2010-CA-00975-RT

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CASES:

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

LIBERTY BAIL BONDS AND LEGAL SERVICES APPELLANT

VS. NO. 2010-CA-0975

STATE OF MISSISSIPPI APPELLEE

REPLY BRIEF OF APPELLEE

The facts of the present case are clear. They can be summarized in the following manner. Appellant, Liberty Bail Bond had an agent post surety for one Joshua Williams. Joshua Williams appeared in Court and *pleaded guilty to the crime of armed robbery.* Appellant, Liberty Bail Bond did not know of the guilty plea. The Trial Court accepted the guilty plea and then with the agreement of the prosecutor allowed Williams to walk out of Court with an armed robbery conviction with Williams' promise to appear on another day. Liberty did not know of the guilty plea, was not in court during the guilty plea, and was not asked to remain on the bond after the guilty plea. Liberty Bail Bond was not asked to promise to stand good for Williams after Williams' guilty plea.

The case of *Frontier Insurance Co. v. State*, 741 So.2d 1021 (Miss. Ct. App. 1999) stands for the solid legal principle that the obligation of a surety is discharged upon "operation of law," which means a conviction. The Appellee argues a notion that was cited by the Trial Court and which is simply illogical. In Appellee's Brief it is argued that *Frontier* is distinguishable due to the fact that Mr. Williams pleaded guilty to armed robbery instead of being found guilty by a jury. This is not a significant and determining legal fact. As the Court noted in *Frontier* when it

discussed bail before conviction and bail pending appeal, the "conviction in and of itself marks the demarcation line regarding bail..." *Frontier*, at 1027.

On page 3 of the Appellee's Brief it is said that the Appellant is arguing that the surety is "released from its obligations under its bond any time an accused appeared for some hearing or another in the course of a criminal case." This is incorrect. As the surety Liberty does not argue that it should be released each time an accused appears for a hearing, motions, continuances, or to await actions of Grand Juries. What Liberty does state is that the surety is discharged by operation of law when the accused becomes convicted by *either* a guilty plea or conviction by a jury. How the accused becomes conviction is not important. The conviction is what is important.

The Appellee argues that the conviction is but a minor point and what is critical in this case is that the Trial Court did not remand the defendant Williams to the custody of the Sheriff. That is in fact true. However, that is a mistake the Trial Court made by allowing a person convicted of armed robbery to walk out of court without a new surety or without asking the existing surety to remain on the same bond. It is a clear principle under Mississippi law that the surety is discharged by operation of law when there is a conviction. *If* the Trial Court had called Liberty into Court and advised them of Williams' plea of guilty and had asked Liberty to remain on the bond after the conviction, and *if* Liberty had agreed, this appeal would be unnecessary.

Counsel for the Appellant has had appeals for over thirty (30) years against the Office of the Attorney General of the State of Mississippi. They had always been effective and fair advocates. However there is a half-truth in their Brief that must be noted. On page 6 the Appellee claims that one of the cases cited by the Appellant actually supports the illogical position of the Appellee. The Appellee says that "On the other hand, in at least on of the cases cited by the Appellant, *State v. Kaerch*, 394 So.2d 1172 (La. 1980), the court made it clear that a bondsman

is liable under his bond in an instance in which the defendant fails to appear for execution of sentence." What the Appellee failed to point out in the *Kaerch* case are several important and distinguishing facts. First, in Louisiana the law "...makes no provision for [a] separate undertaking for bail before conviction and bail after conviction. *Kaerch*, at 1172. Mississippi law is just the opposite. Secondly, in *Kaerch* the agent for the bonding company was in Court and stated he had the permission of the surety to extend the bond after conviction while the defendant was out awaiting the appeal. Neither of these situations is present in the case before the Court. The Appellee is wrong by stating in a lackadaisical fashion that the *Kaerch* decision actually supports its position.

The Appellant Liberty Bail Bond had no knowledge that Williams had pleaded guilty to armed robbery. A plea to armed robbery or to any crime for that matter substantially increases the risk and liability of the surety beyond what was agreed when the accused was released pre-conviction. Had the Trial Court obtained the agreement of Liberty to remain as surety this appeal would not be taking place. As it is Liberty is not liable for the sum of twenty five ($25,000.00) thousand dollars for Mr. Joshua Williams' failure to appear after conviction.

Respectfully submitted,

LIBERTY BAIL BOND AND LEGAL SERVICES

BY: Merrida (Buddy) Coxwell

MERRIDA (BUDDY) COXWELL

CERTIFICATE OF SERVICE

I, Merrida (Buddy) Coxwell, attorney for appellant, Liberty Bail Bonds and Legal Services certify that I have this day filed this Brief of Appellant with the clerk of this Court, and have served a copy of this Reply Brief by United States mail with postage prepaid on the following persons at these addresses:

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This the 16th day of December, 2010.

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