

(Rule 10.3)

81071-1

No. 255697

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

WILLIAM KRAMER, Defendant,

and

ALL CITY BAIL BONDS, Appellant

APPELLANT'S REPLY BRIEF

James L. Studt
Attorney for All City Bail Bonds, Appellant
901 N. Monroe St., Suite 252
Spokane, Washington 99201
WSBA No. 36820

TABLE OF CONTENTS

A.	Assignments of Error	1
No. 1	The trial court's conclusion of law number 1 is an abuse of discretion and an error of law.	1
No. 2	The trial court's conclusion of law number 2 is an error of law.	1
No. 3	The trial court's conclusion of law number 3 is an abuse of discretion and an error of law.	1
No. 4	The trial court's denial of All City Bail Bonds' motion to vacate default judgment and exonerate bail bond is an abuse of discretion and an error of law.	1
B.	Argument	7
C.	Conclusion	18

TABLE OF AUTHORITIES

Table of Cases

<u>State v. Jackschitz</u> , 76 Wash. 253, 136 Pac. 132 (1913).	1, 2, 3, 10, 11
<u>State v. Johnson</u> , 69 Wash. 612, 126 Pac. 56 (1912).	3
<u>State v. Molina</u> , 8 Wn. App. 551, 507 P.2d 909 (1973).	4, 5
<u>State v. Mullen</u> , 66 Wn.2d 255, 401 P.2d 991 (1965).	4, 5, 8
<u>State v. O'Day</u> , 36 Wn.2d 146, 216 P.2d 732 (1950).	2
<u>State v. Olson</u> , 127 Wash. 300, 220 P. 776 (1923).	3, 11, 12

Statutes

RCW 10.19.140	5
---------------	---

Other Authorities:

Webster's II New Riverside Dictionary 556 (1996)	11
--	----

A. Assignments of error

1. The trial court's conclusion of law number 1 constitutes an abuse of discretion and an error of law.
2. The trial court's conclusion of law number 2 is an error of law.
3. The trial court's conclusion of law number 3 is an abuse of discretion and an error of law.
4. The trial court's denial of All City Bail Bonds' motion to vacate default judgment and exonerate bail bond is an abuse of discretion and an error of law.

B. Argument

1. **Judicial Exoneration Of A Recognizance Bond Is Governed By Judicial Interpretation Of Chapter 10.19 RCW, Not Simply The Letter Of Chapter 10.19 RCW.**

In its brief, the Respondent correctly states the specific letter of the statute. The Respondent does not, however, address the fundamental policy foundation for the statute. As early as 1913, the Washington State Supreme Court recognized that a policy of liberal exoneration of bail bonds is critical to the fundamental policy underpinnings of the bail bond statute. See State v. Jackschitz, 76 Wash. 253, 136 Pac. 132 (1913). The fact that the Jackschitz case, despite being nearly a century old, is still cited as controlling law clearly indicates that the policy in

Washington State remains the same: “[t]he object of bail is to insure the attendance of the principal and his obedience to the orders and judgments of the court. There should be no suggestion of bounty or revenue to the state or of punishment to the surety.” Id. at 255.

The Respondent’s brief apparently urges this Court to ignore all case law regarding exoneration of bail bonds. (See Brief of Respondent at 1-12). The Respondent does not cite to any precedent contrary to that of Appellant’s Brief. See Id. The Respondent merely relies on the language of Chapter 10.19 RCW. Id. at 7. The Respondent does not even address the dearth of case law cited by the Petitioner. (See Brief of Respondent at 1-12). The Respondent further makes no attempt to explain why this Court should similarly ignore precedent and rely solely on the statutory language. Id.

In point of fact, the only precedent to which the Respondent cites addresses the standard of review at appeal, not with any substantive argument contained in Appellant’s Brief. (Brief of Respondent at 9-10). Unfortunately, the Respondent fails to completely state the law in its citation to State v. O’Day, 36 Wn.2d 146, 216 P.2d 732 (1950). The Respondent ignores the fact that the primary holding in O’Day was that it was an abuse of discretion to forfeit the bond when the surety persuaded the defendant to surrender himself. Id. at 159.

The Respondent then quotes State v. Olson, 127 Wash. 300, 220 P. 776 (1923), for the same premise. Unfortunately, the Respondent's quotation from Olson, is incomplete, inaccurate, and is an improper statement of law. The **entire** quotation of the holding in Olson provides:

The return of the bail is made to rest, in the code, upon such terms as shall be just and equitable, and this court in State v. Johnson, 69 Wash. 612, 126 Pac. 56, and State v. Jackschitz, 76 Wash. 253, 136 Pac. 132, has said that the order of the court 'will not be reversed on appeal except for a manifest abuse of discretion,' following the general rule as announced in 3 R. C. L. 63, to the effect that in 'the absence of evidence of flagrant abuse the appellate court will not interfere.'
State v. Olson, 127 Wash. 300, 301-302, 220 P. 776 (1923) (emphasis added).

The portion of this ruling that is emphasized above is the pertinent part of the opinion applicable to the instant matter, and is coincidentally omitted by the Respondent. (See Brief of Respondent at 9). As is clearly shown above, the holding in Olson preassumes that a court will forfeit only so much of the bail as is just and equitable, and in such instances will have exercised its discretion properly. In the instant matter, the forfeiture ordered by the trial court was not just and equitable, and the forfeiture was therefore an abuse of discretion.

The trial court here forfeited \$20,000.00 based on a seven day absence. (CP 29-31). No stretch of the imagination would suffice to construe forfeiture of \$20,000.00 for a seven day absence as just and equitable terms. Forfeiture of

\$20,000.00 for a seven day absence is a forfeiture of \$2,857.14 per day. The Respondent fails to explain how a forfeiture of \$2,857.14 per day is equitable, especially when Mr. Kramer was present at trial. The Respondent simply ignores the “just and equitable” language found in nearly every case decided by the appellate courts in the State of Washington.

The Respondent does not challenge the public policy concerns raised by the Appellant’s brief in the instant matter. The court in State v. Molina, 8 Wn. App. 551, 553-554, 507 P.2d 909 (1973) held that it is an abuse of discretion to refuse to exonerate a bail bond when the defendant appears or is in custody in another state at the time the forfeiture judgment is entered or within the sixty day stay of execution period. In the instant case, Mr. Kramer appeared within the sixty day stay of execution period. Following the holding in Molina, no further facts are necessary to find that the forfeiture of Mr. Kramer’s bail bond was an abuse of discretion. The Respondent cites no authority to the contrary, but concludes that the forfeiture was not an abuse of discretion.

Similarly, the court in State v. Mullen, 66 Wn.2d 255, 401 P.2d 991 (1965) held that it was an abuse of discretion to fail to exonerate a bail bond when the defendant’s presence was secured by law enforcement within twenty-one days, even though the bondsman in that case did absolutely nothing to secure the defendant’s presence. Id. at 258-259. The Mullen case is nearly identical to the

instant case, except that All City Bail Bonds took affirmative action to procure Mr. Kramer's presence in court. Why should All City Bail Bonds be given less consideration than a surety who took no action whatsoever? The Respondent provides no answer to this question, but still argues that this is an equitable result. It is illogical and inconceivable that a surety should be punished for taking more action than the Washington State Supreme Court deems sufficient for exoneration.

The Respondent's argument also ignores the fact that All City Bail Bonds had only one week within which to secure the presence of Mr. Kramer before law enforcement located him. If this Court follows the Respondent's argument, it takes the first step down a slippery slope towards complete destruction of the fundamental public policy of recognizance bonds. The Respondent's argument does not address a critical question: How much time should a surety have to secure a fleeing defendant before it is equitable to forfeit the entire bond? According to RCW 10.19.140 and State v. Molina the answer is sixty days; According to the Washington State Supreme Court in State v. Mullen the answer is at least 21 days; According to the Respondent, the answer is apparently less than seven days.

The Respondent concludes that "All City acquiesced, in violation of its responsibility, to the defendant's wishes to remain at large in order for him to

enjoy the Chirstmas (sic) holiday with his family.” (Brief of Respondent at 12). The Respondent does not cite to any authority establishing this alleged “responsibility,” nor does Respondent cite to any evidence establishing this “responsibility.” The Respondent apparently seeks to create, without any basis in law or in fact, a duty on sureties to obtain custody of a defendant within seven (7) days after the defendant’s failure to appear. The fact that established case law in Washington specifically dictates otherwise evidently does not figure into the Respondent’s argument.

Further extension of Respondent’s proposed policy argument naturally leads to the question: What if law enforcement arrests a fugitive defendant the day after the missed hearing? Should it be the policy of this State that the surety bears the risk of losing the entire bail amount if law enforcement reaches a defendant first within a very short time period? That is the exact conclusion urged on this Court by the Respondent. In the instant case, the Lincoln County Sheriff’s Office obtained custody of Mr. Kramer within seven (7) days of his missed court appearance, and apparently did so only a matter of hours before All City Bail Bonds apprehended him. Is it equitable to make All City Bail Bonds pay \$20,000.00 because it was not as fast as the Lincoln County Sheriff? Is it equitable to make All City Bail Bonds pay \$20,000.00 because it couldn’t secure Mr. Kramer within a week? The fundamental public policy behind recognizance

bonds demands that the answer to these questions is an emphatic “No.” The Court should reverse the trial court, remand for a determination of reasonable expenses incurred by the Lincoln County Sheriff’s Office, and order the exoneration of the remainder of the recognizance bond.

2. **Respondent Seeks To Forfeit The Bail Bond In Order To Punish All City Bail Bonds, A Direct Contradiction Of Existing Precedent.**

Respondent states several times that All City Bail Bonds did not inform law enforcement or the prosecutor that Mr. Kramer had contacted All City Bail Bonds. (Brief of Respondent at 8, 10, 11). Respondent then uses this argument as a basis for why the bond should not be exonerated. (Brief of Respondent at 10-12). However, the Respondent provides no explanation for its conclusion that All City Bail Bonds was under any duty to contact law enforcement or the prosecutor. See Id. Respondent does not even explain why this failure somehow requires the entire bond to be forfeit.

The Respondent states that “[t]he defendant was, in fact, apprehended by law enforcement wholly unaware of any contact between the defendant and All City.” Id. Again, it is unclear where the Respondent forms his belief that All City Bail Bonds was somehow under a duty to inform the Lincoln County Sheriff’s Office of its actions. Practically, it is absurd to believe that the Lincoln County Sheriff’s Office would want to receive a phone call from sureties whenever the

surety received a telephone call from an at large Lincoln County defendant. In essence, the Respondent's argument is that "Lincoln County is entitled to \$20,000.00 because Lincoln County does not like what All City Bail Bonds did."

The trial court's order provides further evidence that the only reason that the bail bond was not exonerated was to punish All City Bail Bonds. Conclusion of Law Number 3 states "It is equitable to forfeit the bond because All City Bail Bonds did not take action to secure the defendant's presence in court." (CP 30). This conclusion is erroneous in its factual assertions, as well as its legal conclusion.

All City Bail Bonds directed Mr. Kramer to surrender himself on several occasions. (CP 27, 30; RP 11, 14, 17). All City Bail bonds also scheduled a date to take Mr. Kramer into custody, the same date that law enforcement apprehended Mr. Kramer. (CP 27). Furthermore, the legal conclusion of the trial court is erroneous because even if All City Bail Bonds had taken no action whatsoever, it would still be entitled to exoneration of the bond pursuant to State v. Mullen, 66 Wn.2d at 258-259. The fact that the trial court ignored the ruling of the Washington State Supreme Court, by itself, is sufficient to find a flagrant abuse of discretion.

The Respondent argues that "All City would have this Court believe that contract law somehow applies to decide the issue whether the bond should be

exonerated or damages awarded for the breach.” (Id. at 9). This argument is somewhat confusing, as it was the trial court judge, not All City Bail Bonds, who introduced, argued, and decided the instant matter on a contract theory. (RP 11; CP 29-31; Compare CP 13-15 with CP 29-31). The Respondent ignores the fact that Conclusion of Law Number 1 holds that “All City Bail Bonds failed to perform its contractual obligations to secure the defendant’s appearance in court.” (CP 30). In point of fact, this appeal is partially based upon the trial court’s abuse of its discretion in introducing, arguing, and deciding this matter based on a contract theory because such theory was not introduced or argued by either party.

Respondent’s own brief provides additional support for the contention that the contract theory applied in this case was an abuse of discretion. The trial court held that “All City Bail Bonds failed to perform its contractual obligations to secure the defendant’s appearance in court.” (CP 30). As is clearly shown in the Brief of Appellant, Part 1 and 2 of Argument, there was absolutely no evidence introduced showing that All City Bail Bonds had any contractual obligation to secure the defendants. (See CP 1-38). The Respondent’s Brief states “All City would have this Court believe that contract law somehow applies to decide the issue whether the bond should be exonerated or damages awarded for breach.” (Brief of Respondent at 9). The trial court, not All City Bail Bonds, argued the contract theory, and concluded as a matter of law that All City breached a

contract, and could not therefore obtain exoneration of the bond in the instant matter. (CP 30). Conclusion of Law Number 1 is obviously unsupported by the evidence, and constitutes abuse of discretion.

Respondent's argument can be boiled down to one simple premise: All City Bail Bonds should be punished for not taking the right actions. This premise is diametrically opposed to nearly a full century of precedent. See Jackschitz, 76 Wash. at 255. All City Bail Bonds has never argued that the State is not entitled to recoup its expenses in locating and apprehending Mr. Kramer. All City Bail Bonds has consistently emphasized that established precedent specifically requires it to reimburse the State for its expenses. The primary focus is whether it is equitable and just to award \$20,000.00 for such reimbursement.

It is uncontested that All City Bail Bonds reimburse the State for its expenses in locating and apprehending Mr. Kramer. Equity demands that All City Bail Bonds should not be required to reimburse the State \$20,000.00 because Mr. Kramer was absent for only seven days. An equitable result is to reimburse Lincoln County for its actual expenses. This Court should follow existing public policy, reverse the trial court, remand for a determination of reasonable apprehension expenses, and order the exoneration of the remainder of the bond.

C. Conclusion

This Court should reverse the trial court, remand this matter for a determination of reasonable expenses in locating and apprehending Mr. Kramer, and order the trial court to exonerate the remainder of the surety bond posted by All City Bail Bonds in this matter. The Respondent has failed to cite any authority that supports any other result.

The Respondent simply argues that the letter of the statute controls, despite the well established precedent interpreting that same statute. The Respondent argues that the bond should be forfeited because All City Bail Bonds did not behave as the Respondent wanted. The definition of "punish" is "to subject to a penalty for wrongdoing." Webster's II New Riverside Dictionary 556 (1996). Here, the Respondent seeks to forfeit a \$20,000.00 bail bond, certainly a penalty to All City Bail Bonds, because the Respondent believes that All City Bail Bonds is guilty of wrongdoing. Washington State has, for nearly a century, maintained that recognizance bonds are neither revenue measures nor intended to punish sureties. The Respondent ignores this fact and asks this Court to overturn the near-century of precedent on point, and uphold what is an obvious attempt to punish All City Bail Bonds.

Furthermore, the Respondent misstates the law in its citation to State v. Olson, 127 Wash. at 301-302. The essence of the holding in Olson, is that the trial

court's exercise of discretion is not an abuse of discretion if it is just and equitable. Respondent conveniently leaves out the prerequisite that the forfeiture must be "just and equitable." The holding in Olson, indicates that it is a flagrant abuse of discretion to forfeit a recognizance bond unless the forfeiture is just and equitable. In the instant case, the forfeiture of \$20,000.00 for a seven day absence is certainly unjust and inequitable. A just and equitable result would be to forfeit so much of the bond as is required to reimburse the State for its expenses in locating and apprehending Mr. Kramer, and exonerating the remainder. This is especially the case since the primary goal of the bond was fulfilled, Mr. Kramer was present for trial, and Mr. Kramer was absent for only seven days.

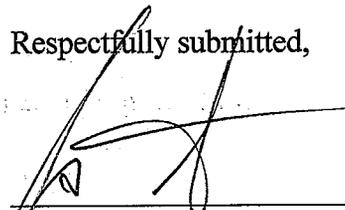
The Respondent's Brief actually supports All City Bail Bonds' claim that a contract theory is inapplicable to the instant matter, and that the application of a contract theory was an abuse of discretion. The Respondent then attempts to obfuscate the issues by failing to recognize that the trial court itself actually argued and decided the matter on a contract theory. The Respondent concludes that the trial court properly exercised its discretion despite the fact that the trial court based its ruling on the same contract theory that both Appellant and Respondent agree is inapplicable.

Finally, the Respondent requests this Court to uphold the forfeiture of the bail bond in the instant matter because All City Bail Bonds somehow violated a

duty to inform the Lincoln County Sheriff's Office. The Respondent does not provide any authority for this proposition, and does not explain why a surety should somehow be obligated to disclose its actions to law enforcement. The Respondent fails to explain how a forfeiture of the entire \$20,000.00 surety bond is in keeping with public policy, especially when the purpose of the bond was achieved: Mr. Kramer was present for trial. This Court should reverse the trial court's decision, remand for a determination of reasonable expenses in locating and apprehending Mr. Kramer, and order the exoneration of the remainder of the bond posted by All City Bail Bonds.

DATED this 10 day of April, 2007.

Respectfully submitted,



James L. Studt, WSBA No. 36820
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on the 10 day of April, 2006, I caused a true and correct copy of this Appellant's Reply Brief to be served on the following in the manner indicated below:

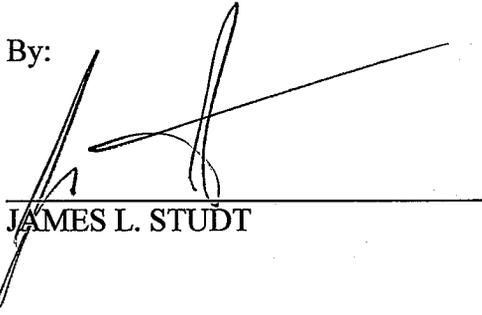
Counsel for: Lincoln County
Prosecuting Attorney

Service by:
 U.S. Mail

Name: Melvin D. Hoit

Address: 450 Logan Street,
P.O. Box 874, Davenport,
Washington, 99122-0874

By:



JAMES L. STUDT