

1977 S.C. Op. Atty. Gen. 208 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-271, 1977 WL 24611

Office of the Attorney General

State of South Carolina

Opinion No. 77-271

August 26, 1977

*1 TO: Honorable Donald V. Myers
Solicitor
Eleventh Judicial Circuit

QUESTIONS PRESENTED:

- (1) Is it proper for a private bonding company to place a defendant back in police custody and thereby be discharged of its obligations when the defendant has not violated any of the conditions of the bond?
- (2) Is it proper for a police agency to designate a particular officer who has custody of the files of the agency to testify as the sole witness on behalf of the State at preliminary hearings?
- (3) Is the State required to produce the victim and the prosecuting officer at the preliminary hearing?

STATUTE INVOLVED:

Section 22-5-320, 1976 Code of Laws of South Carolina.

DISCUSSION:

As to Question One above, there is no statutory or case law on this point in South Carolina.

It appears that we are dealing essentially with two contractual relationships: 1) the relationship between the State and the surety (bonding company); and 2) the relationship between the surety and the defendant.

Of course, of the two, you as a public official would be concerned with the relationship between the State and the surety. The rule here is that the surety is discharged when the defendant is rearrested or otherwise taken into custody on the same charges. [Roberts v. State](#), 32 Ga. App. 339, 123 S.E. 151; [Benson v. Harris](#), 19 Ga. App. 328, 91 S.E. 491. The basis of this rule is that the only consideration flowing to the surety in this arrangement is the custody of the defendant. When that consideration fails, the surety's liability ends. [Benson, supra](#);

It follows that when the defendant refuses to pay the premium to the surety, there has been a failure of consideration in their contractual relationship as well and the surety's obligation to the defendant ceases. By surrendering the defendant to the authorities prior to breach of the conditions of bail, the surety satisfies his obligation to the State.

The second and third questions will be answered together. Under the present state of the law, there appears to be no problem with the procedure you describe. Of course, the testimony of the officer would be hearsay, but the use of hearsay is proper for the establishment of probable cause. See attached opinion.

The State is under no obligation whatsoever to present all of its evidence at a preliminary hearing. Only so much as is needed to establish probable cause is required. [State v. Flood](#), 257 S.C. 141, 184 S.E. 2d 549.

CONCLUSION:

When a defendant fails to pay the premium to a bonding company, it is proper for the bonding company to surrender him to the police and be discharged from their obligation.

The State is under no obligation to produce all of its evidence at a preliminary hearing, and it is proper to use hearsay to support a finding of probable cause at a preliminary hearing.

Joseph R. Barker
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