IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE
EN BANC

STATE OF TENNESSEE,

-vs-

NO. P-41888

Filed 4-21-16
Richard DeSaussure, Clerk
BY [illegible] D.C.

A-24 HOUR BONDING COMPANY and
James Bryant, Owner
Defendant

ORDER *EN BANC*

This cause came to be heard upon a Petition to Show Cause filed by the State of Tennessee; an evidentiary hearing on the Motion that was heard *En Banc* on April 15, 2016; (Judge J. Robert Carter presiding, and Judges Paula Skahan, Glenn Wright, James Lammey, John Campbell, Chris Craft and James Beasley, Jr. participating and Judges Mark Ward, Lee Coffee and Carolyn Blackett recused.); and upon the entire record of this cause.

The Court is relying on two statutes that control the approval of and revocation of the privilege to write bail bonds for Shelby County, TCA §40-11-125 and T.C.A.§40-11-127.

T.C.A. §40-11-125 states:

> (a) In addition to the requirements of part 3 of this chapter regulating professional bondsmen, approval of a professional bondsman or other surety may be withheld, withdrawn or suspended by any court if, after investigation, it appears that a bondsman:
>
> (1) Has been guilty of violating any of the laws of this state relating to bail bonds;

(2) Has a final judgment of forfeiture entered against the bondsman which remains unsatisfied;

(3) Is guilty of professional misconduct as described in § 40-11-126; or

(4) If applying for approval as a professional bondsman, has been convicted in any state of the United States of two (2) or more misdemeanors which are equivalent to Tennessee Class A or Class B misdemeanors; provided, however, that the misdemeanor convictions shall have occurred within five (5) years of the date the application for approval is filed.

(b) Any court withholding, withdrawing or suspending a bondsman or other surety under this section shall notify the bondsman in writing of the action taken, accompanied by a copy of the charges resulting in the court's action. If, within twenty (20) days after notice, the bail bondsman or surety files a written answer denying the charges or setting forth extenuating circumstances, the court shall call a hearing within a reasonable time for the purpose of taking testimony and evidence on any issues of fact made by the charges and answer. The court shall give notice to the bail bondsman, or to the insurer represented by the bondsman, of the time and place of the hearing. The parties shall have the right to produce witnesses, and to appear personally with or without representation by counsel. If, upon a hearing, the court determines that the bail bondsman is guilty as alleged in the charges, the court shall thereupon withhold, withdraw or suspend the bondsman from the approved list, or suspend the bondsman for a definite period of time to be fixed in the order of suspension.

(c) The clerk of the court and the sheriff of the county shall be notified of the action of the court and the offending bondsman stricken from the approved list.

(d) Any applicant for approval whose application has been denied, withheld, suspended or revoked shall have the right of appeal to the next highest court having criminal jurisdiction, and the appeal shall be heard de novo.

T.C.A. §40-11-127 states:

Upon motion, any district attorney general may prefer charges to have a bail bondsman stricken from the approved list pursuant to § 40-11-125 with the same provisions for notice, answer and hearing before the court, and the same right of appeal.

This matter came before the Court through a Petition to Show Cause filed by the District Attorney alleging that A-24 Hour Bonding Company violated T.C.A. §67-4-806 by failing to report and remit the total taxes on all bail bonds written by A-24 Hour Bonding Company during

2013, 2014 and the first two quarters of 2015. The law requires bail bond companies to collect a $12 tax on all bonds that they write and submit this amount to the State Department of Revenue. T.C.A. §67-4-806 states:

> It shall be the duty of the bail bondsman to collect the tax imposed by this part and to remit the tax to the department in such manner as the department may determine. A special account shall be created by the department into which all taxes collected under this part shall be deposited. All remitted revenues shall be maintained in such segregated account within the department until distributed or deposited, as required in this section, into the civil legal representation of indigents fund authorized and created by § 16-3-808.

The State of Tennessee presented Special Agent Russell Dotson and Special Agent Greer of the Tennessee Department of Revenue, who testified about the Department's investigation of possible tax avoidance from bonding companies and they were assigned to the investigation of bonding companies in Shelby County. Agent Dotson testified that he executed a search warrant at the office of A-24 Hour Bonding Company Bartlett Office on September 24, 2015 and Agent Greer served a search warrant on the Memphis Office on the same day. As a result of these search warrants, the Department seized records including the receipt books for the bail bond tax obtained from people making bonds as well as the records of bonds made by A-24 Hour Bonding Company. Agent Greer examined the records to see how much tax was being collected by A-24 Hour Bonding Company and how much was reported on the tax returns filed with the State of Tennessee. From the evidence introduced through Agent Greer, it was shown that A-24 Hour Bonding Company, during a 2 1/2 year period, collected $77,808 in tax from people making bail bonds. Agent Greer testified that he looked at the amount of tax that was reported by A-24 Hour Bonding Company to the Department in their quarterly reports and found that amount to be $27,168. Agent Greer concluded that A-24 Hour Bonding Company was not reporting $50,640

in collected taxes and was keeping this money for its own use. Agent Greer testified that the information that the Department used to calculate the taxes owed came from the receipt books created by A-24 Hour Bonding Company during the ordinary course of business. These receipt books show that A-24 Hour Bonding Company was collecting the tax from persons making bonds but was not remitting the amount owed to the State.

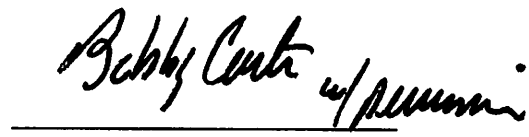
IT APPEARS TO THE COURT: that based on the evidence adduced at the evidentiary hearing, conducted pursuant to T.C.A. §40-11-125, the allegations that A-24 Hour Bonding Company was improperly withholding bail bond taxes from the Tennessee Department of Revenue has been proven by a preponderance of the evidence. The Court is not persuaded by the argument by A-24 Hour Bonding Company that there was confusion about how the tax was to be collected, by the case or by the defendant. A-24 Hour Bonding Company collected the tax as required by law and did not remit the amount to the State. This Court granted A-24 Hour Bonding Company the privilege to write bail bonds for this Judicial District and A-24 Hour Bonding Company abused this privilege to unjustly enrich itself by keeping $50,640 in collected taxes.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED: that A-24 Hour Bonding Company's privilege to write bail bonds is SUSPENDED effective immediately.

IT IS SO ORDERED.

Entered this the 19th day of April 2016.

PAULA SKAHAN
Judge of Division I



J. ROBERT CARTER
Judge of Division III

GLENN WRIGHT
Judge of Division II

JAMES LAMMEY
Judge of Division V

JOHN W. CAMPBELL
Judge of Division VI

JAMES C. BEASLEY, JR.
Judge of Division X

CHRIS CRAFT
Judge of Division VIII