STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 4, 2013)

STATE OF RHODE ISLAND	:	
	:	
v.	:	**P2-10-2491A**
	:	**P2-11-0732A**
	:	
ISRAEL VASQUEZ	:	

DECISION

K. RODGERS, J. This matter is before the Court on the Motion to Set Aside Bail Forfeiture filed by Bondperson Rudolph Procaccianti (Procaccianti). Bail was ordered to be forfeited by this Court on June 5, 2012, after Defendant Israel Vasquez (Vasquez) failed to appear on January 12, 2012, for pretrial conferences scheduled in each of the above-captioned cases. After hearing witnesses and considering written arguments of counsel for the State and Procaccianti, and for the reasons set forth below, the Court orders that the bail forfeiture be set aside in the amount of $15,000 in P2-10-2491A and in the amount of $15,000 in P2-11-0732A.

I

Facts and Travel

A

Pending Criminal Cases

On March 9, 2010, Vasquez was arrested and charged by the Providence Police Department with possession with intent to deliver cocaine, conspiracy to violate the Rhode Island Uniform Controlled Substances Act, and possession of one ounce to one kilogram of cocaine. Defendant was later charged with these offenses by Criminal

Information in P2-10-2491A. Vasquez was arraigned on September 8, 2010, and bail on this Criminal Information was set in the amount of $30,000 with surety. On September 10, 2010, Procaccianti posted real estate located at 180 Pine Street, Providence, Rhode Island, as surety for Defendant's $30,000 bail. Defendant was released from the Adult Correctional Institution (ACI) on September 10, 2010.

On January 6, 2011, while Defendant remained out on bail in P2-10-2491A, he was again arrested by the Providence Police Department, this time for delivery of cocaine. Vasquez was held without bail as an alleged violator of the terms and conditions of his bail in P2-10-2491A. On April 14, 2011, bail in P2-10-2491A was increased to $50,000 with surety. Procaccianti thereafter posted surety for the additional $20,000 bail.

The delivery of cocaine charge ripened into Criminal Information P2-11-0732A, upon which Defendant was arraigned and bail was set at $50,000 with surety on April 19, 2011. Procaccianti's son, Neil Procaccianti, also a court-approved bail bondsperson, posted certain real estate located on Victory Highway in Coventry, Rhode Island as surety for Defendant's $50,000 bail in P2-11-0732A. As of April 19, 2011, Vasquez was released from the ACI on surety bail in both cases in the total amount of $100,000, secured by real estate posted by each of the Procacciantis.

B

Bail Forfeiture

Defendant attended numerous pretrial conferences in both cases in the months after his release from the ACI. These conferences included several in the fall of 2011 and even as late as December 5, 2011. However, on January 12, 2012, after having been provided notice, Vasquez failed to appear for a scheduled pretrial conference on each

case, and a warrant was issued for his arrest on January 17, 2012. The State thereafter filed a Motion to Default Bail in each case on April 19, 2012. The original hearing on the State's Motion was May 22, 2012, but was it continued until June 5, 2012. On June 5, 2012, another Justice of this Court granted the State's Motion to Default Bail in each case, thereby declaring the forfeiture of $50,000 bail in each case. Counsel for the Procacciantis then requested a hearing to set aside the forfeiture in accordance with Rule 46(g)(2) of the Rhode Island Superior Court Rules of Criminal Procedure.

1

Procaccianti's Efforts to Locate Defendant

On October 5, 2012, Procaccianti testified before this Court regarding the efforts he undertakes generally to monitor individuals for whom he and/or Neil has posted surety bail.[1] At or about the time bond is posted for a defendant, Procaccianti would obtain information from a defendant such as address, telephone numbers, date of birth, social security number, vehicle license plate number, and names of relatives and significant others. According to Procaccianti, he obtains information concerning a defendant's

[1] Procaccianti clearly and unequivocally has accepted responsibility under the surety bond posted by his son, Neal:

> Q.: So who's responsible for the defendants, yourself or Neal [sic], if [Neil] posts a bond?
> A.: I am.
> Q.: So if, again, a defendant misses a court date, you're the one that does all the recognizance to find this person, correct?
> A.: That's correct.
> . . .
> Q.: You're indicating today that you're responsible for that bond [posted by Neil], is that correct?
> A.: I am.

Hr'g Tr. at 6, 25, Oct. 5, 2012.

relatives both within and outside Rhode Island. He testified that he would "go as deep as I can into the friends with phone numbers" and get "[w]hatever is available" concerning addresses of parents and significant others. Hr'g Tr. at 4, Oct. 5, 2012.

Procaccianti also described generally how he would "track" defendants pending trial. He stated that he would "have somebody run the cases every two weeks, all the cases are run [for] everyone that I have on bail, and I get an update every two weeks." Id. If he learned that a defendant failed to attend a court date, he would learn that information within about two weeks[2] and would "look back into the file, pull up their telephone numbers, and try to reach them." Id. Procaccianti acknowledged that he does not routinely call or email defendants for whom he has posted surety, but rather relies upon defendants calling him if a court date was missed or if the next court date is unknown to the defendant. The only reason Procaccianti would attempt to contact a defendant is upon learning—up to two weeks thereafter—that a court date was missed. See id. at 18-19.

At the time of Procaccianti's testimony, he stated that he was listed as having posted surety bail for approximately 200 individuals. Id. at 16. He further stated that he has posted surety bail around 2000 times over his 28-year career as a bail bondsman; that out of those 2000 cases, "[m]aybe a couple dozen failed to appear in court;" and that approximately twelve to fifteen have not been found. Id. at 14, 16. He also testified that he has hired a private investigator approximately twenty times to track down defendants. Id. at 23. He denied that he has hired a private investigator to find a defendant only after

[2] Procaccianti further testified that within the year prior to his testimony, he began to have someone check the Court's website on his behalf every two weeks for those defendants for whom he posted surety. Prior to that time, he would cause those checks to be made every two months. Hr'g Tr. at 22, Oct. 5, 2012.

the State had moved to forfeit the bail; rather, he stated that "[a]s soon as I feel as though I've exhausted my own potential and working with a local, I try to use the private investigator." Id.

The information Procaccianti obtained concerning Vasquez included his social security number and address, the license plate of the vehicle used to pick him up from the ACI, and information relative to Vasquez's girlfriend and ex-girlfriend living in Rhode Island and his sister in New York. Id. at 6. Procaccianti also learned from Vasquez that he had no children. Id. The Procacciantis collected a three percent (3%) fee from Vasquez each time surety was posted on his behalf. Id. at 28. Procaccianti testified that when the surety bond was posted on P2-11-0732A—the new offense with which he was charged while on bail on P2-10-2491A—he would have obtained "new information with any updated phone numbers. . . . Again, the vehicle he was driving, the license plate, the color of the vehicle, telephone numbers." Id. at 30. Notably, Procaccianti was not present on April 19, 2011, when his son, Neal, posted surety bail on Vasquez's 2011 offense. Id. at 26-27.

By the end of January 2012, Procaccianti learned that Vasquez missed his January 12, 2012 pretrial conferences. He testified that, in response, he "got the necessary phone numbers, made the phone calls, started talking to the family." Id. at 7. Procaccianti acknowledged that, at one point, he spoke to Defendant: "They were going to have him contact me, and I chased them around for a while. I got one phone call because he said he was going to come in, and I couldn't reach him after that at that point." Id. Procaccianti testified that he "often" knocked on doors at addresses he had in Vasquez's file, all of which were located in Providence, and that he spent a couple of months

looking for Vasquez on his own. He acknowledged that he was "getting the stall" when the addresses provided to him by Defendant's sister, ex-girlfriend, and/or girlfriend were found to have been vacated or were addresses of Defendant's friends denying any knowledge of his whereabouts. Id. at 8-9. He further testified that he heard from Vasquez's ex-girlfriend and sister that Vasquez was getting some things in order and would turn himself in, but this never materialized despite the "back and forth" with Vasquez's ex-girlfriend and sister. Id. at 8.

About four months after Vasquez failed to appear at his pretrial conferences, Procaccianti learned that Defendant's real name was Jaime Rodriguez, that he was of Dominican Republic and not Puerto Rican descent, and that his roots are in New York City. Id. at 9. On April 25, 2012, Procaccianti hired a private investigation firm, Third Eye Investigations (Third Eye), to assist in locating and returning Defendant to Rhode Island Superior Court, when Procaccianti "knew he was in New York City." Id. at 12. Procaccianti testified that he remains involved in efforts to locate Defendant, including continuing to speak to an individual who has provided substantive leads in the past as to Defendant's whereabouts and providing such information to the hired private investigators.[3] Procaccianti has not traveled to New York or elsewhere to participate in Defendant's apprehension, and he testified that he has paid $5000 to Third Eye for all services related to Defendant's apprehension.

[3] Mindful that Defendant has not yet appeared to cancel the warrant issued for his failure to appear for pre-trial conferences, this Court will refrain from disclosing the specific information presented to the Court relative to Defendant's known actions, while summarizing the general efforts taken to locate Defendant in 2012.

2

Efforts of Private Investigator to Locate the Defendant

On October 5 and November 16, 2012, this Court heard testimony from Detective Robert Fitzpatrick of the Providence Police Department. Although employed as a full-time Providence Police detective through September 8, 2012, Fitzpatrick testified before this Court in his capacity as a private investigator and owner of Third Eye.

Det. Fitzpatrick testified that Procaccianti requested Third Eye's services on April 25, 2012 to track down Defendant. Initially, he undertook a background investigation on Defendant, as well as his relatives and friends; conducted surveillance on the Providence addresses that Procaccianti had provided to Third Eye; and searched social media websites. See id. at 50-52; Hr'g Tr. at 3, 33, Nov. 16, 2012. Although duplicative with what Procaccianti testified he did between late January and April 25, 2012, Det. Fitzpatrick stated that he was doing his "own diligence" in going to the same addresses and speaking to the same people. Hr'g Tr. at 33, Nov. 16, 2012.

Unlike Procaccianti's testimony that he knew, as of April 25, 2012, that Defendant was in New York, Det. Fitzpatrick testified that he learned "at some point, a couple months after April" that Defendant was in Lawrence, Massachusetts and, thereafter, was in New York City. Id. at 4-5. His report, introduced into evidence, revealed that the first time Third Eye confirmed Defendant's contact with New York City was July 5, 2012. Id. at 38, 40. Indeed, by July 16, 2012, Third Eye developed information on where Defendant lived and worked in New York City but neither Det. Fitzpatrick nor Procaccianti travelled to New York City at that time. Id. at 43, 47. Instead, Det. Fitzpatrick relied on the New York City Police Department (the NYPD) to

go to the addresses and follow up on any leads the NYPD may develop. Id. at 44-45. Unsatisfied with the NYPD's efforts, Det. Fitzpatrick contracted with New York Fugitive Unit (the Fugitive Unit), a private entity, in August 2012 to conduct surveillance. On August 24, 2012, a full three months after Procaccianti purportedly was aware that Defendant was in New York City, Det. Fitzpatrick travelled to New York City—for the first time since being retained by Procaccianti—to meet with representatives of the Fugitive Unit. See id. at 48. Defendant was not apprehended on August 24, 2012. Det. Fitzpatrick testified that he has not travelled back to New York City for the purpose of apprehending Defendant since that trip. Id. at 53.

In September, 2012, Third Eye received information that Defendant was working at a location in New York City other than the one that had been monitored in August. Id. at 51. The Fugitive Unit conducted surveillance on that location, to no avail. Id. at 52-53. Relying on other information developed in late October 2012, which Det. Fitzpatrick characterized as a "solid lead," Third Eye sent one of its investigators back to New York City, again to no avail. See id. at 57.

Det. Fitzpatrick confirmed that, as of the time of his November 16, 2012 testimony, Procaccianti has paid Third Eye $5000 to find Defendant. Id. at 28. Det. Fitzpatrick further stated, however, that those funds have been used in part to pay the expenses the Fugitive Unit and another company, T & T Recovery (T & T), with which Third Eye also contracted to conduct surveillance on certain locations in New York City. Id. According to Det. Fitzpatrick, both the Fugitive Unit and T & T are on a contingent fee and will be paid $5000 if Defendant is apprehended. Id. at 19-20. Additionally, Det. Fitzpatrick stated that Third Eye has expended approximately 400 hours in manpower

from April 25, 2012 through October 2012, Hr'g Tr. at 53, Oct. 5, 2012, and that the number of individuals working on this matter on behalf of Third Eye varied during that time and up through the date of his November 16, 2012 testimony, depending on the priority of the assignment. Id.; see also Hr'g Tr. at 30-32, Nov. 16, 2012. At the time of hearing, an additional $4000 had been billed by Third Eye to Procaccianti but that amount had not yet paid. Hr'g Tr. at 28-29, Nov. 16, 2012. Furthermore, on at least one occasion, Procaccianti advised Third Eye that there was a deadline for Defendant's apprehension, which corresponded with a hearing date on the instant Motion to Set Aside Bail Forfeiture and caused Third Eye to treat this case with priority. See id. at 46-47.

Since hearing this matter on November 16, 2012, and despite the several continuances requested because Procaccianti and/or his agents had "solid leads" that could result in Defendant's apprehension, Defendant remains a fugitive and the State is unable to prosecute these cases.

II

Standard of Review

Rule 46(g)(1) of the Rhode Island Superior Court Rules of Criminal Procedure and G.L. 1956 § 12-13-16.1 mandate that bail and/or security for bail be forfeited whenever it is shown to the Court's reasonable satisfaction that the defendant left the jurisdiction, failed to appear as required, or failed to perform a condition of recognizance. Rule 46(g)(2) further allows the Court to order that bail forfeiture be set aside "upon such conditions as the [C]ourt may impose, if it appears that justice does not require the enforcement of the forfeiture." The decision to order forfeiture is addressed to the sound discretion of the trial judge and may be overturned only for abuse of discretion, namely,

if the trial judge were to act arbitrarily or capriciously. State v. Werner, 667 A.2d 770, 774 (R.I. 1995); State v. Saback, 534 A.2d 1155, 1157 (R.I. 1987).

III

Analysis

At the outset, this Court notes that, on June 5, 2012, bail in each of these cases was properly deemed to be forfeited in accordance with Rule 46(g) of the Rhode Island Superior Court Rules of Criminal Procedure and § 12-13-16.1. Therefore, the issue presently before this Court is whether or not justice requires the enforcement of the total $100,000 forfeiture on these cases.

The Rhode Island Supreme Court has had several occasions to discuss the various factors that the trial judge may consider in determining whether to set aside bail forfeiture. See generally Werner, 667 A.2d at 774; Saback, 534 A.2d at 1157; In re Armand Procaccianti, 475 A.2d 211, 213 (R.I. 1984). This Court may consider the cost, inconvenience, and prejudice suffered by the State as a result of a breach of a bail condition; whether surety was provided by a family member or a professional bondsman; whether the defendant's breach was willful; whether the surety acted or participated in the defendant's apprehension; whether the defendant failed to appear thereby interfering with the prompt administration of justice; and any explanation or mitigating factors. Werner, 667 A.2d at 774; Saback, 534 A.2d at 1157; Procaccianti, 475 A.2d at 213. The burden of demonstrating good cause to set aside bail forfeiture in whole or in part rests with the surety. Saback, 534 A.2d at 1157 (citing Allegheny Mut. Cas. Co. v. Maryland, 368 A.2d 1032 (Md. 1979)).

The purpose of bail is to secure the presence of the defendant in court for trial. Werner, 667 A.2d at 774 (citing Bridges v. Super. Ct., 121 R.I. 101, 396 A.2d 97 (1978)). It is undisputed here that Defendant's presence before the Court has not been secured since he failed to appear on January 12, 2012 and a warrant issued on January 17, 2012. Moreover, it is undisputed that Procaccianti has expended only $5000 in payment to Third Eye to apprehend Defendant, with the possibility that $5000 would be paid to an entity that does, in fact, apprehend him. Furthermore, $4000 has been billed to Procaccianti but yet remains unpaid. The Procacciantis were paid $3000, or three percent (3%), to post surety in the total amount of $100,000 on these matters.

The State has been wholly unable to bring these two criminal offenses to trial because Defendant has breached the terms of his bail, and the prejudice suffered by the State increases as further time goes by, memories fade, and/or witnesses are unable to be located or to testify. The prompt administration of justice has been seriously impeded in these cases due to Defendant's actions. Defendant's breach was and continues to be willful, as Procaccianti's testimony revealed that Defendant is aware that a warrant has been issued for his arrest.

While Defendant's own deliberate actions are factors considered by the Court in whether bail forfeiture should be set aside in whole or in part, the actions of the surety must also be addressed. Procaccianti, a professional bondsman, admittedly does not initiate contact with individuals for whom he or his son posts bail until he learns that a condition of bail was violated. While such a hands-off approach may be common in the trade, such minimal interaction between Procaccianti and Defendant—for a fee of $3000—did nothing to ensure that Defendant would be present in court for trial. Rather,

Procaccianti only attempted to contact Defendant at the end of January—up to two weeks after he failed to appear before the court on January 12, 2012 and almost two months since his last scheduled court date on December 5, 2011. Surely, contact with Defendant in the intervening time would have given Procaccianti—and ultimately the Court—some comfort that Defendant was in compliance with the terms of bail and intending to maintain his compliance.

Additionally, after learning that Defendant failed to appear in court, Procaccianti himself undertook to locate Defendant utilizing the information Defendant had provided earlier. He spent approximately three months going to the addresses Defendant had given—which he stated were either vacant or addresses for Defendant's friends and not his own—and otherwise "getting the stall" from Defendant's sister and former girlfriend. Such results should have immediately caused Procaccianti enough concern to promptly engage the services of a private investigator rather than waiting for three months and repeating the fruitless investigative exercises he had undertaken.

Once Third Eye was engaged, the search for Defendant was conducted in fits and starts. At times, Third Eye treated this case with priority, which coincided with the time of a scheduled hearing date before this Court and/or Procaccianti's directive that there was a "deadline" to meet. However, months passed before Third Eye reached the same conclusion that Procaccianti did by April 25, 2012: that Defendant was in New York City. Then, even more time passed before anyone from Third Eye travelled to New York City to act on the "solid leads" that developed.

Finally, the Court is obliged to discuss the nature of professional services provided by the surety, as discussed at length in Werner. In that case, our Supreme

Court affirmed the full forfeiture of $250,000—even where the defendant was ultimately apprehended—in part "because the professional bondsman promised, for a substantial fee, to produce [the defendant] and through his own fault failed to do so, the professional bondsman was required to abide by the second part of his promise, which called for the payment in full of the $250,000 set forth in the recognizance." 667 A.2d at 776. The court went on to state:

> Given the large sum of the bail, the professional bondsman should have realized the awesome risk he accepted and the importance of ensuring that he keep his promise with the court that [the defendant] appear when required. Total forfeiture of the entire amount of the bail is a sanction the professional bondman assumed when he agreed to the conditions of the bond. We are of the opinion that in this case the forfeiture serves an important deterrent purpose.

Id.

The Werner court also expressly disagreed with the bondsman's argument, stating:

> We disagree with the professional bondsman's observation that confirmation of the instant bail forfeiture will discourage bondspersons from providing assistance to criminal defendants. We do not believe the forfeiture in this case will have a chilling effect on the willingness of a bondsperson to assist criminal defendants to exercise their constitutional right to bail. Rather, we are of the opinion that it will instead encourage a bondsperson to assess with greater certainty the value of security given by defendants and to encourage him or her to evaluate the likelihood of a defendant's breaching a bail condition. It will also motivate a bondsperson to take reasonable precautions to ensure a defendant's appearance in court when required and to cooperate fully with the state in its efforts to recapture a defendant who breaches the conditions of a recognizance.

Id. (emphasis added).

This Court, then, would be wholly within its discretion to deny Procaccianti's request to set aside the bail forfeiture, as "[t]otal forfeiture of the entire amount of the bail is a sanction the professional bondman assumed when he agreed to the conditions of the bond." Id. However, this Court declines to do so in light of some effort having been expended by Procaccianti and Third Eye to locate and apprehend Defendant. To mandate the full bail forfeiture under these circumstances would do little to encourage professional bondspersons to assist in locating a defendant should he or she fail to comply with the terms and conditions of bail. On the other hand, that is the sanction that any surety assumes when agreeing to the conditions of bond.

More importantly, though, this Court recognizes that it is a serious role that a professional bondsperson plays in our State's criminal justice system and reasonable precautions must be taken by such professionals to ensure a defendant's appearance in court. Id. Here, Procaccianti fell woefully short in meeting such reasonable precautions. Procaccianti admitted he does not even attempt to keep in touch with clients unless they call him or he learns—up to two weeks later—that a client has breached some condition of bail. Surely more can and should be done to warrant a hefty fee for professional bonding services. Additionally, while it would be wholly speculative for this Court to conclude that Defendant would have been apprehended had Procaccianti and/or Third Eye begun to search for Defendant on January 12, 2012—the day he missed his court date—it is nonetheless clear to this Court that more could have been done immediately thereafter, including, for instance, engaging private investigative services sooner than three months when all the evidence revealed that Defendant was purposefully evading Procaccianti.

Because Procaccianti did ultimately engage the services of a private investigator, which a surety should be encouraged to do, this Court orders that forfeiture be set aside in the amount of $15,000 in P2-10-2491A and in the amount of $15,000 in P2-11-0732A. Thus, $35,000 on each case shall be forfeited, for a total of $70,000. Procaccianti shall have thirty (30) days in which to satisfy the forfeiture.

IV

Conclusion

For the foregoing reasons, this Court grants the Motion to Set Aside Bail Forfeiture in the amount of $15,000 on each of the above-captioned cases. Accordingly, $35,000 on each case shall be forfeited, for a total of $70,000. Procaccianti shall have thirty (30) days in which to satisfy the forfeiture.

Counsel for the State shall prepare an order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	State of Rhode Island v. Israel Vasquez
CASE NO:	P2-2010-2491A P2-2011-0732A
COURT:	Providence County Superior Court
DATE DECISION FILED:	June 4, 2013
JUSTICE/MAGISTRATE:	K. Rodgers, J.
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