

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.**

**SUPERIOR COURT**

**(FILED: August 15, 2014)**

**STATE OF RHODE ISLAND**

**V.**

**Case No. P2-2012-3423A**

**JUAN BATISTA**

**DECISION**

**LANPHEAR, J.** After conferencing this case with counsel at a March 13, 2014<sup>1</sup> pretrial conference, this Court explained to the attorneys that if Mr. Batista pled guilty or nolo contendere to the pending charges before trial, he would receive a nine-year sentence, with six months to serve at the Adult Correctional Institutions.<sup>2</sup> The balance of his sentence would be a suspended sentence, running with probation. Defense counsel disliked this offer and consistently urged this Justice to decrease the time for Mr. Batista to serve in prison. The Court refused.<sup>3</sup> After Mr. Batista's counsel rejected the Court's proposal, the case was scheduled for trial. By agreement with the attorneys, the case would be reached for a jury trial on or after April 1, 2014, on what counsel estimated would be a two-day trial.

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<sup>1</sup> The docket reflects that nineteen pretrial conferences were scheduled before March 13, 2014.

<sup>2</sup> The transcript of the March 13, 2014 hearing reflects that the Court attempted to inform the Defendant of the Court's offer, to ensure compliance with Missouri v Frye, 132. S. Ct. 1399, 182 L.Ed.2d 379, 80 USLW 4253 (2012). While informing Mr. Batista of his Constitutional right to a trial, the Court postponed the hearing as Defendant did not appear to be of good health.

<sup>3</sup> While not seeking to justify the Court's proposal, the Court notes that the police report alleges Mr. Batista was supplying runners with crack cocaine from a Woonsocket residence. Armed with a search warrant, the police allege that they located a digital scale, cut cornered baggies, a razor blade knife, acetone, Pyrex measuring bowls, ledger pads, cocaine residue, \$3000 cash, and fourteen individual baggies with crack cocaine in Mr. Batista's apartment. The police further allege that Mr. Batista had two additional bags of crack cocaine on his person at his arrest. Mr. Batista had already been adjudicated a felon of three separate controlled substance felonies and had served time on two of them.

On April 17, 2014, the State alleged that Mr. Batista violated the terms of his bail.<sup>4</sup> The Court file further reflects that on May 12, 2014, the attorneys in the action appeared before the Magistrate presiding over the Daily Criminal Calendar and resolved not only the bail violation but the underlying case which was pending trial. The Magistrate accepted Defendant's plea of nolo contendere on the case and sentenced the Defendant to a seven-year sentence with only ninety days to serve.

Thereafter, the Court reached Mr. Batista's case for trial. The attorneys were notified that the jury trial would start on May 28, 2014. On the day of trial, this Justice discovered that Mr. Batista's case had already been disposed by the Magistrate. Particularly concerned that the Magistrate may not have been aware of this Justice's prior proposal, the Court promptly scheduled a hearing. At that hearing, the Court declared:

“Inasmuch as I'd like to let it pass, I can't let it pass that the Magistrate apparently didn't know what I had offered, as a judicial officer, -- that the Court had offered. So the Court reserves on [that issue].” Tr. 14, June 2, 2014.

In response, the prosecutor stated:

“ . . . regarding whether or not [the Magistrate] was aware that there was another offer on the table, what the offer was, he was certainly aware that there was another offer, and he was most certainly aware that that offer involved jail time. . . . Magistrate McBurney cut that down to a four-month jail term. The top number staying the same, and I believe the resolution of 90 days was finally reached based on the defendant being held without bail on the new case. He is going to be held for 90 days.” Tr. 15, June 2, 2014.

Counsel's response to the Court's concern implies that the Magistrate was not advised of the specific terms of this Justice's March 13, 2014 offer, that is, that this Justice insisted on a six-

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<sup>4</sup> Mr. Batista was arrested on April 16, 2014 for allegedly being in possession of 92.5 grams of cocaine in Providence.

month term to serve.<sup>5</sup> Therefore, by admitting a new infraction, the Defendant did not increase his punishment, but decreased it!

Like many courts, different judicial officers in the Rhode Island Superior Court consider dispositions and accept pleas at different stages in the case, including: arraignment, pretrial, bail violation hearings, trials, sentence violations and after trial. Attorneys, and prosecutors in particular, should accurately and completely describe the proposals previously offered by judicial officers in the same case. It is a bedrock principle of American jurisprudence that attorneys are frank and truthful with the Court. In return, Courts are able to depend on the attorneys for the representations made on behalf of their clients. Shell games are unnecessary. Courts should not need to double check on counsel or have them provide case histories under oath. Judge shopping, simply to obtain a lighter sentence, or avoid a trial, is inappropriate. See, e.g., Abdallah v. Bain Capital, LLC, 2013 WL 3491874 (D. Mass. 2013) and Johns v. Welker, 74 S.E.2d 486 (N.C. 2013). Such conduct erodes the Court's trust, lessens the honor of the bar, and may lead litigants to conclude that they will be awarded for delay, judicial manipulation or violating their bail.

It is disheartening for the Court to consider that it may not always be able to depend upon the attorneys who appear before it. Attorneys are officers of the Court and are duty-bound not only to be truthful with the Court, but to be frank about the travel of the case. When one judicial officer has suggested a firm pretrial offer to counsel and the defendant, the defendant is constitutionally entitled to reject the offer and proceed to trial. Seeking a lower pretrial offer on the same facts from another judge or magistrate is inappropriate bargain hunting. The conduct of

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<sup>5</sup> While a three month difference may seem of little consequence—it is not. A single moment of deprivation of one's liberty interest is substantial. The Court carefully weighs the impact of incarceration before it suggests it or issues a sentence.

counsel in this action perpetuates the fiction that going to another judge on another day—or even worse, committing another criminal infraction—results in a lesser sentence. Such behavior misleads the parties, the public, and threatens to erode confidence in our judicial system. It will not be tolerated.

It is, therefore, ordered that prosecutors and defense counsel shall inform all justices and magistrates of this Court of the terms of all dispositions previously approved by other justices and magistrates who have passed upon the same case. Since the Defendant has already been sentenced, this matter shall pass. The Court has concluded its review of the travel of this case and the attorneys' actions.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** State of Rhode Island v. Juan Batista

**CASE NO:** P2-2012-3423

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** August 15, 2014

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

**For Plaintiff:** Robert E. Johnson, IV, Esq.

**For Defendant:** Chad F. Bank, Esq.