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MEMORANDUM

To: Barbara Sattler, Deputy District Attorney

From: Applicant

Re: State v. Henry Raymond, Defendant, and Oscar Raymond, the Bond Poster/Surety, Real Party in Interest- Brief In Support of Forfeiture of the Bond demonstrating why forfeiture is appropriate and exoneration is not justified.

Date: February 26, 2019

PEOPLE'S BRIEF IN SUPPORT OF FORFEITURE OF BOND

I. THE TRIAL COURT SHOULD EXERCISE ITS DISCRETION AND FIND FORFEITURE IS APPROPRIATE

The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court (People v. Nationwide Surety Insurance Company (Columbia Supreme Court 2006)). In this matter Henry Raymond failed to appear in court for trial after his son posted a \$45,000 bond. The Columbia authorities have made it clear that a surety assumes the risk for a defendant's failure to appear (People v. Saintly Bail Bonds (Columbia Court of Appeals 2008)). In that case a defendant failed to appear at a pre-trial conference because he was in the custody of the Department of Corrections of the State of Franklin. The court ruled that because the surety did not take steps to ensure the defendant's appearance in court that the bond was ordered forfeited. In that case the court also ruled that "the decision to order a bond forfeited is in the discretion of the trial court. A trial court may consider all of the relevant circumstances, including the following list of facts that Columbia courts have frequently delineated: (1) the defendant's willfulness in violating the order to appear; (2) whether the surety is a commercial entity (noncommercial sureties are often given more latitude concerning return of some or all of the bond); (3) The effort and expense expended by the surety in trying to locate and apprehend the defendant to insure the return of the fugitive (lack of effort by the surety to locate the defendant's return justifies forfeiture, as

it is necessary to prove an incentive to the surety to take active and reasonable steps to recapture a fugitive defendant); (4) the costs, inconvenience and prejudice suffered by the State, if any, because of the absence of the defendant; (5) the public's interest in ensuring a defendant's appearance," (People v. Sainly Bail Bonds). An examination of those factors in this case leads to a decision that the bond should be forfeited.

1. The Defendant's willfulness in violating the order to appear

The Defendant was indicted on felony counts of possession of a narcotic drug for sale and possession of drug paraphernalia, including an allegation of exceeding the threshold amount of cocaine. His counsel filed a motion for him to be released from custody. Defendant provided no reference or sources for verifications of any information he provided the Pretrial services department. He had his son post the bond for him. His son testified that his father was never really a part of his life and does not have ties to the community. Mr. Raymond played upon the kindness of his son when convincing him to post bond because his son felt that he did not have a choice to not post the bond because it was his father. Mr. Raymond's failure to appear is the willful action of a man seeking to flee from any responsibility as he provided his son no method to reach him and fled family members homes.

Therefore, the defendant willfully violated the order to appear.

2. Whether the surety is a commercial entity.

Next, the court must take into consideration whether the surety is a commercial entity. Mr. Raymond's son is not a part of a commercial entity. Case law says that in this circumstance that he can be given more latitude concerning the return of some or all of the bond. However, Mr. Raymond's sons testimony indicates that he was fully aware of the financial penalties he was going to face if his father did not appear. The son was aware of his father's illegal activities and still felt compelled to post bond. The son is a software engineer and makes \$120,000 a year and indicated he has money saved for his sisters education. Albeit, unfortunate that the money saved for his sisters education may be affected by this. the son clearly knew what he was doing in posting the bond and not taking steps to ensure Mr. Raymond's compliance with the bond. Therefore, the people urge the court to not weigh heavily on this factor.

3. The effort and expense expended by the surety in trying to locate and apprehend the Defendant to insure the return of the fugitive

The third factor the court must take into consideration is the effort and expense

expended by the surety in trying to locate and apprehend the defendant to insure the return of the fugitive. Here, Mr. Raymond's son testified that he did not make any effort to find out where his dad was because he claims he does not have a way to find him and make him show up. This factor should weigh heavily in favor of the forfeiture of bond because Mr. Raymond's son put up the \$45,000 worth of bond money for a man he had relatively no relation with (other than the biological relationship). The son knew that his father had no connections to the community and yet made no efforts to ensure that his father made it to court. Therefore, this factor should weigh extremely heavily against the son.

4. The costs, inconvenience and prejudice suffered by the State, if any, because of the absence of the Defendant.

The next factor that the court must examine is the costs, inconvenience and prejudice suffered by the State because of the absence of the defendant. Here, the defendant was tried in absentia and acquitted. The acquittal was based on a find that, "There is no substantial evidence to warrant a conviction, based upon insufficient evidence of the identity of the Defendant." This indicates that the State suffered a significant inconvenience and prejudice based on the absence of the defendant. The State lost money during the course of the trial because its employs had to put on the trial. The State was clearly inconvenienced because they lost the conviction based on not being able to identify the defendant. Finally, the State suffered prejudice because if the Defendant would have been present at trial the identity element would have been proven and they would have been successful. Therefore, the State suffered in multiple ways because of the absence of the Defendant.

5. The public's interest in ensuring a Defendants appearance.

The final factor the court must examine is the public's interest in ensuring a Defendant's appearance. The public has an interest in the Defendant appearing to face the charges he was indicted on to promote the function of the criminal justice system. Further, the public has an interest in the ensuring that the guilty are punished. Here, the sale and possession of drugs can create a public safety issue and lead to the spread of drugs around the community of Columbia; if Mr. Raymond is guilty. However, Mr. Raymond even has an interest in ensuring his own appearance because that is where he has the ability to show his innocence, if he is not-guilty of the charges. Therefore, there are multiple interests in ensuring a Defendant's appearance.

Once the court examines these five factors from the Saintly Bonds case it will see that it is proper for the bond to be forfeited in the case. Mr. Raymond's son posted the bond

knowing what could happen if his father failed to appear. He also posted the bond not having a full relationship with his father that would hopefully indicate that his father would appear so as not to cause his son to lose \$45,000. Mr. Raymond's failure to appear cost the State a significant burden which has been detrimental to the public's interest at stake in this matter. Therefore, the People urge the court to order bond forfeited.

II. EXONERATION OF THE BOND IS NOT JUSTIFIED

Defense counsel will argue that because Mr. Raymond is no longer facing charges that the exoneration of the bond is justified; however, it is not. In People v. Weinberger (Columbia Court of Appeals 2003) a defendant failed to appear at a pre-trial conference. At that conference multiple motions were argued that led to charges being dismissed against the defendant. The Court ruled that the bond should be exonerated because the defendant was no longer facing charges. However, a dismissal is much different than an acquittal. The dismissal in Weinberger was granted because the court granted the defendant's motion to suppress evidence. In this case, Mr. Raymond was acquitted after being tried in absentia because there was not enough evidence identifying him. Mr. Raymond was acquitted based on his action of failing to appear and he should not be able to benefit from this. This is much different than a case being dismissed because of a motion to suppress evidence. In a motion to suppress evidence the court is suppressing the evidence due to an unlawful action by law enforcement, this prohibits the defendant from being prejudiced by wrongful acts of law enforcement. Because Mr. Raymond was acquitted based on failing to appear and his case was not dismissed exoneration of the bond is not justified.

Defense counsel may also point to the ruling in People v. Nationwide Surety Insurance Company (Columbia Supreme Court 2006) where a defendant did not appear for preliminary hearing and the court ordered the bond exonerated. That court said that there was an affirmative showing that the Defendant had ties to the community and that it was not up to the surety to prove or disprove the truthfulness of these documents. However, in this case Mr. Raymond's son should have had a reasonable belief to know that Mr. Raymond was a flight risk. The son had never lived with Mr. Raymond, Mr. Raymond was never involved in the son's life. Mr. Raymond had connections to three people in the community (the son, the sister, and Aunt). The son never even asked Mr. Raymond if he intended to appear for trial. The son tries to justify his actions by arguing that he posted the bond because Mr. Raymond is his father and he felt no other choice. This does not make sense and a reasonable person would not have done this. Therefore, the People urge the court to order bond forfeited because exoneration is not justified.

The People urge the court to find that bond should be forfeited because of Defendant's failure to appear for trial. The surety, the Defendant's son, did not take steps to ensure that the Defendant would appear at trial. The Defense will argue that because of the dropping of the charges that the bond should not be exonerated, but the Defendant should not be allowed to benefit from his own actions. The record is clear that Mr. Raymond's son knew the consequences of Mr. Raymond failing to appear and he also should not be able to benefit from his father's failure to appear and his own lack of responsibility in failing to ensure his father's appearance in court.

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