



## **PARTIES' CONTENTIONS<sup>1</sup>**

Defendant Abel Mojica (“Mojica”) contends that the December 15, 2006 search and seizure by bail agents was conducted under the pretext that he had violated his bail conditions by incurring new felony assault charges. Mojica alleges that at the time of the search and seizure no court had arraigned him and no court had issued any orders revoking his bail from previous cases.

Further, Mojica argues that the search by bail agents was conducted at “the urging and instruction”<sup>2</sup> of police detectives who had been frustrated in their attempts to obtain a search warrant during an on-going investigation of drug activity at the Silver Springs Apartments. Mojica alleges that the bail agents worked in concert with Detective Danny Silva and, as such, were agents of the police. Defendant argues that the bail agents’ initial warrantless entry and search of the apartment was unlawful.

Mojica argues that the pre-textual warrantless search and seizure by agents of the police violated his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution, as well as under Article 1, Sections 6 and 7 of the Delaware Constitution. Defendant requests that the Court suppress all evidence seized in connection with the search of the

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<sup>1</sup> Defendant Domingo Figueroa, Jr. accepted a plea agreement.

<sup>2</sup> Def. Mot. Supp., at 1.

residence, with his arrest, as well as all responses to custodial interrogation and processing.

On the other hand, the State contends that on December 15<sup>th</sup> bail agents went to the Silver Springs Apartments in order to take Mojica and Damian Rivera (“Rivera”) into custody because their bond had been revoked due to warrants being issued for their arrest on new assault charges. The State asserts that the bail agents were not agents of the State, that they had acted independently, and that the search conducted by police officers was constitutionally valid.<sup>3</sup> As such, the State contends that “[a]t no point did the police request the bail agents to go to the apartment to secure Mojica or Rivera” nor are there any facts to suggest “that the bail bondsmen...were promised a reward for alerting the police officers to the drugs in the apartment.”<sup>4</sup>

### **FINDINGS OF FACT**

During the Fall of 2006 the Wilmington Police Department and the New Castle County Police Department were investigating alleged drug sales at the Silver Springs Apartment complex located on Mary Ella Drive in Wilmington, Delaware. Detective Danny Silva of the Wilmington Police

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<sup>3</sup> State Resp. to Mot. Supp., at 4.

<sup>4</sup> *Id.*

was targeting Defendant Mojica and Detective Brian Grant of the New Castle County Police was targeting Rivera.

In November of 2006, Detective Grant was unsuccessful in an attempt to purchase heroin from Rivera. After both investigations, police were unable to gather sufficient evidence to make an arrest or to obtain a search warrant. Thus, the investigation ended.

In December of 2006, Mojica and Rivera were released on bail for unrelated drug charges. On December 9<sup>th</sup> arrest warrants were issued against Mojica and Rivera in connection with an alleged assault. Brunilda Mercado (“Mercado”), the owner of Bruny’s Bail Bonds, read a December 13<sup>th</sup> press release in the News Journal that Mojica and Rivera were wanted for felony assault. Mercado contacted bail enforcement agents (“bail agents”) and instructed them to go the Silver Springs Apartments to take Mojica and Rivera into custody for violating their bail conditions. Although Mercado had her own charges dropped a couple months after the incident, there was no showing that the dropped charges amounted to a reward for her actions.

During the early morning hours of December 15<sup>th</sup>, bail agents conducted surveillance of the apartments on Mary Ella Drive for approximately one hour and observed Mojica, Rivera, and Domingo Figueroa (“Figueroa”) engaged in what appeared to be drug transactions

conducted in and around Building 11. The bail agents contacted New Castle County police to advise them of the surveillance in accordance with the state requirements for bail enforcement agents. Bail agents then surrounded Building 11 and knocked on the door of Apartment B. Figueroa answered the door and was immediately secured. Mojica and Rivera were found in the rear of the apartment and secured as well. Bail agents found several bundles of heroin in Mojica's pockets. During a sweep of the residence for other individuals, bail agents saw large quantities of drugs in plain view.

The bail agents called Meracdo and told her that they had found illegal drugs. At approximately 12:30 a.m., Mercado called Detective Silva on his work cell phone and informed him that bail agents had arrested three individuals with drugs in plain view. Detective Silva then called Detective Grant on his cell phone and explained that bail agents, while trying to revoke bail, had located a large quantity of drugs. Detective Grant went to the scene to investigate and spoke with bail bonds Agent McElveen. Although Agent McElveen works for the State of Delaware, he was not working in any state capacity. Agent McElveen produced a state issued identification card indicating he was part of the U.S. Fugitive Recovery Service. Thereafter, Agent McElveen apprised Detective Grant of the situation.

Based upon the evidence recovered by the bail agents, Detective Grant applied for and obtained a search warrant for the apartment. Police officers executed the search warrant and discovered 1,305 bags of heroin, a bag of cocaine, and two bags of marijuana. A fully loaded Smith and Wesson .357 revolver was found under the couch. In addition, drug paraphernalia was found throughout the apartment.

### **CONCLUSIONS OF LAW**

The Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution guarantee “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures” and that “no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”<sup>5</sup> However, a “search or seizure conducted by a private party does not implicate the Fourth Amendment.”<sup>6</sup> The “[e]vidence discovered as a result of such a search is not subject to the exclusionary rule, which is aimed at deterring ‘official misconduct’.”<sup>7</sup>

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<sup>5</sup> U.S.C.A. Const. Amend. IV; Del. Const. Art. I, §6.

<sup>6</sup> *Viridin v. State*, 780 A.2d. 1024, 1030 (Del. Super. Ct. 2001) (citing *Walter v. United States*, 447 U.S. 649 (1980)).

<sup>7</sup> *Id.*

“When a private party conducts a search as an ‘instrument or agent’ of the government, however, the Fourth Amendment and *Article 1, § 6 of the Delaware Constitution* apply.”<sup>8</sup> The Court must consider the following factors in determining whether the person is an instrument or agent of the State: “whether the government knew of and acquiesced in the intrusive conduct and whether the private party’s purpose in conducting the search was to assist law enforcement agents or to further [its] own ends.”<sup>9</sup> In addition, the Court may also look at “whether the private actor acted at the request of the government and whether the government offered the private actor a reward.”<sup>10</sup> The defendant “bears the burden of proving that the private party was acting as an instrument or agent of the government.”<sup>11</sup>

Here, the Court finds that the December 9<sup>th</sup> warrant for the arrest of Mojica and Rivera for violating their bail conditions gave bail agents authority to enter the apartment. Brunilda Mercado first learned of the arrest warrant for Defendant from a newspaper article. Because of her financial interest in Defendant, Mercado located Defendant and organized a group of bail agents to arrest him. The bail agents secured the apartment where they arrested Defendant. While doing so, they discovered a large quantity of

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<sup>8</sup> *Viridin v. State*, 780 A.2d. at 1030.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1031.

illegal drugs in plain view. The bail agents then reported the drugs to Mercado who contacted police.

As such, the Court finds no evidence of an informed communication between police and bail agents prior to Defendant's arrest. Defendant Mojica fails to meet his burden of proof in support of the claim that bail agents acted at the urging or instruction of police.

For all the foregoing reasons, Defendant's Motion to Suppress is **DENIED.**

**IT IS SO ORDERED.**

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**Judge Calvin L. Scott, Jr.**