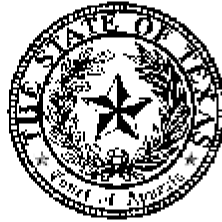
Affirmed and Opinion filed November 22, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-99-00181-CR

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ADELM SANCHEZ ALVARENGA AND NATIONAL AMERICAN INSURANCE CO., Appellants

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 94-27108-A

O P I N I O N

National American Insurance Co. appeals from a final judgment of forfeiture in a criminal bond forfeiture case. We affirm the judgment of the court below.

I. Background

Adelm Sanchez Alvarenga, not a party to this appeal, was arrested and charged with committing a felony in Harris County. Alvarenga, the principal, and National American Insurance Co., the surety, on December 24, 1994, executed a bail bond in the amount of

$10,000 for the defendant's release from custody. The surety subsequently presented to the trial court an "Affidavit of Surety to Surrender," requesting that the court issue an arrest warrant as required by article 17.19 of the Code of Criminal Procedure. TEX. CODE CRIM. PROC. ANN. art. 17.19 (Vernon Supp. 2000) (in all parts here relevant, article effective at time in question identical to current article). On February 21, 1995, an "alias capias" was issued. The defendant subsequently failed to appear and a judgment nisi was entered.

The evidence developed at the October 29, 1998, trial showed that the defendant made court appearances February 23, 1995, and March 1, 1995, but failed to make the May 30, 1995, appearance. An employee of the surety testified that on February 22, 1995, and the morning of February 23, she telephoned the bailiff assigned to the trial court to remind the bailiff that a warrant had been issued for the arrest of the defendant and requesting the bailiff to seize the defendant when the defendant appeared in court February 23. The employee further testified that she again called the bailiff at about 8:30 a.m. March 1 to remind the bailiff to seize the defendant. The defendant was never taken into custody and remained at large at the time of the forfeiture trial.

The bailiff testified that he routinely receives a warrants docket each morning before docket call and that if a defendant scheduled to appear that day is sought under warrant for a felony or class A or B misdemeanor, the defendant is arrested. He testified that he had no recollection of receiving phone calls from the surety employee.

The trial court entered final judgment of forfeiture in favor of the State against the defendant and the surety for the full amount of the bond, $10,000, and court costs.

II. Discussion

The surety complains that because it had effectively surrendered the principal to the sheriff's custody by having the arrest warrant issued, trial court erred in granting the state a final judgment of forfeiture on the bail bond.

We strictly construe the statutes governing bond forfeitures. *See Hernden v. State*, 865 S.W.2d521,523 (Tex. App.—San Antonio 1993, no writ). A surety before forfeiture may relieve itself of its undertaking by surrendering the accused into the custody of the sheriff or delivering to the sheriff an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state or in any county of this state. *See* TEX. CODE CRIM. PROC. ANN. art. 17.16 (Vernon Supp. 2000). Any surety desiring to surrender his principal may file an affidavit of such intention before the court before which the prosecution is pending. The affidavit must state the court and cause number, the defendant's name, the offense charged, the date of the bond, and the cause for the surrender. If the court finds that there is cause for the surety to surrender its principal, the court shall issue an arrest warrant for the principal. *See* TEX. CODE CRIM. PROC. ANN. art. 17.19 (Vernon Supp. 2000). The liability is not discharged until the principal is taken into custody. *See McConathy v. State*, 545 S.W.2d 166, 169 n.4 (Tex. Crim. App. 1977).

Here, the uncontroverted evidence shows that the principal was not taken into custody. The surety, therefore, was not relieved of its undertaking.

The surety argues that because under Texas law a bondsman has no right to use force to compel the principal to surrender to the sheriff, *see Austin v. State*, 541 S.W.2d 162, 165 (Tex. Crim. App. 1976), the bondsman was forced to rely on a peace officer, such as the bailiff, to seize the accused. Once the surety had obtained the warrant, it argues, it had done all it could do to bring the accused into custody. The court noted, however, that even though the particular employee testifying was not a peace officer, the surety could employ other individuals who were authorized to execute the warrant. *See* article 17.19(e) (stating that warrant may be executed by peace officer, security officer, or private investigator licensed in state). Also, under cross-examination, the surety employee acknowledged that although she told the court that she had telephoned the bailiff, neither she nor anyone from the surety appeared in court on those days on which the accused was scheduled to appear to further ensure that the defendant was taken into custody. We overrule appellant points of error.

III. Conclusion

Having overruled appellant's single point of error, we affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed November 22, 2000.

Panel consists of Chief Justice Murphy and Justices Amidei and Hudson.

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