

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK ss.**

**SUFFOLK SUPERIOR COURT  
No. SUCR2013-11007**

**COMMONWEALTH**

**v.**

**YERRI PEREZ**

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**NOLLE PROSEQUI**

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Now comes the Commonwealth, and, for the following reasons, hereby files a nolle prosequi pursuant to Massachusetts Rule of Criminal Procedure 16(a).

Despite diligent efforts dating back to October, 2015, the Commonwealth has been unable to secure the appearance of Mr. Franklyn Ozuna, who is a material witness in the trial of Commonwealth v. Yerri Perez. Below is a summary of the efforts made in this regard relative to securing Mr. Ozuna's appearance at trial. The Commonwealth would otherwise have been ready for trial with in excess of 20 witnesses:

On October 23, 2015, Boston Police Homicide detectives served a summons for a November 4, 2015, trial date at Mr. Ozuna's and usual address. His mother accepted the summons, and told investigators she would inform him of it. On November 2, the Commonwealth was made aware that 3 days later, on October 26, Mr. Ozuna left for the Dominican Republic.

On October 28, the November 4 trial date was continued at the request of the Commonwealth until December 9, 2015, due to logistical issues with witnesses other than Mr. Ozuna, as it was not known at the time that he was outside the jurisdiction.

On November 2, 2015, the Commonwealth learned for the first time from Mr. Ozuna's counsel on an unrelated drug distribution charge in the Dorchester District Court that Mr. Ozuna had traveled to the Dominican Republic on October 26, 2015. Although the Commonwealth contends that counsel stated Mr. Ozuna was expected to return "in a few days," counsel indicated that he believed he said that Mr. Ozuna would be back before his next appearance in Dorchester on December 4. In either regard, Mr. Ozuna was expected to return to the Commonwealth in advance of the December 9, 2015, trial date. The Commonwealth informed counsel that Mr. Ozuna was a necessary witness in a homicide case, and although counsel informed the Commonwealth that his client would not want to testify, it was agreed that we would further discuss Mr. Ozuna's obligations when he returned.

On November 3, 2015, a second summons for the new trial date of December 9, 2015, was served at Mr. Ozuna's last and usual address on Ms. Sandra Ozuna, Mr. Ozuna's mother and the same individual who had accepted service on October 23. Ms. Ozuna again indicated that she would give him the subpoena.

The Commonwealth made numerous attempts throughout the month of November to confirm whether or not Mr. Ozuna had returned from the Dominican Republic. On November 30, 2015, Boston Police Homicide investigators again visited Mr. Ozuna's last known address and spoke with his mother to ascertain whether he had returned to the Commonwealth. Mr. Ozuna's mother directed the investigators to Mr. Ozuna's girlfriend, who told them that Mr. Ozuna intended to return sometime in January, and that he had been told by "the attorneys" that

he didn't have to return. Detective Melvin Ruiz asked her to relay the message to Mr. Ozuna that he was needed for trial on December 9, talked about the possibility of the court issuing a capias for his arrest if he did not, and asked her to relay the detective's cell phone number to Mr. Ozuna so that he could speak with him.

On December 1, 2015, counsel for Mr. Ozuna called the Commonwealth to confirm that, to the best of his knowledge, Mr. Ozuna was still in the Dominican Republic. It was also learned on December 1 that Mr. Ozuna's Dorchester Court matter was continued on November 20 to March, 2016, at the request of counsel due to a scheduling conflict. Counsel confirmed for the Commonwealth that he had not spoken to his client at all, and did not tell him that he didn't have to return, but said that a family member may have conveyed the message that the Dorchester court date had been moved. Counsel indicated that he would make every effort to convey to Mr. Ozuna the necessity of his return. The Commonwealth and counsel spoke on December 3 and again on December 4, and both times counsel indicated that he would attempt to convey to Mr. Ozuna that his return was necessary, but that he only spoke with Mr. Ozuna through intermediaries.

Throughout this time, Boston Police Homicide detectives were able to confirm, through contact with the Department of Homeland Security, that Mr. Ozuna was booked on return flights to Massachusetts on November 10 and again on November 30. He failed to get on either flight, and since then, has not been booked on any other return flights from the Dominican Republic.

On December 7, given the dwindling prospects of Mr. Ozuna returning to the Commonwealth and the necessity of his testimony at trial, the Commonwealth moved to continue the December 9 trial date until February, 2016. This timeframe was based on the fact

that Mr. Ozuna's girlfriend indicated that he would return sometime in January. In allowing the motion to continue, Judge Krupp ruled that the case would be tried in mid-January, 2016.

The case was referred to the homicide session to select a trial date accordingly. On December 15, 2015, Judge Locke, at the request of the Defendant, scheduled the matter for a January 6 trial date. The Commonwealth raised an objection the date was in the beginning, rather than middle, of January. The Commonwealth asked the Court to honor Judge Krupp's earlier order, which itself was at least two weeks earlier than the Commonwealth had requested given lack of specificity in indications Mr. Ozuna would return "sometime in January." The Court declined in order to accommodate defense counsel's trial schedule, and the matter was marked "No Further Continuances."

On December 17, detectives again spoke with Mr. Ozuna's girlfriend, who told them that she believed Mr. Ozuna would be returning in "mid-January". Detective Ruiz again confirmed his cell phone number with her and asked that she have Mr. Ozuna contact him. Mr. Ozuna has not contacted detectives despite their repeated requests for him to do so from October, 2015, until today.

Throughout the month of December, Boston Police Homicide detectives have been in constant contact with the Department of Homeland Security, Department of Justice, and Department of State in an attempt to locate Mr. Ozuna in the Dominican Republic. They have been informed by the Department of State that Mr. Ozuna is a dual citizen of both the United States and the Dominican Republic, and that there is no way to revoke his travel visa and require Mr. Ozuna to return to the United States. Furthermore, there is currently no criminal process that can force Mr. Ozuna's return to the Commonwealth from the Dominican Republic. Detectives

**CERTIFICATE OF SERVICE**

I hereby certify, under the pains and penalties of perjury, that I have today made service on the defendant by directing that a copy of this opposition be sent to his counsel by both electronic and hard copy to:

Rosemary Scapicchio, Esq.  
107 Union Wharf  
Boston, MA 02109

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Joseph Janezic  
Assistant District Attorney

December 30, 2015