Special Issue
Fall 1992

Funded by
Bureau of Justice Assistance

ASSET FORFEITURE Bulletin

IN THIS ISSUE:

- Compilation of legal cases from 23 states.

Editor's Note: *This issue of Asset Forfeiture Bulletin is devoted exclusively to state court decisions. The tremendous volume of asset forfeiture litigation created a backlog of court cases that could only be met by this special issue format. With the next issue of the Bulletin, the format returns to feature articles, publications anouncements, and summaries of court decisions.*

ALABAMA—Bribery Related to Drug Violation Is Facilitation

$10,000 U.S. Currency v. State, No. 2910012, Ct. Civ. App. Ala. (4/3/92). The trial court forfeited $10,000 used in an attempt to bribe a police officer. The officer had previously purchased cocaine from the defendant. With the bribe, the defendant hoped to get the pending case disposed of and to avoid being arrested and charged in future drug offenses. In trial court, the state contended that the $10,000 had been used to facilitate a transaction involving a controlled substance, in violation of Alabama statutes. The defendant countered that the money was not forfeitable because he had not been in the act of selling or attempting to sell a controlled substance. The appeals court affirmed the forfeiture. It noted that the 1988 Alabama Drug Profits Act applies to all money used to facilitate any violation involving controlled substances and ruled that, under the act, attempted bribery directly related to past and future drug transactions is facilitation.

ALABAMA—Delay of Ten Weeks Denies Due Process

Adams v. State, No. 2900658, Ct. Civ. App. Ala. (4/3/92). A vehicle owner was arrested in his vehicle, and a quantity of LSD was found in the map compartment behind the driver's seat. The vehicle was seized on March 11, 1990, and the state filed a forfeiture complaint against the vehicle on May 21, some 10 weeks later. The trial court forfeited the vehicle. The owner appealed, contending that by delaying 10 weeks before filing the complaint, the state had not been in compliance with section 20-2-93(c) of Alabama statutes, which requires that forfeiture proceedings be instituted "promptly." The appeals court reversed the trial court. It held that the state "... did not meet the promptness requirement of section 20-2-93(c) and thereby deprived the owner of due process of law." The appeals court further noted that the record did not reflect any reason why the forfeiture proceeding could not have been instituted immediately after the seizure.

ALABAMA—Exclusionary Rule Not Applicable in Civil Forfeiture

McNeese v. State, No. 2900555, Ct. Civ. App. Ala. (1/3/92). The trial court forfeited the arrested defendant's vehicle and $200 seized from the defendant's home during execution of a search warrant. The only connection of the vehicle to drug violations was the defendant's statement to arresting officers that he had used the vehicle to pick up marijuana. On appeal, the defendant contended that *Hamlet v. State,* 674 So. 2d 951 (Ala. Crim. Appeal 1990) requires that statements made to officers as part of cooperation in a criminal case be excluded. The appeals court affirmed the forfeiture. It

held that *Hamlet* applies to such statements made in criminal cases but not to incriminating statements related to civil forfeitures. The exclusionary rule, therefore, should not be applied in civil actions. Such incriminating statements are admissible as declarations against interest in civil actions and are not confessions in criminal prosecutions.

ALABAMA—Search of Person During Search Warrant Execution

Humphrey v. State, No. 2910003, Ct. Civ. App. Ala. (2/21/92). While executing a search warrant, officers knocked and, receiving no answer at a residence, forcibly entered. The officers saw two people running out the back door of the residence and followed them to the back yard. While performing a pat-down search for weapons on three people standing in the yard, the officers observed a lump in the defendant's pocket and ordered that the object be removed. The object was a plastic sandwich bag containing a small amount of marijuana. Also found on the defendant were an operable beeper and $1,287 in cash. The defendant was arrested, and the money was confiscated. The trial court granted the state's currency petition, which alleged that the money had been used, or was intended to be used, to facilitate a violation involving controlled substances.

On appeal, the defendant contended that the money should not have been forfeited because it had been confiscated during an unlawful search; a search of a person during execution of a search warrant must be based on probable cause to believe that the person is a partici-pant in criminal activity. The defendant further argued that mere presence in the back yard did not constitute probable cause for a pat-down search.

The appeals court affirmed the forfeiture. It held that although a search warrant for premises does not permit searches of individuals who are not reasonably believed to be associated with the premises, it is well established that corroboration can be enough to show probable cause under the totality of the circumstances. The court noted that in this case a search warrant was being executed on premises being used for the manufacture of crack cocaine, and that mate-rials found on the premises confirmed that it was being so used. These facts and the occupants' attempt to escape the premises were sufficient probable cause to justify the search of the individuals found in the back yard of the residence. Hence, the trial court was justified in its finding of probable cause, and its forfeiture of the money was not improper.

ARIZONA—Double Jeopardy/ Collateral Estoppel

Fitzgerald v. Superior Court of Arizona, 110 Ariz. Adv. Rep. 80, Ct. App. Ariz. (4/14/92). In this unusual case, the defendant asked for a "special action review" of the trial court's denial of his motion which sought dismissal of four criminal drug and weapons charges because of the principles of double jeopardy and collateral estoppel. Under Arizona procedure, a special action review is appropriate when a criminal defendant, prior to prosecution, raises an issue about whether that prosecution will violate his constitutional protection against double jeopardy.

After execution of a search warrant at the defendant's home, the state initiated a forfeiture action against various items. In the unsuccessful forfeiture action, the trial court reached four factual conclusions. Subsequently, the state brought a criminal action against the defendant based partly on evidence gathered during execution of the search warrant. In the criminal action, two of the state's four allegations were factually identical to two of the factual conclusions reached by the trial court in the forfeiture action. In the special action review, the defendant contended that the principles of double jeopardy and collateral estoppel precluded the state's reliance on evidence already adjudicated in the forfeiture action.

The appeals court held that the claim of double jeopardy was inapplicable because the forfeiture action had not constituted a "prosecution" in the constitutional sense of double jeopardy jurisprudence. Its decision on the other principle was different. The defendant contended that even if the attempted criminal prosecution did not constitute double jeopardy, the state was collaterally estopped from bringing criminal charges based on the same facts litigated in the forfeiture proceedings. The appeals court wrote that "collateral estoppel" can be generally stated as follows: "When an issue of ultimate fact has once been determined by a valid and final judgement, that issue cannot again be litigated between the same parties in any future law suit." It noted that it had previously recognized that

common law collateral estoppel may flow from a civil case to a criminal prosecution when four elements are present: (1) same parties in both actions; (2) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue; (3) the same issue of ultimate fact is to be litigated; and (4) the previous judgment is valid and final. The court concluded that two of the four allegations in the criminal action had been previously litigated in the civil forfeiture action. Hence, collateral estoppel was applicable and the state was precluded from again charging those violations.

Editor's Note: In view of this decision, Arizona authorities would be well advised to proceed with care in forfeiture actions that precede criminal prosecutions.

ARIZONA—Vehicle Used as Collateral for Drug Debt Is Forfeitable

In the Matter of 1986 Chevrolet Corvette, 109 Ariz. Adv. Rep. 95, Ct. App. Ariz. (3/31/91). The claimant/ defendant was arrested in December 1990 while hauling 400 pounds of marijuana in a van. He was hauling the marijuana for the source of supply, who owned it. About six weeks later, in January 1991, the claimant/ defendant purchased a 1986 Corvette. In April 1991, after being threatened by the source who was seekng $18,000 to replace the lost marijuana, the claimant/defendant surrendered the Corvette to the source. In May 1991, the claimant/ defendant reported the arrangement involving the Corvette to authorities, who then seized the Corvette from the source of supply.

Two weeks after the seizure, the state instituted forfeiture proceedings against the Corvette and furnished notice to both the claimant/defendant and the source of supply. The trial court found in favor of the claimant/ defendant. It held that the state had not shown probable cause for the forfeiture. The state appealed, contending that the trial court had misinterpreted the relevant law and had incorrectly applied the law to the facts of the case.

The appeals court agreed with the state and reversed the trial court. It noted that the claimant had acknowledged transporting the marijuana and that the Corvette constituted payment for the lost marijuana. The court agreed with the state's argument during the appeal that even though the marijuana was transported in another vehicle, the use of the Corvette to satisfy the drug debt facilitated the commission of the drug crime. It noted that this theory is consistent with Federal forfeiture cases that interpret facilitation clauses broadly. The court concluded by stating, "[T]he State showed reasonable grounds for its belief that the connection between the vehicle and the criminal offense was more than incidental or fortuitous because the vehicle was used in some manner or part to satisfy a drug debt that was the direct result of the criminal activity."

ARIZONA—Actual Ownership Interest Required

In Re: One 1983 Toyota v. Valentine, 814 P.2d 356, Ct. App. Ariz. (1991). In trial court the state alleged that a vehicle had been used in "racketeering violations" when it was used to transport cash skimmed from a bar to the claimant's residence. The court ruled that the vehicle was subject to forfeiture. It found that although the mother was the registered owner of the vehicle, the "true owner" at the time of the forfeiture was the daughter, the person involved in the skimming violation. The court noted that the daughter had continuous domination over the vehicle, that she had stated that she was the owner of the vehicle, and that she had paid no consideration when she transferred ownership to her mother. On appeal, the mother claimed that she was an innocent owner who had allowed her daughter to use the vehicle. The appeals court reversed the forfeiture. It apparently relied on the fact that the vehicle was registered to the mother and that the mother paid the insurance and used the vehicle during the winter while she was in Arizona. The court noted that it did not regard the transfer of the vehicle from the daughter to the mother as a sham. Because the mother had no knowledge of her daughter's use of the vehicle in violation of the law, she was entitled to protection as an innocent owner.

CALIFORNIA—Civil Nature of Forfeiture Excludes Ex Post Facto Claim

People v. Real Property Located at 25651 Minoa Dr., No. G010170, Ct. App. Calif. (1/13/92). After purchasing cocaine from the defendant's residence, officers executed a search warrant and seized approximately 20 ounces of cocaine in three different locations throughout the house. The

defendant told the arresting officer that he conducted all his narcotics business at his desk in a spare bedroom, which he used as an office, and that he had been selling cocaine for about two years. The state filed a forfeiture action against the residence and also filed a lis pendens on the property. The trial court forfeited the residence, citing California section 11470(g), which took effect on January 1, 1989.

On appeal, the defendant contended that the bulk of the violations that justified the forfeiture had taken place before January 1, 1989, and that the previous statute would not have allowed the forfeiture. The appeals court affirmed the forfeiture. It held that the ex post facto prohibition cited by the defendant does not apply to civil forfeiture proceedings but only to criminal statutes. In so holding, the court reviewed Federal cases that had reached a similar result but had also highlighted that because forfeiture is a civil action, it carries with it "the spectre of discoveries, battles, depositions, and demurs....[P]rosecutors' offices should be aware that the forfeiture statutes open up a veritable Pandora's box of discovery, in which their investigators, their confidential information, and their very files may be fair game."

The appeals court concluded that the forfeiture of the residence was supported by substantial evidence. Although a single isolated instance of criminal conduct would not result in forfeiture, the facts revealed that the residence had been used to aid an ongoing business of illicit drug sales.

FLORIDA—Filing RICO Complaint Allows Escrow of Property Income

State v. Ruth, Case No. 91-01973, Ct. App. Fla. 2nd Dist. (3/13/92). On April 13, 1990, the state filed RICO charges against the defendants' property pursuant to section 895.05(12) of the Florida statutes (1989). On October 3, 1990, the state filed a civil RICO complaint seeking forfeiture of the defendants' property under chapter 895 of Florida statutes. The state alleged that the defendants had acquired the property from the proceeds of an illegal drug trafficking enterprise and also had used the property to further the activities of the illegal enterprise. On May 7, 1991, the state filed a motion to escrow the income from the property to protect it from dissipation pending final determination of the forfeiture action. The trial court denied the state's motion. It found that section 895.07(9) clearly prohibited such an order.

The state appealed the denial, contending that section 895.07(9) applies only to a RICO lien notice. It argued that the broader provisions of section 895.05(5), which controls after a RICO complaint has been filed, allow the escrow of property income. The appeals court agreed with the state. It held that the trial court should have granted the escrow motion under section 895.05(5), which is applicable after a RICO complaint is filed.

FLORIDA—Airport Currency Seizure Clear and Convincing Evidence

Fletcher v. Metro Dade Police Department, Case No. 90-2271, Ct. App. Fla. 3rd Dist. (1/14/92). After the claimant arrived at the Miami airport on a flight from Atlanta, $80,000 in cash was found in her carry-on bag. The claimant had furnished valid identification and her airline ticket and had consented to a police search of her bag. Officers seized the money and removed it to another location, where a drug detection dog alerted to traces of narcotics on it. The money was then seized for forfeiture.

At the forfeiture hearing, the claimant asserted that the money was intended to be used to purchase video games for a social club in North Carolina owned by a man named Fletcher. However, Fletcher's mother testified that she had given her son $25,000 of the $80,000 for the purchase of lighting equipment for her night club, also located in North Carolina. Investigation in North Carolina revealed that the son's portion of the money had come from narcotics transactions in North Carolina. After the oral arguments in the forfeiture case, the Supreme Court of Florida rendered its decision in *Department of Law Enforcement v. Real Property,* 588 So. 2d 957 (Fla. 1991) that for forfeiture to be justified, the evidence must be "clear and convincing that the property was being used in furtherance of a criminal enterprise." The parties in the forfeiture case were asked to submit briefs discussing the impact of the Florida Supreme Court decision on the case. In the end, the trial court forfeited all of the seized money.

The appeals court affirmed the forfeiture of $55,000 of the seized $80,000 but held that there was not

sufficient "clear and convincing" evidence that the $25,000 that Fletcher's mother contended belonged to her was subject to forfeiture. A dissenting judge concluded that none of the seized money met the "clear and convincing" test because the drug investigation involving Fletcher had taken place 15 months before the money was seized and because someone else had been convicted of drug trafficking while Fletcher had not been charged with any wrongdoing.

GEORGIA—Aborted Plea Agreement Does Not Affect Forfeiture

Sartin v. State, No. A91A1369, Ct. App. Ga. (10/23/91). After the defendant's arrest for cocaine offenses, law enforcement authorities induced him to assist in their efforts to apprehend a major drug trafficker. As a result of the defendant's cooperation in this ultimately successful endeavor, his counsel and a prosecutor agreed to recommend to the trial court that a *nolle prosequi* be entered on two more serious charges and that a guilty plea on a possession charge result in a probated sentence. The trial court refused to consider the proposed plea agreement and proceeded with the trial. The defendant was convicted and the state obtained civil forfeiture of a truck and $423 seized from the defendant at the time of his arrest.

On appeal, the defendant contended that the trial court had erred in rejecting the plea bargain. The appeals court affirmed the conviction and the forfeiture. It held that it is well established that a trial court is not required to accept a guilty plea or a plea agreement.

GEORGIA—Thirty-Day Time to Answer Mandatory

Hubbard v. State, No. A91A0915, Ct. App. Ga. (9/3/91). The trial court forfeited the defendants' vehicle, which had been used to transport a controlled substance. During the forfeiture action, notice was served on the parties to answer the forfeiture petition. The defendants filed an answer on the 32nd day, seeking to intervene in the action. With the consent of the state and the defendants, a bank lienholder also intervened in the action. The state moved to strike the defendants' answer on the grounds that it had not been filed within the 30-day limit allowed for filing a petition, and the court granted the motion.

On appeal, the defendants contended that their late answer should have been allowed because the lienholder had filed its claim even later but the state had waived that tardiness. The appeals court affirmed the forfeiture. It held that the 30-day time limit is mandatory and noted that the defendants had been properly served and had given no reason for failing to meet the 30-day requirement. The court further noted that the defendants, as well as the state, had consented to the waiver granted the lienholder bank.

IDAHO—Traffic Stop/Dog Alert/ Burden of Proof

Idaho Department of Law Enforcement v. $34,000, No. 18983, Ct. App. Idaho (12/11/91). An Idaho State Police officer stopped the claimant for speeding in a car rented by an absent third party. The claimant could not produce a driver's license or other identification but did produce a rental agreement indicating that neither he nor his girlfriend was authorized to drive the car. The officer then asked for and was given permission to search the car. The officer called for a K-9 unit to assist in the search. When the detection dog arrived, the claimant withdrew his permission for the search. The officer then received information, via his radio, that the claimant's driver's license had been suspended in Arizona. The claimant was then arrested for driving without privileges and was placed in a police car. Because the girlfriend was not authorized to drive the rental car, officers decided to impound it. While the car's trunk was being inventoried, the dog jumped in the trunk and alerted on a briefcase and a nylon bag. Without disturbing the items, the dog was removed, the trunk was closed, and the car was driven to the sheriff's office. A warrant to search the car for controlled substances and other items was obtained, and $34,000 was found in the briefcase. When an officer opened the nylon bag he noted a mild scent of marijuana, but a search produced no drugs. Nine days after the warrant was executed, the money was divided into four groups and place in four separate locations in an office, and a detector dog alerted on the money in all four locations. On the basis of these facts, the trial court granted forfeiture of the money.

The claimant appealed. He contended that (1) the money had been seized illegally because the inventory search was merely a pretext for opening the trunk when the dog was present; (2) the court's standard of proof should have been reasonable doubt rather than preponderance of evidence; (3) an officer should not have rendered an opinion that the money had been used in drug trafficking; (4) the court had erred in determining his gross income; and (5) the court had erred in considering a previous marijuana charge from Arizona.

The appeals court affirmed the forfeiture. Regarding the defendant's five contentions it held that (1) impounding the car had been proper and was a valid caretaking function of the police; (2) the trial court had properly applied the preponderance of evidence standard; (3) the officer had properly testified as an expert on the practices of drug violators; (4) the trial court as factfinder had properly determined the defendant's income; and (5) the information regarding a prior marijuana offense had also been obtained from the defendant himself. The appeals court concluded that the facts and circumstances of the case, together with the defendant's failure to support his various assertions, provided sufficient basis for forfeiture.

ILLINOIS—Traffic Stop/Dog Alert/Forfeitable Presumption

State v. $14,000 U.S. Currency, No. 5-91-0034, App. Ct. Ill. 5th Dist. (4/13/92). When the claimant was stopped for speeding in Illinois, he produced a Texas driver's license and was told he would receive a written warning. A computer check revealed that the claimant also had an Illinois driver's license which had been suspended. Subsequently another officer arrived on the scene with his K-9 partner. The claimant was asked to sign a consent form to search, which he did. The search revealed packages in the left and right wheel wells of the vehicle and also in a suitcase. The three packages contained $14,000 in $20 bills. The detector dog alerted on the money, but no contraband, drugs, or paraphernalia were found. The claimant was taken into custody and charged with driving with a suspended license. A lab analysis revealed trace amounts of cocaine on the money.

The state filed a forfeiture complaint. At the hearing, the defense rested without introducing any evidence. An officer testified at the hearing that the claimant had told him two men he did not know had paid him $1,000 to transport the money to Houston and that he thought the money was dirty. The trial court ruled that although the statutory presumption of forfeitability did not apply, the totality of the evidence was sufficient to warrant forfeiture. The claimant appealed, contending that because the trial court had ruled that the presumption was inapplicable, the state had not met its burden to demonstrate by preponderance of the evidence that the money was forfeitable.

The appeals court affirmed the forfeiture. It first held that the issue of statutory presumption was a question of law and that the statutory presumption of forfeitability was applicable. Then, basing its decision on the trace amounts of cocaine on the money and the inadequacy of the claimant's explanation for the money, the court concluded the explanation not only did not provide an arguably innocent reason for the presence of the money, but it militated in favor of the presumption.

ILLINOIS—Double Jeopary/ Severity of Forfeiture Penalty

State v. 1988 Mercury Cougar, 587 N.E.2d 595, App. Ct. Ill. (2/6/92). Following the defendant's arrest for unlawful possession of a controlled substance, the state obtained a summary judgment of forfeiture based on a complaint alleging that a quantity of cocaine had been seized from his automobile in a lawful search. The defendant appealed. The only issue on appeal was whether a civil sanction requiring forfeiture of the vehicle was so excessive as to constitute a second punishment for the same criminal conduct, in violation of the double jeopardy clause. The defendant contended that the case fell within the scope of *U.S. v. Halper*, 490 U.S. 435, 109 S. Court 1892 (1989), in which the U.S. Supreme Court held that "Under the double jeopardy clause a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution."

The appeals court affirmed the forfeiture. It held that *Halper* did not apply because the forfeiture of the defendant's vehicle was not "overwhelmingly disproportionate to the damages he has caused." Moreover,

unlike in the *Halper* case, the forfeiture served the purpose of removing the instrument of the crime, rather than merely imposing a monetary sanction on the party responsible for the criminal conduct.

IOWA—Relation Back/Creditor Not Superior

In the Matter of Property Seized from Keith Joseph Wagner, No. 82/91-17, Sup. Ct. Iowa (3/18/92). On January 7, 1990, a man was arrested for drug dealing and currency was seized from him. On January 31, 1990, before the state initiated forfeiture against the seized money, the man's wife caused execution and garnishment to be served on the police department that was holding the money. On March 9, 1990, the state commenced a forfeiture proceeding. At the proceeding the wife claimed that she had perfected a lien on the currency by her garnishment prior to the state's initiation of the proceeding. The trial court agreed and ordered the state to give the money to the wife.

The state appealed. It argued that the state's interest in the money vested on the date of seizure; hence, the wife's garnishment had no effect on the forfeiture. The Supreme Court of Iowa agreed with the state, and reversed the trial court's decision. It held that the applicable Iowa statute, section 809.6, was intended to exclude new claims to seized property after the seizure. The court reviewed the doctrine of "relation back," which is codified under Federal procedure and case authority, and concluded that the title to seized derivative contraband relates back and vests in the state at the time of seizure.

IOWA—Conspiracy/Burden of Proof

State v. Property Seized from Rios, No. 1-376 / 90-999, Ct. App. Iowa (10/29/91). During an undercover drug investigation, a drug violator told officers that a man was selling drugs at a local motel. The officers executed a search warrant at the motel. They found no drugs but did seize $2,311 from the defendant. A later search of the defendant's residence, conducted with his consent, resulted in seizure of weapons, ammunition, $6,880, an Ohaus scale, a smaller scale, plastic sandwich bags, and a straw. The trial court granted forfeiture of the seized weapons, ammunition, and cash.

On appeal, the defendant contended that because he had not been convicted or charged with any drug-related crime, and because no illegal substances had been found during the searches, there was no substantial evidence to justify the forfeiture. The appeals court affirmed the forfeiture. It held that, under Iowa law, forfeiture is not dependent on a prosecution or conviction of a criminal offense. Rather forfeiture must be based on a substantial connection between the property and a crime. The court agreed with the trial court that there was substantial evidence of a conspiracy to deal in drugs between the defendant and the informant. It noted that the informant had gone to the defendant's residence during a prior drug purchase and that scales and weapons were associated with drug dealing. Hence, the state had established that the items seized from the defendant had a substantial connection to illicit drug traffic.

IOWA—Traffic Stop Not Substantial Basis for Forfeiture

In Re: Property Seized from Daniels, No. 418/90-1729, Sup. Ct. Iowa (12/24/91). Police officers stopped a man for driving faster than 100 mph in a 55 mph zone. As they watched the man search for his driver's license, one officer saw a large amount of cash inside the man's wallet. In response to questions about the large amount of cash, the man stated that he had no knowledge about the money and that he was not its owner. The officers also found $5,150 in a wallet hidden under a front seat armrest, and a small amount of marijuana elsewhere in the car. Subsequently, a drug detector dog alerted on the cash.

During proceedings to forfeit the cash, the state contended that the money had been obtained from an illegal sale of controlled substances or was intended to be used to purchase a controlled substance. The claimant stated that the money was his and his girlfriend's life savings, accumulated from lifetime employment, and that the police testimony about the arrest and discovery of the cash was not true. The trial court determined that the defendant and his girlfriend were not credible and forfeited the money.

The Supreme Court of Iowa reversed the forfeiture. It held that the state had not met its burden of proving, by a preponderance of evidence, that the money was subject to forfeiture. The court concluded

that the small amount of marijuana and the dog's detection of the odor of a controlled substance did not constitute substantial evidence connecting the money with drug dealing. It noted that the trial court's determination that the claimant's testimony was not credible did not render the evidence of the drug connection substantial.

KENTUCKY—Forfeiture Hearing Required

Hughes v. Commonwealth, No. 91-CA-000083-MR, Ct. App. Ky. (1/10/92). The defendant was convicted of various drug offenses, and $441 seized from him at the time of his arrest was forfeited by the court hearing the criminal offense. The defendant appealed various aspects of his criminal conviction. He also contended on appeal that the money had been forfeited improperly.

The appeals court affirmed the criminal convictions but reversed the forfeiture. It noted that the only discussion of the forfeiture by the trial court had occurred during the defendant's sentencing hearing; the trial court had not conducted a separate ancillary hearing to forfeit the property. The state admitted on appeal that there had been no formal hearing but argued that the defendant's failure to object to the forfeiture order or to furnish any defense should preclude his right to any such hearing. The appeals court concluded that the defendant was entitled to an evidentiary hearing. Because the trial court had not provided such a hearing, the forfeiture must be reversed.

LOUISIANA—Bond Required to Contest Forfeiture

State v. Property Seized from Oliver Alfred Walker, No. CA 90 2303, Ct. App. La. (3/6/92). While executing a search warrant at the defendant's residence, officers seized quantities of various illegal drugs, drug paraphernalia, and $3,491 in cash. Most of the money was found in two bundles, one containing $1,000 and the other $2,000. The state instituted forfeiture proceedings against the seized money, and an attorney filed a claim asserting an interest of $3,000 for attorney's fees owed him by one of the residents of the searched premises. As part of his answer to the state's petition for forfeiture, the attorney included an affidavit for surety and affidavits by the parties involved, and the state filed various motions concerning the surety and affidavits. The trial court ruled that the surety furnished by the attorney was sufficient and ordered the $3,000 returned to the attorney as attorney's fees. The state appealed. It contended that the attorney had not filed a 10-percent-of-value bond, as required in such cases by the Louisiana statutes.

The appeals court reversed the trial court. It held that the attorney had not filed the required bond with his answer. The court noted that although the attorney had filed an affidavit for surety signed by a third party, the affidavit was merely a statement attesting to the solvency of the third party; further none of the documents related to the requirement of the 10-percent bond. The court concluded by stating that the language of the Louisiana statute (LSA-R.S.40:2612 E) is mandatory. Because the attorney had not included the required bond with his answer, the trial court judgment must be reversed for further proceedings.

MARYLAND—Delay/Procedural Defects

State v. Walls, 600 A.2d 1165, Ct. Spec. App. Md. (2/3/92). County police officers arrested the defendant and seized $1,680 from him. In a nonjury trial, the defendant was found guilty of conspiracy to violate controlled substances laws. The trial judge specifically noted and credited a witness who testified she had paid the defendant $3,680 for a pool table the day before he was arrested. The Court of Special Appeals noted that what had been a simple and uncomplicated criminal case then became "a nightmare of procedural missteps and errors by everyone involved." The errors included the county officials failing to file a forfeiture petition within the required 90 days of the final disposition of the criminal proceedings; the defendant filing a petition for return of his money with the court that heard his criminal case; the county releasing the money to Federal authorities for forfeiture after the defendant filed his petition for return of the money with the court that heard the criminal case; the court that heard the criminal case attempting to assume jurisdiction over the forfeiture matter; and the county filing its brief late in the appeal with no certificate of service or appendix and no page citations.

It is difficult to determine from this lengthy opinion the exact final result. It appears that the case was

remanded to allow the defendant to file the proper civil action to obtain the return of the seized money.

Editor's Note: This case should be required reading for Maryland prosecutors on how not to proceed with forfeiture actions—or inactions.

MARYLAND—Proximity Presumption/Rebuttal

$3,417.46 U.S. Money, et al. v. Kinnamon, Ct. App. Md. (4/8/92). While executing a search warrant at the defendant's residence, police officers seized two bags of cocaine, sealable plastic bags, crack cocaine, $3,307.36, and four Social Security checks totaling $776. The defendant, who was mentally retarded, had previously been involved in drug offenses. The trial court forfeited all the seized money except $1,000. In excluding the $1,000, the judge stated, "I...believe that at least the balance of that was basically money she had socked away from Social Security and wasn't doing anything other than rotting away in her purse."

On appeal, the circuit court held that all the money seized from the defendant was subject to forfeiture. On further appeal, the Maryland Court of Appeals reversed the circuit court and affirmed the trial court's decision that $1,000 was not subject to forfeiture because the trial judge believed it represented Social Security income. The Court of Appeals noted that this determination was basically a factual one to be made by the trial court. There was no indication that the trial courts had been incorrect in holding that the defendant had rebutted the statutory presumption of forfeitability by establishing that the funds were Social Security income.

MARYLAND—Discretion Is Executive, Not Judicial, Function

State v. One 1989 Harley-Davidson Motorcycle, 601 A.2d 1119, Ct. Spec. App. Md. (2/26/92). The defendant was arrested after 22 grams of marijuana were seized from his jacket pocket when he alighted from his motorcycle. The state filed a complaint for forfeiture, and proper procedures for notification, posting, and publishing were followed. At the conclusion of the forfeiture hearing, the trial court denied forfeiture and returned the motorcycle to the defendant. In so ruling, the court stated, "I believe that the court does have discretion to review all of the circumstances of the seizure of this motorcycle and to determine the propriety of the forfeiture." The trial court also examined the "standards for seizure" codified at section 297(i) of the Maryland statutes.

The state appealed the denial of forfeiture, and the Maryland Court of Special Appeals reversed the trial court's decision. It held that the "standards for seizure" in section 297(i) are guidelines for the seizing authority in deciding whether to recommend forfeiture to the concerned prosecutor, not guidelines for a judge in the forfeiture proceeding. Hence, "For the trial court to consider and apply the standards for seizure that the legislature intended for the benefit of the executive branch and then exercise discretion to deny forfeiture was erroneous."

MICHIGAN—Counties Fighting Over Jurisdiction

State v. Suitcases and Miscellaneous Items, No. 125292, Ct. App. Mich. (2/18/92). Chesterfield Township police arrested two men and seized as the forfeitable proceeds of criminal narcotics activity more than $500,000 in cash, gold coins, and jewelry. The Township then secured an order from the Macomb County Circuit Court preserving the possession of the property until all claims were adjudicated. Subsequently, the prosecutor for neighboring Oakland County, where the bulk of the claims were located, filed a motion in the Macomb County Circuit Court to set aside the order preserving the possession in Chesterfield Township. That motion was denied. The Oakland County prosecutor also filed a forfeiture action against the property in Oakland County. Chesterfield County, in turn, filed a motion in the Oakland County case arguing that Oakland County lacked jurisdiction over the items already under the jurisdiction of the Macomb County court.

The Court of Appeals of Michigan was called upon to referee the fight between the neighboring counties over these forfeiture spoils. It held that although both Macomb and Oakland County courts may have jurisdiction over the property, venue is determined by which seizing agency has control and custody of the property. Because custody was in Chesterfield Township, venue over the items must lie in Macomb County. The court noted that although Oakland County had argued that the bulk of the claims were situated in Oakland

County, that county had not convinced the Macomb County Circuit Court to join the claims or to change venue. The court concluded that although it found in Chesterfield Township's favor, it rejected the argument that the seizing agency is the only party with standing to bring forfeiture proceedings against the property. It noted that MSA 14.15(7524)(1)(b)(ii) provides that agencies "substantially involved in effecting the forfeiture" are to participate in the equitable distribution of the forfeited assets. Because the Oakland County prosecutor's office and the entities it represented were substantially involved, they should participate in the forfeiture actions.

MINNESOTA—Seized Currency/Nexus to Violation

Dakota County Attorney v. $149,000.00 in U.S. Currency, No. CX-91-104, Ct. App. Minn. (1/7/92). Drug task force officers investigating a controlled substances ring obtained a search warrant for a storage locker and seized $149,000 during the search. A particular defendant was a target of the investigation, and the officers had observed the defendant using the locker, on which a drug detector dog had alerted. The locker also contained moth balls and broken perfume vials. After the officers placed the seized currency in a brown bag, a drug detector dog alerted to it. The state instituted forfeiture proceedings against the money. One claimant filed an answer in which he stated that he was a polo player and had sold polo horses, and then had deposited the proceeds, $149,000, in the locker. After the filing of various motions and requests for interrogatories and documents, the trial court entered a default judgment of forfeiture. The claimants appealed.

The appeals court affirmed the forfeiture. It noted that the money was subject to forfeiture because it had been seized properly incident to a lawful search, and it concluded that there was a nexus between the money and the possibility of criminal activity. The court highlighted that the money had been discovered in a locker in which a trained dog smelled the presence of controlled substances and that the locker also contained moth balls and broken perfume vials intended to cover the odor of drugs. It held that title vested in the state when the money was found and that the prosecution had the benefit of an evidentiary presumption because neither claimant had established that he was the owner or that the money had innocent origins. The court also noted that one claimant had given conflicting testimony about the date he had placed the money in the locker.

MISSISSIPPI—Traffic Stop/Burden of Proof

Hickman v. State, No. 90-CA-0531, Sup. Ct. Miss. (12/4/91). Subsequent to a traffic stop, state troopers searched the defendant's vehicle and seized $16,700 from a suitcase that also contained three large sealable plastic bags, two of which contained marijuana gleanings. Two loaded pistols were also discovered on the front seat and front floor of the vehicle. The state filed a forfeiture action, alleging in its complaint that the money, found close to the controlled substance, should be forfeited to the state. At the forfeiture hearing, both occupants of the vehicle, according to the Mississippi Supreme Court, which later heard the appeal "told tales that could only raise suspicion." The trial court itself noted that the occupants "were liars who simply... didn't get their stories straight before they got on the witness stand," and it forfeited the money.

The supreme court affirmed the forfeiture. It relied heavily on the testimony of an experienced narcotics officer who had testified at the forfeiture trial that the materials seized in the vehicle in close proximity to the money were materials commonly used to package marijuana and other drugs. The supreme court noted that two of the plastic bags also contained marijuana gleanings, which certainly suggested that they may have been paraphernalia. The supreme court concluded that the record included substantial, credible, relevant evidence from which the trial court could have properly concluded that the state had met its burden of proof by a preponderance of the evidence.

MISSISSIPPI—Vehicle Facilitation

Jackson v. State, No. 89-CA-1189, Sup. Ct. Miss. (12/4/91). In a narcotics "sting" operation, arrangements were made for the defendant to purchase cocaine from undercover officers at a particular location. The defendant drove his 1984 Cadillac to his nephew's residence, then borrowed his nephew's 1978 Pontiac to drive to the scene of the purchase, switching cars, it was later revealed, because he distrusted the drug seller and thought he saw police in the area.

When the defendant attempted to purchase the planted drugs, he was arrested and $1,087 was seized from his person. The criminal charges against the defendant were eventually dismissed but the state obtained forfeiture of the Cadillac and the money.

On appeal, the defendant contended that the trial court had erred in its broad interpretation of the forfeiture statute. The Mississippi Supreme Court affirmed the forfeiture of the currency but reversed the forfeiture of the Cadillac. It held that the defendant had deliberately not used his own car but had deliberately driven his nephew's car to the location of the drug transaction. The court held that the trial court had used an incorrect legal standard in forfeiting the vehicle and that the state had not met its burden in establishing that the Cadillac had been used, or was intended to be used, to facilitate a violation.

Editor's Note: Although it is not clear from the decision, it appears that the state could have argued effectively that the defendant substituted the Pontiac for his Cadillac because of his suspicions regarding the drug transaction and the observation of a police vehicle and that he indeed proceeded part of the way to the transaction site in the Cadillac and switched vehicles in order not to subject the Cadillac to possible forfeiture. Federal case authority would most likely have forfeited the Cadillac.

MISSISSIPPI—Traffic Stop/Consent Search/Proximity Presumption

Jones v. State, No. 90-CA-0730, Sup. Ct. Miss. (12/18/91). A state trooper stopped the defendant for driving 74 mph in a 65 mph zone. While writing the citation for speeding, the trooper asked the defendant if he had ever been arrested. The defendant said no. The trooper then received information via his radio that the defendant had been convicted in Texas on two counts of possession of a controlled substance. The trooper then requested and received the defendant's consent to search his vehicle just as two other troopers arrived on the scene, and the two other troopers also heard the defendant give oral permission for the search. The defendant then read and signed a consent to search form. A search of the vehicle revealed a marijuana cigarette on the right front seat, marijuana residue "on the carpet, all over," in the trunk, and under the hatchback, and in a piece of luggage, a large amount of cash with marijuana residue "all over it." The defendant admitted that the marijuana cigarette belonged to him, and he was arrested and read his rights. He said he did not know to whom the money belonged.

The state sought forfeiture of the seized $149,700 on the grounds that the money had been used, or was intended for use, in drug trafficking. During the forfeiture proceeding, the defendant's mother testified that she had given him the seized currency to purchase greenhouses. The trial court forfeited the money based on the proximity presumption between it and the controlled substances. The defendant appealed, contending that the search of his vehicle and the subsequent seizure of the money violated his Fourth Amendment rights, and that he had not consented to the search.

The Mississippi Supreme Court affirmed the forfeiture. It held that there had been no Fourth Amendment violation because the defendant had voluntarily consented to the search of his vehicle. It noted that the "voluntary" nature of the consent is a question of fact to be determined from the totality of the circumstances. It also held that the marijuana and marijuana residue found throughout the vehicle belonging to the defendant resulted in the statutory presumption applicable to currency found in close proximity to such substances and that the defendant had failed to rebut this presumption. Further, the court noted that the defendant had admitted that he grew marijuana in Texas and had previously been convicted of controlled substances violations in Texas.

NEW JERSEY—Weapon Laws of Each State Control Travelers

In the Matter of Two Seized Firearms, 602 A.2d 728, Sup. Ct. N.J. (3/4/92). State police officers stopped a van speeding on the New Jersey Turnpike and arrested the two occupants for possession of an 18-inch machete that was in open view between the driver's and passenger seats of the van. A search of the van revealed a loaded 38-caliber handgun in the glove compartment and a loaded .357 magnum revolver, ammunition, and a container of marijuana behind the driver's seat. During state proceedings related to weapons charges, the state was ordered to return the two guns to the defendant; because the defendant's

state of residence (Florida) allowed possession of such firearms, comity compelled the return of the weapons.

The state appealed the order, and the New Jersey Supreme Court reversed it for two reasons: (1) even if Florida law allowed possession of loaded weapons in a vehicle (which apparently it does not), the more stringent provisions of New Jersey law apply to all individuals entering New Jersey; and (2) the defendants did not comply with the Federal statute (18 U.S.C. 926A), which requires firearms being carried or transported from state to state to be unloaded and firearms and ammunition to be not "readily accessible" or "directly accessible" from the passenger compartment of the vehicle. Because the possession of the weapons had been improper under both New Jersey and Federal law, the weapons were forfeited to the state.

NEW JERSEY—Charge Reduction or Acquittal

State v. One 1988 Honda Prelude, No. A-3674-90T5, Sup. Ct. N.J. (12/6/91). The defendant stopped her 1988 Honda and a passenger got out, went into an alley for a few seconds, and returned to the vehicle. The defendant then drove through a red light, whereupon she was stopped by officers in a marked police car who had had the Honda under surveillance. As an officer approached the vehicle, he observed an object thrown out the driver's side window. The object was retrieved and was found to be a clear plastic bag containing cocaine. The defendant and the passenger were arrested and the vehicle was seized.

The state filed a civil action seeking forfeiture of the Honda, and an order was issued to the defendant to show cause why her vehicle should not be forfeited. The defendant contended that the forfeiture statute requires that the offenses underlying the forfeiture be indictable offenses; because the charges against her were not indictable offenses, the vehicle should not be forfeited. The trial judge agreed with the defendant and declined to forfeit the vehicle.

The state appealed. It argued that forfeiture may be based on illegal acts regardless of how those acts are subsequently prosecuted, whether by indictment or by lesser charges if the offenses are downgraded. The state further argued that even if the offense were downgraded and the defendant ultimately acquitted, the vehicle would still be subject to forfeiture.

The Superior Court of New Jersey agreed with the state and reversed the trial court's decision. It held that the vehicle had been used to facilitate a crime within the reasoning of the statute and recent case authority. The court noted that in a civil forfeiture proceeding an independent determination, based on a preponderance of the evidence, must be made as to whether the seized property was subject to forfeiture within the provi-sions of the civil forfeiture statute. The court further noted that One 1979 Chevrolet Camero Z-28, 202 N.J. Super., 222 (App. Div. 1985), on which the defendant had relied, did not repudiate long-standing case law, which made it clear that the outcome of criminal proceedings did not affect the validity of civil forfeiture proceedings.

NEW MEXICO—Innocent Co-Owner Protected

In Re: Forfeiture of One 1970 Ford Pickup Truck, No. 11,673, Ct. App. N. Mex. (11/1/91). A truck co-owned by a mother and her son was seized after it was used by the son in violation of drug laws. The trial court ordered the truck forfeited to the state. On appeal, the state contended that the trial court had properly forfeited the entire truck. The mother and son countered that the truck should not have been forfeited at all, because one of the owners had not known about, or consented to, the illegal activity. The appeals court, after reviewing state cases concerning innocent owner's and co-owner's interests, rejected both arguments. Rather, it held that the son's one-half interest should be forfeited. Hence, the case was remanded to the trial court to forfeit the son's one-half interest by using its equitable powers to ensure that both the state's and the mother's interests were upheld.

OHIO—Forfeiture of Vehicle as Contraband Requires Felony Connection

State v. Lawson, No. L 91-225, Ct. App. Ohio (4/10/92). The defendant was arrested for a felony drug abuse offense, and his 1990 Toyota truck was seized as contraband under Ohio statute. Subsequently, the defendant withdrew his guilty plea to the felony offense and was

sentenced on the basis of a lesser included misdemeanor offense.

At the forfeiture hearing some months later, the defendant contended that his truck was not subject to forfeiture as contraband because section RC2933.43 requires a conviction for a felony as a condition precedent to a vehicle being forfeited as "contraband." The trial court denied forfeiture.

On appeal, the state contended that the trial court had erred, that section RC2933.42V does not require a felony "conviction" but only that the underlying offense be a felony. The appeals court affirmed the denial of forfeiture, citing a recent case, *Ohio v. Casalicchio*, 58 Ohio St. 3d 178 (1991), in which the Supreme Court of Ohio held that a felony conviction is a condition precedent to a vehicle being forfeited as contraband under the cited statute.

Editor's Note: Ohio authorities continue to lose forfeiture cases because of the way "contraband" is defined in the Ohio statutes. Until they persuade the Ohio legislature to amend the statute, they will continue to lose such cases.

OHIO—Forfeiture Declared by Criminal Trial Court

State v. White, No. 15272, Ct. App. Ohio (4/8/92). After selling controlled substances from her residence a number of times, the defendant was arrested and convicted of aggravated trafficking. The trial court that heard the criminal case forfeited her house and the money found in the house. On appeal the defendant contended that the trial court had erred in ordering forfeiture of her property as part of the criminal trial and should have held a separate evidentiary hearing on the forfeiture. During the criminal trial, the court had stated, "Based on the evidence I heard, I'm convinced that drugs were sold in the house." The trial court had also asked defense counsel whether he could provide any evidence in opposition to the forfeiture and had stated that in the absence of such evidence, the court did not intend to hold a separate forfeiture proceeding. The defense counsel had not presented any evidence to contradict the felony conviction for aggravated trafficking or to prove that the house had not been used to facilitate commission of a felony drug offense. The appeals court held that, based on what had transpired regarding the forfeiture matter in the criminal trial, the defendant had waived a separate forfeiture hearing.

Editor's Note: The decision in this case appears highly unusual, but the result is not surprising in view of the procedural quagmire contained in the Ohio statutes.

OKLAHOMA—Unsecured Creditors Not Protected

In Re: Forfeiture of One 1985 Two Door BMW Model 325, 819 P.2d 722, Ct. App. Okla. (10/22/91). The defendant drove his BMW to the front of a residence, entered the residence, and stole a VCR. At the time, the defendant was under surveillance by police officers, and he was subsequently arrested for burglary of the residence. The state obtained forfeiture of the BMW pursuant to 21 O.S. Section 1738 (Supp., 1987). During the forfeiture proceeding, several claimants intervened. One, who said he had given the defendant money to purchase the car, claimed a $10,000 interest in the BMW, another claimed a $7,200 interest for repairs he had made on the BMW, and a third claimed a $2,500 interest to repay a loan to the defendant to pay attorney's fees for the burglary charge. The vehicle was titled in Texas, and no lien or encumbrance was endorsed on the title. Hence, all the alleged interests in the vehicle were based on oral agreement with the defendant, and none of the liens had been perfected in accordance with the motor vehicle laws of Texas.

On appeal, the claimants contended that the trial court had erred in ordering forfeiture of the BMW without protecting their interests as innocent third parties, and that their interests need not be "perfected" in order to be protected from forfeiture. The claimants argued that their rights as innocent third parties were protected under section 1738 of the Oklahoma statutes, which specifically protects the rights of a "bona fide or innocent owner, lienholder, mortgagee, or vendor." The appeals court observed that the real issue was whether the claimants came within the class of persons whose rights are protected by that statute. It then confirmed the trial court's position that the claimants were not within the class of persons so protected. The court noted that creation of two of the claims was attempted after commission of the offense and seizure of the BMW. Further, the asserted liens or interests had not been

perfected by endorsement on the vehicle title, as required by Texas laws.

PENNSYLVANIA—Facilitation/ Simple Possession Not Sufficient

1977 GMC Pick Up Truck, et al. v. Commonwealth, No. 1436 C.D. 1991, Comm. Ct. Pa. (4/15/92). The claimant parked his pick up truck and a prostitute got in. He offered the prostitute $50 in return for sexual services, but she asked for cocaine instead of money. The claimant then walked approximately one-half block to a location where he purchased cocaine. After the claimant returned and got into the truck, a police officer approached. When the claimant became combative, disorderly, and uncooperative, he was arrested for disorderly conduct. The police officer found the cocaine in the claimant's coat pocket, then seized the truck and $330 from the claimant's pants pocket. The claimant was subsequently charged with possession of a controlled substance. The state obtained forfeiture of the pickup truck.

On appeal, the claimant raised the issue of whether the commonwealth had produced sufficient evidence that the truck had been used to facilitate the transportation, sale, receipt, or possession of cocaine. The appeals court held that the commonwealth had not established that the truck had been used to facilitate a drug transaction, because the only transaction involved actually took place one-half block from the truck. The court noted that the transaction between the claimant and the prostitute had not taken place and that an intended transaction cannot constitute a sale or receipt. It then held that the truck was not subject to forfeiture and that the trial court must be reversed.

Editor's Note: This decision does not explore the issue of the claimant's possession of the drugs as a basis for forfeiture, but it appears that the appeals court considered such simple possession merely incidental on the part of the claimant and, hence, not a sufficient basis for forfeiture.

PENNSYLVANIA—Real Property/ No Redemption or Proportionality

In Re: King Properties, No. 304 C.D. 1991, Comm. Ct. Pa. (1/22/92). After an undercover purchase of controlled substances from the defendant's residence, police officers executed a search warrant and seized cocaine and drug-related paraphernalia, including a triple beam scale with white powder residue, from the house. The trial court ordered forfeiture of the defendant's residence. The forfeiture order provided that the defendant could redeem his interest in the residence by paying the commonwealth $30,000.

The commonwealth appealed, contending that the trial court had erred in exercising its equitable powers by giving the defendant the opportunity to redeem his forfeited property. The defendant argued that forfeiture of his entire residence without the redemption would violate his Eighth Amendment protection against cruel and unusual punishment. The appeals court agreed with the commonwealth. It affirmed the forfeiture of the residence but reversed the provision allowing the defendant to redeem his property. The court reviewed a number of Federal and state cases and noted that entire tracts of real estate had been forfeited when only a portion had been used in violation of the law. It ruled that the trial court's imposition of proportionality by way of redemption, owing to the defendant's alleged minor violation, was unsupported and had been improper.

SOUTH CAROLINA—Jury Trial Required

Attorney General v. 1985 Ford F0150 Pick Up, et al., No. 23626, Sup. Ct. S.C. (4/13/92). During a forfeiture hearing against a defendant's vehicle, the defendant demanded a jury trial. The judge denied the request and proceeded to forfeit the vehicle. The defendant appealed. The only issue on appeal was whether South Carolina statutes require a jury trial in forfeiture cases. The Supreme Court of South Carolina reversed the trial court's decision. It held that because a defendant has no right to a remedy in replevin in a civil forfeiture matter, a jury trial is required when the property subject to forfeiture is normally used for lawful purposes. The court held that section 44-53-530(a) of the statutes is unconstitutional to the extent that it denies a defendant/owner the right to a jury trial when the property subject to forfeiture usually is used for lawful purposes. The court noted that an amendment to the state constitution would be needed to abolish the

right to a jury trial in forfeiture proceedings.

TENNESSEE—Reasonable Notice to Owners Required

Brown v. Tennessee Department of Safety, No. 01-A-01-9102-CH-00043, Ct. App. Tenn. Nash. Mid. (4/1/92). Officers executed a search warrant at a private residence and seized small amounts of cocaine and marijuana, weapons, and $45,986. The officers arrested Mr. Brown and advised him of his rights. Brown claimed that he told the officers that the seized money belonged to Mr. Jones, who was not at the residence because he was recovering from an injury at another location. The officers sent a notice of seizure form to Brown by certified mail. Later, all charges against Brown were dismissed. No charges were ever filed against Jones, and no attempt was made to identify the other residents of the searched house. The commissioner of safety and the trial court forfeited the money. Brown and Jones appealed, contending that they had not received proper notice of the seizure. The appeals court affirmed the denial of Brown's claim, holding that because Brown had denied owning the money, he was not an affected party. However, the court reversed the forfeiture order regarding Jones's possible interest. It held that Jones had not received proper notice of the proposed forfeiture of the money and that the involved officers and prosecutors had not made reasonable efforts to locate him or furnish him the required notice.

TEXAS—Currency at Airport/ Profile Stop

$11,014.00 v. State, No. 01-90-00676-CV, Ct. App. Tx. Houst. 1st Dist. (4/16/92). An officer made a profile stop and seized $11,014 from a man after he arrived at the Houston airport on a flight from New York City. A drug detector dog alerted on the currency, but no drugs were seized, and there was no indication that the man had been involved in any drug violations. Nevertheless, the trial court forfeited the money. Later, the Texas Court of Appeals reversed the forfeiture. Still later, the Texas Supreme Court remanded the case to the appeals court with instructions to reconsider its reversal.

Upon remand, the appeals court held that there was no direct evidence that the seized money had been derived from, or was intended for use in, a drug violation. The court recognized that the dog alert and some other circumstances might constitute some evidence that the money had been derived from drugs, but it found the evidence to be factually insufficient to support the trial court's judgment of forfeiture.

Moreover, the man from whom the money had been seized claimed that the dog had not alerted on the money or on his suitcase, and the officer admitted that no lab tests had been performed on the money for residue. The appeals court concluded by noting that the man had stated that he had borrowed the money from relatives to purchase a used van and the state had offered no evidence to the contrary. Therefore, the court concluded for the second time that the required link between the money and a drug offense was not present.

UTAH—Traffic Stop/Currency Violation Must Occur in Utah

In Re: $102,000 in U.S. Currency, No. 910063, Sup. Ct. Utah (1/9/92). During a traffic stop the driver was found to be driving on a suspended license. The vehicle was driven to the sheriff's substation, where a search warrant for the vehicle was obtained. The search revealed a false gas tank containing $100,900 divided in $5,000 blocks, each wrapped in brown paper. A drug detector dog alerted on both the money and the brown paper. No controlled substances were found in the van or on the driver or any of the passengers. None of the passengers was charged with any offense. One of the passengers claimed that the van belonged to an employee of his, that the money belonged to him (the passenger), and that he had recently sold his business for a large sum and had arranged to have the money transported to California in the van. The trial court forfeited the money.

The passenger who claimed to own the money appealed. The Supreme Court of Utah reversed the forfeiture without reviewing the sufficiency of the evidence for the forfeiture. It held that a basic element of a cause of action for forfeiture was absent from the case. Utah statute provides for the forfeiture of currency only when it is used, or intended to be used, to facilitate a violation of the Utah Controlled Substances Act.

It is not enough that the currency may have been generated in a drug transaction that took place outside Utah. In such a case there would be no violation of the Utah act.

Because the state had not attempted to establish that a drug transaction had taken place in Utah, the money could not be forfeited.

ASSET FORFEITURE BULLETIN

A periodic newsletter of the Asset Forfeiture Training and Technical Assistance Project. The project is funded under Cooperative Agreement Number 87-DD-CX-K090 (S-3), between the Bureau of Justice Assistance and the Police Executive Research Forum. Points of view and opinions expressed in the Bulletin are those of the authors and editors and do not necessarily represent the policy or opinions of the Bureau of Justice Assistance or the U.S. Department of Justice.

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