

FILED

AUG 15 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Court of Appeals No. 34025-2

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

Jason Watson,
Appellant.

v.

City of Spokane,
Respondent

APPELLANT'S OPENING BRIEF

APPEAL FROM THE SUPERIOR COURT OF SPOKANE COUNTY

Attorney for Appellant: Jason Watson
Douglas D. Phelps, WSBA #22620
Phelps & Associates
N. 2903 Stout Rd.
Spokane, WA 99206
(509) 892-0467

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A. IDENTITY OF PETITIONER

Mr. Jason Watson respectfully requests this court to accept review of the decision designated in part B of this motion.

B. DECISION

The Appellant seeks review of the Spokane County Superior Court's December 18, 2015 memorandum opinion that affirmed the hearing examiner's Order of forfeiture of currency in the amount of \$13,000 that the police had seized from him. The Order is a violation of the appellant's right to due process, right to be free from unreasonable seizures and a violation of Article IV § 6 of Washington Constitution.

C. ISSUES PRESENTED FOR REVIEW

- I. If a person signs a stipulation to a forfeiture and then requests a hearing, is it improper for the hearing examiner to dismiss the claim without a hearing to determine if a stipulation was made knowingly, intelligently, and voluntarily?**
- II. Does an administrative City Hearing Examiner have jurisdiction in an action to obtain property where the amount in controversy exceeds \$3,000 where Article IV § 6 of the Washington Supreme Court places original jurisdiction in all cases of this type with the Superior Court?**

D. STATEMENT OF THE CASE

On November 13, 2014, the Spokane Police Department (SPD) arrested Jason L. Watson for alleged delivery of a controlled substance. RP July 20, 2015

p. 4. His residence was subsequently searched without a warrant and \$13,000.00 was found in a safe in Mr. Watson's bedroom. *Id.* That \$13,000.00 was seized by the SPD pursuant to RCW 69.50.505. *Id.* That day, Mr. Watson was given the Narcotics Notice of Seizure and Intended Forfeiture. *Id.* The police officers contemporaneously requested he sign a "Stipulation and Release", provided by the police to release his interest in the \$13,000.00. *Id.*

On November 18, 2014, Mr. Watson, by and through counsel, submitted a claim to the \$13,000.00 and requested a hearing. RP Dec. 11, 2015 p. 3. A Forfeiture Hearing Notice was sent to counsel scheduling a hearing for February 12, 2015. On February 11, 2015, counsel filed a motion to continue the forfeiture hearing (Attached as Exhibit A), as no discovery had been received by counsel regarding the arrest or the circumstances surrounding the seizure and proposed forfeiture other than the Notice of Seizure and Intended Forfeiture and the Stipulation and Release.

On February 12, 2015, at a hearing, the City withdrew its objection to a continuance and presented a new Motion to Dispose of Application. (Attached as Exhibit B). No time was afforded to brief a response to this Motion, and the City brought forth no witnesses as to the circumstances surrounding the presentation and signature of the Notice of Seizure and Intended Forfeiture and the Stipulation and Release. In argument, counsel for Appellant requested a continuance, both to obtain discovery and to allow for testimony regarding the circumstances

surrounding the service and signature of the “Notice of Seizure” and “Intended Forfeiture and the Stipulation and Release.”

A written decision was issued on February 19, 2015 deciding in favor of the City and dismissing Mr. Watson’s claim, reasoning, effectively, that the stipulation itself was ample proof of voluntary signature. (Attached as Exhibit C).

On March 19, 2015, the Petitioner filed a Petition for Review in Superior Court, challenging the Dismissal entered February 19, 2015. (Attached as Exhibit D). On July 20, 2015, oral argument was held in Superior Court and the Court ruled that the Hearing Examiner did not have jurisdiction to dismiss Mr. Watson’s claim and remanded the matter for further proceedings. (Attached as Exhibit E).

On July 28, 2015, the City requested that the Hearing Examiner enter an order dismissing Mr. Watson’s claim, prior to the commencement of any new hearing on remand. The Hearing Examiner again dismisses Mr. Watson’s claim in an order filed August 5, 2015 without notice or opportunity to be heard by Mr. Watson or his counsel. (Attached as Exhibit E). The Superior Court upheld the Hearing Examiner’s Second Order Dismissing Claim on December 11, 2015. RP Dec. 11, 2015. The Appellant timely filed a Motion for Discretionary Review on April 26, 2016. This

E. GROUNDS FOR RELIEF

The present court ruled on May 13, 2016 that the appellant is entitled to review as a matter of right pursuant to RCW 34.05.570(3).

F. ARGUMENT

I. **The City of Spokane violated Mr. Watson's right to due process when it dismissed Mr. Watson's claim without a hearing to determine if Mr. Watson's stipulation to the forfeiture was made knowingly, intelligently, and voluntarily.**

Under the Fourteenth Amendment to the United States Constitution, no state shall "deprive any person of life, liberty, or property without due process of law." Article I § 3 of Washington Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law. There are no material differences between the two due process clauses, and the protection they afford is virtually identical. *State v. Wittenbarger*, 124 Wash.2d 467, 480, 880 P.2d 517 (1994). "Due process requires an opportunity for a hearing appropriate to the nature of the case." *In re M.B.*, 101 Wash.App. 425, 470, 3 P.3d 780 (2000). Whether this standard is met turns on the balancing of three distinct factors: the private interests affected by the proceeding; the risk of error created by the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and the countervailing governmental interest supporting use of the challenged procedure. *Id* at 470-471.

The government generally carries the burden of showing waiver of a constitutional right. *See State v. Campos-Cerna*, 154 Wn.App. 702, 709, 226 P.3d 185 (waiver of *Miranda* rights), *review denied*, 169 Wn.2d 1021 (2010); *State v. Hos*, 154 Wn.App. 238m 249, 50, 225 P.3d 389 (waiver of right to jury trial),

review denied, 169 Wn.2d 1008 (2010). A waiver must be knowing, voluntary, and intelligent. *State v. Thomas*, 128 Wn.2d 553, 558, 910 P.2d 475 (1996). A signed waiver is “usually strong proof” of the waiver’s validity. *State v. Woods*, 34 Wn.App. 750, 759, 665 P.2d 895 (1983) (*Miranda* rights) (quoting *N. Carolina v. Butler*, 441 U.S. 369 (1979)).

The dictionary defines a voluntary action as “[p]roduced in or by an act of choice,” implies “knowledge of essential facts,” Black’s Law Dictionary 1575 (6th ed.1990), and is “intentional rather than accidental.” *State v. Atherton*, 106 Wn. App. 783, 789, 24 P.3d 1123, *In re Marriage of Pollard*, 99 Wash.App. 48, 54, 991 P.2d 1201 (2000). “[W]aiver” is the “act of waiving or intentionally relinquishing or abandoning a known right . . . or privilege.” Webster’s Third New International Dictionary 2570 (2002). When constitutional rights are involved, we require the government to bear the burden to prove “an intentional relinquishment or abandonment.” *City of Seattle v. Klein*, 161 Wn.2d 554, 559, 166 P.3d 1149 (Wash. 2007) quoting, *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

In the case at hand, the Spokane Police Department seized \$13,000 pursuant to RCW 69.50.505 after executing a warrantless search of Mr. Watson’s residency. After his residence was searched Mr. Watson was given the Narcotics Notice of Seizure and Intended Forfeiture and was contemporaneously given a Stipulation and Release, purportedly intended to release his interest in the

\$13,000.00. Mr. Watson was not represented by counsel when he signed the stipulation. Mr. Watson was unable to make a knowing, intelligent, and voluntary waiver of his right to the \$13,000 due to the stress and unfamiliarity with forfeiture laws.

When looking to the courts balancing factors Mr. Watson clearly has an interest in \$13,000 that was seized from his personal residence. Further, Mr. Watson was never afforded a hearing in regards to the \$13,000 because he signed a stipulation under stress. This is a clear error created by the procedures in place with the Spokane Police Department in forfeiture actions. Mr. Watson stands to gain his \$13,000 back if he is given his day in court. Lastly, the government's interest in reducing crime and saving taxpayer money is not compelling. Providing a hearing to determine if Mr. Watson's waiver was made knowingly, intelligently, and voluntarily does not undermine the deterrent nature of forfeiture actions and would be inexpensive compared to the \$13,000 seized by the State.

The Spokane Police Department denied Mr. Watson any due process because no hearing was convened and no opportunity to be heard occurred. The Spokane Police Department and City of Spokane City bears the burden of showing a valid waiver, and a signed waiver is not conclusive proof of the waiver's validity, rather merely strong proof. The City must demonstrate that the signature was made knowingly, voluntarily, and intelligently. The failure to

convene a hearing was a complete denial of Mr. Watson's right to due process under Article I § 3 of the Washington Constitution.

II. The Hearing Examiner improperly dismissed Mr. Watson's claim because he did not have jurisdiction over the property pursuant to Article IV § 6 which requires "original jurisdiction" in Superior Court.

Article IV § 6 places original jurisdiction with the Superior Court "in all cases which . . . the demand or the value of the property in controversy amounts to three thousand dollars . . ." The Spokane Police Department and City Hearing Examiner may not take action involving the "property in controversy amounts to exceed three thousand dollars" because the Superior Court has original jurisdiction over these issues.

The courts have been clear that "matters that are 'specially enumerated' in former Const. art. IV, § 6 are not only within the original jurisdiction of superior courts, but also within their exclusive jurisdiction." *State v. Brennan*, 76 Wn.App. 347, 351, 884 P.2d 1343 (Wash. App. Div. I 1994) quoting, *Moore v. Perrot*, 2 Wash. 1, 4-5, 25 P. 906 (1891). Moreover, for those matters, the Legislature has no power to give inferior courts concurrent jurisdiction with superior courts. See, e.g., *State v. Haye*, 72 Wash.2d 461, 469, 433 P.2d 884 (1967); *State v. Schaffer*, 31 Wash. 305, 306, 71 P. 1088 (1903).

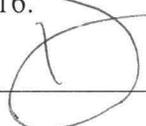
The process used here allowing for the administrative hearing officer to determine the validity of a seizure of \$13,000 without taking evidence is clearly in

violation of the State Constitution. Further, Article I § 3 of the Washington State Constitution requires that a citizen may not be deprived of property without due process of law. The Washington State Constitution requires that a citizen may not be deprived of property without due process of law. The Washington State Constitution requires a specific form of due process in cases involving property worth \$3,000 or more the matter must properly be held in the Superior Court.

G. CONCLUSION

For the above reasons, Petitioner respectfully requests that the Superior Court's Order upholding the Dismissal of Claim be reversed and the matter remanded before the superior court for a hearing consistent with Article IV § 6 of the Washington State Constitution.

Respectfully submitted this 25th day of August, 2016.



Douglas D. Phelps, WSBA #22620
N. 2903 Stout Rd.
Spokane, WA 99206
(509) 892-0467

Exhibit A

filed 2/11/15

BEFORE THE HEARING EXAMINER
CITY OF SPOKANE

JASON L. WATSON,
Claimant,

vs.

SPOKANE POLICE DEPARTMENT,
Seizing Agency.

Report #14-802744
Seizure #14-87

MOTION TO DEFER FORFEITURE HEARING
AND WAIVER OF 90-DAY TIME LIMIT TO
CONDUCT FORFEITURE HEARING

The claimant, JASON L. WATSON, hereby moves the Hearing Examiner to continue the forfeiture hearing, scheduled for February 12, 2015, at 1:30 p.m., regarding Seizure No. 14-87 (police report no. 14-802744), until a mutually agreeable date.

The claimant acknowledges and understands that he has the right, pursuant to RCW 34.05.419, to have the forfeiture hearing conducted within ninety (90) days of the date of filing the appeal. With that understanding, and in furtherance of the claimant's stipulation to defer the forfeiture hearing, the claimant hereby waives his right to have the appeal hearing conducted within the ninety (90) day time-limit set forth by statute.

This Motion is based on the fact that the Office of the City Attorney does not agree to a continuance; however, discovery must be conducted in order to fully be prepared for a forfeiture hearing and sufficient discovery has not been conducted at this point.

DATED this 11th day of February, 2015.



DOUGLAS D. PHELPS, Attorney at Law
on behalf of claimant: Sherry Lynn Olsen
PHELPS & ASSOCIATES, P.S.
2903 N. Stout Road
Spokane, WA 99206
(509) 892-0467

Exhibit B

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BEFORE THE HEARING EXAMINER CITY OF SPOKANE

JASON L. WATSON,

Claimant,

v.

SPOKANE POLICE DEPT.,

Seizing Agency.

CITY OF SPOKANE'S MOTION TO
DISPOSE OF APPLICATION

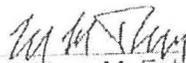
SPD Report #: 14-802744
SPD Seizure #: 14-87

COMES NOW the City of Spokane Police Department, by and through its undersigned attorney, and moves the City of Spokane Hearing Examiner for an order disposing of the above-referenced application pursuant to RCW 34.05.419; RCW 34.05.416 and RCW 69.50.505(5).

Claimant, Mr. Watson, has voluntarily forfeited his claim of ownership and no adjudicative proceeding is warranted.

This motion is based upon the City of Spokane's Memorandum of Authorities filed herewith and the records and files contained herein.

DATED this 12 day of February, 2015.


Matthew M. Folsom, WSBA #40043
Assistant City Attorney
Attorney for City of Spokane Police Dept.

CITY OF SPOKANE'S MOTION TO DISMISS -
Page 1

NANCY L. ISSERLIS, City Attorney
OFFICE OF THE CITY ATTORNEY
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FAX (509) 625-6277

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BEFORE THE HEARING EXAMINER CITY OF SPOKANE

<p>JASON L. WATSON, Claimant, v. SPOKANE POLICE DEPT., Seizing Agency.</p>	<p>CITY OF SPOKANE'S MEMORANDUM OF AUTHORITY IN SUPPORT OF ITS MOTION TO DISPOSE OF APPLICATION SPD Report #: 14-802744 SPD Seizure #: 14-87</p>
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I. INTRODUCTION.

The City of Spokane Police Department moves the City Hearing Examiner to dispose of the above-referenced application as the claimant has given the City of Spokane a release in which he has forfeited the subject matter property. After the release was obtained, claimant, via his counsel, filed a notice of claim.

II. BACKGROUND.

Claimant was arrest on November 13, 2014. See Incident Report No. 14-802744, date 11.13.2014.

Pursuant to RCW 69.50.505, the Spokane Police Department served claimant with a "Narcotics Notice of Seizure and Intended Forfeiture," on November 13, 2014. See attached *Notice*.

Claimant and the City of Spokane Police Department entered into a "Stipulation and Release," dated November 13, 2014. See attached *Stipulation and Release*.

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III. ARGUMENT.

An Agency shall commence an adjudicative proceeding or dispose of the application upon receipt of an application for adjudication, in accordance with RCW 34.05.416. See RCW 34.05.419.

If an agency decides not to conduct an adjudicative proceeding..., the agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant.

RCW 34.05.416.

The City contends that the claimant, Mr. Watson, has no standing to file a claim or application for adjudication. Pursuant to RCW 69.50.505(5), only a person with a claim of ownership or right to possession shall be afforded an opportunity to be heard. Mr. Watson stipulated to the forfeiture of the seized item prior to filing his claim. See attached *Stipulation and Release and Forfeiture Claim*. This release agreement was entered into voluntarily and after Mr. Watson had been read his Constitutional Rights. See Incident Report No. 14-802744, date 11.13.2014.

IV. CONCLUSION.

For the foregoing reasons, the City of Spokane respectfully requests that an adjudicative proceeding not be conducted and a written decision disposing of the matter be issued.

DATED this 12 day of February, 2015.


Matthew M. Folsom, WSBA #40043
Assistant City Attorney
Attorney for City of Spokane Police Dept.

CITY OF SPOKANE'S MEMORANDUM OF
AUTHORITIES IN SUPPORT OF ITS MOTION
TO DISMISS – Page 2

NANCY L. ISSERLIS, City Attorney
OFFICE OF THE CITY ATTORNEY
5th Floor Municipal Building
Spokane, WA 99201-3326
(509) 625-6225
FAX (509) 625-6277

RCW 34.05.419**Agency action on applications for adjudication.**

After receipt of an application for an adjudicative proceeding, other than a declaratory order, an agency shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within ninety days after receipt of the application or of the response to a timely request made by the agency under subsection (2) of this section, the agency shall do one of the following:

(a) Approve or deny the application, in whole or in part, on the basis of brief or emergency adjudicative proceedings, if those proceedings are available under this chapter for disposition of the matter;

(b) Commence an adjudicative proceeding in accordance with this chapter; or

(c) Dispose of the application in accordance with RCW 34.05.416;

(2) Within thirty days after receipt of the application, the agency shall examine the application, notify the applicant of any obvious errors or omissions, request any additional information the agency wishes to obtain and is permitted by law to require, and notify the applicant of the name, mailing address, and telephone number of an office that may be contacted regarding the application;

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the agency may proceed to make a determination of eligibility within the time limits provided in subsection (1) of this section. If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of eligible applicants as provided by law and, upon request, shall notify the applicant of the status of the application.

[1988 c 288 § 404.]

RCW 34.05.416

Decision not to conduct an adjudication.

If an agency decides not to conduct an adjudicative proceeding in response to an application, the agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant.

[1988 c 288 § 403.]

Exhibit C



SPOKANE POLICE DEPARTMENT

CHIEF OF POLICE

FRANK STRAUB, Ph.D.

NARCOTICS NOTICE OF SEIZURE AND INTENDED FORFEITURE

Notice Recipient's Name and Mailing Address:

SPD Report No: 14-602744

Date of Seizure: 11-13-14

This is to notify you that pursuant to RCW 69.50.505, the property listed below has been seized by the Spokane Police Department (SPD) because they believe that it was used to facilitate the sale of controlled substances or it is proceeds acquired in whole or in part from a sale or series of sales of controlled substances in violation of RCW 69.50, RCW 69.41 or RCW 69.52 and are subject to seizure and forfeiture and NO PROPERTY RIGHT EXISTS IN THEM.

It is the intent of SPD to seek forfeiture of the seized property. Pursuant to RCW 69.50.505, property that is used to facilitate the sale of controlled substances, or is acquired in whole or in part with proceeds traceable to a sale or series of sales of controlled substances, or furnished or intended to be furnished in exchange for a controlled substance can be seized and kept by a law enforcement agency. If you would like to make a claim because this property belongs to you and/or you are an interested party, you MUST, within forty-five days of the service of this notice, notify the Spokane Police Department in writing of your claim of ownership or right to possession to the item(s) seized. Send your written claim (certified mail preferred) to: Forfeiture Claim, SPD Civil Enforcement Unit, 1100 West Mallon, Spokane, WA 99260. In your letter please identify the property you are claiming and whether you wish to request a copy of the police report documenting the seizure of the property. You will then receive notice of a hearing date.

If no person notifies the Spokane Police Department in writing of the person's claim of ownership or right to possession of the items specified below within forty-five days of the service of this notice, the items seized shall be deemed forfeited to the Spokane Police Department.

THE FOLLOWING PROPERTY HAS BEEN SEIZED (list below; or, see attached sheet):

\$13,000 U.S. Currency

Served on this 13th day of NOVEMBER, 2014 in the following manner:

Hand Delivered to JASON HEATON at 1727 W GARONER
Jason Heaton OR Jason Heaton
Notice Recipient's Signature OR Witness Signature

Via Certified Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATE: 11-13-14 PLACE: 1100 W. Mallon Ave Spokane, WA

SIGNATURE: [Signature]
Spokane Police Officer

RENIE #533
Print Name and Badge #

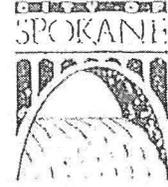
for
Frank G. Straub, Jr.
Chief of Police

Distribution:
Notice Recipient
Civil Enforcement Unit
Records



SPOKANE POLICE DEPARTMENT

FRANK G. STRAUB, JR.
CHIEF OF POLICE



STIPULATION AND RELEASE

WHEREAS, the Spokane Police Department and the below named owner/claimant desire that a settlement be had. It is hereby agreed to and stipulated by the parties that the property listed on the seizure and forfeiture letter dated November 13th, 2014 (Report #14-802744), shall be disposed of as follows:

The following item will be forfeited to the City of Spokane;

Items #13, #14 totaling \$13000.00 in US Currency

Dated this 13th day of November, 2014

Chief Frank G. Straub, Jr.

Chief of Police

Spokane Police Department

By: Eric Olsen

Capt. Eric Olsen

Jason L. Watson

Jason L. Watson

Claimant

 *** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	1756
DESTINATION ADDRESS	99210802
SUBADDRESS	
DESTINATION ID	
ST. TIME	11/18 16:15
TX/RX TIME	00' 50
PGS.	2
RESULT	OK



OFFICE OF THE CITY ATTORNEY
 808 W. SEOKANII FALLS BLVD.
 SPOKANE, WASHINGTON 99201-3326
 509.625.6225
 509.625.6277 FAX

NANCY L. ISSERLIS
 CITY ATTORNEY

PAT J. DALTON
 SENIOR ASSISTANT CITY ATTORNEY

ASSISTANT CITY ATTORNEYS

- | | |
|-----------------------|-----------------------|
| SALVATORE J. FAGGIANO | MICHAEL J. PICCOTO |
| MATTHEW M. FOLSOM | JAMES A. RICHMAN |
| ERIN A. JACKSON | ELIZABETH L. SCHORRHL |
| ASHLEY C. MARSHALL | TIMOTHY B. SZAMBIELAN |
| MARY F. MURAMATSU | HUNT M. WHALEY |
| NATHANIEL J. OJIMA | |

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DATE: 11.18.14

PLEASE DELIVER TO: Doug Phelps
 FIRM NAME:
 FACSIMILE NUMBER: 509.921.0802

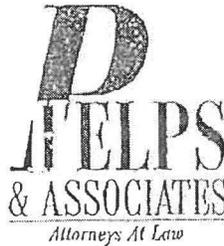
FROM: Matthew MacKay Folsom, Assistant City Attorney

NUMBER OF PAGES INCLUDING COVER SHEET:

HARD COPY TO FOLLOW: YES NO Copy provided upon request.

MESSAGE:
 Signed stipulated release
 seizure #14-87

Licensed in Washington
Douglas D. Phelps
Katharine Allison
Amber Henry, Rule 9



Licensed in Idaho
Douglas D. Phelps

11/18/2014

Forfeiture Claim
SPD Civil Enforcement Unit
1100 West Mallon
Spokane, WA 99260

Re: SPD Report No. 14-802744
Date of Seizure: 11/13/2014
Claimant: Jason L. Watson

Dear Sirs:

This is to advise that Douglas Phelps, of Phelps & Associates has been retained to represent Jason L. Watson in the seizure of \$13,000 U.S. Currency on 11/13/2014. Pursuant to RCW 69.50.505 we are requesting a hearing referencing the seizure and forfeiture of the property. This letter serves as our notice of claim of ownership on behalf of Mr. Jason L. Watson.

We request a timely resolution of this matter consistent with RCW 69.50.505 et seq. Also, we are willing to negotiate a reasonable resolution of this matter short of a full hearing. Further, it is our intent to seek resolution of this matter before the Spokane County Superior Court in the event that negotiations are unsuccessful.

Sincerely,

Douglas D. Phelps

Spokane Police Department
Additional Report

Date: 11-13-2014
Incident Classification: Search Warrant
Location: Spokane, Wa.
Complainant/Victim: Race: Sex: DOB:
Suspect: WATSON, Jason L Race: B Sex: M DOB: 09-23-1977
X-Reference #'s:
Department Status: Further Investigation
NIBRS Status: Not Applicable
Detective Pence #563

On or about November 13th, 2014, Detective Mehring, Detective Willard, and I arrested Jason WATSON at 190 and Evergreen at about 1630. WATSON was driving his white Chevrolet Impala WA LIC #AAJ3983. Detective Mehring's vehicle is equipped with lights and siren, and he initiated the traffic stop at the 190 intersection.

I contacted WATSON at his driver door and informed him he was under arrest for Delivery of a Controlled Substance. WATSON exited the vehicle and I handcuffed (D,L) him and placed him in the front seat of Detective Mehring's vehicle.

WATSON was then transported to a nearby location where Detective Mehring and I conducted an interview. I read as witnessed by Detective Mehring WATSON's Constitutional Rights which he stated he understood and wished to waive. I asked WATSON to tell me about all aspects of his drug dealings. Including where he held his money, drugs, and weapons.

WATSON stated he was being supplied Oxycodone from a black male WATSON knew as "DD". WATSON said he was paying \$21 a pill, and would receive up to 100 pills on average every two weeks for the last 6 months. WATSON stated he believed DD was from the eight trey street gang out of Los Angeles. WATSON gave the phone number of 509-309-5557 for DD. WATSON described DD as black male, 5' 8", 230lbs, and bald. WATSON also stated he believed DD drove a dark colored SUV.

WATSON said he was being supplied powder cocaine from a white male he knew as "pops". WATSON said pops was the middle man for a white male in Newport who drove a white Dodge Ram type of vehicle. WATSON stated he would drive pops to Newport Washington where he would give pops money, and pops would then meet the unknown male. WATSON said he was paying \$1500 an ounce for powder cocaine and was selling it for \$100 a gram.

WATSON stated he currently had no drugs because DD had just taken his money and never returned with any pills.

WATSON stated he had a friend named Barington YOUNG who he had used in the past several weeks to deliver Oxycodone, but that YOUNG had only been dealing for WATSON for a couple weeks. WATSON said YOUNG had no prior drug dealing experience that WATSON was aware of. WATSON stated YOUNG was only doing deals that WATSON sent YOUNG on, WATSON did not believe YOUNG would have any drugs or large amounts of cash to his disposal.

WATSON said he currently had \$13000 in cash located at his address of 4308 N. Ella, Spokane WA. WATSON stated the cash was in a safe located in his closet. WATSON said that not all of the cash was from drug proceeds, but that a portion was. WATSON stated he also had a Glock .40 and a Smith and Wesson 9mm located in a file cabinet at his residence. WATSON said the above items were all of the illegal items he could think of in his possession.

At this time I already had signed search warrants for WATSON's Ella address and WATSON's business SmoovCutz located in the valley mall at 14700 E. Indiana, Spokane Valley, WA.

At approximately 1730 Sgt. Roys, Sgt. Austin, Detective Mehring, Detective Willard, Detective Bowman, and I initiated the search warrant at 4308 N. Ella. Jason WATSON was with us and opened the residence via his garage door opener.

The following items were located in WATSON's residence: \$13000 in cash located by Detective Pence in a small safe in the bedroom (This item was recorded as item #13 and #14 do to there being \$290.00 of our buy money in the \$13000); \$154 in cash located in another smaller safe also in the bedroom item #16; three loaded gun magazines located by Detective Willard in the northwest corner office file cabinet item #6; a glock 22 autoloader .40 caliber serial # CVH405US located by Detective Willard in the northwest corner office file cabinet item 7; 2 loaded magazines for 9mm found located by Detective Willard in the northwest corner office file cabinet item 8; red pistol container located by Detective Willard in the northwest corner office file cabinet item 9; utility bill to SmoovCutz located by Detective Willard item 10; Smith and Wesson autoloader 9mm serial number pbp4653 located by Detective Willard in the northwest corner office file cabinet item 11; and two boxes of 9mm auto located by Detective Willard in the northwest corner office file cabinet item 12.

WATSON was given a copy of the search warrant and inventory of items seized regarding the Ella address.

I informed WATSON that we also had a search warrant to do at his business SmoovCutz located at 14700 E. Indiana. WATSON and I believed it would be best to wait to initiate the warrant at SmoovCutz until business hours were over because of WATSON's cooperation.

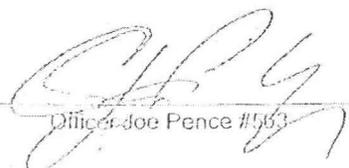
Detective Mehring and I transported WATSON to the Detectives office to wait until 9pm until we could do the search warrant at SmoovCutz. At the Detective's office I served WATSON with a seizure notice and WATSON voluntarily signed a stipulation of release for the \$13000 in cash found in the safe.

In going through the \$13000 seized from WATSON's safe, SIU members located \$290.00 in U.S. currency that was pre-recorded buy money.

At approximately 2100 Sgt. Austin, Detective Mehring, and I initiated the search warrant at SmoovCutz with WATSON letting us into the business and being present. No evidence was collected at SmoovCutz and WATSON was given a copy of the warrant.

Investigation is continuing.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Detective Joe Pence #563

Page: 3 of 3
Report #: 14-802744
Detective: Pence #563

Special Investigative Unit

Pence #563

1 K805 dw

BEFORE THE HEARING EXAMINER DESIGNATED BY
THE CHIEF OF POLICE

JASON L. WATSON,
Claimant,

vs.

SPOKANE POLICE DEPARTMENT,
Seizing Agency.

ORDER DISMISSING
CLAIM

Report No: 14-802744
Seizure No: 14-87

RECEIVED

FEB 20 2015

PHELPS & ASSOCIATES
Attorneys At Law

INTRODUCTION

The Hearing Examiner has determined that this claim should be dismissed because the Claimant, Jason L. Watson, released any interest he had in the seized property when he entered into a stipulated settlement and release with the Spokane Police Department (the "SPD"). As a result, entry of an order dismissing his claim is proper.

BACKGROUND FACTS

On November 13, 2014, the SPD arrested Jason L. Watson for delivery of a controlled substance. The SPD gave Mr. Watson the Miranda warnings, and Mr. Watson elected to talk to the police. Mr. Watson advised that police that he had \$13,000 in a safe at his residence. Mr. Watson stated that some, but not all, of that money was drug proceeds. At the time of Mr. Watson's admissions, the SPD already had a signed warrant to search Mr. Watson's residence. The SPD executed the warrant and found \$13,000 in cash in a safe in Mr. Watson's bedroom. \$290 of that amount was pre-recorded currency utilized by the police in a controlled buy of drugs. The SPD seized the \$13,000 in U.S. Currency pursuant to RCW 69.50.505.

That same day, the SPD provided Mr. Watson with the Narcotics Notice of Seizure and Intended Forfeiture ("Notice of Seizure"), advising Mr. Watson that the SPD intended to seek forfeiture of \$13,000 in U.S. Currency. This Notice of Seizure was hand-delivered to Mr. Watson. He signed the Notice of Seizure to acknowledge that he had received it.

Contemporaneously with signing the Notice of Seizure, Mr. Watson also signed a Stipulation and Release ("Stipulation"), which states as follows:

*... the Spokane Police Department and the below named owner/Claimant desire that a settlement be had. It is hereby agreed to and stipulated by the parties that the property listed on the seizure and forfeiture letter dated November 13, 2014 (Report #14-802744), shall be disposed of, as follows:
The following item will be forfeited to the City of Spokane; Items #13, #14 totaling \$13,000.00 in US Currency.*

The Stipulation is dated November 13, 2014, and is signed by Captain Eric Olsen, on behalf of the Spokane Police Department, and by Jason Watson.

On November 18, 2014, Mr. Watson, through his attorney, Douglas D. Phelps, submitted a claim to the \$13,000 in U.S. Currency, and requested a hearing pursuant to RCW 69.50.505.

The claim letter makes no reference to the Stipulation. Upon receiving Mr. Watson's claim, the SPD immediately faxed a copy of the signed Stipulation to Mr. Phelps.

On January 15, 2015, the SPD sent a Forfeiture Hearing Notice to Mr. Watson. The notice was sent to Mr. Watson via his attorney, by certified mail, return receipt requested. The certified mailing receipt is part of the record of this proceeding. In the Forfeiture Hearing Notice, the SPD advised Mr. Watson that the hearing on his claim would take place on February 12, 2015, at 1:30 p.m., in the Public Administration Conference Room located in the Public Safety Building, 1100 W. Mallon Ave., Spokane, WA, 99260.

On February 11, 2015, Mr. Phelps filed a motion to defer the forfeiture hearing. The motion stated that the City Attorney's Office had refused to stipulate to a requested continuance. In addition, Mr. Phelps contended that discovery was necessary in order to be fully prepared for a forfeiture hearing. The city objected to any continuance of the matter.

On February 12, 2015, at the commencement of the forfeiture hearing, the City withdrew its objection to the continuance proposed by Mr. Watson. However, the City argued that the proceedings should be dismissed in their entirety because the Claimant had already stipulated to the forfeiture of the property he was now claiming. In support of its argument to dismiss the matter, the City submitted a Motion to Dispose of Application, a Memorandum of Authority in Support of its Motion to Dispose of Application, and supporting documentation.

Only the attorneys for the parties appeared at the hearing on February 12, 2015. Matthew Folsom, Assistant City Attorney, represented the SPD. Katherine Allison, an attorney from Mr. Phelps' office, represented Mr. Watson. The hearing was limited to comments and arguments on the motions to continue and dispose of the case. No witnesses appeared or testified.

DISCUSSION

The Hearing Examiner agrees with the City that Mr. Watson cannot bring a claim for the seized currency because he voluntarily executed a stipulation to forfeit that property prior to asserting his claim. Since Mr. Watson released any interest he had in the seized item, he has no basis upon which to contest the forfeiture. Given these circumstances, the Hearing Examiner concludes that the City's motion to dismiss the case should be granted.

The day before the scheduled hearing, the Claimant submitted a motion for a continuance, based upon the contention that discovery was needed to prepare for the forfeiture hearing. The Claimant's motion, however, did not include an explanation as to what evidence was needed, why it could not be obtained by other means, the prejudice caused by the absence of that evidence, or any other justifications normally needed to support a continuance. Presumably, the Claimant intended to support the motion through oral argument or submission of evidence at the hearing. However, these issues were not addressed at the hearing. The parties did not reach these issues because the City withdrew its objection to a continuance of the forfeiture hearing, and instead submitted a motion to dismiss the matter in its entirety. The remainder of the hearing was spent on the argument related to this motion.

In support of its motion to dismiss, the City contended that only a person with a right to ownership or possession of property may properly assert a claim. See RCW 69.50.505. The Hearing Examiner agrees. When Mr. Watson executed the Stipulation, he relinquished any right to ownership or possession of the seized currency. The language of the Stipulation, in this

regard, is unmistakable. The Stipulation recites that the Claimant and the SPD intended to enter into a settlement. The parties specifically agreed and stipulated to dispose of the \$13,000 in U.S. Currency pursuant to the Stipulation. The Stipulation explicitly stated that the seized funds would be forfeited to the SPD. The substantive language of the Stipulation is quoted above, in full, and is the equivalent of one paragraph in length. It is difficult to see how anyone signing this document would fail to appreciate its purpose.

Despite the foregoing, counsel for Claimant made three arguments in opposition to the motion to dismiss. First, counsel for the Claimant maintained that the Claimant "did not know what he was signing." Second, counsel for the Claimant argued that it was the city's responsibility to demonstrate that the Stipulation was not signed under duress. Third, the Claimant's attorney insisted that a full hearing, with live testimony, was necessary to properly dispose of the matter. For the reasons that follow, the Hearing Examiner does not find these arguments to be persuasive.

There is no reason to conclude that the Claimant did not know what he was signing. As stated above, the language of the Stipulation was plain, direct, and unambiguous. There was no argument that Mr. Watson did not read or have the opportunity to read the Stipulation. The police report¹ states that Mr. Watson voluntarily signed the Stipulation in the presence of the police. Counsel for the Claimant did not contest the fact that Mr. Watson signed the documents, and did not claim the signatures were not authentic. In addition, the police report is in the form of a sworn statement. The Claimant did not appear in person at the hearing, to explain how he failed to understand the implications of the Stipulation. Further, the Claimant did not submit any statements, sworn or otherwise, which would tend to demonstrate that he was unable to appreciate the effect of the Stipulation. If Mr. Watson was going to assert that he was confused, manipulated, or misled (facts which are not established in this record), he should have submitted evidence or testimony to that effect. Before signing the Stipulation, the Claimant provided the police with a detailed description of his activities as a drug dealer, even going so far as to direct the police to the location of the money that was ultimately seized. Mr. Watson clearly made a decision to cooperate with the police, as stated in the police report, and his signature on the Stipulation is evidence supporting that conclusion.

Notwithstanding the Claimant's argument, the City does not have the burden to demonstrate that Mr. Watson was *not* under duress when he signed the Stipulation. This argument is an improper attempt to shift the Claimant's burden of proof to the City. There is no legal presumption that duress exists in the absence of proof to the contrary. Rather, duress is an affirmative defense. See e.g., CR 8. As such, it is the responsibility of the party asserting that defense to both raise the defense and prove that it applies. The Claimant failed to do so. There is no evidence the Claimant was overwhelmed by police pressure to sign the Stipulation. The Claimant has not asserted, let alone demonstrated, that he was deprived of his ability to exercise free will. Moreover, Mr. Watson's argument that he did not know what he was signing is quite inconsistent with the idea that he was forced into giving up a valuable right. Mr. Watson's argument suggests that he released his claim due to lack of knowledge, not that he was forced into an unfavorable bargain against his will.

¹ The police report also notes that the SPD read Mr. Watson his rights at the time of his arrest. Counsel for the Claimant appeared to concede this point, and no evidence or argument was introduced to establish otherwise. Thus, the Claimant was apprised of his rights when he described his criminal activity to the police and before he proceeded to sign a stipulation relinquishing his right to contest the seizure and forfeiture.

The Hearing Examiner declines the Claimant's invitation to defer making a decision until a full hearing is conducted. The Claimant did not explain why full adjudication was necessary, or how live testimony would lead to a more reasoned decision. An adjudication seems unnecessary given that the Claimant has not raised a colorable argument that he possesses even a potential right to possession or ownership of the seized funds. He specifically and expressly released his interests in writing. Further, the Claimant did not provide any genuine defense to the validity or effect of the Stipulation. The Hearing Examiner does not believe, given the lack of legal grounds to award relief to the Claimant, that live testimony will serve any purpose or is good use of time or resources, for the Hearing Examiner or the parties. The Hearing Examiner concludes that an immediate disposition of this case is proper, as authorized by RCW 34.05.416.

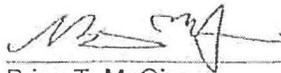
The Hearing Examiner concludes that the Stipulation was voluntarily signed, with knowledge of or the opportunity to know its significance and effect. The result of the Stipulation was to settle the matter and release any claim that Claimant may have had in the seized currency. Based upon this record, and the lack of a bona fide claim or defense, the Hearing Examiner determines that there is no justification for conducting an adjudication of the forfeiture claim. It is proper to dismiss the matter on a summary basis, as requested by the City.

ORDER

Based on the above findings and conclusions, it is hereby ordered that the claim of Jason L. Watson is dismissed. The \$13,000 in U.S. Currency, seized by the Spokane Police Department on November 13, 2014, is forfeited to the Spokane Police Department in accordance with the Stipulation executed by the parties. Mr. Watson's claim for return of the money is denied.

DATED this 19th day of February, 2015

HEARING OFFICER



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

This Order may be appealed by filing a petition for review pursuant to RCW Chapter 34, the Washington Administrative Procedure Act; including but not limited to the procedures set forth in RCW 34.05.514, RCW 34.05.542 and RCW 34.05.546.

The petition for review must be filed in an appropriate Superior Court pursuant to RCW 34.05.514, along with payment of a filing fee under RCW 36.18.020; and must be served on the Spokane Police Department, the Attorney General for the State of Washington, and all parties of record within thirty (30) days after service of the order.

On February 19, 2015, a copy of this order was sent by verified email, to Lieutenant Arnzen of the Spokane City Police Department, Matthew Folsom, Assistant City Attorney, Douglas Phelps, Attorney at Law, representing Jason L. Watson, via first class and certified mail. The 30-day period for filing and serving a petition for review will expire on March 23, 2015.

Exhibit D

COPY

COPY
Original Filed
MAY 29 2015
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

RECEIVED

MAY 29 2015

OFFICE OF THE CITY ATTORNEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON)	No. 15-2-01053-5
Respondent)	Report No. 14-802744
)	Seizure No. 14-87
vs.)	
)	APPELLANT'S BRIEF IN
JASON L. WATSON)	SUPPORT OF PETITION FOR
Appellant/Petitioner)	REVIEW
)	

I. FACTS

On November 13, 2014, the Spokane Police Department (SPD) arrested Jason L. Watson for alleged delivery of a controlled substance. His residence was subsequently searched and \$13,000.00 found in a safe in Mr. Watson's bedroom. That \$13,000.00 was seized by the SPD pursuant to RCW 69.50.505.

That day, Mr. Watson was given the Narcotics Notice of Seizure and Intended Forfeiture and was contemporaneously given a Stipulation and Release, intended to release his interest in the \$13,000.00.

On November 18, 2014, Mr. Watson, by and through counsel, submitted a claim to the \$13,000.00 and requested a hearing. A Forfeiture Hearing Notice was sent to counsel scheduling a hearing for February 12, 2015.

On February 11, 2015, counsel filed a motion to continue the forfeiture hearing (Attached as Exhibit A), as no discovery had been received by counsel regarding the arrest Brief in Support of Petition for Review

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or the circumstances surrounding the seizure and proposed forfeiture other than the Notice of Seizure and Intended Forfeiture and the Stipulation and Release.

On February 12, 2015, at the hearing itself, the City withdrew its objection to a continuance and presented a new Motion to Dispose of Application (Attached as Exhibit B). No time was afforded to brief a response to this Motion, and the City brought forth no witnesses as to the circumstances surrounding the presentation and signature of the Notice of Seizure and Intended Forfeiture and the Stipulation and Release.

In argument, counsel for Appellant requested a continuance, both to obtain discovery and to allow for testimony regarding the circumstances surrounding the presentation and signature of the Notice of Seizure and Intended Forfeiture and the Stipulation and Release.

A written decision was issued on February 19, 2015 deciding in favor of the City and dismissing Mr. Watson's claim, reasoning, effectively, that the stipulation itself was ample proof of voluntary signature (Attached as Exhibit C).

II. ISSUES

- A. Does the burden of proof of voluntary signature rest with the City in a forfeiture action where a stipulation is at issue?
- B. Is it proper for a Hearing Examiner to deny a continuance where requested in order to determine the voluntariness of signature in a forfeiture action where the stipulation is at issue?

III. ARGUMENT

- A. The City bears the burden of proof that a signature is voluntary where a stipulation is at issue in a forfeiture action.

The government generally carries the burden of showing waiver of a constitutional right. See *State v. Campos-Cerna*, 154 Wn.App. 702, 709, 226 P.3d 185 (waiver of *Miranda* rights), review denied, 169 Wn.2d 1021 (2010); *State v. Hos*, 154 Wn.App. 238m Brief in Support of Petition for Review

1 249, 50, 225 P.3d 389 (waiver of right to jury trial), *review denied*, 169 Wn.2d 1008
2 (2010). A waiver must be knowing, voluntary, and intelligent. *State v. Thomas*, 128
3 Wn.2d 553, 558, 910 P.2d 475 (1996). A signed waiver is “usually strong proof” of the
4 waiver’s validity. *State v. Woods*, 34 Wn.App. 750, 759, 665 P.2d 895 (1983) (*Miranda*
5 rights) (quoting *N. Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct. 1755, 60 L.Ed.2d 286
6 (1979)). Because the City bears the burden of showing a waiver, and a signed waiver is not
7 conclusive proof of the waiver’s validity, rather merely strong proof, the City must show
8 that the signature was made knowingly, voluntarily, and intelligently.

9 **B. A continuance should have been granted by the Hearing Examiner in order to**
10 **hold a proper hearing with testimony regarding the circumstances of**
11 **signature.**

12 The City presented no witnesses in support of its Motion at hearing. The Hearing
13 Examiner concluded, wrongly, that the signature was valid absent any testimony
14 whatsoever.

15 The Hearing Examiner asserts that the burden of proof rests on the Petitioner, Mr.
16 Watson. However, as noted above, the burden of proof remains wholly with the City. Mr.
17 Watson cannot be compelled to testify, given that this forfeiture is related to a possible
18 criminal matter. Absent any testimony from the officers, other than one statement in the
19 police report attached to the City’s motion that “he voluntarily signed” the waiver, one
20 certainly cannot conclude that any signature was made knowingly or intelligently, and one
21 has no further knowledge of the circumstances.

22 Failing to provide Mr. Watson with a proper hearing as required by RCW
23 69.50.505, when one was properly requested, is a violation of due process. This matter
24 should have been continued to allow response to the City’s motion as well as testimony to
25 determine the validity of the waiver upon which the City’s motion was based.

26 IV. CONCLUSION

27 For the above reasons, Petitioner respectfully requests that the Hearing Examiner’s
28 Brief in Support of Petition for Review

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Order Dismissing Claim be reversed and the matter remanded for a proper hearing.

Respectfully submitted this 21 Day of May, 2015



Douglas D. Phelps, 22620
Attorney for Appellant/Petitioner

Brief in Support of Petition for Review

PHELPS AND ASSOCIATES, PS
Attorneys at Law
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Spokane, WA 99206-4373
Email: phelps@phelpsaw1.com

Exhibit E

BEFORE THE HEARING EXAMINER DESIGNATED BY
THE CHIEF OF POLICE

JASON L. WATSON,
Claimant,

vs.

SPOKANE POLICE DEPARTMENT,
Seizing Agency.

RECEIVED
MIG 05 2015
S.M.
HELPS & ASSOCIATES
Attorneys At Law

SECOND ORDER
DISMISSING CLAIM

Report No: 14-802744

Seizure No: 14-87

INTRODUCTION

The Hearing Examiner concludes that this claim should be dismissed because the Claimant, Jason L. Watson, released any interest he had in the seized property when he entered into a stipulated settlement and release with the Spokane Police Department (the "SPD"). As a result, entry of an order dismissing his claim pursuant to RCW 34.05.416 is proper.

BACKGROUND FACTS

On November 13, 2014, the SPD arrested Jason L. Watson for delivery of a controlled substance. The SPD gave Mr. Watson the Miranda warnings, and Mr. Watson elected to talk to the police. Mr. Watson advised the police that he had \$13,000 in a safe at his residence. Mr. Watson stated that some, but not all, of that money was drug proceeds. At the time of Mr. Watson's admissions, the SPD already had a signed warrant to search Mr. Watson's residence. The SPD executed the warrant and found \$13,000 in cash in a safe in Mr. Watson's bedroom. \$290 of that amount was pre-recorded currency utilized by the police in a controlled buy of drugs. The SPD seized the \$13,000 in U.S. Currency pursuant to RCW 69.50.505.

That same day, the SPD provided Mr. Watson with the Narcotics Notice of Seizure and Intended Forfeiture ("Notice of Seizure"), advising Mr. Watson that the SPD intended to seek forfeiture of \$13,000 in U.S. Currency. This Notice of Seizure was hand-delivered to Mr. Watson. He signed the Notice of Seizure to acknowledge that he had received it.

Contemporaneously with signing the Notice of Seizure, Mr. Watson also signed a Stipulation and Release ("Stipulation"), which states as follows:

... the Spokane Police Department and the below named owner/Claimant desire that a settlement be had. It is hereby agreed to and stipulated by the parties that the property listed on the seizure and forfeiture letter dated November 13, 2014 (Report #14-802744), shall be disposed of as follows:

The following item will be forfeited to the City of Spokane; Items #13, #14 totaling \$13,000.00 in US Currency.

The Stipulation is dated November 13, 2014, and is signed by Captain Eric Olsen, on behalf of the Spokane Police Department, and by Jason Watson.

On November 18, 2014, Mr. Watson, through his attorney, Douglas D. Phelps, submitted a claim to the \$13,000 in U.S. Currency, and requested a hearing pursuant to RCW 69.50.505. The claim letter makes no reference to the Stipulation. Upon receiving Mr. Watson's claim, the SPD immediately faxed a copy of the signed Stipulation to Mr. Phelps.

On January 15, 2015, the SPD sent a Forfeiture Hearing Notice to Mr. Watson. The notice was sent to Mr. Watson via his attorney, by certified mail, return receipt requested. The certified mailing receipt is part of the record of this proceeding. In the Forfeiture Hearing Notice, the SPD advised Mr. Watson that the hearing on his claim would take place on February 12, 2015, at 1:30 p.m., in the Public Administration Conference Room located in the Public Safety Building, 1100 W. Mallon Ave., Spokane, WA, 99260.

On February 11, 2015, Mr. Phelps filed a motion to defer the forfeiture hearing. The motion stated that the City Attorney's Office had refused to stipulate to a requested continuance. In addition, Mr. Phelps contended that discovery was necessary in order to be fully prepared for a forfeiture hearing. The city objected to any continuance of the matter.

On February 12, 2015, at the commencement of the forfeiture hearing, the City withdrew its objection to the continuance proposed by Mr. Watson. However, the City argued that the proceedings should be dismissed in their entirety because the Claimant had already stipulated to the forfeiture of the property he was now claiming. The hearing was limited to comments and arguments on the motions to continue and dispose of the case. No witnesses appeared or testified.

On February 19, 2015, the Hearing Examiner entered an order dismissing Mr. Watson's claim pursuant to RCW 34.05.416, concluding that Mr. Watson released any interest he had in the seized property when he signed the Stipulation.

On March 19, 2015, Mr. Watson filed a Petition for Review in Superior Court, challenging the entry of the order dismissing his claim.

On July 20, 2015, the Superior Court heard oral argument on Mr. Watson's appeal. Interpreting the language of RCW 34.05.416, the Superior Court ruled that the Hearing Examiner did not have jurisdiction to dismiss Mr. Watson's claim. That same day, the Superior Court entered its written order remanding the matter for further proceedings. The Order on Appeal incorporates the Court's oral ruling by reference.

On July 28, 2015, City requested that the Hearing Examiner enter an order dismissing Mr. Watson's claim pursuant to RCW 34.05.416, prior to the commencement of any new hearing on remand.

DISCUSSION

As a result of the Superior Court's Order on Appeal, this matter was remanded for further administrative proceedings. The SPD has requested that the Hearing Examiner again enter an order dismissing Mr. Watson's claim pursuant to RCW 34.05.416. After carefully considering the Court's ruling, the Hearing Examiner agrees that dismissal of this case is proper, for the reasons that follow.

At the time of Mr. Watson's arrest, he was advised of his constitutional rights. Mr. Watson decided to cooperate with the police, admitting to engaging in drug trafficking and directing the police to the location of the drug proceeds subsequently seized by the police. Mr. Watson then voluntarily signed a Stipulation and Release, expressly relinquishing any right to ownership or possession of the seized currency. The language of the Stipulation, in this regard, is unambiguous. The Stipulation recites that the Claimant and the SPD intended to enter into a settlement. The parties specifically agreed and stipulated to dispose of the \$13,000 in U.S. Currency pursuant to the Stipulation. The Stipulation explicitly stated that the seized funds would be forfeited to the SPD. The substantive language of the Stipulation is quoted above, in full, and is the equivalent of one paragraph in length. It is difficult to see how anyone signing this document would fail to appreciate its purpose.

The Hearing Examiner concludes that Mr. Watson cannot bring a claim for the seized currency because he voluntarily executed a stipulation to forfeit that property prior to asserting his claim. Since Mr. Watson released any interest he had in the seized item, he has no basis upon which to contest the forfeiture. Given these circumstances, the Hearing Examiner concludes that it is proper to immediately dismiss his claim pursuant to RCW 34.05.416, prior to commencing an adjudication on remand.

In reaching this result, the Hearing Examiner acknowledges that his first order of dismissal, based upon RCW 34.05.416, was reversed on jurisdictional grounds. This does not mean, however, that the second order of dismissal suffers from the same jurisdictional defect. On the contrary, the Hearing Examiner concludes that this second order of dismissal is consistent with the Court's analysis and directives on remand, and therefore is proper. To understand how the Hearing Examiner reached this conclusion, a more detailed discussion of the Court's ruling is required.

In its ruling on appeal, the Superior Court first determined that there were two, mutually exclusive choices in this case. The administrative agency could either (1) commence an adjudication of the case, or (2) dispose of the application under RCW 34.05.416. In the court's words, the applicable statute requires "an agency to do one of the following, either commence the action or dispose of the application." See Verbatim Report of Proceedings, Case No. 15-2-01053-5, p. 16.

The Superior Court made it clear that the Hearing Examiner's jurisdiction turned on whether an adjudication was "commenced" or not. The court explained:

The question here is whether the hearing was ever commenced. If the hearing wasn't commenced, this matter was properly dismissed. If a hearing was commenced, then the hearing would be have to be adjudicated rather than disposed of through 34.05.416.

See *id.*

The Superior Court concluded that the adjudication had, in fact, commenced prior to the issuance of the order of dismissal. The Hearing Examiner's order recited that the parties' motions were discussed "at the commencement" of the forfeiture hearing. See *id.* In addition, during the hearing, the Hearing Examiner stated that the record would remain open and the proceedings were not being finally adjourned. See *id.*, p. 16-17. This demonstrated, the court

found, that the proceedings were "commenced." See *id.* From there, the court concluded as follows:

Because a hearing had commenced, the hearing officer didn't have authority to dismiss this action under 34.05.416. Those matters can only be dismissed prior to the commencement of a hearing.

See *id.*, p. 17.

The court did not define the term "commencement" or "commenced," nor are these terms defined in the Administrative Procedure Act. The court's ruling does not identify the precise moment when a commencement occurs, or announce a rule for making such determinations. Nonetheless, from the language of the ruling, it appears that the court equates commencement with the opening of the forfeiture hearing, at least for purposes of this case. Having drawn this line, the court concluded that the proceedings were "commenced," even though "nothing really happened other than a dismissal" pursuant to the statute. See *id.*, p. 18.

The court ultimately reversed the Hearing Examiner's order and remanded the matter for "...further proceedings with the administrative agency." See *id.*, p. 17. To be clear, the proceedings were not being remanded "...for completion of the hearing..." See *id.*, p. 18. Rather, the matter was being remanded to start the process anew. See *id.*, p. 18. That being the case, the Court noted that the parties were free to advance their respective positions in the proceedings below. The Court advised the parties:

Mr. Phelps... You're welcome to raise any arguments or any issues at the administrative hearing.

Mr. Folsom, you're welcome to raise your issues prior to the commencement of the administrative hearing.

See *id.*, p. 17.

The Hearing Examiner concludes that it is appropriate to again enter an order dismissing Mr. Watson's claims, and that this action is consistent with the Order on Appeal issued by the Superior Court. The appeal was decided on narrow, jurisdictional grounds. Specifically, the Hearing Examiner's order was reversed because the Hearing Examiner did not have authority to dispose of the case *after* the hearing was *commenced*. With that in mind, the Court ordered an entirely new hearing. That new hearing has not been commenced. Under the Court's analysis, the "commencement" would apparently coincide with the opening of the hearing by the Hearing Examiner. Even if the "commencement" occurred earlier, such as upon the issuance of a notice of hearing, that step has not yet occurred. So long as the order of dismissal is issued prior to commencement of the new hearing, the dismissal will be proper under RCW 34.05.416. This result directly follows from the Court's conclusions. See *id.*, p. 16 ("If the hearing wasn't commenced, this matter was properly dismissed.").

The Court contemplated this outcome when it explicitly advised the City that it was "...welcome to raise your issues prior to the commencement of a hearing." The reference to "your issues" surely includes the City's primary argument to date, i.e. that Mr. Watson's claim should be dismissed pursuant to RCW 34.05.416. In addition, the Court invited the City to

revisit its contentions "prior to the commencement of a hearing" on remand. This language directly authorizes the City to pursue dismissal of Mr. Watson's claim on remand, although such a remedy must be sought before the commencement of the hearing. The Court's use of the phrase "prior to the commencement of a hearing" could not have been an accident. After all, the Court's analysis of the Hearing Examiner's jurisdiction was dependent upon the timing of the commencement of the hearing. In any event, for this language in the Court's ruling to be meaningful, the Hearing Examiner must have authority to act upon the City's request to rule on a matter prior to the adjudication taking place.

The Hearing Examiner concludes that there is nothing in the Court's ruling that prevents the Hearing Examiner from entering this order, provided the jurisdictional limits are honored. In other words, an order of dismissal pursuant to RCW 34.05.416 is proper, so long as the order is entered at the proper time.

ORDER

Based on the above findings and conclusions, it is hereby ordered that the claim of Jason L. Watson is dismissed pursuant to RCW 34.05.416. The \$13,000 in U.S. Currency, seized by the Spokane Police Department on November 13, 2014, is forfeited to the Spokane Police Department in accordance with the Stipulation executed by the parties. Mr. Watson's claim for return of the money is denied.

DATED this 31st day of July, 2015

HEARING OFFICER



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

This Order may be appealed by filing a petition for review pursuant to RCW Chapter 34, the Washington Administrative Procedure Act; including but not limited to the procedures set forth in RCW 34.05.514, RCW 34.05.542 and RCW 34.05.546.

The petition for review must be filed in an appropriate Superior Court pursuant to RCW 34.05.514, along with payment of a filing fee under RCW 36.18.020; and must be served on the Spokane Police Department, the Attorney General for the State of Washington, and all parties of record within thirty (30) days after service of the order.

On August 3, 2015, a copy of this order was sent by verified email, to Lieutenant Arzen of the Spokane City Police Department, Matthew Folsom, Assistant City Attorney, Douglas Phelps, Attorney at Law, representing Jason L. Watson, via first class and certified mail. The 30-day period for filing and serving a petition for review will expire on September 2, 2015.

Certified # 7014 1200 0000 7510 4846
Certified # 7014 1200 0000 7510 4853

Exhibit F

DEC 21 2015
PHELPS & ASSOCIATES
Attorneys At Law

 SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE	
JASON L. WATSON, Petitioner, vs. CITY OF SPOKANE, Respondent.	NO. 15-02-03615-1 COURT'S OPINION

INTRODUCTION

This is a Petition for Judicial Review of the Second Order Dismissing Claim issued on August 5, 2015, by the City Spokane through the Spokane Police Department's designated Hearing Examiner.

ISSUES

1. Whether the Petitioner has a claim for the \$13,000 forfeited to the Spokane Police Department pursuant to RCW 69.50.505?
2. Whether the Hearing Examiner lacked jurisdiction to conduct the forfeiture hearing pursuant to Article IV § 6 of the Washington State Constitution?

SUMMARY OF THE CASE

On February 12, 2015, a forfeiture hearing was held to determine whether Jason Watson released any interest he had in the seized property when he entered into a stipulated settlement and release with the Spokane Police Department. On February 19, 2015, the Hearing Examiner entered an order dismissing Mr. Watson's claim. On March 19, 2015, Mr. Watson filed a

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Petition for Review in Spokane County Superior Court. On July 20, 2015, the Spokane Superior Court remanded the matter back to the Hearing Examiner for further proceedings. On July 28, 2015, the Hearing Examiner entered an order dismissing Mr. Watson's claim. The matter is now before this Court for review.

STANDARD OF REVIEW

Pursuant to RCW 34.05, agency adjudications are reviewed under the standards of the Washington Administrative Procedure Act (APA). RCW 34.05; William Dickson Co. v. Puget Sound Air Pollution Control Agency, 81 Wn.App. 403, 914 P.2d 750 (1996). Under RCW 34.05.570(3), relief from an agency order or decision may be provided so long as the Petitioner establishes the existence of one or more of the bases for relief as outlined in the statute. When reviewing the actions of an administrative agency, the burden of establishing the invalidity of the agency's actions falls upon the party asserting the invalidity. RCW 34.05.570(1)(a). Relief may be granted only if the "court determines that a person seeking judicial relief has been substantially prejudiced by the action complained of." RCW 35.05.570(1)(d).

A reviewing court reviews the agency's legal conclusions de novo, but also gives substantial weight to its interpretation of the statutes and regulations it administers. King County v. Cent. Puget Sound Growth Mgmt. Hrg's Bd., 142 Wn.2d 543, 553, 14 P.3d. 133, (2000). However, "it is ultimately for the court to determine the purpose and meaning of statutes, even when the court's interpretation is contrary to that of the agency charged with carrying out the law." Overton v. Washington State Econ. Assistance Auth., 96 Wn.2d 552, 555, 637 P.2d 652, 654 (1981). Further, when facts are not in dispute, the court reviewing an adjudicative proceeding shall only grant relief from an agency order if the agency "erroneously interpreted or applied the law." RCW 34.05.570(3)(d). Here, the Petitioner challenges the agency's legal conclusions; therefore the standard of review is de novo.

FACTS

On November 13, 2014, the Spokane Police Department (SPD) arrested the Petitioner, Jason L. Watson, for delivery of a controlled substance. After the SPD informed Mr. Watson of his *Miranda* warnings, he elected to talk with them. Mr. Watson informed law enforcement that he was in possession of \$13,000 which was located inside of a safe at his residence. SPD executed a search warrant on Mr. Watson's residence and found the \$13,000 inside of the safe. The same day, the SPD provided Mr. Watson with the Narcotics Notice of Seizure and Intended Forfeiture (Notice of Seizure) and advised Mr. Watson that they intended to seek forfeiture of the \$13,000. Mr. Watson was provided the Notice of Seizure and acknowledged receipt with his signature. In addition to signing the Notice of Seizure, Mr. Watson also signed a Stipulation and Release. The Stipulation and Release, dated November 13, 2014, is also signed by Captain Eric Olsen of the SPD. The Stipulation and Release provides:

WHEREAS the Spokane Police Department and the below named owner/claimant desire that a settlement be had. It is hereby agreed to and stipulated by the parties that the property listed on the seizure and forfeiture letter dated November 13th, 2014 (Report #14-802744), shall be disposed of as follows:

The following item will be forfeited to the City of Spokane;
Items #13, #14 totaling \$13000.00 in US Currency

On November 18, 2014, Mr. Watson, through his attorney, Douglas D. Phelps, submitted a claim to the \$13,000 and requested a hearing pursuant to RCW 69.50.505. On January 15, 2015, the SPD sent a Forfeiture Hearing Notice to Mr. Watson, via his attorney, by certified mail with return receipt requested. Mr. Watson was advised that the hearing would take place on February 12, 2015. On February 11, 2015, Mr. Phelps filed a motion to defer the forfeiture hearing. The City objected to any continuance of the matter. At the commencement of the forfeiture hearing of February 12, 2015, the City withdrew its objection to the requested continuance by Mr. Watson and instead argued that the proceedings should be dismissed in its entirety because Mr. Watson had earlier stipulated to the forfeiture of the property.

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On February 19, 2015 the City of Spokane Hearing Examiner, Brian McGinn, issued an order dismissing Mr. Watson's claim. The \$13,000 seized by the SPD on November 13, 2014, was therefore forfeited to the SPD in accordance with the Stipulation and Release executed by the parties. On March 9, 2015, Mr. Watson filed a Petition for Review in the Spokane County Superior Court. On July 20, 2015, the Spokane Superior Court remanded the matter for further proceedings. On July 28, 2015, the Hearing Examiner entered the Second Order dismissing Mr. Watson's claim. The matter is now before this Court for review.

ANALYSIS

In Washington, stipulations are agreements between two parties to which there must be mutual assent and the terms must be definite and certain for the stipulation to be effective. State v. Parra, 122 Wn.2d 590, 601, 859 P.2d 1231, 1238 (1993). Courts favor stipulations and will enforce stipulations absent good cause shown to the contrary. Id. at 601. When a party is seeking to enforce an agreement, the party must only prove the other party's objective manifestation of the intent to be bound by the agreement. Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc., 96 Wn.2d 939, 944, 640 P.2d 1051, 1054 (1982). A party voluntarily entering into a contract cannot later repudiate their signature absent a showing of fraud, deceit, or coercion. Id. When establishing duress or coercion, there must be evidence of more than the reluctance to accept the agreement. Id. Furthermore, to assert duress, it must be proven by evidence that the duress resulted from the other's wrongful or oppressive conduct. Culinary Workers Local 596 Trust v. Gateway Cafe, Inc., 91 Wn.2d 353, 363, 588 P.2d 1334 (1979). The mere fact that a contract is entered into under stress or pecuniary necessity is insufficient. Id.

The Petitioner argues the burden is on the City of Spokane to show that the Stipulation and Release was entered into knowingly, voluntarily, and intelligently. In support of this proposition, the Petitioner cites a number of cases concerning waiver of fundamental constitutional rights. State v. Woods, 34 Wn.App. 750, 665 P.2d 895 (1983)(voluntary

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confession); State v. Thomas, 128 Wn.2d 553, 910 P.2d 475 (1996)(waiver of right to testify in one's own behalf); and State v. Campos-Cerna, 154 Wn.App. 702, 226 P.3d 185 (2010)(waiver of *Miranda* rights). When fundamental constitutional rights are waived, "such a [written] waiver 'is not inevitably either necessary or sufficient to establish waiver,' but 'is usually strong proof of the validity of that waiver.'" State v. Woods, 34 Wn.App. at 759 *citing* North Carolina v. Butler, 441 U.S. 369, 373, 60 L.Ed.2d 289, 99 S.Ct. 1755 (1979).

In this matter, the Petitioner's fundamental constitutional rights were not implicated as far as criminal proceedings were concerned. Rather, the Petitioner's due process rights in a quasi-criminal hearing was implicated. Deeter v. Smith, 106 Wn.2d 376, 721 P.2d 519 (1986). Specifically, due process requires the Petitioner be granted notice of his right to a hearing as well as the opportunity to be heard. The Petitioner was provided notice and the opportunity to be heard by way of the Notice of Seizure. The Petitioner then provided a waiver of his right to be heard by stipulating to the release of property. Because this is a quasi-criminal or perhaps even a purely civil forfeiture¹, the Petitioner would bear the burden of showing the Stipulation of Release was not entered into voluntarily. The Petitioner has failed to establish that the stipulation was signed under coercion, duress, or was in any way entered into involuntarily.

Mr. Watson next contends that the Hearing Examiner lacked jurisdiction to hear the matter as it violated his Article IV § 6 of the Washington State Constitution. Article IV § 6 states, in pertinent part, that "[t]he superior court shall have original jurisdiction in all cases at law...in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law." CONST. Art. IV, § 6 (emphasis added). Here, CONST. Art. IV § 1, RCW 69.50.505, and RCW 34.05 fall under the "or as otherwise determined by law" provision of Art. IV, § 6. For these reasons, the Hearing Examiner possessed the jurisdiction to authorize the forfeiture of the \$13,000 claimed by the Petitioner.

¹ See Moen v. Spokane City Police, 110 Wn.App. 714, 42 P.3d 456 (2002) (holding forfeiture hearings under RCW 69.50.505 are civil in nature).

CONCLUSION

The Court therefore concludes that the Hearing Examiner's Second Order Dismissing Claim was appropriately entered. The Petitioner's Petition for Review is denied.

Dated this 18th day of December, 2015.



Judge John O. Cooney