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No. 347559

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

ANTONIO CRAWFORD,

Appellant,

vs.

SPOKANE REGIONAL SAFE STREETS TASK FORCE,

Respondent.

APPELLANT'S REPLY BRIEF

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ARGUMENT:

1. The Findings of Fact Relied Upon by Respondent Are Actually Conclusions of Law Subject to De Novo Review.

Respondent initially argues that this appeal must fail because Appellant did not assign error to any Findings of Fact made by the Hearing Examiner. However, as pointed out in Appellant's Opening Brief, the Findings of Fact upon which Respondent primarily relies as supporting the Hearing Examiner's decision are actually legal conclusions that the seizing agency met the criteria for forfeiture under RCW 69.50.505(1)(g). Thus, those findings should be treated on appeal as conclusions of law subject to de novo review.

The difference between a finding of fact and a conclusion of law is that a finding consists of an assertion that something happened, is happening, or will happen independent of its legal effect. *Moulden & Sons, Inc. v. Osaka Landscaping & Nursery, Inc.*, 21 Wn.App. 194, 197, 584 P.2d 968 (1978), citing *Leshi v. Highway Comm'n.*, 84 Wn.2d 271, 283, 525 P.2d 774 (1974). In other words, a finding of fact is a determination that a particular event occurred or condition existed without regard to the legal significance of the event or condition.

The Hearing Examiner's Findings of Fact 206 through 210 do not establish that any particular event occurred or condition existed

independent of the legal standard for forfeiture as set forth in RCW 69.50.505(1)(g). For example, Finding of Fact 206 states:

The SRSSTF established by a preponderance of the evidence that the \$25,000 seized from Antonio Crawford's safety deposit box was money furnished or intended to be furnished in violation of RCW Chapter 69.50; money intended to be used to facilitate a violation of RCW Chapter 69.50; and/or proceeds acquired in whole or in part with proceeds traceable to an exchange or series of exchanges by Crawford in violation of RCW Chapter 69.50, i.e. proceeds from the sale of his house that are traceable to moneys furnished to Crawford in exchange for a controlled substance commingled with money that Crawford derived from legitimate income.

The statement that the SRSSTF "established" an event or condition by a preponderance of the evidence is clearly a legal conclusion, not a finding of fact. The same is true for Findings of Fact 207 through 210, which are also mislabeled conclusions of law. None of those "Findings" states that a particular event occurred or condition existed that would support a conclusion the seized property was subject to forfeiture. Instead, they simply recited the language of the statute and state that the applicable legal standard has been met.

With regard to the cash taken from Crawford's safety deposit box, the Hearing Examiner found only that the "SRSSTF contended that any money that Antonio Crawford received from the sale of real property would likely have come from the sale of the house that he purchased at 5112 W. Pacific in 2002." (FF 123) A contention is not a fact and does not even constitute competent evidence of the alleged fact. Thus, that the seizing agency contended something does not make it true.

Similarly, Finding of Fact 175 states in part that it is "conceivable" some of the money seized from the safety deposit box came from the sale of property Crawford owned in 2002. A statement that something is "conceivable" also does not establish that it is in fact true.

Respondent has not pointed to any specific findings that would support the conclusions stated in Findings of Fact 206 through 210, and none exists. The sole basis for Hearing Examiner's conclusion that the funds seized from Crawford's accounts were subject to forfeiture is that Crawford did not explain the source of all of those funds. Thus, it is clear the Hearing Examiner placed the burden of proof on Crawford to establish that the seized funds were not forfeitable, rather than requiring the seizing agency to prove the funds were forfeitable as required by RCW 69.50.505(5). Absent any proof as to the source of funds in Crawford's accounts, the Hearing Examiner simply assumed that those accounts consisted of funds from both "legitimate" sources and from illegal drug sales. By doing so, the Hearing Examiner committed clear error of law.

It is no answer for Respondent to assert that the Hearing Examiner "believed" the "unexplained" money in Crawford's accounts came from drug sales. The standard is not whether the Hearing Examiner, or this Court for that matter, believes something to be true. The standard is whether the findings made by the Hearing Examiner based on the evidence presented at the hearing meet the statutory criteria for forfeiture. The findings here, which consist almost exclusively of statements that the

source of certain funds was "unknown," "unexplained." or "not shown to be from legitimate sources" simply do not meet that standard. The Order of forfeiture should be reversed.

2. This Court's Unpublished Opinion in *City of Sunnyside v. Gonzalez* is Not Persuasive and Should Not be Followed.

Respondent cites to this Court's unpublished opinion in *City of Sunnyside v. Gonzalez*, 2016 WL 6124670 as persuasive authority that the findings here are sufficient to support the forfeiture order. Respondent's reliance on *Gonzalez* is misplaced for several reasons.

First, *Gonzalez* is distinguishable on its facts. In *Gonzalez*, the claimant was stopped for speeding in a vehicle with California plates. Approximately \$6,000 in cash and a small quantity of cocaine was found in the vehicle, which was registered to someone else. When asked who owned the car, the claimant gave the name of someone other than the registered owner. The officer who made the stop testified that it was not uncommon for persons to be provided with both cash and a car in exchange for transporting contraband. *Gonzalez*, p. 1-2.

Here, Crawford was never found to be in possession of any controlled substance. All of the property seized came from his bank accounts and from a safety deposit box. No evidence was presented at the hearing placing any of the deposit to or withdrawals from Crawford's accounts in proximity to illegal drugs or to any particular transaction involving illegal drugs. At best, the evidence showed that Crawford made

a number of deposits to and withdrawals from his accounts during an extended period of time when he was allegedly selling oxycodone pills.

Gonzalez is poorly reasoned. The court in *Gonzalez* reasoned that forfeiture of both the vehicle and the \$6,000 cash was supported by the following:

1. Gonzalez recently returned from California in a car he did not own;
2. There was a user amount of cocaine and \$5,940 found inside the car;
3. Gonzalez stated that he paid rent to his parents only when he was able to, implying that he did not normally have large sums of money at his disposal;
4. Gonzalez lied about who owned the car;
5. An officer with 15 years experience testified that it was not uncommon for a person to drive a car with contraband from one place to another and receive money and the car as payment; and
6. Gonzalez gave conflicting statements regarding the source of the cash found in the car.

Gonzalez, at p. 6.

While the foregoing arguably would justify a suspicion that Gonzalez was involved in distributing illegal drugs, it does not even come close to proof by a preponderance that Gonzalez obtained the cash and the car from illegal drug sales. The fact that Gonzalez was driving a car he did not own, paid rent to his parents "when he could," and identified the owner of the vehicle as someone other than the registered owner fails to provide any information about how or when he obtained the cash or the car.

Even more troubling is the court's reliance on the officer's testimony that it "was not uncommon for a person to drive a car with contraband from one place to another, and to receive money and the car as payment." The fact that something may not be "uncommon" establishes only that it has happened before. It tells the trier of fact absolutely nothing about whether a particular event occurred or did not occur. The court's reliance on such testimony is tantamount to relying on evidence that it is not uncommon for young, African-American males to be involved in criminal activity as proof that a particular defendant, who happens to be a young, African-American male, probably committed a crime.

Such testimony does not make it any more or less likely that Gonzalez had obtained the vehicle and cash from a drug transaction. There was no evidence connecting either the vehicle or the cash to any person involved in illegal drug sales or any drug transaction of any kind. Nor was there any evidence that Gonzalez had ever sold drugs or transported drugs or other contraband for someone else.

Finally, the court in *Gonzalez* acknowledged that under Washington law, the seizing agency must present evidence tracing seized property to an illegal drug transaction in order to sustain a forfeiture. *Gonzalez*, at p. 5, citing *Tri-City Metro Drug Task Force v. Contreras*, 129 Wn.App. 648, 653, 119 P.3d 862 (2005); *King County Dep't of Pub. Safety v. Real Prop. Known as 13627 Occidental Ave., S.*, 89 Wn.App. 554, 558-60, 950 P.2d 7 (1998). Nevertheless, the court failed to point to

any evidence tracing the cash found in Gonzalez's car to any drug transaction or series of transactions. That the Hearing Examiner did not believe Gonzalez's explanation of where the cash came from does not establish that the cash came from a drug transaction. It merely fails to establish that it came from the source indicated by Gonzalez.

For the foregoing reasons, *Gonzalez* should not be considered persuasive authority and should not be followed here. This Court should instead adhere to the principles set forth in the published decisions of this Court holding that the failure to present evidence tracing seized property to a drug transaction or series of transactions is fatal to a forfeiture action.

3. The Hearing Examiner's Belief that a Claimant Obtained Property Through Illegal Drug Sales Does Not By Itself Establish that the Property Is Subject to Forfeiture.

Respondent's position before the Hearing Examiner, the Superior Court, and on appeal can be summarized as follows: If the seizing agency presents sufficient evidence to convince the Hearing Examiner that a claimant was involved in illegal drug sales during a specified period of time, all property acquired by the claimant during that time is subject to forfeiture unless the claimant is able to demonstrate that the property was acquired from "legitimate" sources.

While Respondent's position may have a certain appeal as a matter of policy, it is not the standard adopted by the Washington legislature when it enacted RCW 69.50.505. Had the legislature intended to adopt

such a standard, it could have easily done so with plain and unambiguous language. Instead, the legislature chose to place the burden of proof entirely on the seizing agency throughout the proceedings and to require the seizing agency to affirmatively establish by a preponderance of the evidence that the seized property was obtained with proceeds of an illegal drug transaction, exchanged for illegal drugs, or used or intended to be used to facilitate a drug transaction. RCW 69.50.505(1)(g).

Respondent cites to findings by the Hearing Examiner relating to how much money Crawford theoretically could have made from selling oxycodone pills during a particular period of time and findings that certain deposits were made into his accounts from "unknown" or "unexplained" sources as proof that those funds likely came from drug sales. While such facts might be enough to persuade a particular Hearing Examiner that the seized funds probably came from illegal drug sales, they do not meet the specific criteria set forth in RCW 69.50.505.

In the present case, the Hearing Examiner did not make any of the findings required by RCW 69.50.050. That is, the Hearing Examiner made no findings showing that any deposits to Crawford's accounts could be traced to an illegal drug transaction or series of transactions, was money that had been exchanged for illegal drugs, or was money that Crawford used or intended to use to facilitate an illegal drug transaction. Instead, the Hearing Examiner relied upon the absence of evidence

showing where the money came from or what it was used for as the basis for his decision.

Respondent relies on the Hearing Examiner's estimate that Crawford would have had a potential gross profit of between \$169,000 to \$225,000 per year from the sale of oxycodone pills as supporting a conclusion that the seized funds came from such sales. However, if the Hearing Examiner's estimate is to be believed, and if Crawford was depositing funds derived from his drug activities into his accounts, the total deposits in those accounts should have been much greater than they actually were. Thus, the reasoning employed by the Hearing Examiner is flawed.

Of course, it could be argued that Crawford may not have deposited all of the proceeds from his alleged drug activities into his accounts. That argument fails, however, because there was no evidence that Crawford had any significant assets other than the funds in his accounts and no evidence that he lived a lifestyle that was beyond his apparent means. In fact, the evidence was to the contrary. Thus, any conclusion that the funds seized from Crawford's accounts came from the sale of oxycodone pills is nothing more than speculation.

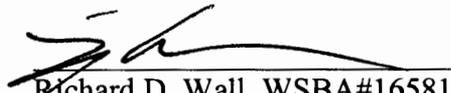
The Hearing Examiner also made no findings that any withdrawals from any of Crawford's accounts could be connected to the purchase of oxycodone pills. Ms. Delcambre testified that Crawford paid for her trips to California and, on at least one occasion, paid her \$500 for making the

trip. (FF # 69(d)-(g)) However, the Hearing Examiner made no finding that any of the funds used to pay for those trips or to pay Ms. Delcambre came from any of Crawford's accounts or that there was any correlation between the trips made by Delcambre and withdrawals from Crawford's accounts. Thus, the findings made by the Hearing Examiner fail to support a conclusion that any of the seized funds were used or intended to be used to purchase illegal drugs or to facilitate an illegal drug transaction. In the absence of such findings, the seizing agency's forfeiture claim necessarily fails.

CONCLUSION

The Hearing Examiner's Findings of Fact fail to meet the requirements for forfeiture as set forth in RCW 69.50.505(1)(g). In the absence of evidence to support the required findings, the Hearing Examiner shifted the burden of proof to the claimant to prove the seized property was obtained from "legitimate" sources. By doing so, the Hearing Examiner committed clear error of law. This Court should reverse the Hearing Examiner's decision and order the seized property returned to Appellant.

Respectfully submitted this th26 day of February, 2017.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of February, 2017, a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF was sent via legal messenger to the following:

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