

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

ANTONIO CRAWFORD,

Appellant,

vs.

SPOKANE REGIONAL SAFE STREETS TASK FORCE,

Respondent.

APPELLANT'S OPENING BRIEF

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 Issue: Does RCW 69.50.505(1)(g) require the hearing examiner in a forfeiture action to make specific findings of fact that seized property can be traced to one or more drug transactions, was furnished or intended to be furnished in exchange for illegal drugs, or was used or intended to be used to facilitate a drug transaction before the property can be forfeited?1

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I. ASSIGNMENTS OF ERROR

1. The Hearing Examiner Committed Clear Error of Law by Concluding that the Property Seized From Appellant Was Forfeitable Without Making Specific Findings that Any of the Property Was Traceable to Proceeds of One or More Drug Transactions, Had Been Used to Facilitate a Drug Transaction, or had been Exchanged for Illegal Drugs as Required by RCW 69.50.505.

Issue: Does RCW 69.50.505(1)(g) require the hearing examiner in a forfeiture action to make specific findings of fact that seized property can be traced to one or more drug transactions, was furnished or intended to be furnished in exchange for illegal drugs, or was used or intended to be used to facilitate a drug transaction before the property can be forfeited?

2. The Hearing Examiner Committed Clear Error by Forfeiting Claimant's Property Based on Claimant's Failure to Explain the Source of the Property and/or How the Property Was Used.

Issue: Does RCW 69.50.050(1)(g) Authorize the Forfeiture of Property Upon a Showing by the Seizing Agency that the Claimant was Involved in Distributing Unlawful Drugs and had "Unexplained" Income or Assets?

II. STATEMENT OF THE CASE

This appeal arises out of the seizure of approximately \$80,000.00 from several bank accounts and a safety deposit box belonging to Appellant Antonio Crawford. The seizure was made after Crawford was arrested for allegedly selling a quantity of oxycodone pills through a third party to a confidential informant, who was working for Detective Lloyd Hixson of the Spokane Regional Safe Streets Task Force ("Task Force").

On June 10, 2014, Detective Hixson arranged for a "controlled purchase" of oxycodone pills from Mitch Lawler by Lewis Pardun, the confidential informant. (Certified Appeal Board Record (AR) 64, FF #30) Pardun met Lawler in the parking lot of the a Wal-Mart store in Spokane Valley, Washington, where Lawler gave Pardun 30 oxycodone pills that Pardun paid for with prerecorded currency. (AR 65, FF #35) Lawler then went inside the store.

Lawler had been driven to the Wal-Mart by Crawford, who according to Lawler, had provided him with the oxycodone pills. Lawler claimed that, after selling the pills to Pardun, he went into the Men's Room of the Wal-Mart store where he met Crawford and given him the money, keeping a small portion for himself. (AR 69-70, FF #60) Crawford and Lawler were in the men's restroom at the same time for less than 1/2 minute. (AR 64, FF #32) Law enforcement officers followed Crawford

from the Wal-Mart to a nearby bank where he conducted a transaction. A search of the currency at the bank did not yield any of the prerecorded buy money. (AR 66, FF #38)

Following the "controlled" buy at the Wal-Mart store, the Task Force began intensive surveillance of Crawford's activities, including placing a GPS device on his car. (AR 67, FF #51) Despite two months of surveillance, no additional evidence was obtained linking Crawford to any distribution of illegal drugs or any other criminal activity. (AR 68-69, FF #51-56)

In November, Crawford was arrested and charged with felony delivery of a controlled substance based on the Wal-Mart incident. (AR 69, FF#56) Crawford was acquitted of that charge by a jury. (AR 69, FF#58)

The following January, the Task Force seized \$25,000.00 in US currency from a safety deposit box at Numerica Credit Union rented by Petitioner and a total of \$54,948.17 from five separate bank accounts under Petitioner's name. (AR 59-60, FF #5) The Task Force instituted several forfeiture actions with respect to all of the seized funds. (AR 60, FF #6) Petitioner timely notified the Task Force of his claim of ownership. (AR 60, FF #7)

A forfeiture hearing was commenced on July 21, 2015 and concluded on August 18, 2015. The following witnesses testified at the hearing: Det. Lloyd Hixson, Patti Neace, Lewis Pardun, Jessica Neace, Shakayla Delcambre, Jennifer Boswell, Det. Mike Bahr, and Felicia Houston. A number of exhibits were also admitted into evidence without objection. (AR 60-61, FF #14 - 17)

Lewis Pardun testified about the purchase of oxycodone pills from Mitch Lawler at the Wal-Mart store on June 10, 2014. He also testified that Lawler had told him source of supply was a person he knew as "Tone." (AR 71, FF#63) Pardun also testified that he had regularly purchased oxycodone pills from Lawler over a period of 6 - 8 months. However, Pardun had never met "Tone" or had any contact with him or with Crawford.

Shakayla Delcambre testified that she had made a number of trips to California at Crawford's request for the purpose of bringing back quantities of oxycodone pills that she obtained from Lafaven Adams. (AR 73-74, FF#69) Detective Hixson was able to verify through airline flights records that Ms. Delcambre had made 15 trips between Spokane and California from May 2013 to November 2014. (AR 76, FF#76) However, no testimony or other evidence was presented to corroborate her claim that she had brought back oxycodone pills for Crawford. In exchange for her

testimony against Crawford, Ms. Delcambre was allowed to plead guilty to a substantially reduced charge on a pending felony and given credit for time served, thus avoiding a possibility of a prison sentence. (AR 74, FF #69(k))

For purposes of this appeal, Crawford does not challenge the sufficiency of the evidence to support findings by the Hearing Examiner that he engaged in the sale of oxycodone in violation of RCW 69.41. By not challenging those findings, Crawford acknowledges only that the Task Force produced some evidence to support the Hearing Examiner's decision. Crawford also notes that both Mitch Lawler and Shakayla Delcambre were given compensation for their testimony against him. AR 69, FF #57; AR 72, FF#67)

On December 9, 2015, the Hearing Examiner issued his written Findings of Fact, Conclusions of Law, and Order forfeiting all of the money seized from Crawford's safety deposit box and bank accounts pursuant to RCW 69.50.505(7). Crawford timely appealed that decision to the Superior Court. CP 1-53. The Superior Court upheld the Hearing Examiner's decision and forfeiture order. CP 58-59, 60-61. Crawford timely filed his Notice of Appeal to this Court. CP 62-63.

The administrative hearing in this matter included more than 15 hours of testimony over a period of three days and the Hearing Examiner

Order consisted of 211 Findings of Fact and 7 Conclusions of Law. (AR 59-100) The Findings of Fact detail the testimony of each witness, as well as the documentary evidence presented at the hearing. The parties have stipulated that the recitation of testimony set forth in the Hearing Examiner's Order is substantially accurate and correct. Therefore, the Certified Appeal Board Record does not include transcripts of the actual testimony. The parties instead have agreed to rely on the Findings of Fact contained in the Hearing Examiner's Order as a complete and accurate summary of the evidence presented to the Hearing Examiner.

III. STANDARD OF REVIEW

Under the Administrative Procedure Act (RCW 34.05), an appellate court reviews the agency decision directly and not the decision of the Superior Court. *Buechel v. Dept. of Ecology*, 125 Wn.2d 196, 202, 884 P.2d 910 (1994); *see also, Standow v. Spokane*, 88 Wn.2d 624, 637, 564 P.2d 1145 (1977). Unless the agency's decision involves only questions of fact, the proper standard of review is the error-of-law standard. *Brandley v. Empl. Security Dept.*, 23 Wn.App. 339, 595 P.2d 565 (1979). Under the error of law standard, the appellate court reviews questions of law *de novo*. *Id.* Substantial weight should be given to the agency's interpretation of the law only if it falls within the agency's

expertise in a special area of law. *Macey v. Dept. of Employment Sec.*, 110 Wn.2d 308, 313, 752 P.2d 372 (1988).

Here, the Task Force has no special expertise with respect to interpretation and application of RCW 69.50.050. Therefore, this Court reviews all issues of law *de novo*.

The burden of demonstrating the invalidity of agency action is on the party asserting invalidity. RCW 34.05.570(1)(b). The court shall grant relief from an agency order if it determines that the order is outside the statutory authority or jurisdiction of the agency, the agency erroneously interpreted or applied the law, or the order is not supported by substantial evidence. RCW 34.05.570(3).

IV. ARGUMENT

1. The Hearing Examiner Failed to Make Specific Findings of Fact to Support the Conclusion that the Seized Property is Subject to Forfeiture.

Seized property is forfeitable under RCW 69.50.505(1)(g) only when the seizing agency has established by a preponderance of the evidence that the property was (1) furnished or intended to be furnished in exchange for a controlled substance, (2) acquired in whole or in part with proceeds traceable to an exchange or series of exchanges of a controlled

substance, or (3) was used or intended to be used to facilitate a violation of RCW 69.50, RCW 69.41, or RCW 69.52. RCW 69.50.505(5).

The Hearing Examiner's Order contains the following statements that are delineated as "Findings of Fact":

206. The SRSSTF [Task Force] established by a preponderance of the evidence that the \$25,000 seized from Antonia 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.

207. The SRSSFT established by a preponderance of the evidence that Antonio Crawford, between September 1, 2012 and December 1, 2014, deposited approximately \$57,000 (i.e. excluding the \$25,000 seized from his safety deposit box) that was not derived from legitimate income or other funding sources into his 15 local bank/credit union accounts; and that such moneys were furnished or intended to be furnished in exchange for a controlled substance in violation of RCW Chapter 60.50, proceeds acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW Chapter 60.50, or moneys used or intended to be used to facilitate a violation of RCW Chapter 69.50.

208. The SRSSTF established by a preponderance of the evidence that Antonio Crawford used or intended to use the monies that he obtained from legitimate sources, such as employment or school loans, and deposited into his 15 local accounts, to facilitate a violation of RCW Chapter 69.50; by intentionally co-mingling such monies with the \$57,000 in illegal moneys or proceeds that he deposited into his accounts, in order to disguise and "launder" such illegal monies or proceeds, and to avoid detection by law enforcement.

209. The \$8,802.66, \$16,120.71, \$1.24, \$15,365.47 and \$14,658.09 in U.S. currency, totaling \$54,948.17, seized from Antonio

Crawford's bank accounts in January 2015 are moneys furnished or intended to be furnished by or to Crawford, or others, in exchange for a controlled substance in violation of RCW Chapter 69.50, and/or moneys used or intended to be used to facilitate a violation of RCW Chapter 69.50.

210. The SRSSTF established by a preponderance of evidence that the \$1,000 in U.S. currency seized from Antonio Crawford on November 12, 2014, incident to his arrest was money furnished or intended to be furnished in exchange for a controlled substance in violation of RCW Chapter 69.50, or a combination of legitimate money that Crawford intentionally commingled with illegal drug proceeds in order to facilitate a violation of RCW Chapter 69.50. (AR 97-98)

Although the foregoing are labeled as Findings of Fact, they should be treated by this Court as conclusions of law, since they do not contain any findings that a particular event occurred or did not occur or that a particular condition or circumstance did or did not exist. Instead, they merely recite the language of the statute and state in a conclusory fashion that the applicable legal standard has been met. *See, Inland Foundry Co. v. Dep't of Labor & Indus.*, 106 Wash.App. 333, 340, 24 P.3d 424 (2001).

To meet the requirements of the statute, the Task Force needed to present evidence showing that the seized funds were derived from illegal drug sales, were exchanged or intended to be exchanged for illegal drugs, or were used or intended to be used to facilitate illegal drug sales. The only findings by the Hearing Examiner that relate to the possible sources of the monies seized from Crawford's accounts and safety deposit box fail

to establish that the funds can be traced in any manner to any illegal conduct by Crawford, Instead, those findings merely acknowledge that the source of some of those monies is "unknown," "unexplained," or not shown to be from "a legitimate source."

The following numbered Findings of Fact illustrate this point:

#128. Between September 10, 2012, and December 10, 2012, Antonio Crawford made 13 cash deposits totaling \$5,395.17 into his Wells Fargo saving 9590 account or Wells Fargo checking 4613 account. The deposits were mostly in increments of \$100, and ranged up to \$1,500. The \$5,474.17 amount does not include a \$39 money order purchased by Crawford, and \$40 **from an unknown source**, deposited into such accounts; which, added to the \$5,395.17, provide a total sum of \$5,474.17 that was deposited into Crawford's accounts **from unknown sources** during the indicated time period. See Exhibits 5, 17, and 19; and testimony of Jennifer Boswell. (AR 86)

#129. Assuming that \$1,020.15 of the \$5,474.17 deposited into Crawford's accounts in the form of cash or money orders could have come from checks from ADG that Antonio Crawford received during the last quarter of 2012, and did not deposit into his local bank accounts (i.e. \$1,479.31 less \$459.61), this still leaves approximately \$4,500 in cash or money orders **from unknown sources** that Crawford deposited into his accounts during the last quarter of 2012. (AR 86)

#137. Assuming that \$280.75 and \$1,826.87 of the cash deposits in 2013 could have come from checks Antonio Crawford received from ADG or from school loans, respectively, that Antonio Crawford received in 2013 and did not deposit into his local bank accounts, and adding in the approximately \$730 in cash that Antonio Crawford received from Urban Blends in 2013, for a total of \$2,837.62, this leaves a sum of \$22,441.67 (i.e. \$25,279.29 less \$2,837.62) **not shown to be derived from legitimate sources** that Crawford deposited by cash or money order into his accounts in 2013. (AR 87)

#161. On October 10, 2014, through October 31, 2014, Antonio Crawford made four (4) electronic transfers totaling \$4,235.70, **from an unknown source** at JP Morgan Chase bank, into his Numerica Credit Union 8150 saving account. On November 6, 2014 Crawford deposited two (2) \$1,000 sums from Neighbors Credit Union, **from an unknown source**, into his Numerica Credit Union 8150 checking account; and on the same day, transferred \$1,000 back to Neighbors Credit Union. (AR 90)

162. On November 4, 2014, Antonio Crawford deposited a \$3,000 check **from an unknown source** at Citbank into his Numerica 8150 checking account. (AR 90)

#165. The December 2014 statement for the STCU checking 2650 account shows an increased balance of \$8,535.49 in the account as of December 31, 2014; the same amount that the January 2015 statement for the account shows was seized by the SRDTF on January 9, 2015. This is exactly \$2,000 more than the ending balance present in the account on March 11, 2014; and indicates that Crawford deposited an additional \$2,000 into the account **from an unknown source** sometime after March 11, 2014 and before December 1, 2014. See Exhibit 17. (AR 90-91)

#169. On June 25, 2014, Antonio Crawford **cashd out a certificate of deposit, which Jennifer Boswell could find no history for**, for \$5,006.88; and deposited the funds in his Wells Fargo 9590 account, which deposit increased the balance in the account from \$2,569.74 to \$7,576.62. (AR 91)

#170. On October 31, 2014, Antonio Crawford **cashd out a certificate of deposit, for which no history was provided**, for \$5,302.85; and deposited the funds in his Wells Fargo 9157 account. (AR 91)

#175. On October 2-3, 2014, Antonio Crawford deposited \$25,000 in U.S. currency, consisting of 250 \$100 bills, in a safety deposit box; **all in unexplained income**. (AR 92)

The foregoing findings clearly do not establish that any of the seized funds came from illegal drug sales.

Similarly, the forgoing findings do not show, and the Hearing Examiner did not make any specific findings or identify any evidence establishing that any of the monies seized from Crawford was exchanged or intended to be exchanged for any illegal drugs or that any of the seized funds was used or intended to be used in any manner to facilitate the distribution of illegal drugs. The Hearing Examiner made no findings that any monies withdrawn from Crawford's accounts was used to purchase illegal drugs or was otherwise used to facilitate the sale of illegal drugs. Instead, the Hearing Examiner found only that, based upon evidence presented by the Seizing Agency regarding Petitioner's known sources of "legitimate income," Petitioner had "unexplained income" of approximately \$82,000 between September 2012 and November 2014. (AR 92, FF#178) The Hearing Examiner then assumed that all of Crawford's "unexplained income" necessarily came from Crawford's alleged illegal drug dealing and/or that those monies were in some unknown way used or intended to be used to purchase drugs or otherwise facilitate illegal drug sales.

The plain language of RCW 69.50.505(1)(g), does not allow a forfeiture to be based on such an assumption. The statute sets forth in precise language what the seizing agency must prove in order to forfeit property. Furthermore RCW 69.50.505(5) explicitly places the burden of

proof throughout the proceedings on the seizing agency. Here, contrary to the plain language of the statute, the Hearing Examiner shifted the burden of proof to Crawford to explain the sources of all of his income and assets or have all of the seized property subjected to forfeiture.

In essence, the Hearing Examiner interpreted and applied RCW 69.50.505 to allow forfeiture of seized property whenever the seizing agency presents evidence that the claimant was involved in illegal drug distribution and has income or assets that are not shown to be from "legitimate" sources. In doing so, the Hearing Examiner committed clear error of law.

Had the legislature intended to allow forfeiture of property under such circumstances, it could easily have said so in plain and unambiguous language. It did not. Rather, the legislature chose to require the seizing agency to present evidence sufficient to establish that the property seized was connected to one or more illegal drug transactions, either because the property was acquired with proceeds from such transactions, was exchanged or intended to be exchanged for illegal drugs, or was used or intended to be used to facilitate one or more illegal transactions.

That choice reflects a particular balancing of the State's interest in forfeiting certain types of property with the individual's right not to be deprived of property in the absence of a substantial justification for the

deprivation supported by actual evidence. The procedure employed by the Hearing Examiner here strikes an entirely different balance by placing the burden of demonstrating that property is not subject to forfeiture entirely on the claimant. Because the Hearing Examiner's decision rests on a clear misapplication of the law, the Order of forfeiture must be reversed.

2. The Task Force Failed to Present Substantial Evidence that Any of the Seized Funds Were the Proceeds of Illegal Drug Sales, Were Exchanged for Illegal Drugs, or Were Used or Intended to Be Used to Facilitate Illegal Drug Transactions.

If the Court chooses to consider Findings of Fact #206 - 210 as actual findings rather than conclusions of law, the record clearly demonstrates that such findings are not supported by substantial evidence.

In responses to interrogatories, Crawford identified a number of sources for monies deposited into his accounts, including the sale of real estate, employment, tax refunds, school loans, and gifts/loans from family. (AR 84, FF #119) The evidence also established that Crawford deposited money earned from employment and money received as student loans into various accounts (AR 86, FF #133), that he received \$730 in wages from Urban Blends in 2013 (Finding of Fact #136), and had income in 2014 from employment, student loans, food stamps, federal tax refund, and a loan from WSECU. (AR 92, FF#174)

In addition, evidence was presented that Crawford had purchased a house prior to 2002 and that some of the money used to make that purchase came from illegal drug sales. (AR 79, FF #96) Crawford also acknowledged in response to interrogatories that he had received some money from his sister in connection with the sale of real property. (AR 84-85, FF #120) However, no evidence was presented identifying the real property that was sold, when it was acquired, or how the proceeds were distributed. Regarding the possibility that Crawford had received money from the sale of real estate, the Hearing Examiner found only that it was "conceivable" he had received proceeds from the sale of a house he had owned in 2002. (AR 92, FF #175)

Regarding whether Crawford had received gifts or loans from family members, the Hearing Examiner noted only that Jennifer Boswell had testified she found "no evidence" that Shujuana Sanders, a person listed as the payable on death beneficiary of one of Petitioner's bank accounts, had deposited any money in any of Crawford's accounts and that the record contained "no evidence" that Crawford's brother, had given or loaned any money to him. (AR 95, FF#122 & 124) Ms. Boswell did not speak to Ms. Sanders or Crawford's brother. Nor did she conduct any investigation into the source of various deposits made into Petitioner's accounts other than her examination of the account records themselves.

Although Ms. Boswell testified that she did not find any evidence that Crawford had received funds from family members, she did not testify that her limited investigation would have revealed any such evidence that might have existed. Thus, the record establishes only a lack of evidence as to the source of most of the deposits made to Crawford's accounts during the relevant time period.

The record also establishes a complete lack of evidence that any money withdrawn from any of Crawford's accounts was used to purchase drugs or otherwise facilitated an illegal drug transaction. Ms. Boswell testified that Crawford cashed out and deposited into his Wells Fargo bank accounts two certificates of deposits worth more than \$10,300. (AR 91, FF #169-170) However, no evidence was presented that any of those funds were used to purchase drugs or to facilitate a drug transaction.

Ms. Boswell also testified that Crawford made various withdrawals from and deposits to his accounts over a period of time. The Task Force presented no evidence, however, to connect any of those withdrawals or deposits to a transaction involving illegal drugs. No evidence was presented, for example, that Crawford made a large withdrawal of cash prior to a known trip by Ms. Delcambre to California to allegedly purchase oxycodone pills for him. No evidence was presented that Crawford made a cash deposit to any of his accounts following an alleged

sale of oxycodone pills to Mitch Lawler. Thus, it is pure speculation that any of the monies deposited to or withdrawn from any of the accounts was connected in any way with the distribution of illegal drugs.

The Findings of Fact entered by the Hearing Examiner clearly demonstrate that his conclusions rely entirely upon the absence of evidence showing where certain funds deposited into Petitioner's accounts came from and what they were used for, rather than on evidence tending to show that such funds were the proceeds of illegal drug sales or were used to purchase drugs. Thus, the Hearing Examiner improperly placed the burden of proof on Petitioner to produce evidence that such monies came from "legitimate" sources and/or were used for "legitimate" purposes. Absent such evidence, the Hearing examiner simply assumed that all unexplained income and expenditures were the direct proceeds from or were otherwise used to promote illegal drug distribution.

The plain language of RCW 69.50.505(5) does not allow for such burden shifting. On the contrary, it unequivocally places the burden of establishing that seized property is subject to forfeiture squarely on the seizing agency. The seizing agency does not meet that burden by simply presenting evidence that the Claimant has "unexplained" income or by asserting that the use of funds withdrawn from an account is "unknown"

The present case is similar to *Valerio v. Lacey Police Dept.*, 110 Wn.App. 163, 39 P.3d 332 (2002). In *Valerio*, the trial court had reasoned that, once the State had produced evidence showing that innocent explanations for claimant's possession of a large quantity of currency were not credible, the burden shifted to the claimant "to present evidence to satisfy a burden by the preponderance of evidence that he had acquired the property in some manner other than in violation of RCW 69.50.505." *Id.*, 110 Wn.App. at 168. The Court of Appeals rejected that reasoning and held that evidence tending to show the claimant's gambling winnings could not have produced the amount of cash found in his car did not establish that the money was the product of an illegal drug business. *Id.*, at 179. *Valerio* was decided prior to the amendments to RCW 69.50.505 expressly placing the burden of proof on the seizing agency. Thus, *Valerio's* reasoning applies here with even greater force.

Even if one accepts that the Task Force presented substantial evidence that Crawford was engaged in illegal drug distribution, the evidence fails to establish any connection between that alleged activity and any of the seized property. The seized property consisted of cash taken from Crawford's safety deposit box and funds seized from several bank accounts owned by Crawford. Even assuming that Crawford's drug distribution activities would have both produced and consumed a

substantial amount of funds, there remains a complete lack of evidence as to whether the money seized from any particular location was in any way connected to the alleged drug distribution.

For example, the Task Force seized \$25,000 in currency from Crawford's safety deposit box at Numerica Credit Union. No evidence was presented as to where that currency had come from. None of the currency was recorded buy money and no other items were found in the safety deposit box indicating any link or nexus between the currency and illegal drug distribution. The Task Force never recovered any ledgers, log books, customer lists, or other documentation of any kind relating to alleged drug distribution by Crawford.

Crawford accessed the safety deposit box only once after renting it. (Finding of Fact #89) Thus, it appears that he was not using the box as a place to deposit ongoing proceeds derived from drug sales or as a "stash" from which he would periodically withdraw funds to purchase drugs. How or when Crawford acquired the \$25,000 in currency is simply unknown. It could have been acquired all at once or over a period of time. Although Crawford identified a number of sources for the money seized by the Task Force, including the currency in his safety deposit box, the Task Force did not investigate any of those potential sources or make any further inquiries. Instead, the Task Force chose only to present evidence

in the form of Ms. Boswell's testimony that the source of the currency was unknown or unexplained. That the Task Force did not know the source of that currency simply does not establish that the currency was more likely than not the proceeds of illegal drug distribution by Crawford.

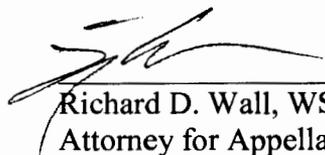
3. Claimant is Entitled to Attorney Fees and Costs on Appeal.

RCW 69.50.505(6) provides that a claimant who substantially prevails in a forfeiture action is entitled to recover reasonable costs and attorneys fees. Therefore, Claimant is entitled to recover costs and fees on appeal in the event he substantially prevails on appeal.

CONCLUSION

For the foregoing reasons, this Court should reverse the reverse the Hearing Examiner's Order forfeiting the seized property, order the property returned to Claimant/Appellant, and remand to the Hearing Examiner for further proceedings. This Court should award Appellant reasonable costs and attorney fees on appeal pursuant to RAP 18.1 and RCW 69.05.505.

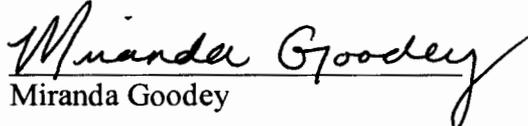
Respectfully submitted this 19th day of December, 2016.


Richard D. Wall, WSBA# 16581
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of December, 2016, a true and correct copy of the foregoing APPELLANT'S OPENING BRIEF was sent hand delivered to:

JAMES H. KAUFMAN
Sr. Deputy Prosecuting Attorney
W. 115 Broadway Avenue
Spokane, WA 99260


Miranda Goodey