

34755-9-III  
COURT OF APPEALS

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Court of Appeals  
Division III  
State of Washington

DIVISION III  
OF THE STATE OF WASHINGTON

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ANTONIO CRAWFORD, APPELLANT

v.

SPOKANE REGIONAL SAFE STREETS TASK FORCE,  
RESPONDENT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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**INDEX**

**I. PROCEDURAL HISTORY..... 1**

**II. COUNTER STATEMENT OF FACTS ..... 4**

**III. STANDARD OF REVIEW..... 21**

**IV. ARGUMENT ..... 27**

    A. APPELLANT’S REQUESTED REVIEW IS LIMITED  
    BY FAILURE TO ASSIGN ERROR TO CERTAIN  
    FACTS FOUND BY THE HEARING EXAMINER..... 27

    B. THE HEARING EXAMINER MADE NUMEROUS  
    SPECIFIC FINDINGS OF FACT TO SUPPORT THE  
    CONCLUSION THAT THE SEIZED PROPERTY IS  
    SUBJECT TO FORFEITURE ..... 28

    C. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT  
    FINDINGS OF FACT BY THE HEARING OFFICER  
    UNDER RCW 69.50.505..... 35

**V. CONCLUSION ..... 45**

## TABLE OF AUTHORITIES

### WASHINGTON CASES

<i>Bridle Trails v. Bellevue</i> , 45 Wn. App. 248, 724 P.2d 1110 (1986) .....	22
<i>Campbell v. Board for Volunteer Firefighters</i> , 111 Wn. App. 413, 45 P.3d 216 (2002).....	25
<i>City of Lynnwood v. \$128.00 Cash</i> , 61 Wn. App. 505, 810 P.2d 1377 (1991).....	26
<i>City of Sunnyside v. Gonzalez</i> , No. 33262-4-III, 2016 WL 6124670, 196 Wn. App. 1035 (unpublished) .....	43, 44
<i>City of Walla Walla v. \$401,333.44</i> , 164 Wn. App. 236, 262 P.3d 1239 (2011).....	23
<i>Custody of C.D.</i> , 188 Wn. App. 817, 356 P.3d 211 (2015) .....	14
<i>Forfeiture of One 1970 Chevrolet Chevelle v. Snohomish Regional Drug Task Force</i> , 166 Wn.2d 834, 215 P.3d 166 (2009).....	34
<i>Foster v. King County</i> , 83 Wn. App. 339, 921 P.2d 552 (1996).....	22
<i>Fuller v. Employment Security Dept. of State of Washington</i> , 52 Wn. App. 603, 762 P.2d 367 (1988).....	27
<i>Heidgeken v. Dept. of Nat. Res.</i> , 99 Wn. App. 380, 993 P.2d 934 (2000), <i>rev. den.</i> , 141 Wn.2d 1015, 10 P.3d 1071 (2000).....	22
<i>Humphrey Industries, Ltd. v. Clay Street Associates, LLC</i> , 176 Wn.2d 662, 295 P.3d 231 (2013).....	14
<i>Inland Foundry Company, Inc., v. Dept. of Labor and Industries</i> , 106 Wn. App. 333, 24 P.3d 424 (2001) .....	24, 28

<i>Jefferson County v. Seattle Yacht Club</i> , 73 Wn. App. 576, 870 P.2d 987 (1994).....	24
<i>Johnson v. Dept. of Health</i> , 133 Wn. App. 403, 136 P.3d 730 (2006).....	25
<i>Keene v. Board of Accountancy</i> , 77 Wn. App. 849, 894 P.2d 582, rev. den., 127 Wn.2d 1020, 904 P.2d 300 (1995).....	24
<i>King County v. Central Puget Sound Growth Management Hearings Board</i> , 142 Wn.2d 543, 14 P.3d 133 (2000) .....	23
<i>Leavitt v. Jefferson County</i> , 74 Wn. App. 668, 875 P.2d 681 (1994).....	22
<i>Mid Mountain Contractors, Inc. v. Washington State Dept. of Labor and Industries</i> , 136 Wn. App. 1, 146 P.3d 1212 (2006).....	36, 37
<i>Mowat Construction Company v. Dept. of Labor and Industries</i> , 148 Wn. App. 920, 201 P.3d 407 (2009) .....	25
<i>Pappas v. Employment Security Dept.</i> , 135 Wn. App. 852, 146 P.3d 1208 (2006).....	24
<i>Patterson v. Superintendent of Public Instruction</i> , 76 Wn. App. 666, 887 P.2d 411 (1994).....	25
<i>Peste v. Mason County</i> , 133 Wn. App. 456, 136 P.3d 140 (2006).....	25
<i>Pres. Our Islands v. Hearings Board</i> , 133 Wn. App. 503, 137 P.3d 31 (2006).....	22
<i>Sam v. Okanogan County Sheriff's Office</i> , 136 Wn. App. 220, 148 P.2d 1086 (2006) .....	26
<i>Schofield v. Spokane County</i> , 96 Wn. App. 581, 980 P.2d 277 (1999).....	26
<i>State v. Chacon Arreola</i> , 176 Wn.2d 284, 290 P.3d 983 (2012).....	22

<i>State v. Hardgrove</i> , 154 Wn. App. 182, 225 P.3d 357 (2010).....	25
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	36
<i>State v. Kalakosky</i> , No. 32476-1-III, 2016 WL 5799345, 196 Wn. App. 1024 (2016) (unpublished) .....	37
<i>State v. Lazcano</i> , 188 Wn. App. 338, 354 P.3d 233 (2015), <i>as amended on reconsideration in part</i> (Aug. 20, 2015), <i>review denied</i> , 185 Wn.2d 1008, 366 P.3d 1245 (2016).....	37
<i>State v. Rooney</i> , 190 Wn. App. 653, 360 P.3d 913 (2015), <i>review denied</i> , 185 Wn.2d 1032 (2016).....	23
<i>State v. Thomas</i> , 150 Wn.2d 821, 83 P.3d 970 (2004).....	23, 26
<i>Union Elevator &amp; Warehouse Company, Inc. v. State Dept. of Transportation</i> , 144 Wn. App. 593, 183 P.3d 1097 (2008).....	24
<i>Valerio v. Lacey Police Dept.</i> , 110 Wn. App. 163, 39 P.3d 332 (2002).....	24, 42, 43, 44
<i>Vancouver v. Jarvis</i> , 76 Wn.2d 110, 455 P.2d 591 (1969).....	22
<i>Western Ports Transportation, Inc v. Employment Security Dept.</i> , 110 Wn. App. 440, 41 P.3d 510 (2002) .....	23
<i>Western Ports Transportation, Inc. v. Employment Security Dept.</i> , 110 Wn. App. 440, 41 P.3d 510 (2002) .....	22, 25
<i>Wilson v. Nord</i> , 23 Wn. App. 366, 597 P.2d 914 (1979) .....	22
<i>ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm'n</i> , 151 Wn. App. 788, 214 P.3d 938 (2009), <i>aff'd</i> , 173 Wn.2d 608, 268 P.3d 929 (2012), <i>as corrected</i> (Mar. 20, 2012) .....	37

**STATUTES**

RCW 34.05.452 ..... 24  
RCW 34.05.570 ..... 24, 26, 28  
RCW 69.50.505 ..... 18, 26, 28  
RCW 69.50.506 ..... 34

**RULES**

RAP 9.6 ..... 35  
RAP 10.3 ..... 23, 27

## **I. PROCEDURAL HISTORY**

Spokane Regional Safe Streets Task Force (“SRSSTF”) seized the sum of \$1,000 plus a 2011 Chevrolet Impala from Antonio Crawford. (Certified Appeal Record, hereinafter “AR,” 59, Finding of Fact, hereinafter “FF,” 1.) That same day, November 12, 2014, SRSSTF Detective Lloyd Hixon personally served the Notice of Seizure on Antonio Crawford. (AR 59, FF 2.)

Crawford hired his then attorney Christian Phelps. On November 27, 2014, Attorney Phelps filed a claim for the \$1,000 and the 2011 Chevrolet Impala on Crawford’s behalf. The Hearing Officer assigned this claim, Claim No. 2014-0018, and scheduled a Forfeiture Hearing for January 27, 2015. (AR 59, FF 3, 4.)

Thereafter, between January 8, 2015 and January 15, 2015, SRSSTF seized a total of \$79,948.17 of U.S. Currency from various bank and credit union accounts controlled by Crawford. (AR 59-60, FF 5-7.)

Attorney Phelps filed a claim on January 12, 2015, based on those latest seizures, pursuant to a Search Warrant, and the parties stipulated to the return of the 2011 Chevrolet Impala to Washington State Employee Credit Union (“WSECU”) which held an outstanding and unpaid loan on the vehicle. (AR 60, FF 7-9; AR 647-49.)

The Forfeiture Hearing on the consolidated claims for both seizures – Claims 2014-0018, which involved the \$1,000 seized November 12, 2014, and 2015-0001, was ultimately set for hearing on May 5, 2015. (AR 60, FF 10-11.)

On April 16, 2015, attorney Richard Wall replaced Christian Phelps as Crawford’s attorney and the May 5, 2015, consolidated hearing on the \$79,948.17 seized in January 2015, and the remaining \$1,000 seized on November 12, 2014, was continued to July 21, 2015, per agreement of the parties and so ordered by Hearing Officer Dempsey. (AR 60, FF 12-13; AR 627.)

Ultimately, a hearing was conducted by Hearing Officer Dempsey which went on for a period of four days, starting on Tuesday, July 21, 2015 and ending on Tuesday, August 18, 2015. (AR 60, FF 14-15.)

Per agreement of counsel, Detective Hixson was called by SRSSTF at intermittent times to accommodate other witnesses. SRSSTF called six witnesses and Crawford called one, Felicia Houston. Twenty-nine exhibits were offered and twenty-eight were admitted in whole or in part. (AR 61-62, FF 17-18.)

During the hearing time and in between the first and second hearing dates, on July 23, 2016, SRSSTF sought to clarify Exhibit No. 17. (AR 326-396.) This also occurred on November 6, 2015, while the matter was under

consideration for decision. (AR 62, FF 19-20.) This was done without objection of Mr. Crawford's counsel. (AR 63, FF 22.)

Ultimately, on December 9, 2015, Hearing Officer Dempsey entered a lengthy and thorough "Findings of Fact, Conclusions of Law and Order" forfeiting all seized assets to SRSSTF. (AR 59-100.)

Thereafter, there were some technical/clerical errors corrected in an order (AR 56-58) and Mr. Crawford moved for (partial) reconsideration on December 17, 2015, solely relating to the seizure of \$25,000 cash from a Numerica Credit Union safety deposit box. (AR 59-60, FF 5; AR 97, FF 205-206; Exhibit 15; AR 315-319; AR 49-54.) SRSSTF responded to the reconsideration motion and on January 11, 2016, Hearing Officer Dempsey issued an order denying the reconsideration motion. (AR 10-13.)

On January 29, 2016, Mr. Crawford timely filed his appeal/petition for review. (AR 5-8.)

Thereafter, the parties submitted authorities and on August 12, 2016, Honorable Michael P. Price, Superior Court Judge, entered a Memorandum Decision affirming Hearing Officer Dempsey and an Order deciding such was entered on August 24, 2016. (CP 58-59, 60-61.)

On September 20, 2016, a timely appeal was filed by Crawford (CP 62-63.)

## **II. COUNTER STATEMENT OF FACTS**

This forfeiture case against Appellant Antonio Crawford essentially begins when SRSSTF Detective Lloyd Hixson became aware that Lewis Pardun was arrested on a shoplifting charge at a Spokane Valley Rosauer's store in May 2014. Pardun advised Detective Hixson that he had made numerous oxycodone purchases from a fellow named Mitch Lawler, whose supplier was a black guy, who went by "Tone" and worked as a telemarketer in the area of Sprague and Sherman Street, Spokane, and drove a grey Chevrolet Impala. (AR 63, FF 25-26.)

Pardun had agreed to become a confidential informant for SRSSTF and Detective Hixson was able to identify the persons Pardun referred to as Mitch Lawler, a 28-year-old white male, from a telephone number provided by Pardun; and "Tone" as likely Antonio Crawford, a 45-year-old black male who had prior felony convictions in 2001 in Spokane County Superior Court and U.S. District Court in California in 2003. Detective Brad Richmond who worked for SRSSTF and who specialized in investigating gang-related crimes helped in that identification. Pardun was able to give Detective Hixson a license plate number for assistance in identification of Crawford. (AR 64, FF 27-28.)

Pardun also informed Detective Hixson he had purchased oxycodone pills from Mitch Lawler for about a year on a continuous basis and usually purchased 10 to 30 30 mg. oxycodone pills from Lawler 2 to 3 times per week at an average price of \$29 to \$30 per pill, so a “controlled buy” from Lawler was set up with Pardun buying 30, 30 mg. oxycodone pills from Lawler at \$29 per pill for a total of \$870. (AR 64, FF 29-31.)

As part of the “controlled buy,” a 2011 Chevrolet Impala delivered Lawler to a Spokane Valley Wal-Mart on East Sprague and surveillance by other SRSSTF members confirmed this. This included a full “strip search” of Pardun by Detective Hixson while a complete search of Pardun’s vehicle was completed by SRSSTF Detective Bryan Miller. Pardun was provided with \$870 of “prerecorded” buy money to make the purchase from Mitch Lawler. (AR 64, FF 31-32.)

Crawford was observed leaving the Impala after the “controlled buy” by Pardun from Lawler and Crawford. Crawford was also seen on tape with Lawler going into the men’s restroom at Wal-Mart. (AR 65-66, FF 34-37; Exhibit 3; AR 176.)

It should be noted that after the “controlled buy,” Pardun, Lawler, and Crawford left the area separately, although Lawler and Crawford arrived together. Pardun returned to Detective Hixson with the 30, 30 mg. oxycodone pills and Pardun was again followed to a pre-arranged place by law

enforcement, where Pardun turned over the oxycodone pills to Detective Hixson and was strip-searched per “controlled buy” standard procedures. Detective Hixson recognized the pills as oxycodone pills. (AR 64-66, FF 31-38, 40, 41; Exhibits 3, 18; AR 175-176; AR 397-403.)

Exhibit 3 (AR 176) shows Lawler exiting the Wal-Mart restroom before Crawford in the chronology set forth in Finding of Fact 37. (AR 65-66.) Crawford then goes to Wells Fargo Bank in Spokane Valley and is followed by SRSSTF Detective Shawn Hause, but does not appear to have conducted any transaction at that time and Wells Fargo bank records do not reflect any transaction that day. (AR 66, FF 38-39; AR 94, FF 191.)

During the week following the June 10, 2014, “controlled buy” Pardun was arrested and charged with felonies relating to controlled substances and SRSSTF terminated its agreement with Pardun. Pardun entered a plea to felony charges and went to jail. (AR 66, FF 42.)

Detective Hixson with assistance of Detective Bryan Miller of SRSSTF contacted and interviewed Lawler at his Spokane Valley residence and Lawler admitted to prior drug use and that he, Lawler, had illegally sold drugs to support his habit and had been supplied large amounts of oxycodone by Antonio Crawford. (AR 66-67, FF 43-44.)

Lawler was later arrested by Detective Hixson on July 24, 2014. After his arrest, Lawler advised Hixson he met Crawford about two years earlier and said he could purchase oxycodone directly from Crawford without going through an intermediary and that Lawler had also purchased oxycodone from women whose source of supply was Crawford. Crawford became Lawler's exclusive supplier because of Crawford's regular supply and had cheaper, prices, so Lawler could make a steady profit. (AR 67, FF 47.)

Lawler further gave Detective Hixson information about some purchases of oxycodone from Crawford for resale and various oxycodone price information. This was over a two- year timeframe. Lawler mentioned to Crawford law enforcement was interested in Crawford's activities and Crawford told Lawler "the police were out to get him!" Crawford had advised Lawler to notify him of any investigations of which Lawler became aware of. (AR 67, FF 48-49.)

Detective Hixson looked in detail at Crawford's background and criminal history and found several prior felony convictions and the fact Crawford was then on active federal probation in Spokane for a 2003 cocaine conviction. (AR 68, FF 50; Exhibits 6, 7, 18, 29; AR 210-216, 217-229, 399, 536, respectively.)

Detective Hixson also started surveillance of Crawford, which included some very “suspicious” incidents and indicia of active drug/narcotics transactions. Detective Hixson obtained a search warrant from Honorable John O. Cooney, Superior Court Judge, to authorize installation of a GPS tracking device to be placed on Crawford’s 2011 Impala, which occurred. (AR 68-69, FF 51-55; Exhibit 9; AR 259-276.)

Detective Hixson ultimately arrested Crawford on November 12, 2014, and “froze” Crawford’s 15 local credit union/bank accounts. The arrest was based upon the June 10, 2014, “controlled buy” at Wal-Mart. (AR 69, FF 56.)

Crawford’s felony charge went to trial in March 2015, and resulted in a “not guilty” verdict with both Lawler and Pardun testifying for the State. Findings of Fact 63 detail pertinent trial testimony. (AR 69-72, FF 58-65; Exhibit 4; AR 177-206.)<sup>1</sup>

SRSSTF also called Shakayla Delcambre as a witness. (AR 60, FF 16.) Delcambre had participated in a “free talk” with federal, state, and local law enforcement and currently had a charge of felony promoting

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<sup>1</sup> Exhibit 4 is the transcript of Mitch Lawler’s trial testimony which was admitted at the Forfeiture Hearing by Stipulation as neither party called Lawler as a witness. SRSSTF called Pardun and he testified as noted. Hearing Officer Dempsey gives a thorough and specific review of Pardun’s testimony at the Forfeiture Hearing and Pardun was found particularly credible. (AR 71-72, FF 63-65; AR 60-61, FF 16; AR 95, FF 193-96.)

commercial sex abuse or prostitution of a minor. She was a convicted felon. (AR 72, FF 66.)

Delcambre entered into a cooperation agreement with the State of Washington, negotiated by her attorney John Stine and Senior Deputy Prosecuting Attorney Stefanie Collins. (Exhibit 10; AR 277-281.) In that agreement, which involved Spokane County Superior Court Case No. 15-1-00844-8, Delcambre's criminal case, Delcambre agreed to cooperate fully and truthfully with investigating officers and was given consideration.<sup>2</sup>

Delcambre acknowledged in her testimony she worked with Crawford at American Directions Group ("ADG"), a telemarketing business. Delcambre noted she had made several flights to California per month from approximately June, 2013, until September, 2014, and stayed at the Budget Inn at Bellflower, Los Angeles, California. She acknowledged she would pay for the trip by using a "green dot" card, prepaid by Crawford, and carrying a certain amount of money on the card, which she accessed through a number Crawford provided her. She was paid \$500 per trip, in cash by Crawford, and she returned with large quantities of oxycodone pills. Delcambre admitted

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<sup>2</sup> It should be noted most of the cooperation agreement involved other matters than this forfeiture case.

prior felony convictions and that she knew Crawford as “Tone”<sup>3</sup> and that “Tone” had initially asked Delcambre’s sister to make those trips to California to obtain drugs for him, but her sister refused. Delcambre’s sister was ordered or asked by Crawford to ask Delcambre to make those trips and she agreed. (AR 72-75, FF 68-69.)

As noted, Delcambre indicated she had made approximately 20 to 30 trips to California in 2013 and 2014, and that with one exception – her last trip down – Crawford paid for all flights down with “green dot” cards. Delcambre traveled on both Alaska and Delta Airlines. (AR 73, FF 69(d).)

Delcambre also indicated she was picked up at the airport in California by Lafaven Adams and he paid for her hotel stays. She mentioned Adams gave her oxycodone pills to return to Spokane and to give them to Crawford. Delcambre said she did not normally count those pills, although she recalled on one occasion she saw 5,000 pills counted out. (AR 73, FF 69(e).)

Delcambre mentioned she was for a time romantically involved with Adams and had performed some acts of prostitution in California. She further mentioned that when she was picked up at the Spokane Airport by Crawford, he took her to her mother’s house near Gordon and Nevada Streets in Spokane. She also noted Felicia Houston – the only witness called by Crawford at the

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<sup>3</sup> Like Pardun (AR 63, FF 26), Patti Neace (AR 83, FF 112) and Delcambre identified Antonio Crawford as “Tone.”

Forfeiture Hearing and a co-worker at ADG – also picked her up at the airport when Crawford was unavailable to do so. (AR 61, FF 16(h); AR 73-74, FF 69(e)-(h); AR 80-81, FF 100-102; AR 93-94, FF 186.)

Delcambre was also working for Crawford on a different date in 2014, when she arranged a potential purchase of 100 oxycodone pills to some people from Montana through Demetrius Dennis, who was the owner of the “420 Lounge” in Spokane Valley. Dennis had been contacted by some people from Montana looking for oxycodone pills. Dennis knew Delcambre as she had acted as a “middle man” in an oxycodone purchase for Dennis and Crawford. Delcambre was allowed by Crawford to keep \$50 for her assistance in this “buy.” This was undisputed testimony. (AR 74, FF 69(i).)

Delcambre was released from jail on May 22, 2015. Delcambre testified Crawford showed up at her mother’s house which was unexpected as he was not invited. Crawford showed up to inquire from Delcambre about paying back money she had taken from him. Delcambre also saw Crawford and Adams together on two consecutive nights at two different Spokane bars in late May, 2015. She admitted to Adams she had taken money from Crawford, but when she attempted to call Crawford about such, he did not return her call. Yet, when she was listed as a witness for the Forfeiture Hearing on July 1, 2015, Crawford initiated many urgent calls to Delcambre’s mother’s house trying to reach her. Delcambre testified she felt Crawford was trying to

intimidate her and this “flurry of activity” caused Detective Hixson to obtain a search warrant from Honorable Maryann Moreno, Superior Court Judge, to intercept and to record Crawford’s and Delcambre’s conversations. (AR 74-76, FF 69(l)-(n), 70-73; Exhibits 16, 16A; AR 320-325.)

Hearing Officer Dempsey made a specific finding of the pressure Crawford placed on Delcambre when he noted:

The calls, both as transcribed and heard audibly, support the contentions by Detective Hixson in the search warrant affidavit, and Shakayla Delcambre’s assertions during the telephone calls, that Crawford was trying to persuade Delcambre not to testify in the current proceeding; considering Crawford’s implication in the calls that he could have harmed her if he wanted to, and attempts to convince her that the police were trying to frame her, and not to cooperate with the police against him. The calls indicate that Crawford paid some hotel and telephone expenses for Delcambre in the past, which is indicative of a business relationship between Crawford and Delcambre.

AR 76, FF 73.

Further, Detective Hixson testified Delcambre had also unexpectedly heard from Demetrius Dennis a few days before the Forfeiture Hearing.<sup>4</sup> She was “startled” by the contact as she had not had any problems with Dennis and it caused her to believe Crawford had notified Dennis about the fact the earlier “drug buy” involving Dennis had come up in the forfeiture proceedings

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<sup>4</sup> Delcambre testified on the hearing’s first day, July 21, 2015. However, Detective Hixson’s testimony about Delcambre’s situation with Dennis was on July 27, 2015, the second day of proceedings. (AR 59, opening paragraph.)

and appeared to be part of Crawford's attempts to intimidate her. (AR 76, FF 74.)

Detective Hixson testified regarding his efforts to obtain airline and hotel records concerning the trips Delcambre took to California to obtain oxycodone for Crawford. (AR 76-77, FF 75-82.)

Hearing Officer Dempsey again details his Findings of Fact based upon the admitted evidence showing that the GPS device which was placed on Crawford's 2011 Chevrolet Impala pursuant to Spokane County Superior Court search warrant reveals that on August 22, 2014, that said Impala traveled to 3581-3599 Nevada Street in Spokane at 4:55 p.m. that day, 20 minutes after the traced Delcambre flight arrived at Spokane's International Airport. This was corroborated by Alaska Airline records. (AR 77, FF 83-85; Exhibits 9, 11; AR 259-275, 282.)

Detective Hixson's investigation further showed that a "passenger profile address" of 1810 W. 29<sup>th</sup> Street in Long Beach, California, which is the address listed for Lafaven Adams, showed Adams had purchased the ticket for the April 14, 2014, flight on Alaska Airlines that Delcambre took from Spokane to Long Beach, California. Detective Hixson testified that he found Adams's address on a number of pages in the flight records. (AR 77-78, FF 86.)

SRSSTF also produced evidence as to the price and transportation of oxycodone pills, which showed that 30-mg. oxycodone pills typically sold for \$10 to \$15 per pill in the Los Angeles area. There was considerable evidence that Lawler paid a minimum of \$26 per pill to Crawford and re-sold them at \$29 to \$30 per pill. Delcambre also said the sale price on the oxycodone pills Crawford sold Dennis was \$26 per pill. (AR 78, FF 87.)

There was also considerable and specific un rebutted evidence from Detective Hixson which was adopted by the Hearing Officer that it was not uncommon to have drug dealers get individuals to smuggle controlled substances in a condom implanted in their body, as Delcambre testified. Detective Hixson testified there were drug dealers (other than Crawford) in the area who had recently used a similar method of transporting drugs in a condom. (AR 78-79, FF 88, 91; AR 89, FF 154.)<sup>5</sup>

Detective Michael Bahr, who is with the Spokane Police Department and was working in 2015 with the Federal Drug Enforcement Agency, was called as a witness as he had been involved in a felony drug arrest of Crawford in October 2002. Detective Bahr testified he arrested Crawford on October 4,

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<sup>5</sup> Crawford appears to have abandoned issues relating to the cost of oxycodone pills and what quantity(ies) were involved as he has not challenged the factual basis in this preceding nor made any assignment of error to those factual findings by the Hearing Officer. Such unchallenged findings are verities on appeal. *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 176 Wn.2d 662, 675, 295 P.3d 231 (2013); *Custody of C.D.*, 188 Wn. App. 817, 827, 356 P.3d 211 (2015).

2002, for dealing crack cocaine in Spokane and that Crawford had delivered cocaine to a confidential informant inside a vehicle Crawford was driving during a controlled buy. Detective Bahr interviewed Crawford after the arrest, and *Miranda*<sup>6</sup> warnings had been given. Crawford indicated to Detective Bahr he had sold cocaine since 1989, sold heroin for the past six months and started buying crack cocaine and heroin in Long Beach, California and made an average \$2,000 per month selling controlled substances. When Detective Bahr arrested Crawford, he had \$1550 in cash in his left front pants pocket, similar to his arrest on November 12, 2014. (AR 79-80, FF 94-95, 97.)

Detective Bahr further testified Crawford had advised him in 2002 that Crawford had a job in the construction business and was part owner of a janitorial firm and that Crawford was purchasing a house at W. 5112 Pacific in Spokane. Crawford admitted money from drug selling had gone into the down payment for that house, and that he, Crawford, had comingled money from “legitimate work” with drug sales proceeds regarding the house purchase and payments on that house. (AR 79, FF 96.)

There is reference in Crawford’s brief at page 14 to the sale of real estate and to gifts or loans from family as possible explanation for the large amount of money in Crawford’s accounts. Interestingly enough,

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<sup>6</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).

Detective Bahr's testimony shows that the only real estate discussed in these forfeiture proceedings owned at one time by Crawford was purchased by his own admission at least in part with drug proceeds. Crawford had previously responded to interrogatories propounded by SRSSTF in March, 2015 as follows:

**INTERROGATORY NO. 3:** For each fact stated in response to Interrogatory No. 2, identify each witness, including expert witnesses, you intend to call to establish such facts at trial or hearing, and describe in detail each witness's anticipated testimony. For each witness, please provide the witness's name, address, and telephone number, and where the witness is claimed as an expert witness, please provided his/her resume or curriculum vitae.

**ANSWER:**

**Shujuana Sanders:** Will testify that moneys were provided to me from the sale of real property.

**Trini Crawford:** Will testify that he provided money to me in varying amounts from 2012 to 2014.

**Antonio Crawford:** Will testify the Property was obtained from various sources as noted above including, \$14,209.00 from student loans from January 2013 to October 2013.

AR 427.

Yet, despite the specific response that "Shujuana Sanders will testify that moneys were provided to me from the sale of real property," Crawford did not call her as a witness, supposedly on the "sale of real property" matters.

Crawford lists names of relatives in response to SRSSTF's Interrogatory No. 28 (AR 437), which indicated seven names. Sanders is also listed there, with the names of son "Avante Crawford" (AR 129) and "Trini Crawford," brother, and others (AR 437). None of those seven testified in person or by telephone, despite the fact the Hearing Officer generally allowed testimony by telephone as Lewis Pardun testified. (AR 61, FF 16(c).) Interestingly, Crawford's only witness, Felicia Houston, was not listed as a witness.

Patti Neace and Jessica Neace were called as somewhat hostile witnesses by SRSSTF. (AR 61, FF 16(b), 16(d).) Jessica Neace is Crawford's girlfriend, and Patti Neace is Jessica's mother. (AR 82-84, FF 112, 115.) They owned "Urban Blends Coffee" at Spokane Northtown Mall. They further corroborated Crawford's use of the nickname "Tone" and that "Tone" did work at Urban Blends. They acknowledged some of their paperwork and tax information was incomplete and that some of Crawford's work there involved taking care of Jessica's child. (AR 82-84, FF 110-117.)

Certain "payroll information" from Urban Blends Coffee was admitted into evidence. (Exhibit 8; AR 231-258.) Most, if not all, of those records were prepared by Jessica Neace, Crawford's girlfriend. Jessica Neace noted she prepared those invoices for Crawford's Parole Officer. Patti Neace, would have preferred to pay Crawford "under the table," than have her

daughter, Jessica Neace, make out payroll stubs that Crawford needed for his parole officer. (AR 83, FF 112.) There was no evidence this income was fully stated in tax returns. This was testified to by FBI Forensic Accountant Jennifer Boswell. (AR 231-257, 130.) For example, it appears Crawford was paid \$730 by Urban Blends Coffee in 2013 and did not report such on the 2013 tax return. (AR 87, FF 136.)

Jennifer Boswell, Forensic Accountant employed by the FBI, testified at length regarding the financial records not only seized by search warrants, but information relating to interrogatories submitted and answered by both sides. (AR 112-166; AR 61, FF 16(f); AR 81-82, FF 103-109; AR 84-85, FF 117-124; AR 85-89, FF 126-153; AR 89-92, FF 156-178; AR 112-166.)

Ms. Boswell discussed several exhibits, particularly Exhibit Nos. 17 and 19 relating to Crawford's Bank and Credit Union information. (AR 61, FF 16(f); AR 326-396, 404-411.) As noted, Ms. Boswell also considered and discussed interrogatory response by the parties, and Exhibit 22 in particular. (AR 423-439.)

Exhibit 22 involved interrogatories of SRSSTF responded to by Crawford and counsel.<sup>7</sup>

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<sup>7</sup> AR 427-438. Although under RCW 69.50.505 the seizing agency has the burden to establish the property was subject to forfeiture by a preponderance of the evidence, interrogatory responses anticipated the possibility there might be evidence as to how such property may not be subject to forfeiture or used in, obtained from, or intended to be used in the "drug trade," specifically oxycodone. However, Crawford introduced no evidence to

Those interrogatory responses included a response to Interrogatory No. 2, which was as follows:

**INTERROGATORY NO. 2:** Please state, with particularity, each and every fact you intend to establish at trial or hearing to support your contention that the property listed in Interrogatory No. 1, is not subject to forfeiture under the provisions of Chapter 69.50 of the Revised Code of Washington.

**ANSWER:** The “property” was not furnished in exchange for a controlled substance and is not the proceeds of any exchange of a controlled substance. The Property was acquired by me from the following sources:

School loans  
Employment  
Sale of Real Property  
Gifts/Loans from Family Members  
Tax Refunds

AR 427.

Further, Ms. Boswell testified as to several things, which include:

1. 97.24% of all payments Crawford made were in cash.

(AR 120, 124.)

2. \$30,729.84 of various withdrawal payments including

large dermatology and orthodontist payments. (AR 120-121.)

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support such, nor was there any evidence introduced to show any sums directly were subject of real estate proceeds. The only reference to such was from Detective Bahr as noted, and to the extent those involved possible real estate sums, they were shown to have been at least partially from drug sales in 2002. Jennifer Boswell testified there was no evidence Crawford received any money from relatives despite Crawford’s response(s) to Interrogatory Nos. 28 and 29 and Request for Production No. 14. (AR 437-438.) In fact, there was evidence of money from Crawford going out of his account(s) to relative Trini Crawford, (AR 144-145), which was also testified to by Jennifer Boswell.

3. \$30,729.84 in largely ATM and counter (at bank/credit union) withdrawals in 2013. (AR 122-123.)

4. 2013 deposits to accounts were \$13,000 by check and \$21,000 in cash. (AR 123.)

5. Car payments of \$4,600, all made in cash. (AR 124.)

6. Over \$5,600 in dental expenses, a lot of the money considered reported income for two years was only \$10,693. (See footnote 8.) (AR 125-126.)

7. The failure to list well over \$10,000 in dental insurance and car payments as living expenses. (AR 125-127.)

8. Crawford showed an income on W-2 of \$4,218 for tax year 2013 claiming two dependents, including Antonio Crawford and Avante Crawford and 2014 income of \$6,475. (AR 129-130.)<sup>8</sup>

9. No income from Urban Blends in tax year 2013 was listed on his return and clearly not all of said income was listed on the 2014 tax return, if any. W-2s did not adequately explain the 2014 return. (AR 130-131.)

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<sup>8</sup> Note reported income on 2013 and 2014 tax returns prepared by Crawford totaled \$10,693, about the same amount he paid for car and dental expenses during the same time period. Hence, the money reported to the IRS would not support any rental or living or other expenses. (AR 123-124, 129-130; Exhibits 21, 23; AR 81, FF 107; AR 81, 413-422, 440-449.)

10. Crawford's response to SRSSTF's Interrogatory No. 9 listed income of \$630.00 per month. Ms. Boswell's analysis of \$1,738.88 per month living expenses. (AR 131-132; Exhibit 22, p. 430.)<sup>9</sup>

11. \$96,000 went into various accounts of Crawford during the period of Ms. Boswell's analysis, from September 1, 2012 until October 31, 2014, with \$35,759 of said sum cash. (ROA p. 133.)

12. Loans placed into accounts amounted to roughly \$9,400 per Ms. Boswell's analysis. (ROA p. 136.)

It would not seem necessary to go into more examples of Ms. Boswell's testimony as those involved un rebutted facts placed before Hearing Officer Dempsey and the subject of many of his findings as previously noted.

With the above in mind and all of the record which contains nearly 700 pages over the four days of testimony and exhibits, seasoned Hearing Officer Dempsey granted forfeiture to SRSSTF.

### **III. STANDARD OF REVIEW**

It is initially important to note several principles of law relating to the standard(s) of review of this Administrative Hearing. Of course, review of Hearing Officer Dempsey's decision is not de novo.

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<sup>9</sup> Again, please note, the listed monthly expenses in interrogatory responses from Crawford showed only \$630.00 of monthly expenses, less than average monthly expenses for dental and car payment expense alone. (AR 131-132, 430.)

In general, the scope of judicial review of such administrative decisions is limited to determining on the record before the agency or hearing officer whether the acts complained of by the appellant were arbitrary and capricious or contrary to law. *Foster v. King County*, 83 Wn. App. 339, 346, 921 P.2d 552 (1996); *Bridle Trails v. Bellevue*, 45 Wn. App. 248, 251-52, 724 P.2d 1110 (1986).

Further, this Court is performing an appellate function in its review so it cannot substitute its judgment for that of the Hearing Officer's judgment should it be so inclined. *Vancouver v. Jarvis*, 76 Wn.2d 110, 114, 455 P.2d 591 (1969); *Leavitt v. Jefferson County*, 74 Wn. App. 668, 677, 875 P.2d 681 (1994); *Western Ports Transportation, Inc. v. Employment Security Dept.*, 110 Wn. App. 440, 449, 41 P.3d 510 (2002). The reviewing court is not free to substitute its judgment for the Hearing Officer's, nor act in a "supervisory role" to him. *Wilson v. Nord*, 23 Wn. App. 366, 371-72, 597 P.2d 914 (1979).

Additionally, unchallenged findings of fact by the agency, here the Hearing Officer, are verities on appeal with the burden of asserting the invalidity of the action/decision upon Petitioner as the one who challenges it. See *State v. Chacon Arreola*, 176 Wn.2d 284, 288, 290 P.3d 983 (2012); *Heidgeken v. Dept. of Nat. Res.*, 99 Wn. App. 380, 384, 993 P.2d 934 (2000), *rev. den.*, 141 Wn.2d 1015, 10 P.3d 1071 (2000); *Pres. Our Islands v. Hearings Board*, 133 Wn. App. 503, 529, 137 P.3d 31 (2006).

There are really no specific findings formally challenged by Crawford. See RAP 10.3(g), meaning they are verities on review. See, *State v. Rooney*, 190 Wn. App. 653, 658, 360 P.3d 913 (2015), *review denied*, 185 Wn.2d 1032 (2016), citing *State v. Bonds*, 174 Wn. App. 553, 562, 299 P.3d 663, *review denied* 178 Wn.2d 1011, 311 P.3d 26 (2013).

The reviewing Court may also not substitute its judgment as to a witness' credibility or the weight to be given the testimony where there was conflicting evidence. See *Western Ports Transportation, Inc*, 110 Wn. App. at 449. Circumstantial and direct evidence are equally reliable. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004), abrogated in part and other grounds by *Crawford v. Washington*, 541 US 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Hence, the Appellate Court is reviewing the agency's decision and order and not the decision of the Superior Court. *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000).

The reviewing Court must affirm any findings which are supported by substantial evidence and which support the Conclusions of Law. Further "substantial evidence is a quantum of evidence sufficient to convince a rational, fair-minded person the premise is true." *City of Walla Walla v. \$401,333.44*, 164 Wn. App. 236, 255-56, 262 P.3d 1239 (2011);

*Inland Foundry Company, Inc., v. Dept. of Labor and Industries*, 106 Wn. App. 333, 340, 24 P.3d 424 (2001).

Additionally, hearsay testimony is admissible in the judgment of the Hearing Officer. See RCW 34.05.452; *Pappas v. Employment Security Dept.*, 135 Wn. App. 852, 857, 146 P.3d 1208 (2006); *Union Elevator & Warehouse Company, Inc. v. State Dept. of Transportation*, 144 Wn. App. 593, 607, 183 P.3d 1097 (2008).

Also, the purpose of forfeiture proceeding is to punish individuals who participate in the illegal dealing of controlled substance. See *Valerio v. Lacey Police Dept.*, 110 Wn. App. 163, 176, 39 P.3d 332 (2002).

Here Antonio Crawford has the burden of demonstrating the invalidity of the Hearing Officer's decision. See RCW 34.05.570(1)(a). And, in order to overturn the Hearing Officer's decision, Crawford must establish one of the grounds set forth in RCW 34.05.570(3).

Regarding Crawford's claim of the lack of "substantial evidence" in the record to support the Hearing Officer's decision, courts have devised various comments or "tests" to see whether substantial evidence exists. Those "tests" include firstly whether "such evidence as would convince an unprejudiced, thinking mind of truth of the declared premises." *Keene v. Board of Accountancy*, 77 Wn. App. 849, 858-59, 894 P.2d 582, *rev. den.*, 127 Wn.2d 1020, 904 P.2d 300 (1995); *Jefferson County v. Seattle Yacht*

*Club*, 73 Wn. App. 576, 588, 870 P.2d 987 (1994); *State v. Hardgrove*, 154 Wn. App. 182, 185, 225 P.3d 357 (2010); *Patterson v. Superintendent of Public Instruction*, 76 Wn. App. 666, 674, 887 P.2d 411 (1994).

Secondly, a “test” determines whether there is “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.” *Campbell v. Board for Volunteer Firefighters*, 111 Wn. App. 413, 418, 45 P.3d 216 (2002), and *Western Ports Transportation, Inc.*, 110 Wn. App. at 449-50; *Johnson v. Dept. of Health*, 133 Wn. App. 403, 411, 136 P.3d 730 (2006); *Mowat Construction Company v. Dept. of Labor and Industries*, 148 Wn. App. 920, 925, 201 P.3d 407 (2009).

A third “test” or comment has also been stated recently in *Peste v. Mason County*, 133 Wn. App. 456, 136 P.3d 140 (2006):

“[S]ubstantial evidence” is evidence sufficient to convince an unprejudiced, rational person that a finding is true. *Isla Verde Int’l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751-52, 49 P.3d 867 (2002). This factual review is deferential, requiring us to view all the evidence and reasonable inferences “in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority...” *Freeburg v. City of Seattle*, 71 Wn. App. 367, 371-72, 859 P.3d 610 (1993) (quoting *State ex rel. Lige & Wm. B. Dickerson Co. v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992)).

*Id.* at 477

Deference is given to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the witness. *Thomas*, 150 Wn.2d at 874-875; *Schofield v. Spokane County*, 96 Wn. App. 581, 586, 980 P.2d 277 (1999).

Antonio Crawford's appeal, as noted, is pursuant to the Administrative Procedure Act, RCW 34.05. The main relevant statute, RCW 69.50.505, relates to forfeitures.

Respondent has the burden to show the property was subject to forfeiture, RCW 69.50.505(5), by a preponderance of evidence.

Respondent's burden of proof can be satisfied by direct or circumstantial evidence. *Sam v. Okanogan County Sheriff's Office*, 136 Wn. App. 220, 229, 148 P.2d 1086 (2006); *City of Lynnwood v. \$128.00 Cash*, 61 Wn. App. 505, 514, 810 P.2d 1377 (1991).

Crawford has the burden of demonstrating the invalidity of the Hearing Officer's decision. See RCW 34.05.570(1)(a). And, in order to overturn this decision, Crawford must establish one of the grounds set forth in RCW 34.05.570(3) and it appears Crawford focused on alleged insufficiencies of evidence under RCW 34.05.570(3)(e). That statute provides as follows:

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which

includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

*Id.* (emphasis added).

With these principles of law in mind, it is time to illustrate how and why there was clearly substantial evidence in this record to support Hearing Officer Dempsey's decision(s).

#### IV. ARGUMENT

##### **A. APPELLANT'S REQUESTED REVIEW IS LIMITED BY FAILURE TO ASSIGN ERROR TO CERTAIN FACTS FOUND BY THE HEARING EXAMINER.**

SRSSTF notes that the general law has been where a party fails to assign error to administrative findings, such findings are verities on appeal and thereby requires only a very limited review as to whether the findings support the conclusions of law. *Fuller v. Employment Security Dept. of State of Washington*, 52 Wn. App. 603, 606, 762 P.2d 367 (1988). See, also, RAP 10.3(g) and RAP 10.3(h).

Here, it appears there is no specific assignment of Findings of Fact 206-210, 128-129, 137, 161-162, 165, 169-170, and 175. Further, some findings which were discussed, initially 129, 137, 169, 170, and 175, were not completely listed further precluding review.

Crawford does make a very general challenge in his second assignment of error stating there was not substantial evidence to support

forfeiture. However, such is a general challenge and not specific enough for review where no findings are formally challenged. Thus, it would appear much of his challenge is precluded for review. This will be discussed further, later in this brief, as Crawford also attempts to challenge findings before this Court which were not even discussed before the Superior Court which he cannot do as later discussed.

**B. THE HEARING EXAMINER MADE NUMEROUS SPECIFIC FINDINGS OF FACT TO SUPPORT THE CONCLUSION THAT THE SEIZED PROPERTY IS SUBJECT TO FORFEITURE**

SRSSTF acknowledges that RCW 69.50.505(1)(g) requires it establish forfeiture by a preponderance of the evidence and that Crawford bears the burden of showing the action of the Hearing Examiner's actions is unsupported as noted in RCW 34.05.570(1)(a) and (b) and RCW 34.05.570(3).

Crawford proceeds to cite Findings of Fact 206-210 (AR 97-98) for the proposition they are actually conclusions of law. He also cites *Inland Foundry Company, Inc., v. Dept. of Labor and Industries*, 106 Wn. App. 333, 340, 24 P.3d 424 (2001) for such proposition.

Although some of the language in some of those findings may appear conclusory, the findings reflect the overall factual evidence placed before the Hearing Officer. The overwhelming amount of uncontested evidence, includes the comingling of monies into fifteen local bank/credit union

accounts which monies were intended to be furnished in exchange for a controlled substance in violation of RCW 69.50, proceeds in which all or in part traceable to an exchange or series of exchanges and drug dealings to facilitate a violation of RCW 69.50. (AR 97, FF 207.)

Further, Hearing Officer Dempsey found comingling of possibly legitimate and clearly illegal proceeds of drug monies or proceeds deposited into Crawford's accounts to disguise and to "launder" such illegal monies. This was done to avoid detection by law enforcement. Crawford was found to have done this by the Hearing Officer. (AR 98, FF 208.)

Finding of Fact 209 (AR 98) relates to Crawford's bank accounts and states the amounts seized from Crawford, which are uncontested facts – and that they were seized in January 2015, and that they were furnished or intended to be furnished by or to Crawford or others in exchange for controlled substances violations. Again, these are undisputed facts.

Likewise, Finding of Fact 210 (AR 98) also states money – \$1,000 seized on November 12, 2014, incident to Crawford's arrest, was money furnished or intended to be furnished in exchange for controlled substance, or a combination of legitimate money that Crawford intentionally comingled with illegal drug proceeds in order to facilitate a violation of RCW Chapter 69.50, a drug transaction.

SRSSTF contends the testimony and evidence support these factual findings.

Crawford then goes into discussion of certain other factual findings – numbers 128, 129, 137, 161, 162, 165, 169, 170, and 175. Crawford attempts to dispute that they are legitimate findings of fact, but claims they are insufficient findings to support forfeiture. Crawford discusses these findings of fact on pages 10 and 11 of his brief.

Initially Findings of Fact 129, 137, 169, 170, and 175 are not completely quoted and taken out of context. (See AR 86, 87, 91, and 92, respectively).

Secondly, for example, the fully quoted Finding of Fact 128 (AR 86) also cites to Exhibits 5, 17, and 19 – AR 207, 326-396, respectively, merely points to the unknown sources of \$40 of deposits relating to \$5,474.17. The remainder was traced to bank and employment security documents and comingled; \$39 was traced to a money order.

Finding of Fact 129 deals with larger sums of money, but notes the “unknown source” money was from money order and cash deposits, often consistent with drug transactions. This is particularly significant in the fact the concluding sentence was deleted from that finding. The finding is listed below with the portion deleted by Crawford underlined:

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. This was during a time that Crawford was out of prison and in a halfway house in Spokane; and, according to Mitch Lawler, was supplying large quantities of oxycodone pills to buyers in the Spokane area through third parties.

AR 86.

Obviously, the Hearing Officer believed based upon the stipulated testimony of Mitch Lawler that the funds were "more likely than not" derived from illegal controlled substance sales. Clearly, once SRSSTF established such it was incumbent upon Crawford to provide any contrary evidence he had to rebut such, and he never did. Thus, Finding of Fact 129 was reasonable and supported.

Additionally, an analysis regarding Finding of Fact 137 is similar. That finding is listed below with the portion Crawford deleted on page 10 of his brief underlined:

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 approximately \$730 in cash that 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. This is an average of approximately \$1,900 per month, similar to the \$2,000 per month average that Crawford stated he earned from selling crack cocaine and heroin when he was arrested on federal drug charges in 2003.

AR 87.

Regarding Finding of Fact 137 (AR 87), the deleted part in Crawford's brief points out to the analysis of the Hearing Officer that the amounts of money in addition to legitimate sources was very similar to the amount of money Crawford admitted to Detective Bahr he had made per month, selling cocaine when he was arrested on federal drug charges in 2003.

These deletions as pertain to several findings of fact are significant as they reflect the Hearing Officer's total findings, thinking, and analysis of the overall testimony presented at the lengthy hearing. They reflect consideration of the FBI's Jennifer Boswell who testified at length to money coming into and going out of Crawford's several accounts.

Findings of Fact 169, 170, and 175 are also not quoted completely in Crawford's brief at page 11. Those findings are also presented in their entirety with the left out portions underlined as noted:

169. On June 25, 2014, Antonio Crawford cashed 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. The remainder of the activity in the account consisted of a series of small electronic withdrawals to Primerica, through October 6, 2014, and a \$100

cash deposit on August 11, 2014; which resulted in an ending balance of \$6,976.89 on October 31, 2014.

170. On October 31, 2014, Antonio Crawford cashed 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. This increased the balance in the account from \$2,075.44 to the ending balance of \$7,378.29 shown in the account on October 31, 2014. See Exhibit 17.

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. It is conceivable that some of this money, or some portion of Crawford's unexplained cash income, consisted of proceeds from the sale of the house that Crawford had at the time of his 2002 arrest on federal charges. Since Crawford purposely comingled his legitimate income with illegal drug income to purchase the home, the proceeds from the sale would be subject to forfeiture under RCW 69.50.505.

AR 326-396.

These findings, and particularly Findings of Fact 170 and 175, have great significance in that Finding of Fact 170 cites Exhibit 17 (AR 326-396) which is the exhibit completed by Ms. Boswell, and Finding of Fact 175 also discusses the comingling of funds and how some of that \$25,000 in the safety deposit box may have been from the sale of a house that was comingled drug monies from his earlier federal arrest and the subject of forfeiture under RCW 69.50.505. Thus, if that occurred it was subject to forfeiture. It is significant in his reconsideration motion Crawford only challenged the seizure of the \$25,000 in the safety deposit box and nothing further. (AR 49-53.) Yet,

he does not mention Finding of Fact 175 (AR 92) in his brief to the Superior Court.

Crawford then discussed how he believes the Hearing Officer “shifted the burden of proof” in this case to him. This clearly did not occur. In this regard, Crawford conveniently forgets that the law provides once law enforcement has established that property is subject to forfeiture, RCW 69.50.506(a) potentially shifts the burden of any exemption or exception to forfeiture upon the person claiming it. See *Forfeiture of One 1970 Chevrolet Chevelle v. Snohomish Regional Drug Task Force*, 166 Wn.2d 834, 837, 215 P.3d 166 (2009). Further, in reality, the Hearing Officer simply believed and found that the evidence submitted by SRSSTF was very credible and substantial.

Hence, the fact that SRSSTF has the burden to prove that forfeiture is appropriate does not mean Crawford does not need to put on any evidence – which largely occurred here – where the Hearing Officer or trier of fact believes and finds the evidence SRSSTF presented as clearly credible and substantial.

Crawford spends most of pages 12 and 13 of his brief speculating as to what the Hearing Officer thought or assumed. As noted, there was overwhelming evidence of drug transactions presented, such as the June 10, 2014, transaction where Lawler, arriving at Wal-Mart, sold to Pardun after

obtaining the oxycodone pills from Crawford who drove Lawler to Wal-Mart.  
(AR 176, FF 29, 45, 47, 49, 51-54, 59-65.)

As Honorable Michael P. Price, Superior Court Judge, noted in his  
August 12, 2016, Memorandum Decision:

Here, the Court is satisfied that the hearing officer below in fact made multiple findings directly related to funds, which were sized by the SRSSTF in the amount of \$79,948.17. The significant volume of evidence submitted by the government, coupled with the de minimis evidentiary response by Mr. Crawford acts to fully support the hearing examiner's decision. The December 9<sup>th</sup>, 2015, decision is therefore fully affirmed by this Court.

CP 59.

**C. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT FINDINGS OF FACT BY THE HEARING OFFICER UNDER RCW 69.50.505.**

Initially, it is important to note Crawford did not make specific challenges to any individual Findings of Fact as required to do in order to allege error before either the Superior Court or the Court of Appeals.

Further, it does not appear the following Findings of Fact were even mentioned in Crawford's brief before the Superior Court, although some of them are mentioned in his brief before this Court.<sup>10</sup> Those findings not mentioned in his Superior Court brief are listed with those findings which are referenced only before this Court and not in the Superior Court in parentheses

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<sup>10</sup> Crawford did not request the parties' memoranda before the Superior Court to the Court of Appeals. SRSSTF has filed a Supplemental Designation of Clerk's Papers for these pleadings, but they have not yet been prepared for transmittal to this court. See RAP 9.6.

next to them by number. SRSSTF suggests any alleged error by Respondent relating to those findings in parentheses should not be considered by this Court.

1 – 47; (5-7, 14-16, 30, 32, 35, 38)

49 – 68; (51-54, 56, 58, 63, 67, 68)

70 – 86; (76)

88 – 121; (96, 119, 120)

125 – 127

133 – 153; (133, 137)

156, 158, 160, 164, 166, 168;

171 – 174; (174)

175, 177; (175 on pp. 11 and 15)

209 – 211 (209-210)

Hence, as previously mentioned it should be assumed that all finding of fact listed above are in fact verities on appeal. *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 176 Wn.2d at 675; *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

Further, there does not appear to be too much law in Washington on the issue of raising or attempting to raise issues in the Appellate Court not raised in a Superior Court appeal, there are some cases which did deal directly or indirectly with it. In *Mid Mountain Contractors, Inc. v.*

*Washington State Dept. of Labor and Industries*, 136 Wn. App. 1, 146 P.3d 1212 (2006), Division I of the Court of Appeals noted how *Mid Mountain* in an appeal from the Superior Court decision affirming a decision by the Board of Industrial Insurance Appeals had abandoned a hearing issue on appeal to Superior Court and Division I failed to reach that issue and stated:

... Because Mid Mountain abandoned that issue on appeal to the superior court, we do not reach the issue now.

At the hearing before the BIIA, Mid Mountain objected to the admission of hearsay evidence by Scott Reiquam on redirect examination. However, Mid Mountain failed to argue this issue before the superior court. We may decline to consider an issue that was inadequately argued below. Accordingly, we do not reach this issue.

*Id.* at 7-8 (citing *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 36–37, 42 P.3d 1265 (2002)).

Similarly, Division II appears to have limited review of such issues in *ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm'n*, 151 Wn. App. 788, 214 P.3d 938 (2009), *aff'd*, 173 Wn.2d 608, 268 P.3d 929 (2012), *as corrected* (Mar. 20, 2012).

Division III appears to have discussed the issue only in criminal cases. See *State v. Lazcano*, 188 Wn. App. 338, 355, 354 P.3d 233 (2015), *as amended on reconsideration in part* (Aug. 20, 2015), *review denied*, 185 Wn.2d 1008, 366 P.3d 1245 (2016), and *State v. Kalakosky*,

No. 32476-1-III, 2016 WL 5799345, 196 Wn. App. 1024 (2016) (unpublished), cited per GR 14.1(a) as persuasive authority (slip opinion). *Kalakosky* is an unpublished opinion and not binding upon this Court. *Kalakosky* cites *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 37, 42 P.3d 1265 (2002), for a similar proposition.

These verities include, at minimum, the following information with an asterisk by the finding number, were not even mentioned or cited to in the Superior Court, but are raised in this Court.

Finding of Fact No.	Description
(28)	Identity of “Tone” as Crawford;
(29)	Ongoing purchasing by Pardun from Lawler of oxycodone pills 2-3 times per week at an average \$29-\$30 per pill;
(30-39)*	The fact of the “controlled buy” at Wal-Mart on June 10, 2014, and Pardun’s, Lawler’s, and Crawford’s involvement therein;
(40-45)	Lawler’s drug activity with Crawford;
(47)	Lawler’s dealing over two (2) years with Crawford, most specifically Lawler’s obtaining oxycodone pills from Crawford for use and re-sale;
(49)	Admission of contact by Lawler with Crawford after Lawler spoke with Detectives Hixson and Miller;
(51-54)*	Relating to other drug sale like activities observed by Detective Hixson in August, 2014, after the “controlled buy”;

Finding of Fact No.	Description
(59-61)	No challenge to findings of Mitch Lawler’s testimony implicating Crawford in the “controlled buy” at Wal-Mart and that Lawler had been the intermediate between by Crawford and Pardun;
(62-65)*	No challenge to findings of Lewis Pardun’s testimony as to the “controlled buy” at Wal-Mart;
(68)	No challenge to the finding Crawford approached Shakayla Delcambre about making trips for him to California to get oxycodone and bringing it back to Spokane, including sending flights to California per period of time between approximately June, 2013 and September, 2014, staying at the Budget Inn in Bellflower, California and that Delcambre was paid \$500 per trip by Crawford giving her a “green dot” card, and obtaining oxycodone pills;
(71-73)	No challenge to findings relating to Crawford’s trying to persuade Delcambre from testifying in the forfeiture hearing and urging her not to cooperate with the police;
(74)	The contact with Delcambre from Demetrius Dennis, who was involved in an oxycodone buy with Delcambre and Crawford, suddenly turning up attempting to contact Delcambre just after she is listed as a witness in this proceeding;
(83-85)	The contact revealed by court-authorized GPS tracing of Crawford’s picking up and taking Delcambre to her mother’s house at 922 E. Gordon, Spokane, Washington, on August 22, 2014, after her return to Spokane, corroborating Delcambre’s testimony;
(91)	The Hearing Officer’s taking notice of the calculation of 5,000 30-mg. oxycodone pills in a condom given to Delcambre by Lafaven Adams in California for return to Crawford;

Finding of Fact No.	Description
(94-98)*	Detective Bahr's testimony mentioned earlier;
(102)	Detective Hixson's rebuttal of the only witness Crawford puts forward as found by the Hearing Officer;
(103-109, 117-121*, 125-127, 130-131, 133-153*, 156, 158, 164, 166, 168, 171-174*, 176-177*)	This material relates to financial information which was analyzed by FBI's accountant Jennifer Boswell;
(179-205, 209-211)*	Various mostly Findings of Fact and some likely mixed questions of Finding of Fact and Conclusion of Law unchallenged by Crawford before the Superior Court, although partially discussed before this Court.

It is extremely important to note other than a small amount of testimony from witness Felicia Houston, Crawford never testified nor offered any amount of evidence to rebut any of the claims made by SRSSTF. In fact, Houston actually corroborated SRSSTF's contention and Delcambre's statement that when Delcambre was picked up at the airport, she was returned to her mother's house. (AR 80, FF 100.) Houston also corroborated the fact "Crawford Entertainment" was essentially a "shell of a business" as Houston had no knowledge of it and Jennifer Boswell found no income from it. (AR 80-81, FF 100-102; AR 145-146, 479-81.)

Further, Crawford readily admitted that – at least for purposes of this appeal – there was sufficient evidence to support the Hearing Officer's

findings that he engaged in the sale of oxycodone.<sup>11</sup> He further admits the sufficiency of the evidence to support such. Crawford attempts to limit his participation in the “distribution” of oxycodone and attacks witnesses Delcambre and Lawler due to the fact they received consideration.<sup>12</sup> Of course, Pardun was not mentioned and specifically did not receive any consideration to testify at the forfeiture hearing and Lawler did not physically testify in that hearing, only stipulated testimony from the criminal trial was admitted. Thus Lawler was not given any consideration and did not physically testify before the Hearing Officer. Despite Crawford’s attempt on appeal to limit his involvement in the sale of oxycodone, he did not testify nor offer any controverting evidence on the key issues the Hearing Officer had to consider. Of course, as noted earlier in this brief, the factual determinations have been made by Hearing Officer Dempsey which cannot be disturbed in this appeal unless they lack “substantial evidence” or are “clearly erroneous” as previously noted. There was evidence from Lawler, Delcambre, and Pardun as to the scope of these distribution activities on the part of Crawford. Obviously, Finding of Fact 91 (AR 78-79) is the Hearing Officer’s calculation

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<sup>11</sup> Respondent SRSSTF has designated supplemental Clerk’s Papers to include the parties’ briefs before the Superior Court. No Clerk’s Paper Designation has been given as of this time. See Crawford’s Superior Court brief also, p.2, lines 1-12.

<sup>12</sup> Page5, first full paragraph on that page on Appellant’s Brief before this Court. (AR 69, FF 57; AR 72, FF 67.)

based upon the evidence presented, is significant and was challenged in the Superior Court, but is not even mentioned in Crawford's appellate brief and therefore is abandoned.

That calculation is based upon evidence in the record from Delcambre, and consistent with other testimony and SRSSTF's investigation, Jennifer Boswell's testimony and Crawford's finances. Also, SRSSTF's proof only need be by a preponderance of evidence at that hearing. Hearing Officer Dempsey found that "controlled buy" occurred. (AR 93-96, FF 186-198.) It is clear crucial credibility findings went "against" Crawford on those issues both in the hearing and in Crawford's reconsideration motion. In denying Crawford's reconsideration motion, Hearing Officer Dempsey notes when distinguishing *Valerio v. Lacy Police Dept., supra*, as follows:

The facts in the current case are clearly distinguishable from *Valerio*, and the related appellate cases cited therein, because there is overwhelming evidence in the record that the \$25,000 is comprised of monies furnished in exchange for a controlled substance, legitimate monies purposely commingled with illegal drug proceeds to deter law enforcement, and/or proceeds acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW Chapter 69.50, i.e. Proceeds derived by Antonio Crawford from the sale of his house that are traceable to moneys furnished to Crawford in exchange for a controlled substance that Crawford commingled with moneys he derived from legitimate earnings.

AR 10-11, Order Denying Petition for Reconsideration (emphasis added).

Additionally, *Valerio* is subject not only to the point raised by Hearing Officer Dempsey, but was questioned recently in *City of Sunnyside v. Gonzalez*, No. 33262-4-III, 2016 WL 6124670, 196 Wn. App. 1035 (unpublished).<sup>13</sup> Crawford cites *Valerio* at page 18 of his brief regarding “burden shifting” and seems to imply the burden of proof was inappropriately shifted to Crawford by the Hearing Officer. This was not the case. As noted by both the Hearing Officer and the Superior Court Judge, the evidence here was overwhelming. Crawford appears to disagree with this conclusion despite offering virtually no substantive or rebuttal evidence.

Additionally, *Valerio* did put on some evidence – even though not found credible by the trial judge who was the fact finder there – and different than in this case. As noted previously, the only witness Crawford called did not relate to the issue involved in *Valerio* and was not even among those witnesses he listed in his discovery response.<sup>14</sup> Additionally, Mr. Valerio’s girlfriend testified. As noted recently by this Court in *City of Sunnyside*.

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<sup>13</sup> *City of Sunnyside*, is not a binding opinion upon this Court and is an unpublished opinion cited pursuant to GR 14.1(a) for persuasive authority only.

<sup>14</sup> Crawford’s only witness, Felicia Houston, was not listed as a witness in response to requested witnesses in his response to SRSSTF’s interrogatories. See AR 427-428, Interrogatory 3.

... the trial court found there was probable cause to believe the seized money was used or would be used for drug dealing, and Mr. Valerio had failed to satisfactorily refute the evidence. *Id.* Mr. Valerio appealed, and the appellate court reversed. *Id.* at 175.

*City of Sunnyside*, 2016 WL 6124670 at \*6

The *City of Sunnyside* Court went on to state:

The *Valerio* court noted Mr. Valerio *could have* acquired the \$58,300 from legal sources, such as earnings and gambling (despite tax returns stating otherwise). *Id.* at 179. The court also noted, without explanation, the drug canine *could have* alerted to odors which the money “absorbed from sources other than contact with drugs.” *Id.* at 181. The *Valerio* court reversed the trial court because the city of Lacey could not disprove, *to the appellate court's satisfaction*, the claimant's assertions. We question this decision and will not rely on it.

*Id.* at \*7.

SRSSTF respectfully asks this Court hold as *City of Sunnyside* did and reject *Valerio's* analysis, or adopt the Hearing Officer's analysis when he distinguished *Valerio* and denied Crawford's reconsideration motion. (AR 10-11.)

Finally, Hearing Officer Dempsey then goes on to indicate, again, Delcambre's trips to California went on until September, 2014, and that Mitch Lawler made at least one more purchase from Crawford after the June 10, 2014, “controlled buy” per Pardun, who as earlier noted, was found very

credible by the Hearing Officer.<sup>15</sup> The timeframe involved with Delcambre's trips and the accumulation of monies is consistent with her testimony.

This is important just as it was on October 2, 2014, when Crawford opened the safety deposit box at Numerica and placed \$25,000 in one hundred dollar bills into it. (AR 92, FF 175.)<sup>16</sup>

With the above in mind, it becomes overwhelmingly clear that there is substantial, un rebutted, and overwhelming evidence to support the Hearing Officer's decision that the seized property is subject to forfeiture under RCW 69.50.505.

## **V. CONCLUSION**

Based upon the volume of evidence submitted by SRSSTF and the lack of any contradictory evidence submitted by Crawford, SRSSTF respectfully requests Hearing Officer Dempsey's decision filed

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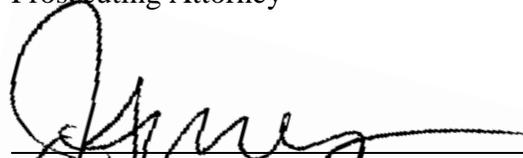
<sup>15</sup> See AR 95-96, FF 193-199.

<sup>16</sup> Please note Finding of Fact 175 is not even mentioned before the Superior Court, only in Crawford's brief to this Court and Crawford cannot do such as noted.

December 9, 2015, and Honorable Michael Price, Superior Court Judge,  
decision filed August 12, 2016, be affirmed.

Dated this 2nd day of February, 2017.

LAWRENCE H. HASKELL  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "James H. Kaufman", written over a horizontal line.

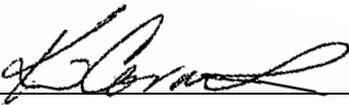
JAMES H. KAUFMAN, WSBA #7836  
Sr. Deputy Prosecuting Attorney  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington, that on February 2, 2017, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Richard D. Wall, Esq.	<u>X</u>	Hand Delivered ( <i>Atty. Serv.</i> )
Richard D. Wall, P.S.	<u>X</u>	Electronic Mail
1604 W. Dean		
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<u>February 2, 2017</u>	<u>Spokane, WA</u>
(Date)	(Place)



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