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No. 58943-1-1

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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In Re:

THE FORFEITURE OF ONE 1970 CHEVROLET CHEVELLE
(WLN CVO2849) and ONE 2004 NISSAN SENTRA (WLN) 937SRL)

APPELLANT'S REPLY

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SUMMARY OF REPLY TO RESPONDENT

1. The term “receipt” as used in RCW 69.50.505(d) is not synonymous with the term “possession”; rather, the term refers to possession with the intent to transport for purposes of sale or distribution.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The procedural history and facts of this case have been summarized elsewhere and will not be repeated here. See. E.g. Brief of Appellant (hereinafter App. B.) 2-7; Brief of Respondent (hereinafter Res. B.) 1-6.

ARGUMENT

1. The term receipt as used in RCW 69.50.505(d) means possession of narcotics with the intent to sell or distribute them, not mere possession for the purpose of individual consumption.

The State has taken the position that the term “receipt” is synonymous with the term possession. Res. B. pg. 7. However, the State’s position is conspicuously lacking in authority. There is a dearth of case law in the state of Washington regarding the definition of the term receipt in the context of civil forfeitures, nor has the legislature defined the term in RCW 69.50.505. However, a number of other jurisdictions have

forfeiture laws similar to RCW 69.50.505(d), and they have defined the term receipt, as used in that context.

For example, in Reeder v. State the Supreme Court of the Alabama held that the word receipt meant “receiving for the purpose of sale or in some way to facilitate the sale of drugs.” 314 So.2d 853, 857 (Ala. 1975). The Court specifically held that it did not mean mere possession. Id. at 857. At the time of the ruling, the statute stated in relevant part “all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt” of narcotics were subject to forfeiture. Ala. Code 22-258(57)(a)(4), *as quoted in Reeder*, 314 So.2d at 854.¹ The statute has since been amended to read in relevant part, “all conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, *possession*, or concealment of any property” are subject to forfeiture. Ala. Code 20-2-93(a)(5)(emphasis added). Undoubtedly, this was done to subject vehicles to forfeiture where the vehicle was used to possess the controlled

¹ Though Wilhite v. State later overturned Reeder, it did so only to the extent that Reeder stood for the proposition that the forfeiture statute was penal in nature. 689 So.2d 221, 224 (Ala. 1996).

substance. Regardless, the interpretation of the term “receipt” still stands as binding authority.

In State v. 1985 GMC Pickup the Supreme Court of Oklahoma interpreted a forfeiture statute similar in nature to RCW 69.50.505(d) and ruled that simple possession of a controlled dangerous substance by an occupant of a vehicle was not a proper basis for forfeiture. 898 P.2d 1280, 1281 (Okla. 1995). The Court reasoned that if the legislature intended for vehicles to be subject to forfeiture for simple possession it could have explicitly provided for such a result. Id. at 1285. Finally, in yet another state, the Utah Supreme Court decided that forfeiture of an automobile was not permissible where possession of a narcotic was not for the purpose of transporting the substance to sell or distribute. State v. One Porsche 2-Door, 526 P.2d 917, 918-19 (Utah 1974).² Presumably in response to One Porsche 2-Door the Utah legislature amended the forfeiture law in 1987 to allow for vehicle forfeitures in cases involving simple possession by defining possession as being inclusive of not only for the purpose of sale and distribution but consumption as well. Davis v. State, 813 P.2d 1178, 1180 (Utah 1991).

² One Porsche 2-Door was later overturned, but only to the extent that the State had to show a profit motive on the part of the person involved in the transportation and distribution of narcotics. State v. One 1983 Pontiac, 717 P.2d 1338, 1340 (Utah 1986).

Conversely, legislatures that authorize forfeiture based on simple possession make it explicitly known within the language of the statutes that provide for civil forfeiture. Arizona's drug forfeiture statute provides for forfeiture of any vehicle in which a narcotic is possessed by an occupant. See In the Matter of One 1965 Ford Econline Van, 591 P.2d 569 (Ariz. Ct. App. 1979); One 1976 Porsche 911, 670 F.2d 810 (9th Cir., 1979). The federal equivalent to RCW 69.50.505(d) states that "all conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, *possession*, or concealment of property" are subject to forfeiture. 21 U.S.C.S. 881(a)(4)(emphasis added). Clearly, the intent of the U.S. Congress was to provide for vehicle forfeiture in cases involving simple possession.

The same cannot be said of RCW 69.50.505(d). The term possession is used throughout the Uniform Controlled Substances Act, most notably in RCW 69.50.401, which deals with possession of narcotics with the intent to deliver or manufacture, and RCW 69.50.4013, which deals with mere possession. The legislature was presumably aware of the term "possession", as well as its legal consequences, and could have very easily included it in RCW 69.50.505(d). It deliberately chose not to do so

because the legislature never intended the term “receipt” to be read synonymously with the term “possession”.

As further evidence that the legislature intended to give the words different meanings, they are used in the same sentence of the forfeiture statute. RCW 69.50.505(1)(d)(ii) provides, “no conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor”. Statutes must be construed so that all language is given effect with no portion rendered meaningless or superfluous. State v. Keller, 142 Wash.2d 267, 277, 19 P.3d 1030, 1036 (2001). If the legislature intended the words to be identical or used interchangeably, then the provision should read no conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana *that* constitutes a misdemeanor. By including both “receipt” and “possession” in the sentence, the legislature wanted to ensure that the two terms kept a separate and distinct meaning.

Additional evidence that the legislature never intended RCW 69.505.505(d) to provide for forfeiture based solely on possession is found in the legislative purpose and findings of the legislature. The Court should look to the policies appearing on the face of the statute to determine the legislature’s intent. Dep’t of Ecology v. Campbell & Gwinn, L.L.C., 146 Wash.2d 1, 9, 43 P.3rd 4, 12 (2002). In the findings of RCW

69.505.505(d) the legislature opined that “drug related offenses are difficult to eradicate because of the profits derived from criminal activities, which can be invested in legitimate assets and later used for further criminal activities.” Legislative Findings, 1989 C271. Clearly, the legislature was concerned about the difficulty of stopping drug offenses because of the immense profits amassed by drug kingpins through narcotics trafficking. Mere possession of drugs for the purpose of individual consumption can hardly be considered an effective business model for generating wealth, regardless of whether it is legitimate enterprise. Indeed, the exact opposite would be the expected result, which was not a concern on the legislature’s mind, at least for the purposes of civil forfeitures, when they enacted RCW 69.505.505(d).

The State’s claim that the legislative findings refer only to residential and commercial properties and not vehicles misses the mark. Res. B. pg. 8. The purpose behind many, if not all, civil forfeiture statutes is to deter and punish drug *trafficking*. In deciding a case regarding the punitive and penal nature of civil forfeitures, the U.S. Supreme Court remarked that there was a “congressional intent to punish only those involved in drug *trafficking*”. Austin v. United States, 509 U.S. 602, 619, 113 S. Ct. 2801, 2811, 125 L. Ed. 2d 488, 504 (1993). The Court further remarked that Congress found that the traditional penalties of

imprisonment and fines for drug offenses were inadequate to deter drug trafficking and additional sanctions were necessary. Id. at 620. These findings are remarkably similar to the findings behind RCW 69.50.505.

Also, the State has attempted to mischaracterize this argument as asking the Court “to create a parental exception” to RCW 69.505.505(d). Res. B. pg. 8. This characterization is merely a scope shift on the part of the State to divert the Court’s attention from the real issue, which is that the State applied RCW 69.505.505(d) outside of the scope intended by the legislature. The civil forfeiture statute was never intended to be applied to cases involving mere possession, let alone to a hardworking, law abiding family like the Roos, whose only real fault was to hope for the best in their drug addicted child. The doctrine of statutory interpretation, the legislative intent, and the persuasive authority from jurisdictions with civil forfeiture laws similar to RCW 69.505.505(d) makes it clear that the Roos’ should have had their vehicles forfeited to the State under the circumstances in which they found themselves.

CONCLUSION

For the above stated reasons and the arguments contain in the appellants’ brief the hearing examiner’s orders forfeiting the Nissan and the Chevelle to the State should be overturned, the vehicles returned, and the Roos awarded attorney fees.

Respectfully submitted this 6th day of April , 2007.

A handwritten signature in black ink, appearing to read "John W. Ewers", is written above a horizontal line.

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