

8116-4

COURT OF APPEALS Consolidated Case No.'s 58943-1-I & 58944-0-I

FILED
JAN 22 2008

CLERK OF SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

SNOHOMISH REGIONAL DRUG TASK FORCE, Respondent

v.

IN THE MATTER OF THE FORFEITURE OF ONE 1970 CHEVROLET
CHEVELLE (WLN CV02849).

IN THE MATTER OF THE FORFEITURE OF ONE 2004
NISSAN SENTRA (WLN 93724L)

ALAN and STEPHNE ROOS, Appellants/Petitioners

2007 OCT 16 PM 2:47
COURT OF APPEALS
STATE OF WASHINGTON

Petition for Review

MAZZONE AND MARKWELL, LAWYERS by
Michael Torgesen, WSBA 34337
Attorneys for Appellant/Petitioner
2910 Colby Avenue, Suite 200
Everett, Washington 98201-4011
(425) 258-5458

Table of Contents

A. IDENTITY OF THE PETITIONER 1

B. DECISIONS BELOW 1

C. ISSUES PRESENTED FOR REVIEW 1

D. STATEMENT OF THE CASE 2

E. ARGUMENT 6

 1. Why Review Should be Granted 6

 2. The Court of Appeals Erred in Finding that the Appellants
 were not Innocent Owners By Improperly Imputing an
 Objective Standard of Knowledge into the Innocent Owner
 Exception to Vehicle Subject to Forfeiture 7

 a. Tellevik v. Real Property Known as 31641 West
 Rutherford 8

 b. Escamilla v. Tri-City Task Force12

 3. Even if the Court of Appeals was Correct in Imputing an
 Objective Standard of Knowledge into the Innocent Owner
 Exception to Conveyances Subject to Forfeiture, the Court of
 Appeals Erred in Expanding the Definition of that Standard
 15

F. CONCLUSION 17

G. APPENDICES

1. Court of Appeals Decision 1-24

2. Hearing Officer Decision-Nissan Sentra 1-14

3. Hearing Officer Decision-Chevelle 1-14

4. Snohomish County Superior Court Decision 1-3

Table of Authorities

Supreme Court Cases

Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 40
L.Ed 2d 452, 94 S.Ct. 2080 (1974) 9

Other Federal Cases

United States v. 141st St. Corp., 911 F2d 870 (2d Cir. 1990) 9

Washington State Cases

Escamilla v. Tri-City Task Force, 100 Wn.App. 742, 999 P.2d 625
(2000) 4, 12, 13, 14

Rozner v. City of Bellevue, 116 Wn.2d 342, 804 P.2d 24 (1991) . 11

State v Cole, 128 Wn.2d 262, 906 P.2d 925 (1995) 13

Tellevik v. Real Property Known as 31641 West Rutherford, 120
Wn.2d 68, 838 P.2d 111 (1992) 4, 8, 9, 10

Statutes

RCW 34.05.570(e) 8

RCW 69.50.505 10, 11

RCW 69.50.505(1)(d) 7, 8

RCW 69.50.505(1)(d)(ii) 6, 7, 8

RCW 69.50.505(1)(h) 10

RCW 69.50.505(1)(h)(i) 8, 9, 10

RCW 69.50.505(7)(a) 12

RCW 69.50.505(7)(b) 12

RCW 69.50.505(9)(a) 12

RCW 69.50.505(10) 12

RCW 69.50.506(a) 11

Court Rules

RAP 13.4 6

A. Identity of the Petitioner

Alan and Stephne Roos, (Roos) appellants in the Court below, ask this Court to accept review of the Court of Appeals, Division One decision designated in Part B of this motion.

B. Decision Below

On September 17, 2007, the Court of Appeals, Division One, issued a consolidated opinion, affirming the decision of the law enforcement agency's Hearing Officer forfeiting the appellants' vehicles to the law enforcement agency.¹

No motion for reconsideration was filed by appellants.

Appellants timely submit this request for review to the Washington State Supreme Court.

C. Issues Presented for Review

1. Did the Court of Appeals err in concluding that appellants were not innocent owners by imputing an objective standard of knowledge into the

¹The Court of Appeals opinion below, consolidated opinions of In The Matter of The Forfeiture of One 1970 Chevrolet Chevelle (WLN CV02849), and In the Matter of the Forfeiture of One 2004 Nissan Sentra (WLN 93724L), v. Snohomish Regional Drug Task Force, Case No. 58943-1-I and Case No. 58944-0-I, respectively, is a 24 page opinion, which is attached hereto as Appendix 1, and henceforth will be referred to by the citation, App., followed by the relevant page number to be referenced.

innocent owner exception to the forfeiture of conveyances?

2. Is the new burden of proof promulgated by the Court of Appeals in this case, the proper burden of proof for innocent owner claimants under RCW 69.50.505(1)(d)?

D. Statement of the Case

On August 16, 2005, the Snohomish County Regional Drug Task Force (SRDTF) seized a 2004 Nissan Sentra owned by appellants and operated, at that time, by their son, Thomas, based upon probable cause that the vehicle was being used to traffic in controlled substances. Appendix 2, pg. 5.²

On September 9, 2005, the SRDTF seized a 1970 Chevrolet Chevelle also owned by appellants and operated by Thomas Roos, again based upon probable cause that the vehicle was being used to traffic in controlled substances. Appendix 2, pg. 6.

On February 17th and February 24th, 2006, forfeiture hearings were

²The designated Hearing Officer issued two decisions and orders on March 8, 2006, one for the Nissan and one for the Chevrolet. Both decisions and orders are included as exhibits. The decision and order referring to the Nissan will be included as Appendix 2, and the decision and order referring to the Chevrolet will be included as Appendix 3. The respective decisions will be referred to hereinafter as App. 2, and App.3, followed by the page number of the pages to be referenced.

held on both vehicles. App. 2, pg. 1. During the two-day hearing, evidence was produced and testimony was provided both by the appellants, and their son, Thomas. *See* App. 2, App. 3. At the hearings, the SRDTF and the Roos' were represented by counsel and the hearing was presided over by a hearing officer designated by the seizing law enforcement agency. App. 2, pg.1.

Throughout the hearing, the appellants argued that both vehicles should be returned to them because they lacked knowledge of their son's use of their vehicles to engage in illicit drug transactions and thus were eligible for the innocent owner exception to the vehicle forfeiture statute. App.2, pg.2, App.3, pg. 2.

On March 8, 2006, the hearing officer issued two decisions forfeiting both vehicles. App.2, App.3. In the decisions, the hearings officer acknowledged that the record lacked evidence that the appellants had knowledge of their son's illicit drug activities. App. 2, pg. 10, App. 3, pg. 10.³ In both decisions, the hearing officer stated that the appellants "should have wondered" and "may well have actually feared" that their son was using their vehicles to traffic in drugs. App. 2, pg.12, App. 3, pg.11. Without a finding

³"The crux of this case is what did Alan and Stephne know, when did they know it, and what did they do about it. The record contains scant hard evidence on any of those questions."

of actual knowledge, the hearing officer concluded the discussion by stating “[t]hat they [appellants] failed to effectively stop that use does not make them innocent owners.” App.2, pg.12, App. 3, pg.11.

To deny the innocent owner defense to the Roos’, the hearing officer applied an objective standard of knowledge to the facts of the present case and concluded that the Roos’ knew or should have known that their son was using their vehicles to traffic in controlled substances. App. 2, pg.13, App.3, pg. 12.

The hearing officer cited two cases⁴ for the proposition that the vehicles could be forfeited with a finding that the Roos’ should have known that their son was using the vehicles to conduct illegal drug transactions. App. 2, pg. 11, App. 3, pg. 11.

On appeal, the Snohomish County Superior Court decided that, despite this being, a “close case”, and while questioning whether the legislature or the appellate courts intended for the law to be applied in cases like the present case, it felt compelled to forfeit the vehicles under the current state of the law.

⁴ *Tellevik v. Real Property Known as 31641 West Rutherford*, 120 Wn.2d 68, 838 P.2d 111 (1992), hereinafter *Tellevik*; and *Escamilla v. Tri-City Task Force*, 100 Wn.App. 742, 999 P.2d 625 (2000), hereinafter *Escamilla*.

Appendix 4, pg.3.⁵

Division One of the Court of Appeals, in a published opinion, affirmed the decisions forfeiting appellants' two vehicles and created new Washington precedent on the burden of proof that must be met by innocent owner claimants whose conveyances are subject to forfeiture. App. 1, pgs.8-10.

The Court of Appeals began its discussion of knowledge by citing the same cases relied upon by the hearing officer for the proposition that Washington Courts have previously applied an objective standard of both knowledge and consent in forfeiture proceedings. App. 1, pgs. 8-9.

While acknowledging that this was a matter of first impression in the State of Washington, the Court of Appeals relied upon the authorities cited by the hearing officer to conclude that the Roos' were not entitled to the innocent owner exception. App. 1, pg. 9. In doing so, the Court of Appeals created new precedent in Washington by (1) imputing objective knowledge into the statutory innocent owner exception regarding forfeiture

⁵On October 2, 2006, on appeal, the Snohomish County Superior Court issued its 3 page decision affirming the forfeiture of the vehicles. A copy of the Court's decision is included in its entirety as Appendix 4 and will be referred to hereinafter as App. 4, followed by the page number to be referenced.

of conveyances; and (2) changing the burden of proof that an innocent owner claimant must show to withstand forfeiture of a vehicle:

to benefit from the innocent owner exception, claimants must demonstrate that (1) they did not know of the illegal use to which the vehicle was being put; (2) they could not have known of that illegal use based on the information before them; and (3) they could not have known of that illegal use based on the information available to them had they conducted an inquiry a reasonable person would have conducted under the circumstances.

App. 1, pg. 10.

E. ARGUMENT

1. Why Review Should Be Granted

Pursuant to RAP 13.4, this Court should grant review in this case because the forfeiture of a person's conveyance for the drug related crimes of another, without a showing that the forfeiting person had actual knowledge of the crimes, is a matter of substantial public interest that should be determined by the Supreme Court.

The Court of Appeals decision (1) relies upon the hearing officer's analysis and application of the law to impute an objective standard of knowledge into the plain language RCW 69.50.505(1)(d)(ii), the "innocent owner" exception to conveyance forfeitures; and (2) the decision creates questionable new Washington precedent that significantly increases the

burden of proof on every innocent owner claimant in a conveyance forfeiture hearing.

If the Court of Appeals decision is to be the new law in Washington governing the burden of proof that innocent owner claimants must meet to successfully withstand forfeiture of their personal property, the Supreme Court should review this matter to provide uniformity, clarity, and guidance on the quantum of evidence needed for claimants to successfully avail themselves of the innocent owner defense in conveyance forfeiture cases.

2. The Court of Appeals erred in finding that the Appellants were not Innocent Owners by Improperly Imputing an Objective Standard of Knowledge into the Innocent Owner Exception to Conveyances Subject to Forfeiture.

A law enforcement agency is allowed to seize and subject to forfeiture, any conveyances which are *used or intended for use, in any manner, to facilitate the sale, delivery, or receipt* of controlled substances. RCW69.50.505(1)(d).

RCW 69.50.505(1)(d)(ii), commonly referred to as the "innocent owner" exception, provides in pertinent part that no conveyance *is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed without the owner's knowledge or consent.* The plain language of the statute does not include an objective

standard of knowledge.

RCW 34.05.570(3)(e) governs the standard of review of an administrative agency's factual findings, and provides in pertinent part that a court shall grant relief from an agency order in an adjudicative proceeding if it finds that the order is not supported by substantial evidence when the record is viewed as a whole.

The Court of Appeals concluded that substantial evidence supported the hearing officer's finding that the appellants were not innocent owners for the purposes of RCW 69.50.505(1)(d). App.1, pg. 22. In doing so, the Court of Appeals summarily agreed with the hearing officer's analysis, citing the same two cases used by the hearing officer in support of the decision to impute the objective standard of knowledge into RCW 69.50.505(1)(d)(ii). App. pgs. 8-9. Both cases are distinguishable from the present case.

a. *Tellevik v. Real Property Known as 31641 West Rutherford.*

In *Tellevik v. Real Property Known as 31641 West Rutherford*, this Court ruled that, for purposes of the innocent owner exception to the forfeiture of real property,⁶ consent, as contained in that provision, shall

⁶*Tellevik* refers to former RCW 69.50.505(a)(8)(i), currently RCW 69.50.505(1)(h)(i). Amendment effective date July 1, 2004. 2003 c 53 § 348. No notable change, other than transposed numbers and letters, in relevant portions of the statute.

thenceforth be defined, as "the failure to take all reasonable steps to prevent illicit use of the premises once one acquires *knowledge* of that use." 120 Wn.2d 68, 88, 838 P.2d 111 (1992) (emphasis added). In *Tellevik*, this Court cited approvingly a 2nd Circuit Court of Appeals case, which in turn cited a U.S. Supreme Court decision, to support its reasoning behind its use of the negative and objective definition of consent:

when combined with [the disjunctive] construction of the phrase "knowledge or consent," it provides a *balance* between two congressional purposes of making drug trafficking prohibitively expensive for the property owner and preserving the property of the innocent owner.

*Id.*⁷ (Emphasis added).

In doing so, this Court recognized that its holding would thereafter define consent in both the negative and objective form, but agreed with the reasoning of the 2nd Circuit Court of Appeals, and the U.S. Supreme Court, that the new negative, and objective, language of consent would be sufficiently counterbalanced by the word *knowledge* in the same sentence:

we define consent in RCW 69.50.505[(1)(h)(i)]⁸ similarly to balance the two policies enunciated by the Washington

⁷Tellevik, 120 Wn.2d at 88 (citing *United States v. 141st St. Corp.*, 911 F.2d 870 (2d Cir. 1990), citing *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689, 40 L.Ed 2d 452, 94 S.Ct.2080 (1974)).

⁸See FN 6, *supra*.

Legislature: to remove the profit incentive from drug trafficking and to protect innocent owners.

Id.

That is, the *Tellevik* Court agreed with the 2nd Circuit Appellate Court's reasoning that the word *knowledge* in the similar statutes would protect innocent owners, but if *knowledge* was found, then the burden of proof shifted back upon the claimant of the innocent owner exception to overcome the burden established by applying consent in both the negative and the objective form. The critical point here is that, in *Tellevik*, this Court agreed that the *knowledge* prong existed as the protection of the property owner.

While *Tellevik* dealt with real property, a review of the statutory provisions governing forfeitures in Washington State shows that the point made in *Tellevik* is even more critical when dealing with personal property. In Washington State, real property subject to forfeiture has two *knowledge* safeguards, RCW 69.50.505(1)(h) and (1)(h)(i). Both statutory provisions contain a knowledge element. In RCW 69.50.505(1)(h), the seizing agency bears the burden of showing knowledge or consent on the part of the forfeiting property owner before property is forfeited. RCW 69.50.505(1)(h)(i) allows an innocent owner claimant to show lack of knowledge or consent.

On the other hand, in personal property cases in Washington State there is only a single *knowledge* safeguard, the one included in the innocent owner exceptions. See RCW 69.50.505. The state need not prove that the claimant has any knowledge, and the burden is on the claimant to show that they lacked knowledge. RCW 69.50.506(a).

Accordingly, it is imperative that the single *knowledge* safeguard for innocent owners of conveyances in Washington not be imputed with the objective standard and thereby reduced to a perfunctory role.

That the subjective *knowledge* element is a necessary safeguard against improper forfeitures is clear. A review of the statutory language of RCW 69.50.505 reveals that forfeiture is the default mechanism for any personal property seized by a law enforcement agency.

Law enforcement can seize a conveyance with only a showing of probable cause. *Rozner v. City of Bellevue*, 116 Wn.2d 342, 350, 804 P.2d 24, 29 (1991). Once probable cause for the seizure is established, the proceedings for forfeiture of personal property are deemed commenced and, except for providing notice of forfeiture, the remaining burdens lie with the claimant, e.g., to respond, in writing, in a short period of time; for a hearing presided over by a law enforcement agency designee; to remove the case; to provide evidence that claimant did not, in fact, have knowledge of, or did not consent

to, the illicit use of the personal property that was seized. *See* RCW 69.50.505.

Once forfeited, the seizing agency is allowed to keep the personal property for its own use or sell it and keep the proceeds. RCW 69.50.505(7)(a),(b), RCW 69.50.505(9)(a), (10).

Based upon the above statutory construction, it is apparent that the current state of personal property forfeiture law in Washington State favors forfeiture and that law enforcement agencies have an incentive to seize property. Accordingly, as in the present case, innocent owner claimants already look forward to a lengthy, expensive battle to regain possession of personal property once seized.

b. Escamilla v. Tri-City Task Force.

The Court of Appeals also relied upon a Division III, Court of Appeals case, *Escamilla v. Tri-City Task Force*, in support of its decision to impute an objective standard of knowledge to expand the statutory definition of knowledge to include "knew or should have known". 100 Wn.App. 742, 753-54, 999 P.2d 625 (2000).

In *Escamilla*, the Court of Appeals affirmed a hearing officer's finding, imputing objective knowledge into the innocent owner exception to illegal proceeds, based upon a highly deferential clearly erroneous standard

of review. *Id.* at 753. The *Escamilla* Court found that, because the claimants possessed a large amount of unaccounted for money that the hearing officer found was either proceeds from drug transactions or commingled with proceeds from drug transactions, the hearing officer's decision to impute an objective standard of knowledge into the statute governing forfeiture of drug proceeds, was not clearly erroneous. *Id.*

The present case is factually distinguishable from *Escamilla* on many grounds. In *Escamilla*, the Court of Appeals incorrectly reviewed the hearing officer's decision based on a clearly erroneous standard of review. *Id.* The Court of Appeals in the present case acknowledged the correct standard of review is *the hearing officer's decision must be based upon substantial evidence when the record is viewed as a whole*. App. 1, pg. 17. In *Escamilla*: (1) the forfeited contraband was illegal proceeds, which are, by definition, directly related to illegal action, See *State v. Cole*, 128 Wn.2d 262, 906 P.2d 925 (1995) (the forfeiture of proceeds from illegal drug sales is more closely akin to the seizure of the proceeds from the robbery of a federal bank than the seizure of lawfully derived ...property); (2) the husband and wife shared the same house and, presumably, shared the same bedroom where bundles of illegal cash were found; (3) the innocent owner claimant had access to \$10,000 in cash, also forfeited as illegal proceeds, which she attempted to use

to post bail; and (4) the claimants conceded forfeiture of their vehicle and over \$14,000 in cash. *Id.* at 744, 751.

In contrast, the property subject to forfeiture here are two vehicles owned by the parents of the drug user and it is undisputed that the Roos' never benefitted from their son's illegal activity. Unlike *Escamilla*, the illicit user in the instant case intentionally led a "secretive life" from his parents, and avoided them at all costs. App.3, pg.2. In the hearing officer's decisions in the present case, the hearing officer found that the appellants' son was "being very secretive" and "not living at home", and that the son had "been stealing mail and erasing voice mail messages for over two years". App. 3, pg. 11. Astonishingly, however, instead of finding these facts to be mitigating, the hearing officer used the information to support the opinion, echoed by the Court of Appeals, that the appellants were avoiding knowledge by "sticking their heads in the sand". App.3, pg. 11, App. 1, pg. 9. Such a finding readily applies to the facts in *Escamilla*, but not to the present case.

The Court of Appeals erred in summarily relying upon the hearing officer's analysis and application of the law to the present case to deny the Roos' the innocent owner status by imputing the objective standard of knowledge into the innocent owner exception. The current statutory

subjective definition of knowledge provides the only protection for innocent owner claimants from a statute favoring forfeiture. A case concerning an innocent owner claimant's seeking the return of proceeds, which, by definition, are directly related to an illicit drug transaction cannot properly be compared to conveyances used by others to engage in illicit acts. Accordingly, the Court of Appeals' decision should be reversed and appellants' vehicles should be returned to them.

3. Even if the Court of Appeals was correct in imputing an objective standard of knowledge into the innocent owner exception to conveyances subject to forfeiture, the Court of Appeals erred in expanding the definition of that objective standard.

After imputing the objective standard of knowledge, supra, the Court of Appeals further held that, in order to successfully withstand forfeiture, innocent owner claimants must also show:

(2) they could not have known of that illegal use based on the information before them; and (3) they could not have known of that illegal use based on the information available to them had they conducted an inquiry a reasonable person would have conducted under the circumstances.

App.1, pg.10.

The second part of the new standard raises many questions. Who determines what information is "before" an individual? Is a person's mental capacity a factor? How far must vehicle owners pry into the lives of those to

whom they lend their vehicles to discover what information is available? What if the person is intentionally hiding such information, as in the present case? If vehicle loaners have to conduct an investigation to gain information, is the information really “before” them?

The effect of this new burden of proof will fall squarely upon the shoulders of the largest segment of the population that privately share vehicles, the parent-child relationship. How many relationships will withstand such close scrutiny? These questions are the tip of the iceberg created by the Court of Appeals’ new standard.

In part three of the new standard, the Court of Appeals requires that innocent owner claimants be held up to the hypothetically perfect “reasonable person”. The “reasonable person” standard will be yet another stumbling block for innocent owner claimants that hearing officers and courts will have to deal with regularly. The Court of Appeals holding significantly increases the already onerous burden facing any innocent owner claimants of conveyances subject to forfeiture and foreseeably will create more problems than it is attempts to solve.

The Court of Appeals, in a published opinion, haphazardly increased the burden of proof upon innocent owner claimants of vehicles subject to forfeiture. If the Court of Appeals’ decision is allowed to remain as precedent

in Washington State, it will severely weaken the only protection that innocent owner claimants possess against unreasonable seizure and forfeiture. Today, the Court of Appeals decision only governs innocent owner claimants of conveyances subject to forfeiture. Yet, given the broad nature of the Court of Appeals' published holding, no vivid imagination is necessary to see this questionable precedent rapidly applied to all innocent owner claimants under RCW 69.50.505 by hearing officers around the state.

F. CONCLUSION

The Court of Appeals summarily agreed with the hearing officer and improperly imputed an objective standard of knowledge into the existing innocent owner exception to conveyances subject to forfeiture, thereby denying the appellants' claim of innocent owner status. To support its decision, the Court of Appeals cited Washington caselaw that is inapposite to the present case and, arguably, stands more for not imposing the objective standard of knowledge in cases involving forfeiture of conveyances, than for the proposition for which it was cited.

The current statutory definition of knowledge provides the only protection possessed by innocent owner claimants of conveyances subject to forfeiture, in an area of law where, right or wrong, the deck is stacked against them. This Court has previously recognized that the current statutory

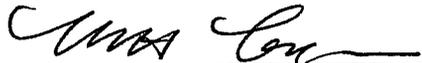
definition of knowledge is the individuals only counterbalance to the state's mechanism for fighting drug trafficking.

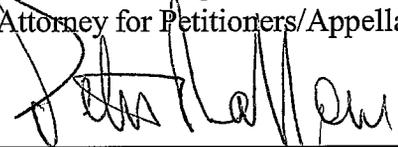
Inexplicably, the Court of Appeals chose this difficult case to fashion a questionable, and more onerous, burden of proof for innocent owner claimants that, if allowed to stand, will significantly diminish any protection provided by the current subjective knowledge standard of the statute, to the point of almost automatic default of any conveyance seized while the operator possesses drugs. If that was the intent of the legislature, then the legislature should have inserted language including an objective standard of knowledge into the statute.

For the above reasoned arguments, appellants respectfully request that this Court grant review of the Court of Appeals' decision.

Respectfully submitted this 16th day of October, 2007.

MAZZONE AND MARKWELL, LAWYERS


By Michael Torgesen, WSBA #34337
Attorney for Petitioners/Appellants


By Peter Mazzone, WSBA # 25262
Attorney for Petitioners/Appellants

APPENDIX 1

the Snohomish County Sheriff ordered the vehicles forfeited. The Snohomish County Superior Court affirmed the order of forfeiture.

On appeal, Alan and Stephne contend that they are subject to the "innocent owner" exception to the vehicle seizure and forfeiture provision, RCW 69.50.505, and that the hearing officer's findings to the contrary are not supported by substantial evidence. We disagree, and hold that the "innocent owner" exception may not be relied upon to prevent forfeiture of a vehicle when a claimant knew or should have known that the vehicle was being used to acquire possession of controlled substances. We further hold that substantial evidence supports the finding that Alan and Stephne possessed such knowledge. Accordingly, we affirm.

FACTS

On June 10, 2005, a Lynnwood police officer observed 24-year-old Thomas Roos unconscious in the driver's seat of a 2004 Nissan Sentra parked in a carwash parking lot. The Nissan was registered to Alan and Stephne Roos. The officer roused Thomas and arrested him on suspicion of driving while under the influence. A search of the Nissan incident to that arrest uncovered various controlled substances, including methamphetamine and oxycodone pills, as well as drug paraphernalia, \$21,406 in cash, and a notebook containing a list of names and corresponding sums of money. Thomas was booked into the Snohomish County Jail on the charge of manufacture, delivery, or possession

with intent to deliver a controlled substance. A friend of Thomas's posted bail for him and secured his release.¹

On July 3, 2005, a police officer pulled Thomas over while he was driving a friend's vehicle, and arrested him for driving with a suspended license. A subsequent search of the vehicle pursuant to a search warrant uncovered a large quantity of controlled substances including methamphetamine, cocaine, and oxycodone pills. The search also uncovered drug paraphernalia, \$5,266 in cash, a drug ledger, and a licensing renewal notice for the Nissan which bore the handwritten notation, "For Tom." Thomas was booked into the Snohomish County Jail for felony possession of methamphetamine. Stephne was notified of Thomas's arrest, and arranged to have bail posted for his release. Stephne testified that she also learned of Thomas's prior arrest at that time, and that some drugs were involved. The bail bond documents signed by Stephne did not list the offenses with which Thomas was being charged.

On August 16, 2005, a police officer observed Thomas again unconscious in the driver's seat of the Nissan. The vehicle was parked in a convenience store parking lot with the engine running. The police officer roused Thomas and arrested him on suspicion of driving while under the influence. The police officer conducted a search of Thomas and the vehicle incident to that arrest, which

¹ The Nissan was impounded when Thomas was arrested. A notice of impound was mailed to Alan and Stephne's home address, and a voicemail message regarding the impound was left on their home voicemail system. After Thomas was released from jail, however, he retrieved the Nissan from the impound yard and intercepted the notices of impound before they reached Alan and Stephne.

uncovered a large quantity of controlled substances, including a baggie containing 77 oxycodone pills and a 110-gram brick of cocaine. The search also uncovered \$6,600 in cash and a large quantity of various personal items belonging to Thomas, which filled between five and eight large trash bags. Thomas's brother drove by the scene of the arrest while it was underway, and subsequently notified Alan of the unfolding events. Alan then proceeded to the scene where police officers informed him that Thomas was being placed under arrest and showed him the items uncovered during the search of the Nissan.

The SRDTF then seized the Nissan pursuant to RCW 69.50.505, the seizure and forfeiture provision of the Uniform Controlled Substances Act. Thomas was booked into the Snohomish County Jail for possession of a controlled substance. Stephne subsequently posted bail for Thomas and secured his release. The bail bond documents signed by Stephne identify the charge against Thomas as "poss of cont sub x2."

On September 9, 2005, a police officer observed Thomas unconscious in the driver's seat of a 1970 Chevrolet Chevelle, registered to Stephne, while the vehicle was parked in a convenience store parking lot. After rousing Thomas, the police officer ran a check on Thomas's name and learned of the existence of an outstanding warrant for his arrest. The police officer arrested Thomas and conducted a search incident to that arrest. The search of Thomas uncovered several controlled substances, including 38 oxycodone pills, as well as drug paraphernalia and \$1,530 in cash. A subsequent search of the vehicle pursuant

to a search warrant uncovered additional controlled substances, including several more oxycodone pills, 4.8 grams of cocaine, additional drug paraphernalia, and a large quantity of various personal items belonging to Thomas, which filled between five and eight large trash bags. The SRDTF then seized the Chevrolet pursuant to RCW 69.50.505.

The SRDTF subsequently sought forfeiture of both the Nissan and the Chevrolet. Alan and Stephne filed claims for return of the vehicles, asserting that they were subject to the "innocent owner" exception to the vehicle forfeiture provision. RCW 69.50.505(1)(d)(ii). Alan and Stephne claimed that they gave Thomas permission to use both vehicles temporarily, but that they did not know that Thomas was using the vehicles for illegal purposes.

A hearing was held before a designated hearing officer for the Snohomish County Sheriff. Alan, Stephne, and Thomas all testified. The hearing officer found that the SRDTF had proved by a preponderance of the evidence that both vehicles were used to facilitate drug trafficking, subjecting the vehicles to forfeiture pursuant to RCW 69.50.505. The hearing officer further found that Alan and Stephne had failed to prove that they were entitled to the benefit of the "innocent owner" exception to the vehicle forfeiture provision of the statute. Accordingly, the hearing officer ordered the vehicles forfeited.

Alan and Stephne petitioned for judicial review by the Snohomish County Superior Court, which affirmed the order of forfeiture. The superior court noted that a vehicle is subject to forfeiture pursuant to RCW 69.50.505 when the

vehicle is used to facilitate the "receipt" of drugs.² Accordingly, the trial court interpreted the statute to require only that such a vehicle be used to acquire possession of drugs, rather than to facilitate the sale or delivery of drugs. The trial court concluded that substantial evidence supported a finding that Alan and Stephne knew or should have known that Thomas was using the vehicles to acquire possession of drugs.

This appeal followed.

DISCUSSION

RCW 69.50.505, the seizure and forfeiture provision of the Controlled Substances Act, provides in relevant part:

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of [controlled substances], except that:

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent.

RCW 69.50.505 (emphasis added). The exception contained in subsection (1)(d)(ii) of the statute is commonly referred to as the "innocent owner" exception.

² As herein discussed, the forfeiture statute states that vehicles "which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt" of drugs are subject to forfeiture. RCW 69.50.505(1)(d) (emphasis added).

The burden of proof in a case concerning the forfeiture of property pursuant to RCW 69.50.505 shifts from one party to the other. RCW 69.50.505(5) provides that, "[i]n all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture." RCW 69.50.506(a) provides that "[t]he burden of proof of any exemption or exception is upon the person claiming it." Accordingly, claimants asserting that they are subject to the innocent owner exception to the vehicle forfeiture provision bear the burden of demonstrating that the requirements of the exception are satisfied.

Alan and Stephne do not challenge the hearing officer's finding that the SRDTF met its initial burden of proving that the vehicles were subject to forfeiture pursuant to RCW 69.50.505(1)(d). They assert, however, that they are entitled to the benefit of the "innocent owner" exception to that provision.

Knowledge

Initially, the parties disagree as to what mental state must be proved by a claimant to invoke the innocent owner exception to the vehicle forfeiture provision. We hold that a claimant may not successfully invoke the innocent owner exception to prevent forfeiture of a vehicle where the claimant knew or should have known that the vehicle was being used to acquire possession of controlled substances.

Again, a claimant may benefit from the innocent owner exception to RCW 69.50.505(1)(d), the vehicle forfeiture provision, only where the claimant is able

to demonstrate that the illegal activity for which the vehicle was used was undertaken without the claimant's "knowledge or consent." RCW 69.50.505(1)(d)(ii).

As a preliminary matter, we hold that a claimant's "knowledge," within the meaning of this exception, encompasses not only that which the claimant knew, but that which the claimant should have known under the circumstances, including any information that would have been revealed by a reasonable inquiry into the vehicle's use. In other words, both a subjective standard and an objective standard apply in determining whether a claimant's knowledge is sufficient to invoke the benefits of the innocent owner exception.

Courts have previously applied such objective standards in determining a claimant's knowledge for the purpose of determining the applicability of other, similarly-worded, innocent owner exceptions contained in RCW 69.50.505. In Tellevik v. Real Property Known as 31641 West Rutherford Street, 120 Wn.2d 68, 88, 838 P.2d 111 (1992) (quoting United States v. 141st Street Corp. by Hersh, 911 F.2d 870, 879 (2d Cir. 1990)), our Supreme Court defined "consent," in the context of the innocent owner exception to the real property forfeiture provision of RCW 69.50.505, as "the failure to take all reasonable steps to prevent illicit use of premises once one acquires knowledge of that use." (Emphasis added.) See RCW 69.50.505(1)(h). In Escamilla v. Tri-City Metro Drug Task Force, 100 Wn. App. 742, 753-54, 999 P.2d 625 (2000), Division Three of this court held that the claimant in that case was not entitled to benefit

from the innocent owner exception to the illegal proceeds forfeiture provision of RCW 69.50.505 when the claimant either knew or "should have known" that the proceeds in question were drug-related. See RCW 69.50.505(1)(g).

No Washington court has yet held that these objective standards apply in the context of the innocent owner exception to the vehicle forfeiture provision of RCW 69.50.505. In applying them here, the hearing officer reasoned that a claimant should not be entitled to benefit from the innocent owner exception by "stick[ing] his/her head in the sand" to avoid gaining knowledge of a vehicle's illegal use. We agree. We do not believe that the legislature intended RCW 69.50.505(1)(d) to provide the benefits of the innocent owner exception to the vehicle forfeiture process to claimants who failed to conduct a reasonable inquiry, where such an inquiry would have revealed the existence of illegal use.

Accordingly, we hold that the innocent owner exception to the vehicle forfeiture provision may not be invoked by a claimant who either knew, or should have known after reasonable inquiry, of the illegal use of the property that subjects it to forfeiture. Thus, in order to benefit from the innocent owner exception, claimants must demonstrate that (1) they did not know of the illegal use to which the vehicle was being put; (2) they could not have known of that illegal use based on the information before them; and (3) they could not have known of that illegal use based on the information available to them had they conducted an inquiry a reasonable person would have conducted under the circumstances.

Next, the parties disagree about the drug-related activities sufficient to subject vehicles to forfeiture pursuant to RCW 69.50.505(1)(d) and the corresponding information sufficient to defeat a claim to the innocent owner exception to that provision. Specifically, the parties contest the meaning of the word "receipt" contained in RCW 69.50.505(1)(d). Again, that provision subjects to forfeiture vehicles that are used "in any manner to facilitate the sale, delivery, or receipt" of controlled substances. (Emphasis added.) The SRDTF contends that the inclusion of the word "receipt" in RCW 69.50.505 subjects to forfeiture those vehicles that are used to acquire possession of controlled substances, even when the individual using the vehicle does not intend to further sell or distribute the drugs. In contrast, Alan and Stephne contend that the inclusion of the word "receipt" in the statute was intended to subject to forfeiture only those vehicles that are used to receive controlled substance with an intent to further sell or distribute them.

We agree with the construction of the statute advanced by the SRDTF, and hold that the statute subjects to forfeiture vehicles that are used to acquire controlled substances, regardless of the purpose for which the controlled substances are acquired. Accordingly, a claim to the innocent owner exception to the vehicle forfeiture provision is defeated when the claimant seeking the benefit of the exception knows or should have known that the driver of the vehicle in question used the vehicle to acquire possession of illegal drugs.

The meaning of a statute is a question of law subject to de novo review. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Our fundamental objective in determining the meaning of a statute is to ascertain and carry out the legislature's intent. Dep't of Ecology, 146 Wn.2d at 9. Pursuant to this "plain meaning" rule, if a statute's meaning is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. Dep't of Ecology, 146 Wn.2d at 9-10. In determining plain meaning, we may take into account the meaning that words are ordinarily given, basic rules of grammar, and the "statutory context" including "all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Dep't of Ecology, 146 Wn.2d at 11-12. Only where the statute remains susceptible to more than one reasonable meaning after this inquiry is conducted is it appropriate to resort to aids of construction, such as legislative history. Dep't of Ecology, 146 Wn.2d at 11-12.

Here, the plain meaning of the word "receipt" supports the conclusion that the statute subjects to forfeiture those vehicles used to acquire possession of controlled substances, whether or not the driver of the vehicle intended to further sell or distribute the acquired illegal drugs. The statute plainly states that vehicles used to facilitate the "receipt" of controlled substances are subject to forfeiture. RCW 69.50.505(1)(d). "Receipt" is defined as "the act or process of receiving." Webster's Third New International Dictionary of the English Language 1894 (1993). "Receive," in turn, is simply defined as "to take

possession or delivery of," or "to knowingly accept." Id. We are unable to discern any indication within either RCW 69.50.505(1)(d) or any related provision of the statute that the legislature intended "receipt" to mean, as Alan and Stephne insist, receipt with intent to facilitate further sale or distribution.

In fact, another exception to the vehicle forfeiture provision, RCW 69.50.505(1)(d)(iii), compels an interpretation contrary to that advanced by Alan and Stephne. That exception, added to the statute the same year as "receipt" was added to the vehicle forfeiture provision to which it applies, provides that "[n]o 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." RCW 69.50.505(1)(d)(iii) (emphasis added). If the legislature intended "receipt" in RCW 69.50.505(1)(d) to be interpreted as Alan and Stephne assert, i.e., receipt with intent to sell or distribute, the legislature would have had no need to include an exception to the statute applicable to a controlled substance offense which, by definition, encompasses the possession of illegal drugs only for personal use rather than for sale or distribution. See RCW 69.50.4014; RCW 69.50.401 (together providing that any person in possession of forty grams of marijuana without intent to manufacture or deliver is guilty of a misdemeanor, but that any person in possession of forty grams of marijuana with intent to manufacture or deliver is guilty of a felony). Accordingly, the legislature's inclusion of this exception indicates that the legislature contemplated that in the absence of the exception, receiving a small amount of marijuana for personal

use, rather than for sale or distribution, would come within the scope of the vehicle forfeiture provision. The inclusion of the exception, therefore, supports the conclusion that the statute is intended to subject to forfeiture those vehicles used to acquire possession of controlled substances, whether or not the driver of the vehicle intended to further sell or distribute the acquired illegal drugs.

Alan and Stephne contend, nonetheless, that this interpretation of "receipt" is contrary to legislative intent, and subjects to forfeiture those vehicles used by individuals who are merely in possession of controlled substances. We disagree.

We agree that the legislature did not intend to subject to forfeiture those vehicles used by individuals in mere possession of controlled substances, as evidenced by the absence of the term "possession" in the relevant provision of the statute.³ However, despite Alan and Stephne's contention to the contrary, the SRDTF's reading of the statute does not subject such vehicles to forfeiture. Rather, so interpreted, the "receipt" language of the provision subjects to forfeiture only those vehicles used to acquire possession of controlled substances. Thus, a vehicle used by an individual in possession of a controlled substance, but not used to facilitate the acquisition of that controlled substance, is not subject to forfeiture. Such a reading both gives effect to the presence of

³ Unlike RCW 69.50.505, several forfeiture statutes from other jurisdictions do expressly subject vehicles to forfeiture in the case of mere possession. See, e.g., 21 U.S.C. 881(a)(4); Fla. Stat. § 932.703(4); Ana Kèllia Ramares, Annotation, Application of Forfeiture Provisions of Uniform Controlled Substances Act or Similar Statute Where Drugs Were Possessed for Personal Use, 1 A.L.R.5th 375 (1992).

the term "receipt" in the statute, and reasonably distinguishes "receipt" from "possession," a term not present in that provision of the statute.

Accordingly, the plain language of RCW 69.50.505(1)(d) supports the conclusion that the statute subjects to forfeiture vehicles used to acquire possession of controlled substances, regardless of the purpose for which the controlled substances are acquired.

Furthermore, even if we were to consider the inclusion of the word "receipt" ambiguous in the context of the statute, thereby justifying resort to legislative history, we are aware of no history evidencing an intent contrary to the interpretation advanced by the SRDTF.

Alan and Stephne rely on a legislative finding stating that:

[T]he forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking.

Laws of 1989, ch. 271, § 211 (emphasis added). Alan and Stephne contend that this finding evidences a legislative intent to forfeit only property that is used to facilitate drug trafficking, rather than property used to facilitate other controlled substances offenses. However, this finding was issued pursuant to a 1989 amendment to the statute which made real property subject to forfeiture.

Accordingly, the finding evidences the legislature's intent only in regard to real property, not in regard to personal property such as the vehicles here at issue.

Furthermore, the term "receipt" was not added to the vehicle forfeiture provision

until 1990, a year later. Unlike the 1989 real property amendment, the 1990 vehicle forfeiture amendment was not accompanied by a legislative finding expressing an intent to deter drug trafficking in particular. Alan and Stephne's reliance on the 1989 finding is unavailing.

Alan and Stephne next direct us to a handful of cases in other jurisdictions holding, under somewhat similarly-worded statutes, that the term "receipt" refers to more than mere possession. See, e.g., Reeder v. State, 294 Ala. 260, 314 So. 2d 853 (1975) (overruled on other grounds by Wilhite v. State, 689 So. 2d 221 (Ala. Crim. App. 1996)); State ex rel. Dep't of Public Safety v. 1985 GMC Pickup, 898 P.2d 1280 (Ok. 1995). However, despite Alan and Stephne's suggestion to the contrary, courts from other jurisdictions have not uniformly held that the term "receipt" in property forfeiture statutes applies only to receipt with intent to distribute or sell. For example, the court in Hughes v. State Department of Safety, 776 S.W.2d 111 (Tenn. Ct. App. 1989), interpreted a statute which subjected to forfeiture vehicles used "to facilitate the transportation, sale, or receipt of property," to encompass situations where such an intent is absent:

[W]e are convinced that the use of a vehicle to drive to the point where an illegal sale is made and the further use to transport the controlled substance away from the point of sale will subject the vehicle to confiscation regardless of the purpose for which the controlled substance was purchased.

Hughes, 776 S.W.2d at 115 (interpreting former Tenn. Code Ann. § 53-11-409(a)(4)(C)).

Moreover, regardless of the tendency of courts from other jurisdictions to interpret foreign statutes one way or the other, in light of the plain meaning evident in the Washington statute here at issue we do not find such authority persuasive. Alan and Stephne's reliance on authority from other jurisdictions is unavailing.

We hold that RCW 69.50.505 subjects to forfeiture vehicles used to acquire possession of controlled substances. Accordingly, if a claimant knew or should have know that the driver of a vehicle used or was using the vehicle to acquire possession of a controlled substance, the claimant is not an "innocent owner" within the meaning of RCW 69.50.505(1)(d)(ii).

Review of the Evidence

Alan and Stephne next assert that the hearing officer's finding that they are not innocent owners within the meaning of RCW 69.50.505(1)(d)(ii) is not sufficiently supported by the evidence.⁴ We disagree.

As a preliminary matter, before turning to our review of the evidence presented to the hearing officer in this case, we must clarify this court's standard of review for such evidence.

⁴ Resolution of this claim requires us to both view the evidence in the light most favorable to the SRDTF and give credence to the fact-finder's right, based on credibility determinations, to not accept the truth of factual assertions advanced by the proponents of the defense. Given that Alan and Stephne have the burden of proof in asserting the "innocent owner" defense, the appropriate standard of review includes the inquiry as to whether, considering the evidence in the light most favorable to the party seeking forfeiture, a rational trier of fact could have found that the claimants failed to prove the defense by a preponderance of the evidence. State v. Lively, 130 Wn.2d 1, 17, 921 P.2d 1035 (1996) (entrapment defense); State v. Matthews, 132 Wn. App. 936, 941, 135 P.3d 495 (2006), review denied, 160 Wn.2d 1004 (2007) (insanity defense).

Judicial review of administrative orders, such as the order of forfeiture here at issue, is governed by RCW 34.05.570 of the Administrative Procedure Act. Pursuant to that statute,

this court may reverse an administrative decision only if: (1) the administrative decision was based on an error of law; (2) the decision was not based on substantial evidence when viewed in the light of the record as a whole; or (3) the decision was arbitrary or capricious.

Callecod v. Wash. State Patrol, 84 Wn. App. 663, 670, 929 P.2d 510 (1997). We apply these standards directly to the record before the administrative agency.

Callecod, 84 Wn. App. at 670. It is well-established that, pursuant to RCW 34.05.570(3), an agency's findings of fact are reviewed to determine whether they are supported by substantial evidence. Premera v. Kreidler, 133 Wn. App. 23, 31, 131 P.3d 930 (2006); Heidgerken v. Dep't of Natural Res., 99 Wn. App. 380, 384, 993 P.2d 934 (2000). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. Premera, 133 Wn. App. at 32.

In Escamilla, 100 Wn. App. at 753 (citing Clarke v. Shoreline Sch. Dist. No. 412, 106 Wn.2d 102, 109-10, 720 P.2d 793 (1986)), however, Division Three of this court applied the "clearly erroneous" standard of review to a hearing officer's findings of fact in a forfeiture proceeding pursuant to RCW 69.50.505, the statute here at issue. Notably, the case cited by the Escamilla court supporting the application of that standard of review relied on former RCW 34.04.130 which, in 1988, was recodified as RCW 34.05.570.

While it is true that former RCW 34.04.130(6)(e) provided that a court might reverse an agency's order if it was "clearly erroneous in view of the entire record," the current statutory authority, RCW 34.05.570(3)(e), provides that a court may grant relief from an agency order when the order "is not supported by evidence that is substantial when viewed in light of the whole record before the court." As numerous cases have held, the recodified statute clearly iterates a substantial evidence standard of review for agency factual findings rather than the clearly erroneous standard of review that applied to factual findings under the former statute. Compare Premera, 133 Wn. App. at 31 (substantial evidence standard of review) with Dep't of Ecology v. Pub. Util. Dist. No. 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993), affirmed, 511 U.S. 700, 114 S. Ct. 1900, 128 L. Ed. 2d 716 (1994) (clearly erroneous standard of review pursuant to former RCW 34.04.130(6)(e)).

Thus, we do not adopt the Escamilla court's suggestion that a clearly erroneous standard of review applies to factual findings in forfeiture cases pursuant to RCW 69.50.505. Instead, we review the findings here to determine if they are supported by substantial evidence. The substantial evidence standard is highly deferential to the agency fact-finder and, accordingly, we will neither weigh the evidence presented to the agency nor substitute our judgment regarding witness credibility for that of the agency decision-maker. Premera, 133 Wn. App. at 32. See also State v. Michel, 55 Wn. App. 841, 845, 781 P.2d 496

(1989) (the determination of witness credibility is “exclusively within the province of the finder of fact.”).

In finding that Alan and Stephne knew or should have known that Thomas was using their vehicles for illegal purposes, the hearing officer elaborated as follows:

The Hearing Officer is left with the belief that Alan and Stephen Roos learned of Thomas’ June 10, 2005 arrest and incarceration on or about July 3, 2005, when he was arrested for the second time. From that point on, they knew of his involvement with drugs. How many specifics they learned from the bail bond company is not at all clear, although it does stretch credibility to say that the bonding agent would not tell Stephne what her son had been arrested for.

The hearing officer further found:

If you know that your son was convicted of delivering a controlled substance as a juvenile, your son is being very secretive, your son is not living at home, your son has been stealing mail and erasing voice mail messages for over two years, your son is unemployed, and as of July 3, 2005, your son has been arrested twice since June 10th with drugs and large sums of cash on his person, how can you ignore the reality and claim to be an innocent owner when he is later arrested and your property is seized? The Roos should have wondered whether and may well have actually feared that Thomas was using their family cars to traffic in drugs. That they failed to effectively stop that use does not make them innocent owners.

These findings are supported by substantial evidence.⁵

⁵ We note that these excerpts are actually taken from the “Discussion” section of the hearing officer’s decision and order. However, they are clearly factual findings. Accordingly, we review them as such. See Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) (a finding of fact erroneously described as a conclusion of law is reviewed as a finding of fact); Escamilla, 100 Wn. App. at 753 (hearing officer’s finding that he claimant “should have known” of illegal use reviewed as finding of fact, even though incorrectly labeled conclusion of law).

Significant testimony presented at the hearing supports the hearing officer's finding that, before the date of the Nissan's seizure, Alan and Stephne knew or should have known that Thomas was using the Nissan for the sale, delivery, or receipt of controlled substances.

Initially, the testimony presented at the hearing established that Alan and Stephne knew, before the Nissan's seizure, that Thomas was using the vehicle as a primary or significant form of transportation. Alan testified that he gave Thomas permission to use the vehicle. Thomas testified that he used the Nissan on a daily basis, and sometimes kept the vehicle for several weeks at a time. Such testimony is also supported by the fact that a large quantity of Thomas's personal possessions were recovered from the Nissan pursuant to a search of the vehicle after its seizure, as well the fact that a registration renewal form for the Nissan, bearing the handwritten notation, "For Tom," was recovered pursuant to a prior search.

The testimony presented at the hearing further established that Alan and Stephne should have known, at the very least, that Thomas was using the Nissan to acquire controlled substances. Initially, Stephne testified that she learned of both Thomas's June 10, 2005, and July 3, 2005, drug-related arrests on July 3, before the events giving rise to the Nissan's forfeiture. Furthermore, as the hearing officer noted, the testimony presented at the hearing established that Alan and Stephne were aware that Thomas was convicted of delivery of a controlled substance when he was a juvenile, that he had been unemployed

since 2002, that he was leading a "secretive" life during the summer of 2005, and that "someone" in their household had been intercepting mail and voicemail between 2002 and 2005.

Based on this evidence, Alan and Stephne failed to demonstrate that they did not know, or should not have known, that Thomas was using the Nissan to facilitate the sale, delivery, or acquisition of controlled substances. At a minimum, the information Alan and Stephne did possess, including Thomas's past and present problems with drugs and his unemployed status, would have led a reasonable person to further inquire into the Nissan's use in order to ensure that the vehicle was not being used for an illegal purpose. As herein discussed, Alan and Stephne's failure to make such an inquiry does not entitle them to benefit from the innocent owner exception.

Accordingly, substantial evidence supports the hearing officer's finding that Alan and Stephne are not innocent owners in regard to Thomas's use of the Nissan. In turn, that finding supports the hearing officer's order forfeiting Alan and Stephne's ownership of the vehicle.

Significant testimony presented at the hearing also supports the hearing officer's finding that, before the date of the Chevrolet's forfeiture, Alan and Stephne knew or should have known that Thomas was using the Chevrolet for the sale, delivery, or receipt of controlled substances.

Stephne testified that, before the date of the Chevrolet's forfeiture, she had twice arranged for bail to be posted for Thomas after he was arrested on

drug-related charges. Furthermore, Alan testified that he was present at the scene of Thomas's August 16, 2005 arrest, where police officers both informed him that Thomas was being arrested on drug-related charges and showed him the large quantity of drugs and drug paraphernalia they had discovered in the Nissan. Based on this evidence, at the very least Alan and Stephne knew or should have known that Thomas was using those vehicles to which he had access to acquire possession of controlled substances.

The evidence presented at the hearing also establishes that Stephne knew that Thomas had access to the Chevrolet on September 9, 2005, the date of its seizure. Initially, while Stephne stated that she believed the vehicle to be in a vehicle repair shop as of September 9, 2005, in her claim letter she stated that she had given Thomas permission to use the vehicle for the first time on September 8, 2005. In contrast to both of these statements, Thomas testified that he had retrieved the Chevrolet from the repair shop approximately one and a half weeks before September 9, and had been using the vehicle since that time. He further testified that he kept the vehicle at the Bothell home at which Stephne resided.

Additionally, other evidence presented at the hearing indicated that Thomas made a layaway purchase of custom wheels for the Chevrolet on June 30, 2005, and that the store from which the tires were purchased installed them on the vehicle within six weeks from that purchase. The Chevrolet was equipped with the wheels at the time of the vehicle's seizure on September 9,

2005. Additionally, after the vehicle was seized, police retrieved numerous personal items belonging to Thomas, which filled between five and eight large trash bags. Such evidence indicates that, despite Stephne's claims to the contrary, Thomas was likely using the Chevrolet for several days or weeks before the September 9, 2005 seizure of the vehicle.⁶

Based on this evidence, Stephne has failed to demonstrate that she did not know or should not have known both that Thomas was using the Chevrolet on September 9, 2005, and that he used the vehicle, at a minimum, to acquire possession of controlled substances.

Accordingly, substantial evidence supports the hearing officer's finding that Stephne was not an innocent owner in regard to Thomas's use of the Chevrolet. In turn, that finding supports the hearing officer's order forfeiting Stephne's ownership of the vehicle.

Finally, Alan and Stephne seek an award of reasonable attorney fees pursuant to RCW 69.50.505(6). This statute entitles a claimant to an award of attorney fees only where the claimant "substantially prevails" in his or her claim.

⁶ In light of both Stephne's contradictory testimony regarding the whereabouts of the Chevrolet prior to September 9, 2005, and the evidence indicating that Thomas had been using the vehicle for several days or weeks before that date, the hearing officer specifically found that Stephne's testimony regarding these matters was not credible. Such credibility determinations are exclusively within the province of the finder of fact, in this case, the hearing officer. Michel, 55 Wn. App. at 845. The determination regarding the credibility of Stephne's testimony further supports the inference that, despite her claims, Thomas was using the vehicle for several days or weeks before the September 9 seizure.

Alan and Stephne have not prevailed in their claim. Thus, their request for an award of attorney fees is denied.

Affirmed.

Deery, J.

WE CONCUR:

Cox, J.

Azid, J.

APPENDIX 2

BEFORE THE DESIGNATED HEARING OFFICER
for the
SNOHOMISH COUNTY SHERIFF

PHILLIPS AND MAZZONE
MAR 09 2006

DECISION AND ORDER

In re the forfeiture of: One (1) 2004 Nissan Sentra (WLN: 937 SRL; VIN: 3NICB51084L475347)

Incident No.: SO05-20161

Statutory Authority: RCW 69.50.505

Claimants: Alan M. and Stephne K. Roos, Represented by Pete Mazzone, Attorney at Law

Seizing Agency: Snohomish County Sheriff/Snohomish Regional Drug Task Force, represented by Special Deputy Prosecuting Attorney Alfred P. Gehri¹

Decision Summary: Vehicle FORFEITED

Date of Decision: March 8, 2006

John E. Galt, Designated Hearing Officer, convened a consolidated hearing on the above-captioned claim and a companion claim filed by Stephne K. Roos under Incident Number TF05-205 on Friday, February 17, 2006, in the Board of Equalization Hearing Room, County Administration Building East, 2nd Floor: Room 2F03, 3000 Rockefeller Avenue, Everett, Washington. The hearing was recessed at the end of the day; the hearing was reconvened at 10:00 a.m. on Friday February 24, 2006, and concluded on that day. The companion claim is decided in a separate Decision and Order issued this date.

At said hearing witnesses were sworn, testimony was presented, and exhibits were entered. The Hearing Officer, having considered all of said evidence and having considered the pleadings, positions and arguments of both parties and being fully advised in the premises, now makes and enters his:

FINDINGS OF FACT:

1. On August 16, 2005, the Snohomish Regional Drug Task Force (SRDTF) seized with intent to forfeit one (1) 2004 Nissan Sentra (WLN: 937 SRL; VIN: 3NICB51084L475347), referred to hereinafter as "the Nissan." The SRDTF served Alan M. Roos (Alan Roos) personally on or

Mr. Gehri was killed in a March 4, 2006, automobile accident.

about August 16, 2005, with a Notice of Seizure and Intended Forfeiture pursuant to RCW 69.50.505, for the forfeiture of the Nissan. (Exhibit 1²)

2. The SRDTF seized the Nissan and later a 1970 Chevrolet Chevelle under incident number TF05-205 (See Finding 9.F, below.) based on probable cause to believe that they had been used by Thomas E. Roos (Thomas Roos) to facilitate drug trafficking. The several incidents involved in this case are summarized in Findings 10 – 13, below.
3. Alan Roos filed a timely claim for return of the Nissan on August 22, 2005. His claim letter states "I gave permission to my son, Thomas E. Roos, to borrow the car for temporary transportation. I was totally unaware of any uses or activities that may have occurred during this time." (Exhibit 2) Alan Roos thus bases his claim on the innocent owner exception of RCW 69.50.505(1)(d)(ii).
4. The SRDTF served Stephne K. Roos (Stephne Roos) by certified mail on or about September 1, 2005, with a Notice of Seizure and Intended Forfeiture pursuant to RCW 69.50.505, for the forfeiture of the Nissan. (Exhibit 3)
5. Stephne Roos filed a timely claim for return of the Nissan on September 23, 2005. Her claim letter states "Our son, Thomas E. Roos, borrowed the car for a short time on 8-15-05 and 8-16-05. We had no knowledge of what he was using the car for or contents in the car at that time. My husband uses this car for commuting, as the truck he has is 12 years old and not fuel efficient at all." (Exhibit 5) Stephne Roos thus bases her claim on the innocent owner exception of RCW 69.50.505(1)(d)(ii).
6. Alan and Stephne Roos are husband and wife. They are in their early to mid-fifties. They have two sons: Jesse and Thomas. Jesse's age is not stated in the hearing record; Thomas, at all times material to the incidents involved in this case, was 24. (Exhibit 50 and testimony)

Thomas was convicted on June 18, 1998, when he was 17 of delivery of a controlled substance. He also has a number of adult misdemeanor convictions, including possession of drug paraphernalia when he was 19. (Exhibit 17) Thomas was convicted on January 25, 2006, of possession of controlled substances on June 10 and August 16, 2005. (Exhibits 16 and 45; See Findings 10 and 12, below.)
7. Alan and Stephne Roos are both gainfully employed. Alan Roos has been employed by Safeway for some 27 years and is presently a meat department manager. Alan Roos works days from 6:00 a.m. to 4:00 p.m. and arrives home around 5:00 p.m. (Exhibit 37 and testimony)

² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Hearing Officer considers all relevant documents in the record, typically only major documents are cited. The Hearing Officer's Decision is based upon all documents in the record.

Stephne Roos is a dental assistant with the King County/City of Seattle Public Health Department. Stephne Roos also works days, leaving home at around 6:50 a.m. and returning at around 6:00 p.m. (Exhibit 37 and testimony)

Thomas Roos is unemployed and had no reported income from the 2nd quarter of 2002 through the 2nd quarter of 2005. (Exhibit 37)

8. Alan and Stephne Roos own three properties in Washington. They reside at 17306 10th Avenue SE, Bothell, Washington 98012. Jesse Roos lives with them. Thomas Roos uses that address as his official address but rarely stayed there. He had a key to the locking mail box (at least until August 16, 2005, when his keys were confiscated after an arrest) and retrieved mail occasionally. He also apparently went into the house during the day when his parents were not around. The relationship between Alan and Thomas during the period prior to and during the incidents involved in this case seems to have been strained at best. Thomas apparently tried to avoid being at home when Alan was there. (Exhibit 2 et al. and testimony)

Alan and Stephne Roos also own a property in Skagit County which has a Sedro Woolley mailing address and a rental property in Seattle. (Testimony)

9. Between them Alan and Stephne Roos own seven motor vehicles:

- A. The Nissan. (Exhibit 44) Alan and Stephne purchased the Nissan new on or about July 22, 2004 Alan and Stephne Roos are the registered and legal owners. (Exhibits 38, 46, 47, and 51) The Nissan was kept at the Bothell residence. (Testimony)
- B. A 2000 Chevrolet Impala (WLN: 144 KSR). This vehicle was purchased and registered on or about December 7, 1999. Alan and Stephne Roos are the registered owners; First security Bank is the legal owner. (Exhibit 38) The Impala is kept at the Bothell residence and is used primarily by Stephne Roos. (Testimony)
- C. A 1994 Toyota Pick-up truck (WLN: A12310V). This vehicle was purchased and registered on or about May 18, 1994. Alan Roos is the registered and legal owner. (Exhibit 38) The Toyota is kept at the Bothell residence and is used primarily by Alan Roos. (Testimony)
- D. A 1998 Jeep Cherokee (WLN: 234 BJI). The Jeep was purchased and registered on or about March 27, 2003. Stephne Roos is the registered and legal owner. (Exhibit 38) The Jeep is kept at the Sedro Woolley property and apparently does not run well. (Testimony)
- E. A 1973 triumph T140RV motorcycle (WLN: GD 419). The Triumph was purchased and registered on or about September 10, 1975. Alan Roos is the registered and legal owner. (Exhibit 38) Location of the Triumph was not disclosed during the hearing.
- F. A 1970 Chevrolet Chevelle (the "1970 Chevy"; WLN: CV02849). The 1970 Chevy was described during the hearing as a "muscle car."

For an unknown period of time prior to April, 2001, title to the 1970 Chevy was held by Chris Summy. Its plate at this time was 823 CZJ. Summy sold the 1970 Chevy to Thor Carlson in or around April, 2001, for \$2000. In May, 2001, Carlson had the plates changed to the present collector vehicle plate number. (Exhibits 38 and 49 and testimony)

Carlson sold the 1970 Chevy to Thomas Roos in or around March, 2002, for \$1,500. Roos borrowed some if not all of the purchase price from Alan Roos. (Testimony)

Thomas Roos repaid his father very little, if any, of the money he had borrowed nor did he take responsible care of the 1970 Chevy. In or around March, 2003, he apparently expressed an interest in getting rid of the 1970 Chevy. Stephne Roos apparently indicated that she wanted it. On March 27, 2003, Thomas Roos "gifted" the 1970 Chevy to his mother who filed for title on the same date. Stephne Roos is now the registered and legal owner. The 1970 Chevy was kept at the Sedro Woolley property for some period of time prior to the period involved in the incidents which form the basis of this case. (Exhibits 38, 48, and 49 and testimony)

G. A 1968 Volvo 140SW (WLN: CV 15989). The Volvo was purchased and registered on or about June 27, 1985. Alan and Stephne Roos are the registered and legal owners. (Exhibit 38) The Volvo is kept at the Sedro Woolley property. (Testimony)

10. At around 9:30 a.m. on June 10, 2005, Thomas Roos was found slumped over the wheel of the Nissan, whose engine was running, at a carwash in Lynnwood. He was very unresponsive and, in the opinion of the Lynnwood Police officer on the scene, he was obviously high on something. He was removed from the vehicle and initially arrested for being in physical possession of a vehicle while under the influence. (Exhibit 11 and testimony)

During a search incident to arrest the Lynnwood Police found \$4,366, methamphetamine, Oxycontin 80 pills, and other pills on his person. A small case under the driver's seat contained \$17,040 and a drug ledger. (Exhibit 11 and testimony)

The Lynnwood Police seized with intent to forfeit the currency, cell phones, electronic equipment, and about 19 merchant gift cards. Notice of the seizure was served personally on Thomas Roos on June 10, 2005. (Exhibit 11) A settlement was subsequently reached regarding the seized items. Neither the date of the settlement nor the precise disposition of the seized property was made part of this hearing record. (Testimony)

Thomas Roos was booked into the Snohomish County Jail on a charge of manufacturing, delivering, and/or possession of a controlled substance with intent to deliver. Bail was set at \$10,000. (Exhibit 13) Phyllis Etzler, a friend of Thomas Roos', posted a bail bond on June 10, 2005; Thomas Roos was released from Jail around or before 5:00 p.m. on June 10, 2005. (Exhibits 11 and 40 and testimony)

The Lynnwood Police impounded the Nissan and had it towed to Wally's Towing. When impounded, the Nissan contained miscellaneous clothing and personal items which were not confiscated. (Exhibit 14) The Lynnwood Police Department determined that Alan Roos was the registered owner of the Nissan. They called Alan Roos' home phone number to tell him of the impound. No one answered; a message was left on the answering machine. Wally's Towing mailed a Notice of Vehicle Impound to Alan Roos at the Bothell address on June 10, 2005; the Lynnwood Police Department mailed an official Notice of Impound to Alan Roos at the family's Bothell address on June 13, 2005. (Exhibit 31) Both Notices were found under Thomas Roos' dominion and control when he was arrested on July 3, 2005, in another vehicle. (See Finding 11, below.)

After being released from Jail, Thomas Roos made arrangements with Wally's Towing to retrieve the impounded Nissan that same day. He forged Alan Roos' signature to gain release of the vehicle.³ (Exhibit 15 and testimony)

11. On July 3, 2005, Thomas Roos was stopped for a traffic violation while driving a Chevrolet Tahoe with a Cadillac Escalade grill (the Tahoe). The Tahoe was registered to one Christopher Summy. Thomas Roos was arrested for driving with a suspended license. Search incident to arrest and a subsequent search pursuant to a search warrant found methamphetamine, cocaine, 100 Oxycontin pills, \$5,266, drug paraphernalia, bank statements in the name of Thomas Roos, the impound notices from the June 10, 2005, Lynnwood Police Department incident, numerous cell phones and merchant gift cards, a drug ledger, a Department of Licensing vehicle tab renewal notice for the Nissan addressed to Alan and Stephne Roos at the family's Bothell address bearing the hand-written notation "For Tom" on its front, and other items of personal property. All of those items were confiscated as evidence and/or seized for forfeiture. (Exhibits 18, 28 – 33)

Thomas Roos was booked into the Snohomish County Jail on July 3, 2005, for felony possession of methamphetamine and the suspended license warrant. (Exhibit 28) Bail was set at \$5,000 for each charge. (Exhibit 40, Fax pp. 4, 6, and 7) A friend of Thomas Roos' called his mother to tell her of Thomas' incarceration. Stephne Roos was told of Thomas' June 10, 2005, arrest at this time. Stephne Roos posted two bail bonds on July 3, 2005, to gain Thomas' release from the Jail. (Exhibit 40, Fax pp. 4, 6 – 8) While the two power of attorney documents for those bonds contain identification of the charges (admittedly somewhat cryptic) (Exhibit 40, Fax pp. 4 and 7), the papers actually signed by Stephne Roos do not (Exhibit 40, Fax pp. 6 and 8).

12. On August 16, 2005, at approximately 1:30 a.m., Thomas Roos was found slumped over the wheel of the Nissan at a 7/11 store near his parents' home. As with the June 10th incident, the engine was running and he was passed out. He was roused and taken into custody for driving under the influence; he was eventually booked into the Jail on a charge of possession with intent to deliver a controlled substance. Search of Thomas Roos incident to arrest found over \$6,600, a

³ Comparison of the signatures on Exhibits 2 and 15 leaves no doubt but that the Exhibit 15 signature is a forgery. Differences include the absence of the initial up-stroke on the capital "A," inversion of the swoops in the middle initial "M," and a total dissimilarity in the capital "R."

baggie filled with 77 Oxycontin 80 pills, and a 110.7 gram chunk of cocaine on his person. Search of the vehicle incident to arrest found two stash containers, more pills, high end electronics, and a cell phone which was constantly ringing. All of those items were confiscated as evidence and/or seized for forfeiture. (Exhibits 21, 35, and 36 and testimony)

Jesse Roos arrived at the 7/11 during the incident. Upon learning what was going on, he drove home and told his father. Alan Roos then drove to the scene, arriving before Thomas Roos was transported to Jail. The Nissan was seized under RCW 69.50.505 on probable cause that it was used or intended to be used to facilitate drug trafficking and transported to an SRDTF facility. Alan Roos was served with the seizure notice at the scene. (Exhibits 1 and 21 and testimony)

Stephne Roos posted a bail bond on August 18, 2005, to gain Thomas' release from the Jail. (Exhibit 39, Fax pp. 3 – 9) Unlike the July 3, 2005, bail bond documents, the August 18, 2005, documents include one signed by Stephne Roos which states the charge against Thomas Roos: "Poss of cont sub x2." (Exhibit 39, Fax p. 8) The other pages signed by Stephne Roos do not identify the charge. (Exhibit 39, Fax pp. 4, 5, and 9)

On or about September 8, 2005, Snohomish County District Court issued a search warrant for the Nissan. (Exhibit 21) Search pursuant to that warrant found a "dictionary safe" containing two digital scales, marijuana, and packing materials, a glass pipe, a safe in the trunk containing \$88.00, miscellaneous paperwork in the name of Alan and Thomas Roos (including the forged Wally's Towing impound release form from June 10, 2005), a 2002 body shop repair order from 2002 for a "70 Chevelle", a pre-April, 2001, photograph of the 1970 Chevy⁴, a watch with an attached price tag, and five cellular telephones. Each of those items was confiscated as evidence and/or seized for forfeiture. (Exhibits 23 and 43) After those items were confiscated, the Nissan still contained a large quantity of personal possessions which the SRDTF found no reason to confiscate. Those possessions filled five – eight large trash bags which were later returned to Stephne Roos as agent for Thomas Roos. (Testimony)

13. On September 9, 2005, at approximately 6:30 a.m. Thomas Roos was found slumped over the wheel of the 1970 Chevy at a 7/11 store on Filbert Road in South Snohomish County. As on previous such encounters, he was very difficult to rouse. Upon checking his expired driver's license, the responding officers found that he was the subject of an outstanding misdemeanor warrant for driving under the influence. Thomas Roos was taken into custody on that charge. (Exhibit 22 and testimony)

Search of Thomas Roos incident to arrest found \$1,530, the equivalent of 38 Oxycontin pills, and a glass pipe on his person. (Exhibit 26, Bates pp. 349 and 350) Search of the vehicle incident to arrest found two small white rock-like items which the officer believed to be methamphetamine. (Exhibit 22, Bates p. 333) The 1970 Chevy was seized under RCW 69.50.505 on probable cause that it was used or intended to be used to facilitate drug trafficking and transported to an SRDTF facility. (Testimony and official notice from the companion case file.)

⁴ The photograph can be dated based upon the license plate on the vehicle: As previously noted, Thor Carlson changed the "823 CZJ" plate present in the photograph to the current collector vehicle plate when he took title in April, 2001.

On or about September 9, 2005, Snohomish County District Court issued a search warrant for the 1970 Chevy. (Exhibit 22, Bates pp. 327 – 334) Search pursuant to that warrant found an Oxycontin pill on the dash, two scales, a backpack containing white powder and baggies, 4.8 grams of cocaine, an iPod, and eight cellular telephones. Each of those items was confiscated as evidence and/or seized for forfeiture. (Exhibits 24, 26 {Bates pp. 349D – 351B}, and 42) After those items were confiscated, the 1970 Chevy still contained a large quantity of personal possessions which the SRDTF found no reason to confiscate. Those possessions filled five – eight large trash bags which were later returned to Stephne Roos as agent for Thomas Roos. (Testimony)

Stephne Roos posted three bail bonds on September 9, 2005, to gain Thomas's release from the Jail. (Exhibit 39, Fax pp. 10 - 20) Like the August 18, 2005, bail bond documents, the September 9, 2005, documents include one signed by Stephne Roos which states the charges against Thomas Roos: "Neg Drv 1st", "Poss cont sub x2", and "DUI." (Exhibit 39, Fax p. 19) The other pages signed by Stephne Roos do not identify the charge. (Exhibit 39, Fax pp. 17, 18, and 20)

14. On November 15 and 16, 2005, Alan Roos purchased one "kill switch" and two steering wheel locks. (Exhibits 53 and 54 and testimony) On November 16, 2005, Alan Roos obtained an estimate from an Everett automobile repair shop for installation of new ignitions and kill switches in the Nissan and the 1970 Chevy. (Exhibit 52 and testimony)

15. According to testimony by the Rooses, the 1970 Chevy was usually kept at the family's Sedro Woolley property. For some period of time prior to Spring, 2005, it apparently was not in very good running order. The Rooses testified that Thomas suggested that it be taken to a friend of his, Raymond Brown (Brown), who could do the necessary repair work in his spare time. The 1970 Chevy was apparently driven by someone from Sedro Woolley to Brown's shop in Lynnwood. Thomas Roos testified that the 1970 Chevy was taken to Brown's shop about six months before and that Brown released it to him about two weeks before his arrest on September 9, 2005.

Stephne provided contradictory testimony as to the whereabouts of the 1970 Chevy during the period of interest in this case. At one point she said it went into Brown's shop in early Spring, 2005. She later said that she thought it was in Sedro Woolley as of July 3, 2005, still later said she thought it was in Sedro Woolley as of August 16, 2005, and still later said she didn't know that Thomas was driving the 1970 Chevy before September 9, 2005.

Evidence shows that Thomas Roos made a layaway purchase of four custom "Boyd's" wheels for the 1970 Chevy on June 30, 2005, at a Discount Tire store in Bothell. He put \$1,000 down and owed \$851.30. The invoice indicates that the store had six weeks from that date to get the wheels ready for Thomas Roos. (Exhibit 19) The 1970 Chevy was equipped with Boyd's wheels when seized on September 9, 2005. (Official notice of Exhibit 44 in the companion case file)

16. Stephne Roos testified that Thomas was living a secretive life during the Summer of 2005. She said he came home occasionally and that he had keys to the family home and mail box until his arrest on August 16, 2005. She said that she never saw the June 10, 2005, paperwork which was

mailed to Alan Roos. She also said that she believed someone was screening and erasing messages from their voice mail system from around 2002 through August or September 2005, at which point they moved the answering machine into their bedroom and installed a lock on the bedroom door.

She said she had no knowledge of Thomas Roos' drug use until after the July 3, 2005, arrest. She said she was told of his June 10, 2005, arrest when she arranged his bail from the July 3, 2005, arrest. She testified that Alan Roos gave Thomas permission to use the Nissan during the period between July 3 and August 16, 2005.

She said she believed Thomas Roos when he said that everything was fine. She said that Thomas would not answer her questions. Stephne denies writing "For Tom" on Exhibit 18. She claims not to have known the full extent of Thomas Roos' troubles until several months after the September 9, 2005, seizure. She stated that she and Alan Roos paid a \$3,200 retainer in July, 2005, for a criminal defense lawyer for Thomas Roos.

17. Alan Roos testified that Thomas Roos "came and went" during the Spring and Summer of 2005, but that he never slept at home. He said that he didn't really know his son well. He said he never saw the Lynnwood impound papers nor did he receive the Lynnwood Police call regarding the impound.

Alan Roos testified that he bought the Nissan because he wanted a reliable car for daily commuting. He said the Toyota pick-up was getting old. He said that he let Thomas use the Nissan to visit friends, etc. when he wasn't using it. He said that Thomas would borrow the Nissan as much as several times a day, but wouldn't be gone with it for more than one or two days.

Alan Roos testified that he was shown the cocaine "brick" when he arrived at the August 16, 2005, incident. He said he became "mad as hell" after that incident and could not cope with it well. He said he dumped responsibility to deal with the September incident on Stephne Roos.

Alan Roos recalled receiving the Nissan renewal notice (Exhibit 18), but has no idea who wrote "For Tom" on it. He recalls that the 1970 Chevy went into the shop for repairs around April, 2005. He said that Brown never called to say that the 1970 Chevy repairs were complete.

Alan Roos testified that it was Stephne who retained the criminal defense lawyer for Thomas after the July 3, 2005, incident.

18. Thomas Roos testified that he purchased the 1970 Chevy for around \$6,000 in 2001 and signed the title over to Stephne Roos when he couldn't keep up the payments. He said that the Nissan was a spare car for his parents and that he used it frequently. He said he used the Nissan daily without Alan Roos' knowledge and sometimes kept it for several weeks. He testified that Stephne Roos told him on July 4, 2005, not to use the Nissan, but he kept using it anyway. He later stated that he took the Nissan only about 10 times between June 10 and October 11, 2005.

He stated that he kept the Nissan wherever he was, not at the family's Bothell residence. He stated that he was living with friends, not at home, during the time period of concern in this case.

Thomas Roos testified he made the arrangements with Brown for the 1970 Chevy repairs. He said that Brown called him, not his parents, when the repair work was complete. He testified that he got the 1970 Chevy from Brown about 1.5 weeks prior to September 9, 2005, and that he kept it at the family's Bothell residence.

Thomas Roos testified that his parents knew of his juvenile conviction for drug trafficking, but were not aware of his adult convictions. He admitted to having a drug use problem during 2005, he admitted that he bought and sold drugs to support his habit, but he denied that he used either car to facilitate drug sales.

19. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW

Authority

Section 69.50.505(5) RCW provides that timely filed claims involving personal property seized under Chapter 69.50 RCW shall be heard "before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency". The undersigned is the Designated Hearing Officer for the Snohomish County Sheriff.

Review Criteria

Personal property which falls into any of seven categories within RCW 69.50.505(1) is "subject to seizure and forfeiture and no property right exists in" it. [RCW 69.50.505(1)] The seven personal property categories are:

- (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;
- (b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;
- (c) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);
- (d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) or (2), ...

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. ...

[RCW 69.50.505(1)] Subsections (d) and (g) include "exceptions" to forfeiture (not quoted above). Subsection (d) contains common carrier, innocent owner, misdemeanor marijuana possession, security interest, and untimely seizure exceptions. Subsection (g) contains security interest and innocent owner exceptions.

Burden of Proof and Standard of Review

The burden of proof in a personal property forfeiture case under RCW 69.50.505 shifts from one party to the other during the proceedings. The "initial burden is on the claimant to show a lawful right to possession of the property." Furthermore, without a lawful interest in the property, the claimant has no standing to contest forfeiture. [*Irwin v. Mount*, 47 Wn. App. 749, 753 (1987)] "In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture." [RCW 69.50.505(5)] "The burden of proof of any exemption or exception is upon the person claiming it." [RCW 69.50.506(a)]

DISCUSSION

The crux of this case is what did Alan and Stephne know, when did they know it, and what did they do about it? The record contains scant hard evidence on any of those questions. The answers all rest on the testimony of Alan, Stephne, and Thomas Roos. Thus, the credibility of their testimony is of paramount importance.

Their testimony regarding family relationships is credible. It seems quite apparent from their demeanor during the hearing that a huge gulf exists between Alan and Stephne on the one hand and Thomas on the other hand. It also seems apparent that Alan is likely a rather strict disciplinarian who has difficulty coping when his authority is flaunted or ignored, as Thomas apparently did frequently. The notion that Thomas came home as infrequently as possible when his parents were there and that he lived a separate life with friends is found credible.

Their testimony, even the two Nissan claim letters, is inconsistent regarding the extent of Thomas' use of the Nissan and the degree of authorization surrounding that use. The notion that Thomas only used the car when his parents were at work is simply unbelievable, especially in view of his non-home living arrangements. Thomas' testimony alone is filled with contradictions and vagueness regarding the extent of his use of that car. It seems more likely than not that Alan and Stephne allowed Thomas to use the Nissan regularly during the time period of interest. Further, it seems likely that they expected Thomas to pay licensing fees for the Nissan because of his extensive use of the vehicle.⁵ It is incomprehensible that he would have amassed as much personal possessions in the car were he only using it every so often and his father using it the remainder of the time. The Nissan may have been bought as a commuter vehicle for Alan, but it is more likely than not given the testimony in the hearing that it was being used primarily by Thomas, not Alan, in the Summer of 2005.

Thomas' statement that he never used the Nissan or the 1970 Chevy in drug trafficking is totally unbelievable.

It is more likely than not that Alan and Stephne Roos never learned of the June 10, 2005, Lynnwood incident until on or after July 3, 2005. It seems probable that Thomas was entering the family mail box and residence while his parents were at work in order, among whatever else he might have been doing, to steal mail and erase telephone messages relating to that incident.

Stephne Roos' testimony regarding when the 1970 Chevy went into the shop was inconsistent and not credible.

The Hearing Officer is left with the belief that Alan and Stephne Roos learned of Thomas' June 10, 2005, arrest and incarceration on or about July 3, 2005, when he was arrested for the second time. From that point on, they knew of his involvement with drugs. How many specifics they learned from the bail bond company is not at all clear, although it does stretch credibility to say that the bonding agent would not tell Stephne what her son had been arrested for.

What does it take to qualify as an "innocent owner?" The *Tellevik v. Real Property (Tellevik I)* court [120 Wn.2d 68, 845 P.2d 1325 (1992)] adopted the Federal courts' interpretation of a nearly identical Federal forfeiture statute. In a recent statement of that interpretation, Washington courts have held that a person who "knew or should have known" of an illegal use cannot qualify as an innocent owner and that a "failure to take all reasonable steps" to prevent illegal use of personal property amounts to tacit consent for such illegal use. [*Escamilla v. Tri-City Task Force*, 100 Wn. App. 742, 753-54, 999 P.2d 625 (2000)]

⁵ The "For Tom" hand-written note on Exhibit 18 was most likely written by either Alan or Stephne Roos. Whoever wrote that note did so sometime after it was deposited in the locked family mailbox. Thomas could have taken it out of the mailbox, but would have had no logical reason to write his name on the renewal notice. It seems highly unlikely that Jesse Roos would take it upon himself to decide that his brother rather than his parents should pay to register the Nissan. The only logical explanation is that Alan or Stephne decided that Thomas should pay for the registration, wrote the note on the form, and gave it to Thomas - who had it with him when arrested on July 3, 2005. The denial by Alan and Stephne seems merely to be an effort to deny the extent of the usage right which they gave to Thomas.

But does that mean that one can "stick his/her head in the sand" to avoid that knowledge? Such a view would hardly seem likely to win the support of Washington courts. If you know that your son was convicted of delivering a controlled substance as a juvenile, your son is being very secretive, your son is not living at home, your son has been stealing mail and erasing voice mail messages for over two years, your son is unemployed, and as of July 3, 2005, your son has been arrested twice since June 10th with drugs and large sums of cash on his person, how can you ignore the reality and claim to be an innocent owner when he is later arrested and your property is seized? The Roos' should have wondered whether and may well have actually feared that Thomas was using their family cars to traffic in drugs. That they failed to effectively stop that use does not make them innocent owners.

CONCLUSIONS OF LAW:

1. The Hearing Officer has jurisdiction over the matters and parties in this case.
2. All notices were timely given and received.
3. The SRDTF had indisputable grounds for probable cause to seize the Nissan on August 16, 2005. By that date, Thomas Roos had been arrested three times, once in the Nissan, with large quantities of drugs and cash on his person. The police were certainly within their rights to believe that the Nissan was being used to facilitate illegal drug trafficking.⁶
4. The SRDTF has proven by a preponderance of the evidence that the Nissan was used to facilitate drug trafficking. The evidence shows that on two occasions the Nissan contained Thomas Roos who, at those times, was transporting quantities of controlled substances beyond what might be considered typical of mere possession for personal use, who had a large quantity of cash on his person or in the vehicle, and who was transporting other indicia of drug trafficking: packaging materials and drug ledgers.
5. Forfeiture of a vehicle under RCW 69.50.505(1)(d) is subject to five exceptions. The burden of proving any exception is upon the person claiming it. [RCW 69.50.506(a)] Alan and Stephne Roos base their claims on the innocent owner exception, the second of the five. That exception will be addressed in the following Conclusion. As to the other four exceptions which are not being claimed, the available evidence shows that none apply in any event:
 - A. The first exception (Subsection (i)) pertains to common carriers (like busses, trains, commercial airplanes, etc.) and is inapplicable here.

⁶ That the drugs and money were, for the most part, either on Thomas Roos' person or in containers which he had in the vehicle, is not a defense to seizure and forfeiture of the vehicle. A vehicle is used to facilitate trafficking if it transports a person carrying drugs for sale or transports containers holding drugs which are for sale. It also matters not that the drugs may have been "fronted" for resale.

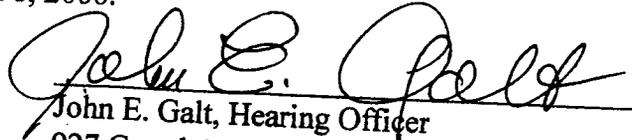
- B. The third exception (Subsection (iii)) prevents forfeiture if the seized vehicle was "used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014". This case involves drugs other than marijuana.
- C. The fourth exception (Subsection (iv)) protects holders of "a bona fide security interest" from losing their security in a forfeiture proceeding. The exception does not bar forfeiture; rather, it protects the secured party's interest if forfeiture is ordered. No bona fide security interest exists in the Nissan: Alan and Stephne Roos are the legal and registered owners. The exception does not apply.
- D. The fifth exception (Subsection (v)) provides that forfeiture may not occur "When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW ... unless it is seized or process is issued for its seizure within ten days of the owner's arrest". The seizure was initiated the day Thomas Roos was arrested. The seizure occurred within the required time period.
6. The second exception (Subsection (ii)) is commonly referred to as the "innocent owner" exception. Alan and Stephne Roos knew or should have known as of July 3, 2005, that Thomas was in serious drug problems (again). They should thereafter have prevented his access to any of their vehicles. Due diligence and prudence require nothing less. Denying the existence of the problem throughout the summer and waiting until November, 2005, two months after they filed these claims, to begin to take action to prevent Thomas' use of the family vehicles cannot qualify them under the innocent owner exception.
7. The Nissan is subject to forfeiture. Alan and Stephne Roos have not proven the innocent owner exception by a preponderance of the evidence.
8. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

NOW, THEREFORE, on the basis of the foregoing Findings of Fact, Discussion, and Conclusions of Law, the Hearing Officer issues the following

ORDER:

One (1) 2004 Nissan Sentra (WLN: 937 SRL; VIN: 3NICB51084L475347) is and shall remain forfeited to the Seizing Agency which may convert for use or dispose of the vehicle in compliance with applicable state law. Any and all personal possessions of the previous owner, not to include appurtenances, which are still located within the vehicle shall be promptly returned to the previous owner (unless otherwise restricted due to hazardous contamination). Please contact the Seizing Agency's Administrative Sergeant at (425) 388-3479 to make arrangements to retrieve personal property from the vehicle.

DECISION and ORDER issued March 8, 2006.



John E. Galt, Hearing Officer
927 Grand Avenue
Everett, WA 98201-1305
Phone/FAX: (425) 259-3144

***** NOTICE *****

- A. Any party may seek reconsideration of this Decision and Order by filing a written Petition for Reconsideration both with the Designated Hearing Officer, 927 Grand Avenue, Everett, Washington 98201, and with the opposing party at its address of record within ten (10) days of the service (date of mailing) of this Decision and Order. Any such Petition must state the specific grounds upon which relief is requested, and will be processed in accordance with the provisions of § 34.05.470 RCW and Rule of Procedure PF15.
- B. Petitions for a stay of effectiveness of this Order will not be accepted or granted; PROVIDED, that the timely filing of a Petition for Reconsideration shall automatically stay the effectiveness of this Decision and Order until that Petition has been finally disposed of by the Hearing Officer.
- C. Appeal from this Decision and Order is governed by the provisions of Chapter 34.05 RCW. [RCW 69.50.505(5)] Part V of Chapter 34.05 RCW provides for judicial appeal and establishes procedures for such appeal. All administrative remedies must be exhausted prior to filing of a judicial appeal. In summary, any appeal by a person with standing must be filed with the appropriate Superior Court within 30 days after service of the final order. Chapter 34.05 RCW, Part V, should be consulted for specific requirements.

Distribution:

Claimants:

Alan M. and Stephne K. Roos
C/o Pete Mazzone
2910 Colby Avenue, Suite 200
Everett, WA 98201
(425) 259-4989

SENT BY CERTIFIED MAIL NO.: 7005 0390 0004 2337 1460

Seizing Agency's Representative:

Lt. Mark St. Clair
Snohomish Regional Drug Task Force
3000 Rockefeller M/S 606
Everett, WA 98201
(360) 657-1625

SENT BY FAX TO THE SRDTF

APPENDIX 3

BEFORE THE DESIGNATED HEARING OFFICER
for the
SNOHOMISH COUNTY SHERIFF

PHILLIPS AND MALLONEE
MAR 09 2006

DECISION AND ORDER

In re the forfeiture of: One (1) 1970 Chevrolet Chevelle ¹ (WLN: CV02849)

Incident No.: TF05-205

Statutory Authority: RCW 69.50.505

Claimant: Stephne K. Roos, Represented by Pete Mazzone, Attorney at Law

Seizing Agency: Snohomish County Sheriff/Snohomish Regional Drug Task Force, represented by Special Deputy Prosecuting Attorney Alfred P. Gehri ²

Decision Summary: Vehicle Forfeited

Date of Decision: March 8, 2006

John E. Galt, Designated Hearing Officer, convened a consolidated hearing on the above-captioned claim and a companion claim filed by Alan M. and Stephne K. Roos under Incident Number SO05-20161 on Friday, February 17, 2006, in the Board of Equalization Hearing Room, County Administration Building East, 2nd Floor: Room 2F03, 3000 Rockefeller Avenue, Everett, Washington. The hearing was recessed at the end of the day; the hearing was reconvened at 10:00 a.m. on Friday February 24, 2006, and concluded on that day. The companion claim is decided in a separate Decision and Order issued this date.

At said hearing witnesses were sworn, testimony was presented, and exhibits were entered. The Hearing Officer, having considered all of said evidence and having considered the pleadings, positions and arguments of both parties and being fully advised in the premises, now makes and enters his:

FINDINGS OF FACT:

1. On September 9, 2005, the Snohomish Regional Drug Task Force (SRDTF) seized with intent to forfeit one (1) 1970 Chevrolet Chevelle (WLN: CV02849), referred to hereinafter as "the 1970 Chevy." The SRDTF served Stephne Roos by certified mail on or about September 15, 2005,

¹ This vehicle has also been referred to in previous documents and during the hearing as a "Chevrolet Malibu."
² Mr. Gehri was killed in a March 4, 2006, automobile accident.

with a Notice of Seizure and Intended Forfeiture pursuant to RCW 69.50.505, for the forfeiture of the 1970 Chevy. (Exhibit 1³)

2. The SRDTF seized the 1970 Chevy about three weeks after seizing a 2004 Nissan under incident number SO05-20161 (See Finding 7.A, below.) based on probable cause to believe that they had been used by Thomas E. Roos (Thomas Roos) to facilitate drug trafficking. The several incidents involved in this case are summarized in Findings 8 – 11, below.

3. Stephne Roos filed a timely claim for return of the 1970 Chevy on September 27, 2005. Her claim letter states "We let our son, Thomas E. Roos; [sic] use the car to go to appointments. On 9-08-05 he took the car to show to a friend. Prior to that, the car had been in storage for 3 months. We had no knowledge of what contents were in the car at that time." (Exhibit 2) Stephne Roos thus bases her claim on the innocent owner exception of RCW 69.50.505(1)(d)(ii).

4. Alan M. (Alan Roos) and Stephne Roos are husband and wife. They are in their early to mid-fifties. They have two sons: Jesse and Thomas. Jesse's age is not stated in the hearing record; Thomas, at all times material to the incidents involved in this case, was 24. (Exhibit 50 and testimony)

Thomas was convicted on June 18, 1998, when he was 17 of delivery of a controlled substance. He also has a number of adult misdemeanor convictions, including possession of drug paraphernalia when he was 19. (Exhibit 17) Thomas was convicted on January 25, 2006, of possession of controlled substances on June 10 and August 16, 2005. (Exhibits 16 and 45; See Findings 8 and 10, below.)

5. Alan and Stephne Roos are both gainfully employed. Alan Roos has been employed by Safeway for some 27 years and is presently a meat department manager. Alan Roos works days from 6:00 a.m. to 4:00 p.m. and arrives home around 5:00 p.m. (Exhibit 37 and testimony)

Stephne Roos is a dental assistant with the King County/City of Seattle Public Health Department. Stephne Roos also works days, leaving home at around 6:50 a.m. and returning at around 6:00 p.m. (Exhibit 37 and testimony)

Thomas Roos is unemployed and had no reported income from the 2nd quarter of 2002 through the 2nd quarter of 2005. (Exhibit 37)

6. Alan and Stephne Roos own three properties in Washington. They reside at 17306 10th Avenue SE, Bothell, Washington 98012. Jesse Roos lives with them. Thomas Roos uses that address as his official address but rarely stayed there. He had a key to the locking mail box (at least until August 16, 2005, when his keys were confiscated after an arrest) and retrieved mail occasionally.

³ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Hearing Officer considers all relevant documents in the record, typically only major documents are cited. The Hearing Officer's Decision is based upon all documents in the record.

He also apparently went into the house during the day when his parents were not around. The relationship between Alan and Thomas during the period prior to and during the incidents involved in this case seems to have been strained at best. Thomas apparently tried to avoid being at home when Alan was there. (Exhibit 2 et al. and testimony)

Alan and Stephne Roos also own a property in Skagit County which has a Sedro Woolley mailing address and a rental property in Seattle. (Testimony)

7. Between them Alan and Stephne Roos own seven motor vehicles:
 - A. A 2004 Nissan Sentra (the "Nissan"; WLN: 937 SRL). Alan and Stephne purchased the Nissan new on or about July 22, 2004 Alan and Stephne Roos are the registered and legal owners. (Exhibits 38, 46, 47, and 51) The Nissan was kept at the Bothell residence. (Testimony)
 - B. A 2000 Chevrolet Impala (WLN: 144 KSR). This vehicle was purchased and registered on or about December 7, 1999. Alan and Stephne Roos are the registered owners; First security Bank is the legal owner. (Exhibit 38) The Impala is kept at the Bothell residence and is used primarily by Stephne Roos. (Testimony)
 - C. A 1994 Toyota Pick-up truck (WLN: A12310V). This vehicle was purchased and registered on or about May 18, 1994. Alan Roos is the registered and legal owner. (Exhibit 38) The Toyota is kept at the Bothell residence and is used primarily by Alan Roos. (Testimony)
 - D. A 1998 Jeep Cherokee (WLN: 234 BJI). The Jeep was purchased and registered on or about March 27, 2003. Stephne Roos is the registered and legal owner. (Exhibit 38) The Jeep is kept at the Sedro Woolley property and apparently does not run well. (Testimony)
 - E. A 1973 triumph T140RV motorcycle (WLN: GD 419). The Triumph was purchased and registered on or about September 10, 1975. Alan Roos is the registered and legal owner. (Exhibit 38) Location of the Triumph was not disclosed during the hearing.
 - F. The 1970 Chevy. The 1970 Chevy was described during the hearing as a "muscle car." (Exhibit 44)

For an unknown period of time prior to April, 2001, title to the 1970 Chevy was held by Chris Summy. Its plate at this time was 823 CZJ. Summy sold the 1970 Chevy to Thor Carlson in or around April, 2001, for \$2000. In May, 2001, Carlson had the plates changed to the present collector vehicle plate number. (Exhibits 38 and 49 and testimony)

Carlson sold the 1970 Chevy to Thomas Roos in or around March, 2002, for \$1,500. Roos borrowed some if not all of the purchase price from Alan Roos. (Testimony)

Thomas Roos repaid his father very little, if any, of the money he had borrowed nor did he take responsible care of the 1970 Chevy. In or around March, 2003, he apparently expressed an interest in getting rid of the 1970 Chevy. Stephne Roos apparently indicated that she wanted it. On March 27, 2003, Thomas Roos "gifted" the 1970 Chevy to his mother who filed for title on the same date. Stephne Roos is now the registered and legal owner. The 1970 Chevy was kept at the Sedro Woolley property for some period of time prior to the period involved in the incidents which form the basis of this case. (Exhibits 38, 48, and 49 and testimony)

G. A 1968 Volvo 140SW (WLN: CV 15989). The Volvo was purchased and registered on or about June 27, 1985. Alan and Stephne Roos are the registered and legal owners. (Exhibit 38) The Volvo is kept at the Sedro Woolley property. (Testimony)

8. At around 9:30 a.m. on June 10, 2005, Thomas Roos was found slumped over the wheel of the Nissan, whose engine was running, at a carwash in Lynnwood. He was very unresponsive and, in the opinion of the Lynnwood Police officer on the scene, he was obviously high on something. He was removed from the vehicle and initially arrested for being in physical possession of a vehicle while under the influence. (Exhibit 11 and testimony)

During a search incident to arrest the Lynnwood Police found \$4,366, methamphetamine, Oxycontin 80 pills, and other pills on his person. A small case under the driver's seat contained \$17,040 and a drug ledger. (Exhibit 11 and testimony)

The Lynnwood Police seized with intent to forfeit the currency, cell phones, electronic equipment, and about 19 merchant gift cards. Notice of the seizure was served personally on Thomas Roos on June 10, 2005. (Exhibit 11) A settlement was subsequently reached regarding the seized items. Neither the date of the settlement nor the precise disposition of the seized property was made part of this hearing record. (Testimony)

Thomas Roos was booked into the Snohomish County Jail on a charge of manufacturing, delivering, and/or possession of a controlled substance with intent to deliver. Bail was set at \$10,000. (Exhibit 13) Phyllis Etzler, a friend of Thomas Roos', posted a bail bond on June 10, 2005; Thomas Roos was released from Jail around or before 5:00 p.m. on June 10, 2005. (Exhibits 11 and 40 and testimony)

The Lynnwood Police impounded the Nissan and had it towed to Wally's Towing. When impounded, the Nissan contained miscellaneous clothing and personal items which were not confiscated. (Exhibit 14) The Lynnwood Police Department determined that Alan Roos was the registered owner of the Nissan. They called Alan Roos' home phone number to tell him of the impound. No one answered; a message was left on the answering machine. Wally's Towing mailed a Notice of Vehicle Impound to Alan Roos at the Bothell address on June 10, 2005; the Lynnwood Police Department mailed an official Notice of Impound to Alan Roos at the family's Bothell address on June 13, 2005. (Exhibit 31) Both Notices were found under Thomas Roos' dominion and control when he was arrested on July 3, 2005, in another vehicle. (See Finding 9, below.)

After being released from Jail, Thomas Roos made arrangements with Wally's Towing to retrieve the impounded Nissan that same day. He forged Alan Roos' signature to gain release of the vehicle. ⁴ (Exhibit 15 and testimony)

9. On July 3, 2005, Thomas Roos was stopped for a traffic violation while driving a Chevrolet Tahoe with a Cadillac Escalade grill (the Tahoe). The Tahoe was registered to one Christopher Summy. Thomas Roos was arrested for driving with a suspended license. Search incident to arrest and a subsequent search pursuant to a search warrant found methamphetamine, cocaine, 100 Oxycontin pills, \$5,266, drug paraphernalia, bank statements in the name of Thomas Roos, the impound notices from the June 10, 2005, Lynnwood Police Department incident, numerous cell phones and merchant gift cards, a drug ledger, a Department of Licensing vehicle tab renewal notice for the Nissan addressed to Alan and Stephne Roos at the family's Bothell address bearing the hand-written notation "For Tom" on its front, and other items of personal property. All of those items were confiscated as evidence and/or seized for forfeiture. (Exhibits 18, 28 – 33)

Thomas Roos was booked into the Snohomish County Jail on July 3, 2005, for felony possession of methamphetamine and the suspended license warrant. (Exhibit 28) Bail was set at \$5,000 for each charge. (Exhibit 40, Fax pp. 4, 6, and 7) A friend of Thomas Roos' called his mother to tell her of Thomas' incarceration. Stephne Roos was told of Thomas' June 10, 2005, arrest at this time. Stephne Roos posted two bail bonds on July 3, 2005, to gain Thomas' release from the Jail. (Exhibit 40, Fax pp. 4, 6 – 8) While the two power of attorney documents for those bonds contain identification of the charges (admittedly somewhat cryptic) (Exhibit 40, Fax pp. 4 and 7), the papers actually signed by Stephne Roos do not (Exhibit 40, Fax pp. 6 and 8).

10. On August 16, 2005, at approximately 1:30 a.m., Thomas Roos was found slumped over the wheel of the Nissan at a 7/11 store near his parents' home. As with the June 10th incident, the engine was running and he was passed out. He was roused and taken into custody for driving under the influence; he was eventually booked into the Jail on a charge of possession with intent to deliver a controlled substance. Search of Thomas Roos incident to arrest found over \$6,600, a baggie filled with 77 Oxycontin 80 pills, and a 110.7 gram chunk of cocaine on his person. Search of the vehicle incident to arrest found two stash containers, more pills, high end electronics, and a cell phone which was constantly ringing. All of those items were confiscated as evidence and/or seized for forfeiture. (Exhibits 21, 35, and 36 and testimony)

Jesse Roos arrived at the 7/11 during the incident. Upon learning what was going on, he drove home and told his father. Alan Roos then drove to the scene, arriving before Thomas Roos was transported to Jail. The Nissan was seized under RCW 69.50.505 on probable cause that it was used or intended to be used to facilitate drug trafficking and transported to an SRDTF facility. Alan Roos was served with the seizure notice at the scene. (Exhibits 1 and 21 and testimony)

⁴ Comparison of the signatures on Exhibits 46 and 15 leaves no doubt but that the Exhibit 15 signature is a forgery. Differences include the absence of the initial up-stroke on the capital "A," inversion of the swoops in the middle initial "M," and a total dissimilarity in the capital "R."

Stephne Roos posted a bail bond on August 18, 2005, to gain Thomas' release from the Jail. (Exhibit 39, Fax pp. 3 – 9) Unlike the July 3, 2005, bail bond documents, the August 18, 2005, documents include one signed by Stephne Roos which states the charge against Thomas Roos: "Poss of cont sub x2." (Exhibit 39, Fax p. 8) The other pages signed by Stephne Roos do not identify the charge. (Exhibit 39, Fax pp. 4, 5, and 9)

On or about September 8, 2005, Snohomish County District Court issued a search warrant for the Nissan. (Exhibit 21) Search pursuant to that warrant found a "dictionary safe" containing two digital scales, marijuana, and packing materials, a glass pipe, a safe in the trunk containing \$88.00, miscellaneous paperwork in the name of Alan and Thomas Roos (including the forged Wally's Towing impound release form from June 10, 2005), a 2002 body shop repair order from 2002 for a "70 Chevelle", a pre-April, 2001, photograph of the 1970 Chevy⁵, a watch with an attached price tag, and five cellular telephones. Each of those items was confiscated as evidence and/or seized for forfeiture. (Exhibits 23 and 43) After those items were confiscated, the Nissan still contained a large quantity of personal possessions which the SRDTF found no reason to confiscate. Those possessions filled five – eight large trash bags which were later returned to Stephne Roos as agent for Thomas Roos. (Testimony)

11. On September 9, 2005, at approximately 6:30 a.m. Thomas Roos was found slumped over the wheel of the 1970 Chevy at a 7/11 store on Filbert Road in South Snohomish County. As on previous such encounters, he was very difficult to rouse. Upon checking his expired driver's license, the responding officers found that he was the subject of an outstanding misdemeanor warrant for driving under the influence. Thomas Roos was taken into custody on that charge. (Exhibit 22 and testimony)

Search of Thomas Roos incident to arrest found \$1,530, the equivalent of 38 Oxycontin pills, and a glass pipe on his person. (Exhibit 26, Bates pp. 349 and 350) Search of the vehicle incident to arrest found two small white rock-like items which the officer believed to be methamphetamine. (Exhibit 22, Bates p. 333) The 1970 Chevy was seized under RCW 69.50.505 on probable cause that it was used or intended to be used to facilitate drug trafficking and transported to an SRDTF facility. (Testimony and official notice from the companion case file.)

On or about September 9, 2005, Snohomish County District Court issued a search warrant for the 1970 Chevy. (Exhibit 22, Bates pp. 327 – 334) Search pursuant to that warrant found an Oxycontin pill on the dash, two scales, a backpack containing white powder and baggies, 4.8 grams of cocaine, an iPod, and eight cellular telephones. Each of those items was confiscated as evidence and/or seized for forfeiture. (Exhibits 24, 26 {Bates pp. 349D – 351B}, and 42) After those items were confiscated, the 1970 Chevy still contained a large quantity of personal possessions which the SRDTF found no reason to confiscate. Those possessions filled five – eight large trash bags which were later returned to Stephne Roos as agent for Thomas Roos. (Testimony)

⁵ The photograph can be dated based upon the license plate on the vehicle: As previously noted, Thor Carlson changed the "823 CZJ" plate present in the photograph to the current collector vehicle plate when he took title in April, 2001.

Stephne Roos posted three bail bonds on September 9, 2005, to gain Thomas's release from the Jail. (Exhibit 39, Fax pp. 10 - 20) Like the August 18, 2005, bail bond documents, the September 9, 2005, documents include one signed by Stephne Roos which states the charges against Thomas Roos: "Neg Drv 1st", "Poss cont sub x2", and "DUI." (Exhibit 39, Fax p. 19) The other pages signed by Stephne Roos do not identify the charge. (Exhibit 39, Fax pp. 17, 18, and 20)

12. On November 15 and 16, 2005, Alan Roos purchased one "kill switch" and two steering wheel locks. (Exhibits 53 and 54 and testimony) On November 16, 2005, Alan Roos obtained an estimate from an Everett automobile repair shop for installation of new ignitions and kill switches in the Nissan and the 1970 Chevy. (Exhibit 52 and testimony)

13. According to testimony by the Rooses, the 1970 Chevy was usually kept at the family's Sedro Woolley property. For some period of time prior to Spring, 2005, it apparently was not in very good running order. The Rooses testified that Thomas suggested that it be taken to a friend of his, Raymond Brown (Brown), who could do the necessary repair work in his spare time. The 1970 Chevy was apparently driven by someone from Sedro Woolley to Brown's shop in Lynnwood. Thomas Roos testified that the 1970 Chevy was taken to Brown's shop about six months before and that Brown released it to him about two weeks before his arrest on September 9, 2005.

Stephne provided contradictory testimony as to the whereabouts of the 1970 Chevy during the period of interest in this case. At one point she said it went into Brown's shop in early Spring, 2005. She later said that she thought it was in Sedro Woolley as of July 3, 2005, still later said she thought it was in Sedro Woolley as of August 16, 2005, and still later said she didn't know that Thomas was driving the 1970 Chevy before September 9, 2005. Her claim letter says Thomas took the car to show a friend on September 8, 2005. (Exhibit 2)

Evidence shows that Thomas Roos made a layaway purchase of four custom "Boyd's" wheels for the 1970 Chevy on June 30, 2005, at a Discount Tire store in Bothell. He put \$1,000 down and owed \$851.30. The invoice indicates that the store had six weeks from that date to get the wheels ready for Thomas Roos. (Exhibit 19) The 1970 Chevy was equipped with Boyd's wheels when seized on September 9, 2005. (Official notice of Exhibit 44 in the companion case file)

14. Stephne Roos testified that Thomas was living a secretive life during the Summer of 2005. She said he came home occasionally and that he had keys to the family home and mail box until his arrest on August 16, 2005. She said that she never saw the June 10, 2005, paperwork which was mailed to Alan Roos. She also said that she believed someone was screening and erasing messages from their voice mail system from around 2002 through August or September 2005, at which point they moved the answering machine into their bedroom and installed a lock on the bedroom door.

She said she had no knowledge of Thomas Roos' drug use until after the July 3, 2005, arrest. She said she was told of his June 10, 2005, arrest when she arranged his bail from the July 3, 2005, arrest. She testified that Alan Roos gave Thomas permission to use the Nissan during the period between July 3 and August 16, 2005.

She said she believed Thomas Roos when he said that everything was fine. She said that Thomas would not answer her questions. Stephne denies writing "For Tom" on Exhibit 18. She claims not to have known the full extent of Thomas Roos' troubles until several months after the September 9, 2005, seizure. She stated that she and Alan Roos paid a \$3,200 retainer in July, 2005, for a criminal defense lawyer for Thomas Roos.

15. Alan Roos testified that Thomas Roos "came and went" during the Spring and Summer of 2005, but that he never slept at home. He said that he didn't really know his son well. He said he never saw the Lynnwood impound papers nor did he receive the Lynnwood Police call regarding the impound.

Alan Roos testified that he bought the Nissan because he wanted a reliable car for daily commuting. He said the Toyota pick-up was getting old. He said that he let Thomas use the Nissan to visit friends, etc. when he wasn't using it. He said that Thomas would borrow the Nissan as much as several times a day, but wouldn't be gone with it for more than one or two days.

Alan Roos testified that he was shown the cocaine "brick" when he arrived at the August 16, 2005, incident. He said he became "mad as hell" after that incident and could not cope with it well. He said he dumped responsibility to deal with the September incident on Stephne Roos.

Alan Roos recalled receiving the Nissan renewal notice (Exhibit 18), but has no idea who wrote "For Tom" on it. He recalls that the 1970 Chevy went into the shop for repairs around April, 2005. He said that Brown never called to say that the 1970 Chevy repairs were complete.

Alan Roos testified that it was Stephne who retained the criminal defense lawyer for Thomas after the July 3, 2005, incident.

16. Thomas Roos testified that he purchased the 1970 Chevy for around \$6,000 in 2001 and signed the title over to Stephne Roos when he couldn't keep up the payments. He said that the Nissan was a spare car for his parents and that he used it frequently. He said he used the Nissan daily without Alan Roos' knowledge and sometimes kept it for several weeks. He testified that Stephne Roos told him on July 4, 2005, not to use the Nissan, but he kept using it anyway. He later stated that he took the Nissan only about 10 times between June 10 and October 11, 2005. He stated that he kept the Nissan wherever he was, not at the family's Bothell residence. He stated that he was living with friends, not at home, during the time period of concern in this case.

Thomas Roos testified he made the arrangements with Brown for the 1970 Chevy repairs. He said that Brown called him, not his parents, when the repair work was complete. He testified that he got the 1970 Chevy from Brown about 1.5 weeks prior to September 9, 2005, and that he kept it at the family's Bothell residence.

Thomas Roos testified that his parents knew of his juvenile conviction for drug trafficking, but were not aware of his adult convictions. He admitted to having a drug use problem during 2005,

he admitted that he bought and sold drugs to support his habit, but he denied that he used either car to facilitate drug sales.

17. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW

Authority

Section 69.50.505(5) RCW provides that timely filed claims involving personal property seized under Chapter 69.50 RCW shall be heard "before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency". The undersigned is the Designated Hearing Officer for the Snohomish County Sheriff.

Review Criteria

Personal property which falls into any of seven categories within RCW 69.50.505(1) is "subject to seizure and forfeiture and no property right exists in" it. [RCW 69.50.505(1)] The seven personal property categories are:

- (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;
- (b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;
- (c) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);
- (d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) or (2), ...
- (e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;
- (f) All drug paraphernalia;
- (g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all

tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. ...

[RCW 69.50.505(1)] Subsections (d) and (g) include "exceptions" to forfeiture (not quoted above). Subsection (d) contains common carrier, innocent owner, misdemeanor marijuana possession, security interest, and untimely seizure exceptions. Subsection (g) contains security interest and innocent owner exceptions.

Burden of Proof and Standard of Review

The burden of proof in a personal property forfeiture case under RCW 69.50.505 shifts from one party to the other during the proceedings. The "initial burden is on the claimant to show a lawful right to possession of the property." Furthermore, without a lawful interest in the property, the claimant has no standing to contest forfeiture. [*Irwin v. Mount*, 47 Wn. App. 749, 753 (1987)] "In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture." [RCW 69.50.505(5)] "The burden of proof of any exemption or exception is upon the person claiming it." [RCW 69.50.506(a)]

DISCUSSION

The crux of this case is what did Alan and Stephne (in particular) know, when did they know it, and what did they do about it? The record contains scant hard evidence on any of those questions. The answers all rest on the testimony of Alan, Stephne, and Thomas Roos. Thus, the credibility of their testimony is of paramount importance.

Their testimony regarding family relationships is credible. It seems quite apparent from their demeanor during the hearing that a huge gulf exists between Alan and Stephne on the one hand and Thomas on the other hand. It also seems apparent that Alan is likely a rather strict disciplinarian who has difficulty coping when his authority is flaunted or ignored, as Thomas apparently did frequently. The notion that Thomas came home as infrequently as possible when his parents were there and that he lived a separate life with friends is found credible.

Their testimony contradicts Stephne Roos' claim letter regarding the whereabouts of the 1970 Chevy prior to September 9, 2005, and the extent of Thomas' use of the 1970 Chevy. The claim letter states that Alan and Stephne allowed Thomas to use the 1970 Chevy on September 8, 2005. However, Alan and Stephne both testified that they thought the 1970 Chevy was still in Brown's shop being repaired on that date. The claim letter states that the 1970 Chevy was in storage for three months prior to September 9 (or 8), 2005. However, all three Roos testified that it had been in Brown's shop for repairs, not in storage in Sedro Wooley, in the months prior to September 9, 2005. Stephne, in particular, was very unsure in her testimony as to when the vehicle went into the shop, but she was very certain that she did not know it had come out of the shop before September 9, 2005. The claim letter and testimony are found to be self-serving and unreliable.

Thomas' statement that he never used either the 1970 Chevy or the Nissan in drug trafficking is totally unbelievable. Thomas' argument that no one would ever use a car like the 1970 Chevy for drug dealing because it is too "showy" is logical – but Thomas was not thinking or acting logically during the Summer of 2005. The evidence of its use to transport drugs for sale is simply too persuasive.

It is more likely than not that Alan and Stephne Roos never learned of the June 10, 2005, Lynnwood incident until on or after July 3, 2005. It seems probable that Thomas was entering the family mail box and residence while his parents were at work in order, among whatever else he might have been doing, to steal mail and erase telephone messages relating to that incident.

The Hearing Officer is left with the belief that Alan and Stephne Roos learned of Thomas' June 10, 2005, arrest and incarceration on or about July 3, 2005, when he was arrested for the second time. From that point on, they knew of his involvement with drugs. How many specifics they learned from the bail bond company is not at all clear, although it does stretch credibility to say that the bonding agent would not tell Stephne what her son had been arrested for.

What does it take to qualify as an "innocent owner?" The *Tellevik v. Real Property (Tellevik I)* court [120 Wn.2d 68, 845 P.2d 1325 (1992)] adopted the Federal courts' interpretation of a nearly identical Federal forfeiture statute. In a recent statement of that interpretation, Washington courts have held that a person who "knew or should have known" of an illegal use cannot qualify as an innocent owner and that a "failure to take all reasonable steps" to prevent illegal use of personal property amounts to tacit consent for such illegal use. [*Escamilla v. Tri-City Task Force*, 100 Wn. App. 742, 753-54, 999 P.2d 625 (2000)]

But does that mean that one can "stick his/her head in the sand" to avoid that knowledge? Such a view would hardly seem likely to win the support of Washington courts. If you know that your son was convicted of delivering a controlled substance as a juvenile, your son is being very secretive, your son is not living at home, your son has been stealing mail and erasing voice mail messages for over two years, your son is unemployed, as of July 3, 2005, your son has been arrested twice since June 10th with drugs and large sums of cash on his person, and that the SRDTF seized your Nissan on August 16, 2005, because of its use in drug trafficking, how can you ignore the reality and claim to be an innocent owner when he is later arrested and your property is seized? The Roos' should have wondered whether and may well have actually feared that Thomas was using their family cars to traffic in drugs. That they failed to effectively stop that use does not make them innocent owners.

CONCLUSIONS OF LAW:

1. The Hearing Officer has jurisdiction over the matters and parties in this case.
2. All notices were timely given and received.
3. The SRDTF had indisputable grounds for probable cause to seize the 1970 Chevy on September 9, 2005. By that date, Thomas Roos had been arrested four times, twice in the Nissan, with large

quantities of drugs and cash on his person. The police were certainly within their rights to believe that the 1970 Chevy was being used to facilitate illegal drug trafficking.⁶

4. The SRDTF has proven by a preponderance of the evidence that the 1970 Chevy was used to facilitate drug trafficking. The evidence shows that the 1970 Chevy contained Thomas Roos who was transporting quantities of controlled substances beyond what might be considered typical of mere possession for personal use, who had a large quantity of cash on his person or in the vehicle, and who was transporting other indicia of drug trafficking: scales and packaging materials.
5. Forfeiture of a vehicle under RCW 69.50.505(1)(d) is subject to five exceptions. The burden of proving any exception is upon the person claiming it. [RCW 69.50.506(a)] Stephne Roos bases her claim on the innocent owner exception, the second of the five. That exception will be addressed in the following Conclusion. As to the other four exceptions which are not being claimed, the available evidence shows that none apply in any event:
 - A. The first exception (Subsection (i)) pertains to common carriers (like busses, trains, commercial airplanes, etc.) and is inapplicable here.
 - B. The third exception (Subsection (iii)) prevents forfeiture if the seized vehicle was "used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014". This case involves drugs other than marijuana.
 - C. The fourth exception (Subsection (iv)) protects holders of "a bona fide security interest" from losing their security in a forfeiture proceeding. The exception does not bar forfeiture; rather, it protects the secured party's interest if forfeiture is ordered. No bona fide security interest exists in the 1970 Chevy: Stephne Roos is the legal and registered owner. The exception does not apply.
 - D. The fifth exception (Subsection (v)) provides that forfeiture may not occur "When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW ... unless it is seized or process is issued for its seizure within ten days of the owner's arrest". The seizure was initiated the day Thomas Roos was arrested and Notice of the seizure was sent to Stephne Roos within six days of the seizure. The seizure occurred within the required time period.
6. The second exception (Subsection (ii)) is commonly referred to as the "innocent owner" exception. Stephne Roos knew or should have known as of July 3, 2005, that Thomas was in serious drug problems (again). She should thereafter have prevented his access to any of the family's vehicles. Due diligence and prudence require nothing less. Denying the existence of the

⁶ That the drugs and money were, for the most part, either on Thomas Roos' person or in containers which he had in the vehicle, is not a defense to seizure and forfeiture of the vehicle. A vehicle is used to facilitate trafficking if it transports a person carrying drugs for sale or transports containers holding drugs which are for sale. It also matters not that the drugs may have been "fronted" for resale.

problem throughout the summer and waiting until November, 2005, two months after she filed this claim, to begin to take action to prevent Thomas' use of the family vehicles cannot qualify her under the innocent owner exception.

Her seeming almost total lack of knowledge of where the 1970 Chevy was being repaired and when it would be completed is quite perplexing. It is hard to accept that a person who loves "muscle cars," as Stephne was portrayed, would not know who had her car and how the repairs were coming. It is even harder to believe that after the Nissan had been seized on August 16, 2005, she would not have immediately made sure that she knew where the 1970 Chevy was and further made sure that Thomas could not get his hands on it. The reality of what happened raises serious questions about who actually had dominion and control over the 1970 Chevy, but this Decision stands on the facts presented without any reliance on the possibility that Thomas may well have been the party with dominion and control over the 1970 Chevy.

7. The 1970 Chevy is subject to forfeiture. Stephne Roos has not proven the innocent owner exception by a preponderance of the evidence.
8. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

NOW, THEREFORE, on the basis of the foregoing Findings of Fact, Discussion, and Conclusions of Law, the Hearing Officer issues the following

ORDER:

One (1) 1970 Chevrolet Chevelle (WLN: CV02849) is and shall remain forfeited to the Seizing Agency which may convert for use or dispose of the vehicle in compliance with applicable state law. Any and all personal possessions of the previous owner, not to include appurtenances, which are still located within the vehicle shall be promptly returned to the previous owner (unless otherwise restricted due to hazardous contamination). Please contact the Seizing Agency's Administrative Sergeant at (425) 388-3479 to make arrangements to retrieve personal property from the vehicle.

DECISION and ORDER issued March 8, 2006.


John E. Galt, Hearing Officer
927 Grand Avenue
Everett, WA 98201-1305
Phone/FAX: (425) 259-3144

***** NOTICE *****

- A. Any party may seek reconsideration of this Decision and Order by filing a written Petition for Reconsideration both with the Designated Hearing Officer, 927 Grand Avenue, Everett, Washington 98201, **and with the opposing party at its address of record** within ten (10) days of the service (date of mailing) of this Decision and Order. Any such Petition must state the specific grounds upon which relief is requested, and will be processed in accordance with the provisions of § 34.05.470 RCW and Rule of Procedure PF15.
- B. Petitions for a stay of effectiveness of this Order will not be accepted or granted; PROVIDED, that the timely filing of a Petition for Reconsideration shall automatically stay the effectiveness of this Decision and Order until that Petition has been finally disposed of by the Hearing Officer.
- C. Appeal from this Decision and Order is governed by the provisions of Chapter 34.05 RCW. [RCW 69.50.505(5)] Part V of Chapter 34.05 RCW provides for judicial appeal and establishes procedures for such appeal. All administrative remedies must be exhausted prior to filing of a judicial appeal. In summary, any appeal by a person with standing must be filed with the appropriate Superior Court within 30 days after service of the final order. Chapter 34.05 RCW, Part V, should be consulted for specific requirements.

Distribution:

Claimant:

Stephne K. Roos
C/o Pete Mazzone
2910 Colby Avenue, Suite 200
Everett, WA 98201
(425) 259-4989
SENT BY CERTIFIED MAIL NO.: 7005 0390 0004 2337 1477

Seizing Agency's Representative:

Lt. Mark St. Clair
Snohomish Regional Drug Task Force
3000 Rockefeller M/S 606
Everett, WA 98201
(360) 657-1625
SENT BY FAX TO THE SRDTF

APPENDIX 4

*Superior Court of the State of Washington
for Snohomish County*

DAVID A. KURTZ
JUDGE

SNOHOMISH COUNTY COURTHOUSE
M/S #502
3000 Rockefeller Avenue
Everett, WA 98201-4060

(425) 388-3881

PHILLIPS AND MAZZONE
OCT 03 2006

October 2, 2006

✓ Mr. John Ewers, Attorney at Law
Phillips and Mazzone
2910 Colby Avenue, Suite 200
Everett, WA 98201

Ms Mara Rozzano, Deputy Prosecuting Attorney
Snohomish County Prosecutor's Office
3000 Rockefeller Ave., M/S 504
Everett, WA 98201

RE: In re the Forfeiture of one 2004 Nissan Sentra, cause # 06-2-07162-8, and
In re the Forfeiture of one 1970 Chevrolet Chevelle, cause #06-2-07161-0

Dear Counsel:

These matters came before the Court for judicial review and argument on September 19, 2006. I took the matters under advisement. By this letter, the Court is rendering its decision, and the letter will be filed with the Clerk in each cause. (If the parties also wish the presentation of other formal documents, please arrange with my law clerk.)

First, let me commend both counsel for your briefing and argument of the issues. You have presented your respective positions well, and that is appreciated.

(FYI, the case also raised the procedural question of how such forfeiture actions should be addressed on the busy Civil Motions calendar. Please check with Court Administration in the future, but it seems to me that these actions should be handled akin to RALJ appeals, with an initial reference hearing noted on Civil Motions, but with the case then assigned out to a particular department for argument at a later time. Although I have now reviewed the transcript and record of the forfeiture hearing before the examiner, it was impossible for me to do so adequately prior to September 19, which necessitated me taking the matters under advisement. Ultimately it did not prove a problem, but an alternative procedure seems prudent.)

These matters came before the Court upon the petitions of Alan and Stephne Roos, for judicial review, pursuant to RCW 69.50.505 and Title 34 RCW, of decisions dated March 8, 2006, by Hearing Officer John E. Galt. The burden is on the petitioners, and the Superior Court's role is limited. Indeed, regarding factual matters, RCW 34.05.570(3)(e) provides that relief shall be granted only where the orders are "not supported by evidence that is substantial when viewed in light of the whole record".

(The suggestion by the State, and Escamilla v. Tri-City Task Force, 100 Wn. App. 742 (2000), that a "clearly erroneous" standard applies, appears imprecise in light of 1988 amendments to the APA. "Substantial evidence" appears correct, but either way, a deferential standard applies. This Court's ultimate decision would be the same, regardless of whether the "substantial evidence" or "clearly erroneous" language is utilized.)

The issues here boil down to the application of the "innocent owner" defense. Again, the petitioners bear the burden of proof, of showing by a preponderance of the evidence, that the exception in RCW 69.50.505(1)(d)(ii) applies. By case law, the phrase "without the owner's knowledge or consent" has been equated with the phrase "knew or should have known". Escamilla, at 753. Likewise, in Tellevik v. Real Property, 120 Wn.2d 68, 88 (1992), our Supreme Court adopted the broad federal view defining "consent" as "the failure to take all reasonable steps to prevent illicit use...once one acquires knowledge of that use".

What do the parents here need to have known, or should have known, in order to defeat the innocent owner defense? The parents essentially argue that mere knowledge that their son may have been using drugs is insufficient; the parents essentially argue that they need to have known, or should have known, that their son was dealing drugs with use of the Nissan.

That argument goes too far. For example, the forfeiture statute now encompasses vehicles "which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt" of drugs. RCW 69.50.505(1)(d). At one time the statute just covered vehicles involved in the "sale" of controlled substances; the addition of "receipt" appears significant. It now encompasses cars used to pick up drugs as well.

Is there "substantial evidence" to conclude that the parents "should have known" their son was using the Nissan to get drugs after July 3, 2005? Although they may not have known all the details, it seems pretty clear that as of 7/3/05 the parents learned their son had been arrested for drug offenses on 7/3/05, and earlier on 6/10/05. They also knew that their son had a history of drug problems, including a conviction for delivery of crack cocaine (albeit several years before). Yet perhaps wanting to believe the best about their son, they continued to let him use the Nissan, even though he wasn't working and as his mother described, "he was leading a secret life." (Page 403 of the transcript).

Hearing Officer Galt put it this way: "If you know that your son was convicted of delivering a controlled substance as a juvenile, your son is being very secretive, your son is not living at home, your son has been stealing mail and erasing voice mail messages for over two years, your son is unemployed, and as of July 3, 2005, your son has been arrested twice since June 10th with

drugs and large sums of cash on his person, how can you ignore the reality and claim to be an innocent owner when he is later arrested and your property is seized?"

Although the parents may not have known every one of those facts on 8/16/05, they likely knew the gist of it. The Court must largely defer to the hearing officer who heard the witnesses and gauged their credibility. The question is not whether this Court would necessarily have reached the same decision; the question is whether "substantial evidence" exists to support Mr. Galt's ultimate findings and conclusions regarding the Nissan. I am compelled to conclude that there is.

After their son's arrest, with e.g. an alleged "brick" of cocaine on 8/16/05, the parents were put on even greater notice. Did they then take "all reasonable steps to prevent illicit use" of the Chevrolet Chevelle (the "Chevy") by their son in obtaining drugs?

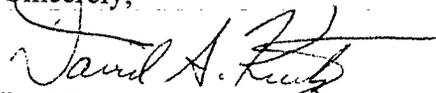
The gist of the defense regarding the Chevy is that the parents thought it was still in the shop. Again, this Court must largely to defer to Mr. Galt's first-hand evaluation of the mother's testimony. Galt variously found her testimony to be "contradictory" (page 7 of his Decision and Order), "perplexing" (p.13), "self-serving and unreliable" (p.10). For example, the mother's testimony that she didn't know his son was using the Chevy prior to 9/9/05 (Transcript, p.434) is inconsistent with her own claim letter (Exhibit #2) which stated, "We let our son Thomas E. Roos use the car to go to appointments. On 9-08-05 he took the car to show to a friend..."

For what it's worth, the son's testimony also appears inconsistent with his mother. At one point Thomas Roos said that he picked up the Chevy "approximately a week-and-a-half" before September 9th, and that he was then "keeping it at my parents' house in Bothell". (Transcript, p.102). Thomas Roos denied his mother knew he was using it, but said: "I was told that we were supposed to take it to our other house to store it, as it was supposed to be stored, because I wasn't supposed to drive, and I was supposed to keep it and keep it stored. I was told that numerous times." (p.102).

Once again, the burden is on the petitioners. The Court is compelled to conclude that "substantial evidence" supports Mr. Galt's findings and conclusions on the Chevy as well.

This is close case. The parents trusted their son, even though that trust was misguided. One wonders whether the Legislature and appellate Courts contemplated that their language in the statute and court opinions would lead to parents losing vehicles under circumstances like these. But this Court must defer to those authorities regarding the law, just as the Court must defer to the hearing officer, where "substantial evidence" supports him regarding the facts. The Decisions and Orders of 3/8/06 are accordingly affirmed.

Sincerely,



DAVID A. KURTZ, Superior Court Judge
cc: Court file