

FILED

OCT 04 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

28865-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER P. SMITH, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

FILED

OCT 04 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

28865-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER P. SMITH, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

INDEX

APPELLANT’S ASSIGNMENT OF ERROR.....1
ISSUE PRESENTED.....1
STATEMENT OF THE CASE.....1
ARGUMENT2
CONCLUSION.....5

TABLE OF AUTHORITIES

WASHINGTON CASES

BRUETT V. REAL PROPERTY KNOWN AS 18328 11TH AVE N.E.,
93 Wn. App. 290, 968 P.2d 913 (1998)..... 2

STATE V. ALAWAY, 64 Wn. App. 796,
828 P.2d 591 (1992)..... 2

TERRY V. CITY OF TACOMA, 109 Wn. App. 448,
36 P.3d 553 (2001)..... 3

STATUTES

RCW 69.50.505 2

RCW 69.50.505(3)..... 3, 4

COURT RULES

CR 5 4

I.

APPELLANT'S ASSIGNMENT OF ERROR

1. The court erred in denying the defendant's motion for return of seized assets.

II.

ISSUE PRESENTED

- A. WAS THE DEFENDANT PROPERLY NOTIFIED OF THE IMPENDING FORFEITURE?

III.

STATEMENT OF THE CASE

The defendant was arrested on June 6, 2007, following an investigation of video surveillance tapes at Northern Quest Casino. CP 2. It appears on the tapes that the defendant was involved in a drug transaction. CP 2-4. A search of the defendant's car incident to his arrest uncovered \$2,740 in a small zippered bag next to the driver's seat. CP 3. When the defendant was transferred to the Spokane County Jail, jail staff discovered a small bag tied around the defendant's waist band containing \$2,200. CP 4.

Detective Justice of the Airway Heights Police Department responded to the jail and supplied the defendant with a form notifying the defendant that his cash was being seized by the Airway Heights Police Department. CP 4.

The defendant filed a motion in Spokane County Superior Court seeking the return of seized funds. CP 8-13. This motion was denied. CP 25. This appeal followed. CP 27.

IV.

ARGUMENT

The forfeiture of drug related property by the police is governed by RCW 69.50.505. According to *Bruett v. Real Property Known as 18328 11th Ave. N.E.*, 93 Wn. App. 290, 968 P.2d 913 (1998) and *State v. Alaway*, 64 Wn. App. 796, 800, 828 P.2d 591 (1992), drug related forfeitures under RCW 69.50.505 are the exclusive “mechanism for forfeiting property. *Id.* at 296.

It is important to point out that the defendant has misapplied RCW 69.50.505 in this case. The defendant states in his brief that “The statute requires the law enforcement agency to serve notice of the seizure

on the owner of the property *in compliance with the rules of civil procedure.*” Brf. of App. 3-4. (*emphasis added*). This is simply incorrect. This case involves the forfeiture of U.S. currency, not real property. RCW 69.50.505(3) plainly states: “Service of notice of seizure of *real property* shall be made according to the rules of civil procedure.” RCW 69.50.505(3). (*emphasis added.*) At a later point the statute reads: “The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail....”

It is undisputed that the defendant made no effort to respond and contest the forfeiture.

The defendant makes another mistaken claim that Washington caselaw indicates that proof of service by personal delivery requires that there be some evidence of the time place and manner of service. Brf. of App. at 4. To support this claim, the defendant cites to *Terry v. City of Tacoma*, 109 Wn. App. 448, 36 P.3d 553 (2001). *Terry* involves service under Mandatory Arbitration rules. *Id.* at 454. *Terry* is inapposite for the purposes of this case.

The defendant points to the proof of service document which directly indicates in person service of notice of the seizure. According to the defendant, the notice is not certified and is signed by an "...unidentified officer...." Brf. of App. at 4. The defendant does not cite authority requiring that a proof of service for forfeiture be certified. Additionally, just because the defendant does not recognize the signature on the service form hardly creates any sort of error.

The facts are that the defendant received an "in person" service of the notification of seizure shown by the service document dated the same day (June 6, 2007) as the defendant's arrest. CP 21. Additionally, the affidavit of facts states plainly that "Detective Justice responded to SCSO Jail and provided both Smith and Plybon with seizure forms notifying them that their cash was being seized by the Airway Heights Police Department." CP 4. The affidavit of facts was filed on June 19, 2007.

The facts show that the service occurred on the date of arrest and the service was done in person.

The defendant's arguments are based on the mistaken idea the service of forfeited personal property is governed by civil rules, specifically CR 5. As has been shown, the defendant misread RCW 69.50.505(3). This appeal has no merit.

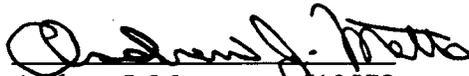
V.

CONCLUSION

For the reasons stated, the trial court's refusal to grant the defendant's motion should be affirmed.

Dated this 4th day of October, 2010.

STEVEN J. TUCKER
Prosecuting Attorney


Andrew J. Metts #19578
Deputy Prosecuting Attorney
Attorney for Respondent