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J8943-1

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No.58943-1-I

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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In Re:

THE FORFEITURE OF ONE 1970 CHEVROLET CHEVELLE  
(WLN CV02849) and ONE 2004 NISSAN SENTRA(WLN 937SRL).

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APPELLANT BRIEF

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## **I. ASSIGNMENT OF ERROR**

### **A. Assignments of Error**

1. The Designated Hearing Examiner erred when he applied RCW 69.50.505 outside of the intent contemplated by the legislature.

2. The Designated Hearing Examiner's decisions regarding the forfeiture of the Nissan and the Chevelle are not supported by a substantial weight of the evidence when viewed in light of the record as a whole.

### **B. Issues Relating to the Assignments of Error**

1. Did the legislature intend for RCW 69.50.505 to be applied to families trying to cope with drug addicted children, when the intent of the statute was to deter drug dealers by imposing economic sanctions on them?

2. Was the Designated Hearing Examiner's decision supported by substantial evidence when viewed in light of the record as a whole, despite the State's failure to produce evidence to show that the Roos had knowledge and consented to their son's drug activities?

## **II. STATEMENT OF FACTS**

### **A. Statement of Facts**

Alan and Stephne Roos live at 17306 10<sup>th</sup> Ave. SE, Bothell, WA

98012. Report of Proceedings (RP), volume 2, pgs. 395.<sup>1</sup> Alan has been employed as a butcher for the Safeway grocery store chain for nearly thirty years, while his wife, Stephne, works as a dental assistant for the Seattle Public Health Department. RP-2, pgs. 395, 482. The Roos' have two sons, Thomas and Jesse, both of whom resided with their parents during the incidents in question. RP-2, pgs. 395-97. However, Thomas rarely stayed at his parent's home and used the residence primarily as his mailing address. RP-2, pgs. 396-97. Alan and Stephne are the registered and legal owners of a 2004 Nissan Sentra WLN: 937SRL (hereinafter Nissan). RP-2, pgs. 484-88. They bought the Nissan as a secondary and back-up car, due to the aging condition of Alan's primary vehicle, a beat up Toyota pickup truck. RP-2, pg. 489. Alan and Stephne routinely gave Thomas permission to use the Nissan to run daily errands. RP-2, pg. 489.

In March 2002 Thomas bought a 1970 Chevrolet Chevelle WLN: CV02849 (hereinafter Chevelle) from Thor Carlson, using money loaned to him by his parents. RP-1, pgs. 67-69. Thomas failed to take adequate care of the Chevelle and steadily lost interest in it. RP-2, pgs. 400-01.

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<sup>1</sup> The Report of Proceedings includes two volumes. They will be designated throughout this brief as RP, followed by volume number and page number.

Rather than sell the Chevelle, and still owing money to his parents from having purchased the car, Thomas gifted the vehicle to his mother. RP-2, 403-07. At the time of this incident, Stephne was the registered and legal owner of the Chevelle. RP-2, 407. Stephne elected to store the Chevelle at their vacation property in Skagit County, as opposed to their home in Bothell. RP-2, pgs. 398-99. The Roos' viewed the Chevelle as a "collector's vehicle", and did not rely on it for daily commuting. RP-2, pgs. 400-02.

During the spring and summer of 2005 the Roos' decided to have work done on the car. RP-2, pgs. 401-02. In March of 2005 Thomas suggested that his parents let a man named Raymond Brown, his friend's brother, work on it. RP-1, pgs. 100-01. Sometime during the spring or summer of 2005, the Chevelle was driven from Skagit County to Brown's repair shop in Lynnwood, WA. RP-2, pgs. 434.

On June 10, 2005 Thomas was arrested in the Nissan with a substantial quantity of cash, drugs and electronics. RP-1, pg. 14. He was booked into the Snohomish County jail for possession with intent to deliver or manufacture a controlled substance. RP-1, pg. 26. The Nissan was impounded by the Lynnwood police department and towed to the

impound yard at Wally's Towing. RP-1, pg. 23. Based on office procedure, the police department advised Alan and Stephne Roos that their Nissan had been impounded by mailing them a pair of notices and leaving a message on their answering machine. RP-1, pgs 23-24. Meanwhile, Thomas bailed out of jail and managed to gain the release of the Nissan at the impound yard by forging his father's name to the release form. RP-1, pgs. 79-81. He then intercepted the notices of impound and the phone message concerning his parent's car by screening his parent's mail and phone messages. Exhibit 1, FF-16, pg. 8, Discussion Section (DS), pg. 11.<sup>2</sup>

On July 3, 2005 Thomas was arrested for possession of a controlled substance in his friend's vehicle. RP-1, pg. 87-90. The police discovered a substantial quantity of cash, drugs, electronics, drug

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<sup>2</sup> The Designated Hearing Examiner issued two decision and orders, one for the Nissan and one for the Chevelle. Both decision and orders are included as exhibits for the Court's convenience. The Findings of Fact will be referred to as FF, and the discussion section will be referred to as DS. The decision and order referring to the Nissan will be included as Exhibit 1, and the decision and order referring to the Chevelle will be included as Exhibit 2.

paraphernalia, a drug ledger and the notices of impound concerning the Nissan related to the June 10<sup>th</sup> stop. Exhibit 1, FF-11, pg. 5. Thomas' friend called Stephne Roos and advised her that Thomas had been arrested and that he needed to be bailed out of jail. RP-2, pg. 410. It was not until that day that the Roos' became aware that Thomas had been arrested on June 10, 2005. RP-2, pg. 447. Though they were not aware of the specific charge for which he had been arrested on July 3, 2005, they knew that it involved drugs. RP-2, pg. 412. At this point, they were still unaware of the magnitude of their son's drug involvement, as they knew nothing about the facts surrounding his two previous arrests. RP-2, pgs. 413-14, 497-98.

On August 16, 2005 Thomas was arrested in the Nissan with a sizable quantity of cash, drugs, and electronics in a 7/11 parking lot near his parent's house. RP-2, pgs. 262-65. Jesse Roos, Thomas' brother, just happened to be driving by the scene of the arrest and notified his father. RP-2, pg. 498. Alan Roos drove to the parking lot and saw police searching his Nissan and stacking drugs and other items of evidentiary value on the roof of the car. RP-2, pgs. 499-500. At that moment, the police notified Alan of their intent to seize the Nissan. RP-2, pg. 267. On September 9, 2005 Thomas was arrested in the Chevelle, after somehow

managing to get it out of the repair shop, with large sums of drugs and cash. RP-1, pg. 100. The police seized the Chevelle under the authority of RCW 69.50.505 and transported it to a Snohomish Regional Drug Task Force facility. Exhibit 2, FF-11, pg. 6.

### **B. Procedural History**

Forfeiture proceedings were held on February 17<sup>th</sup> and 24<sup>th</sup>, 2006. Following the hearing, the hearing officer returned orders that forfeited the Nissan and the Chevelle to the Snohomish Regional Drug Task Force. On March 8, 2006 Alan and Stephne Roos timely filed a petition for judicial review. The Snohomish County Superior Court heard argument on September 19, 2006 to determine whether the agency's decision was supported by substantial evidence when viewed in light of the record as a whole. On October 2, 2006 the Court, after acknowledging that the case was a "close call", nonetheless, issued its decision upholding both of the agency's orders.<sup>3</sup> The petitioners timely filed notices of appeal for both of the forfeited vehicles on October 10, 2006. On October 31, 2006 the Court of Appeals consolidated both appeals under the cause number 58943-1-I.

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<sup>3</sup> A copy of the Court's decision has been included in its entirety as Exhibit 3.

### III. ARGUMENT

#### A. Legal Authority

Agency orders not supported by substantial evidence when viewed in light of the record as a whole must be reversed. Callecod v. Washington State Patrol, 84 Wash. App. 663, 670, 929 P.2d at 510, 513 (1997). The court applies this standard directly to the record before the administrative agency. Id. at 670, 929 P.2d at 513. In order for an agency decision to be upheld it must be supported by a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order. Id. at 673, 929 P.2d at 515.

The meaning of a statute is a question of law reviewed de novo. State v. Breazeale, 144 Wash.2d 829, 837, 31 P.3d 1155 (2001). The court's fundamental objective is to ascertain and carry out the legislature's intent. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wash.2d 1, 9, 43 P.3d 4, 12 (2002). The court should look to the statute's plain meaning as an expression of the legislative intent. Id. at 9-10, 43 P.3d at 13. The plain meaning rule requires the court to consider the legislative purposes or policies appearing on the face of the statute. Id. at 11, 43 P.3d at 15-16. In addition, background facts of which judicial notice can be taken are

properly considered as part of the statute's context because presumably the legislature also was familiar with them when it passed the statute. Id. at 11, 43 P.3d at 16. Thus, the plain meaning of a statute is derived from all the legislature has said about the statute. Id. at 11, 43 P.3d at 16.

The state has the power to seize automobiles that are used to facilitate the sale, delivery or receipt of a controlled substance. RCW 69.50.505(1)(d). However, an automobile used to facilitate the sale, delivery or receipt of a controlled substance that is owned by a person who did not have knowledge or did not consent to the automobile being used in that fashion is not subject to seizure and forfeiture. RCW 69.50.505(1)(d)(ii). Consent has been defined as the failure to take all reasonable steps to prevent illicit use of the property in question once one acquires knowledge of that use. Tellevik v. 31641 West Rutherford Street, 120 Wash.2d 68, 88, 838 P.2d 111, 121 (1992). The reason the legislature granted law enforcement agencies the power to seize property used in drug trafficking was that it provides "a significant deterrent to crime by removing the profit incentive of drug trafficking." RCW 69.50.505 (Legislative Findings, 1989 C 271). The legislature also recognized that the forfeiture of property was an exceptionally powerful tool and should

not be applied in cases in which a manifest injustice would occur. RCW 69.50.505 (Legislative Findings, 1989 C 271).

To seize an automobile the state must prove by a showing of probable cause that the vehicle was used to facilitate the sale or delivery of a controlled substance. Rozner v. City of Bellevue, 116 Wash.2d 342, 350, 804 P.2d 24, 29 (1991). At a subsequent forfeiture hearing the claimant must prove by a preponderance of the evidence that the property was not used in an illegal fashion or was used without the consent or knowledge of the owner. Id. at 342, 804 P.2d at 29. Ultimately, the state carries the initial burden of producing evidence to show knowledge and consent, but the claimant carries the burden of persuasion of showing a lack of knowledge or consent. Tellevik, 120 Wash.2d at 89, 838 P.2d at 122. An individual who successfully prevails in a forfeiture proceeding is entitled to reasonable attorney fees reasonably incurred. RCW 34.05.574 and RCW 69.50.505(6).

## **B. Legal Argument**

### **1. The Designated Hearing Examiner Applied RCW 69.50.505 Outside of the Scope Intended by the Legislature.**

The purpose behind the legislature's decision to grant law enforcement agencies the power to seize property to combat drug

trafficking was to break apart drug conspiracies through powerful economic sanctions. The legislature found that the seizure and forfeiture of property used to facilitate the sale and delivery of narcotics provided a significant deterrent by removing the financial incentive to engage in drug trafficking. RCW 69.50.505 (Legislative Findings, 1989 C 271). In the case at bar, these sanctions were inappropriately brought to bear on parents whose only offense was to discover their son's drug addiction too late.

In the case of Dep't of Ecology v. Campbell & Gwinn, L.L.C., the Court was asked to interpret the meaning of a statute and code that dealt with the withdrawal of groundwater in a residential development. 146 Wash.2d at 4, 43 P.3d at 6. To decide the plain meaning of the statute the Court decided that the best method to determine the plain meaning was to look at the legislative intent. Id. at 11-12, 43 P.3d 16. By looking to the legislative intent in the case at bar, the Court will clearly see that the Designated Hearing Examiner applied RCW 69.50.505 outside of the scope intended by the legislature.

Alan and Stephne Roos are not now, nor have they ever been, engaged in a drug trafficking enterprise. In fact, the State conducted a financial background search on both Alan and Stephne Roos and

determined, based on their combined incomes, that they could legitimately afford the homes and cars that they owned. RP-2, pg. 334. Alan has been employed as a butcher with the Safeway grocery store chain for nearly thirty years, while his wife, Stephne, is a dental assistant with the Seattle Public Health Department. They hardly fit the mold of the types of characters who the legislature was after when it enacted RCW 69.50.505.

The economic sanctions that the legislature authorized in RCW 69.50.505 are a powerful deterrent in combating drug offenses. Indeed, the legislature specifically found that the forfeiture of property will "provide a significant deterrent to crime by removing the profit incentive of drug trafficking." RCW 69.50505 (Legislative Findings, 1989 C271). However, it also cautioned that the statute should not be brought to bear where a manifest injustice would occur. RCW 69.50505 (Legislative Findings, 1989 C271). The Roos' are not drug dealers. They are not, and were not, profiting from the illegal distribution of narcotics. The deterrent effect of the statute is lost in the case at bar because it punishes the Roos for nothing more than the misfortune of having a son who was addicted to drugs.

The logical extension of this decision would potentially subject

every parent in the state of Washington, who has become aware of their child's drug addiction, to the possible forfeiture of their cars and homes. Parents would be forced to turn out on to the streets their drug addicted children for fear that their children might possibly use the family house or car to buy or sell narcotics during a relapse. Such an outcome would lead to the absurd result of broken and bankrupted families and swelling State impound yards, bursting at the seams with confiscated automobiles and homes. Certainly, this was not what the legislature intended when it enacted RCW 69.50.505.

**2. The Designated Hearing Examiner's Decisions Were not Supported by Substantial Evidence When Viewed in Light of the Record as a WholeBthe Nissan.**

The second issue before the court is whether the agency's decision is supported by substantial evidence when viewed in light of the record as a whole. Callecod, 84 Wash. App. at 671, 929 P.2d at 513. That is, was there a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the hearing examiner's decision that the Roos' knew or should have known that their son was using the Nissan or the Chevelle to facilitate the sale or delivery of narcotics. Id. at 673, 929 P.2d at 515. Quite simply, the record does not contain any evidence that they

knew or should have known that Thomas was using the Nissan or the Chevelle to sell drugs.

In the case of Tellevik v. 31641 West Rutherford Street the State sought to seize real property used to facilitate the sale, delivery and manufacture of a controlled substance. 120 Wash.2d at 88, 838 P.2d at 121. The claimant sought to prove that they did not have knowledge and consent that the property was being used to facilitate the sale, delivery and manufacture of a controlled substance. Id. at 88, 838 P.2d at 121. The Supreme Court ruled that the burden of proof of any exemption or exception is upon the person claiming it. Id. at 89, 838 P.2d at 122. Therefore, the State carries the initial burden of producing evidence to show knowledge and consent, but the claimant carries the burden of persuasion of showing a lack of knowledge and consent. Id. at 89, 838 P.2d at 122.

### **1. The Chevelle**

The hearing examiner's own opinion with regards to the Roos' knowledge and consent states that there is "scant hard evidence on any of those questions." Exhibit 2, DS, pg. 10. Obviously, the State failed to show the Roos' had knowledge and consent regarding Thomas' use of their

Chevelle. Tellevik is clear that the State does bear some burden in showing knowledge and consent. Id. at 89, 838 P.2d at 122.

All of the testimony regarding the location of the Chevelle prior to September 9, 2005 placed the vehicle in a repair shop. Though there may have been conflicting testimony as to the exact date that the car went into the shop, there is little evidence that the Chevelle was anywhere else other than a repair shop prior to September 9, 2005. Alan, Stephne and Thomas Roos all testified that the Chevelle was in the repair shop prior to September 9, 2005. RP-1, pg. 100, RP-2, pgs. 401- 02, 521. Even a detective with the Snohomish Regional Drug Task Force testified that when she investigated the Roos' property prior to September 9, 2005, the Chevelle was not one of the vehicles parked out in front of the residence. RP-2. pgs. 340.

An argument that the Roos' would have to take additional steps to stop their drug addicted son from taking their vehicle from a repair shop stretches the bounds of what should be considered reasonable. The Roos' should not be responsible for the security of their Chevelle when it is left in a third party's repair shop. Considering the Roos' testimony, they clearly established their burden of proof by showing a lack of knowledge

and consent regarding Thomas' use of their car to facilitate the sale and delivery of a controlled substance. Therefore, the onus is on the State to show that the Roos' had knowledge and consented to Thomas' use of the Chevelle. Having failed to produce any evidence regarding the Roos' knowledge and consent, the State has failed to rebut the evidence and testimony offered by the Roos'.

## **2. The Nissan**

In the hearing examiner's discussion of his findings of fact, he claims that the Roos' knew their son had "been arrested twice since June 10<sup>th</sup> with drugs and large sums of cash." Exhibit 1, DS, pg. 11. This is simply not true. The record contains no such testimony or exhibit. In fact, the hearing examiner's own findings of fact preclude such a determination.

The hearing examiner correctly notes that both Alan and Stephne Roos testified that they did not receive notice of the impoundment of the Nissan relating to the June 10, 2005 incident. Exhibit 1, FF-16 & FF-17.

Undoubtedly, in regards to this testimony, the hearing examiner notes that "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." Exhibit 1, DS, pg. 11. Furthermore, he notes that it was probable that Thomas was

entering the family mailbox and erasing telephone messages to cover up his involvement in that incident. Exhibit 1, DS, pg. 11. Clearly, the hearing examiner's *own* findings negate the conclusion that the Roos' knew that Thomas had been arrested with drugs and large sums of cash.

Though Thomas was arrested on July 3, 2005 around large sums of drugs, cash, drug paraphernalia, a drug ledger and electronics, he was only booked for felony possession of a controlled substance. Exhibit 1, FF-11. Of particular importance is that the fact that at the time of the arrest he was not in the Nissan, nor was the Nissan anywhere near the incident. Stephne Roos testified that the bondsman refused to tell her for what her son had been arrested, but the hearing examiner thought that such testimony stretched the bounds of credibility. Exhibit 1, DS, pg. 11. Regardless, the most that can be said of her knowledge is that she knew Thomas had been arrested for possession of a controlled substance, *not* possession with intent to deliver or manufacture a controlled substance.

In the case at bar, the Roos' had to show a lack of knowledge or consent to their son using the Nissan to facilitate the sale or delivery of drugs, while the sheriff's office had to prove that Stephne and Alan Roos had knowledge or consented. Tellevik, 120 Wash.2d at 89, 838 P.2d at

122. A great deal of time and attention was spent by both parties regarding the amount of Thomas' use and permission to use the Nissan. Ultimately, the Roos' grant of permission to Thomas to use the Nissan is meaningless because the state presented no evidence that the Roos' knew or should have known their son was using the Nissan to sell drugs. Alan Roos testified that he let Thomas use the vehicle to seek treatment after the July 3, 2005 incident. RP-2, pg. 513-14. Even assuming that the Roos' knew that Thomas had a drug problem and that they continued to let him use the Nissan, the state still has not connected them to knowledge that Thomas was using the Nissan to sell drugs.

The most that can be said of the Roos' knowledge of their son's behavior is that he was leading a secretive life, he came and went from the house, he was stealing mail and erasing telephone messages, nearly a *decade earlier* he had been adjudicated as a juvenile for a drug offense, and on July 3, 2005 they learned that he had been arrested on that day and June 10, 2005. These facts offer nothing more than the conclusion that the Roos' son was a drug addict, who was, quite possibly, stealing from them. Though these facts may lead one to conclude that Thomas has a drug problem, the facts are still a far cry from knowledge that he was using the

Nissan to facilitate the delivery and sale of narcotics.

Sadly, on the day that the Roos' learned that their son was using their Nissan to sell drugs, August 16, 2005, the state seized the car. Alan Roos learned of this incident when he arrived at the scene of his son's arrest and saw the evidence scattered atop the roof of the Nissan. Prior to that day, the Roos' may have known that Thomas had a drug problem; but, they certainly did not know that he was selling drugs, much less using the Nissan to facilitate the sale and delivery of drugs.

### **3. Attorney Fees**

The Roos' incurred \$9,570.00 in attorney fees and costs associated with the litigation regarding the Nissan and the Chevelle in a consolidated forfeiture hearing for both automobiles occurring on February, 17<sup>th</sup> 2006 and February, 24<sup>th</sup> 2006. In regards to attorney fees associated with litigation of the petitions for judicial review of the Chevelle and the Nissan the Roos incurred \$14,000 in attorney fees. In total, to pursue the return of their automobiles the Roos have spent \$ 34,247.65. Exhibit 4. Pursuant to RCW 34.05.574 and RCW 69.50.505(6) they are entitled to reasonable attorney fees incurred as a result of this litigation. Accordingly, the Roos'

request that the court approve attorney fees and costs in the amount of \$ 34,247.65 which reflects the total amount spent in the litigation concerning the forfeiture of their automobiles.

#### V. CONCLUSION

Based on the foregoing, the petitioners respectfully requests that the Court set aside the decision and orders that forfeited to Snohomish county one 2004 Nissan Sentra (WLN: 937SRL) and one 1970 Chevrolet Chevelle (WLN: CV02849) that the vehicles in question be returned to the petitioners. The petitioners also respectfully requests that they be awarded attorney fees pursuant to RCW 34.05.574 and RCW 69.50.505(6).

Respectfully submitted this 26th day of December, 2006.

Phillips and Mazzone, Lawyers



John W. Ewers, WSBA # 31245  
Attorney for the Petitioner(s)

# EXHIBIT 1

BEFORE THE DESIGNATED HEARING OFFICER  
for the  
SNOHOMISH COUNTY SHERIFF

PHILLIPS AND MAZZONE  
MAR 09 2006

**DECISION AND ORDER**<sup>1</sup>

*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. Gehri<sup>1</sup>

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, 2<sup>nd</sup> 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

<sup>1</sup> 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 1<sup>2</sup>)

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)

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<sup>2</sup> 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 2<sup>nd</sup> quarter of 2002 through the 2<sup>nd</sup> quarter of 2005. (Exhibit 37)

8. Alan and Stephne Roos own three properties in Washington. They reside at 17306 10<sup>th</sup> 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.<sup>3</sup> (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 10<sup>th</sup> 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

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<sup>3</sup> 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 Chevy<sup>4</sup>, 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.)

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<sup>4</sup> 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 1<sup>st</sup>", "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.<sup>5</sup> 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)]

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<sup>5</sup> 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 10<sup>th</sup> 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.<sup>6</sup>
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 Stephe 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.

<sup>6</sup> 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

# EXHIBIT 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) 1970 Chevrolet Chevelle <sup>1</sup> (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 <sup>2</sup>

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, 2<sup>nd</sup> 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,

<sup>1</sup> This vehicle has also been referred to in previous documents and during the hearing as a "Chevrolet Malibu."

<sup>2</sup> 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 1<sup>3</sup>)

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 2<sup>nd</sup> quarter of 2002 through the 2<sup>nd</sup> quarter of 2005. (Exhibit 37)

6. Alan and Stephne Roos own three properties in Washington. They reside at 17306 10<sup>th</sup> 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.

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<sup>3</sup> 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. <sup>4</sup> (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 10<sup>th</sup> 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)

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<sup>4</sup> 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 Chevy<sup>5</sup>, 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)

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<sup>5</sup> 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 1<sup>st</sup>", "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 Rooses 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 10<sup>th</sup> 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.<sup>6</sup>

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

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<sup>6</sup> 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

# EXHIBIT 3

*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 10<sup>th</sup> 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?

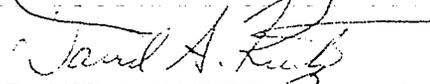
The gist of the defense regarding the Chevy is that the parents thought it was still in the shop. Again, this Court must largely to defer to Mr. Galt's first-hand evaluation of the mother's testimony. Galt variously found her testimony to be "contradictory" (page 7 of his Decision and Order), "perplexing" (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 9<sup>th</sup>, 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

# EXHIBIT 4

PHILLIPS AND MAZZONE, LAWYERS

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Phone (425) 259-4989 Fax (425) 259-5994

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Peter Mazzone

Charles M. Markwell

John W. Ewers

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December 8, 2006

Payments made by Alan M. Roos

10-13-05 .....	\$2,500.00
12-29-05 .....	\$3,300.00
02-21-06 .....	\$800.00
03-10-06 .....	\$10,000.00
03-20-06 .....	\$2,380.00
05-01-06 .....	\$2,000.00
10-05-06 .....	\$12,500.00
11-13-06 .....	\$767.65
TOTAL .....	\$34,247.65

COURT OF APPEALS  
DIVISION ONE  
OF THE STATE OF WASHINGTON

IN RE:

THE FORFEITURE OF ONE 2004  
NISSAN SENTRA (WLN 937SRL); AND  
ONE 1970 CHEVROLET CHEVELLE  
(WLN CV02849).

Appellant.

CONSOLIDATED NO. 58943-1-I.

CERTIFICATE OF SERVICE

I, Sabriena Mathews, Paralegal in the law office of PHILLIPS & MAZZONE, LAWYERS, hereby certify that on December 27, 2006, a copy of the document (Appellant's Brief) to which this Certificate is attached was sent via United States Postal Service, to:

Janice Ellis, Prosecuting Attorney  
Snohomish County Prosecuting Attorneys Office  
3000 Rockefeller Avenue,  
Everett, WA 98201;

And to:

Lt. Mark St. Clair  
Snohomish County Regional Drug Task Force  
3000 Rockefeller Avenue, MS 606  
Everett, WA 98201



Sabriena Mathews,  
Paralegal for John Ewers, Attorney

2006 DEC 28 PM 3:16

FILED  
COURT OF APPEALS DIVISION  
STATE OF WASHINGTON