

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

71039

Case No. 2013-CP-18-01365

MAILED
THE CITY OF NORTH CHARLESTON,

Appellant,

vs.

NGAN TRAN,

Respondent.

NOTICE OF APPEAL

The City of North Charleston hereby appeals the December 11, 2013 Order of the Honorable Kristi L. Harrington, Circuit Court Judge, ordering that the one hundred and two thousand either hundred seventy-one dollars (\$102,871.00) seized by the North Charleston Police Department be returned to Respondent Tran in the above captioned matter. Appellant received written notice of the Order via email on December 11, 2013. A copy of the Order is attached.

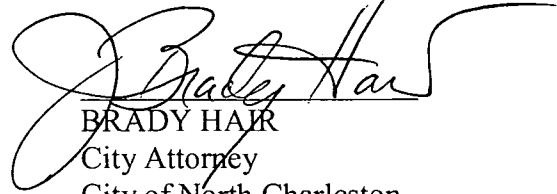
The Order at issue is a final judgment containing errors of law and is appealable under S.C. Code § 201(a)(1976).

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JAN 22 2014

SC Court of Appeals

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brady Hair", written in a cursive style. The signature is positioned above the printed name and title.

BRADY HAIR

City Attorney

City of North Charleston

Post Office Box 190016

North Charleston, South Carolina 29419

DERK VAN RAALTE

Deputy City Attorney

FRANCIE AUSTIN

Deputy City Attorney

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2013-CP-18-01365

THE CITY OF NORTH CHARLESTON,

Appellant,

vs.

NGAN TRAN,

Respondent.

PROOF OF SERVICE

I, Beth Woodall, certify that I have served the within Notice of Appeal by facsimile and by depositing copies in the United States mail, postage prepaid, addressed to:

Michael Dupree, Esquire
147 Wappoo Creek Drive, Suite 101
Charleston, South Carolina 29412
(843) 577-5062 (facsimile)

Grady O. Query, Esquire
147 Wappoo Creek Drive, Suite 101
Charleston, South Carolina 29412
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Via United States Mail Delivery
South Carolina Court of Appeals
Post Office Box 11629

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SC Court of Appeals

Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 8th day of January, 2014.

A handwritten signature in cursive script that reads "Beth Woodall". The signature is written in black ink and is positioned above a horizontal line.

BETH WOODALL
Legal Assistant

City of North Charleston

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
NGAN TRAN,)
Plaintiff,)
vs.)
NORTH CHARLESTON POLICE)
DEPARTMENT,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2013-CP-18-01365

ORDER

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JAN 22 2014

SC Court of Appeals

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CLERK OF COURT
DORCHESTER COUNTY

THIS MATTER CAME BEFORE THE COURT for hearing on November 14, 2013, on Plaintiff's Petition for a Rule to Show Cause under the provisions of S.C. Code Ann. Sections 44-53-586 and 44-53-520. Present on behalf of the Plaintiff Ngan Tran were Attorneys P. Michael Dupree and Grady Query. Attorney Frances Austin appeared on behalf of the City of North Charleston ("the City"). Plaintiff Tran testified on her own behalf and the City introduced testimony from Narcotics Detectives John Glenn, Tireka Cerone, Cathy Kirkland, and Jamie Humphries. Based upon the testimony and other evidence presented, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On May 5, 2013, at approximately 10:16 p.m., North Charleston Police Department ("NCPD") units responded to a potential home invasion at 3785 Ladson Road, Apartment 13. During the investigation, officers discovered evidence of narcotics distribution and trafficking, including two (2) pounds of marijuana and cash. While on the scene, a residential alarm was received through dispatch for 5005 Thornton Drive, which is within the city of North Charleston, in Dorchester County. During further investigation at the 3785 Ladson Road address, contact

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was established with Son Thanh Tran, who presented a South Carolina Driver's license bearing the address of 5005 Thornton Drive. Officers subsequently made contact with the residents of 5005 Thornton Drive, Floyd Alan C. Bustos and Ngan Thuy Doan Tran ("Plaintiff"). NCPD officers explained to the residents of 5005 Thornton Avenue the reason for their arrival was to ensure the occupants were safe and to investigate a possible connection between the two residences. Bustos allowed the officers into the residence and admitted to having a small amount of marijuana and a pistol in his bathroom. The officers performed a safety inspection of the home and secured the area until the North Charleston Narcotics Unit could take over the investigation.

Detective John Glenn of the North Charleston Narcotics Unit assisted NCPD officers in obtaining a search warrant, which was signed by Chief Municipal Court Judge Samuel M. Coleman. Detective Glenn executed the search warrant and maintained the return. Detective Tireka Cerrone photographed and recovered the evidence. The items seized from 5005 Thornton Drive are as follows:

1. several partially burnt hand-rolled cigarettes, which later tested positive for marijuana, located in the master bathroom;
2. a clear plastic zip lock bag containing a green plant-like material, which weighed approximately eight (8) grams and which later tested positive for marijuana, located in the master bathroom;
3. paper documents with the name of Ngan Tran, Njan Tran and Floyd Bustos located in the master bathroom;
4. a black Dyno digital scale located in the master bathroom hamper;
5. several smoking pipes and green plant-like stems in a Rubbermaid container located in the master bathroom;
6. miscellaneous paperwork located in the master bathroom;
7. a key to open a safe in the master bathroom;
8. a Ruger P-345 handgun, serial number 864-88854, located in the master bathroom next to the sink;
9. a Bersa Thunder .380 caliber handgun, serial number 791816, located in the master bedroom in a purse; and

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10. one hundred two thousand eight hundred seventy-one and 00/100 dollars (\$102,871.00) in United States currency located in two safes within the master bedroom and master bathroom.

Detective Glenn and Detective Cerone testified that no baggies, ledgers, or other evidence of drug distribution were found at 5005 Thornton Drive. Detective Cerone testified that the marijuana seized appeared to be for personal use. Detective Glenn issued Floyd Bustos a citation for simple possession of marijuana.

At approximately 4:00 a.m., North Charleston Narcotics Canine Drug Detection Dog, "Chopper," was requested on the scene. Detective Cathy Kirkland led Chopper to conduct a sniff of the currency discovered in the residence. The currency was taken out of the safes and placed in a brown paper bag on the floor along with two other brown paper bags. The bags were placed two feet apart from one another. Chopper conducted a sniff of all three bags twice before alerting to the bag containing the currency. No evidence was presented that Chopper alerted on the outside of the two safes where the seized currency was located. Plaintiff Tran claimed ownership of the currency.

Detective Jamie Humphries testified that she spoke with Plaintiff Tran at her residence. Tran told Detective Humphries that the money located in the two safes was money she had accumulated over time by earning tips while working at her nail salon. Detective Humphries also testified that Tran provided tax returns and bank statements to the NCPD. Detective Humphries did not testify as to Tran's expenditures.

Counsel for the Plaintiff called Ngan Tran to the witness stand. Plaintiff Tran testified that she owned a nail salon in Hampton, South Carolina, and worked there six days a week. She stated that she did not trust banks and a large amount of cash is kept in two safes within her residence. Plaintiff Tran claimed that the money in the two safes was money she saved over the

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years from tips she received while working at her nail salon and that she accumulated the money by receiving tips of between fifty (50%) and one hundred (100%) percent of the service's cost over a five year period. Plaintiff Tran further testified that additional money had been placed in the safes from tips she had earned by working in the nail business since she was thirteen (13) years old. She claimed that from 2007 to 2012, she earned one hundred fifteen thousand five hundred twenty-two dollars (\$115,522.00) in tips. As evidence of her collection of gratuities, Plaintiff Tran presented a calendar which included totals for gross sales made and tip money she had collected during 2012. All entries were handwritten and consistent with her testimony.

Gross sales on Tran's calendar indicate over one hundred thirty-nine thousand dollars (\$139,000.00) in sales. The tip money includes calculations in cash and credit card receipts, and the gross sales generated by Tran's business were consistent with expenditures shown in her bank account. No expert testimony was offered by the NCPD to analyze the tax returns, which showed that Tran's annual income was twenty-seven thousand dollars (\$27,000.00).

CONCLUSIONS OF LAW

This Court has jurisdiction over the subject matter of this case and venue is proper. S.C. Code Ann. Section 44-53-520(a) enumerates the specific property subject to forfeiture in a criminal action. The purpose of a forfeiture hearing is to determine whether the State had probable cause to seize the property in question. *Gowdy v. Gibson*, 381 S.C. 225, 229, 672 S.E. 2d 794, 796 (Ct. App. 2008). Probable cause arises when a law enforcement officer has a "good faith belief that a person is guilty of a crime when this belief rests on grounds that would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise." *Id.* at 230, 672 S.E. 2d at 796 (quoting *Lynch v. Toys "R" Us-Del., Inc.*, 375 S.C. 604, 654 S.E. 2d 541 (Ct. App. 2007)).

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- I. The monies seized by NCPD officers shall be returned to Plaintiff Tran because, despite their close proximity to a forfeitable controlled substance, Plaintiff Tran established to this Court's satisfaction that the monies were not the product of illegal acts.**

Under S.C. Code Ann. Section 44-53-520(a)(8), the following property is subject to forfeiture:

(8) all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances and all monies seized at the time of arrest or search involving violation of this article. If the person from whom the monies were taken can establish to the satisfaction of a court of competent jurisdiction that the monies seized are not products of illegal acts, the monies must be returned pursuant to court order.

Thus, once law enforcement establishes probable cause to seize monies because they were found in close proximity to a forfeitable controlled substance, the burden of proof shifts to the owner of the monies seized to demonstrate to the satisfaction of the Court that the monies seized were not the product of illegal acts. *See* S.C. Code Ann. § 44-53-520(a)(8).

A. The monies seized by NCPD Officers were in close proximity to a forfeitable controlled substance.

In this case, the City proved the currency was in close proximity to a controlled substance pursuant to Section 44-53-520(a)(8). The City introduced photographs and witness testimony that the marijuana, found in three (3) different locations in the master bathroom, was in close proximity to the seized money. The monies were found in two safes, one of which was located in the master bathroom, and the other was located directly outside the master bathroom in the master bedroom against the adjoining wall. By producing this evidence, the City satisfied its burden of showing probable cause to seize the property in question. *See Gowdy*, 381 S.C. at 229, 672 S.E. 2d at 796. The City's demonstration of probable cause has the legal effect of shifting

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the burden of proof to Plaintiff Tran to establish to the satisfaction of this Court that the monies seized were not products of illegal acts, as provided by S.C. Code Ann. Section 44-53-520(a)(8).

B. Plaintiff Tran established to the satisfaction of this Court that the monies seized were not products of illegal acts.

Monies seized by law enforcement must be returned if "the person from whom the monies were taken can *establish to the satisfaction of a court* of proper jurisdiction that monies seized are not products of illegal acts . . ." S.C. Code Ann. § 44-53-520(a)(8) (emphasis provided). This standard is separate and distinct from that found in Section 44-53-586(b)(1). Under Section 44-53-586(b)(1), in order to be entitled to the return of property seized by law enforcement, an "innocent owner" must demonstrate by a *preponderance of the evidence* that the owner "was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture."

Using principles of statutory interpretation, this Court concludes that the lesser standard of "to the satisfaction of a court" is specific only to the property described in Subsection (a)(8), and that Plaintiff Tran's forfeited property is correctly categorized under this subsection. This section delineates a specific procedure and burden of proof for one seeking the return of monies seized in close proximity to forfeitable controlled substances and Section 44-53-520(a)(8) governs the Court's analysis in this case. *See Byrd v. Irmo High School*, 321 S.C. 426, 435, 468 S.E. 2d 861, 866 (1996) ("The general rule of statutory construction is that a specific statute prevails over a more general one."). As a result, Plaintiff Tran must establish to the satisfaction of the Court that the monies seized from her home were not the product of illegal acts.

This Court further concludes that Plaintiff Tran proved to the satisfaction of the Court that the one hundred two thousand eight hundred seventy-one and 00/100 (\$102,871.00) dollars seized by NCPD officers were not the product of illegal acts. The evidence presented at the

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November 14, 2013, hearing showed that Plaintiff Tran had a significant income; that she had deposited monies she earned from her legitimate business into two (2) safes over the period over several years; that she had bank records which supported her expenditures; and that she kept detailed business records showing her gross sales and income from tips. Plaintiff Tran also testified that she kept the monies in safes within her home, rather than a bank, due to personal preferences and her cultural background. As a result, Plaintiff Tran established to the satisfaction of this Court that the monies seized from her residence were not the product of illegal acts and this Court hereby concludes that the monies seized from Plaintiff Tran's home would properly be returned to her.

C. Further, this Court concludes that Plaintiff Tran met the higher burden established under the "innocent owner" doctrine found in Section 44-53-586(b)(1), in the event it applies.

While S.C. Code Ann. Section 44-53-520(a)(8) governs this Court's analysis, Plaintiff Tran would also be entitled to a return of the monies seized in the event that Section 44-53-586(b)(1) applied. Under the latter statute, a court may return seized property to an "innocent owner" if the owner demonstrates by a preponderance of the evidence "that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture." S.C. Code § 44-53-586(b)(1); *see also Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001*, 322 S.C. 127, 131, 470 S.E.2d 373, 376 (1996). The South Carolina Court of Appeals recently applied the "innocent owner" doctrine in *Gowdy*.¹ There, Mrs. Gibson testified that the monies seized from her safe were a combination

¹ In *Gowdy*, the Court of Appeals analyzed whether Mrs. Gibson was an innocent owner after the State proved the monies seized from Mrs. Gibson's home were "traceable" to the exchange of controlled substances under South Carolina Code Section 44-53-520(a)(7). *Gowdy*, 381 S.C. at 231-33, 672 S.E. 2d 794, 797-98. In the present case, this Court ruled that Plaintiff Tran's monies

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of her life savings and monies she acquired through illegal gambling. *Gowdy*, 381 S.C. at 233, 672 S.E. 2d at 798. Mrs. Gibson acknowledged that she could not access the safe, did not know the combination of the safe, and was unable to provide any documentation of a legitimate source for the monies. *Id.* As a result, the Court of Appeals held that Gibson was unable to rebut the evidence presented by the State that the monies were connected to illegal drug activity and upheld the trial court's ruling that Gibson did not meet the standard of an "innocent owner" under Section 44-53-586(b)(1). *Id.*

In the present case, Plaintiff Tran has proven by a preponderance of the evidence that she was an innocent owner of the monies seized by law enforcement. Distinguishing *Gowdy*, the evidence in this case supports the finding that Plaintiff Tran has a significant income; that she had access to her two safes; that she controlled the monies located in her residence; that she had bank records which supported her expenditures; and that she kept detailed business records showing her gross sales and income from tips. Taking into account Plaintiff Tran's testimony and that the City was unable to satisfactorily refute her assertions, this Court finds that Plaintiff Tran has shown by a preponderance of the evidence that she is an "innocent owner" entitled to the return of her forfeited property as defined by S.C. Code Ann. § 44-53-586(b)(1). Therefore, this Court again reaches the conclusion that the monies seized from Plaintiff Tran's home would properly be returned to her.

CONCLUSION

This Court hereby makes the following findings of fact and conclusions of law:

- (1) The City of North Charleston, by showing close proximity, proved it had probable cause to seize the monies located in Plaintiff Tran's residence.

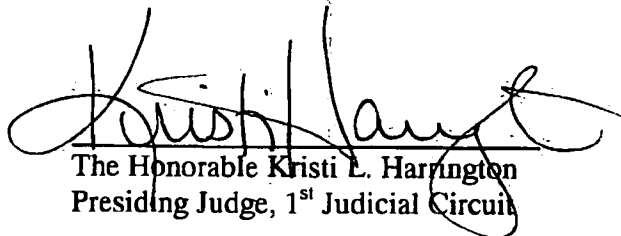
were found in close proximity to a controlled substance under S.C. Code Ann. Section 44-53-520(a)(8).

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- (2) This showing of probable cause resulted in the shifting of the burden of proof to the Plaintiff Tran to establish to the satisfaction of this Court that the monies seized were not the product of illegal acts.
- (3) Plaintiff Tran met this burden of proof and is entitled to the return of the seized by NCPD officers.
- (4) Furthermore, Plaintiff Tran has proven by a preponderance of the evidence that she was an "innocent owner" of the monies seized from her home, in the event S.C. Code Ann. Section 44-53-586(b)(1) is applicable.

THEREFORE, IT IS HEREBY ORDERED that the one hundred two thousand eight hundred seventy-one and 00/100 (\$102,871.00) dollars seized by the North Charleston Police Department be returned to Plaintiff Tran.

AND IT IS SO ORDERED!


The Honorable Kristi L. Harrington
Presiding Judge, 1st Judicial Circuit

December 11, 2013.
St. George, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-18-1365

Ngan Tran

North Charleston Police Department

FILED-RECORDED

2013 DEC 11 PM 4:30

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

CHERYL GIBSON
CLERK OF COURT
DORCHESTER COUNTY

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This case came before the Court for hearing on November 14, 2013, on Plaintiff Tran's Petition for Rule to Show Cause. Plaintiff Tran's Petition for Rule to Show Cause is hereby GRANTED. See attached formal Order.

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ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

JAN 22 2014

SC Court of Appeals

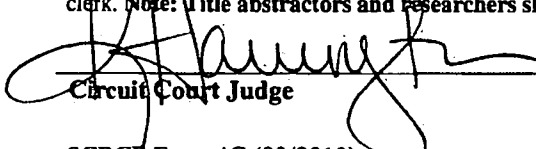
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2151
Judge Code

12/11/13
Date

For Clerk of Court Office Use Only

This judgment was entered on 12-11-2013, and a copy mailed first class or placed in the appropriate attorney's box on 12-11-2013, to attorneys of record or to parties (when appearing pro se) as follows:

P. Michael DuPree 147 Wappoo Creek Dr. Ste. 101
Charleston, SC 29412

Frances Daniel Austin 2500 City Hall Lane Charleston, SC
29406

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

City of North Charleston

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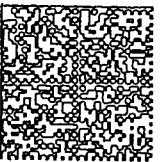
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