

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JIMMY A. RICHARDSON, II, SOLICITOR  
FOR THE FIFTEENTH JUDICIAL CIRCUIT,  
ON BEHALF OF THE MYRTLE BEACH  
POLICE DEPARTMENT,

Plaintiff,

vs.

ELEVEN THOUSAND FIVE HUNDRED  
SIXTY-THREE AND NO/100 DOLLARS,  
(\$11,563.00), U.S. CURRENCY,

Defendant Property,

KENDRICK W. GREEN,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
CASE NO.: 2016-CP-26-0403

**RECEIVED**

JAN 8 0 2017

SC Court of Appeals

**ORDER OF FORFEITURE**

FILED  
HORRY COUNTY  
2017 JAN 18 AM 11:11  
RENEEN N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

**STATEMENT OF THE CASE**

Plaintiff brought this action for the forfeiture of the above named Defendant Property pursuant to S.C. Code Section 44-53-520. Plaintiff personally served Defendant with the summons and complaint on January 26, 2016, and Defendant's attorney filed an answer and counterclaim on February 9, 2016.

On February 17, 2016, the Plaintiff filed a Rule 12 motion to dismiss Defendant's counterclaim, and Defendant subsequently filed a Rule 12 motion to dismiss Plaintiff's action. After hearing argument from both parties, the Honorable D. Craig Brown dismissed both motions.

A hearing on the merits of this case was held on October 18, 2016 at 9:30 am before the Honorable Benjamin H. Culbertson. Present at the hearing was Plaintiff's Special Prosecutor, James R. Battle, Defendant's attorney, Ralph Wilson, Jr., and Defendant Kendrick Green.

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Plaintiff submitted live testimony and video in support of Plaintiff's allegations. Defendant did not present any evidence or testimony.

### FACTUAL PRESENTATION

Plaintiff's first witness, Investigator Jeremiah Beam with the Myrtle Beach Police Department, testified that on August 5, 2015, Defendant Green and Jamal Burgess were sitting and talking at Jimmagan's Bar & Grill in Myrtle Beach. Due to Investigator Beam's experience in violent crimes and narcotics, he testified that Defendant Green and Burgess were well-known drug dealers, both having previous criminal convictions, and that Defendant Green's criminal history warns he is a documented gang member.

Investigator Beam testified that Burgess and Defendant Green began arguing over a pile of money in Defendant Green's lap. The two started fighting, and Burgess then shot Defendant Green. At this point, patrons in the crowded bar scattered. Defendant Green pretended to be dead, and when Burgess left the bar, Defendant Green got up and shot Burgess. During the fight and shooting, Defendant Green's money spilled onto the floor, and he spent time picking up the money before leaving the bar. This sequence of events was supported by the Plaintiff's publication of the security video from Jimmagan's.

According to Investigator Beam, Defendant Green left Jimmagan's in a car, which had been reported as stolen, and was found by Myrtle Beach Police in the parking lot of a nearby La Quinta Inn. An ambulance transported Defendant Green to the hospital, and Myrtle Beach Police found \$6,700.00 in one of his pants pocket, \$712.00 in another pants pocket, and a \$1 coin. Police searched the car and found \$4,050.00, multiple plastic baggies, three cell phones, and trace amounts of marijuana. Investigator Beam believed the items found in the car belonged to Defendant Green and testified that the baggies and multiple cell phones were items common to

drug dealers. He also testified that a drug dog alerted to the car as having been in contact with narcotics. Including the \$100 found on the floor of Jimmagan's, the total seized property was \$11,563.00.

After Defendant Green's arrest for the shooting at Jimmagan's, Defendant Green told Investigator Beam that he could work for the police and purchase kilos of heroin and cocaine.

Plaintiff's final witness was Corporal Chris White. Corporal White testified that from March to April of 2016, he conducted five control buys against Defendant Green, where he used a confidential informant to purchase narcotics from Defendant Green. In the control buys, the confidential informant used \$60.00 to \$100.00 to purchase crack cocaine or heroin, and in all of the control buys, the drugs purchased from Defendant Green field tested positive for narcotics.

Corporal White also testified that he is a Task Force Officer assigned to the Federal Bureau of Investigations. In this capacity, Corporal White had participated in the investigation and federal indictment of Defendant Green. Reading from Defendant Green's federal indictment, Corporal White testified that Defendant Green's indictment had been true billed by a grand jury, and count 1 of the indictment alleged that beginning in 2001, Defendant Green had been involved in a conspiracy to sell 5 kilograms of cocaine, 280 grams of crack cocaine, and a quantity of heroin. This concluded Plaintiff's presentation. Defendant Green did not present any evidence or testimony refuting Plaintiff's evidence or presenting a legitimate source of the seized money.

### STANDARD

Pursuant to S.C. Code § 44-53-520, the following may be seized and forfeited to the State:

(7) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any

person in exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange

In addition, "[a]ny property subject to forfeiture under this article may be seized...if...the seizure is incident to an arrest." S.C. Code § 44-53-520(b).

"The statute requires the State to establish probable cause the seized money was traceable to drug activity." *Gowdy v. Gibson*, 381 S.C. 225, 232, 672 S.E.2d 794, 797 (Ct. App. 2008) *aff'd*, 391 S.C. 374, 706 S.E.2d 495 (2011). "Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise." *Id.* at 230, 796.

"If probable cause is shown, the burden shifts to the owner to show by the preponderance of the evidence that he or she '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.'" *Id.* at 233, 798 (quoting S.C. Code § 44-53-586(b)(1)). This is a higher burden than the State's probable cause burden.

#### DISCUSSION

During the hearing, Defendant Green's attorney argued that the instant case was analogous to *Pope v. Gordon*, 369 S.C. 469, 633 S.E.2d 148 (2006). Contrary to the Defendant's argument, the court finds *Pope v. Gordon* distinguishable. In *Gordon*, the confiscated funds were deposited into a bank account for a legitimate business that also included legitimate deposits. Even though the defendant in *Gordon* was convicted of drug activities, the Court ruled that a "totality of the circumstances" view could not be used to establish probable cause.

The case at hand is more in line with *Gowdy v. Gibson*, 381 S.C. 225, 672 S.E.2d 794 (Ct. App. 2008). In *Gibson*, the court placed a lot of emphasis on the fact that the defendant had

a prior drug conviction; the confiscated funds were located in a hidden safe in the home of the defendant's mother; and people usually do not keep that amount of money in their home. Like *Gibson*, the confiscated money in the instant case was not in a bank account but rather, found on Defendant Green's person and in a stolen vehicle after Defendant Green was involved in a shooting with a known drug dealer. Defendant Green has a prior drug distribution conviction. No explanation was given as to why Defendant Green had \$11,563.00 on his person and in the car he was driving.

The court's decision in this case was not based on the funds being found in close proximity to illegal drugs. The minute amount of marijuana found in the car was not indicative that the confiscated funds were generated by illegal drug sales.

Based on the facts presented and law of this State, the Court finds the following:

1. Defendant's property was properly seized pursuant to the arrest of Defendant Green after the August 5, 2015 shooting at Jimmagan's;
2. The Plaintiff's unrefuted evidence established sufficient probable cause that the seized money was traceable to drug activity and therefore, met the criteria described in S.C. Code § 44-53-520(a)(7).

**NOW THEREFORE, IT IS HEREBY ORDERED:**

1. A forfeiture is hereby declared of the Defendant Property, and Defendant Green is divested of any claim to Defendant Property;
2. The Myrtle Beach Police Department is the seizing agency;
3. If the Defendant Property is reduced to proceeds, it is to be disposed of in the following manner:
  - a. One Thousand (\$1,000.00) Dollars to the seizing agency;

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b. Any monies in excess of this amount to be distributed as follows:

1. Seventy-five percent (75%) to the seizing agency;
2. Twenty percent (20%) to the prosecuting agency; and
3. Five percent (5%) must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.

Jan. 10, 2017, 2016  
Conway, South Carolina

*Morganut Culbertson*  
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JUDGE OF THE FIFTEENTH JUDICIAL CIRCUIT