

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

JIMMY A. RICHARDSON, II, SOLICITOR
FOR THE FIFTEENTH JUDICIAL CIRCUIT,
ON BEHALF OF THE 15th CIRCUIT DRUG
ENFORCEMENT UNIT,

Plaintiff,

vs.

TWENTY-ONE THOUSAND AND NO/100
DOLLARS (\$21,000.00) U.S. CURRENCY
AND VARIOUS JEWELRY.

Defendant Property,

MARVIN JOSHUA WHITE

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
BEFORE THE MASTER IN EQUITY
CASE NO.: 2015-CP-26-3707

ORDER OF FORFEITURE

RECEIVED
NOV 14 2017
SC Court of Appeals

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 May 21, 2015, and Defendant's attorney filed an answer on June 18, 2015.

On September 19, 2016, the Honorable Benjamin H. Culbertson filed a Consent Order referring this matter to this Court pursuant to Rules 53 and 71, SCRCP.

A hearing on the merits of this case was held on December 6, 2016 at 1:00 pm before the Honorable Master in Equity Cynthia Graham Howe. Present at the hearing were Plaintiff's Special Prosecutor, James R. Battle, Defendant's attorney, Ralph Wilson, Jr., and Defendant Marvin White. Prior to the factual presentation, Mr. Wilson made a motion for Judge Howe to recuse herself, a motion for a continuance based on Defendant White's request for new counsel,

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and a motion to exclude Plaintiff's evidence based on a discovery dispute. After considering their merits, the Court denied Mr. Wilson's motions. The Court gave Defendant White the opportunity to proceed *pro se*, and he chose to go forward with the hearing with Mr. Wilson as his attorney.

During the factual presentation, Plaintiff submitted live testimony and video in support of Plaintiff's allegations. Defendant did not present any evidence or testimony. Based on the undisputed evidence presented by the Plaintiff, the Court makes the following findings of fact:

FACTUAL FINDINGS

1. Agent Derrick Suggs with the 15th Circuit Drug Enforcement Unit ("DEU") has been in law enforcement for nine years and worked in narcotics for four years. He has participated in over 85 controlled drug buy investigations and at least 60 drug-related residential search warrants.
2. In July of 2013, Agent Suggs was informed that Defendant White was selling crack cocaine in Conway, South Carolina. Shortly after Agent Suggs began his investigation of Defendant White, Conway Police Department ("CPD") arrested Defendant White for possession with intent to distribute crack cocaine.
3. In August of 2013, Agent Suggs was informed that Defendant White was using a storage unit at Absco Storage to house guns that he received in exchange for narcotics. When officers executed a search warrant on Defendant White's storage unit, they recovered 22 firearms; 5 of which were stolen.
4. During this time, Agent Suggs also determined that, while Defendant White was incarcerated for the CPD drug charge, he had turned his drug dealing operation over to Shelton M. Brantley.

5. Agent Suggs conducted a controlled drug purchase with Mr. Brantley and on August 23, 2013 arrested Mr. Brantley for distribution of narcotics. At the time of Mr. Brantley's arrest, he was driving Defendant White's car and had Defendant White's cell phone. Mr. Brantley also told officers that the cell phone belonged to Defendant White.

6. On September 3, 2013, Agent Suggs obtained a search warrant for Defendant White's cell phone and recovered photos of Defendant White holding large sums of money and four videos of Defendant White counting large quantities of \$50 and \$100 bills. In the photos of Defendant White, he was wearing a black digital watch and manila colored rubber bands on his wrist. He also had distinctive tattoos on his left arm. The same watch, rubber bands, and tattoos can be seen in the videos of Defendant White counting money. In one of the videos, Defendant White commented that he made the money in just one week.

7. In January of 2015, Agent Suggs was informed that Defendant White was again selling narcotics. On January 13, 2015, January 19, 2015 and February 9, 2015, DEU agents used a confidential informant to purchase quantities of crack cocaine from Defendant White.

8. On February 18, 2015, DEU agents executed a search warrant at Defendant White's residence and recovered 209 grams of cocaine, 39 grams of crack cocaine, several tablets of an unknown drug, \$7,765.00, and two handguns. Agent Suggs testified all recovered drugs yielded a positive test result for their respective drug, and the street value of these drugs was roughly \$25,000.00.

9. On April 24, 2015, Agent Suggs was informed that Defendant White kept the proceeds from his drug sales in a safety deposit box at the Wells Fargo Bank in Conway, South Carolina.

10. Agent Suggs obtained two successive search warrants. The first was to obtain Defendant White's financial information at Wells Fargo. Through this search warrant, Agent Suggs learned

that Defendant White had a safety deposit box at Wells Fargo. The second search warrant allowed Agent Suggs to search Defendant White's safety deposit box.

11. On April 28, 2015, Agent Suggs executed the search warrant on Defendant White's safety deposit box and recovered the Defendant Property, i.e. \$21,000.00 and various jewelry.

12. Agent Suggs testified that the safety deposit box was registered exclusively to Defendant White, and a sign in sheet for the safety deposit box showed that only Defendant White had opened or been given access to the box.

13. Agent Suggs further testified that the cell phone videos of Defendant White counting money appeared to have been filmed in the Wells Fargo bank room.

Defendant White, who was present during the hearing, did not testify and did not present any evidence or testimony refuting Plaintiff's evidence or presenting a legitimate source of the Defendant Property.

LEGAL FINDINGS

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

(4) All property, both real and personal, which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in various controlled substances as defined in this article;...

(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 or a search under a search warrant." S.C. Code § 44-53-520(b).

“The purpose of a forfeiture hearing is to confirm that the state had probable cause to seize the property forfeited.” *Gowdy v. Gibson*, 391 S.C. 374, 379, 706 S.E.2d 495, 498 (2011) (internal citations omitted). “The initial burden lies with the state to show it had probable cause for believing a substantial connection exists between the property to be forfeited and the criminal activity. Once probable cause is shown, the burden shifts to the property owner to show by a preponderance of the evidence that the property was innocently owned.” *Id.* “[I]n evaluating traceability, a court may weigh evidence presented to draw its conclusion.” *Id.* at 383, 499.

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In the instant case, Plaintiff presented extensive evidence that Defendant White engaged in the sale of illegal narcotics. First, Agent Suggs testified that CPD charged Defendant White in 2013 with possession with intent to distribute crack cocaine. Second, Agent Suggs recovered 22 firearms, including 5 stolen firearms, from Defendant White’s storage unit and testified that Defendant White accepted firearms in exchange for narcotics. Third, Agent Suggs testified that the DEU used a confidential informant to purchase illegal narcotics from Defendant White on three separate occasions thereafter. Fourth, in a search of Defendant White’s home, DEU agents found 209 grams of cocaine and 39 grams of crack cocaine, which collectively had an approximate street value of \$25,000.00. At the time of the hearing, these charges were pending in the United States District Court in Florence, South Carolina, and Defendant did not present any evidence to refute this testimony.

In turn Plaintiff presented extensive evidence that the Defendant Property belonged to Defendant White. First, the safety deposit box where Agent Suggs located the Defendant Property was exclusively in Defendant White’s name, and the Wells Fargo’s entrance record showed only Defendant White having access to the box. Second, no one except Defendant White claimed an ownership interest in the Defendant Property. There was no testimony from any

innocent third party, and Defendant White did not present any evidence of a legitimate source for the Defendant Property. Lastly, the street value of the narcotics found at Defendant's home was about \$25,000.00, so Defendant was engaged in a level of drug dealing equivalent to the value of the Defendant Property.

Defendant's attorney argued that Plaintiff failed to trace the Defendant Property to a specific drug transaction. In support of this position, Defendant relied on *Pope v. Gordon*, 369 S.C. 469, 633 S.E.2d 148 (2006). In *Gordon*, the confiscated funds were deposited into a bank account for a legitimate business that also included legitimate deposits.

In *Gowdy*, the South Carolina Supreme Court rejected Defendant's strict traceability argument. *Gowdy*, 391 S.C. at 383, 706 S.E.2d at 499 ("Notably, in *Gordon*, this Court did not construe traceability so narrow as to require bills be marked or serial numbers be recorded. Neither did this Court require the State prove to an absolute certainty that the money in the bank account was a product of illegal drug transactions."). Instead, *Gowdy* allowed the Court to "make a practical, common-sense decision whether, given all the circumstances set forth...there is a fair probability that the properties to be forfeited are proceeds of illegal drug transactions." *Id.* (internal citations omitted).

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In the instant case, Plaintiff presented evidence that: (1) Defendant White's only source of income was selling illegal narcotics, and (2) the Defendant Property in the safety deposit box was Defendant White's. Defendant White did not present any evidence to refute these facts.

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

- (1) Defendant's property was properly seized pursuant to a search of Defendant White's safety deposit box; and
- (2) the Plaintiff established sufficient probable cause that a substantial

connection existed between the Defendant Property and Defendant White's criminal activity, and therefore, Plaintiff met the criteria described in S.C. Code Sections 44-53-520(a)(4) and (7).

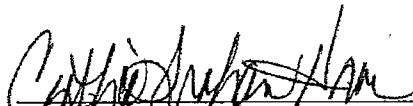
NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Defendant Property is forfeited to the State pursuant to S.C. Code Section 44-53-520;
2. The 15th Circuit Drug Enforcement Unit 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;

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.



The Honorable Cynthia G. Howe
Master in Equity for Horry County

Date: October 9, 2017
Conway, SC

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-26-03707

RECEIVED

NOV 14 2017

SC Court of Appeals

Jimmy A. Richardson, II, Solicitor for the Fifteenth Judicial
Circuit, on behalf of the 15th Circuit Drug Enforcement Unit

Marvin Joshua White

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James R. Battle	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Order of Forfeiture

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)
n/a		\$
		\$
		\$

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.

Master in Equity 3073 10/9/17
 Judge Code Date

