THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Masters in Equity Court

Cynthia Graham Howe, Master in Equity

Case No. 2017-CP-26-2365

(Court of Appeals Case No. 2017-002365)

Jimmy A. Richardson, II, Solicitor, on Behalf of the 15th Circuit Drug Enforcement Unit, Respondent,

v.

Twenty-One Thousand and no/100 Dollars ($21,000.00) U.S. Currency and Various Jewelry, Defendant Property, and Marvin Joshua White, Appellant,

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RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court properly denied White's request for a discovery sanction against Richardson due to White's neither filing a motion to compel nor notifying Richardson of the outstanding discovery requests.

II. Whether the trial court properly admitted evidence obtained through judicially approved search warrants.

III. Whether the trial court properly ordered the forfeiture of the seized property.

STATEMENT OF THE CASE

On May 19, 2015, Respondent Richardson brought this action for the forfeiture of $21,000.00 and jewelry pursuant to S.C. Code Section 44-53-520. (R. pp. 11-17). Richardson personally served Appellant Marvin White with the Summons and Complaint on May 21, 2015, and White answered the Complaint on June 18, 2015. (R. pp. 18-19).

On June 23, 2015, Richardson sent discovery requests to White, and White responded to those discovery requests on July 29, 2015. (R. pp. 21-33).

On August 3, 2015, White claims that he sent Richardson discovery requests through the U.S. Mail. Richardson contends that he never received these discovery requests.

On September 19, 2016, the Honorable Benjamin H. Culbertson filed a consent order referring this matter to the Honorable Cynthia G. Howe, Master in Equity Judge, pursuant to Rules 53 and 71 of the S.C. Rules of Civil Procedure. (R. p. 1). Although White's discovery requests would have been overdue when Judge Culbertson referred this case, White did not bring his discovery requests to either Richardson's or the court's attention.

On December 1, 2016, Richardson emailed White's attorney White's federal indictment, plea agreement, and guilty plea to violating federal drug laws. (R. p. 80).

A hearing on the merits of this case was held on December 6, 2016 at 1:00 pm before Judge Howe. At the hearing, White's attorney made an oral motion *in limine* to exclude Richardson from presenting any evidence due to Richardson's not responding to White's discovery requests. (R. pp. 107-109). White did not file a formal motion

prior to the hearing. White's attorney admitted that from August 3, 2015, the date he alleged the discovery was sent, to the date of trial, December 6, 2016, he neither filed a motion to compel nor notified Richardson of the outstanding discovery requests. (R. pp. 119-122).

White's attorney argued that he did not have an obligation to file a motion to compel responses to his discovery requests, and the trial court could sanction Richardson and exclude evidence from trial without White's ever filing a motion to compel or notifying Richardson of the outstanding discovery requests. (R. pp. 107-144).

White's attorney further argued that Richardson's emailing White's federal criminal documents was evidence that Richardson had received the discovery requests. (R. pp. 122-123). Richardson's attorney stated that he emailed the documents as a professional courtesy. (R. p. 123, lines 9-11). The trial court noted that Richardson's email did not characterize the emailed documents as discovery responses. (R. pp. 129-130).

On balance, the trial court believed White had sent the discovery requests but also believed Richardson had not received them. (R. p. 144). Without an accompanying motion to compel, "where this could have been straightened out," and relying on Rule 37 of the S.C. Rules of Civil Procedure, the trial court allowed Richardson to go forward with his case and denied White's request to exclude Richardson's evidence. *Id.*

During the course of the hearing, Richardson sought to put into evidence three sets of search warrants: (1) four search warrants for cell phones (R. pp. 42-57); (2)

one search warrant for a residence; and (3) two search warrants for White's safety deposit box (R. pp. 58-66).

White did not object to the admission into evidence of the four search warrants for the cell phones other than his ongoing objection that Richardson did not respond to his discovery requests. (R. p. 158, line 14-p. 160, line 16).

For the search warrant concerning the residence, White objected to the search warrant coming into evidence on the basis that the affidavit for the search warrant had not been signed by the affiant officer. (R. p. 183, line 24-p. 184, line 11). White argued the testifying officer, Agent Randall Suggs, could not account for the discrepancy in the search warrant because he was not the affiant officer. (R. p. 182, line 20-p. 183, line 6). The trial court agreed with White and did not allow the residential search warrant into evidence due to authenticity issues. (R. p. 189, lines 1-4.)

White later argued that because the affiant officer's signature was missing from the search warrant, the search warrant was defective, and the evidence gathered from the search warrant should be suppressed. (R. p. 191, line 14-p. 194, line 7). However, the trial court distinguished between not allowing the search warrant as a document into evidence and ruling that the officers' search of the residence lacked probable cause. The trial court suppressed the search warrant document but allowed the testimony concerning the drugs, money, and guns found pursuant to the search of the residence. (R. p. 189, lines 1-4 & p. 192, line 25-p. 194, line 10).

Concerning the final two search warrants for White's safety deposit box, White argued that the search warrants should be suppressed because the search

warrants were based in part on an anonymous tip that White had a safety deposit box at the Wells Fargo Bank in Conway, South Carolina, and the anonymous source was not available to testify. (R. p. 197, line 14-p. 203, line 25).

Richardson argued that the search warrants were being presented to show the legal authority officers used to open White's safety deposit box, and not to show that the facts alleged in the search warrants' affidavits were true. (R. p. 198, line 20-p. 199, line 5). The trial court overruled White's objection and allowed the search warrants into evidence.

At the conclusion of Richardson's presentation, White did not present any evidence or testimony. Based on the undisputed evidence presented by Richardson, the trial court ordered the forfeiture of the property in question pursuant to S.C. Code Sections 44-53-520(a) and (b). (R. pp. 2-8).

STATEMENT OF THE FACTS

Agent Suggs with the 15th Circuit Drug Enforcement Unit ("DEU") was the sole witness during the December 6, 2016 hearing. He testified that in July of 2013, he was informed that White was selling crack cocaine in Conway, South Carolina. (R. p. 155, lines 4-12). Shortly after Agent Suggs began his investigation of White, Conway Police Department ("CPD") arrested White for possession with intent to distribute crack cocaine. *Id.*

In August of 2013, Agent Suggs was informed that White was using a storage unit at Absco Storage to house guns that he received in exchange for narcotics. (R. p. 157). When officers executed a search warrant on White's storage unit, they recovered 22 firearms – 5 of which were stolen. *Id.*

During this time, Agent Suggs also determined that, while White was incarcerated for the CPD drug charge, he had turned his drug dealing operation over to Shelton M. Brantley. (R. p. 157, lines 18-24).

Agent Suggs conducted a controlled drug purchase with Brantley and on August 23, 2013 arrested Brantley for distribution of narcotics. At the time of Brantley's arrest, he was driving White's car and had White's cell phone. Brantley told officers that the cell phone belonged to White. (R. p. 157, line 25-p. 158, line 13).

On September 3, 2013, Agent Suggs obtained a search warrant for White's cell phone and recovered photos of White holding large sums of money and a video of White counting large quantities of $50 and $100 bills. (R. pp. 42-57; R. pp. 67-73 & Video "-A").

In January of 2015, Agent Suggs was informed that White was again selling narcotics. (R. p. 177, line 5-p. 179, line 1). On January 13, 2015, January 19, 2015 and February 9, 2015, DEU Agents used a confidential informant to purchase quantities of crack cocaine from White. *Id.* For the last purchase on February 8, 2015, White sold the drugs out of a home on Turtle Street in Conway, S.C. (R. p. 213, lines 19-22).

On February 18, 2015, DEU Agents executed a search warrant at the residence on Turtle Street 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. (R. p. 230, lines 9-21).

On April 24, 2015, Agent Suggs was informed that White kept the proceeds from his drug sales in a safety deposit box at the Wells Fargo Bank in Conway, South Carolina. (R. p. 180, line 11-p. 181, line 5).

Agent Suggs obtained two successive search warrants. The first was to obtain White's financial information at Wells Fargo. Through this search warrant, Agent Suggs learned that White had a safety deposit box at Wells Fargo. The second search warrant allowed Agent Suggs to search White's safety deposit box. (R. p. 189, line 19-p. 190, line 17).

On April 28, 2015, Agent Suggs executed the search warrant on White's safety deposit box and recovered the seized property – $21,000.00 and jewelry.

Agent Suggs testified that the safety deposit box was registered exclusively to White, and a sign in sheet for the safety deposit box showed that only White had opened or been given access to the box. (R. pp. 74-78). Agent Suggs further testified that the cell phone video of White counting money appeared to have been filmed in the Wells Fargo bank room. (R. p. 205, line 7-p. 208, line 5 & Video "-A").

White, who was present during the hearing, did not testify and did not present any evidence or testimony refuting Agent Sugg's testimony. Moreover, he did not present any evidence of a legitimate source for the seized property.

ARGUMENT

I. The trial court properly denied White's request for a discovery sanction against Richardson due to White's neither filing a motion to compel nor notifying Richardson of the outstanding discovery requests.

Standard of Review

"The imposition of sanctions is generally entrusted to the sound discretion of the trial judge." *Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003) (internal citation omitted). "A trial judge's exercise of his discretionary powers with respect to sanctions imposed in discovery matter will not be disturbed on appeal absent a clear abuse of discretion." *Id.* "The burden is on the party appealing from the order to demonstrate the trial court abused its discretion." *Id.*

Discussion

White argues the trial court should have excluded Richardson from presenting evidence at trial because Richardson did not respond to White's discovery requests. (Appellant's Initial Brief, p. 3). As stated above, White claimed that he sent Richardson discovery requests on August 3, 2015. Richardson denied he received those discovery requests.

It is uncontested that White neither filed a motion to compel responses to his discovery requests nor notified Richardson of the outstanding discovery requests. It is uncontested that White did not mention his discovery requests until December 6, 2016, the date of the hearing.

The failure to make or cooperate in discovery and sanctions are covered in Rule 37 of the S.C. Rules of Civil Procedure. Rule 37 establishes the procedure for handling unanswered discovery. First, the requesting party files a motion for a court order compelling responses to his discovery requests. Rule 37(a), SCRCP. After the issuance of the court order, if the opposing party does not comply, then the court may issue sanctions including "prohibiting [the unresponsive party] from introducing designated matters in evidence." Rule 37(b)(2)(B), SCRCP.

In the instant case, it is uncontested that White never sought an order to compel responses to his discovery requests. (R. p. 137). Without a prior order compelling discovery responses, sanctions were not proper under Rule 37. (R. p. 111, lines 12-14). Therefore, the trial court properly denied White's request to exclude Richardson's evidence at the hearing.

In addition to White's failure to obtain an order to compel, White's request for sanctions amounted to a request to dismiss Richardson's case because Richardson would have been prohibited from presenting any evidence. "Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 719 (Ct. App. 1999). In the instant case, White did not present any evidence of bad faith, willful disobedience or gross indifference by Richardson.

II. The trial court acted properly in admitting evidence obtained through judicially approved search warrants.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012) (internal citation omitted). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.*

Discussion

White argues that evidence obtained from two sets of search warrants should have been suppressed by the trial court. (Appellant's Initial Brief, p. 7). For the first search warrant, authorizing the search of a residence, White argues the search warrant did not have the affiant officer's signature and was therefore defective. Because the search warrant was defective, White argues, the 209 grams of cocaine, 39 grams of crack cocaine, several tablets of an unknown drug, $7,765.00, and two handguns found in the residence should not have been considered by the trial court.

For the second set of search warrants, authorizing the search of White's bank information and then safety deposit box, White argues the search warrants lacked sufficient probable cause and were therefore unlawful. Because the search warrants were unlawful, White argues the property found in the safety deposit box should have been excluded.

White's arguments rely on the application of the exclusionary rule. The exclusionary rule is a judicially created remedy and "is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment." *Brown*, 401 S.C. at 87, 736 S.E.2d at 266. However, the fact finder should not be barred from considering evidence obtained from an illegal search based on simple police mistakes. *See Herring v. U.S.*, 555 U.S. 135, 138 (2009) ("Thus, even if there were a Fourth Amendment violation, there was 'no reason to believe that application of the exclusionary rule here would deter the occurrence of any future mistakes.'") (internal citation omitted).

The exclusionary rule is applicable to civil forfeiture actions such as the instant case. *See State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 195, 525 S.E.2d 872, 882 (2000).

Search of Residence

In South Carolina, the procedure and form for search warrants are controlled by S.C. Code Section 17-13-140. *See State v. Covert*, 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2006). Under Section 17-13-140, "[a] warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate...establishing the grounds for the warrant."

It is uncontested that the affidavit supporting the search warrant for White's home was not signed by the officer. If this Court finds that this oversight does not comply with Section 17-13-140, then the search warrant is still valid as a good faith exception to the statute. A "good faith exception permits the introduction of evidence

seized pursuant to a warrant that is defective under Section 17-13-140." *Covert*, 368 S.C. at 195, 628 S.E.2d at 486.

The S.C. Supreme Court allowed this good faith exception in *State v. Sachs*, where the affiant officer misstated the facts in the search warrant's affidavit. 264 S.C. 541, 216 S.E.2d 501 (1975). The Court in *Sachs* held that despite the misstated facts, the state demonstrated a good faith attempt to comply with Section 17-13-140, and therefore, the search was valid. *Id.* at 559, 510; *see, e.g., State v. Weaver*, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004) (holding a failure to observe the requirement that search warrants be executed and a return made within ten days after the date of the warrant does not invalidate the search); *State v. Mollison*, 319 S.C. 41, 459 S.E.2d 88 (Ct. App. 1995) (stating the failure to list on the return all the items seized or to make the return within ten days is a ministerial error that does not invalidate the search).

In the instant case, the officers made a good faith attempt to comply with Section 17-13-140. First, it is uncontested that the search warrant for the residence contained a written affidavit supporting the search warrant. (R. p. 188, lines 2-7). Second, it is uncontested that the search warrant was signed by the Honorable Magistrate Judge Christopher Arakas. (R. p. 186, lines 9-11). Third, it is uncontested that the search warrant contained a return which had been signed by an officer. (R. p. 186, lines 16-22). Finally, the probable cause to search the residence, the three controlled purchases of crack cocaine from White, is uncontested. (R. p. 177, line 19-p. 179, line 12).

The only inconsistency is the absence of the affiant officer's signature. Such a ministerial oversight does not outweigh the written affidavit, the magistrate judge's

signature, the officer's signed return, and the uncontested probable cause supporting the search warrant.

In addition, the absence of the affiant officer's signature did not allow the officers to skip some level of due process or give the officers an unfair advantage. Judge Arakas signed the search warrant. As stated in *Herring*, the application of the exclusionary rule in this instance would not prevent future officers from making the same clerical mistake. 555 U.S. at 138.

Therefore, the search should be considered valid under the good faith exception to S.C. Code Section 17-13-140.

If this Court determines the good faith exception does not apply, then the trial court's order for the seizure of the property should remain because the admission of the evidence found with the defective warrant was harmless error. *See Covert*, 368 S.C. at 196, 368 S.E.2d at 487; *see also State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990) ("Error is harmless where it could not reasonably have affected the result of the trial.").

In other words, there was extensive evidence beyond the drugs and guns found at the residence to support the trial court's order. Excluding the evidence found in the residence, Agent Suggs testified: (1) White was selling crack cocaine in Conway, S.C. in July of 2013; (2) White accepted guns in exchange for illegal drugs, and when DEU Agents searched a storage unit owned by White, they found 22 firearms – including 5 stolen firearms; and (3) just a few months prior to the seizure, DEU Agents bought drugs from White on three separate occasions.

Due to the above, either the search of the residence was proper or the admission of the faulty search was harmless error.

Search of White's Safety Deposit Box

White argues the search warrants for his safety deposit box relied on an anonymous source, and therefore, the search warrants lacked sufficient probable cause. Without probable cause, the search warrants were unlawful and any property gained from the search should be excluded.

A search warrant may be issued only upon a finding of probable cause. *State v. Martin*, 347 S.C. 522, 527, 556 S.E.2d 706, 708 (Ct. App. 2001) (citing *State v. Bellamy,* 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999)). Great deference must be given to a magistrate's conclusions as to whether probable cause exists to issue a search warrant. *State v. Weston,* 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997).

"[A] warrant based solely on information provided by a confidential informant must contain information supporting the credibility of the informant and the basis of his knowledge." *192 Coin-Operated Video Game Machines,* 338 S.C. at 192, 525 S.E.2d at 881.

In determining the validity of the warrant, a reviewing court may consider only information brought to the magistrate's attention. *Martin*, 347 S.C. at 527, 556 S.E.2d at 709.

A "totality of the circumstances" test is applicable in determining whether sufficient probable cause exists to issue a search warrant:

> The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair

probability that contraband or evidence of a crime will be found in a particular place.

Bellamy, 336 S.C. at 143, 519 S.E.2d at 348 (quoting *Illinois v. Gates,* 462 U.S. 213, 238 (1983)). "Under the 'totality of the circumstances' test, a reviewing court considers all circumstances, including the status, the basis of knowledge, and the veracity of the informant, when determining whether or not probable cause existed to issue a search warrant." *State v. Jones,* 342 S.C. 121, 128, 536 S.E.2d 675, 679 (2000).

"[A] deficiency in one of the elements [of veracity and reliability] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Bellamy,* 336 S.C. at 144, 519 S.E.2d at 349.

In the instant case, there were two search warrants. One for White's banking records, and a second to enter White's safety deposit box. The affidavit supporting the search warrant for White's banking records was signed on April 27, 2015 and set forth:

1. On July 12, 2013, Conway Police Department arrested White for possession with intent to distribute cocaine and cocaine base.

2. During January of 2015, officers carried out multiple controlled drug purchases with White.

3. On February 18, 2015, officers searched White's home and found over 200 grams of cocaine, 39 grams of cocaine base and $7,695.00.

4. Officers have obtained photos and videos of White holding quantities of cash believed to be in excess of $40,000.00.

5. Officers recently received information from an anonymous source that White maintained a safety deposit box at the Wells Fargo Bank in Conway, S.C.

6. In the past, White has rented storage buildings to conceal his illicit activities.

(R. pp. 58-66).

From the execution of this search warrant, officers obtained White's safety deposit box number. The affidavit for the second search warrant contained substantially the same information as the first.

The officer's affidavits for the search warrants provided sufficient probable cause to search White's banking information and then safety deposit box. First, the officer did not rely solely on the anonymous source. The officer presented the magistrate with first-hand information about White's drug dealing and his habit of maintaining large quantities of cash. This was the criminality portion of the affidavit.

The anonymous source provided detailed information about White maintaining: (1) a safety deposit box; (2) at the Wells Fargo Bank; and (3) in Conway, S.C. None of the criminal information against White came from the anonymous source.

The result of the first search warrant was the knowledge White maintained safety deposit box number 317 at the Wells Fargo in Conway, S.C. The first search warrant sought less invasive information, and its finding corroborated the anonymous source's information.

With the second search warrant, to search the safety deposit box, Agent Suggs testified that Wells Fargo sent the search warrant "to their main headquarters because they have certain criteria that must be met before they would approve." (R. p. 190,

lines 11-14). Wells Fargo contacted Agent Suggs that the search warrant "met the criteria, and they gave [him] a date that a representative would be there to open the box." (R. p. 190, lines 15-17).

Based on the totality of the circumstances, Agent Suggs had sufficient probable cause to obtain White's banking information and then to search his safety deposit box.

III. The trial court properly ordered the forfeiture of the seized property.

Standard of Review

"An action for forfeiture of property is a civil action at law. When an action at law is tried without a jury, the standard of review extends only to the correction of errors of law. The [trial judge's] findings of fact will only be disturbed on appeal if the findings are wholly unsupported by the evidence or controlled by an erroneous application of the law." *Gowdy v. Gibson*, 391 S.C. 374, 379, 706 S.E.2d 495, 497 (2011) (quoting *Pope v. Gordon*, 369 S.C. 469, 633 S.E.2d 148 (2006)).

Discussion

White argues the trial court erred in ordering the forfeiture of White's property. (R. pp. 2-8 & Appellant's Initial Brief, p. 11).

"The purpose of a forfeiture hearing is to confirm that the state had probable cause to seize the property forfeited." *Gowdy*, 391 S.C. at 379, 706 S.E.2d at 498. "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.

The trial court's order set forth the facts and analysis it used to forfeit White's property. (R. pp. 2-8).

White raises a number of issues which he asserts should have undermined the trial court's decision. In relevant part they are addressed below:

1. The trial court relied solely on the testimony of Agent Suggs and his past dealings with White to find that White engaged in the sale of illegal narcotics including a previous arrest where the charge was later dismissed. (Appellant's Initial Brief, p. 12).

Agent Suggs was the sole witness called by Richardson, and White did not present any evidence to refute Agent Suggs' testimony. White's state criminal charges were dismissed because White was indicted by the federal government. (R. pp. 224-226). As Agent Suggs testified, "Once the federal government indicts on a charge, then the State will dismiss theirs." (R. p. 226, lines 6-7).

White's attorney explained "[t]his case was a bad case in criminal court which is why the feds took it." (R. p. 115, lines 18-19). In a pre-trial hearing for new counsel, White, speaking on his own behalf, explained to the trial court, "the charge is the same charge. It shouldn't be a trick on words whether you be [sic] federal or state." (R. p. 91, lines 23-25).

2. The trial court relied on an unsubstantiated theory that guns found in a storage unit were traded for illegal narcotics. (Appellant's Initial Brief, p. 12).

This evidence came from Agent Suggs. White did not object to this testimony during the trial and did present any contradictory evidence.

3. White did not own the residence where the search warrant was executed. Id.

Agent Suggs testified DEU Agents purchased drugs from White at this residence on February 9, 2015. (R. p. 213, lines 17-22).

4. Richardson did not present evidence that the drugs and guns found in the residence were White's. (Appellant's Initial Brief, p. 12).

Agent Suggs testified DEU Agents used a confidential informant to purchase drugs from White at the Turtle Street residence. Nine days later, DEU Agent executed a search warrant at this same residence and found 209 grams of cocaine, 39 grams of crack, several tablets, $7,7695.00, and two handguns. (R. p. 179, lines 4-12).

White did not present any evidence to show the drugs and guns found in the residence were not White's.

5. There was no evidence presented that the seized property was related to White's alleged drug dealing. (Appellant's Initial Brief, p. 12).

Agent Suggs' testimony about White's drug dealing was intended to show that White regularly engaged in the sale of illegal drugs. Richardson's case to the trial court had two prongs: (1) White regularly engaged in the sale of drugs; and (2) White was the owner of the cash and jewelry found in the safety deposit box. If White regularly sold drugs and owned the cash and jewelry found in the safety deposit box, then there was probable cause to believe a substantial connection existed between White's drug dealing and the cash and jewelry.

In the instant case, DEU Agents bought drugs from White on three separate occasions. DEU Agents searched White's phone and found photos of him holding large sums of money and a video of him counting a large sum of money and commenting that he made the money in just one week. White did not present any evidence of a legitimate source for the seized property. In other words, there were no gaps between the straight line of White's selling drugs for money and owning the money seized in his safety deposit box. *See e.g., Pope v. Gordon*, 369 S.C. 469, 633 S.E.2d 148 (2006) (The Court denied forfeiture in part because the confiscated funds were deposited into a bank account for a legitimate business that also included legitimate deposits.). Here, there were no intermingled legitimate funds or innocent owners.

Due to the above, the trial court properly ordered the forfeiture of White's property.

CONCLUSION

For the forgoing reasons, Respondent Richardson respectfully requests that the order of the Honorable Cynthia G. Howe be affirmed and that Appellant White's appeal be dismissed.

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CERTIFICATE OF COMPLIANCE

I, James Battle, certify Respondent's Final Brief complies with Rule 211(b) of the S.C. Appellate Court Rules.

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