

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)
)
 Ernest A. Finney, III, Solicitor,)
 Third Judicial Circuit,)
)
 Plaintiff,)
)
 vs.)
)
 Michael Levaughn Pearson and Sonya)
 Pearson Rankins, Ten Thousand and no)
 00/100ths (\$10,000.00) Dollars US Currency)
 approximately 2 lbs. Marijuana, Smith and)
 Wesson .40 caliber Handgun and a)
 2004 Cadillac CTS VIN #)
 1G60M577140108755, 3 cell phones,)
 digital scales,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 C/A NO.: 2012-CP-14-0384

RECEIVED

APR 15 2013

SC Court of Appeals

FINAL ORDER

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 2-27-13
 Barbara S. Roberts
 CLERK OF COURT
 CLARENDON COUNTY SC

2013 FEB 27 11:05:51
 CLARENDO COUNTY SC
 BEYOND THE SUBJECTS
 CLARENDO COUNTY SC

This suit is IN REM brought by the Solicitor for the Third Judicial Circuit as a civil proceeding under South Carolina Code §44-53-530 (1970), as amended. This suit asked for forfeiture of the above captioned personal property to certain agencies of State Government dealt with hereafter. The property was seized by the Clarendon County Sheriff's Office on November 11, 2010 from the Defendant Michael Levaughn Pearson under circumstances relating to illegal drugs. Sonya Pearson Rankins was also named in this complaint as she had an interest in the above identified vehicle.

Representing the Plaintiff, Ernest A. Finney, III, is Tyler Bryant Brown. Michael Levaughn Pearson is represented by Charles David Barr, and Sonya Pearson Rankins is represented by Doward Harvin. All parties were present on February 20, 2013 for the final hearing on this matter.

The Plaintiff in this case introduced evidence that on the date of November 11, 2010, Officer Coker of the Clarendon County Sheriff's Department did observe what he believed to be a metallic object being thrown into the woods upon his patrol car approaching a group of individuals, one of which was identified as Michael Levaughn Pearson. Officer Coker did also observe at that time Michael Pearson sitting on the back hatch of a red GMC SUV with the hatch opened, and then did observe another individual, later identified as Akeno Reid, close this hatch. Upon making contact with all individuals and questioning them on the item being thrown into the woods, Officer Coker was able to note the odor of green marijuana coming from the GMC. At this same time, Officer Coker called for backup, at which time Officer Wilkes and Officer Broadway of the Clarendon County Sheriff's

Department arrived, and Officer Wilkes also noted the smell of Marijuana coming from the vehicle. A search of the red GMC did reveal an opened duffle bag containing what was later tested to be approximately 2 pounds of marijuana, and also a 40 caliber Smith and Wesson handgun. Officers also performed an inventory search of a black in color Cadillac CTS (which is the vehicle named in this action), which was 15 yards away from the red GMC. Upon opening the front driver's side door, officers observed an opened black trash bag which contained \$10,000 in cash. This vehicle and the money were identified as belonging to Michael Levaughn Pearson and were seized by the Sheriff's Department. Later that day, Officer Coker and Officer Mack Kennedy of the Clarendon County Sheriff's Office searched the woods in the direction which they believed an item had been thrown, and this search did result in them locating one 40 caliber Smith and Wesson magazine similar to the one found in the handgun found in the GMC.

It is the finding of this Court that the \$10,000.00 seized from Mr. Pearson is subject to seizure. Specifically, the Court finds that the amount of money in the bag, the amount of the drugs in the GMC, and the fact that Mr. Pearson was sitting on the back hatch of the GMC satisfy the close proximity requirement as articulated in Gowdy v. Gibson, 381 S.C. 225 (SC 2008). There was also sufficient evidence to establish probable cause that a substantial connection existed between the money and drugs. Additionally, the defense failed to present enough evidence to prove that the \$10,000 was not involved in illegal acts. There was some testimony that the money was either from the cashing of two insurance checks or belonged to Mr. Pearson's uncle but there was not sufficient evidence presented to prove either assertion.

This Court also finds that the vehicle, which is a 2004 Cadillac CTS VIN #1G60M577140108755, is not subject to forfeiture, and shall be returned to the defendant, either Michael Levaughn Pearson or Sonya Pearson Rankin, upon the filing of this order. Specifically, this Court finds that the Plaintiff failed to meet the requirements of §44-53-520(a)(6) of the South Carolina Code of Laws. 44-53-520(a)(6) states that "[n]o motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 44-53-370(a), involving at least one pound or more of marijuana." In this case, the State did not prove or offer any testimony that Mr. Pearson was intending to buy one pound or more of marijuana. The Court acknowledges that the State presented testimony that the amount of marijuana seized from the GMC was over one pound. However, the State did not connect the total weight of the marijuana, or at least one pound of marijuana, with Mr. Pearson. Therefore, 44-53-520(a)(6) is not met and the Cadillac is not subject to forfeiture.

Under South Carolina Code §44-53-520 and §44-53-530 (1976), as amended, the property is subject to forfeiture to the state agencies with disbursement as follows:

- a) The defendant currency shall be disbursed in the following matter: The first One Thousand (\$1,000.00) Dollars of so much less as has been seized is declared to be the property of the seizing agency unless otherwise agreed by the seizing agency and the prosecuting agency.
- b) The funds will be disbursed as follows:
 - 1) Five (5%) Percent of the amount above \$1,000.00 to the **State Treasurer or \$450.00;**
 - 2) Twenty (20%) Percent of the amount above \$1,000.00 to the **Third Circuit Solicitor's Office or \$1,800.00;**
 - 3) One Hundred (100%) Percent of the amount \$1,000.00 or less and Seventy-Five (75%) Percent of the amount over \$1,000.00 to the Seizing Agency or **\$7,750.00 to the Clarendon County Sheriff's Office.**

IT IS THEREFORE ORDERED:

1. That the Plaintiff is entitled to judgment of the \$10,000.
2. That the Defendant is entitled to the return of one 2004 Cadillac CTS VIN #1G60M577140108755;
3. That \$10,000.00 shall be forfeited to the Plaintiff;
4. That Plaintiff may enter judgment accordingly.

IT IS SO ORDERED.



The Honorable R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit

Clarendon, South Carolina

Dated: Feb. 26, 2012

**LAW OFFICE OF
CHARLES DAVID BARR**
ATTORNEYS AND COUNSELORS AT LAW
Post Office Box 83*319 W. Main Street
Kingstree, South Carolina 29556
TELEPHONE: 843-355-8000
FASCIMILE: 843-355-8003
E-mail: barrandbarr@ftc-i.net

April 11, 2013

The Honorable Jenny Abbott Kitchings, Clerk
S.C. COURT OF APPEALS
Post Office Box 11629
Columbia, South Carolina 29211

RE: Ernest Finney vs. Michael Pearson
Appellate Case No.: 2013-000735
CDB File No.: 12-262 LITcdb

Dear Ms. Kitchings:

Enclosed please find a copy of the Order of the Honorable R. Ferrell Cothran, Jr. dated February 26th, 2013 in the above-referenced.

With kind regards,

Sincerely,


Charles David Barr

CDB/dc
Enclosure(s)
cc: Mr. Tyler Bryant Brown

RECEIVED

APR 15 2013

SC Court of Appeals