



<p><b>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.</b></p>		
<p><b>Judgment in Favor of</b> (List name(s) below)</p>	<p><b>Judgment Against</b> (List name(s) below)</p>	<p><b>Judgment Amount To be Enrolled</b> (List amount(s) below)</p>
		\$
		\$
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p>		

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.**  
**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

J. Derham Cole	2053	03/31/2022
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

BARRY J. BARNETTE, CIRCUIT SOLICITOR  
 \_\_\_\_\_  
 ATTORNEY(S) FOR THE PLAINTIFF(S)

ANDREW J. JOHNSTON, ESQ.  
 \_\_\_\_\_  
 ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
 BRANDY W. MCBEE, CLERK OF COURT

**Court Reporter: MOFFITT**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

**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.





Cherokee Common Pleas

**Case Caption:** Barry J. Barnette VS Steve Sullivan , defendant, et al  
**Case Number:** 2018CP1100499  
**Type:** Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF **CHEROKEE** )  
 )  
 Barry J. **BARNETTE** as Solicitor for the )  
 Seventh Judicial Circuit and on behalf of )  
 The Cherokee County Sheriff's Office, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 Steve **SULLIVAN** and Dewey Scott )  
**WILLIAMS,** )  
 )  
 Defendants. )  
 )  
 IN REM: )  
 )  
 One Thousand Four Hundred and Four )  
 Dollars (\$1,404) and Twenty Thousand )  
 Dollars (\$20,000) in U.S. Currency. )  
 )

IN THE COURT OF GENERAL SESSIONS

**RECEIVED**  
 MAY 05 2022  
 SC Court of Appeals

**ORDER**

Civil Action No. **2018-CP-11-00499**

This matter was before the Court for trial on the plaintiff's Amended Complaint for Forfeiture Confirmation brought pursuant to South Carolina Code Annotated Section 12-21-2710. At the trial held in this matter the plaintiff was represented by Assistant Circuit Solicitor Russell D. Ghent. The defendant Steve Sullivan appeared *pro se*. The defendant Dewey Scott Williams appeared and was represented by Andrew J. Johnston, Esq.

STATEMENT OF THE CASE

On November 7, 2016 a search warrant was executed by officers of the Cherokee County Sheriff's Department at 184 Wallace Road in the town of Cowpens in the County of Cherokee. The search warrant had been obtained based upon law enforcement agents, posing as gamblers, going to a structure associated with the Sportsman's Carp Fishing Lake to engage in illegal gambling by the playing of video poker machines. The structure is owned by the defendant Steve Sullivan ("Sullivan") and is located on the same property as his residence. Pursuant to a search of the premises, Twenty-one Thousand Four Hundred and Four Dollars (\$21,404.00) in United States currency was seized from the Sullivan residence. The currency seized is the subject of this action for a forfeiture.

The State claims that all of the monies seized from the Sullivan residence are subject to forfeiture as being the proceeds of illegal gambling. Sullivan makes no claim to \$20,000 of the monies seized and agrees to the forfeiture of \$1,404 as being the proceeds from illegal gambling activities conducted by him on the premises. The defendant Dewey Scott Williams ("Williams") makes a claim to \$20,000 of the monies seized asserting in

his Answer to the Complaint that he is an “innocent owner” under *S. C. Code Ann. Section 44-53-586* and even if he is not an “innocent owner” is still entitled to a return of the monies pursuant to *S.C. Code Section 44-53-520* as (1) the monies are not the products of illegal acts; (2) the seizure of the monies was not based upon probable cause; and (3) the seizure was made unlawfully. He further asserts that forfeiture proceedings authorized by *S. C. Code Ann. Section 44-53-530 et seq.* are unconstitutional as violative of “due process” and constitute excessive fines and forfeitures.

No claim is made that Williams was in any way involved with the unlawful gambling activities occurring on the Sullivan premises. Williams does make a claim to the \$20,000 which was seized pursuant to the execution of the search warrant at the Sullivan residence and for which a forfeiture is sought by the State. The sole question before this Court is whether \$20,000 of the monies seized by the State is the property of Williams and therefore not subject to forfeiture or is proceeds from unlawful gambling activities engaged in by Sullivan on the premises and therefore subject to forfeiture.

#### APPLICABLE LAW

“It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or any video game machine ... or any machine or device ... used for gambling ...” *S.C. Code Section 12-21-2710*. It is further unlawful to “set up, keep, or use any ... machine or device licensed pursuant to Section 12-21-2710 ... for gambling purposes ...” *S. C. Code Section 16-19-50*. “All and every sum or sums of money staked, betted or pending on the event of such game or games as aforesaid are hereby declared to be forfeited.” *S. C. Code Section 16-19-80*.

An action for the forfeiture of property is civil in nature and an *in rem* proceeding against the property itself. Proceedings under the gambling forfeiture statutes should be conducted pursuant to *S. C. Code Ann. Section 44-53-530*. *SC Op. Atty. Gen. 2009 WL 1814563*. In order to establish the property is subject to forfeiture the State must show that the money seized was “an integral part of” or “fruit of” a gambling operation. *State v. Perry, 270 S.C. 206 (1978)*.

“The purpose of the forfeiture hearing is to confirm the state had probable cause to seize the property in question.” In this context, “probable cause” refers to a good faith belief that the monies seized were an “integral part of” or “fruit of” an unlawful gambling operation when that “belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise”. “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.” *Gowdy v. Gibson*, 381 S.C. 225 (app. 2008). “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.” S. C. Code Ann. Section 44-53-520(a)(7).

#### TESTIMONY OF STEPHEN DANIEL SULLIVAN

Sullivan was called to testify as to the facts and circumstances surrounding the seizure of the monies from his residence and for which forfeiture is now sought. He testified that he tried to make a living operating a carp fishing lake on his premises. When it proved to be unsuccessful he turned to illegal gambling through video poker machines as a way to generate income. He testified that his residence was searched pursuant to a search warrant resulting in the seizure of the \$21,404 which is the subject of this forfeiture action. He states that \$1,404 was found in a closet in the bedroom occupied by he and his wife and \$20,000 was found in a bedroom furniture drawer used by his wife. The monies were seized by Sheriff’s deputies and he was charged with unlawfully maintaining and operating coin operated (video poker) machines for gambling purposes. He further testified that on approximately seven previous occasions he has been charged and convicted of similar gambling offenses as remote as the year 2009. He stated that at those previous occasions \$2,000 or less of gambling proceeds was found at his residence, seized, and forfeited as “fruit of” his gambling operation.

Based upon the testimony of Sullivan the Court found probable cause to believe Sullivan was engaged in unlawful gambling activities through the use of coin-operated machines or devices located on his premises and that the \$21,404 in United States currency found in the bedroom and connected closet of his residence was the “fruit of” those illegal gambling activities.

#### TESTIMONY OF DEWEY SCOTT WILLIAMS

Williams presented testimony that he has been gainfully employed as a long-distance truck driver for more than twenty-five years with Swift Transportation. He testified that by November of 2016 he had been living in his truck for two to three years and staying with his sister Leanne Sullivan and his brother-in-law Steve Sullivan when in town after returning from a trip. He now lives with a girlfriend at her residence. Williams provided documentation showing income of \$35,227.34 for the year 2014; \$68,932.46 for the year 2015, and \$62,857.60 for the year 2016. Williams asserts that over this period of time he had saved up about \$46,000 in cash. He further stated that at the time of the seizure he did not maintain a bank account and had not had one since

2008. In October 2016 he heard a "friend" was "losing" some property over delinquent mortgage payments. He recalled the friend's first name and stated, "Littlejohn, I think, is the last name." He further offered that, "She worked at Hardee's, I think, that's where I would see her off and on." He states that he offered to make the payments on the mortgage if the property was "signed over" to him and, if and when he was reimbursed, he would transfer the property back. The friend refused the offer and the property was to be sold at auction. He stated that he had never visited the property, was not sure exactly where it was, but nevertheless gave his sister \$20,000 to make a bid up to that amount for the property at the sale. His sister did not attend the sale on the day of the auction and the same day police came to the Sullivan residence and seized the money.

#### TESTIMONY OF LEANNE SULLIVAN

Leanne Sullivan testified that she was the husband of Sullivan and sister to Williams. She and Sullivan operated a carp fishing business at a lake on their property and that by 2016 was "very expensive" to maintain and operate. As a result, Sullivan turned to keeping video poker machines for illegal gambling to make "enough to scrape by and barely keep the lake open". She stated that her home had been raided "several times" before but the most that was taken at any one time was "something like \$2,500". She stated that her brother Williams had nothing to do with the gambling business. She stated that she and Williams had talked about him getting a place of his own and that a friend involved in real estate had suggested the property that was being foreclosed upon for delinquent mortgage payments which was to be sold at auction. She testified that she was provided the \$20,000 by Williams the night before the auction and the search, for her acting on his behalf, to bid on the property subject to the foreclosure due to Williams being out of town on business on that date. She claimed her friend had called to inform her that the bank had bid on the property and there was no use in attending the sale as too much would have to be paid in order to get the property. She therefore did not attend the sale and kept the money in bedroom bedside table until Sullivan was to return home from his trip. Later that day the police came and seized the money during the search.

#### CONCLUSION

Probable cause having been established by the State for a seizure and forfeiture of the monies, the burden shifted to the claimed owner, Williams, to show by the preponderance of the evidence that; (1) he is the owner of the property that was seized, (2) he did not consent to nor was he privy to the circumstances that provide the basis for the seizure and forfeiture of the monies; or (3) the property was not an integral part of any unlawful enterprise or the product of any illegal acts.

The three witnesses that were called to testify on behalf of the purported “innocent owner” were each closely related by blood or marriage to one another and the testimony suggests that a close relationship was maintained between them. The evidence further suggests that each has both a personal and pecuniary interest in the outcome of the action and that such an interest would bear upon the credibility of that testimony.

It is further evident that other potential testimony and evidence exists which could have been elicited from persons and sources which might be described as independent of those who did testify. Such testimony might be shown to be untainted by the connection that exists between the witnesses who did provide testimony in support of the claim of “innocent owner”. Such testimony and evidence might include; the woman whose property was claimed to be in foreclosure, the woman who Leeanne Williams identified as suggesting a purchase of the property by Williams, a bank official who was involved in the foreclosure of the property, and a proper identification of the property that was claimed to be the subject of the foreclosure, so that its status could be determined. Whether or not these witnesses or evidence would have been credible, probative, or convincing is left to speculation as any such information that might have corroborated Williams’ claim of innocent ownership by such a presentation was not proffered.

“The fact that testimony is not contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.” *Black v. Hodge*, 306 S.C. 196 (1991).

After careful consideration of the testimony and other evidence submitted, this Court is compelled to find that Dewey Scott Williams has failed to establish by the preponderance of the evidence that he is an “innocent owner” under *S. C. Code Ann. Section 44-53-586* or, if not an “innocent” owner, is nevertheless entitled to a return of the monies pursuant to *S.C. Code Section 44-53-520* as (1) the monies are not the products of illegal acts; or (2) the seizure of the monies was not based upon probable cause; or (3) the seizure of the monies was otherwise unlawful; or (4) the forfeiture proceedings authorized by *S. C. Code Ann. Section 44-53-530 et seq.* are not applicable to the case, or are unconstitutional as violative of “due process” and/or constitute excessive fines and forfeitures.

The plaintiff’s **COMPLAINT** for **CONFIRMATION** of **FORFEITURE** should be and **IS** therefore **GRANTED**.

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**J. DERHAM COLE, RESIDENT JUDGE**  
The Seventh Judicial Circuit Court

**MARCH 31, 2022**



Cherokee Common Pleas

**Case Caption:** Barry J. Barnette VS Steve Sullivan , defendant, et al  
**Case Number:** 2018CP1100499  
**Type:** Order/Forfeiture

IT IS SO ORDERED!

s/J. Derham Cole 2053