

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF MICHIGAN,

Plaintiff-Appellee,

v

COLOR MINI CAMERA, SWANN D 14 TWIN  
PACK CAMERA, 5.1 PHILLIPS BRAND  
SURROUND SOUND SPEAKERS, CURTIS  
MATHES COLOR FLAT SCREEN  
TELEVISION, SONY BRAND BIG SCREEN  
TELEVISION SN 9714363, DELL BRAN  
COMPUTER TOWER, KEY BOARD, LCD  
MONITOR & MOUSE, KODAK EASY SHARE  
2612 DIGITAL CAMERA WITH DOCKING  
STATION, SONY BRAND STEREO RECEIVER  
SN 8854606, VIDEO ROUTER WITH FOUR  
CHANNELS, DELPHI XM RADIO RECEIVER,  
2000 GMC PICKUP BLACK WITH CAB VIN  
1GTGK24U7YE146315, YARD MACHINE  
SNOW BLOWER #1K045B70430, LAWN BOY  
PUSH MOWER # 250012863, RYOBI LAWN  
TRIMMER #A40743824, POULON BRAND  
CHAIN SAW SN 00333D300, COMMERCIAL  
SERIES CHAR-BROIL GRILL GAS SN  
80004330, RYOBI TABLE SAW SN  
X052795649, RYOBI CHOP SAW SN V0449 and  
\$878,

Defendants,

and

TINA SOCOLOVITCH and ANDREW M.  
KOSACK,

Claimants-Appellants.

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UNPUBLISHED  
September 14, 2010

No. 291418  
Emmet Circuit Court  
LC No. 07-009780-CF

Before: BORRELLO, P.J., and JANSEN and BANDSTRA, JJ.

PER CURIAM.

Claimants appeal as of right a judgment of forfeiture. The court found that all but one item seized by the Straits Area Narcotics Enforcement Team (SANE) during the execution of a search warrant on claimants' home was subject to forfeiture under MCL 333.7521. Further, the court held that \$6,800 was not the subject of the forfeiture proceedings. For the reasons set forth in this opinion, we affirm.

## I.

On February 9, 2007, SANE officers executed a search warrant on the claimants' residence where they found 69 grams of cocaine, 12 grams of crack, and \$2,000 in a safe under the bed. Officers also found a digital scale, a loaded revolver, materials for packaging cocaine, a surveillance system used to monitor the outside of the residence, \$878 was found in a chest in a guest bedroom. After interviewing claimants and conferring with officers, SANE seized these items and an additional amount of money, cell phones, a 1997 Mercury Marquis, a 2000 GMC pickup truck, and lawn and home maintenance items. Claimant Tina Socolovitch pleaded guilty to possession of less than 50 grams of cocaine after her arrest in February 2007. Claimant Andrew Kosack pleaded guilty to federal drug crimes and was sentenced to federal prison.

Claimants represented themselves in the forfeiture hearing and did not make any oral argument or question any witnesses. Kosack's motion to be present or testify by video from federal prison was denied.<sup>1</sup> The court explained that the motion was not timely, Kosack was not required to be present, and the court had instructed him previously that he would have to testify by deposition.

During the forfeiture trial, plaintiff and the court recounted that an August 12 order provided that a digital scale, two cell phones, a safe, a hand gun, a Mercury Grand Marquis car, the residence, and cash in the amounts of \$2,000, \$245, and \$63 were forfeited by summary disposition. Pertaining to the remaining items, plaintiff argued that the cameras, the video router and the television sets were part of a surveillance system for the drug operation, and that the pickup truck was used to transport drugs and that the other items seized were purchased with drug proceeds.

The trial court noted that in a drug forfeiture case, the plaintiff has to prove by a preponderance of the evidence that the property the plaintiff wants to forfeit has a substantial connection to the underlying criminal activity. With the exception of a tile saw, the trial court found that all other items on the list were either purchased with drug proceeds or were items that were being used to facilitate violations of the state drug laws, and were therefore subject to forfeiture on those grounds.

## II.

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<sup>1</sup> Claimant Kosack made a similar request to this Court which was denied.

Claimants argue on appeal that the court erred in ordering forfeiture of the items because the seizure of the items was unlawful, and that the trial court relied on confidential testimony in making its determination. The invocation of the exclusionary rule in a civil forfeiture proceeding is a question of law reviewed de novo. *In re Forfeiture of \$180,975*, 478 Mich 444, 450; 734 NW2d 489 (2007). A trial court's decision in a forfeiture proceeding will not be overturned unless it is clearly erroneous. *Id.* A trial court's findings as to a motion to suppress evidence as illegally seized are reviewed for clear error. *People v Mullen*, 282 Mich App 14, 21; 762 NW2d 170 (2008). A finding is clearly erroneous where the reviewing court is firmly convinced that a mistake has been made. *In re Forfeiture of \$180,975*, 478 Mich at 450.

A search warrant must particularly describe the place to be searched and the persons or things to be seized. US Const Am IV; Const 1963, art 1, § 11; MCL 780.654(1); *Groh v Ramirez*, 540 US 551, 557; 124 S Ct 1284, 1289; 157 L Ed 2d 1068, 1078 (2004); *People v Keller*, 479 Mich 467, 475; 739 NW2d 505 (2007). Generally, unconstitutionally seized evidence must be excluded because exclusion of improperly obtained evidence serves as a deterrent to police misconduct, protects the right to privacy, and preserves judicial integrity. *Terry v Ohio*, 392 US 1, 12-13; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Hyde*, 285 Mich App 428, 439; 775 NW2d 833 (2009). However, MCL 333.7522 provides that property subject to forfeiture may be seized without a warrant in a variety of ways:

Property that is subject to forfeiture under this article or pursuant to section 7521 may be seized upon process issued by the circuit court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

(a) Incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.

(b) The property is the subject of a prior judgment in favor of this state in an injunction or forfeiture proceeding under this article or pursuant to section 17766a.

(c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) There is probable cause to believe that the property was used or is intended to be used in violation of this article or section 17766a.

The court found that, in addition to a search warrant, probable cause existed to seize the items.

Even if this evidence had been improperly obtained, the exclusion rule was never meant to exclude illegally seized property from a subsequent civil forfeiture proceeding involving that property. *In re Forfeiture of \$180,975*, 478 Mich at 447. Illegally seized property is not immune from forfeiture. *Id.* Illegally seized property that is the subject of the forfeiture proceeding may even be offered into evidence for the limited purpose of establishing its existence and the court's jurisdiction over it. *Id.* at 459-460. Illegally seized property is subject to forfeiture under forfeiture law as long as the forfeiture can be supported by a preponderance of untainted evidence. *Id.* at 447, 460.

Forfeiture proceedings are in rem civil proceedings and the government has the burden of proving its case by a preponderance of the evidence. *In re Forfeiture of \$25,505*, 220 Mich App 572, 574-575; 560 NW2d 341 (1996). Property that is subject to forfeiture is set forth in MCL 333.7521, and includes “[a]ny thing of value that is furnished or intended to be furnished in exchange for a controlled substance, ... that is traceable to an exchange for a controlled substance, ... or that is used or intended to be used to facilitate any violation of [the controlled substances act],” is subject to forfeiture. MCL 333.7521(1)(f); *In re Forfeiture of \$25,505*, 220 Mich App at 574.

The statute requires a substantial connection between the property and the criminal activity. *In re Forfeiture of 301 Cass Street*, 194 Mich App 381, 383-384; 487 NW2d 795 (1992). Property that has only an incidental or fortuitous connection to the unlawful activity is not subject to forfeiture. *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 146; 486 NW2d 326 (1992). Forfeitures generally are not favored in the law. However, because the forfeiture provisions of the controlled substances act are embodied in the Public Health Code, they must be liberally interpreted in order to promote the health, safety, and welfare of Michigan’s citizens. *In re Forfeiture of \$19,250*, 209 Mich App 20, 27; 530 NW2d 759 (1995). Nonetheless, the requirements of the forfeiture provisions are strictly construed to ensure that the due process rights of claimants are protected. *Id.*

Some of the items seized in this case were found subject to forfeiture pursuant to a motion for summary disposition. The court ruled that the residence was forfeited as a container of controlled substances with a substantial connection between the home and the drug activity according to MCL 333.7521(1)(c) and *In Re Forfeiture of 5118 Indian Garden Road*, 253 Mich App 255, 257; 654 NW2d 646 (2002). A safe where drugs were found was also forfeited as a container for illegal controlled substances. The court found that currency seized at the property while executing the warrant was forfeited according to MCL 333.7521(1)(f), which provides in part that “[a]ny money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed to be subject to forfeiture under this subdivision.” The court found that a Grand Marquis was forfeited because Kosack admitted using it to transport drugs. See MCL 333.7521(1)(d). Further, based on affidavit the court found that a revolver, digital scale, and cell phones were used to facilitate illegal drug trafficking and were therefore subject to forfeiture under MCL 333.7521.

The court found that genuine issues of material fact existed as to all other items seized. Accordingly, a trial was held. Anthony Socolovitch testified that neither claimant had worked for 2 or 3 years prior to their arrest in 2007 and that money from drug sales was their income. He identified which items claimants possessed at their apartment prior to quitting their jobs, and which items were purchased after claimants ceased working and had purchased a home. The court found that a Sony TV was used as part of a surveillance system that facilitated violation of drug laws and was subject to forfeiture on those grounds. The court found, consistent with Anthony’s testimony, that a 2000 GMC truck was used for transportation of drugs and was subject to forfeiture under MCL 333.7521(1)(d) as a conveyance used to facilitate violation of drug laws. The court found that all other items on the forfeiture list were purchased with drug proceeds and subject to forfeiture on those grounds MCL 333.7521(f). A prosecutor may demonstrate that seized property is linked to drug trafficking by presenting evidence showing that a claimant purchased the property at a time when there was no alternative source of income

or savings other than drug trafficking. *In re Forfeiture of \$25,505*, 220 Mich App at 576. The trial court cited proper grounds for forfeiture of each of the items, and claimants have not demonstrated that any error occurred during the forfeiture proceedings.

Claimants next argue that a sum of \$6,800 was unlawfully seized after the initial search of the home. MCL 333.7523(c) provides in part:

Any person claiming an interest in property that is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a written claim signed by the claimant with the local unit of government or the state expressing his or her interest in the property. Upon the filing of the claim and the giving of a bond to the local unit of government or the state in the amount of 10% of the value of the claimed property, but not less than \$250.00 or greater than \$5,000.00, with sureties approved by the local unit of government or the state containing the condition that if the property is ordered forfeited by the court the obligor shall pay all costs and expenses of the forfeiture proceedings.

Claimants were twice presented with notice of seizure and intent to forfeit the \$6,800. MCL 333.7523(d) provides in part that, “[i]f no claim is filed or bond given within the 20-day period as described in subdivision (c), the local unit of government or the state shall declare the property forfeited and shall dispose of the property as provided under section 7524.” As a matter of law, the property was ceded to the county on the twentieth day following service of the notice of intent to forfeit property. *In re Return of Forfeited Goods*, 452 Mich 659, 667; 550 NW2d 782 (1996). When an administrative forfeiture has been declared, the circuit court does not have jurisdiction to review the matter. *Id.* at 667-668, 671-672. Accordingly, the \$6,800 at issue here was forfeited by operation of law and was not subject to review by the circuit court.

Lastly, claimants argue that the court erred in relying on a confidential statement in contravention of Kosack’s agreement with federal authorities. However, it has not been demonstrated that the trial court relied on this information in finding the items subject to forfeiture. The statement established that Kosack sold cocaine from 2002 until his arrest and that he quit his job in 2006 because he was financially stable enough to remain home and remodel his house. It was further established that Kosack would buy cocaine in Detroit while in his black pick-up truck. Further, he outlined the approximate amounts of sales and profits. However, Anthony Socolovitch provided similar detailed testimony regarding the volume and price of drug sales, the use of the black pick-up truck, and the source of income for claimants at various times. Additionally, police officers provided information about the scope of claimants’ drug sales. Further, it was separately established that the residence contained the safe that the drugs were in, and Anthony Socolovitch’s testimony established that drugs were sold directly from the home. Claimants do not demonstrate that it was necessary for the court to utilize Kosack’s statements in order to establish that the items were subject to forfeiture. Moreover, there has been no showing that the court relied on any confidential statement. Based on the foregoing we affirm all aspects of the trial court’s findings.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Richard A. Bandstra