

STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF \$1,190.

CITY OF GRAND RAPIDS,

Plaintiff-Appellee,

v

\$1,190 and 2003 HUMMER & CONTENTS,

Defendants,

and

TYRONE CHRISTIAN and TAWANNA
CHRISTIAN,

Claimants-Appellants.

UNPUBLISHED

June 28, 2011

No. 296719

Kent Circuit Court

LC No. 09-004843-CF

Before: TALBOT, P.J., and GLEICHER and M.J. KELLY, JJ.

PER CURIAM.

Grand Rapids police officers seized claimants' 2003 Hummer after witnessing its use during one confirmed and one suspected drug transaction. Plaintiff pursued a forfeiture of the vehicle under MCL 333.7521. Tawanna Christian fought the forfeiture arguing that she was an "innocent owner," unaware that her husband used her vehicle for illegal purposes. The trial court rejected this defense and entered a judgment of forfeiture. We affirm.

On March 25, 2009, a drug informant for the Grand Rapids Police Department arranged to purchase \$500 worth of cocaine from Tyrone Christian at a specified location. An officer stationed outside the claimants' home witnessed both claimants leave in the 2003 Hummer. Tawanna Christian was driving the vehicle. When the claimants reached the planned location, the drug informant entered the Hummer with \$500 in cash. When the informant exited the vehicle, he was carrying cocaine. Both claimants were inside the vehicle during this transaction and Tawanna Christian subsequently drove the vehicle home. Later that day, Tyrone Christian left the home alone and drove the Hummer to a party store. At that location, Mr. Christian exited the Hummer and entered another vehicle in the parking lot. After a short period of time, Mr. Christian returned to the Hummer and drove home. Although the officers could not see the

individuals' actions inside the vehicle, plaintiff argued that these events were consistent with a drug transaction.

On April 1, 2009, the investigating officers executed a search warrant at the claimants' home. The officers found marihuana and seized various items, including the Hummer.¹ Tawanna Christian was not charged with any criminal offense arising from this investigation. Tyrone Christian, on the other hand, was arrested and ultimately pled guilty to possession with intent to deliver cocaine, MCL 333.7401(2)(d)(iii), and being a felon in possession of a firearm, MCL 750.224f.

At the forfeiture trial, Tawanna Christian testified that she personally paid for the Hummer with her tax refund and the proceeds from the sale of another vehicle. Ms. Christian did not recall driving her husband anywhere on March 25 or witnessing her husband sell cocaine that day. Ms. Christian also denied any knowledge that her husband either used or distributed drugs from the Hummer, and denied knowing about the marihuana found in the home.

The trial court determined that plaintiff presented insufficient evidence to show that the claimants purchased the Hummer with drug proceeds. However, the trial court rejected Ms. Christian's claimed lack of knowledge or consent given that the investigating officers saw her in the vehicle while the drug transaction was taking place. Accordingly, the court ordered the forfeiture of the Hummer.

On appeal, claimants argue that the trial court ignored the "innocent owner doctrine," under which property used to facilitate a drug transaction may not be forfeited by an owner unless it was used for that purpose with the owner's knowledge or consent. MCL 333.7521. Claimants assert the plaintiff presented insufficient evidence to show that Ms. Christian either knew of or consented to her husband's use of the Hummer to facilitate the sale of cocaine.

We review a trial court's decision in a forfeiture proceeding for clear error. "A finding is clearly erroneous where, although there is evidence to support it, the reviewing court is firmly convinced that a mistake has been made." *In re Forfeiture of \$180,975*, 478 Mich 444, 450; 734 NW2d 489 (2007). The plaintiff in a forfeiture action has the burden to prove its case by a preponderance of the evidence. *Id.* at 458.

MCL 333.7521(d) provides for the forfeiture of any "conveyance" used "to transport or ... facilitate the transportation" of illegal controlled substances. MCL 333.7521(1)(d)(ii) provides an exception known as the "innocent owner doctrine": "A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent." The owner of the subject property has the burden "to establish this affirmative defense." *In re Forfeiture of a Quantity of Marijuana*, ___ Mich App ___; ___ NW2d ___ (Docket No. 291993, pub'd January

¹ The officers also seized \$1,190 that was found during a search of the Christian residence. The trial court rejected plaintiff's complaint to forfeit those funds.

11, 2011), slip op at 4. The burden then shifts to the plaintiff “to produce clear and decisive evidence to negate this defense.” *Id.*, slip op at 6.

The trial court did not clearly err in finding that Ms. Christian’s Hummer was used for drug trafficking with her knowledge or consent. We note that plaintiff correctly states that a criminal prosecution is not a prerequisite to a forfeiture proceeding. MCL 333.7522; *In re Forfeiture of \$53*, 178 Mich App 480, 496; 444 NW2d 182 (1989). Accordingly, it is irrelevant that the prosecutor did not pursue criminal charges against Tawanna Christian.

This Court recently summarized the “innocent owner doctrine” as follows:

The statute’s requirement that the clamant [sic] lack “knowledge or consent” of the acts or omission forming the basis for forfeiture means the innocent owner defense is defeated if the claimant has either knowledge of “or” consented to the illegal activity. Also, the word “knowledge” does not include the concept of constructive knowledge. *Echelon Homes[, LLC v Carter Lumber Co]*, 472 Mich 192, 197; 694 NW2d 544 (2005)]. Thus, an innocent owner defense would be defeated only by actual knowledge of the illegal activity. A claimant’s consent, however, might be implied from the circumstances even without knowledge. See *In re Forfeiture of \$53*, 178 Mich App at 498 n 3. [*In re Forfeiture of a Quantity of Marijuana*, slip op at 6).]

“Actual knowledge” means “an awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact.” *Echelon Homes*, 472 Mich at 197, quoting Black’s Law Dictionary (8th ed). This Court recognizes, however, that a claimant will not likely admit actual knowledge in a case such as this. Rather, a plaintiff may prove actual knowledge through circumstantial evidence. *Echelon Homes*, 472 Mich at 200.

Here, Ms. Christian presented no evidence to support her “innocent owner” defense. Ms. Christian simply denied all knowledge of any illegal activity on the part of her husband. Even if we accepted this blanket denial as sufficient to support Ms. Christian’s defense, plaintiff presented sufficient evidence to overcome it. Plaintiff presented evidence that Tawanna Christian was actually aware of and consented to Tyrone Christian’s use of her vehicle in drug transactions. Ms. Christian drove to and was present during a drug transaction between her husband and the informant. That same day, Mr. Christian used the Hummer for a five-minute trip to a local store’s parking lot to conduct a second suspected drug transaction. Ms. Christian’s presence during one drug transaction and apparent willingness to lend her vehicle for a second transaction is at least circumstantial evidence that she was aware of and consented to the use of her vehicle for this purpose. In light of this evidence, the trial court reasonably determined that Ms. Christian feigned ignorance of her husband’s use of her vehicle in his drug sale business. The repeated use of the vehicle for drug transactions in a one day period is evidence that this was a regular course of conduct to which Ms. Christian consented. See, e.g., *In re Forfeiture of \$53*, 178 Mich App at 487-488, 498 n 3 (“By ‘implied consent’ we would suggest as an example the situation where a co-owner allowed the driver to transport narcotics on an earlier occasion. One could then imply that there was consent on the day in question even if there was no actual knowledge”).

Ultimately, the trial court, as the trier of fact, discredited Ms. Christian's testimony that she was unaware of her husband's drug trafficking activity. Even if we disagreed with that assessment, we may not substitute our judgment for the trier of fact's credibility determination. *Kelly v Builders Square, Inc*, 465 Mich 29, 40; 632 NW2d 912 (2001).

Affirmed.

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly