

STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF 1999 FORD CONTOUR.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

1999 FORD CONTOUR,

Defendant,

and

FREDDIE BURSE,

Claimant-Appellee/Cross-
Appellant.

UNPUBLISHED

February 2, 2012

No. 300482

Wayne Circuit Court

LC No. 10-002976-CF

Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

SERVITTO, J. (*concurring in part/dissenting in part*).

Though I concur with the majority's resolution of the cross-appeal concerning sanctions, and I agree that the claimant was not entitled to summary disposition on the basis of the innocent owner exception set forth in MCL 333.7521(1)(d)(ii), I respectfully dissent from the majority's conclusion that the trial court erred in granting summary disposition in favor of the claimant based upon the exception set forth in MCL 333.7521(1)(d)(iii).

MCL 333.7521(1)(d) states, in pertinent part:

(1) The following property is subject to forfeiture:

* * *

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

* * *

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).

MCL 333.7403(2)(d) proscribes possession of marijuana. MCL 333.7404 proscribes use of various controlled substances, including marijuana.

Plaintiff argues that the exception in § 7521(1)(d)(iii) “only applies to those vehicles that were *not* used to facilitate a marijuana transaction, but had simply contained possession amounts, without more.” To accept plaintiff’s construction, this Court would have to conclude that the vehicle could not be forfeited if the claimant’s wife actually possessed marijuana within the vehicle at the time of the traffic stop, but that forfeiture would be permitted if she used the vehicle to attempt to acquire possession of marijuana, but was not successful in *actually* acquiring it. Plaintiff’s contention that § 7521(1)(d)(iii) does not apply in the latter situation is not supported by the statutory language or the hierarchical structure of the statute.

To be subject to forfeiture under § 7521(1)(d) in the first instance a vehicle must be used (or intended for use) to transport or facilitate the transportation of a controlled substance for purposes of sale or receipt. The “violation” at issue here for purposes of § 7521(1)(d)(iii) involved mere possession, i.e., the claimant’s wife’s attempt to acquire possession of the marijuana. There was no evidence that the claimant’s wife was involved in any illegal activity beyond mere possession. Therefore, I would find that the trial court did not err in finding that the exception in § 7521(1)(d)(iii) applied, thereby entitling the claimant to summary disposition.

/s/ Deborah A. Servitto