IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. HARRY MATTHEW OLEBAR, Appellant.	No. 67170-7-I DIVISION ONE UNPUBLISHED OPINION FILED: July 30, 2012

Leach, C.J. — Harry Olebar appeals a trial court's denial of his motion for return of property and motion for reconsideration. Because the State previously forfeited Olebar's interest in the property he claimed to own and he made no claim of ownership or right to possession of the remaining property, the court properly denied the motions. We affirm.

Background

The Washington State Patrol arrested Harry Olebar on suspicion of driving under the influence when his vehicle ran out of gas on SR 520. During a search incident to Olebar's arrest, the state patrol located more than $7,400 in cash, a vial of PCP (phencyclidine), and a quantity of cocaine. They also confiscated two cellular phones and an address book found with the drugs and money.

The State charged Olebar with felony drug possession, but he ultimately pleaded guilty to a misdemeanor solicitation charge. After sentencing, Olebar filed a

pro se motion for the return of the seized property but did not identify any specific items he wanted.[1] The motion was filed on March 14, 2011. In the State's response, a deputy prosecuting attorney related the substance of a conversation he had with an assistant attorney general about the cash. He was told that the attorney general's office had initiated forfeiture proceedings under RCW 69.50.505 more than a year earlier and the money was administratively forfeited to the Washington State Patrol on or before February 26, 2010. The trial court denied Olebar's motion and his subsequent motion to reconsider. Olebar appeals.

Analysis

This case presents two issues: (1) the availability of a motion to return property to review the previous forfeiture of property and (2) the availability of this motion to a person not claiming a right of ownership or possession. CrR 2.3(e) governs motions for return of property by any person aggrieved by an unlawful search and seizure and also for the return of lawfully seized property no longer needed for evidence.[2] RCW 69.50.505 establishes the exclusive means for a law enforcement agency to forfeit seized property allegedly used in connection with illegal drug activity. It also provides the exclusive, mandatory means for a person claiming a right of ownership or possession to challenge the forfeiture.[3]

---

[1] The motion did not mention the address book or cellular phones at all, although in later correspondence to the court, he claims those items should have been returned to him. He also asserts that he is not the owner of the cellular phones.

[2] State v. Alaway, 64 Wn. App. 796, 798, 828 P.2d 591 (1992).

[3] RCW 69.50.505(3) and (4) provide,

> (3) . . . [P]roceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days

If the seizing agency does not utilize the statute, the person claiming a right to possession may bring a CrR 2.3(e)[4] motion for the return of the property.[5] However, if the agency complies with the forfeiture statute, a person claiming ownership or possession of the property must respond to a forfeiture notice within the statutorily mandated 45 days or forfeit any claim.[6]

Although Olebar did not assert a claim to the currency during the forfeiture proceeding,[7] he argues that the trial court should have conducted an evidentiary hearing to decide the validity of that forfeiture. Further, he contends that the court improperly relied on hearsay evidence to determine the currency had been forfeited to the State. We disagree with both arguments. Olebar correctly notes that the prosecutor's recounting of what the assistant attorney general said is hearsay. But the

---

> following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. . . .
>
> (4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items . . . within forty-five days of the service of notice from the seizing agency in the case of personal property . . . , the item seized shall be deemed forfeited.

[4] CrR 2.3(e) provides,

> A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress.

[5] Alaway, 64 Wn. App. at 798.

[6] Farrare v. City of Pasco, 68 Wn. App. 459, 464, 843 P.2d 1082 (1992).

[7] Indeed, Olebar concedes that if the procedure was followed, he is not entitled to the return of property.

trial court treats a motion for return of property after the State files an information like a suppression motion.[8] Because the trial court may consider hearsay evidence at a suppression hearing,[9] it properly considered the State's hearsay evidence of the forfeiture.

The purpose of a CrR 2.3(e) hearing is solely "to determine the right to possession, as between the claimant and the court or officers having custody of the property."[10] Where the ownership of the property is disputed, the claimant must resort to a civil remedy to establish his claim.[11] Because the State presented evidence that the state patrol owned the cash, the CrR 2.3(e) procedure became unavailable for it. Thus, no evidentiary hearing was needed to address the cash.[12]

Next Olebar argues that the trial court had no legitimate reason for refusing to return the cellular phones and address book. He did not identify them in his motion. But in several letters to the court and again in his motion for reconsideration, he concedes that the property does not belong to him, but to an acquaintance. He did not claim a right of possession.

CrR 2.3(e) "contemplates that the claimant, by his own testimony or affidavits, will show the court sufficient facts to convince it of his right to possession. If such a showing is not made, it is the court's duty to deny the motion."[13] Olebar's pleadings do

---

[8] CrR 2.3(e).

[9] ER 104(a); State v. O'Cain, 108 Wn. App. 542, 556, 31 P.3d 733 (2001) (citing State v. Jones, 112 Wn.2d 488, 493, 772 P.2d 496 (1989)).

[10] State ex rel. Schillberg v. Everett Dist. Justice Court, 90 Wn.2d 794, 798-99, 585 P.2d 1177 (1978).

[11] Schillberg, 90 Wn.2d at 798.

[12] Because of this resolution, we do not address the issue of the preclusion effect of the statutory forfeiture proceeding.

not make this showing. Thus, the court properly denied the motion for the return of the cellular phones and address book without an evidentiary hearing.

For the same reasons, the trial court properly denied Olebar's motion for reconsideration.

Conclusion

Because the cash was administratively forfeited pursuant to RCW 69.50.505 and because Olebar does not claim any right of ownership or possession to the other property, the court properly denied his motions. We affirm.

Leach, C.J.

WE CONCUR:

[13] Schillberg, 90 Wn.2d at 801.