IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA: NO. CP-67-MD-0001853-2016
:
VS. :

Gray 2004 Mercedes Benz CLK, PA LIC # BMORE C, VIN#WDBTJ65J04F074549 and all contents in vehicle, RED 1996 Dodge Neon, PA LIC JMV9768, VIN #IB3ES42C5TD646387 and all contents in vehicle, $924.10 Cash, Phillips TV, Visio TV, Amt .0380 Cal Pistol Ser # A70895, Black Safe

RE: Christopher Michael Hawkins

OPINION AND ORDER

On October 30, 2018, Defendant Christopher Michael Hawkins pled guilty in the Court of Common Pleas of York County, Judge Craig T. Trebilcock presiding, to Delivery of Heroin, Possession with Intent to Deliver Heroin, and Possession of Heroin. He also pled guilty to being a Person not to Possess a Firearm. Subsequently, the Commonwealth initiated a forfeiture action pursuant to the guilty plea against the property enumerated in the caption above. A forfeiture hearing was held on December 17, 2018, with the parties permitted to submit supplemental briefs and argument. This opinion follows.

LEGAL AUTHORITY

The Commonwealth seeks forfeiture of the above referenced property pursuant to 42 Pa.C.S.A. § 5802 et seq. The legislature enacted this statue, as amended, to "eliminate economic incentives of drug-related activity and thereby deter such activity." *Commonwealth v. Heater,* 899 A.2d 1126, 1132 (Pa. Super 2006). Civil forfeitures are a quasi-criminal proceeding that is a penalty for engaging in wrongdoing prohibited by statute.

> Property is forfeited not as a result of [a] criminal conviction, but through a separate proceeding, civil in form but quasi-criminal in nature, in which the agency seeking

the property must show, by a preponderance of the evidence, a nexus between the property sought and the possessor's illegal activity…

Commonwealth v. Jackson, 53 A.3d 952, 956 (Pa. Cmwlth 2012).

In order to prevail in a forfeiture action the Commonwealth must establish by a preponderance of the evidence that a nexus exists between the pertinent illegal activity and the property subject to forfeiture; when that burden is sustained, the burden of proof shifts to the property owner to disprove the evidence or establish statutory defenses to avoid forfeiture. *Commonwealth v. 1992 Chevrolet*, 844 A.2d 583 (Pa. Cmwlth 2004). The forfeiture statute grants the police extensive powers to seize the personal property of citizens, without prior judicial approved or order when the police claims establish a nexus between the possession/ownership of property and illicit drug activity.

Under the statute, upon an order of the court forfeiting property, the property is sold at auction (hearing transcript of December 17, 2018 at page 40, hereinafter Tr. 40). Proceeds from the auction are then utilized to help finance the operations of the Drug Task Force through the District Attorney's Office (Tr. 43). The Drug Task Force is the police entity whose officers are involved in the seizure of the property involved in this case (Tr. 2, 40).

FACTS OF THE CASE

Claimant, Christopher Hawkins, is a convicted drug dealer. On March 22, 2016, Officers of the York County Drug Task Force set up a purchase of heroin from Mr. Hawkins at his home at 298 Rathton Road, York Pennsylvania. The purchase was conducted through a confidential informant. Mr. Hawkins resided at 298 Rathton Road with his girlfriend, Christina Oliveras. His adult son sometimes resided at the residence as well. Mr. Hawkins was the owner of 4 to 5 vehicles at the time of the relevant drug transactions. The exact

number is not important to the ultimate disposition of this case and there was conflicting testimony on that point. Amongst the vehicles that the Defendant did own were two of the vehicles the Commonwealth seeks to forfeit in this case, specifically a gray 2004 Mercedes Benz CLK, VIN# WDBTJ65J04F074549 and a red 1996 Dodge Neon VIN# IB3ES42C5TD646387.

On March 22, 2016, Detective S. of the York County Drug Task Force watched Mr. Hawkins exit from his residence at 298 Rathton Road to meet with the confidential informant for the sale of heroin. Mr. Hawkins performed the sale, then returned into his residence. The informant returned to the police surveilling the transaction and turned over the heroin he had just purchased from Hawkins.

On the following day, March 23, 2016, Detective S. met with a 2nd confidential informant. The 2nd informant again went to the address, 298 Rathton Road, to conduct a controlled buy from Mr. Hawkins. The 2nd CI purchased heroin from Mr. Hawkins. The confidential informant immediately told the police that he had purchased the drugs from Mr. Hawkins utilizing the official funds he had been provided. The CI turned over the heroin that he had just purchased. The Defendant did not use any vehicles in the sale of any drugs on the 22nd or 23rd (Tr. 15-16)

Immediately following the second sale, Detective F. of the District Attorney's Office obtained a search warrant for the Rathton Road residence. In the interim, Mr. Hawkins had left his residence and was taken into custody during a traffic stop. At that time he was driving a black Ford Escape with the vanity tag, "CRISSY". During the apprehension Mr. Hawkins was found to be in possession of $526.00, of which $80 were official funds that had been used in the purchase of illegal narcotics just prior to leaving the house. This vehicle was not sought for forfeiture.

Subsequent to his arrest, Mr. Hawkins was interviewed by Detective F., while Detective S. assembled a team to execute the search warrant on 298 Rathton Road. Pursuant to the search warrant, Detective S. and his team entered the residence at 298 Rathton Road. Inside they located defendant's son, Christopher Hawkins Jr, who indicated that he sometimes stayed in the residence (Tr. 8). The son identified Defendant's bedroom as the northeast bedroom of the house. In the course of searching that particular room, the police located marijuana, an AMT .380 pistol, and a black safe which contained $138.10 and 4 ecstasy pills. They also located two boxes of ammunition for the pistol. There were other pills, packaging materials, and digital scales throughout the room. In addition, a Visio TV was located in that same bedroom. A Phillips TV was located and seized in the living room. Both televisions were seized, solely because they had resale value. (Tr. 20).

Detective S. testified that they seized a 1996 red Dodge Neon, a Jeep, as well as the 2004 Mercedes Benz, which were taken back to the police station. Detective S. concluded that that the Jeep and Ford Escape were not involved in any criminal activity and the police could not see any nexus between the drugs and those two vehicles, so they were returned (Tr. 12).

Detective S. testified that the Dodge Neon and the Mercedes were kept by the police because "we thought there was clear and convincing nexus between drugs and those vehicles" (Tr. 12). However, no credible facts were provided by Detective S. to substantiate these conclusions[1]. During cross examination, Detective S. indicated the vehicles did not play any role in the drug transactions on the 22nd or 23rd (Tr. 15-16). Detective F. was the investigator who took the lead in questioning Hawkins (Tr. 17). Detective S. only heard a

[1] There was no testimony during the hearing that distinguished the Neon/Mercedes from the Jeep/Ford Escape as far as connection to drug trafficking or drug money.

"very little bit of it." (Tr. 17). Mr. Hawkins indicated that he went to Baltimore two or three times a week to get drugs (Tr. 17). However, he never specified that he used the Mercedes (Tr. 17). Detective S. testified that Mr. Hawkins indicated that he did drive the Mercedes Benz around York to "meet people for money primary for drugs." This is a verbal statement that was not recorded, nor preserved in any way other than in the officer's memory. [2] It is not a statement corroborated by Detective F., and the Court finds Detective S's memory to be faulty on that point. Detective S. testified that there was no lien on either the Neon or Mercedes Benz (Tr. 19), the apparent sole distinguishing factor as to why they were seized, instead of the other vehicles.

Regarding the televisions, during cross examination, Detective S. was asked "What is the connection between drugs and the TV, specifically the Phillips TV that was found in the living room?" Detective S. indicated that the sole basis in seizing the TV was that "Mr. Hawkins wasn't employed, therefore, not able to have money to obtain such items."[3] This conclusion was made despite not knowing the age of the TV. The detective acknowledged that the girlfriend was working and that she could have afforded the TV, and that "it was seized because there was value to that TV to sell it." (Tr. 20) As further evidence in the hearing revealed, the supposition that Hawkins had not been legitimately employed was wrong.

When asked why the Visio TV in the bedroom was taken, the officer responded "same theory" (Tr. 21). The Defense counsel asked Detective S. to elaborate, asking "Since

---

[2] The Court had the opportunity to observe the demeanor of the witness as well as his level of certainty in his recollection of this statement, and concludes based upon this, as well as subsequent testimony from Detective F. that the Defendant made no such statement. In fact, the Defendant was scrupulously evasive at all times about what specific vehicles he used, if any, to support his drug dealing business.

[3] This conclusion was later refuted by evidence and a stipulation presented later in the hearing that the Defendant was working until shortly before his arrest.

he wasn't working to afford it, it must have come from ill-gotten means?" Detective S. responded "Correct." The officer conceded once again that the Defendant's wife/girlfriend, Ms. Oliveras, who resides at 298 Rathton Road, does work. On further cross examination the officer acknowledged that he does not know the age of the Visio TV, nor whether Mr. Hawkins had ever worked previously. In short, there was no factual evidence to support the conclusion that Mr. Hawkins (or another resident) could not legitimately afford a television being present in his home. The task force seized the property simply because it had resale value.

The Court then engaged in a brief questioning of the witness to inquire how the police decide which items to take and which items not to take when dealing with a suspected drug dealer. This Court has noted in numerous forfeiture proceedings initiated by the Drug Task Force in the past year that large screen TVs are very frequently seized from the houses of drug suspects, as are video game systems, regardless of any nexus to drug activity or funds. Accordingly, in the instant case, the Court inquired if there was an SOP that led or directed police towards those items. Detective S. indicated that there was not. The Court further inquired why other items of value are not taken, such as silverware or Hummels (collectibles), or furniture. Detective S. responded "I can only say we may take those items if there is value in those items. There is not typical value in furniture or typically value in general silverware. Whereas there is value in those other items." (Tr. 25).

Detective F. then testified and indicated that his role was to assist with the controlled purchase in the afternoon of March 23, 2016. He indicated that he observed the controlled buy between Mr. Hawkins and the informant, and remained at 298 Rathton where the purchase had been made (Tr. 27). Detective F. ultimately arrested and questioned Mr. Hawkins. Detective F. read Mr. Hawkins his Miranda warnings, which he waived. Mr.

Hawkins revealed that he obtained his heroin in Baltimore and in York, buying bundles of gram quantity to "take care of" a couple of people, mainly friends (Tr. 31). He also acknowledged possession of the handgun. In short, he made credible and non-evasive statements against his personal interest.

When asked what vehicles he drove to Baltimore, he said that he would "take whatever was available." (Tr. 31). It was at that point, or just before, that Detective S. walked in upon the conversation. (Tr. 31).

Detective F. asked Mr. Hawkins specifically if he took the Dodge Neon and the Mercedes to Baltimore. He said that he did, but when asked if he took the Mercedes to Baltimore to pick up heroin, he responded simply by indicating that "he took whatever vehicle was around." [4] The discussion between the Detective and the Defendant continued as the police sought clarification. The Defendant indicated to Detective F. that it sounded to him as if the police were seeking to get him to admit that he used the car so that they can take it (Tr. 32). Detective F. responded that he wanted to clarify as to what the Defendant did with his vehicle when it came to heroin sales, and at that point the Defendant stopped responding to questions about the Mercedes.

The Defendant made the same general statement in regard to inquiries about links between the Dodge Neon and drug activity, i.e., that "he would take whatever vehicle was around." Detective F. indicated that the atmosphere in discussing matters with Mr. Hawkins was not antagonistic and that he was discussing things very freely. He discussed "his heroin sales,... what he sold it for, where he purchased his heroin for resale, things like that..." (Tr. 34), Detective F. conceded that the Defendant never acknowledged that he used either the

[4] There is no violation of the Controlled Substance Act by a person taking a vehicle to Baltimore. It is up to the police to establish by preponderance of the evidence that the vehicle was taken to Baltimore for the purpose of an illicit drug purchase or other action contrary to law. *Commonwealth v. 1992 Chevrolet*, 844 A.2d 583 (Pa. Cmwlth 2004). In this case the police were not able to do that.

Mercedes or the Dodge Neon for drug distribution or purchases (Tr. 35). Detective F. also admitted that the police did not have any evidence that he used either vehicle for drug transactions (Tr. 36). The Court finds the testimony of Detective F. credible.

Upon questioning by the Commonwealth, Detective F. indicated that if there was financial information, such as receipts or recent purchase information as to who made a purchase of personal property, that the police will take that information, in order to determine whether property should be forfeited (Tr. 39). Upon questioning by the Court, Detective F. indicated that items seized to be forfeited are sold at auction twice a year, with the proceeds going " to the District Attorney's Office to the Drug Task Force" (Tr. 40). Detective F. clarified on recross that the funds are going to fund the Drug Task Force active training, equipment, and overtime (Tr. 43). Forfeitures, in part, therefore, result in additional income streams to the very officers seizing the property, a source of concern to this Court.

Christina Oliveras, the Defendant's girlfriend, testified at the hearing (Tr. 44). The Court noted that her testimony would be received with doubt, because as she was walking up to the witness stand, she paused and exchanged information in a hushed voice with the Defendant at the Defense table. This appeared to the Court to be an attempt to either influence his testimony or her own (Tr. 44). Ms. Oliveras testified that the TV in the living room belonged to her and that she purchased the TV in 2015 from Sam's Club. She indicted Mr. Hawkins purchased the TV in the bedroom in March 2016. She also testified that the Defendant was working just prior to his arrest to March 2016. She further testified that the Red Dodge Neon belonged to Mr. Hawkins, but that she and the Defendant bought the Gray 2004 Mercedes Benz together (Tr. 48). The Mercedes Benz was bought with a trade-in of a Dodge Magnum, which they previously owned, as well as a $1,500 down payment at that

time, and a $1500 payoff within a month or two (Tr. 49). Ms. Oliveras placed the date of purchase at February 1, 2014. Ms. Oliveras testified that she was working at a nursing home in 2014 making between $19.80 to $22.80 per hour on a full time basis. The Court finds that Ms. Oliveras statements regarding her work record and pay to be credible, as well as information provided regarding her relationship with the Defendant, such as the fact that she cohabitated with the Defendant at the time of the seizure. This testimony was corroborated by other evidence in the case. The Court also finds her testimony credible that the Defendant was working up until just prior to his arrest in 2016. As to any other testimony regarding ownership of property in this case, the Court gives no weight to her testimony due to her misconduct as she approached the witness stand.

Christopher Hawkins next testified, and the Court finds that the Defendant testified credibly. The Defendant presented employment records for the Court's consideration to corroborate his testimony that he had regular employment until just before his arrest. He testified that he had been dealing heroin and that he had also been employed in a series of temporary jobs leading up to March 2016, including through a temporary agency (Tr. 57). The Defendant testified that in 2014 he was working for Ferguson Trenching Company, a subcontractor for Baltimore Gas and Electric, and that he may have also worked for a moving company. The Defendant testified that he purchased a Gray 2004 Mercedes Benz from D and M Motors for a trade in, $1500 down, and the balance payoff in 30 to 60 days. The Court finds that the Defendant legitimately purchased this vehicle with lawfully obtained funds, and there is no evidence to indicate that the vehicle was bought with the proceeds from any drug transactions. The Court also finds that there is no evidence that the Defendant bought the Dodge Neon with the proceeds from any drug transactions. The Defendant denied ever selling drugs out of the Mercedes Benz and the Court finds there is

not sufficient evidence either vehicle was used for drug transactions.

The Commonwealth and Defense counsel entered into a stipulation that beginning in 2014, specifically January 29, 2014 through April 12, 2014, Defendant was working on a part time basis for the moving service (Tr. 61). The Defendant was also working through February 2016 and presented bank records to substantiate that fact, that he was working through Aerotek. (Tr. 62-62). Accordingly, the suppositions and conjecture upon which the task force justified seizing the televisions was completely without factual basis.

ANALYSIS

This Court holds that the forfeiture statute enacted by the Pennsylvania Legislature, 42 Pa.C.S.A. 5802 et seq., is not constitutionally vague, accomplishes a legitimate government purpose, and is not intended to be punitive in nature. It is within the legitimate authority of the legislature and the Court to ensure that Defendants who engage in the illegal sale of narcotics do not enrich themselves by engaging in the sale of illicit and dangerous narcotics by removing the profit motive. It is also a legitimate government purpose to deter drug dealing by prohibiting defendants from spending or investing drug proceeds into other property to raise their quality of life. Accordingly, forfeiting such drug money or drug money financed property is a legitimate government purpose, if done consistent with due process and other legal precedent designed to protect the rights of citizens accused of wrongdoing.

However, a lawful statute can be applied in a manner that is unlawful in execution. This Court equally finds that the forfeiture statute, as applied in this case by the Drug Task Force, was constitutionally impermissible. Specifically, the actions of the police in this case constituted the illegal seizure of private property from citizens in an arbitrary manner without due process. This seizure was conducted in violation of the United States

Constitution protection against illegal seizure of property under the Fourth Amendment, as applied to the states through the Fourteenth Amendment of the Constitution, as well as violating, Pennsylvania Constitution Article 1, Section 8, that protects Pennsylvania citizens from unreasonable seizure of their possessions[5].

This case is being decided on the facts of this case alone. It is important to note, however, that overzealous forfeiture actions by the Drug Task Force in the time frame of this case have not been isolated in nature. Dozens of forfeiture actions are brought before this court each year. While the property seized may vary from case to case, with some cases involving automobile, firearms or other property, a disconcerting pattern is evident that Drug Task Force officers seize big screen TV's that are present in the property regardless of any link to drug money or illegal activity. In addition, they disproportionately seize all game systems and video games, present in the property. The decision as to which property to seize is driven, in the words of Detective S., by which property has resale value. The Drug Task Force does not seize furniture or clothing, silverware, or other items that have low resale value. (Tr. 25). They focus upon items that have high resale value. That is not a problem in itself, until the police begin to ignore that there must be a nexus to drug dealing or drug money to seize those higher high value assets. This nexus is essential, because property itself cannot be considered derivative contraband merely because it is owned by or occasionally used by a criminal drug offender for legitimate purposes. *Commonwealth v. One 1985 Dark Blue Mercedes Benz Car*, 571 A.2d 482 (Pa.Super. 1990). Objects do not acquire a "guilt by association" simply because they are owned by someone engaged in criminal activity. *Petition of Maglisco*, 491 A.2d 1381, 1385 (Pa.Super. 1985). In this case,

---

[5] Constitutional protection against unreasonable government seizures of property existed in Pennsylvania more than fifteen years before promulgation of the Federal Fourth Amendment to the U.S. Constitution. *Commonwealth v. Sell,* 504 Pa. 46, 63, 470 A.2d 457 (1983).

the Drug Task Force personnel ignored the need for such a nexus and engaged in a shopping spree, for the benefit of their budget, based solely on the property's value.

The Court finds the two televisions were seized solely because the Defendant was involved in drug sale activities and because he possessed items of resale value (Tr. 20). There was no nexus. The Court finds that the Task Force members knew or should have known there was no evidence linking the televisions in any way to drug dealing or drug money. They seized the property solely because the Defendant was a drug dealer and the property had resale value. There is no law to support such an arbitrary exercise of police power in violation of the Fourth Amendment to the U.S. Constitution (as applied to the states through the Fourteenth Amendment), as well as in violation of the Pennsylvania Constitution, Article 1, Section 8.

The Defendant in this case lives in a home in York County, with his girlfriend who had a job. The defense presented evidence during the forfeiture hearing that the Defendant was regularly employed before his arrest and conviction, and that the Defendant's adult son resided in the premises off and on during all dates relevant to the action. At no time related to this case did the police take, seek, or seize any financial record of the Defendant to support their claim he could not legitimately afford the televisions. The police did not seek to determine whether the electronic devices had been purchased with drug proceeds or through bona fide means. They did not seek to determine ownership of the items as being belonging to the defendant solely, to his wife, or to his son. The officers simply saw items of value that had a market resale value in a drug dealer's home, and seized those items without a valid basis in law.

The Defendant and his family were denied the use of the property for 2 ½ years, a period of time where the property had no evidentiary value to the police, during which it

depreciated in value, and during which the Defendant's family had to choose to buy replacement property, or to live 2 ½ years without access to their unlawfully seized property.

There is no dispute that the Defendant in this case is a bad actor. He does not have clean hands and is a criminal. However, the protections of the Constitution of the United States, and that of Pennsylvania, do not create two tiers of protection against unlawful and arbitrary seizure of private property by the police. All citizens of the United States and the Commonwealth are protected equally from an arbitrary and unreasonable taking of their property[6]. The Court finds that the police seizure and ongoing possession of the items in this case was manifestly unreasonable.

When the taking of property from a criminal suspect has neither evidentiary relevance to a case, nor nexus to a drug transaction or drug money, the police are not only in violation of statute, but acting outside of the law. Such police procedures are arbitrary and may comprise a form of pre-verdict punishment inflicted by the police, without judicial approval. The United States Supreme Court has recognized that when private property is *lawfully* seized pursuant to a forfeiture statue, then that seizure is not a taking under the law. *Bennis v. Michigan*, 516 U.S. 442, 452 (1996). As in this case, where private property is *unlawfully* taken from a suspect and denied to him and his family, the rightful owners, for a period of years, the police have performed an unlawful "taking" of property under the law. If the police target drug suspects for this disparate treatment, they are punishing a suspect who is still presumed to be innocent under the law. They are also inflicting punishment upon the lawful and bona fide owners of the property as well, who may be facing no charges. Such

[6] At this point, the scope of this opinion does not apply to the seizure of evidence or other property by the police that has evidentiary value to the investigation of a case. The police have broad discretion and authority to seize property pursuant to a search warrant that has probative value to prove or disprove the commission of a crime. That is not the issue at bar in this case. This case involves the seizure of property solely for forfeiture purposes.

punishment, imposed in the sole discretion of the police, is not supported by the law, and is in fact a violation of their duty to protect the private property of all citizens of the Commonwealth. The Superior Court has recently held that a property owner may not appeal a forfeiture of property until there is a final order in his criminal case. *Commonwealth v. Bowers*, 185 A.3d, 358 (Pa. Super 2018).

The potential consequences of police engaging in the overzealous seizure of private property may have detrimental second and third order effects in criminal prosecutions. The seizure of personal property, without lawful authority, becomes a potential tool of coercion against suspects that was not in the legislature's intent in passing the forfeiture statute. When not restrained by the Courts, this can become a form of collateral financial coercion, which this Court will not tolerate. *Luis v. U.S.*, 136 S.Ct. 1083, 1086 (2016). An overbroad seizure of an individual's property, without meeting the requirements or of the forfeiture statute, provides the police with undue leverage to potentially coerce suspects to become confidential informants in order to regain their family's property that has been unlawful seized[7].

Overbroad seizure of property further places potentially coercive influence upon plea negotiations and the voluntariness of pleas negotiated before the court. *Commonwealth v. Forbes*, 299 A.2d 268, 271 (Pa. 1973). When property has been improperly seized and withheld for an unreasonable period of time, the choice to the defendant is no longer merely whether to accept a period of probation or incarceration, but the added pressure is levied on the defendant to accept the deal in order to retrieve his or his families' legitimate property, of which they have been possibly wrongly deprived. Where the property is highly valuable, or where the value of the property is substantial and the defendant is of modest means, the

[7] The Court takes judicial notice that operating as a confidential informant is an inherently dangerous activity.

decision to enter into a plea might no longer be viewed by the Court as freely and voluntarily entered into, where it is built upon a foundation of financial coercion.[8]

This Court is not willing at this time, upon this record, to go so far as to hold that the Drug Task Force has engaged in such coercive practices regarding statements of pleas. This particular record does not reflect that such coercion has occurred in this Defendant's guilty plea. However, in the absence of reform and a greater demonstration of responsibility in future Drug Task Force practices, this issue will remain to be decided to the voluntariness of plea deals, questions of double jeopardy, and the personal or institutional liability/culpability of those officers who seize private property unlawfully.

Finally, the Court also notes, in practical application, that as most forfeitures proceed after sentencing, and as a defendant does not have a right to be represented by legal counsel in a forfeiture action, many defendants are incarcerated in prison at the time of their forfeiture action without ready access to legal counsel to defend their interests. This creates a system where excesses in the exercise of police authority are not easily remedied. It is also a common practice that defendants are asked to negotiate away their forfeiture claims as a condition of a reduced sentence in a pretrial negotiation with the prosecutor.

Accordingly, significant legal hurdles and disincentives are put in the path of a defendant to assert a claim to their own bona fide property when it is seized contrary to law. Asserting such a claim to their own legitimate property may cause the prosecutor to withdraw a plea offer, resulting in extended incarceration. The absence of counsel may cause an unsophisticated or uninformed defendant to lose their claim to property, as they have exhausted their funds on legal representation in their underlying criminal matter. The systemic protections are meager. Accordingly, this Court will require hearings in all future

[8] This is an issues that might impact the voluntariness of statements taken by the police as well.

forfeiture actions, to ensure compliance with the forfeiture statute's intent.

Taken in its entirety, the testimony of the officers in this case indicates that the police made the subjective assessment that the Defendant is too poor, absent drug dealing, to have nice possessions. This was nothing more than a hunch, unsupported by any investigative rigor, and clouded by an overzealous desire to forfeit the possessions.

CONCLUSION

In regard to the two vehicles, the Commonwealth has not proven their case. The Defendant and his family owned four to five cars depending on whose testimony was presented. Two of the cars seized were the Dodge Neon and the 2004 Mercedes. No credible evidence was presented that the Defendant used any specific car for drug activity or that he used all of them. Counsel for the defense established that the police seized the two vehicles that had no liens on them, while leaving behind vehicles that either had liens or may have had liens. To forfeit a specific vehicle on this record would be nothing more than guessing, not a decision based on a preponderance of the evidence.

Accordingly, there is no basis for the seizure of any vehicle from the Defendant. The vehicles will be returned to the custody of the Defendant or his designated family members and all cost of storage are placed upon the Commonwealth. The two televisions sets will be returned to the Defendant or his designated representative in working condition within three days, as there was no lawful basis whatsoever to seize this property.

The Clerk of Court is directed to serve a copy of this Opinion to the York County District Attorney, Korey Leslie, Esquire, Counsel for the Defendant, and to the Defendant, Christopher Hawkins.

BY THE COURT

CRAIG T. TREBILCOCK., JUDGE

20 March 2019