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Ada County Prosecuting Attorney v. Demint Appellant's Brief Dckt. 44026

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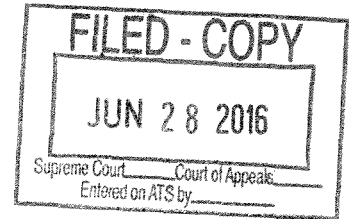
IN THE SUPREME COURT OF THE STATE OF IDAHO

ADA COUNTY PROSECUTING)
ATTORNEY,)
)
Appellant,)
vs.)
)
NINE THOUSAND FOUR HUNDRED)
FIFTEEN AND 64/100 DOLLARS)
(\$9,415.64) UNITED STATES CURRENCY,)
)
Defendant-Respondent,)
)
and)
)
WILLIAM SCOTT DEMINT,)
)
Claimant-Respondent,)
)
and)
)
1998 FORD F150, VIN)
1FTRX18L9WKB27754; *et al.*)
)
Defendants.)
)

Supreme Court Docket No. 44026
Ada County No. CV-OC-2014-17003

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IDAHO SUPREME COURT
COURT OF APPEALS



Appeal from the District Court of the Fourth Judicial District for Ada County

Honorable D. Duff McKee, District Judge presiding

APPELLANT'S BRIEF

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I.

STATEMENT OF THE CASE

A. Nature of the Case.

In this appeal, the Ada County Prosecuting Attorney appeals the District Court's decision in ruling that Defendant Property Nine Thousand Four Hundred Fifteen and 64/100 Dollars (\$9,415.64) United States Currency is not subject to forfeiture under the Idaho Controlled Substances Act.

B. Course of Proceedings.

This case arises from Claimant William Scott DeMint's August 20, 2014 arrest, which resulted in a guilty plea and conviction for trafficking methamphetamine and which gave rise to the instant civil forfeiture. Plaintiff filed this action on September 8, 2014 and Mr. DeMint answered on November 14, 2014. On July 6, 2015, the Plaintiff filed a Motion for Summary Judgment with supporting memorandum and affidavits. On December 3, 2015, the district court heard Plaintiff's Motion for Summary Judgment, and on December 8, 2015, the court issued a ruling denying summary judgment as to Defendant Property Nine Thousand Four Hundred Fifteen and 64/100 Dollars (\$9,415.64) United States Currency and granting summary judgment as to all remaining Defendant Property.¹ A court trial was held before Judge Duff McKee on

¹ Summary judgment was granted as to the following items of Defendant Property: 1998 Ford F150, VIN 1FTRX18L9WKB27754; Twelve Thousand Seven Hundred Ninety-Four and 00/100 Dollars (\$12,794.00) United States Currency; Approximately Four Hundred Forty-One and Forty-Seven Hundredths (441.47) Grams Methamphetamine; Approximately Twelve and Seventy-Nine Hundredths (12.79) Grams Marijuana; Ten (10) 16-MG Pills Hydromorphone; One (1) Taurus Millennium 9-MM Handgun, Model PT111, Serial No. TSC27053, with One

January 19, 2016. At trial, following Plaintiff's submission of evidence, Judge McKee granted Mr. DeMint's motion for directed verdict. Plaintiff now appeals that decision.

C. Statement of Facts.

On August 20, 2014, Deputy Lowry with the Ada County Sheriff's Office ("ACSO") stopped a vehicle driven by Claimant William Scott DeMint² for speeding and failure to signal a lane change for five seconds. Tr. p. 24, LL. 21-25, p. 25, LL. 1-13 at the time of the stop, Mr. DeMint had been travelling in a drug corridor, a route commonly used by traffickers to transport controlled substances. Tr. p. 48, LL. 7-13, p. 49, LL. 3-8. Following a K-9 alert on the vehicle, officers located, among other items, Defendant Property Twelve Thousand Seven Hundred Ninety-Four Dollars (\$12,794.00) United States Currency, a handgun, 441.47 grams of methamphetamine, 12.79 grams of marijuana, ten 16-milligram pills of hydromorphone, five digital scales, ten glass bongs, and thirty-one glass pipes. Tr. p. 25, LL. 14-19, p. 26, LL. 1-8, Ex. 1, Cr. p. 104-08. Mr. DeMint was arrested and transported to the Ada County Jail on a charge for trafficking methamphetamine. Tr. p. 25, LL. 18-25, p. 26, LL. 1-8, p. 30, LL. 13-15, Ex. 1. Later that day, Detectives James Roberson and Javier Bustos with the ACSO interviewed Mr. DeMint

(1) Magazine of Ten (10) Rounds 9-MM Ammunition; Two (2) Folding Knives; One (1) Vipertek Taser; One (1) Digital Scale With Residue and Black Case; Four (4) Digital Scales in Boxes; One (1) Green Metal Container; One (1) Orange Mesh Bag; One (1) Red Mesh Bag; One (1) Black Mesh Bag; One (1) Blue Chase Bank Bag; Various Plastic Ziploc Bags; Two (P2) Glass Pipes With Burnt Residue; One (1) Small Metal Smoking Pipe With Burnt Residue; Ten (10) Glass Bongs; and Thirty-One (31) Glass Pipes.

² When Mr. DeMint was stopped by Deputy Lowry, he was accompanied by passenger Joshua Allen Thomas. The District Court entered an Order Allowing Default and a Default Judgment as to Mr. Thomas in this matter on January 16, 2015 as to all Defendant Property.

at the Ada County Jail. Tr. p. 30, LL. 16-24. During that interview, Mr. DeMint informed the detectives that he was unemployed and looking for work. Tr. p. 34, LL. 13-25, p. 35, LL. 1-5.

Mr. DeMint's phone calls were monitored by Detective Roberson during his time at the Ada County Jail. Tr. p. 37, LL. 8-13. A transcript of several of Mr. DeMint's jail phone calls were admitted into evidence at trial. On August 20, 2014, Mr. DeMint called a woman and requested that she transfer \$10,000 out of his bank account immediately. Ex. 3, p. 40, LL. 16-25, p. 43, LL. 17-18. He provided her his Chase bank account information in order to extract the money, and expressed fear that the money was going to be taken. Ex. 3, p. 41, LL. 1-25, p. 42, LL. 1-4, p. 43, LL. 14-21.

Mr. DeMint then called a man and gave instructions on what to do with his bank account. Ex. 3, p. 16, LL. 6-11. He said that half of the money should be put on his "books" and the other half given to "Linda." *Id.* Mr. DeMint explained that he needed the money removed from his account and told the man, "Just get it out of the bank for now [. . .] We'll worry about where it goes. [. . .] [T]ransfer them into someone else's bank account. . . or they're going to confiscate it[.]" Ex. 3, p. 18, LL. 1-8.

Upon reviewing the above phone calls, Detective Roberson wrote a seizure affidavit in order to seize the money from Mr. DeMint's bank account. Tr. p. 40, LL. 11-25, p. 41, LL. 1-11. A seizure warrant was issued and served upon Chase Bank. Tr. p. 41, LL. 9-22. On or about

August 27, 2014, Chase Bank issued a cashier's check to ACSO in the amount of \$9,415.64, the balance of Mr. DeMint's bank account at that time.³ Ex. 3, p. 44, LL. 23-25, p. 45, LL. 1-12.

Mr. DeMint's bank records from the relevant dates were admitted into evidence at trial. Mr. DeMint's bank statement for the month of June shows out-of-state purchases in Utah and Colorado on July 7, 2014. Ex. 4, p. 80-81. Mr. DeMint's bank statement beginning July 8, 2014 shows a beginning balance of -\$161.04. Ex. 4, p. 83. On July 16, the statement shows a deposit in the amount of \$26,268.19. *Id.* After that large deposit, a number of cash withdrawals occurred, including a withdrawal of \$4,000 on July 17, a withdrawal of \$5,000.00 on July 21, and a withdrawal of \$4,500.00 on July 30. Ex. 4, pp. 83-84. Additionally, the July statement shows out-of-state purchases in Winnemucca, Nevada and Yuba City, California from July 21 through July 22, 2014 and from July 30 to August 1, 2014. Ex. 4, pp. 84-85. Many of these expenses were incurred for gas and hotels. *Id.*

Mr. DeMint's beginning balance for the month of August, 2014 was \$3,709.59. Ex. 4, p. 94. A number of large cash deposits occurred, including a deposit of \$4,650.00 on August 13 and two deposits equaling \$6,450.00 on August 18. Ex. 4, p. 95. Both deposits occurred after Mr. DeMint traveled to Yuba City, California and Winnemucca, Nevada – his bank records show purchases in these places August 7 through August 11, 2014 and August 13 through August 14, 2014. Ex. 4, pp. 94-95. Again, many of Mr. Demint's out-of-state purchases were incurred for gas and hotels. Ex. 4, pp. 94-95. Additionally, the August statement shows that Mr. DeMint

³ The cashier's check comprises the Defendant Property Nine Thousand Four Hundred Fifteen and 64/100 Dollars (\$9,415.64) United States Currency at issue in this appeal.

purchased gas in Ogden, Utah on August 20, 2014, the same date he was arrested in Boise. Ex. 4, p. 95.

Mr. DeMint ultimately pled guilty to trafficking methamphetamine and was sentenced on May 27, 2015. Plaintiff initiated the instant lawsuit on September 8, 2014. Mr. DeMint is the only claimant remaining in this matter,⁴ and Defendant Property Nine Thousand Four Hundred Fifteen and 64/100 Dollars (\$9,415.64) United States Currency from Mr. DeMint's bank account is the only Defendant Property still at issue.⁵ Because the district court granted Mr. DeMint's motion for directed verdict, the record includes only Plaintiff's case-in-chief.

II.

ISSUES PRESENTED ON APPEAL

(1) Whether the District Court erred in entering a directed verdict in Mr. DeMint's favor, and (2) Whether the District Court erred in ruling that Defendant Property Nine Thousand Four Hundred Fifteen and 64/100 Dollars (\$9,415.64) United States Currency is not subject to forfeiture per Idaho Code Section 37-2744 and the Idaho Uniform Controlled Substances Act, Idaho Code §§ 37-2701, *et seq.*

III.

STANDARD OF REVIEW

As aforementioned, Mr. DeMint prevailed upon a motion for directed verdict. In reviewing the entry of a directed verdict, the appellate court must apply the same standard that

⁴ The only other claimant, Joshua Allen Thomas, was defaulted on January 16, 2015.

⁵ The District Court awarded Plaintiff summary judgment and forfeiture of all other items of Defendant Property in an order dated December 8, 2015.

governs the trial court which entered the directed verdict. *Quick v. Crane*, 111 Idaho 759, 764, 727 P.2d 1187, 1192 (1986). “Whether a verdict should be directed is purely a question of law and on those questions, the parties are entitled to full review by the appellate court without special deference to the views of the trial court.” *Id.* The Supreme Court of Idaho has therefore ruled that in determining whether a motion for directed verdict should have been granted, the appellate court “must determine whether, admitting the truth of the adverse evidence and drawing every legitimate inference most favorably to the opposing party, there exists substantial evidence to justify submitting the case to the jury.” *Myers v. Workmen’s Auto Ins. Co.*, 140 Idaho 495, 508-09, 95 P.3d 977, 990-91 (2004) (citation omitted). The requirement of substantial evidence “does not require the evidence to be uncontradicted. It requires only that the evidence be of sufficient quantity and probative value that reasonable minds could conclude that a verdict in favor of the party against whom the motion is made is proper.” *Id.* at 509, 991 (citation omitted).

However, because the case at hand involved a court trial rather than a trial by jury, the proper motion before the District Court was one for involuntary dismissal under Idaho Rule of Civil Procedure 41(b) and not a motion for directed verdict. *See Durrant v. Quality Fist Mktg.*, 127 Idaho 558, 559, 903 P.2d 147, 148 (Idaho Ct. App. 1995), *Spirit Ridge Mineral Springs, LLC v. Franklin County*, 157 Idaho 424, 426, 337 P.3d 583, 585 (2014). I.R.C.P. 41(b) provides, in pertinent part:

After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff’s evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal

on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

In assessing an involuntary dismissal, an appellate court “review[s] freely any statements of law and the court’s conclusion that the facts as found did not entitle [plaintiff] to relief.”⁶ *Staggie v. Idaho Falls Consol. Hosps.*, 110 Idaho 349, 351, 715 P.2d 1019, 1021 (Idaho Ct. App. 1986).

IV.

ARGUMENT

The district court misapplied the preponderance standard in this case; a proper application of the standard shows that the \$9,415.64 is subject to forfeiture under the Idaho Controlled Substances Act.

A. The District Court Failed to Apply the Correct Standard.

In making its determination in this matter, the district court applied the incorrect standard to Plaintiff’s case. Idaho Code Section 37-2744 subjects to forfeiture all property “which has been used or intended for use in connection with the illegal manufacture, distribution, dispensing or possession” of controlled substances. The Section further provides that forfeiture proceedings are in rem civil actions and that the standard of proof is preponderance of the evidence. I.C. § 37-2744. To meet a preponderance burden, the evidence must show that something is

⁶ When an appellate court reviews a district court’s findings of fact, it may overturn such findings of fact only if they are “clearly erroneous.” *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 743, 9 P.3d 1204, 1209 (2000). However, here, the district court made no findings of fact; thus, Plaintiff herein challenges the district court’s application of law.

“more probably true than not.” *Oxley v. Med. Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003). Thus, in a forfeiture case, a plaintiff must show that the property involved was, more likely than not, used or intended for use in connection with illegal drug activity.

In this matter, the district court stated that it applied a preponderance of the evidence standard. Tr. p. 100, LL. 18-25, p. 101, LL. 1-3. However, a review of the court’s oral ruling exposes a flawed application of the standard. The court began its ruling by stating that an attempt to forfeit money from a bank account “build[s] a mountain. . . that is almost insurmountable.” Tr. p. 95, LL. 24-25, p. 96, LL. 1-3. This statement alone conflicts with the preponderance standard; it more accurately describes “beyond a reasonable doubt,” a much higher burden. The Supreme Court of Idaho has likened “beyond a reasonable doubt” to “the summit of a high mountain.” *State v. Arregui*, 44 Idaho 43, 63 (1927). The district court’s extension of such a definition to the preponderance standard is erroneous. Following the above, the court states two propositions which are troubling when compared with the preponderance standard.

First, the district court held that the Plaintiff was required to trace the funds in the bank account and stated, “[Y]ou have to be very precise; a dollar in, you get a dollar out.” Tr. p. 97, LL. 19-22. Second, and even more troublesome, the district court ruled that in order to meet its burden, the Plaintiff was required to disprove all Mr. DeMint’s potential legitimate sources of income, despite the absence of any such sources on the record. Specifically, the court stated, “You have to rule out all. . . other possibilities of where the money might have gone.” Tr. p. 100, LL. 1-3. These two propositions display that the court erred in applying a burden much higher than preponderance.

To begin with, no Idaho statutory or decisional law requires a plaintiff to trace money in order to forfeit funds in a bank account—the law merely requires that a plaintiff show that the money was *more likely than not* used in connection with illegal drug activity. Idaho courts have never addressed the subject and have therefore never required plaintiffs to trace money in a bank account.

Where the Idaho Supreme Court has not specifically ruled on a matter involved in a civil forfeiture, the Court has stated: “the Idaho legislature included a ‘uniformity of interpretation’ provision, which directs that the Idaho act shall be applied and construed to make uniform the law with respect to the subject of the act among those states that enact it.” *State v. Barraza-Martinez*, 139 Idaho 624, 626, 84 P.3d 560, 562 (2003). Thus, other states’ interpretations of forfeiture statutes similar to Idaho’s may be directive here.

Though Idaho law has not addressed tracing money, various other courts which have ruled that the plaintiff does not have to link monies from a bank account to any one particular transaction. See *United States v. \$1,101.00 in United States Currency*, 2015 U.S. Dist. LEXIS 94349, at *8 (W.D. Wash. 2015) (“The government may discharge its burden with circumstantial evidence, and it is not required to trace assets to particular transactions.” (citations omitted)), *Commonwealth v. 32,950.00 United States Currency*, 160 Pa. Commw. 58 (1993) (ruling that requiring the government to “produce evidence directly linking the property to the illegal activity” was “too strict and would impose an onerous burden” on the government) (citation omitted), *United States v. \$49,790 in United States Currency*, 763 F.Supp.2d 1160 (N.D. Cal. 2010) (“The determination whether the government has met its burden of proof is based on the

aggregate of the facts, including circumstantial evidence.”), *United States v. 380 Cody Rd. S.*, 2015 U.S. Dist. LEXIS 17868 (S.D. Ala. 2015) (ruling that the government “is not required to offer direct evidence of a connection between the defendant currency and a specific drug transaction.”). Other courts have ruled that while tracing is required, it involves a totality of the circumstances approach, rather than the dollar in, dollar out approach as suggested by the district court in this case. *See United States v. 174,206.00 in United States Currency*, 320 F.3d 658 (6th Cir. 2003) (ruling that forfeiture was proper where claimants’ legitimate income did not support the large amount of money found in claimants’ safe deposit boxes), *United States v. Funds in the Amount of Thirty Thousand Six Hundred Seventy Dollars (\$30,670.00)*, 403 F.3d 448 (7th Cir. 2005). The 7th Circuit Court of Appeals also noted that “[i]n evaluating the evidence of proceeds traceable to drug transactions, we . . . eschew[] clinical detachment and endorse[] a common sense view to the realities of normal life applied to the totality of the circumstances.” *Id.* at 469 (citation omitted). In one case, the 11th Circuit Court of Appeals noted that a lack of documents directly tracing money “is not how legitimate business transactions are handled. It is, however, the way drug rings operate.” *United States v. Carrell*, 252 F.3d 1193, 1201 (11th Cir. 2001).

Here, the lack of account tracing is, of its own accord, indicative of its use in illegal drug transactions. Despite being unemployed, during the two months preceding his arrest, Mr. DeMint deposited over \$37,000.00 into his bank account. Mr. DeMint had no legitimate source of income and there was no evidence before the district court suggesting that the money came from a legitimate source. The only evidence on the record shows that Mr. DeMint is a convicted methamphetamine trafficker who was, despite his unemployment, depositing large sums of

money following recurring trips to Yuba City, California and Winnemucca, Nevada via a drug corridor, a route commonly used by drug traffickers. The record also shows that at the time of his arrest, Mr. DeMint was in possession of a large amount of methamphetamine, marijuana, cash, five digital scales, a gun, ten glass bongos, and thirty-one glass pipes. All of this evidence suggests that Mr. DeMint was involved in a drug operation. Thus, an inability to directly trace the funds makes sense; as the 11th Circuit Court of Appeals noted, it is “the way drug rings operate.” *Id.* On this error alone, the case is subject to remand.

The district court also applied the incorrect standard when it required Plaintiff to disprove every potential legitimate source of income. No Idaho statutory or case law requires Plaintiff to disprove potential sources of income. In fact, no court has interpreted the preponderance standard so strictly against a plaintiff. The Supreme Court of Michigan stated, “In deciding whether there is sufficient evidence to support a ruling of drug forfeiture, courts look to the totality of the circumstances and do not try to pick them off, one by one, by conjuring up some alternative hypothesis of innocence. . .” *People v. \$180,975 in United States Currency (In re Forfeiture of \$180,975)*, 478 Mich. 444, 471, 734 N.W.2d 489, 504 (2007).

Here, the district court did just that. No evidence on the record supports that the money in Mr. DeMint’s bank account is from a legitimate source; however, the court hypothesized: “I have no idea whether [Mr. DeMint] is a gambler or. . . whether he has a rich uncle that loaded him up with this money. . . I don’t know where this money goes. But it could be all sorts of places.” Tr. p. 99, LL. 17-21. The court went on, noting that Plaintiff has “to rule out all of these other possibilities of where the money might have gone.” Tr. p. 100, LL. 1-3. Again, per Idaho law,

Plaintiff was merely required to show that the money was, more likely than not, used or intended for use in connection with illegal drug activity. A requirement for Plaintiff to disprove all potential legitimate sources of income created a burden far beyond preponderance in favor of one that is, in the district court's words, "almost insurmountable."

The district court erred in requiring Plaintiff to directly trace money into and out of Mr. DeMint's bank account and to disprove all potential legitimate sources of income. Because the court applied the incorrect standard, the matter is subject to remand for application of the correct legal standard.

B. The District Court Erred in Ruling that Defendant Property Nine Thousand Four Hundred Fifteen and 64/100 Dollars (\$9,415.64) United States Currency is Not Subject to Forfeiture.

Applying the preponderance standard properly, the evidence on the record shows that the Defendant Property involved in this appeal was more likely than not used or intended for use in Mr. DeMint's trafficking of methamphetamine and is therefore subject to forfeiture. As previously stated, courts have ruled that "in evaluating the evidence of proceeds traceable to drug transactions, we have eschewed clinical detachment and endorsed a common sense view to the realities of normal life applied to the totality of the circumstances." *Funds in the Amount of Thirty Thousand Six Hundred Seventy Dollars (\$30,670.00)*, 403 F.3d at 469 (citation omitted), *see also \$180,975 in United States Currency*, 478 Mich. at 471, 734 N.W.2d at 504, *Commonwealth v. \$6,425.00 Seized from Esquilin*, 583 Pa. 544, 880 A.2d 523 (2005).

In determining whether property is forfeitable, courts have relied on evidence such as: the significance of the claimant's travel route at the time of arrest,⁷ the frequency of claimant's trips to a drug source location, and the claimant's lack of legitimate income to support his available funds. *See Funds in the Amount of Thirty Thousand Six Hundred Seventy Dollars (\$30,670.00)*, 403 F.3d 448, *174,206.00 in United States Currency*, 320 F.3d 658. Plaintiff placed such evidence on the record, but the district court failed to consider it under the appropriate standard. Giving due consideration to such evidence, Defendant Property is subject to forfeiture because the totality of the circumstances shows that it was derived from Mr. DeMint's sales of methamphetamine and because it was used to support his frequent travel to purchase and sell methamphetamine, as further detailed below.

To begin with, Mr. DeMint received Defendant Property from selling methamphetamine. The evidence at hand shows that his sole source of income was distributing methamphetamine. He possessed almost a pound of methamphetamine,⁸ five digital scales, almost forty smoking devices, and \$12,794.00 cash at the time of his arrest and ultimately pled guilty to trafficking methamphetamine.⁹ Additionally, ACSO detectives had received information that Mr. DeMint

⁷ Various state and federal courts have held a defendant's travel route through a known drug corridor is probative in forfeiture cases, despite the fact that the route may be a common travel route. *See People v. \$180,975 in United States Currency*, 478 Mich. 444, 466-468 (2007).

⁸ Mr. DeMint had four hundred forty-one and 47/100 grams of methamphetamine in his car when arrested. Tr. p. 25, LL. 14-19, Ex. 1. The street value of this amount of methamphetamine is between \$8,000 and \$12,000. Tr. p. 61, LL. 11-19.

⁹ A trafficking conviction requires that a defendant possess at least twenty-eight (28) grams of methamphetamine. I.C. § 37-2732B. Mandatory minimum sentences for trafficking methamphetamine are categorized by the amount of methamphetamine a defendant possesses. *Id.* Possession of four hundred or more grams is the highest mandatory sentence category. *Id.*

was distributing methamphetamine in the Treasure Valley. Tr. p. 30, LL. 6-12. Additionally, Mr. DeMint was unemployed. Tr. p. 34, LL. 13-25, p. 35, LL. 1-5. The record shows no legitimate source of income. Mr. DeMint's bank records, which were admitted during trial, also support that Mr. DeMint's funds were derived from drug sales. Despite being unemployed, Mr. DeMint made four large deposits in the two months preceding his arrest: \$26,268.19 on July 16, 2014, \$4,650.00 on August 13, 2014, and \$5,450.00 and \$1,000 on August 18, 2014. Ex. 4, pp. 83, 95. These four large deposits equal \$37,368.19. Additionally, it is important to note that each of Mr. DeMint's large deposits occurred shortly after a series of out-of-state purchases in Yuba City, California, Winnemucca, Nevada, and Ogden, Utah, suggesting that Mr. DeMint sold or purchased methamphetamine during his travels, and was therefore able to deposit large amounts of cash afterward. Ex. 4, pp. 83-85, 94-95. Mr. DeMint's bank records also show that he took at least six separate trips to California, Utah, and Nevada¹⁰ between July 7 and August 20, 2014 (the date of his arrest). Mr. DeMint's frequency of travel alone is incongruous with the way most people travel. Additionally, as aforementioned, Mr. DeMint was in possession of \$12,794.00 at the time of his arrest, which money has since been forfeited. Mr. DeMint was a drug dealer without a legitimate source of income who received large amounts of money for selling methamphetamine – the \$9,415.64 in his bank account consisted of drug money.

At the time of his arrest, Mr. DeMint was in possession of four hundred forty-one and 47/100 grams. Tr. p. 25, LL. 14-19, Ex. 1. Thus he was subject to the highest mandatory sentence per Idaho law.

¹⁰ Specifically, the bank records show out-of-state purchases in Utah and Colorado on July 7, 2014; in Yuba City, California and Winnemucca, Nevada July 21 through July 22, 2014, July 30 to August 1, 2014, August 7 through August 11, 2014, and August 13 through 14, 2014; and in Ogden, Utah on August 20, 2014. Ex. 4, pp. 80-81, 84-85, & 94-95.

In addition, Mr. DeMint used funds from his bank account to support his traveling to buy and sell methamphetamine. His bank records show him making frequent out-of-state purchases in Utah, California, and Nevada, many of which were incurred for gas and hotels. Ex. 4, pp. 83-85, 94-95. At the time of his arrest, Mr. DeMint was traveling in a corridor that is known for drug trafficking and he was in possession of a large amount of cash and methamphetamine. Tr. p. 51, LL. 5-15, p. 52, LL. 3-8. Detective Roberson had information that Mr. DeMint met with his source of methamphetamine supply in Ogden, Utah on August, 20, 2014, the date of his arrest in Boise. Tr. p. 56, LL. 1-3. Mr. DeMint's bank records support this information – Mr. DeMint purchased gasoline in Utah on the date he was arrested in Boise. Ex. 4, p. 95. Thus, his bank records show him extracting money to purchase the gas that fueled his car in transporting nearly a pound of methamphetamine from Ogden to Boise.

Once in the Ada County Jail, Mr. DeMint asked two individuals outside of the jail to withdraw Defendant Property from his bank account. He instructed one man that half of the money should be put on his “books” and the other half given to “Linda.” Ex. 3, p. 16, LL. 6-11. Mr. DeMint explained that he needed the money removed from his account and told the man, “Just get it out of the bank for now [. . .] We’ll worry about where it goes. [. . .] [T]ransfer them into someone else’s bank account. . . or they’re going to confiscate it[.]” Ex. 3, p. 18, LL. 1-8. Mr. DeMint feared that Defendant Property would be seized because it was derived from his trafficking methamphetamine.

The evidence at hand shows that Defendant Property is derived from drug sales and that it was both used and intended for use in supporting Mr. DeMint's trafficking methamphetamine.

Mr. DeMint deposited a large amount of money in his bank account from the sales of methamphetamine, and his bank records show purchases to fund his trafficking excursions. The money in Mr. DeMint's bank account was used *and* intended for use in connection with his trafficking methamphetamine. Thus, applying the correct standard, Defendant Property is subject to forfeiture.

V.

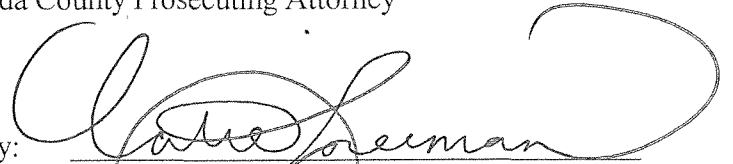
CONCLUSION

For the reasons set forth above, a directed verdict (or an involuntary dismissal) should not have been granted in this matter. Thus, the Plaintiff respectfully requests this Court to reverse the District Court's decision and remand to allow for a trial under the proper standard.

DATED this 28th day of June, 2016.

JAN M. BENNETTS
Ada County Prosecuting Attorney

By:


Catherine A. Freeman
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of June, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF to the following persons by the following method:

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