7-27-2016

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

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**

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

Honorable D. Duff McKee, District Judge Presiding

CLAIMANT-RESPONDENT'S BRIEF

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I.

STATEMENT OF THE CASE

A. Nature of the Case.

The Ada County Prosecuting Attorney, as Plaintiff, has appealed the district court's ruling that Defendant Property Nine Thousand Four Hundred Fifteen and 64/100 Dollars ($9,415.64) United States Currency seized from Claimant's Chase Bank checking account is not subject to forfeiture under the Idaho Controlled Substances Act.

B. Course of Proceedings.

Appellant's brief accurately states the course of proceedings in this case and Claimant-Respondent has nothing to correct or add to Appellant's account.

C. Statement of Facts.

As this appeal concerns only the money seized by law enforcement from Claimant's bank account, much of the testimony from the hearing and factual history as provided by Appellant is incomplete, inaccurate, or irrelevant to the issues raised on appeal. The complete account of all the evidence introduced at trial, and therefore relevant to this appeal, are as follows:

At trial the Plaintiff called two witnesses. The first, Deputy Lowry of the Ada County Sheriff's Office, testified that on August 20, 2014, he was working patrol and interdiction that day out on the freeway. Tr. p. 24, LL. 19-20. While on duty, he stopped Claimant on the freeway for speeding and failure to signal for five seconds. Tr. p. 24, L. 15-25 and p. 25, LL. 1-12. (No testimony was offered as to which freeway or where the stop occurred nor is it mentioned in any of the exhibits admitted at trial.) A subsequent search of Claimant's vehicle yielded a large amount of methamphetamines, marijuana and money. Tr. p. 25, LL. 15-19. Appellant introduced Exhibit 1, Claimant's Judgment of Conviction, through Deputy Lowry which was admitted into evidence. This summarizes the entirety of the testimony offered by Deputy Lowry.

Next the Plaintiff called Detective Roberson of the Ada County Sheriff's Office. He testified that on August 20, 2014, he interviewed Claimant at the Sheriff's Office following Claimant's arrest. Tr. p. 30, LL. 18-21. During questioning, Claimant told Roberson he was currently unemployed and looking for work. Tr. p. 34, LL. 13-25 and p. 35, LL. 1-5. That was meaningful to Roberson because Claimant was found with $12,000 in cash during the traffic stop. Tr. p. 35, LL. 6-12. Roberson did not testify at any point in the

trial that Claimant's unemployment was concerning to him in relation to the money eventually seized from Claimant's bank account. Further, Roberson offered no testimony that he had ever questioned Claimant about the length of his unemployment, when the period of unemployment had begun, or what Claimant did for employment prior to becoming unemployed.

After interviewing Claimant, Roberson took him to the Ada County jail for booking. Tr. p. 37, 16-18. He then returned to the Ada County narcotics unit to review any phone calls Claimant might make from the booking area of the jail. Tr. p. 37, LL. 8-23. In one phone call, Claimant told someone named Aaron to empty his bank account, to put half the money on his books and to take the other half to Linda, because he was afraid it would be confiscated. Ex. 3, p. 17, LL. 9-25 and p. 18, LL. 1-8. In a second phone call, Claimant told an unknown female to empty his bank account and to transfer it to anyone of her choosing. Ex. 3, p. 40, LL. 21-25 and p. 41, LL. 1-25. However, Claimant also told her in that call, "So, there's $10,000 in the bank that we got to get out of there...**I can prove the income but they're still going to take it**, you know." Ex. 3, p. 43, LL. 17-21 (emphasis added). Roberson stated on direct exam that he included Claimant's statements about his fear of the bank money being confiscated in his affidavit for a seizure warrant; however, he admitted on cross exam that he failed to include Claimant's statement that he could prove the legal source of the money in that affidavit. Tr. p. 69, LL. 19-25 and p. 70, 1-14. Roberson also admitted on cross exam that there could have been many reasons why Claimant feared the bank money would be confiscated other than because it was drug money. Tr. p. 82, LL. 14-20. He also admitted that at no time did Claimant ever state in any of the monitored phone calls that the bank money was related to drugs in any way. Tr. p. 82, LL. 21-25 and p. 83, LL. 1-5. Exhibit 3, Transcript of the recorded phone calls, was then admitted through Roberson.

After reviewing these calls, Roberson sought and obtained a seizure warrant which he served on Chase Bank where Claimant had his account. Tr. p. 44, LL. 1-17. On August 27, 2014, Chase Bank issued a cashier's check to the Ada County Sheriff's Office for the amount of $9,415.64, the amount of money in Claimant's account at that time. Tr. p. 44, LL. 23-25 and p. 45, LL. 1-12.

Roberson then testified that in August, 2014, Claimant had traveled to Ogden or the Ogden area. Tr. p. 51, LL. 5-6. This was significant to the detective because "I-84 is a

corridor for drug trafficking between Salt Lake and Boise." Tr. p. 51, LL. 14-15. However, on questioning from the court, the detective admitted that he "may have misspoke," and that I-84 is really just a travel route between the two cities that is also sometimes used by narcotics traffickers. Tr. p. 52, LL. 5-25 and p. 53 LL. 1-11. He further admitted to the court that his characterization of I-84 as a "drug corridor" was not the reason Claimant's trip to Ogden was significant to him. Tr. p. 53, LL. 1-11.

During Detective Roberson's direct exam he testified that he has reviewed bank records when performing investigations and that he had reviewed Claimant's bank records as part of this investigation. Tr. p. 45, LL. 13-18. Plaintiff introduced Exhibit 4, Claimant's bank records, which was admitted into evidence. Tr. p. 46, LL. 2-3. The entire testimony elicited from Detective Roberson relative to Exhibit 4 is as follows:

- "The beginning balance (in the account) was negative $161.04." Tr. p. 47, LL. 2-3;
- "On July 16th, 2014, there was a deposit in the amount of $26,288.19." Tr. pl. 47, LL. 9-10;
- "...there appear to be expenses outside of Boise..." Tr. p. 48, LL. 7-8;
- "There is a purchase on August 21st, 2014, at the IHOP in Ogden, Utah." Tr. p. 53, LL. 19-20;
- "...I had knowledge that Mr. DeMint was in Ogden specifically meeting with his source of supply on the 20th of August." *Do you know where they were meeting in Ogden?* "I do from the bank statements, yes." Tr. p. 56, LL. 1-6;

At no point in the trial did Roberson ever testify, nor did Plaintiff offer any evidence that law enforcement ever investigated any bank records to determine the source of the deposits to Claimant's account. No evidence was offered that any investigation was done to determine whether the sources of the deposits on Claimant's bank records were legitimate or not.

On its own review of Exhibit 4, the district court observed a $4,000 withdrawal on July 17, 2014, a $5,000 withdrawal on July 21, 2014, and a $4,500 withdrawal on July 30, 2014, all of which occurred a month prior to Claimant's arrest. Tr. p. 59, LL. 19-25, and p. 60, LL. 1-4. Again, Plaintiff offered no evidence that Detective Roberson ever interviewed Claimant or otherwise investigated any of the deposits or withdrawals to the account. This summarizes the entirety of Detective Roberson's testimony.

II.

ISSUES PRESENTED ON APPEAL

1. Whether the District Court erred in entering a directed verdict in Mr. DeMint's favor.

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 § 37-2744 and the Idaho Uniform Controlled Substances Act, Idaho Code §§ 37-2701, *et seq.*

III.

STANDARD OF REVIEW

In the case of a court trial rather than a jury trial, the proper motion for a party to make, instead of a motion for directed verdict, is a motion for involuntary dismissal. *Durrant v. Quality First Marketing*, 127 Idaho 558, 559, 903 P.2d 147, 148 (Ct. App. 1995). As in *Durrant*, this case having been tried to the court without a jury, this Court should therefore treat the district court's grant of Claimant's motion for directed verdict as a grant of a motion for involuntary dismissal. *Id.*

Upon appeal of a granting of a motion for involuntary dismissal, this Court "must view all of the (nonmoving party's) evidence as being true and afford every inference favorable to the (nonmoving party) that legitimately may be drawn from such evidence." *Id.* at 560. This is the same standard as should be applied to motions for directed verdict. See *General Auto Parts Co., Inc. v. Genuine Parts Co.*, 132 Idaho 849, 855, 979 P.2d 1207, 1213 (1999) citing *Herrick v. Leuzinger*, 127 Idaho 293, 297, 900 P.2d 201, 205 (Ct. App. 1995) ("When reviewing the disposition of a motion for a directed verdict... [this 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.")

The granting of a motion for involuntary dismissal, like a motion for directed verdict, is subject to the "substantial evidence test." *Hibbler v. Fisher*, 109 Idaho 1007, 1010, 712 P.2d 708, 711 (Idaho App. 1985). The "substantial evidence test" requires 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."

General Auto Parts, 132 Idaho at 855, citing *All v. Smith's Management Corp.*, 109 Idaho 479, 480, 708 P.2d 884, 885 (1985).

IV.

ARGUMENT

The District Court correctly granted Claimant's motion for directed verdict, now treated as a motion for involuntary dismissal, because the court applied the correct standard of proof to Plaintiff's evidence and because Plaintiff's evidence, even when viewed in the light most favorable to Plaintiff, did not meet the standard of proof.

A. The District Court applied the correct standard of proof of preponderance of the evidence to Plaintiff's evidence.

"Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the standard of proof shall be preponderance of the evidence." Idaho Code § 37-2744(d). The Idaho Court of Appeals examined this standard even more closely in *Idaho Dept. of Law Enforcement By and Through Richardson v. $34, 000 United States Currency*. In that case, the claimant argued that a reasonable doubt standard should be applied to civil forfeiture cases due to their penal nature. In response, the Court stated:

> When applying I.C. § 37-2744, the trial court required that the state show by a preponderance of evidence that the seized money was used in a manner that violated the statute. The court stated:
>
> > The forfeiture statute explicitly adopts a preponderance of evidence standard. While this is substantially more rigorous than the 'probable cause' standards applied in federal forfeiture proceedings, 21 U.S. C.A. 881(a)(6), the Court is troubled by the use of a civil standard of proof in proceedings which are clearly penal in nature. Indeed, the state would not have prevailed in this proceeding had it been required to prove its case by 'clear and convincing evidence,' or 'beyond a reasonable doubt.' However, the legislature has spoken on this issue, and the court is not persuaded that it can ignore the statutory directive of I.C. 37-2744.
>
> We, too, cannot ignore the directive of I.C. § 37-2744. Established case law indicates that a majority of states have adopted and upheld an evidentiary standard below reasonable doubt in civil forfeiture proceedings, and that most have adopted a preponderance of evidence standard. See *State v. Spooner*, 520 So.2d 336, 360 (La. 1988). Also, we note that the standard Idaho imposes is more stringent than the finding of probable cause required in forfeiture proceedings under federal law. See 21 U.S. C. § 881(a)(6); 19 U.S. C. § 1615; *United States v. $250,000 in United States Currency*, 808 F.2d 895, 900 (1st Cir. 1987).

Idaho Dept. of Law Enforcement By and Through Richardson v. $34, 000 United States Currency, 121 Idaho 211, 216, 824 P.2d 142. 147 (Idaho App. 1991). It is therefore well-established in Idaho that the standard of proof in civil forfeiture cases is preponderance of the evidence.

> Preponderance of the evidence is defined as:
>
> Greater weight of evidence, or evidence which is more credible and convincing to the mind. *Button v. Metcalf*, 80 Wis. 193, 49 N.W. 809. That which best accords with reason and probability. *U.S. v. McCaskill*, D.C. Fla., 200 F. 332. The word 'preponderance' means something more than 'weight'; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a 'weight' of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. *Mathes v. Aggler & Musser Seed Co.*, 178 P.713, 715, 179 Cal. 697; *Barnes v. Phillips*, 184 Ind. 415, 111 N.E. 419.

Black's Law Dictionary. "A preponderance of the evidence means that the evidence shows something to be more probably true than not." *In re Beyer v. State of Idaho, Transportation Dept.*, 155 Idaho 40, 45, 304 P.3d 1206, 1211 (Ct. App. 2013) citing *Oxley v. Medicine Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003).

In this case, the district court applied the correct standard of proof of preponderance of the evidence. First, the district court stated on the record that it understood and was following the correct standard: "So on the status of the proof and the status of the evidence that was presented to me, there is not sufficient evidence to draw any conclusions **to a preponderance of the evidence** or otherwise that the cash in question, that the cash in the bank...was the product of drug or prohibited money." Tr. p. 100, LL. 18-25 and p. 101, LL. 1-3 (emphasis added).

Second, the district court appropriately looked at all the evidence presented by Plaintiff at the trial, and only the evidence presented at trial. As shown above, it rendered its decision on "...the evidence **that was presented to me**..." at trial. The district court was restricted to only the evidence presented at trial and correctly relied on only the evidence presented. Plaintiff's arguments regarding various theories, suppositions, assumptions, or hunches about where Claimant's bank money came from are not evidence. *Idaho Standard Jury Instructions*. This Court, in reviewing the evidence in

this case, is subject to the same restrictions and must decide this case based only on the evidence presented at trial. *Durrant*, 127 Idaho at 559-560.

Third, the evidence presented at trial is subject to the substantial evidence test, which the district court correctly applied. Evidence is substantial if "it is of sufficient quantity and probative value that reasonable minds could conclude that the verdict of the (fact-finder) was proper." *Hibbler*, 109 Idaho at 1009-1010, citing *Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 736, 518 P.2d 1194, 1198 (1974). Here, the court specifically found that not only was there not substantial evidence, there was not sufficient evidence to meet the preponderance burden. Tr. p. 100, LL. 20-21.

Our state's Supreme Court has clearly defined the trial court's duty and responsibility when confronted with a motion for involuntary dismissal, as well as the appellate court's level of deference it will give to the trial court's decision on such a motion:

> [W]hen a defendant moves for an involuntary dismissal at the close of the plaintiff's presentation in a non-jury case, the court sits as a trier of fact and is not required to construe all evidence and inferences to be drawn therefrom in the light most favorable to the plaintiff. *Keenan v. Brooks*, 100 Idaho 823, 825, 606 P.2d 473, 475 (1980). The trial court 'is to weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance lies.' *Id.* A trial court's findings of fact will not be set aside on appeal unless they are clearly erroneous. *Camp v. East Fork Ditch Co., Ltd.*, 137 Idaho 850, 856, 55 P.3d 304, 310 (2002); I.R.C.P. 52(a). 'When deciding whether findings of fact are clearly erroneous, this Court does not substitute its view of the facts for that of the trial court. It is the province of the trial court to weigh conflicting evidence and to judge the credibility of witnesses.' *Miller v. St. Alphonsus Reg'l Med. Ctr., Inc.*, 139 Idaho 825, 832, 87 P.3d 934, 941 (2004) (citation omitted).

Cummings v. Stephens, 157 Idaho 348, 355, 336 P.3d 281, 288 (2014). Although Claimant in this case erroneously moved for a directed verdict rather than an involuntary dismissal, this Court is to treat it as a motion for involuntary dismissal, as shown above, making *Cummings* directly on point. Although on appeal this Court must view all of Plaintiff's evidence presented at trial as true and afford Plaintiff every inference favorable to Plaintiff that legitimately may be drawn from such evidence, the district court was not under the same burden. Instead, the district court was only required to weigh the evidence presented, resolve any conflicts in it, and decide for itself where the

preponderance lies. The district court, as evidenced in its summation and ruling at the end of the trial, did exactly that. Having done that, the trial court's findings and judgment "will not be set aside on appeal unless they are clearly erroneous." And while this Court should draw all legitimate inferences from Plaintiff's evidence, this Court cannot substitute its view of the facts for that of the district court in this case. Regarding the facts and the evidence, this Court is to give deference to the district court inasmuch as the district court was present for the presentation of the evidence and therefore in the best position to read body language, listen to tone of voice, and judge the credibility of witnesses.

Plaintiff spends much of its brief discussing statements made by the district court at trial like, "...you build a mountain for yourself that is almost insurmountable...," and "...the mountain road got significantly steeper..." However, in so arguing Plaintiff is making a mountain out of a molehill. Plaintiff wants to put itself in the district court's mind and assume that the district court was applying a reasonable doubt standard. However, at no time did the district court ever say anything about reasonable doubt. If Plaintiff wants to assume what was in the court's mind based on comments made at the close of evidence, one can just as easily assume the district court's comments were an effort to compare Plaintiff's preponderance burden with that of probable cause, a much lower burden, as explained above. Being that this case originated in a penal case where the standard of probable cause is often the correct standard, the district court here could just have easily been demonstrating to Plaintiff that a handful of facts that would suffice for probable cause in that setting is not sufficient to meet the standard of preponderance of the evidence in this civil case.

Further, by making the argument that the district court applied the wrong standard, Plaintiff is simply trying to hide the fact that its evidence amounts to no more than a molehill. For example:

a. Plaintiff claims in its brief that it presented evidence of the frequency of Claimant's trips to a drug source location. Appellant's Brief, p. 13. A review of the trial transcript yields no such evidence.
b. Plaintiff argues that Claimant received the bank money from selling meth. Appellant's Brief, p. 13. There is no evidence in the record to support this. There is no evidence that any investigation of the source of the bank money was

made. Further, at no time did Claimant ever admit that the bank money was the product of drug activity. Rather, he said, in a call that he apparently didn't know was being monitored, "I can prove the income," a fact Detective Roberson conveniently omitted from his sworn affidavit presented to a magistrate for a seizure warrant.

c. Plaintiff asserts that Claimant's sole source of income was from distributing meth. Appellant's Brief, p. 13. This is a mere assumption, not borne out by any measure of sufficient evidence in the record. Claimant told Roberson on August 20 that he was unemployed. However, Roberson did not ask him how long he'd been unemployed, where he'd been working prior to becoming unemployed, whether he had money saved in the bank, whether he was collecting unemployment, whether he had any other source of income, etc. Even after seizing the money in the bank, Roberson did not investigate the unemployment issue.

d. Plaintiff argues that the "record shows no legitimate source of income" for Claimant. Appellant's Brief, p. 14. In so arguing, Plaintiff either forgets that Plaintiff alone bears the burden of proof, or seeks to distract this Court from the scarcity of its evidence.

e. Plaintiff argues that "[d]espite being unemployed, Mr. DeMint made four large deposits in the two months preceding his arrest." Appellant's Brief, p. 14. As shown above, there is no evidence in the record regarding the length of Claimant's unemployment and whether he was unemployed when those deposits were made. In making this argument, Plaintiff misstates, overstates, exaggerates, or misconstrues the evidence to prop up a weak case.

f. In its argument, Plaintiff points out four large deposits to Claimant's bank account in July and August, 2014, and then states that each of these deposits occurred shortly after a series of out-of-state purchases. Appellant's Brief, p. 14. A review of Exhibit 4 shows this simply is not true. Again, Plaintiff attempts to inflate its limp case by puffing up the evidence.

g. Plaintiff argues that Claimant took six separate trips to California, Utah and Nevada in July and August, 2014, which is "incongruous with the way most people travel." Appellant's Brief, p. 14. There is no evidence on the travel issue.

"More probably true than not," means exactly that – more than 50%, more than halfway, more than equally true. It means more than possibly true. It means Plaintiff must present, not just possess, a sufficient quantity and/or quality of evidence to get over the hump – not to prove that theirs is the only possibility but to prove that it is the best possibility. In this case, the district court felt that the meager amount of evidence presented by Plaintiff – after a full opportunity to present all the evidence it wished – did not meet this burden, a burden that Plaintiff alone bore.

Plaintiff argues that the district court applied the wrong standard but Plaintiff does not argue that the district court's findings of fact were erroneous. This is because Plaintiff presented so little evidence, much of which was undisputed, and therefore there is no erroneous argument to be made. "A trial court's findings of fact will not be set aside on appeal unless they are clearly erroneous... 'When deciding whether findings of fact are clearly erroneous, this Court does not substitute its view of the facts for that of the trial court.'" *Cummings*, 157 Idaho at 355.

B. Even after admitting the truth of Plaintiff's evidence and drawing every legitimate inference most favorably to Plaintiff, the evidence fails to meet the standard of proof.

Plaintiff's burden at trial was to prove, to a preponderance of the evidence, that Claimant's money in the bank was "used or intended for use in connection with the illegal manufacture, distribution, dispensing, or possession of property" described in Idaho Code § 37-2744(a)(1), (2), (3), (5), (7), and/or (8). Idaho Code § 37-2744(a)(6). Plaintiff put on no evidence at trial that the bank money was ever used in the manufacture, distribution, or dispensing of controlled substances. Plaintiff introduced evidence only of possession of controlled substances; when law enforcement stopped and searched Claimant on August 20, 2014, they found him in possession of nearly a pound of meth. There was no evidence introduced that Claimant was selling the meth, meeting someone to deliver the meth, or even sharing the meth with others. Indeed, the trafficking statute under which Claimant pled guilty, contains no requirement that sale, delivery, or intent to deliver be proven. *State v. McIntosh*, 368 P.3d 621, 625 (2016). Therefore, the only question is whether the bank money seized by the State was ever used for the purpose of possessing controlled substances.

Out of the two witnesses Plaintiff called at trial, only Detective Roberson said anything relative to the money in the bank. The only testimony he provided about the bank money was:

a. Claimant had expressed a fear that the bank money would be confiscated;
b. The beginning balance in the bank account was -$161.04;
c. There was a deposit on July 16, 2014 of $26,288.19;
d. The account appears to reflect expenses outside of Boise;
e. There was a purchase from the account at the Ogden IHOP on August 21, 2014.

However, on cross exam Detective Roberson admitted that in the same phone call where the Claimant expressed fear that the bank money would be confiscated he also expressed that he could legitimately account for the money. Roberson also admitted that Claimant never mentioned anything about drugs or illegal activity related to the bank money and that he had chosen to omit these details from his affidavit for the seizure warrant for the money.

Regarding the large deposit on July 16, there was no evidence presented that Roberson had done any kind of investigation to determine the source of that deposit. There was no evidence that he reviewed any bank records, that he interviewed any bank employees, that he interviewed Claimant, or did anything else to determine if the source was licit or illicit. He testified on direct that Claimant told him the day of his arrest he was unemployed but he admitted on cross that he hadn't inquired further, at that time or after the discovery of the bank money, to determine when Claimant became unemployed or whether he was unemployed at the time of the large deposit.

The rest of Roberson's testimony sheds no further light on the source of the bank money or whether or not it was tied to drug activity. Roberson testified that the IHOP purchase proves that Claimant was in Ogden on August 20, 2014, and the then testified that he assumed that was where Claimant was meeting his source of meth supply. However, Claimant did not testify, nor could he offer any evidence, that he was present in Ogden on that date and witnessed Claimant meeting a drug supplier at the IHOP. Further, even if Roberson could offer such evidence, the only evidence of the use of the bank money was for pancakes, not a pound of meth.

On Plaintiff's counsel's urging, the district court observed three withdrawals of $4,000, $5,000, and $4,500 on July 17, July 21, and July 30, respectively. However,

there was no evidence presented whatsoever to show any purpose for the withdrawals. Further, the district court correctly pointed out that these withdrawals were made a month prior to Claimant's arrest.

As demonstrated above, there is no escaping the fact that Plaintiff put on a relatively small amount of evidence at trial, some of which was contradicted by its own witness. Even admitting all the evidence as true, and drawing all reasonable, legitimate references therefrom, Plaintiff did not meet its burden of preponderance of the evidence. Thinking so doesn't make it so. Plaintiff had an adequate opportunity to present all the evidence it desired regarding the bank money, the district court applied the correct standard of proof to the evidence, and the evidence came up lacking. The district court made the correct decision in granting Claimant's motion.

V.

CONCLUSION

For the reasons set forth above, Claimant-Respondent respectfully requests this Court enter an order affirming the decision of the district court and awarding attorney fees and costs to Claimant.

DATED this 27th day of July, 2016.

MAUK MILLER & HAWKINS, PLLC

Joseph C. Miller
Attorney for Claimant-Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2016, I served true and correct copies of the foregoing document by delivering the same to the following persons, by the method indicated below, pursuant to I.R.C.P.5(f):

Catherine Freeman	[ ]	U.S. Mail, postage prepaid
Ada County Deputy Prosecutor	[x]	Hand-Delivered
200 W Front St, Rm. 3191	[ ]	Overnight Mail
Boise, ID 83702	[ ]	Facsimile
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Joseph C. Miller