UIdaho Law
Digital Commons @ UIdaho Law

Idaho Supreme Court Records & Briefs

8-18-2016

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

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation
"Ada County Prosecuting Attorney v. Demint Appellant's Reply Brief Dckt. 44026" (2016). *Idaho Supreme Court Records & Briefs*. 6189.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6189

This Court Document is brought to you for free and open access by Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

**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,

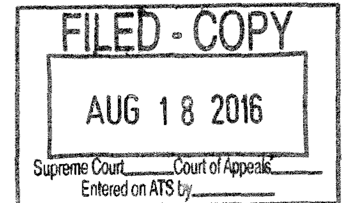
and

1998 FORD F150, VIN 1FTRX18L9WKB27754; *et al.*

Defendants.

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

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS
2016 AUG 10 PM 2:37




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

Honorable D. Duff McKee, District Judge presiding

# APPELLANT'S REPLY BRIEF

**JAN M. BENNETTS**
ADA COUNTY PROSECUTING ATTORNEY
**CATHERINE A. FREEMAN**
Deputy Prosecuting Attorney
200 W. Front Street, Rm. 3191
Boise ID 83702
Telephone: (208) 287-7700
Facsimile: (208) 287-7719
Email: civilpafiles@adaweb.net
***Attorneys for Appellant***

**JOSEPH C. MILLER**
**MAUK MILLER HAWKINS, LLC**
515 S. 6th Street
Boise, ID 83702
Telephone: (208) 287-8787
Facsimile: (208) 287-8788
Email: joe@idahojustice.com
***Attorney for Claimant-Respondent***

COPY

## TABLE OF CONTENTS

TABLE OF CONTENTS ..................... i

TABLE OF CASES AND AUTHORITIES CITED ..................... ii

I. STANDARD OF REVIEW ..................... 1

II. ARGUMENT ..................... 1

A. The District Court Misapplied the Preponderance Standard ..................... 1

B. Appellant's Evidence Shows that the Defendant Property is Subject to Forfeiture ..................... 3

III. CONCLUSION ..................... 7

## TABLE OF CASES AND AUTHORITIES CITED

Cases

*Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 9 P.3d 1204 (2000) ............................ 1

*Oxley v. Med. Rock Specialties, Inc.*, 139 Idaho 476, 80 P.3d 1077 (2003) ............................. 2

*People v. $180,975 in United States Currency (In re Forfeiture of $180,975)*, 478 Mich. 444, 734 N.W.2d 489 (2007) ................................................................................ 4

*United States v. Funds in the Amount of Thirty Thousand Six Hundred Seventy Dollars ($30,670.00)*, 403 F.3d 448 (7th Cir. 2005) ............................................................ 3

Authorities

Idaho Code § 37-2744 .............................................................................................................. 1

## I.

## STANDARD OF REVIEW

An appellate court "exercises free review over the district court's conclusions of law"; the court may therefore "substitute its view for that of the district court on a legal issue." *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 743, 9 P.3d 1204, 1209 (2000). Respondent asserts that the reviewing court may overturn a district court's "findings and judgment" only if they are "clearly erroneous." Claimant-Respondent's Brief, p. 8. However, only findings of fact are subject to the "clearly erroneous" standard; the court may freely review questions of law. *Idaho Power Co.,* 134 Idaho at 743, 9P.3d at 1209. Here, Appellant does not appeal any findings of fact.[1] Instead, Appellant requests this Court's review of the district court's application of the law, and the Court therefore exercises free review.

## II.

## ARGUMENT

### A. The District Court Misapplied the Preponderance Standard.

As noted by both parties, the standard of proof in a forfeiture proceeding is preponderance of the evidence. I.C. § 37-2744. This requires a plaintiff to show that the Defendant Property was, more likely than not, used or intended for use in connection with illegal

[1] Though a ruling of involuntary dismissal under Idaho Rule of Civil Procedure 41(b) requires a district court to enter findings of fact, the court failed to do so here. Respondent asserts that Appellant does not argue that the findings of fact are erroneous because "there is no erroneous argument to be made." Claimant-Respondent's Brief, p. 10. However, no findings of fact exist in this case; Appellant omits this argument because it instead questions the district court's application of law.

drug activity. *see Oxley v. Med. Rock Specialties, Inc.*, 139 Idaho 476, 481, 80 P.3d 1077, 1082 (2003). A review of the record here shows misapplication of the standard.

Respondent appears to offer one direct response to Appellant's argument that the district court applied the wrong standard: the court stated it used the preponderance burden. Tr. p. 100, LL. 18-25, p. 101, LL. 1-3. He argues that the Appellant's reliance on the district court's words is therefore misguided and that Appellant's citations to the court's explanation of its ruling is an attempt to "assume what was in the court's mind." Claimant-Respondent's Brief, p. 8. However, to rely on the court's statement that it applied the preponderance standard alone is to elevate form over substance – though the standard was correctly titled, it was misapplied. The court's explanation of its ruling exposes several critical flaws. For example, as discussed in the Appellant's Brief, the court stated that Appellant's burden was "almost insurmountable" because the Appellant sought money from a bank account. Tr. p. 95, LL. 24-25, p. 96, LL. 1-3. "More likely than not" is not comparable to "almost insurmountable." The court's explanation of its ruling revealed a troublesome interpretation of preponderance and a mistakenly heightened burden on Appellant.

Appellant set forth two propositions in its initial briefing which depict the district court's misapplication in more detail. Claimant-Respondent has not addressed either. First, the district court required the Appellant to trace funds in an exact, "dollar in," "dollar out" manner. Tr. p. 97, LL. 19-22. Second, the court required Appellant to disprove all potential legitimate sources of income. Tr. p. 100, LL. 1-3. There is not Idaho statutory or decisional law that supports the district court's broad application of the standard in requiring the above. The law merely requires

that the Appellant show that the Defendant Property was more likely than not used in connection with illegal drug activity. Further, nationally, courts have "eschew[ed] clinical detachment and endors[ed] a common sense view to the realities of normal life applied to the totality of the circumstances." *U.S. v. Funds in the Amount of Thirty Thousand Six Hundred Seventy Dollars ($30,670.00)*, 403 F.3d 448, 469 (7th Cir. 2005) (citation omitted). The law does not support the district court's broad application of the preponderance standard, and Respondent has offered nothing to defend these errors.

Aside from citing the district court's statement that it was applying the preponderance standard, Respondent offers two arguments which he claims support the court's application of the standard: (1) that the court appropriately examined the evidence at trial and (2) that the court correctly applied the substantial evidence test. These arguments do not refute Appellant's position. As mentioned above, Appellant does not appeal findings of fact in this case; rather, Appellant disputes the district court's application of law to those facts. Instead, these arguments appear to be an attempt to bolster Respondent's primary argument in response, which questions the sufficiency of Appellant's evidence. However, a review of the evidence shows that there was indeed sufficient evidence to shift the burden to Respondent and even further, to subject Defendant Property to forfeiture.

### B. Appellant's Evidence Shows that the Defendant Property is Subject to Forfeiture

Applying the correct standard, the evidence shows that Defendant Property is subject to forfeiture. As aforementioned, courts have "endors[ed] 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 People v. $180,975 in U.S. Currency*, 478 Mich. 444, 471, 734 N.W.2d 489, 504 (2007). Respondent attempts to discount the evidence on the record piece by piece[2]; however, the totality of the evidence through the common sense lens noted above shows that Appellant met its burden.

The evidence on the record shows that Respondent is a convicted methamphetamine trafficker. Ex. 1. At the time of his arrest, he was in possession of almost a pound of methamphetamine, five (5) digital scales, almost forty (40) smoking devices, and $12,794.00. Tr. p. 25, LL. 14-19, p. 26, LL. 1-8, Ex. 1, Cr. p. 106-07. This is not the way a recreational methamphetamine user travels. Common sense suggests that Respondent was instead transporting drugs for sale at the time of his arrest.[3]

In addition, the evidence also shows that Respondent was unemployed at the time of his arrest. Specifically, Respondent informed Detective Roberson on the date of his arrest that he was unemployed and looking for work. Tr. p. 34, LL. 13-25, p. 35, LL. 1-5. In his brief, Respondent appears to intimate evidence to the contrary, which is not on the record. For example, Respondent states that "Roberson did not ask [Respondent] how long he'd been

---

[2] The Claimant-Respondent's Brief attacks individual pieces of evidence, almost summarily stating that facts do not exist to support Appellant's argument on each. It is important to note that each of Appellant's factual references is accompanied by citation to the record.

[3] Respondent's Brief appears to argue that Appellant is required to prove that Respondent was not only trafficking drugs but also transporting them for sale. Appellant has already proven a violation of the Idaho Controlled Substances Act, as required by the Act; the Judgment of Conviction outlining his Trafficking conviction was admitted as an exhibit in this case. Ex. 1. At this point, Appellant need only show that *more likely than not* the money in Respondent's bank account was derived from methamphetamine sales. The fact that Respondent was traveling across state lines with nearly a pound of methamphetamine, almost $13,000, and five digital scales suggests that Respondent was, in fact, transporting controlled substances for sale.

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 sources of income, etc. Even after seizing the money in the bank, Roberson did not investigate the unemployment issue." Claimant-Respondent's Brief p. 9 & 11. None of these claims are evidenced in the record, and Claimant-Respondent's Brief can offer no citations. The only evidence admitted and in front of the district judge shows that Respondent was unemployed.

Despite his unemployment, Respondent deposited over $37,000 in the two months preceding his arrest. Ex. 4, pp. 83 & 95. The fact that Respondent was an unemployed methamphetamine trafficker who was depositing over $37,000 in less than two months (despite his unemployment) again suggests that the money in his bank account was more likely than not from methamphetamine sales. The bank records also show that each of his large deposits occurred within eight days following a series of out-of-state purchases.[4] *Id.* Additionally, the bank records admitted into evidence show that Respondent made at least six trips to California, Utah, and Nevada in the month and a half prior to his arrest and that many of his expenditures were for gas and lodging. Ex. 4, pp. 80-81, 84-85, & 94-95. This is not common bank activity for a typical traveler.

Detective Roberson had received information that Respondent met with his source of methamphetamine supply in Utah on August 20, 2014. Tr. p. 56, LL. 1-3. In fact, Respondent's

[4] Respondent made out-of-state purchases in Colorado and Utah on July 7, 2014 and a deposit of $26,620.48 on July 15, 2014; out-of-state purchases in Nevada and California from August 7 to 11, 2014 and a deposit of $4,650.00 on August 13, 2014; out-of-state purchases in Nevada and California from August 13 to 14, 2014 and deposits equaling $6,450.00 on August 18, 2014. Ex. 4, pp. 80-81, 84-85, & 94-95.

bank records show that he bought gas in Utah on August 20, 2014 – the same date that he was arrested in Boise with nearly a pound of methamphetamine in his car. Ex. 4, p. 95. Thus, the evidence admitted shows that Respondent used money from the Defendant Property bank account to fuel his vehicle in transporting methamphetamine across state lines. Additionally, Detective Roberson testified that Respondent was traveling in a corridor that is known for drug trafficking at the time of his arrest; Respondent was found in the corridor with a large amount of cash and methamphetamine in his possession. Tr. p. 51, LL. 5-15, p. 52, LL. 3-8.

Additionally, while being booked into the Ada County Jail, Respondent asked two individuals outside of the jail to withdraw Defendant Property from his bank account in order to evade police. He stated, "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. Again, courts endorse a common sense approach – this is not the way an individual with a bank account of legitimate funds would act.

The Respondent asks that this court review the evidence on a piece by piece basis. However, the evidence as a whole, viewed through a lens of common sense, shows that Defendant Property was used and intended for use in connection with the illegal transport of methamphetamine. The totality of the evidence at hand shows that 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.

## III.

## CONCLUSION

The district court improperly held Appellant to a standard that was "almost insurmountable," and which reflects misapplication of the preponderance standard. Additionally, the evidence at hand shows that Defendant Property is subject to forfeiture under the Idaho Controlled Substances Act.

Therefore, based on the above, Appellant respectfully requests that this Court reverse the district court's ruling and remand for a trial under the proper standard.

DATED this 18th day of August, 2016.

**JAN M. BENNETTS**
Ada County Prosecuting Attorney

By:
Catherine A. Freeman
Deputy Prosecuting Attorney

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF to the following persons by the following method:

Joseph C. Miller
Mauk Miller & Hawkins, LLC
515 S. 6th St.
Boise, ID 83702

✓ Hand Delivery
____ U.S. Mail
____ Certified Mail
____ Facsimile

Janae S Peterson