

SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Civil Forfeiture) v. Walsh, 2013 NSSC 130

Date: 20130425

Docket: Hfx No. 405942

Registry: Halifax

Between:

Manager of Civil Forfeiture

Plaintiff

v.

Matthew Craig Walsh

Defendant

Judge: The Honourable Justice Michael J. Wood

Heard: January 10, 2013 (in Chambers), in Halifax, Nova Scotia

**Final Written
Submissions:** February 25, 2013

Written Decision: April 25, 2013

Counsel: Terry D. Potter, for the Applicant
No one appeared for the Defendant

By the Court:

[1] This is one of four proceedings under the *Civil Forfeiture Act*, SNS 2007, c. 27, (“the Act”) which came before me in Chambers on January 10, 2013. In this matter, the Manager of Civil Forfeiture is seeking an order with respect to cash in the amount of \$4,755.00, which was seized by the Halifax Regional Police on September 6, 2011. The motion was made on an *ex parte* basis for default judgment and issuance of a forfeiture order since the defendant did not file a defence within the required time period.

[2] In a companion decision (*Manager of Civil Forfeiture v. Allen*, 2013 NSSC 109), I reviewed the general principles applicable to civil forfeiture in Nova Scotia. This decision will be limited to the application of those principles to the evidence filed on behalf of the Manager.

EVIDENCE ON THE MOTION

[3] In addition to an affidavit of Henry Sample confirming notice to the defendant, the Manager filed an affidavit of Matthew Kingston, a constable employed by the R.C.M.P. Constable Kingston’s affidavit includes the following information:

- During his career as a police officer, his duties have included proceeds of crime investigations, as well as investigations under the *Controlled Drugs and Substances Act*. His experience helps him identify currency found to be obtained through the proceeds of crime. This knowledge was gained through training, as well as his work experience.
- On September 6, 2011, he was involved in a traffic stop where the driver was suspected of impaired driving.
- The defendant, Walsh, was a passenger in the vehicle. He acknowledged being in possession of a small amount of marijuana, which he gave to Constable Kingston. He was also in possession of \$4,755.00, consisting of two bundles of cash wrapped with elastic bands. Most of the bills were \$20.00 denomination.

- In addition, Constable Kingston seized an electronic scale and three cell phones from the vehicle.
- Mr. Walsh advised Constable Kingston that he was going to use the money to “buy something”, but provided no other details.

[4] Constable Kingston expressed his opinion concerning the monies seized in para. 14 of his affidavit, which states as follows:

14. I believe that the \$4,755 in cash was directly or indirectly acquired by selling illicit drugs. This belief is based on the large amount of cash, the \$20 denominations, wrapped with elastic bands and the possession of marijuana, electronic scales and three cell phones. It is also noteworthy that Mr. Walsh was with Doug Casey, a person known to be associated in the drug trade and that Mr. Walsh’s explanation that he was possessing the cash to “buy something”.

CONCLUSION AND DISPOSITION

[5] According to para. 14 of his affidavit, Constable Kingston’s opinion is based, in part, on the driver’s reputation as a person known to be associated in the drug trade. There is no factual basis for this assertion in the affidavit, and it is either based upon hearsay or unsubstantiated opinion. In either case, it is not admissible.

[6] The electronic scales and cell phones found in the vehicle are not directly connected to Mr. Walsh, who was a passenger. It is obvious that scales could be used in drug transactions; however, without more information, it is difficult to conclude the cell phones are necessarily evidence of that sort of activity. The existence of three cell phones in a vehicle occupied by two people does not seem particularly suspicious or unusual.

[7] The existence of a small quantity of marijuana in Mr. Walsh’s pocket is not in and of itself an indication that he was engaged in trafficking. The large amount of cash could be an indication of trafficking activities, depending upon the surrounding circumstances. In this case, I am not satisfied that there are enough other indicators to prove on a balance of probabilities that the money was acquired

by selling drugs or would be used for that purpose. There is no admissible evidence to connect Mr. Walsh to the drug trade and no indication of any convictions for drug related offences.

[8] I do not believe that the Manager has met the necessary burden of proof in order to obtain a forfeiture order and, therefore, I will dismiss his motion.

Wood, J.