

STATE OF INDIANA
PUTNAM CIRCUIT COURT
2010 TERM

PUTNAM COUNTY SHERIFF'S DEPARTMENT
and STATE OF INDIANA,
Plaintiff

CAUSE NO. 67C01 0902 MI 41

-vs-

ANTHONY C. SMELLEY,
Defendant

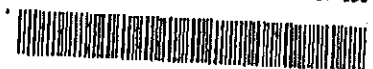
FILED
FEB 17 2010

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Mary J. Watts
CLERK, PUTNAM CIRCUIT COURT

PROCEDURAL HISTORY

1. On January 7, 2009 following a traffic stop, \$17,320.00 of U.S. currency was seized from Anthony C. Smelley by Lieutenant Dwight Simmons of the Putnam County Sheriff's Department.
2. On February 2, 2009 Plaintiffs, Putnam County Sheriff's Department and State of Indiana filed a Complaint for Forfeiture against the seized \$17,320.00 pursuant to Ind. Code 34-24-1. Thereafter, on February 4, 2009 the Defendant, Anthony C. Smelley, by counsel filed a Motion to Dismiss and Request for Immediate Hearing.
3. On February 9, 2009 the Court set a hearing for February 12, 2009. On February 11, 2009 the Plaintiffs filed a Memorandum in Response to the Defendant's Motion to Dismiss. The hearing took place on February 12, 2009. It resulted in a Court Order granting the Defendant's Motion to Dismiss, but permitting the Plaintiff ten days to file an Amended Complaint. In addition, the Court set the matter for a Bench Trial beginning on April 13, 2009.
4. On February 19, 2009 Plaintiffs filed their Amended Complaint. On March 2, 2009 the Defendant filed his Second Motion to Dismiss and Motion to Suppress.



5. On March 2, 2009 Smelley filed a Motion to Dismiss and/or Judgment on the Pleadings and Motion to Suppress.
6. On March 4, 2009 the Presiding Judge recused himself, ultimately resulting in the undersigned being appointed as Special Judge.
7. On August 18, 2009 the Court DENIED Smelley's Motion to Dismiss the Amended Complaint.
8. On August 25, 2009 Smelley filed an Answer.
9. The cause was set for Trial to the Bench on November 13, 2009.
10. Due to Smelley's failure to comply with discovery requests, Plaintiff filed a Motion to Continue the trial date.
11. The Court on November 3, 2009 vacated the trial date due to congestion of the Court's calendar.
12. Smelley subsequently complied with Plaintiffs' discovery requests.
13. The Court reset the matter for trial January 29, 2010.
14. Smelley's counsel withdrew from the case effective December 1, 2009.
14. The matter was tried to the Court January 29, 2010 and the Court took the matter under advisement.

FINDINGS OF FACT

1. On January 7, 2009 at approximately 4:50 a.m., Defendant, Anthony C. Smelley (Smelley), was operating a vehicle on Interstate 70 in Putnam County, Indiana.
2. Smelley was observed by Deputy Dwight Simmons of the Putnam County Sheriff Department to drift out of his driving lane and onto the edge of the roadway.
3. Deputy Simmons also observed that the license plate of the vehicle was partially obscured.

4. Deputy Simmons initiated a traffic stop. Deputy Simmons asked for Smelley's driver's license and registration, but did not tell him immediately why he was pulled over.

5. Smelley did not have a license in his possession, only an ID card, and could not produce a registration.

6. There were two passengers, a male and female, in the car, in addition to Smelley.

7. Deputy Simmons took Smelley to his patrol vehicle and patted him down for weapons, discovering a "large" roll of what he believed to be U.S. currency in Smelley's front pocket.

8. While the registration was being run and a warrant check was being run on Smelley and the two passengers, Deputy Simmons engaged Smelley in conversation about his itinerary and discovered Smelley was traveling from Detroit to St. Louis with his girlfriend and cousin to visit his aunt.

9. Deputy Simmons was informed that vehicle was registered to one of the occupants.

10. Deputy Simmons then spoke individually with the other occupants and believed that the story of visiting the aunt sounded rehearsed and questioned the relationship of the occupants.

11. Based upon Deputy's observations and belief that there was insufficient luggage for the three to visit St. Louis for any length of time, that the interior of the vehicle emitted an odor of incense, that I-70 is a known drug corridor, that Detroit and St. Louis are known drug distribution centers, that the itinerary and purpose for the trip as related by the three occupants did not sufficiently match up and the "large" roll of currency in Smelley's pocket, he contacted a canine unit to conduct an exterior sweep of the vehicle

12. Smelley denied that there were drugs, weapons or large amounts of currency in the vehicle.

13. Deputy Boller of the Putnam Sheriff's Department arrived with his certified canine at approximately 5:35 a.m., and during a walk around the vehicle, the dog indicated on the back left area of vehicle and also near the driver's door.

14. Based upon the canine indication, a search was conducted on the interior of the vehicle. The canine indicated upon a shoe box in the rear of the vehicle in which a large amount of currency was found, as was currency in shoes in the vehicle. A "large" roll of currency was found in the pocket of the other male passenger in the vehicle.

15. The total amount of currency found was Seventeen Thousand Three Hundred Twenty Dollars (\$17,320.00), although Deputy Simmons did not inventory and could not recall how much currency was found in the various locations.

16. No drugs were found.

17. A marijuana pipe was found in the purse of the female passenger, but she was not arrested or given a citation.

18. The passengers individually indicated that the money was Smelley's and was to be used to purchase a car in St. Louis, although Simmons believed the occupants version did not "match up".

19. Smelley indicated that he had received the money as settlement in a personal injury action and thought there was about Twelve Thousand Dollars (\$12,000.00) in the vehicle.

20. After Deputy Simmons discovered the money, the occupants were advised of their Miranda rights.

21. The two passengers signed a document presented by Deputy Simmons giving up any claim to the currency.

22. Smelley would not sign a document releasing any claim to the money, despite several comments from Deputy Simmons that it would be better for Smelley to give up any claim to the money than having the Feds involved in the matter.

23. The currency was seized and subsequently this forfeiture action initiated.

24. Smelley was given a warning ticket for the plate violation and given a ticket for operating a vehicle with an expired operator's license.

25. Smelley did receive a gross settlement of Fifty Thousand Dollars (\$50,000.00) in September of 2008 for injuries incurred in an auto accident of which he received net proceeds of Forty-Two Thousand Dollars (\$42,000.00).

26. Smelley made withdrawals from the bank account where such proceeds had been deposited of \$11,895.95 on September 26, 2008, \$2,500.00 on October 10, 2008 and \$7,000.00 on October 16, 2008.

27. No criminal charges have been filed against Smelley.

CONCLUSIONS OF LAW AND JUDGMENT

1. Based upon Deputy Simmons' observation of Smelley's drifting out of the driving lane and the license plate being partially obscured, both of which Smelley readily admitted, Deputy Simmons had authority under Indiana law to pull Smelley over and issue a traffic and warning ticket.

2. Although the evidence was somewhat conflicted, detaining Smelley on the roadside for approximately thirty minutes to have a certified drug canine brought to the scene to be taken around the exterior of the vehicle was permissible under Indiana law. Kenner v. State, 703 NE2d (Ind. App 1999).

3. Based upon the dog's indicating on the rear of the vehicle, which was undisputed and acknowledged by Smelley, under Indiana law, Deputy Simmons had authority to search the interior of the vehicle and all containers. Wyoming v. Houghton, 526 U.S. 295, 199 S.Ct. 1297 (1999), California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982 (1991), Bradshaw v. State, 759 NE2d 271 (Ind. App. 2001).

4. Although Federal law based upon the Federal Forfeiture Statute has held that a drug dog indicating on currency is a sufficient nexus to prove that the currency was fruits of criminal activity, no Indiana case has confronted the issue directly. United States v. \$30,670.00, 403 F2d 448 (7th Circuit 2005).

5. The Plaintiffs here are required to show by a preponderance of the evidence that the seized currency is the result of illegal narcotics, as alleged in their forfeiture complaint. Ind. Code 34-24-1-1 *et seq.*

6. That although there may be cases, especially when the amount of currency is extraordinary or is undoubtedly disproportionate to the means of the individual from whom seized, such that positive drug signal by certified dog plus large amount of currency meets the seizing authorities burden, such is not the case here.

7. That viewing the totality of the facts here, the Plaintiffs have failed to meet their burden of proving by a preponderance of the evidence that the seized currency was the result of criminal activity.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Anthony C. Smelley's Motion to Suppress is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs Putnam County Sheriff's Department and the State of Indiana take nothing by virtue of their Complaint and that the Seventeen Thousand Three Hundred Twenty Dollars (\$17,320.00) in U.S. currency seized from Defendant/Interested Party Charles A. Smelley be returned to him forthwith.

SO ORDERED this 17th day of February, 2010.



DAVID R. BOLK,
Special Judge

Distribution to:
All parties and/or counsel