

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER
OF THE COURT OF CIVIL APPEALS

ORIGINAL

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

APR 20 2007

MICHAEL S. RICHIE
CLERK

STATE OF OKLAHOMA, ex rel.
Mark Campbell, District Attorney,

Plaintiff/Appellant,

vs.

EIGHTEEN THOUSAND TWO HUNDRED
THIRTY-FIVE DOLLARS IN U.S.
CURRENCY (\$18,235.00),

Defendant,

SHAWN GANDY,

Appellee.

Case No. 104,016

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APPEAL FROM THE DISTRICT COURT OF
BRYAN COUNTY, OKLAHOMA

HONORABLE TRACE SHERRILL, JUDGE

AFFIRMED

Greg Jenkins,
Assistant District Attorney,
Atoka, Oklahoma,

Attorney for Plaintiff/Appellant,

Robert Locke,
LOCKE & MOORE,
Tulsa, Oklahoma,

Attorney for Defendant/Appellee.

Opinion by Larry Joplin, Presiding Judge:

¶1 The State of Oklahoma, ex. rel. Mark Campbell, District Attorney (State), appeals the trial court's order denying forfeiture of eighteen thousand two hundred thirty-five dollars (\$18,235.00) found along with 3.07 grams of marijuana during a routine vehicle search. The district court held that absent an allegation of drug trafficking, a charge of simple possession is an insufficient basis to warrant forfeiture of money found in close proximity to a controlled dangerous substance. We agree. The order of the trial court is affirmed.

¶2 Shawn Gandy (Gandy) was stopped by a City of Calera police officer for an illegal neon light surrounding the license plate of his vehicle. During a search of the vehicle, the officer found 2.86 grams of marijuana in a cigar box and .21 grams of marijuana loose in a shaving kit packed inside an overnight bag and stored in the cargo bed. The officer also found money on Gandy's person and in a plastic sack in the same overnight bag. Gandy was given a warning for an unauthorized vehicle light and charged with misdemeanor possession of marijuana.

¶3 The State initiated forfeiture proceedings under 63 O.S. § 2-503(A)(7) based upon a 2004 amendment to the statute specifically authorizing forfeiture of money found in close proximity to “*any amount*” of marijuana, a controlled dangerous substance under the Uniform Controlled Dangerous Substances Act, 63 O.S. § 2-101 et. seq (Act). Gandy complained that forfeiture could not lie under § 2-503(A)(7) based upon a charge of simple possession. Further, Gandy argued that forfeiture of large sums of money in connection with misdemeanor possession of marijuana violated the excessive fines clause of the Eighth Amendment to the United States Constitution. Based upon the submission of briefs by the parties, the trial judge denied forfeiture and dismissed the claim.

¶4 The relevant provision of § 2-503(A)(7) reads as follows:

A. The following shall be subject to forfeiture:

...

7. All moneys, coin and currency found in close proximity to any amount of forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under the Uniform Controlled Dangerous Substances Act. The burden of proof is upon claimants of the property to rebut this presumption ;

...

Resolution of the question requires us to construe the statute and its forfeiture provisions.

¶5 The overriding principle of statutory construction is legislative intent. *City of Chandler v. State, ex rel. Department of Human Services*, 1992 OK 137, ¶10, 839

P.2d 1352, 1354. To determine intent, the entire act must be read in the context of its general purpose and objective. *Rout v. Crescent Public Works Authority*, 1994 OK 85 at ¶ 10, 878 P.2d 1045 at 1050 (footnotes omitted).

¶6 Further, it is well established that the law abhors forfeiture. As such, any statute authorizing a taking of private property by forfeiture must be strictly construed. *State v. Nesbitt*, 1981 OK 113, ¶5, 634 P.2d 1306, 1308. Absent clear language in the statute to the contrary, forfeitures are not permitted. *Id.*

¶7 The appellate courts in Oklahoma have previously construed the Act's forfeiture provisions, including § 2-503(A)(7). In *State v. Eighteen Thousand Six Hundred Sixty-Three Dollars and Twenty-Five Cents (\$18,663.25) Cash*, 2000 OK CIV APP 102, 11 P.3d 1253, the Court of Civil Appeals determined the pre-2004 version of § 503(A)(7) did not permit forfeiture of monies found in close proximity to controlled dangerous substances based upon simple possession of marijuana. *Id.* at ¶ 16, 11 P.3d at 1257. By applying conventional rules of statutory construction, the court held that the general term "forfeitable substances" must be read in harmony with the more specific phrase, "forfeitable drug manufacturing or distributional paraphernalia," that enumerated a particular class:

[G]eneral and specific words in the statute which are associated together, and which are capable of analogous meaning, take color from each, so that the general words are restricted to a sense analogous to the less general, and that "under this rule general terms in a statute may be regarded as limited by subsequent more specific terms."

Oklahoma Tax Commission v. Fortinberry Co., 1949 OK 75, ¶ 14, 207 P.2d 301, 305. (Emphasis in original). By application of this rule, the court determined the Legislature intended to permit forfeiture of monies in close proximity to forfeitable substances *only if* that related to the manufacturing, importation and distribution of controlled dangerous substances. *Id.* at ¶ 16, 11 P.3d at 1257.

¶8 This reading of the statute is consistent with an earlier opinion of the Oklahoma Supreme Court in *State v. 1985 GMC Pickup*, 1995 OK 75, 898 P.2d 1280. In that case, Supreme Court determined that § 2-503(A)(4)¹ could not be used as a basis to initiate forfeiture proceedings against a vehicle based only upon the sole occupant’s conviction of marijuana possession. In determining that § 2-503(A)(4) restricted vehicular forfeiture to actions related to the transportation of controlled dangerous substances for sale or distribution, the Court held that the State’s limited emphasis on the term “possess[ion] by an occupant” and rejection of the accompanying language relating to “transportation, conceal[ment], or cultivat[ion] for the purposes of distribution” contrary to the rules of construction which require statutory provisions

¹A. The following shall be subject to forfeiture: ...

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in the Uniform Controlled Dangerous Substances Act, or which are used in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when the property described in paragraphs 1 or 2 of this subsection is unlawfully possessed by an occupant thereof,

to be read in a manner that gives not only complete and reasonable construction to a particular term, but also to the subsection and the statute as a whole. *Id.* at ¶10, 898 P.2d at 1282. This construction not only gave full effect to every term under the statute but also recognizes the intended historical purpose of forfeiture by restricting its application to private property which has become “guilty” by the owner having allowed it to be used for the commission of a crime. *Austin v. United States*, 509, U.S. 602, 618-619, 113 S.Ct. 2801, 2810, 125 L.Ed 3d 488 (1993). When the occupant of a vehicle is charged with transporting controlled dangerous substances for the purpose or sale of distribution or any other element of drug trafficking, the vehicle is subject to forfeiture as an integral part of the criminal act. When the offense is a charge of simple possession, it is the occupant alone who commits the crime. *State v. 1985 GMC Pickup* at ¶ 12, 898 P.2d at 1283.

¶9 In *State v. 1985 GMC Pickup*, the Court recognized the primary holding set forth by the United States Supreme Court in *Austin* that “forfeiture is penal in nature, and, therefore, the ‘excessive fines’ clause of the Eighth Amendment to the U.S. Constitution applies to any forfeiture under statutes such as the one at issue ... In finding such forfeiture statutes to be penal in nature, the [U.S. Supreme] Court noted that Congress’s intent in allowing forfeitures for drug-related offenses was to *deter and punish* drug trafficking.” *Id.* at ¶13, 898 P.2d at 1283, citing *Austin* at 509 U.S. at 620, 113 S.Ct. At 2811. (Emphasis in original).

¶10 In this case, the State argues that the current version of § 2-203(A)(7) which added the words “in any amount” now calls for the statute to be construed in a manner that requires forfeiture of the \$18,235.00 found in the same vehicle and on Gandy, notwithstanding the limited nature of the pending charge. Based upon an application of the same rules of statutory construction as relied upon by the appellate courts in *State v. 1985 GMC Pickup* and *State v. \$18,663.25*, we disagree.

¶11 By adding the phrase “in any amount” to § 2-503(A)(7), the Legislature intended for monies found in close proximity to the smallest amount of controlled dangerous substances to be subject to forfeiture. However, as the Legislature elected *not* to modify the more specific and associated language contemplating forfeiture if related to “forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances,” it cannot be said that this amendment modifies the prior interpretation limiting forfeiture to actions related to drug trafficking.

¶12 As such, based upon a reading of the statute as a whole, and application of the settled rules of statutory construction and the analysis utilized in *State v. 1985 GMC Pickup* and *State v. \$18,663.25*, we continue to find simple possession of a controlled dangerous substance an improper basis for forfeiture of monies found in close proximity. Further, this holding takes into consideration the excessive fines provision of the Eighth Amendment of the United States Constitution and its implications on forfeiture proceeding set forth by Supreme Court of the United States in *State v.*

Austin and cited with approval by the Oklahoma Supreme Court in *State v. 1985 GMC Pickup*. The trial court did not err in dismissing the forfeiture action based upon simple possession.

AFFIRMED.

MITCHELL, V.C.J., concurs, and ADAMS, J., dissents.