

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, ex rel
KYM L. WORTHY, WAYNE COUNTY PROSECUTING
ATTORNEY,
Plaintiff-Appellee,

-v-

No. 164360

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and

STEPHANIE GRACE WILSON,
Claimant-Appellant,

PLAINTIFF-APPELLEE'S
ANSWER TO CLAIMANT-APPELLANT'S APPLICATION FOR
LEAVE TO APPEAL

FILED UNDER AO 2019-6

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STATEMENT OF JURISDICTION

This Court has jurisdiction under MCR 7.303(B)(1).

STATEMENT OF QUESTION PRESENTED

I.

A motion for summary disposition in favor of the claimant in a forfeiture case must be denied when there is evidence that the defendant vehicle was used in the purchase or transportation of drugs. Claimant Wilson admitted that she knowingly used the defendant vehicle to help her friend buy heroin, and the evidence suggests that she drove the car with the drugs inside. In light of these facts, was the Court of Appeals right to reverse the trial court's grant of summary disposition in favor of the claimant?

The Plaintiff answers, "Yes."

The Claimant answers, "No."

INTRODUCTION

To paraphrase a popular saying, Claimant is entitled to her own opinion, but not to her own facts. Or her own law, for that matter. Unfortunately, her application takes liberties with both.

Specifically, she maintains that the Court of Appeals opinion in this case has authorized the police to seize cars from people like her who “everyone agrees” have done nothing wrong. But the forfeiture statute, subsection 7521(1)(d)(ii), unquestionably protects innocent owners from having their vehicles seized: “A conveyance is not subject to forfeiture [for acts] committed or omitted without the owner’s knowledge or consent.” The Court of Appeals did not amend the statute.

Moreover, she is not innocent. Although this fact is nowhere in her application, Claimant *admitted* to the police that she knowingly picked up Malcolm Smith to take him to get his fix. Instead of owning up to her admission, or dealing with the facts in the light most favorable to the Plaintiff (as the law requires at this stage), she ignores the unfavorable evidence, and latches on to her friend’s claim that he “admitted to having purchased ten dollars’ worth of heroin sometime *before he got in Stephanie’s car.*” (Emphasis added.) But the fact is that the police *saw* Smith involved in a hand-to-hand buy *while in Claimant’s car.* Additionally, she and Smith had been stopped before (in 2019) doing the same thing: Wilson driving him to purchase and consume heroin. No one who gives a ride to a friend, family member, or random stranger is going to have their car taken from them merely because the passenger is found to have drugs. Certainly that is not what happened to the Claimant here.

Claimant also argues that the Court of Appeals rejected the Plaintiff’s legal argument on appeal but overturned the trial court anyway on a theory of their own. Again, that is not what happened. It is

true that the People’s primary argument on appeal was that knowingly transporting *a person* to and from a drug deal is grounds for forfeiture of the car. But Plaintiff also maintained, on page 8 of our reply brief, that even if Claimant’s reading of the statute were correct—that it was *the drugs* that had to be transported—“the evidence suggests that Smith consumed or threw away the drugs while the car was underway.” Plaintiff continues to believe that the statute authorizes forfeiture for transporting persons to the drugs; but it is also plainly within the statute’s ambit to forfeit a car that has actually transported the drugs.

Either way, leave should be denied.

FACTS

On June 24, 2019, officers of the Special Operations Unit of the Wayne County Sheriff's Office were conducting surveillance on a known drug house at 4727 Lumley in Detroit.¹ Sergeant Chivas Rivers observed the defendant vehicle—a 2006 Saturn Ion—park on Lumley near the drug house.² He then saw an unknown male exit 4727 Lumley and approach the passenger side of the defendant vehicle, reaching his arm into the window in what appeared to be a hand-to-hand drug transaction.³

A short time later, the vehicle left the location, turning east on Cypress without using a turn signal.⁴ Officers stopped the vehicle on the I-94 service drive and Chopin. Sgt. Rivers spoke with the driver, claimant Stephanie Wilson, who said that she had driven her passenger, Malcolm Smith, to the Lumley address to purchase heroin.⁵ Specifically, Wilson maintained that Smith would get sick without the drugs, and so she brought him down every day to get a fix.⁶ Upon searching the defendant vehicle, the police found five empty syringes under the passenger seat, but no controlled substances.⁷

Additionally, Wilson and Smith had been stopped earlier in 2019 under almost identical circumstances: Wilson had driven Smith to a drug house in her car to purchase heroin; the police stopped them

¹ Deposition testimony of Sergeant Chivas Rivers, 1.25.21, at 15-16.

² Id. at 20.

³ Id. at 20-21.

⁴ Id. at 22.

⁵ Id. at 39.

⁶ Id.

⁷ Id. at 40.

immediately afterwards; both Smith and Wilson admitted that Wilson had bought and consumed \$10 worth of heroin.⁸

On October 23, 2019, Plaintiff-Appellant filed a forfeiture complaint under MCL 333.7521 against the Saturn Ion. In March of 2021, Claimant filed a motion for summary disposition, arguing among other things that no issue of material fact existed. Judge Allen granted the motion on April 29, 2021, and denied a motion for reconsideration on May 13, 2021. According to the court, the fact that the police recovered no drugs from the car meant that no reasonable mind could find that the defendant vehicle had knowingly been used as transportation to buy illegal narcotics under MCL 333.7521(d). The trial court thus issued an order of judgment in favor of claimant Wilson on April 29, 2021. The Court of Appeals reversed in an opinion dated March 24, 2022.

⁸ Id. at 43.

ARGUMENT

- I. **A motion for summary disposition in favor of the claimant in a forfeiture case must be denied when there is evidence that the defendant vehicle was used in the purchase or transportation of drugs. Claimant Wilson admitted that she knowingly used the defendant vehicle to help her friend buy heroin, and the evidence suggests that she drove the car with the drugs inside. In light of these facts, the Court of Appeals was right to reverse the trial court's grant of summary disposition in favor of the claimant.**

Standard of Review

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Hoffner v Lanctoe*, 492 Mich 450, 459 (2012). And, as the court knows, in a motion for summary disposition all reasonable doubt should be given to the party opposing the motion. *Reaver v Westwood*, 148 Mich App 343 (1986). That is, the court must look at all the evidence in the light most favorable to the nonmoving party. *Atlas Valley Golf & Country Club*, 227 Mich App 14 (1997). As such, the trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes; if material evidence conflicts, summary disposition under MCR 2.116(C)(10) is not appropriate. *Pioneer State Mut Ins v Dells*, 301 Mich App 368, 377 (2013). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

Discussion

Ms. Wilson *admitted* she used the defendant vehicle to help Malcolm Smith buy heroin, and the police saw her drive the car away after the sale while the drugs were likely inside. That is, according to

the sworn testimony of one of the officers who seized the defendant vehicle, Malcolm Smith bought drugs from a house on Lumley and then when the car was stopped the Claimant conceded that she intentionally drove Smith to that address for that purpose. Since the government has the authority to seize a vehicle that has knowingly been used as transportation to buy or transport illegal narcotics, there was no basis for the trial court to rule that no issue of material fact existed.

Unfortunately, the statutory subsection in question, MCL 333.7521(1)(d), is poorly written. It states:

[A] conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [a controlled substance]” is subject to forfeiture.

The problem is that the statute does not specify *what* is being transported. Again: “A conveyance ... used or intended for use to transport _____ or in any manner facilitate the transportation of _____, for the purpose of sale or receipt of a controlled substance, is subject to forfeiture.” Given the context, the thing transported by the conveyance could be either *a person* or *the drugs*.

According to the Court of Appeals in *Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182 (1990), “people” fits in the blank. That is, under the statute, the conveyance could be taken if used “to transport *customers* to and from the home of an illicit drug dealer for the purpose of purchasing various quantities of cocaine.” *Id.* at 183 (emphasis added). The Court of Appeals ruled similarly in the unreported case of *In re Forfeiture of 1999 Ford Contour*, where the panel held that “MCL 333.7521(1)(d) clearly indicates that a vehicle used to transport *a customer* to and from the home of an illicit drug dealer for the purpose of purchasing controlled substances is subject to

forfeiture.” (Emphasis added.) Since the Ford Contour had been used by the claimant’s wife to transport her to a house to purchase marijuana, the vehicle was properly subject to forfeiture unless an exception applied.

But here, the Court of Appeals held that it must be the drugs that were transported, and the Plaintiff takes no issue with that view. Again, as the Court noted and as the People argued on appeal, the evidence suggests that Smith either consumed the heroin while the car was underway, or threw the narcotics out the window before the car was stopped by the police. Somehow he bought drugs on Lumley but all that was left by the time the police apprehended them were the syringes under his seat. This raises an issue of material fact for a jury to decide whether Smith actually bought heroin and whether it was still in the car when they drove away.

But if an owner of a vehicle knowingly uses it as transportation to and from a drug sale, the car is subject to forfeiture. Here, if Ms. Wilson intentionally used her Ion to help get Smith his heroin fix, and Smith didn’t shoot up on the spot, then the car can be properly taken by the government. Those are the facts that Plaintiff reasonably intends to prove at trial, and summary judgment was therefore inappropriate. The Court of Appeals was correct in that regard, and there is no reason for this Court to grant leave.

RELIEF REQUESTED

THEREFORE, the Plaintiff respectfully requests that this Honorable Court deny leave to appeal.

Respectfully submitted,

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Dated: June 9, 2022

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with AO 2019-6. The body font is 12 pt. Century Schoolbook set to 150% line spacing. This document contains 1,228 countable words.

/s/ David A. McCreedy

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