

**Healy v Thebert**

2013 NY Slip Op 31622(U)

July 19, 2013

Sup Ct, Wayne County

Docket Number: 74941/2013

Judge: Daniel G. barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Village of Lyons, New York on the 22<sup>nd</sup> day of May, 2013.

Present: Honorable Daniel G. Barrett  
Acting Supreme Court Justice

SUPREME COURT  
COUNTY OF WAYNE STATE OF NEW YORK

RICHARD M. HEALY,  
WAYNE COUNTY DISTRICT ATTORNEY

Plaintiff Claiming Authority

DECISION  
Index No. 74941

2013

-vs-

MATTHEW A. THEBERT

Defendant

Appearances - District Attorney - Christopher Bokelman, ADA  
Defendant - pro se

Plaintiff claiming authority filed and served a Summons and Complaint on the Defendant seeking a judgment against the Defendant pursuant to Article 13-A of the CPLR.

Defendant was convicted in Wayne County Court by plea of guilty to one count of Criminal Possession of Controlled Substance 5<sup>th</sup>, pursuant to Penal Law 220.06. The Court finds this is a post-conviction forfeiture crime as defined in CPLR 1310(5) when the Defendant is a criminal defendant as defined in CPLR 1310(9).

The Plaintiff seeks as forfeiture the following: 2003 Ford Explorer, \$2,723.18 in cash, a television and a safe. The Plaintiff subsequently amended its application and removed the request for the 2003 Ford Explorer.

The primary purpose of a post-conviction forfeiture statute is seizure and forfeiture of the proceeds of the crime as a law enforcement measure; restoration properly to its true owners, if any, is not the reason the statute was enacted, Morgenthau v. Citi Source, Inc., 148 Misc. 2d 83.

Article 13-A of the CPLR provides a comprehensive scheme by which public authorities may bring an action to declare a forfeiture of the proceeds of a crime. Generally a civil action may be commenced by the appropriate claiming authority to recover property that constitutes proceeds of a crime, the substitute proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime.

In a forfeiture action the following rebuttable presumptions apply: all currency or negotiable instruments payable to the bearer are presumed to be proceeds of the forfeiture crime when such currency is found in close proximity to a controlled substance unlawfully possessed by the Defendant in an amount sufficient to constitute a violation of the designated section of the Penal Law or found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such Defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package, or otherwise prepare for sale such controlled substance or marihuana, see Penal Law 220.18, 220.21 and CPLR 1311(3)(d).

A permissible inference may be drawn that a defendant was engaged in drug trafficking from a combination of a conviction of possession and items seized from the defendant's person and home, including cash, cocaine, paper with names and dollar amounts, scales and other drug paraphernalia; accordingly the claiming authority can establish a prima facie forfeiture cause of action even though the defendant was only convicted of the crime of drug possession, Vergari vs. Lockhart, 144 Misc. 2d 860.

At the hearing the Plaintiff established the conviction by testimony of Court Reporter, Christine Hayes in which she identified a fourteen page transcript of the plea in Wayne County Court on June 21, 2012.

Investigator Jay Warren, an investigator with Newark Police Department and member of the Wayne Net team, testified.

He identified photographs of the scene of the search, seizure and arrest of the Defendant at his home. Exhibit 4 showed a small garbage can, wallet and money, Exhibit 5 a learner's permit, Exhibit 6 a wooden box found inside the safe in the spare bedroom, Exhibit 7 lower portion of the safe and the door of the safe, Exhibit 8 door of the safe with cocaine and marihuana in it, Exhibit 9 a close up of Exhibit 8, Exhibit 10 a Walmart receipt for the television seized, Exhibit 11 the area outside the safe, Exhibit 12 the box the TV came in which was in the livingroom, and Exhibit 13 a seal of the top of the TV box with initials.

In addition, the investigator identified the drug paraphernalia as shown in the exhibits, Exhibit 14 a photo of two digital scales, Exhibit 15 a digital scale, Exhibit 16 a digital scale, Exhibit 17 cutting agent called Superior B, Exhibit 18 a cutting agent, Exhibit 19 a cutting agent and Exhibit 20 a cutting agent. The investigator testified that all of the above are used in the sale of cocaine. Exhibit 21 and 22 showed property receipts for the drugs seized at Defendant's home.

Investigator Roger LaClair of the Wayne County Sheriff's Department testified. He supervised the purchases of the cocaine from the Defendant. On December 14, 2011 at 9:30 P.M. he was watching from a parking lot across from the Defendant's house when a confidential informant was sent in to purchase cocaine from the Defendant.

He testified that in the safe coins were found in the amount of \$549.18 and \$16.00 in cash. Separate from these items was an actual coin collection of the Defendant.

Deputy Scott Knapp of the Wayne County Sheriff's Department testified. He was there the day the search was conducted at the Defendant's home. He was involved with the confidential informant who bought the drugs from the Defendant in March, 2011 and he wrote the search warrant.

He testified about a conversation with the Defendant about the television. The Defendant stated he bought it from Walmart for \$800.00 in cash in September, 2011. Deputy Knapp testified that the Defendant was not working when he bought it and believes the proceeds for the TV came from the sale of the drugs.

Defendant in rebuttal had his mother testify, Kathleen McKinstry. She testified on or about September 20, 2011 she gave the Defendant \$600.00 to buy the TV. This was suppose to be a birthday and Christmas present and she had previously bought TV's for Defendant's siblings.

She further testified about the Defendant's coin collection in the safe which came from the Defendant's father.

The Defendant testified he bought the TV with \$600.00 from his mother and with approximately \$250.00 he had on his own.

The Defendant states he had the safe for many years and there was no cocaine in it when he was arrested. He admitted there was cocaine in the living room but it was near the chair he was sitting in and not the safe. He further testified that the coin collection was not part of any drug transactions. He admits that the \$2,100.00 in cash was from the sale of cocaine. he admits he was not working in August or September of 2011. He admits to selling the cocaine but he did it to support his habit.

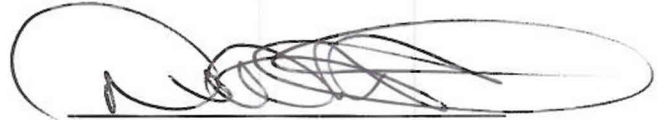
The Plaintiff requests the following: \$2,174.00 in cash, \$549.18 in coins, \$16.00 in cash, the safe itself and the TV.

The Court finds the District Attorney has met its burden of proof on all items requested except for the TV. The TV is found to be purchased with the cash given to the Defendant from Defendant's mother and the Defendant providing the remainder.

Therefore, the following is forfeited: \$2,174.00 in cash, \$549.18 in coins, \$16.00 in cash and the safe. Anything else found in the safe and the TV are to be returned to the Defendant.

This constitutes the Decision of the Court.

Dated: July 19, 2013  
Lyons, New York

A handwritten signature in black ink, appearing to read 'Daniel G. Barrett', enclosed within a large, hand-drawn oval.

Daniel G. Barrett  
County Court Judge