

St. Petersburg Times

December 23, 2002

Forfeiture and fairness

The courts are finally beginning to curb the abuse of forfeiture laws, which were never intended to wrest property from innocent citizens.

In 1999, the 17-year-old son of New Jersey resident Carol Thomas used her car without her knowledge or consent to sell marijuana to an undercover police officer. Though no drugs were found in the car and Carol Thomas was clearly an innocent owner, the state moved to take her car anyway. With the help of the Washington, D.C.-based Institute for Justice, Thomas fought to get her \$1,500 car back. She also challenged the constitutionality of a statutory scheme that creates an incentive for law enforcement to seize property without worrying too much about guilt or innocence.

Earlier this month, she won a decision that appears to be the first of its kind. New Jersey Superior Court Judge G. Thomas Bowen ruled in the case of State of New Jersey vs. One 1990 Ford Thunderbird that the built-in profit motive in the state's forfeiture law violated due process under the state and federal constitutions.

Between 1998 and 2000, New Jersey police and prosecutors confiscated about \$32-million in cash and property. The money was

then used to underwrite a big chunk of the discretionary budgets at county prosecutors' offices.

The money paid for office furniture, gym equipment, a golf outing and conference expenses, among other things. Bowen wrote that the financial interests of the prosecutors' offices in forfeitures "are not remote as to escape the taint of impermissible bias in enforcement of the laws."

Of course, the state said it plans to appeal, but the decision is on the mark and should stand. Policing agencies have tremendous coercive power over the general public. When the interests of these agencies include converting private property to their own purposes, abuses are bound to occur—and they have, over and over again.

Civil forfeiture allows state and federal law enforcement to confiscate property used in criminal activity. Applied correctly, the idea is not an unreasonable one. It strips criminals of some of the profits of their enterprise. But for years now, it has been evident that the system also encourages police and prosecutors to fish for potential assets as a way to generate revenues.

Florida experienced one of the most reprehensible examples of law

enforcement's use of the civil forfeiture laws as a way to pad the budget. Former Volusia County Sheriff Bob Vogel mastered the art of taking large quantities of cash found on drivers as they drove along I-95. Vogel's deputies would stop cars for minor driving infractions, then search the cars and confiscate any substantial cash they found, on the grounds that it would likely be used to buy drugs. Because the law allows property to be taken without charging the owner with a crime, innocent people could get their money back only by hiring a lawyer and going to court—with the fight sometimes costing more than the confiscated assets. While this operation was in full swing, from 1989 to 1992, Vogel pulled in \$8-million to pay for cop toys and other perks.

Since then, attempts have been made in Congress and several state legislatures to address some of civil forfeiture's worse abuses. But as long as police and prosecutors are allowed to keep part of the booty—and in Florida, law enforcement is allowed to keep 85 percent of what is brought in under civil forfeiture—the incentive will be to take as much property as possible, regardless of fairness.