

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-012190

01/07/2021

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
C. Ladden
Deputy

IN RE THE MATTER OF

\$39,500.00 U S CURRENCY

DALLEN DARRELL GARDNER
PHILIPPE MARTINET
JUDGE WARNER

MINUTE ENTRY

This civil forfeiture case involves \$39,500 in cash seized from Claimant at the airport. At Claimant's request, a probable cause hearing was held on January 6, 2021. Both the State and Claimant presented evidence. Based on the evidence presented, the Court finds that Claimant is not an owner of or interest holder in the property.

A.R.S. § 13-4310(D) requires Claimant to prove, by a preponderance of the evidence, that he is an owner of or interest holder in the property seized. This requirement applies to "any judicial forfeiture hearing, determination or other proceeding pursuant to this chapter," which includes a probable cause hearing. "Owner" and "interest holder" are statutorily defined as follows:

4. "Interest holder" means a person in whose favor there is a security interest or who is the beneficiary of a perfected encumbrance pertaining to an interest in property.

5. "Owner" means a person who is not a secured party within the meaning of § 47-9102 and who has an interest in property, whether legal or equitable. A person who holds property for the benefit of or as agent or nominee for another is not an owner. A purported interest which is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the

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interest against a bona fide purchaser for value shall not be recognized as an interest against this state in an action pursuant to this chapter. An owner with power to convey property binds other owners, and a spouse binds his spouse, by his act or omission.

A.R.S. § 13-4301(4), (5).

Claimant testified that the \$39,500 in cash was his own money that he brought to Phoenix to potentially buy a truck at auction for his transportation business. This testimony is not believable for several reasons, including the following:

1. The evidence Claimant provided does not show the source of that \$39,500.
2. Claimant testified that he brought cash because he does not like to work with banks. But Claimant has bank accounts and bank cards. And a reasonable businessperson would know that flying with tens of thousands of dollars in cash—including a significant amount in checked baggage—is far riskier than utilizing a bank or wire transfer to purchase a large item. That is not to say it is illegal to use cash in that way, just that it is unlikely, which affects the credibility of Claimant’s testimony.
3. Part of the money Claimant had at the airport was in his checked baggage and part was in a backpack. The money was stored in such a way as to hide it. Some of the money was in a forehead thermometer box, some of it was in a “hair salon steam styler” box, and some of it was in separate envelopes tucked into four manila folders.
4. Claimant had previously wired money to people in California. He testified that he did this as a favor for friends who did not have identification. This alone is implausible, that Claimant had friends who needed to make wire transfers but who did not have identification. It became even more implausible when Claimant refused to identify those friends.
5. When stopped by police at the airport, Claimant incorrectly said he had \$10,000. He either did not know how much money he was carrying or lied about it.
6. At the airport, Claimant signed a “Disclaimer of Ownership” stating that the money did not belong to him.
7. Several indicia of criminal activity were present when Claimant was stopped at the airport, including that he had a short turn-around trip to Phoenix with a ticket that was purchased around 24 hours in advance, that he was carrying three mobile phones (something he

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did not explain at the evidentiary hearing), that he was carrying so much cash, and that the cash smelled like marijuana.

Any one of these facts, standing along, is explainable. It is possible that Claimant brought cash to Phoenix for the purpose of possibly buying a truck, rather than traveling to Phoenix to inspect the truck and later purchasing it through a wire transfer or other means. It is possible that Claimant separated his cash into separate boxes and folders for legitimate reasons. And it is possible Claimant falsely signed the “Disclaimer of Ownership” because he was scared. But the standard of proof for ownership is preponderance of the evidence. As between two possibilities—that Claimant flew with his own cash to possibly buy a truck, or that Claimant was transporting the proceeds of drug transactions—the latter is more likely.

Claimant has not met his burden of proving that he owns the \$39,500 seized from him. The Court therefore does not reach the issue of probable cause. Because Claimant is not an owner or interest holder in the property,

IT IS ORDERED denying the Claim.