

Circuit Court for Baltimore County
Case No. 03C17008219

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1240

September Term, 2019

COREY DONNELL BLOUNT

v.

DIRECTOR, OFFICE OF BUDGET AND
FINANCE OF BALTIMORE COUNTY,
MARYLAND

Berger,
Arthur,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 2, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

This case is before us on appeal from an Order for Forfeiture of Currency issued by the Circuit Court for Baltimore County. The narrow issue on appeal is whether the trial court applied an incorrect standard when making its forfeiture determination. Specifically, the issue is whether the trial court correctly applied the pre-2016 forfeiture law or whether the trial court erred by failing to apply the revised forfeiture law. For the reasons explained herein, we shall hold that the trial court erred by applying the pre-2016 forfeiture law in this case. Accordingly, we shall vacate the forfeiture order of the circuit court and remand for further proceedings consistent with this opinion.

FACTS AND PROCEEDINGS

The facts necessary to the determination of this appeal are undisputed.¹ On October 27, 2015, detectives from the Baltimore County Police Department executed a search and seizure warrant at the residence of Corey Blount, appellant, located at 6701 Woodbury Road in Baltimore County. Detectives recovered currency in the amount of \$21,949.00 during the search. Police also recovered heroin and twenty-seven mobile phones.² On August 17, 2017, the Director of the Baltimore County Office of Budget and Finance (“Baltimore County”) filed a Complaint for Forfeiture of Currency.

¹ We shall not set forth in detail the circumstances of the seizure because they are irrelevant to our determination of the narrow legal issue at the center of this appeal.

² In the associated criminal case in Baltimore County Circuit Court, case number 03-K-15-006682, on March 29, 2017, Blount pleaded guilty to possession of heroin in violation of Md. Code 2002, 2012 Repl. Vol.), § 5-601(a)(2) of the Criminal Law Article.

A hearing was held before the circuit court on November 13, 2018. Before reaching the substance of the forfeiture matter, the trial court and both parties addressed the recent change in Maryland forfeiture law in the following exchange:

THE COURT: Just so I'm clear going into the hearing, it is my understanding that since the law has changed to make a higher standard for the party seeking forfeiture here, Baltimore County, that it is my understanding from what both counsel have said that everyone believes that the law is either retroactive or should be applied under that standard or do you believe that it is not retroactive and it is under a different standard? I want to be clear what the positions are.

[COUNSEL FOR BALTIMORE COUNTY]: My understanding, Your Honor, is that the law as it is currently written would apply The law has changed. Seizure was made in 2015. The law changed in 2016. And this action arose following final disposition of criminal proceedings in 2017.

THE COURT: All right.

[COUNSEL FOR BLOUNT]: And Your Honor, I would agree that it should apply retroactively. I have case law if you need it. Since both parties agree, I won't make any other argument.

THE COURT: I wanted to be clear what the positions were. So I would go into testimony and evidence making sure we are all on the same page.

The parties based their arguments at the hearing on the revised, post-2016 forfeiture statute. At the close of the hearing, the trial court advised the parties that the court would consider the evidence presented and “review the statute, which, again, was written and enacted after the incident.” The court again emphasized that “[t]here is no disagreement that the current statute should be applied to this case.”

On January 7, 2019, the circuit court issued an Order for Forfeiture of Currency that provided that “currency in the amount of \$19,630.00 is to be forfeited and to remain in the possession of the Director of Budget and Finance of Baltimore County, as the Plaintiff proved, by clear and convincing evidence, that the above-mentioned amount of currency was located within ‘close proximity’ to controlled dangerous substances, as prescribed under Maryland Criminal Procedure § 12-102(a)(7).”³ The order was docketed by the clerk on January 12, 2019.⁴ On January 22, 2019, Blount filed a Motion to Reconsider Order for Forfeiture of Currency of January 12, 2019, which the circuit court denied on August 8, 2019. This appeal followed.

DISCUSSION

Forfeiture of property is governed by Maryland Code (2001, 2018 Repl. Vol.), § 12-101 *et seq.* of the Criminal Procedure Article (“CP”). Property subject to forfeiture includes “any amount of money that is used or intended to be used in connection with the unlawful manufacture, distribution, or dispensing of a controlled dangerous substance.” CP § 12-102(a)(7). When property is seized, “[a]ll rights in, title to, and interest in the money or weapons immediately shall vest in: (i) the State, if the seizing authority was a State unit; (ii) the county in which the money or weapons were seized, if the seizing

³ The court further ordered that currency in the amount of \$2,319.00 be returned to Rachel Veronica Blount, the appellant’s wife. The disposition of this currency is not at issue in this appeal.

⁴ The January 12, 2019 date is the date of judgment. Md. Rule 2-601(d).

authority was a county law enforcement unit, including a sheriff's office; or (iii) the municipal corporation in which the money or weapons were seized, if the seizing authority was a law enforcement unit of a municipal corporation.” CP § 12-102(b)(1). Seized property “may be returned to the claimant only as . . . provide[d]” by the statute.

Section 12-312 of the Criminal Procedure Article sets forth the applicable burden of proof in forfeiture proceedings and provides as follows:

(a) Except as provided in subsection (b) of this section, property or part of a property in which a person has an ownership interest is subject to forfeiture as proceeds, if the State establishes by clear and convincing evidence that:

(1) the person has violated §§ 5-602 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, or § 5-628 of the Criminal Law Article or has attempted or conspired to violate Title 5 of the Criminal Law Article;

(2) the property was acquired by the person during the violation or within a reasonable time after the violation; and

(3) there was no other likely source for the property.

CP § 12-312(a).

The statutory sections cited above are the current governing law. Prior to 2016, however, a different standard was in effect. The 2016 change in the forfeiture law is the central issue in this appeal. The former version of the statute provided that “[m]oney or weapons **that are found in close proximity** to a contraband controlled dangerous substance, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are contraband and **presumed to be**

forfeitable.” Md. Code (2001, 2008 Repl. Vol.), § 12-102(b)(1)(i) of the Criminal Procedure Article (emphasis supplied). The prior version of the statute further provided that “[a] claimant of money or weapons has the burden to rebut the presumption.” Md. Code (2001, 2008 Repl. Vol.), § 12-102(b)(1)(ii) of the Criminal Procedure Article.

The 2016 revisions disposed of the “close proximity” language in CP § 12-102(a), and instead, provided that money is subject to forfeiture when it is “used or intended to be used in connection with the unlawful manufacture, distribution, or dispensing of a controlled dangerous substance.” 2016 Maryland Laws, Chapter 5; Maryland Laws Chapter 619, Maryland Laws Chapter 658.⁵ The General Assembly also struck the language setting forth the rebuttable presumption and instead placed the burden of proof upon the State. *Id.*; *see* CP § 12-312(a).

The seizure of the currency forming the basis of the case before us on appeal occurred in 2015, prior to the change in the forfeiture law. Critically, however, the forfeiture action giving rise to this appeal was filed in 2017, and the trial court’s hearing in this matter occurred in 2018, at which time the revised statute had taken effect. Before the

⁵ 2016 Maryland Laws, Chapter 5 removed the “close proximity” language previously found in CP § 12-101(b)(1)(i) and instead provided in CP § 12-102(a)(7) that money is subject to forfeiture when it is “directly connected to the unlawful distribution of a controlled dangerous substance.” This change took effect on February 20, 2016. The General Assembly subsequently revised CP § 12-102(a)(7) to remove the “directly connected” language and replace it with language providing that “any amount of money that is used or intended to be used in connection with the unlawful manufacture, distribution, or dispensing of a controlled dangerous substance” is subject to forfeiture. 2016 Maryland Laws, Chapters 619 (H.B. 336) and 658 (S.B. 161). This revision took effect on October 1, 2016.

circuit court, the parties agreed that the revised law was the appropriate standard for the trial court to apply when determining whether to issue a forfeiture order. Accordingly, the parties' arguments focused upon the application of the revised statute to the facts of this case. Nonetheless, in the circuit court's Order for Forfeiture of Currency, the court did not apply the revised forfeiture statute. Instead, the trial court found that Baltimore County had "proved, by clear and convincing evidence, that the . . . currency was located within 'close proximity' to controlled dangerous substances, as prescribed under Maryland Criminal Procedure § 12-102(a)(7)." The trial court did not address whether the currency was "used or intended to be used in connection with the unlawful manufacture, distribution, or dispensing of a controlled dangerous substance," *see* CP § 12-102(a)(7), nor did the trial court make any findings regarding whether Baltimore County had satisfied its burden of proof pursuant to CP § 12-312(a).

On appeal, Blount asserts that the trial court erred by applying the incorrect forfeiture statute in this case. Although Baltimore County had agreed with Blount before the trial court that the revised statute was applicable, Baltimore County asserts on appeal that the trial court applied the correct statute. Baltimore County contends that the operative date for this matter is the date of the seizure, and, therefore, the trial court correctly applied the prior version of the forfeiture statute.⁶ In contrast, Blount asserts that the operative date

⁶ Baltimore County acknowledges, as it must, that both parties agreed before the trial court that the revised forfeiture law was the applicable standard in this case. Baltimore County argues, however, that "[i]t is of no consequence what the parties believed or agreed the law to be" because "it is the judge who decides the law."

for the determination of which statute applies to this case is the date upon which Baltimore County filed the Complaint for Forfeiture of Currency that initiated the forfeiture action. Baltimore County filed the complaint on August 17, 2017.

We agree with Blount that the operative date for the determination of which statute applies in this case was the filing of the forfeiture complaint that initiated this action. Baltimore County emphasizes that “all rights in, title to, and interest in the money or weapons immediately vest in” the seizing government entity at the time of seizure. CP § 12-102(b). Nonetheless, a successful forfeiture action is necessary in order to perfect the government’s interest in the property. *Tsu v. Montgomery Cnty.*, 188 Md. 351, 360 (2009) (“The forfeiture is a civil proceeding completely separate and apart from the criminal proceeding. The result of the civil proceedings either perfects the government’s interest in the goods or results in a determination that they are not contraband and should be returned.”) (quotation omitted). Although the initial seizure necessarily precedes a subsequent forfeiture proceeding, it does not itself initiate the forfeiture action. It is the filing of the forfeiture complaint that initiates the process by which the government’s interest in the seized property may be perfected. In our view, it is this date -- the date upon which the forfeiture complaint was filed -- that determines the applicable law. Furthermore, it is beyond dispute that the revised forfeiture law had gone into effect by the time Baltimore County filed its complaint for forfeiture on August 17, 2017.

Accordingly, under the circumstances of this case, we hold that the circuit court erred by applying the prior version of the forfeiture statute and by failing to make specific

findings required under the current forfeiture law. Given this error, the trial court abused its discretion by denying Blount's revisory motion. We shall, therefore, vacate the trial court's January 12, 2019 forfeiture order and remand for further proceedings consistent with our opinion.⁷

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY VACATED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
BALTIMORE COUNTY.**

⁷ We decline Blount's invitation to reach the issue of whether the government satisfied the requirements of the revised forfeiture statute. That is an issue for the circuit court's determination on remand.