



SPECIAL REPORT

A legal brief from Scarabin's attorney

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ARGUMENT

THE DUE PROCESS PROBLEM - MRS. ANDERSON'S CHEVY VAN AND BUZZY'S MONEY - THE SAME PROBLEM FOR THE DEA

The search warrant resulting in the seizure of Buzzy's money was issued by the Plaquemines Parish district Court. (Tr. #87) What Mr. High Sheriff was supposed to do with Buzzy's \$12,360 after he seized it is very clear under Louisiana law:

When property is seized pursuant to a search warrant, it shall be retained under the direction of the judge. If the seized property is not to be used for evidence or is no longer needed as evidence, it shall be disposed of according to law, under the direction of the judge. La.C.Crim.P. Art. 167

Without requesting authority from the state court, the Plaquemines Parish Sheriff's Office GAVE Buzzy's \$12,360 to the DEA so that it could be forfeited under federal law. Why? Because Louisiana state law would not allow a forfeiture in this case, as Buzzy was only charged with misdemeanors.(2)

In any event, without an order from the state court divesting itself of jurisdiction over the property, the DEA never, never acquired jurisdiction over the Buzzy Loot. United States v. One 1979 Chevrolet C-20 Van, 924 F.2d 120 (7th Cir, 1991).(3)

In One 1979 Chevrolet, the Batavia, Illinois police department GAVE Mrs. Anderson's van to the FBI without an appropriate order from the state court which had issued the warrant by which the van was seized. After stating that there is no authority for this type of transfer between executive agencies without the permission of the state court having jurisdiction over the property, the Seventh circuit observed:

A local police department may not take seized property and just pass it on to the FBI in flagrant disregard of state laws mandating judicial authority for such turnovers. For its part, the government does not seem to care how this type of property comes into its possession, as long as it ends up with

it. The Government argues that local police departments give contraband to federal authorities for forfeiture as a routine, administrative matter. It fails, however to cite any authority for this questionable practice... Moreover, it troubles us deeply that a local police department can ignore statutory directives as a "routine and administrative" matter. Arguments to the contrary, the due process clause of the Fifth Amendment still is alive and well, even in Batavia, Illinois.... If the federal authorities wanted the Van, they were bound to seek a turnover order from the circuit court for the county in which the van was seized.

While obviously not "well", it is hoped that the due process clause is at least still "alive" in Plaquemines Parish, Louisiana. The DEA had about as much business ending up with Buzzy's money as the Sheriff would have in letting the prisoners in the Parish Jail shoot dice for it, the latter probably producing better results for Buzzy.

Aside from the complete lack of authority to institute federal forfeiture proceedings in the first place by virtue of the DEA's failure to comply with Art. 167 of the Louisiana code of Criminal Procedure, the DEA is hampered by yet another pesky procedural safeguard. Just as the illegality of a state authority's seizure of evidence is imputed to the federal authority which attempts to use that evidence in a federal proceeding, *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437 (1960), so too, if reason is to prevail, must the inability of the seizing state authority to institute forfeiture proceedings be imputed to the federal forfeiters as well. For if it were such, which it simply must be, then that due process lovin' thinking would again render meaningful state forfeiture laws, and put an end to the circumvention of everybody's laws at the hands of conspiring law enforcement officials.

The High sheriff was required by Louisiana law to hang onto Buzzy's money until the state court told him what to do with it. We assume it was seized to be used as evidence of "something against Buzzy. The charges were dismissed; the money should have been returned to Buzzy. La. R. S. 15:41. But when Buzzy went looking for it, whoosh, it had taken a little vacation up North. The good news for the Sheriff was \$11,124 of it migrated back down South on November 16, 1990 (see Stipulations) about the time the ducks starting showing up. "Wait a minute, Pro Bono," one of the associates broke in. "Maybe the Sheriff or the DEA secretly got an order from the state court and we just don't know about it." "Good point," Pro Bono replied, "but I had Miss Sybil(4) root around down there and she couldn't find anything. Plus the DEA has graciously stipulated that nobody got an order."(5)

The DEA never legally assumed jurisdiction over Buzzy's money. It did not seize it. Jurisdiction over the Buzzy Loot remains, if anywhere, in the state court. This Court should simply point this out to DEA, and let's all go home. But before we do, out of the legendary Abundance Of Caution, let us address the merits:

THE FACTS: FINALLY WE GET TO SHOW THIS COURTS THE FACTS

On remand from this Court, Buzzy submitted new evidence to the DEA conclusively showing he (a) didn't own the Roaches and (b) he routinely and legitimately dealt in small amounts of U.S. currency. We explained this to the DEA in a brief. We felt pretty good about it. We had some phone conversations with the DEA people in Washington and they assured us it would all be digested and we would get their decision shortly. We did. We got a letter from someone who we had never heard of (he probably never heard of us either, for that matter) by certified mail. We had a little ceremony in the kitchen at the law firm. Most of the Buzzy Brainstormers were there. Pro Bono dramatically opened the letter.

Having some experience in these matters, he went directly to the end. "and therefore, we are gonna keep Buzzy's money" was the gist. "We lose" he informed the assembled group. Silence. Copies were made and passed around.

It almost started a riot at Roy, Kiesel. Pro Bono had associates, law clerks, and even a few other condescending partners cramming his cluttered office. "Those no good sap-suckers," one cried out in frustration, "how can they do this! They never did any investigation; they never once asked anyone about this. They simply twisted the bogus facts from the state people and socked it to us."

"Calm, calm down, people," Pro Bono admonished, "It ain't over yet." Inside, though, Pro Bono was seething as well. He had been on the butt end of plenty of "loaded" decisions in his time, but this was the worst. The following is what the DEA said in the letter, and what the record shows actually happened:

On page one, paragraph three, the DEA glibly (and of course without any explanation) says there was "probable cause that the property (Buzzy's \$12,360) had been used in violation of the law," and therefore DEA gave no consideration to the issue of how it pilfered the Buzzy Loot in the first place. We guess they really don't want to give any consideration to the issue of how they magically came into

possession of Buzzy's money. Like Mrs. Anderson's van. A later hint in the DEA letter suggests since on remand DEA considered The Buzzy case a remission proceeding, validity of the seizure is presumed. GOTCHA again, Buzzy!

"Not so fast, DEA," one of the associates demands. "We filed this originally as a Petition for Expedited Release and never admitted for one second the seizure was valid, ever! The fact that this Fifth Circuit told you to treat it as a remission on remand doesn't give you that presumption" Immediately a Cajun whoop splits the air. "Aaiieeee!!.... that DEA, man, them guys are slick!" the law clerk from Mamou shouts. "Those suckers can make them doggone CFR's dance." The DEA is slick, all right. They try to put the presumption hat on Buzzy: the presumption of guilt. Unbelievable.

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