IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE FORFEITURE OF ONE 1970 CHEVROLET CHEVELLE.	)	No. 81116-4
IN THE MATTER OF THE FORFEITURE OF ONE 2004 NISSAN SENTRA.	)	
ALAN ROOS AND STEPHNE ROOS,	)	
Petitioners,	)	En Banc
v.	)	
SNOHOMISH REGIONAL DRUG TASK FORCE,	)	
Respondent.	)	
_____	)	Filed September 3, 2009

C. JOHNSON, J.—This case involves a challenge to an order of the forfeiture of two automobiles pursuant to RCW 69.50.505, drug trafficking laws. Alan and Stephne Roos owned two cars that their son, Thomas, was found to be using for trafficking drugs. The hearing examiner found that the Rooses should have known of the illicit activities for which their cars were used and were, therefore, not considered "innocent owners" under RCW 69.50.505(1)(d)(ii). The hearing

examiner rejected an actual knowledge standard and ordered the vehicles forfeited. The Superior Court affirmed the order of forfeiture and the Court of Appeals affirmed.

The definition of "knowledge" applied by these courts is inconsistent with our cases, other similarly worded statutes, and the relevant legislative history. We hold the term "knowledge" under the meaning of RCW 69.50.505(1)(d)(ii) is satisfied only by proof of actual knowledge. We reverse.

FACTS

Between June 10, 2005 and September 9, 2005, Thomas Roos was found by police four times to be either unconscious in or operating a vehicle that contained, among other things, various controlled substances and large sums of cash. Each time the police arrested and charged Thomas accordingly. On two of these occasions, incident to arrest and pursuant to RCW 69.50.505, the Snohomish Regional Drug Task Force (SRDTF) seized a 2004 Nissan Sentra and a 1970 Chevrolet Chevelle. The Nissan was titled to Alan Roos and the Chevrolet was titled to Stephne Roos, Thomas' parents.

Both Alan and Stephne filed claims for return of the vehicles, asserting they were subject to the "innocent owner" exception in the vehicle forfeiture provision of RCW 69.50.505(1)(d)(ii). Alan and Stephne claimed that, while they had given Thomas permission to use the cars on a temporary basis, they had no actual knowledge of any illegal use of their vehicles.

At the administrative hearing, a hearing officer for the Snohomish County sheriff found the SRDTF proved by a preponderance of the evidence that Thomas used both vehicles to facilitate drug trafficking, which subjected the vehicles to forfeiture under RCW 69.50.505. The hearing officer applied an objective standard of knowledge (knowing or having reason to know) and found Alan and Stephne had reason to know what Thomas was up to and failed to take appropriate steps to ensure their vehicles were not used in such a manner. The hearing officer did not make any finding that Alan or Stephne had actual knowledge about Thomas' illegal use of the Nissan or the Chevrolet. The hearing officer ordered the vehicles forfeited.

Alan and Stephne appealed, and the Snohomish County Superior Court

affirmed the order of forfeiture. Alan and Stephne appealed that ruling, and the Court of Appeals affirmed the trial court and held the objective standard of knowledge is appropriate for determining whether owners are "innocent owners" under RCW 69.50.505. *In re Forfeiture of One 1970 Chevrolet*, 140 Wn. App. 802, 167 P.3d 599 (2007). Alan and Stephne's petition for review by this court was granted. *In re Forfeiture of One 1970 Chevrolet*, 164 Wn.2d 1007, 195 P.3d 87 (2008).

ISSUE

Does the phrase "without the owner's knowledge" in RCW 69.50.505(1)(d)(ii) permit objective knowledge (reason to know) to satisfy the term "knowledge" or is subjective knowledge (actual knowledge) required?

ANALYSIS

This matter concerns the interpretation of RCW 69.50.505(1)(d)(ii), the innocent owner provision. We review the meaning of a statute de novo because it is a question of law. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The objective of statutory interpretation is to carry out legislative

intent. Where a statute is plain on its face, we give effect to that plain meaning as an expression of legislative intent. In determining the meaning, we may account for the ordinary meaning of words, basic rules of grammar, and the statutory context to conclude what the legislature has provided for in the statute and related statutes. When a statute remains susceptible to more than one reasonable meaning, it is appropriate to resort to other aids of construction, such as legislative history.

RCW 69.50.505 is the seizure and forfeiture provision of the Uniform Controlled Substances Act, which provides in relevant part:

> (1) The following are subject to seizure and forfeiture and no property right exists in them:
>
> . . . .
>
> (d) All conveyances, including aircraft, *vehicles*, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of [controlled substances], except that:
>
> . . . .
>
> (ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's *knowledge* or consent.

(Emphasis added.) Subsection (1)(d)(ii) is commonly referred to as the "innocent owner" exception.

RCW 69.50.505(5) provides that, "[i]n all cases, the burden of proof is upon

the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture." Once established, RCW 69.50.506(a) shifts the burden "of any exemption or exception . . . upon the person claiming it." *Tellevik v. 31641 W. Rutherford St.*, 120 Wn.2d 68, 89, 838 P.2d 111, 845 P.2d 1325 (1992).

Here, the hearing officer properly found that the vehicles were subject to forfeiture. Alan and Stephne do not challenge this finding. As such, the burden shifted to Alan and Stephne to establish they had no "knowledge" pursuant to RCW 69.50.505(1)(d)(ii). The parties disagree as to the meaning of "knowledge" in this statutory exception to forfeiture. The hearing officer found objective knowledge (i.e., reason to know) sufficient to satisfy the statutory requirements, as did the Court of Appeals.

In holding that objective knowledge is sufficient to satisfy RCW 69.50.505, the Court of Appeals relied on *Tellevik*, 120 Wn.2d 68 and *Escamilla v. Tri-City Metro Drug Task Force*, 100 Wn. App. 742, 753-54, 999 P.2d 625 (2000).[1]

[1] As will be shown by our analysis of *Tellevik*, *Escamilla* is unhelpful in this case. *Escamilla* did not concern the definition of "knowledge"; rather, it concerned the sufficiency of evidence needed to show consent. *Escamilla* is not binding on this court and appears to have incorrectly approved of (at least tacitly) a "knew or should have known" standard with respect to "innocent owners."

Although both cases involve interpretation of the similarly worded forfeiture statute for real property, a closer read of these cases shows the Court of Appeals has misapplied its holdings here.

Tellevik concerned the forfeiture of real property used in trafficking drugs. While *Tellevik* focused on the definition of "consent," as used in the statute, our discussion there sheds light on the definition of "knowledge" for the purposes of RCW 69.50.505. There, we defined consent as "'the failure to take all reasonable steps to prevent illicit use of [the] premises once one *acquires knowledge* of that use.'" *Tellevik*, 120 Wn.2d at 88 (emphasis added) (alteration in original) (quoting *United States v. 141st St. Corp. by Hersch*, 911 F.2d 870, 879 (2d Cir. 1990)). In adopting this definition from *141st Street,* we noted that this definition makes sense because "'when combined with [the disjunctive] construction of the phrase 'knowledge or consent,' it provides a balance between the two congressional purposes of making drug trafficking prohibitively expensive for the property owner and preserving the property of an innocent owner. *A claimant with knowledge* of the illegal use to which his property is put may defend on the basis of lack of

consent . . . .'" *Tellevik*, 120 Wn.2d at 88 (alteration in original) (emphasis added) (quoting *141st St.*, 911 F.2d at 879). This explanation means that determining whether there is a lack of consent first requires that the claimant has acquired knowledge, the first term in the statute's disjunctive construction.

In *141st Street*, the court engaged in the following discussion about the term consent:

> Consent is "compliance or approval esp[ecially] of what is done or proposed by another." Webster's Third New International Dictionary 482 (1971). In order to comply with or approve of something, it is *only common sense that one must have knowledge of it*. Thus, in order to consent to drug activity, one must *know* of it.

911 F.2d at 878 (emphasis added). Similarly, it is only common sense that when one says someone *knows* of something or *has knowledge* of something, actual knowledge is contemplated knowledge not objective knowledge (reason to know).

The *141st Street* court went on to state that "to show lack of consent [an innocent owner claimant must] prove that he did all that reasonably could be expected to prevent the illegal activity once he *learned* of it." 911 F.2d at

879 (emphasis added). The court concluded that it was entirely appropriate to trigger the disjunctive means of claiming one is an innocent owner after the person "acquires knowledge" of the illicit use of one's property. The logical extension of the phrase "acquired knowledge" means that one must actually possess certain knowledge not that one merely should have (had reason to) acquired the knowledge. In other words, the court's phraseology interpreted the law to require a subjective knowledge standard (actual knowledge), not an objective standard (reason to know). Because the *141st Street* court's ruling was the foundation for determining consent in *Tellevik*, the subjective (actual) knowledge standard is likewise warranted when determining the definition of the term "knowledge."

Such an interpretation also comports with the plain language of the "innocent owner" provision. RCW 69.50.505(1)(d)(ii) ("No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's *knowledge* or consent." (emphasis added)). The provision's use

of the term "knowledge" expresses a legislative choice in adopting a specific standard.

The legislature had several options to choose from in crafting the language of this provision. It could have defined knowledge with an objective definition by using phrases like "knows or has reason to know," "knowing or having reason to know," or "actual or constructive knowledge." In fact, the legislature could have expressed its intent in a variety of ways. But the legislature chose to use the term "knowledge."

In other statutes, the legislature has utilized terms to require objective versus subjective knowledge. *See, e.g.*, RCW 4.24.630(1) ("For purposes of this section, a person acts 'wrongfully' if the person intentionally and unreasonably commits the act or acts while *knowing, or having reason to know*, that he or she lacks authorization to so act." (emphasis added)); RCW 19.108.010(2)(b)(ii) ("At the time of disclosure or use, *knew or had reason to know* . . ." (emphasis added)). Where the legislature uses certain statutory language in one statute and different language in another, a difference in

legislative intent is evidenced. *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005). We assume the legislature means exactly what it says and interpret the wording of statutes according to those terms. Where the legislature uses different terms we deem the legislature to have intended different meanings. Because we recognize the legislature is familiar with objective versus subjective "knowledge," the use of "knowledge" on its own in the "innocent owner" provision establishes the legislature intended actual knowledge as the standard.

This legislative choice also makes sense in the overall context of what is occurring. The government has provided for the taking of one's property due to the criminal act of someone else. In another similar context, the legislature has established criminal liability based on someone else's acts, such as proof of aiding and abetting or accessory liability. RCW 9A.08.020.[2] Such instances require proof of someone actually doing something to support or facilitate the commission of a crime or actually knowing and assisting in

[2] *See also State v. Everybodytalksabout*, 145 Wn.2d 456, 472, 39 P.3d 294 (2002) (noting that the State must show the defendant had knowledge of the crime and aided in the planning or commission of that crime).

the criminal activity in order to be subject to criminal sanctions. Perhaps a person should know many things, but often the opposite could be true, like here: The parents could have just as easily presumed their son's criminal activities would stop after the first arrest just as they could have suspected their son's criminal activities would continue.

Turning back to *Tellevik*, we noted there that objective facts could be used to determine subjective knowledge. That is, where certain facts are able to be linked with reasonable inferences, it may raise a genuine issue of fact regarding what a person knows. Deriving reasonable inferences from objective facts about what a person's subjective knowledge was at the time is appropriate because it prevents the "I had my head in the sand" defense.

Tellevik, a consolidated case, concerned the forfeiture of the Wilsons' property (used as a primary residence) and the Pearsons' property (used as a rental property). Here, we are concerned only with the Pearsons' property. The Eastside Drug Task Force executed a search of the Pearsons' rental property and found a marijuana grow operation. Mr. Pearson was present

during this search. In response to the possible forfeiture of her home based on the alleged drug trafficking, Mrs. Pearson moved for summary judgment under the "innocent owner" provision of RCW 69.50.505. The trial court granted summary judgment in favor of Mrs. Pearson.

On appeal, we found a genuine issue of fact as to whether Mrs. Pearson actually knew of her husband's illegal activities. The following facts were relevant: (1) Mrs. Pearson was residing in the house when the renovations were being made, including a trap door to the basement grow room where 40 marijuana plants were seized;[3] (2) Mrs. Pearson had joint control over the finances; and (3) the marijuana was being packaged and dried in her current residence. Indeed, the only "fact" presented in contradiction was Mrs. Pearson's denial of any knowledge of wrongdoing.

In contrast, here, the record in the Rooses' case provides many contradictory facts to suggest Alan and Stephne were not actually aware of Thomas' illegal activities involving their vehicles. For example, (1) Thomas

[3]According to her deposition, Mrs. Pearson lived in the Pearson home from 1980 to 1986. During this time, the entire basement was built to house where the grow operation was located. The house was lifted, the basement was built, the trap door and lock were installed, and a new floor was put down to cover the floor. This work was done without Mrs. Pearson's opposition (supposedly without her *knowledge* of the reason for the elaborate remodel).

did not live at home; (2) Thomas was leading a "secretive" life; and (3) "someone" in the household had been intercepting mail and voicemail, which may have provided Alan and Stephne with more information about Thomas' illegal activities. These facts contradict the idea that Thomas' parents were actually aware of his drug trafficking. Unlike the facts in *Tellevik*, we do not have sufficient objective facts here to determine the subjective knowledge of Alan and Stephne during the relevant time period of Thomas' criminal activity involving his parents' vehicles. As such, we cannot agree with the trial court and the Court of Appeals that Thomas' parents had actual knowledge but simply stuck their heads in the sand.

CONCLUSION

We hold the term *knowledge*, as used in RCW 69.50.505(1)(d)(ii) means subjective (actual) knowledge. We vacate the judgment of forfeiture of the vehicles, reverse the Court of Appeals, and remand for further proceedings.

AUTHOR:
Justice Charles W. Johnson

WE CONCUR:

Chief Justice Gerry L. Alexander

Justice Richard B. Sanders

Justice Debra L. Stephens

Justice Tom Chambers