

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

JOHN BARNHARDT,

Defendant.

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) Criminal No. 04-0132 (PLF)
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MEMORANDUM OPINION AND ORDER

On December 13, 2004, the defendant filed a motion for return of property, requesting the \$3,894.00 taken from him at the time of his arrest.¹ On April 22, 2005, this Court denied defendant's motion based on the United States' representation that it had no interest in the seized money, because that money was in the possession, custody, and control of the District of Columbia Metropolitan Police Department. See Government's Response to Motion for Return of Property at 3.² Because that representation now appears not to have been accurate, and the Court has information that the money is, in fact, in the possession of the United States

¹ Defendant and the United States agreed that this is the amount in dispute; the District of Columbia, stated in its January 31, 2005 response to the motion that \$3,864.00 was taken, but then stated in its December 19, 2005 submission to the Court that the amount was \$3894.00. The Court assumes that the January 31, 2005 amount listed was a typo based on the more current filing.

²The defendant was arrested by members of the District of Columbia's Metropolitan Police Department on February 13, 2004. His indictment was later dismissed after the Court granted his motion to suppress physical evidence.

government and has been since June 28, 2004, the order denying defendant's motion is vacated and the United States is reinstated as a party to this proceeding.

On December 22, 2004, the United States Attorney's Office filed a response to the defendant's motion, taking no position and stating that because the United States did not have possession, custody, or control over the money, it had no interest in the matter. The United States went on to state that it had provided a copy of the defendant's motion to the District of Columbia, as a courtesy. On January 31, 2005, the District of Columbia, by the Office of the Attorney General for the District of Columbia, also filed an opposition to the motion for return of property. In that opposition, the District argued that the money should not be returned to the defendant so that the District could initiate a civil forfeiture proceeding. See District of Columbia's Memorandum of Points and Authorities in Opposition to Defendant's Motion for Return of Property at 2-3. Implicit in the District's argument was that it retained possession, custody, and control of the money in question.

Based on the defendant's motion and the representations of both the United States and District of Columbia governments, this Court issued an order on April 22, 2005 denying the defendant's motion. The Court further ordered the District of Columbia to provide notice to the Court on or before May 23, 2005 indicating whether civil forfeiture proceedings have been initiated in compliance with the D.C. Code, stating that if the District has not done so, the Court would entertain a renewed motion for return of property from the defendant.

On December 19, 2005, the District filed a notice with the Court stating that despite the United States and the District's previous representations to the Court, the money was not in the possession, control, or custody of the District. In fact, according to the District, the

defendant's confiscated property was administratively forfeited by the United States Drug Enforcement Administration on June 28, 2004, four months after the defendant's arrest and six months before his motion for return of property. Based on this information, this Court has no choice but to vacate the order it issued on April 22, 2005 that was based on faulty information given to the Court. Accordingly it is hereby

ORDERED that the order [36] denying without prejudice defendant's motion for return of property is VACATED; and it is

FURTHER ORDERED that the United States is reinstated as a party to this proceeding; it is

FURTHER ORDERED that the United States shall investigate this matter further and submit an amended response to defendant's motion for return of property on or before January 13, 2006.

SO ORDERED.

/s/_____
PAUL L. FRIEDMAN
United States District Judge

DATE: December 23, 2005