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Is Tide Turning Against Civil Asset Forfeiture?

A Pennsylvania Supreme Court ruling last week in a case involving a 72-year-old grandmother offers hope to opponents of the practice known as civil asset forfeiture. Elizabeth Young lost her home and her only vehicle four years ago to civil asset forfeiture, after her son was arrested for selling $140 worth of marijuana to an undercover policeman. However, in a unanimous decision, the Pennsylvania High Court said that there must be clear evidence that a property owner knew of and agreed to the crimes causing the loss of property.

In the case of *criminal* asset forfeiture, the accused is afforded all the constitutional and statutory safeguards available under criminal law. With criminal asset forfeiture, the accused must be found guilty beyond a reasonable doubt before property is forfeited. With *civil* asset forfeiture, on the other hand, no conviction is required. It is used by both federal government officials and law-enforcement authorities at the state and local levels to seize property that they suspect has been used in wrongdoing — even without having to charge a person with any crime.

Under civil asset forfeiture, it is the *property* — such as cash, a car, a house, or something else of value — that is being charged, not a person with constitutionally protected rights. This has led to some odd-sounding court cases such as *The State v. $12,000 Cash*, or *The State v. A 2014 Toyota Camry*.

While civil asset forfeiture has been around for decades, its use greatly ramped up as part of the war against drug kingpins. In practice, few drug lords have lost property, but thousands of Americans have suffered the loss of their property — without conviction of any crime. And the practice is used not just on alleged drug crimes: Many of those who have lost property are clearly innocent of having committed any crime at all.

As is the case with Elizabeth Young. Justice Debra Todd of the Pennsylvania Court declared that the ruling would make sure that "innocent property owners are not dispossessed of what may be essential possessions … without rigorous scrutiny by the courts."

Young's ordeal began in 2009 after her adult son, Donald Graham, and his children moved in with her. Graham assured his mother that he no longer used drugs, a practice that had caused her to cut off all ties to him. Young has required hospitalization for blood clots in her lungs, and her son used her car to drive her to church and other places.

But unknown to his mother, Graham was still involved in drug dealing, although apparently he was far from being a "drug lord." In seven transactions with undercover Philadelphia police, Graham sold them 19 grams of marijuana, worth about $190. Graham was arrested in January 2010, and received a sentence of 11 to 23 months in house arrest, but no fine.

Unfortunately, the authorities argued that Young's house and car had "facilitated" his drug dealing, because he sold the pot to undercover cops using the 1997 Chevrolet minivan, and he had conducted

some of the transactions near the house.

Young argued that she did not know about her son's drug dealing. In addition, she contended that the loss of a home and a car was an example of an "excessive fine" forbidden by the Eighth Amendment to the U.S. Constitution. But in May of 2012 a judge rejected both of her claims — that she was an "innocent party," and that the loss of a home and car over the sale of less than $200 of marijuana was "excessive."

The Pennsylvania Supreme Court, however, held that it was an example of an excessive fine, observing, "The amount of forfeiture must bear some relationship to the gravity of the offense that it is designed to punish."

After the court's ruling, Young declared, "I am glad that this has come to some kind of conclusion.… I never did anything wrong and I have been out of my house long enough." Since 2013, she had not been able to live in her house.

Despite Young's eventual win, the case illustrates the dangers of civil asset forfeiture. Though she had not been able to live in her home for the past four years, no compensation was awarded Young for being ejected from her own property all that time.

Fortunately, the publicity of such gross travesties of justice may help others avoid civil asset forfeiture. Philadelphia has been particularly notorious for the practice, having seized more than 1,000 homes, 3,000 cars, and $44 million in cash over the past 11 years. The police officer in charge of the sting operation outside the Young home has since gone to federal prison for planting drug evidence on suspects.

One person particularly aghast at the injustices associated with civil asset forfeiture is U.S. Supreme Court Associate Justice Clarence Thomas, who began questioning the legality of civil asset forfeiture in 1993, only two years after he had taken his place on the High Court, in the case of *U.S. v. James Daniel Good Real Property*. Five years after Good had completed a prison sentence for drug possession, federal marshals seized his home in Hawaii, without any notice or legal proceedings. Thomas opined that he was "disturbed by the breadth of new civil-forfeiture statues," and he and other justices ruled in favor of Good.

Other cases that have brought civil asset forfeiture into disrepute include *Leonard v. Texas*, in which Lisa Leonard had about $200,000 in cash seized from a safe in her son's car. Liberty County (ironically enough) officers took the money, arguing that it must be profits from drug sales. Actually, it was from the recent sale of her home in Pennsylvania, and a bill of sale for the property was also located in the safe, along with the cash. The courts held that the seizure was proper, however, because under civil asset forfeiture, they had to prove only a "preponderance of the evidence."

Another case involved a Detroit woman whose car was taken when her husband was caught using it (without his wife's knowledge) to have sex with a prostitute.

In addition to members of the Pennsylvania Supreme Court and U.S. Supreme Court Justice Clarence Thomas, another government official opposed to pre-conviction civil asset forfeiture is the former attorney general of Oklahoma, Scott Pruitt, now Trump's director of the Environmental Protection Agency (EPA). In an interview with the libertarian think tank CATO, Pruitt insisted that the only type of asset forfeiture that is legitimate is "post-conviction."

One of the earliest voices raising concern about civil asset forfeiture was the late Henry Hyde, a

congressman from Illinois, who wrote a book on the subject: *Forfeiting Our Property Rights*. Hyde noted that the assumption is made that a person would not be carrying large amounts of cash unless he or she were involved in some sort of criminal activity. But just who decides what is a large amount of cash? And furthermore, it is not a crime to carry large amounts of cash.

Lest average citizens think such a nightmare as that experienced by Young and thousands of others could not happen to them, they should know that it could actually happen quite easily. For instance, if tenants in a citizen's rental house conducted a drug deal on the premises, or some other crime on the property, that property could very well be seized under the guise of "fighting crime."

Congressman Hyde also considered civil asset forfeiture an example of a violation of the Eighth Amendment, which prohibits "excessive fines." He wrote, "There is little or no proportionality between the crimes alleged and the punishment imposed," citing examples similar to the citizen's rental house cited above, of hotels being taken because gangs used them for drug transactions, or entire apartment complexes being confiscated because of drug deals allegedly taking place therein. (One would think this could cause the seizure of the vast majority of apartment complexes and hotels in the country.)

And of course, if the Eight Amendment is not an argument against civil asset forfeiture, perhaps one should go to the Bible and read the Seventh Commandment: "Thou shalt not steal."