

ADA ELLIOTT - FORFEITURE - MONEY

Tucumcari police stopped vehicle for speeding. The officer was given conflicting responses, became suspicious, and asked for consent to search. The officer was given written consent to search and in the trunk of the vehicle found currency which amounted to \$104,999. The stepfather of one of the occupants of the vehicle said the money was his and came from a legitimate business. The officer seized the money pending proof of ownership.

The police department sought forfeiture of the money under the Controlled Substances Act, NMSA 1978, Section 30-31-34. Section F provides for forfeiture of "narcotics paraphernalia or money which is a fruit or instrumentality of a crime." All forfeitures of property under this section are based upon the fact that defendant is in violation of the Controlled Substances Act. Forfeiture, in other words, must be tied directly to the commission of drug offenses.

Court of Appeals held the money seized was not subject to forfeiture. The only evidence the police had was the discovery of a substantial amount of money that did not appear to come from a legitimate business. But there was no evidence that occupants or the stepfather obtained the money from a drug-related transaction. The police department had to prove defendant or his agents committed a violation of the Controlled Substances Act before his money could be forfeited. The money was returned to defendant. State v. \$104,999 (2000).

