IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE,

Case No. 1303006466

VS.

THOMAS JEFFERSON,

Defendant.

Submitted October 10, 2013 Decided October 29, 2013

John M. Sandy, Esquire, Attorney for Defendant Stacy Cohee, Esquire, Deputy Attorney General

DECISION ON DEFENDANTS MOTION TO DISMISS FORFEITURE

The Court has reviewed Defendant's Motion "to dismiss the State's Motion" for Forfeiture for lack of jurisdiction," and the State's response thereto. The Motion is denied.

On June 17, 2013, Defendant and the State entered into a written plea agreement, under which Defendant entered a nolo contendere plea in this Court to two misdemeanors related to the provision of illegal gambling devices to unlicensed organizations and establishments. The State had seized from Defendant \$138,527.00 it claims are proceeds from the crimes. From the Court's review of the plea agreement and the record of the Court's plea colloquy and sentencing, it is evident that, as part of the plea, Defendant agreed to the forfeiture of seized cash related to the illegal activity, but denied that all of the seized funds were so related. Accordingly, as part of the plea agreement, the

State and Defendant *agreed* that the Court would hold a subsequent forfeiture hearing to determine what part of the seized funds should be forfeited.

The hearing was scheduled for July 15, 2013, and subsequently continued to October 8, 2013 at Defendant's request. On October 2, 2013, however, Defendant filed the present motion, in which he now claims that the Court lacks jurisdiction to determine a forfeiture related to a criminal conviction in this very Court; and that, even if the Court does have such jurisdiction, under "Superior Court Criminal Rule 40" the State's "forfeiture motion" had to be filed twenty days prior to trial.

Defendant's motion lacks merit. First, this Court clearly has, and often exercises, jurisdiction to order a forfeiture of property seized in connection with crimes prosecuted before it. A Court cannot have jurisdiction to *order* a forfeiture, and yet lack jurisdiction to *determine* the scope of such forfeiture.

Second, the Superior Court's Criminal Rules are not the rules of this Court, and do not act as a bar to this Court's consideration of this matter. Finally, Defendant erroneously claims that he seeks dismissal of the State's *motion* for forfeiture, when in fact no such motion was filed with this Court. Rather, the State and Defendant *agreed* to a forfeiture of seized proceeds allocable to Defendant's criminal charges, leaving it to the State to prove, and the Court to determine that amount. If any deadline for filing a motion is applicable, it is certainly waived by this agreement.

| Defendant's Motion is therefore DI | ENIED, and the hearing in this matter |
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| will be scheduled for the next available da | te. |
| IT IS SO ORDERED, this da | y of October, 2013. |
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| | Transath C. Clark, In |
| | Kenneth S. Clark, Jr. Judge |