

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MEMORANDUM AND ORDER
05-C-043-S

ONE PONTIAC SUNFIRE,
VIN 1G2JB12F147204412 and
RANDI LEE GRIFFIS (claimant),

Defendants.

On January 20, 2005 plaintiff United States of America commenced this civil action pursuant to 28 U.S.C. §§ 1345 and 1355 to enforce the provisions of 21 U.S.C. §881(a)(4) which provides for the forfeiture of a conveyance which was used, or intended to be used, to facilitate the transportation, sale, receipt, possession or concealment of a controlled substance in violation of Title II of the Controlled Substances Act. Claimant Randi Lee Griffis answered the complaint.

On April 29, 2005 plaintiff filed a motion for summary judgment submitting proposed findings of fact, conclusions of law, a declaration and a brief in support thereof. Pursuant to this Court's March 25, 2005 Preliminary Pretrial Conference Order claimant's opposition to plaintiff's motion was to be filed not later than May 19, 2005 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding plaintiff's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

On or about July 11, 2004 Officer Gregory Dahlstrom, a police officer with the North Hudson Police Department, stopped the defendant vehicle for a traffic violation. The owner and driver of the vehicle was Randi Griffis. The front-seat passenger was identified as Richard Stayberg. When Griffis opened the glove compartment to look for her registration Dahlstrom saw a large Ziploc bag containing smaller bags that appeared to contain marijuana

Dahlstrom located approximately 18 individually packaged "dime & nickel" bags of marijuana, a 4-ounce scale and \$95.00 in the glove compartment of defendant vehicle. Other items found in the search of the vehicle included assorted drug paraphernalia, a box of sandwich bags and a Ziploc bag containing approximately 10 grams of marijuana.

Griffis told Dahlstrom that prior to the vehicle being stopped, she and Stayberg had driven to several places in the Hudson area. She also said she would frequently give Stayberg rides to different places and drop him off and then pick him up.

On July 12, 2004 Griffis was charged with possession with intent to deliver THC, dealer with possession of an untaxed controlled substance and possession of drug paraphernalia, all as a party to the crime. On August 19, 2004 she was charged with bail jumping and possession of drug paraphernalia. On January 5, 2005 Griffis pled no content to possession with intent to deliver THC

and possession of drug paraphernalia. The Court stayed adjudication on the charge of possession with intent to deliver THC pursuant to a deferred judgment agreement.

Stayberg was charged with possession with intent to deliver THC as a second offense, dealer with possession of untaxed controlled substance and possession of drug paraphernalia, all as a party to the crime. On January 5, 2005 he pled no contest to an amended charge of possession with intent to deliver THC.

MEMORANDUM

Plaintiff moves for summary judgment on its claim that the 2004 Pontiac Sunfire is subject to forfeiture under 21 U.S.C. §881(a)(4). Claimant has not responded to the motion and it will be decided as a matter of law.

The statute provides that all conveyances which are used, or intended to be used, to facilitate the transportation, sale, receipt, possession or concealment of controlled substances are subject to forfeiture. 21 U.S.C. §881(a)(4). It is undisputed that the 2004 Pontiac Sunfire was used by Richard Stayberg and claimant Randi L. Griffis as transportation for the sale of controlled substances. Accordingly, as a matter of law it is subject to forfeiture. Plaintiff's motion for summary judgment will be granted.

United States v. One 2004 Pontica Sunfire, 05-C-043-S

ORDER

IT IS ORDERED that plaintiff's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of plaintiff forfeiting the defendant 2004 Pontiac Sunfire, VIN 1G2JB12F147204412, to the United States of America for disposal in accordance with federal law.

Entered this 26th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge