

controlling hold that when evidence seized is also property, especially property used to provide a livelihood, it is subject to vastly different due process requirements than evidence alone. These decisions and principles directly controlling hold that the opportunity to contest property deprivations, to be effective, must include confrontation of adverse witnesses, presentation of evidence and witness testimony, and oral argument.

This court has overlooked or misconceived the material fact that no hearing was promptly given, no notice of the opportunity for a prompt hearing was given, and no notice of the case or intent to forfeit was promptly given. This court has overlooked the material fact that *AS 16.05.190* and *AS 16.05.195* allowed the seizure, deprivation, and forfeiture of property without the required procedural due process. This court has also overlooked or misconceived the material fact that the evidence seized was also property, which was the primary means to provide a livelihood. This court has also overlooked or misconceived the material fact that in deciding this motion, which is occurring over three years after the time of property deprivation, no confrontation of witnesses was allowed, no presentation of evidence or witness testimony was allowed, and no oral argument was allowed – even though all this was asked for numerous times.

In its decision this court has also failed to give any explanation or justification or to cite any decisions and/or principles directly controlling or even persuasive.

FACTS

During a criminal prosecution of David for misdemeanor Fish and Game crimes the State of Alaska, using warrants based upon perjury, seized and deprived David and Jackie Haeg of property used as the primary means to provide a livelihood. No hearing to protest was provided, no notice of a hearing or opportunity for a hearing to contest was provided, no notice of the case against their property was provided, no opportunity to bond the property out was provided, and no authority or intent to seek forfeiture of the property was ever provided in any warrant, charge or information filed. In addition, the statutes which authorized forfeitures in Fish and Game cases, *AS 16.05.190* and *AS 16.05.195*, lack standards to require this constitutional due process during forfeiture actions.

Much of the property was forfeited after David's conviction.

David and Jackie, after they realized the State's violation of the procedural due process required by constitution, filed motions in both this district court and the Court of Appeals for the return of their property and to suppress it as evidence in accordance with Criminal Rule 37(c). After nearly a year of having both courts refusing to rule on 16 different motions, by saying the other court had jurisdiction, David finally stated he would physically go get he and Jackie's property from the Trooper impound yard. It was only after this that the Court of Appeals ordered the district court to conduct any proceedings necessary to determine the merits of David's motion.

This district court then denied David's multiple requests for the district court in which the property was seized to rule on the motion and for an evidentiary hearing so he could confront the witnesses against him, to present witness testimony and evidence, and to conduct oral argument – stating David could only provide a written request and that “this court can't turn back time to change what happened”.

David filed his motion on 6/2/07 – supporting his arguments with numerous decisions and principles directly controlling. The State filed an opposition on 6/22/07 – without citing a single decision or principle directly controlling - and not contesting the fact they never gave David or Jackie notice of an opportunity to contest or of the case for forfeiture – and falsely claiming that David tried to “impermissibly shift the burden for seeking a post seizure hearing from himself to the State.” David filed a reply on 7/3/07. This district court's order failed to address almost every request David made in his motion – and failed to give authority, justification, explanation, or to place its essential findings on the record so if and/or when David appeals the decision the reviewing court would know this courts rational for its decision. David specifically asked the following from this court: (1) That the procedural due process violations by the State entitled David and Jackie to the return of *all* their property and to suppress it as evidence; (2) That *AS 16.05.190 and AS 16.05.195* are unconstitutional and that because of this the seizure, deprivation, and/or forfeiture of David and Jackie Haeg's property, without the constitutionally required notice and/or hearing, was and is void; (3) That because the

seizure, deprivation, and/or forfeiture of David and Jackie Haeg's property was and is void everything seized, deprived, and/or forfeited must be immediately returned and suppressed as evidence; (4) That Trooper Gibbens search warrant affidavits, upon which all search warrants were authorized, contained intentional, misleading, and highly prejudicial perjury – and thus all evidence gathered as a result of these search warrants affidavits must be suppressed; (5) That because of the material issues of fact presented David and Jackie Haeg are allowed to testify, present evidence and oral argument, and subpoena witnesses so they may cross-examine them under oath. See *Criminal Rule 42(e)(3)*, “If material issues of fact are not presented in the pleadings, the court need not hold an evidentiary hearing.” This means that if material issues of fact *are* presented, *as have been*, there must be an evidentiary hearing held; (6) That because of the obstructions and delays in getting this motion timely ruled on this court rule on *all* above requests – including the one declaring *AS 16.05.190 and AS 16.05.195* unconstitutional. (7) That this court to include its essential findings on the record, including caselaw to support it, for the decision on each and every above request – especially the rational to differentiate between items that are returned and those not returned; (8) Also how the seizure, deprivation, and/or forfeiture of their property complied with U.S. and Alaska constitutional due process guarantees; (9) That this court place a very clear and detailed finding for dispensing with any and/or all evidentiary hearings in order to decide this motion which turns on issues of material fact - i.e. whether David and/or Jackie received a hearing or notice of their right to a hearing “within days if not hours” to contest the seizure of the property they used to provide a livelihood or even bond it out, notice of the case to forfeit before the hearing, notice of the statute authorizing this in the charging documents, whether the property was used to provide a livelihood, etc, etc, etc. (10) How not receiving an evidentiary hearing in which adverse witnesses could be cross examined, witness testimony and evidence be presented, and oral arguments does not deprive David and Jackie of their constitutional right to an *effective* opportunity to present their case; and (11) That the State affirmatively mislead the court in order to keep property they seized, deprived, and forfeited in violation of constitutional due process.

CONCLUSION

The decision and order from this court is defective in nearly every respect. It completely fails to address any of the concerns that David had to literally lay his life on the line to have addressed. It completely fails to apply law to the facts. It completely fails to cite any decisions or principles directly controlling to justify its decision to not return all the property or to suppress it as evidence – and completely fails to show how the numerous decisions and principles David cited, which entitle him to the return of *all* property and to suppress it as evidence, did not control. It completely fails to consider or admit the fact that no post property seizure hearing or opportunity for a hearing was ever provided – and fails to consider or admit all law holds that if this is not done promptly *all* property seized must be returned and suppressed as evidence even if it has already been used as evidence or forfeited. It completely fails to consider the fact that no notice of the intent to forfeit, case for forfeiture, or statute authorizing forfeiture was ever given in any warrant, charge or information filed – and fails to consider or admit all law holds this deprives a defendant of a fair opportunity to prepare a defense, requiring *all* property forfeited to be returned. It completely fails to consider that property seizures are subject to vastly different rules than just evidence seizures. The decision fails to consider the fact all decisions and principles directly controlling hold forfeiture statutes are unconstitutional if they lack of standards and this results in a deprivation of due process. The decision fails to consider the fact the State affirmatively misled the court to keep the property they seized, deprived, and forfeited in violation of constitutional due process – and claims that David involuntarily, unintelligently, and unknowingly “waived” his constitutional rights, which cannot be waived unless it is a voluntary, intelligent and knowing waiver. It completely fails to consider David’s claim this is all “plain error” – requiring *all* property to be returned.

This court rubber-stamped, verbatim, without any explanation, authority cited, evidentiary hearing, or without any support or justification whatsoever, exactly what the State *wanted* - that David was entitled to only the property not forfeited or that could be returned to David without upsetting their conviction of David – when all the property was

seized, deprived, and forfeited in violation of constitutional due process. It appears the court failed to read David's brief proving the constitutional violations. It appears as if it is the policy of both the State and this court to ignore constitutional violations if they are detrimental to the State - and that this policy is somehow acceptable to the public who would bear the devastating price of this corruption. This is would be a gross violation of the publics trust. To ensure this is not policy this court needs to address the constitutional violations presented, render a decision that is in agreement with the numerous decisions and principles directly controlling, and then justify and explain the decision to show how it complies with both the U.S. and Alaska constitutions.

Because of the above defects, plain error, and fundamental breakdown in justice David respectfully asks this court to reconsider and clarify its decision of 7/23/07.

This motion is supported by the accompanying affidavit from David Haeg.

RESPECTFULLY SUBMITTED this ____ day of _____, 2007.

David S. Haeg, Pro Se

CERTIFICATE OF SERVICE

I certify that on the ____ day of _____ 2007,
a copy of the forgoing document by ____ mail,
____ fax, or ____ hand-delivered, to the following party(s):

Andrew Peterson, O.S.P.A.
310 K. Street, Suite 403
Anchorage, AK 99501

Alaska Court of Appeals

U.S. Department of Justice

By: _____