

SPOTLIGHT

How Pa. state troopers seize big money from drivers, many of whom are never charged

October 1, 2020

Joseph Darius Jaafari & Joshua Vaughn

Since 2017, Pennsylvania State Police has seized \$608,000 in cash from drivers in the south-central region of the state, much of which was taken from people who were never charged with a crime, The Appeal and Spotlight PA have found.

Legal experts say the practice is a form of “highway robbery,” in which police take money — largely from people of color — to pad their yearly budgets and those of prosecutors.

Pennsylvania, like other states, allows law enforcement to seize property and keep it even if someone is acquitted of a crime or not charged at all. A 2017 law raised the burden of proof required to seize property in the state, but it is still below the standard in federal criminal forfeiture cases, where people who are acquitted can get their property back.

“Regardless of what you set the standard of proof at, the problem is you’ve got something that’s less than is necessary for a criminal conviction,” said Dan Alban, a senior attorney at the Institute for Justice who researches forfeiture. “Judges will frequently defer to law enforcement, and sometimes it’s these pretty Mickey Mouse justifications and Mickey Mouse evidence.”

The Appeal and Spotlight PA reviewed 32 cases in Cumberland, Dauphin, and Franklin Counties where state police seized assets during traffic stops.

In about one-third of the cases reviewed, police seized cash from people who were never charged with a crime or even issued a traffic ticket. One-quarter of the cases resulted in misdemeanor convictions, and another quarter resulted in felony convictions.

State police spokesperson Ryan Tarkowski defended the practice, saying the seizures and forfeitures are “done in accordance with state and federal law and department regulation,” and that the forfeiture process is overseen by the state attorney general’s office.

But, as The Appeal and Spotlight PA uncovered in a previous investigation, the justifications that troopers use to stop vehicles and then conduct a search can be questionable or outright illegal. Roughly a third of all criminal cases in the region since 2016 that arose from traffic stops by the state police drug interdiction unit were thrown out of court because the searches were later deemed illegal, the investigation found. As a result of the inquiry, Gov. Tom Wolf requested the Office of State Inspector General conduct a review of all such traffic stops, which is underway.

Police justified the searches in some cases by saying the driver was nervous or “their carotid artery was pulsating.” In one case, troopers seized \$50,282 after a traffic stop and charged the owner of the vehicle, who was not present at the time. In another, they took \$525 from a passenger. Judges ultimately dismissed the charges in both cases, finding the searches were illegal. The state returned the \$525, but kept \$20,000 in the other case.

In several other cases, police seized money and property from people whose cases were expunged after they completed a court program for first-time offenders.

Court records show in one such case that the state took a car and money from someone accused of possessing cigarettes that weren’t properly taxed. The attorney general’s office kept \$24,309, including \$10,000 in money orders the man said he was planning to use to pay rent for a restaurant he was starting with his brother. The state returned his car.

A legal battle few can afford

Forfeiture cases in Pennsylvania are brought against the property, meaning prosecutors file suit against items like cash, cars, or homes. The courts then require the owners to prove that they have the legal basis to challenge the state, and then argue to get their property back. Since the process is handled in civil court, people seeking to get their money back are not entitled to a court-appointed lawyer.

Although the burden still lies with the attorney general to prove the money or property was used in criminal wrongdoing, it’s often harder for property owners to prove they did not commit a crime.

In one case, police seized \$19,000 during a traffic stop in Franklin County in 2018 from a Mister Softee ice cream truck driver who said he intended to use the money for truck repairs. He was convicted in the past for possession of drug paraphernalia, and prosecutors demanded he provide a litany of evidence to get the money back, including several years of tax records, receipts of bank withdrawals, and an explanation of what legitimate use he had for the money. His forfeiture case is still ongoing, and he is still trying to get his money back.

Clark Neily, vice president for criminal justice at the Cato Institute, a think tank, said innocent people often have to jump through hurdles just to get their property back.

Without a lawyer, people stand little chance. Of the 32 cases The Appeal and Spotlight PA reviewed, the state returned cash or property only when a lawyer got involved, according to case records from the Office of the Attorney General. Out of the \$608,000 seized and subsequently prosecuted, the attorney general’s office gave back less than \$60,000 after negotiating with property owners’ lawyers.

“Do you think you can do that yourself?” Neily said. “The answer is no, you cannot because you’re not a lawyer, you don’t specialize in this area, and you don’t know the procedures.”

In more than 75% of the cases, the person did not challenge the forfeiture or did not challenge it properly in order to take it to trial.

In about one-third of the cases reviewed, state police seized cash from people who were never charged with a crime or even issued a traffic ticket.

‘It’s not very good proof’

Because police may not actually see someone exchange money for drugs, oftentimes troopers will seize cash and scan it for drug residue. Prosecutors make the assumption in court that if there is a high trace amount of drugs on currency, that money could have been used to purchase or sell drugs.

But defense attorneys and legal scholars say that kind of evidence is circular reasoning because almost all currency has some form of drug residue on it.

A 2008 study by researchers at the Department of Justice Sciences at the University of Alabama found that 42% of the currency they examined had traces of methamphetamine on it. A study published a year later by researchers at the University of Massachusetts Dartmouth found that roughly 90% of U.S. currency was contaminated with cocaine. Unlike many prior studies, which typically only sampled small numbers of \$1 bills, it tested larger denomination bills in higher numbers.

Danielle Brown, the chief deputy attorney general who oversees Pennsylvania’s forfeiture and money laundering cases, said there are usually other reasons cash is seized, but that law enforcement can take money if it detects a trace amount of drugs that is higher than expected. The office accounts for that by comparing the bills against money already in circulation and tested by the National Guard in other parts of the state and nation.

Out of 11 cases reviewed by The Appeal and Spotlight PA in which no charges were filed, the attorney general’s office justified seizing people’s money after testing the cash for drug residue in 10 of them.

In one case, state police pulled over two Middle Eastern men traveling from Brooklyn to Tennessee for speeding. When the trooper asked if they had large sums of cash on them, they answered yes, and said they had the money because they were worried about their car breaking down and wanted cash for repairs. Whatever was leftover, they said, would be used for a trip for one of them to go to Egypt.

The men gave the trooper permission to search the vehicle, which turned up no contraband. The trooper then took their \$10,000, tested the cash for drugs a week later, and found “high levels of PCP” on the currency. The attorney general’s office concluded the cash was used to buy or sell drugs through an unknown drug trafficking ring.

“It’s not very good proof, right?” said Alban, the Institute for Justice senior attorney. “But if you have a judiciary that kind of rolls over and defers to law enforcement, as kind of a knee-jerk thing, then that’s really all you need.”

Neither man was charged with a crime or cited for a traffic violation. But because the men did not try to claim their money in court, the state was able to keep it.

It's common for people to not show up in court to claim their property, said Louis Rulli, a law professor at the University of Pennsylvania, especially people who can't afford a lawyer.

"People are giving up rather than fighting the government because the amount of cash being seized, it doesn't warrant getting an attorney and fighting the government," Rulli said.

In the review by The Appeal and Spotlight PA, people of color accounted for roughly 80% of all forfeiture cases. White, non-Hispanic people accounted for only about 20% of those whose property was seized, but they make up nearly 80% of the state's population.

Although carrying large sums of cash may appear suspicious, it's not uncommon in communities of color, said Rulli, who researches civil asset forfeiture across the nation. Many people in these communities are unbanked or underbanked, meaning a person either has no bank account, or has a savings or checking account but also uses alternative, cash-heavy services like check cashing or payday loans.

According to a 2017 national survey by the Federal Deposit Insurance Corporation, more than half of Black and Hispanic, and roughly a third of Asian, households in the United States were either unbanked or underbanked.

"I think a lot of Americans would look at this and go, 'Why the hell are they carrying so much cash? Obviously, they're doing something criminal,'" Rulli said. "But, first of all, you know, it's the government's burden to prove that. But secondly, there are very justifiable reasons why particular groups may be carrying more cash. And parts of our society are much more in the cash economy where others are in the credit economy."

A financial windfall

Pennsylvania law stipulates that seized money go directly into the coffers of law enforcement agencies, creating what experts say is an incentive to take as much property as possible.

Money taken during traffic stops and then charged with forfeiture under the state's drug law goes into a specific fund for combating drug trafficking.

"You combine those perverse incentives with extraordinarily lax procedures, meaning a low bar for doing the initial seizure ... that adds up to a policy that is rife for abuse and is demonstrably abused," said Neily, with the Cato Institute.

But the state attorney general's office balked at the contention that it pursues forfeiture cases for financial gain, calling it "completely false."

"To effectively combat the heroin and opioid epidemic that is killing 12 Pennsylvanians a day, our commonwealth has focused efforts on stopping narcotics from being pumped into our communities by pharmaceutical companies and major drug traffickers and expanding treatment for those suffering from addiction," said Jacklin Rhoads, communications director for Attorney General Josh Shapiro. "It has been well-documented that Interstate 81 is a major drug trafficking route."

But Nora Demleitner, a law professor at Washington and Lee University in Virginia who has studied and written about civil forfeiture, said the state's low bar for evidence, along with the use of legally questionable traffic stops, makes the process appear to be more like state-endorsed "highway robbery."

"That's really what this is," she said.

Demleitner said one of the main reforms a state could make to rein in civil forfeiture is to eliminate financial incentives and require police and the attorney general to place the money in a state or city's general fund rather than directly benefiting the police.

Thirty-five states, including Pennsylvania, allow law enforcement to keep most of the money seized. Only seven states and the District of Columbia bar police agencies from keeping any of the money they take.

Only 11 states require a criminal conviction when seizing property. Notably, in 2015, New Mexico's governor at the time, Susana Martinez, signed a bill that was unanimously passed by the state legislature to completely eliminate civil forfeiture and require a criminal conviction for forfeiture.

Rep. Chris Rabb (D., Philadelphia) recently introduced a bill that would require money obtained through civil forfeiture be put into a fund to help compensate people exonerated of crimes and their families. Currently, Pennsylvania does not provide any compensation to people who were wrongfully convicted or incarcerated.

Although there have been court decisions in the past trying to limit excessive seizures, the limits remain a legal gray area, Demleitner said.

"It seems randomly in the eye of the beholder what is declared excessive and what is not declared excessive with the exception of the extreme cases," she said. "I just don't know where the limit is and I don't think anybody does."

In one case reviewed by The Appeal and Spotlight PA, a state trooper seized \$38,500 from a driver who had three cartons of cigarettes from Virginia in his vehicle that were not taxed in Pennsylvania as required. He was carrying the money, he said, after his sister sold her restaurant, and he was headed back where he lived in New York to deposit the money in a bank account.

State police accused the man of evading roughly \$90 in taxes, and issued him \$400 in fines and fees for the summary offense — akin to a traffic ticket.

In the end, the state kept the \$38,500.