

Caswell Motel Case Marks a Victory Against Federal Forfeiture Abuse

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A federal magistrate in Massachusetts has slapped down a federal government effort to seize a motel because of limited drug activity there. That's a blow against asset forfeiture abuse.

special to Drug War Chronicle by investigative journalist Clarence Walker, cwalkerinvestigate@gmail.com [7]

In a major victory for property rights advocates, a federal judge in Massachusetts last week struck down a scheme by federal prosecutors to seize a motel owned by the Caswell family on rundown Main Street in Tewksbury. The ruling in *US v. 434 Main Street, Tewksbury, Massachusetts* [8] should make it more difficult for the government to seize a person's property if third parties committed criminal offenses on that property without the property owner's knowledge.

The ruling reinforced longstanding complaints that the use of asset forfeiture statutes -- both federal and state -- is so broad as to be tantamount to an abuse of power. Under such laws, prosecutors file civil actions seeking to seize the property of accused criminals as the fruits of crime, but they often result in citizens being deprived of their property without ever being convicted of a crime, sometimes even without ever having been arrested.

"People better wake up to what's going on with the government taking property under this federal civil forfeiture law," said Russ Caswell, 69, longtime owner of the Caswell Motel. "I was never charged with a crime and I never participated in no drug crimes on my property," he told the Chronicle Sunday. "Neither did the police tell me that my business was a problem, plus we often reported to police about criminal activity on the premises, but they still tried to take my property. I am thankful to God and my attorneys that this nightmare is over."

The Caswell Motel isn't the Hilton -- like countless thousands of other low-end motels on gritty streets across the country, it offers rooms by the week, and its clientele includes itinerant construction workers, traveling salesmen, the just-up-from-homeless, and, yes, the occasional drug user or peddler.

US Attorney Carmen Ortiz had sought to seize the Motel Caswell from the Caswell family under the theory that the motel allegedly facilitated drug crimes. The government provided evidence of 15 drug-related incidents between 1994 and 2008, rousing US Magistrate Judith Dein to note tartly in her opinion that "it should be noted that during this 14 year period, the Motel Caswell rented out approximately 196,000 rooms."

Dein found that Caswell "did not know the guests involved in the drug crimes, did not know of their anticipated criminal behavior at the time they registered as guests, and did not know of the drug crimes while they were occurring."

The government argued that the Caswells had failed to cooperate with police to alleviate drug problems at the property, but Dein cited numerous examples of the motel's cooperation with Tewksbury Police, and also noted that "there is no contention in this case that anyone from the Caswell family has been involved in any criminal activity either at the Motel or elsewhere. It is undisputed that they are a law-abiding family. Mr. Caswell testified that he had never been charged with any crime in his life."

Then Dein blistered the prosecution.

"It is rather remarkable," she wrote, "in this court's view, for the Government to argue in this case that the Property owner should lose his property for failure to undertake some undefined steps in an effort to prevent crime, while putting on evidence that the police drove through the Property routinely, knew the Property owner's identity and that he lived next door to the Motel, and never contacted him in an effort to work together to control crime at the Property. No comparable cases have been cited by the parties, and none have been found. Having failed to notify Mr. Caswell that he had a significant problem, and having failed to take any steps to advise him on what to do, the Government's resolution of the crime problem should not be to simply take his Property."

The federal magistrate then flatly dismissed the government's case. "The Government has failed to meet its burden of establishing that the Motel is subject to forfeiture," Dein found. "In addition, this Court concludes that the Claimant has met his burden of proving that he is the innocent owner of the Property."

Attorneys and asset forfeiture critics applauded the decision. Darpana Sheth, a Virginia-based pro-bono attorney who assisted with the defense of the Caswell Motel called the verdict "very important" and said it could have wider implications if other judicial districts and lawyers pick up on it.

"This decision will make it tougher for the government to initiate forfeiture proceedings or file complaints based on the actions of third parties," she said.

"This is a complete victory for the Caswell family and for the protection of private property rights," said attorney Scott Bullock, after Dein's ruling. Bullock, who represented the family, is a senior attorney for the Institute for Justice [8] (IJ), a Virginia-based public interest law firm specializing in fighting federal and state forfeiture abuse nationwide.

Caswell definitely needed the Institute's help, his family's limited resources having been eaten up in earlier stages of their battle with a relentless federal prosecutor.

"After running out of money after spending over \$100,000, my local attorney discovered the Institute for Justice on the Internet," said Caswell. "Had it not been for the Institute representing me pro-bono, I would have lost the motel and my livelihood."

While the Institute is a bulwark of the fight against asset forfeiture abuses, it is perhaps best known for its David vs. Goliath victory over billionaire Donald Trump in an Atlantic City eminent domain case in the 1990s. In that case, the Institute successfully represented a property owner whose land Trump wanted for a parking lot for his casino and hotel, blocking Trump's plan and saving the property [9].

The Caswell Motel case also opened a window on unsavory practices around asset forfeiture and raised questions of "policing for profit." Although Caswell attorneys argued -- and the court agreed -- that the family had cooperated with police to alleviate the drug problem, someone tipped the DEA to a potential target. The property had an estimated value of between \$1.5 million and \$1.8 million. Through the federal asset forfeiture "Equitable Sharing Program," state and local law enforcement agencies involved would have received 80% of the value of the Caswell property, with the feds reaping the other 20%.

"What the government did amounted to a grab for quick cash under the guise of civil forfeiture," said attorney Larry Salzman, another IJ attorney.

The workings of the asset forfeiture machine were partially revealed in the deposition of Vincent Kelly, DEA Special Agent in the New England office asset forfeiture unit. He testified under oath that his job was to look for high-dollar property with no mortgage to be forfeited. Kelly explained clearly how he checked the Registry of Deeds "to find out who owns the property and how much equity is on the property." Then, the DEA would contact local police to see how many drug arrests or other serious crimes been committed on the property.

Kelly said it was DEA policy to deal only with property worth at least \$50,000.00. With Caswell Motel's worth between \$1.5 and \$1.8 million dollars, it was ripe for forfeiture since many drug arrests had occurred there.

In another sign that the motel had been the target of selective prosecution, defense attorneys and the Lowell Sun [10] also uncovered evidence that at one point, narcotic officers and police made more arrests on the premises of Walmart, IHop, and Home Depot, nearby businesses also located off I-95 on Main Street. From 2010-2012, the attorneys said 19 drug arrests were made at Caswell Motel, with 24 drug arrests on Walmart's premises, 14 at Home Depot and five each at Applebee's and Burger King. But those are all deep-pocketed corporations with legions of lawyers; the Caswell family and its motel was not.

The Caswell Motel case is only an especially egregious example of asset forfeiture abuses. For years, attorneys, community activists, and advocacy groups, such as Forfeiture Endangers Americans Rights [11] (FEAR) and Americans for Forfeiture Reform [12] have been fighting to reign in such prosecutorial misconduct, and some progress has been made.

Some states implemented higher burdens of proof for police to seize property or acted to reduce the incentive to police for profit by directing that all or some seized funds go to the state general fund or education fund -- not straight into police coffers. And some states require an actual conviction before civil asset forfeiture can proceed.

But facing increasingly tougher standards and regulations, state and local law enforcement have learned to hand their cases over to the feds, ensuring that the cops get their cut under the equitable sharing program, but in effect robbing state governments of funds that should have gone to them. According to a Cato Institute [13] study, as of 2008, the Justice Department's forfeiture fund reached \$3.1 billion, with less than 20% of property seized coming from cases where the owners were prosecuted.

At the federal level, things are a bit better than they used to be, but it clear that room for abuse still exists, as the Caswell case demonstrates. Prior to federal asset forfeiture reform legislation passed in 2000, seizures could be made on mere suspicion that the property was involved in a

crime. Once that happened, the property owner had to prove by a "preponderance of evidence" that the property was not involved in a crime.

Ironically, it was the attempted seizure of another motel, the Red Carpet Inn in Houston, Texas, that helped lead the way to passage of the Civil Asset Forfeiture Reform Act of 2000. In that case, the feds seized the motel in 1998, claiming it was a "drug haven."

Like Caswell, Red Carpet owner Jason Brice had complied with police by hiring security and allowing police to patrol his property, and had spent thousands of dollars to comply with law enforcement demands that the motel discourage drug dealing. But when Brice balked at raising room rates and then revoked permission for police to patrol the property, the feds moved in with a civil forfeiture claim. Brice won in court, but only after years of stress and hundreds of thousands of dollars in attorneys' fees.

Led by then Rep. Henry Hyde (R-IL) and inspired by cases like that of the Red Carpet Inn, Congress finally acted in 2000, passing the first effort to rein in asset forfeiture abuse at the federal level. The reforms include the "innocent owner" defense that Caswell successfully used in its trial.

But the civil asset forfeiture machine that grew out of Ronald Reagan's 1980s drug war keeps on humming. When the Department of Justice's Asset Forfeiture Fund to split seized goods with local and state law enforcement started in 1986, it took in \$93.7 million. Last year, it took in \$1.5 billion. That is a real and continuing incentive to pervert policing in pursuit of profits.

"It's like stealing your property in a hold-up without a gun," summed up Russ Caswell. "It goes back to our founding fathers. What happened to me was so un-American."

Someone needs to tell US Attorney Ortiz, who has not yet given up the fight for the Caswell Motel. On Tuesday, her office said "we are weighing our options with respect to appeal." They have until March 15 to file, and until then, Russ Caswell and his motel still aren't in the clear.