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**DISTRICT II**

August 23, 2023

To:

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Sarah Adjemian  
Clerk of Circuit Court  
Washington County Courthouse  
Electronic Notice

Luke Aaron Cull  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2022AP5-CR

State of Wisconsin v. Luke Aaron Cull (L.C. #2021CF21)

Before Gundrum, P.J., Grogan and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Luke Aaron Cull appeals from an order granting in part and denying in part his motion for return of property seized in executing a search warrant. Cull argues that the circuit court erred in denying the return of certain seized property, asserting that the State did not meet its burden of demonstrating that the property was contraband.<sup>1</sup> Based upon our review of the briefs

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<sup>1</sup> Cull further purports to challenge his underlying conviction after his guilty plea for manufacturing and delivering THC, arguing that he was denied due process, that the circuit court lacked “jurisdiction,” and that “the alleged crime lacked a proven victim[.]” The only issue properly before us on appeal is whether the circuit court erred in denying the return of the seized property in question. As such, we do not address Cull’s other arguments because they are outside the scope of this appeal.

and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>2</sup> We affirm.

As part of a drug investigation, police executed a search warrant at Cull's home. Pursuant to the search, police found marijuana plants, bags of marijuana, over \$11,000 in cash, a safe that tested positive for the presence of THC, scales, THC cartridges, glass pipes, bong, and weapons, including two semi-automatic firearms and two ammunition magazines. Cull pled guilty to one count of manufacturing or delivering THC with three other drug-related charges dismissed and read in. The circuit court imposed a stayed four-year prison sentence, three years of probation, and six months of jail time.

As relevant to this appeal, Cull filed various motions requesting the return of property seized pursuant to the search warrant. The State agreed to return certain property but objected to returning the drug paraphernalia, which Cull described as his "art collection," the two semi-automatic firearms and ammunition, and a large amount of cash.

The circuit court held two hearings to address the motions for the return of the seized property. The court took evidence regarding whether the property was contraband, including testimony from police investigator Shaun Whealon, who participated in the execution of the search warrant. Cull and his father also testified.

After considering the evidence presented at the hearings and the applicable law, the circuit court concluded that the State had not met its burden of proving that one of the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

semi-automatic firearms, which belonged to Cull's father, and Cull's collectible cash, including "old ... bills" and \$2 bills, were contraband. The court ordered the State to return that property.

Based on the same evidence and legal standards, the circuit court denied Cull's request to return the drug paraphernalia, the other semi-automatic firearm, the ammunition, and the balance of the cash. The court found that the State had proven by the greater weight of the credible evidence that those items of the seized property were contraband connected to Cull's crime of manufacturing and delivering THC.

Specifically regarding Cull's "art collection," the circuit court found that "drug paraphernalia by itself is illegal[,] ... even if they're collectible art[.]" The court also found that the State had met its burden of demonstrating that the other semi-automatic firearm was contraband because "it is connected to marijuana sales and use and purchases[.]" Finally, the court made similar findings related to the remainder of the cash and the ammunition. Cull appeals from that part of the court's order denying the return of his drug paraphernalia, firearm and ammunition, and the remaining, noncollectible cash.

WISCONSIN STAT. § 968.20(1) governs the return of property seized pursuant to a search warrant. That statute provides, in relevant part, that any person claiming the right to possession of such property may apply for its return, and the circuit court shall hold a hearing to hear all claims to its true ownership. *Id.* The statute further provides that the court shall not order the return of "contraband" or "a dangerous weapon or ammunition" used in the commission of a crime. Sec. 968.20(1g), (1m).

As the circuit court properly observed, "[c]ontraband" in the context of the return of seized property is defined in WIS. STAT. § 968.13. Pertaining to this appeal, the statute

specifically includes within this definition “controlled substance analogs, as defined in s. 961.01(4m), and the implements for smoking ... them.” Sec. 968.13(1)(a). It also includes “[a]nything which is the fruit of or has been used in the commission of any crime[.]” Sec. 968.13(1)(b).

The person seeking the return of property bears the burden of establishing the right to possess the property. See *Jones v. State*, 226 Wis. 2d 565, 594-95, 594 N.W.2d 738 (1999). The State carries the burden of proving by the “greater weight of the credible evidence” that the property in question is contraband. See *id.* at 595 (“[T]he State [has] the burden of establishing that the property ... constitutes contraband as defined by WIS. STAT. § 968.13(1)(a), and need not be returned[.]”).

We review de novo the question of whether a party has met its burden of proof. *Burg v. Miniature Precision Components, Inc.*, 111 Wis. 2d 1, 12, 330 N.W.2d 192 (1983). However, “[w]e accept the circuit court’s findings as to the credibility of the testimony [at a hearing on the request to return seized property] unless they are clearly erroneous.” *Jones*, 226 Wis. 2d at 598 (citing *Burg*, 111 Wis. 2d at 12).

Cull argues on appeal that the State failed to “prove, beyond a reasonable doubt, that [his] property was used in the commission of a crime.” Cull seeks the return of all seized property. He asserts the circuit court erred when it concluded that Cull’s “possession of the glass art collection was illegal” under Wisconsin law and found that “the cash and firearm were associated with drug sales[.]” We disagree.

As an initial matter, we observe that Cull frames his argument using an incorrect legal standard. The proper standard governing a motion for the return of seized property is not

“beyond a reasonable doubt,” as Cull advances. Rather, as stated above, the State bears the burden of proving by the “greater weight of the credible evidence” that the property in question is contraband. *See Jones*, 226 Wis. 2d at 595. Although Cull does not frame his arguments under the appropriate standards, we address them below within the appropriate legal framework.

Applying the proper legal standard, we conclude that the circuit court did not err in concluding that the State met its burden of proving that the “art collection,” firearm and ammunition, and the remaining cash were contraband. First, the court properly concluded that the State proved that Cull’s numerous glass pipes and bonges were “drug paraphernalia” that was “by itself ... illegal” under the applicable statutes and thus was contraband that the State did not need to return to Cull. As stated above, drug paraphernalia is per se illegal contraband under WIS. STAT. § 968.13(1)(a). Cull’s repeated references to his drug paraphernalia as an “art collection” does not change the fact that Wisconsin statutes explicitly define it as contraband. Thus, the circuit court properly determined that Cull was not entitled to its return.

Second, based on the evidence presented at the hearing, we conclude that the circuit court’s finding that the State proved by the greater weight of credible evidence that the semi-automatic firearm, ammunition, and noncollectible cash were contraband was not clearly erroneous and is supported by the Record. As to Cull’s firearm, the court found that the “testimony and the original request to get it back ... doesn’t make sense” and that “it is connected to marijuana sales and use and purchases[.]” The ammunition goes hand in hand with the firearm.

Regarding the noncollectible cash, the circuit court explicitly rejected Cull’s explanation that the cash came from settlements following car accidents involving Cull. The court observed

that Cull's evidence on the cash did not "make sense" because it was "mostly in \$100 bills" and was found in Cull's safe "right by the scale" that he used for "dealing in marijuana[.]" Cull has failed to point to anything in the Record or the relevant law to show the circuit court erred when it found that these items were "the fruit of or ha[d] been used in the commission of any crime[.]" *See* WIS. STAT. § 968.13(1)(a) and (b). As such, Cull is not entitled to the return of those items.

For the foregoing reasons, we determine that Cull has failed to demonstrate how the circuit court erred in its findings, application of the law, and conclusions. *See Jones*, 226 Wis. 2d at 595. The court weighed the credibility of the police investigator, Cull, and Cull's father. The court then applied the appropriate legal standards and found that the State had not met its burden of demonstrating that some of the seized property was not contraband. The court ordered all noncontraband property returned to Cull. Neither Cull nor the State challenge the findings or conclusions of the circuit court related to the property the court ordered returned.

Similarly, after considering the credibility of the witnesses and applying the correct standards, the circuit court found the State proved by the greater weight of credible evidence that the drug paraphernalia, the firearm and ammunition, and the stacks of cash (that were not collectible bills) were all contraband related to Cull growing and selling THC. Cull has not demonstrated that the court's findings were clearly erroneous.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*