

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**NO. 32 MAP 2017**

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**COMMONWEALTH OF PENNSYLVANIA,  
Appellant**

**v.**

**JUSTEN IRLAND; SMITH AND WESSON 9MM  
SEMI-AUTOMATIC PISTOL, SERIAL NUMBER PDW0493,  
Appellees**

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**BRIEF OF *AMICUS CURIAE* PENNSYLVANIA OFFICE OF  
ATTORNEY GENERAL IN SUPPORT OF APPELLANT**

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**Appeal From The Order Of The Commonwealth  
Court Of Pennsylvania Dated January 13, 2017, At  
No. 448 CD 2015, Reversing The Order Of The Court  
Of Common Pleas Of Adams County Dated March 9,  
2015, At No. CP-01-CR-224-2014**

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**TABLE OF CONTENTS**

**PAGE**

TABLE OF AUTHORITIES.....ii

STATEMENT OF QUESTION INVOLVED ..... 1

STATEMENT OF THE INTEREST OF *AMICUS CURIAE* ..... 2

SUMMARY OF ARGUMENT..... 3

ARGUMENT ..... 4

    1. IN THIS MATTER IN WHICH THE COMMONWEALTH COURT HELD THAT THE COMMONWEALTH MAY NOT SEEK FORFEITURE ABSENT SPECIFIC STATUTORY AUTHORITY—A RULING THAT CONFLICTS WITH BOTH THE COMMONWEALTH COURT’S PRIOR HOLDINGS AND WITH THOSE OF THE SUPERIOR COURT—AND WHERE THERE IS NOW A SPLIT IN COEQUAL APPELLATE AUTHORITY—THE COURT SHOULD GRANT THE COMMONWEALTH’S PETITION IN ORDER TO PROVIDE PROMPT AND DEFINITIVE GUIDANCE REGARDING THE STATUS OF COMMON LAW FORFEITURE WITH THE COMMONWEALTH..... 4

        A. *Existence of Common Law Forfeiture Prior to the 1980’s* ..... 5

        B. *Statutory Displacement*..... 6

CONCLUSION ..... 8

CERTIFICATE OF SERVICE..... 9

**TABLE OF AUTHORITIES**

	<b><u>Page(s)</u></b>
<b><u>Cases</u></b>	
<i>Commonwealth v. Blythe</i> , 115 A.2d 906 (Pa. Super. 1955).....	5
<i>Commonwealth v. Coghe</i> , 439 A.2d 823 (Pa. Super. 1982).....	5
<i>Commonwealth v. Dickson</i> , 918 A.2d 95 (Pa. 2007).....	7
<i>Commonwealth v. Irland</i> , 153 A.3d 469 (Pa. Commw. 2017).....	2, 4, 5
<i>Commonwealth v. Irland</i> , No. 448 C.D. 2015 (Pa. Commw. January 13, 2017).....	2, 4
<i>Commonwealth v. Landy</i> , 362 A.2d 999 (Pa. Super. 1976).....	5
<i>Commonwealth v. Sinn</i> , 82 Pa. Super. 482 (1924).....	6
<i>Estate of Peetros v. County Detectives</i> , 492 A.2d 6 (Pa. Super. 1985).....	5
<i>Panulla v. Rosenberg</i> , 90 A.2d 267 (Pa. Super. 1952).....	5
<i>Petition of Maglisco</i> , 491 A.2d 1381 (Pa. Super. 1985).....	5
<i>Rosen v. Superintendent of Police</i> , 181 A. 797 (Pa. Super. 1935).....	6
<i>Schuettler v. Maurer</i> , 46 A.2d 586 (Pa. Super. 1946).....	5, 6

**Statutes**

1 Pa.C.S. § 1922(4)..... 7

18 Pa.C.S. § 7707 ..... 6

18 Pa.C.S. § 2717(b.1)..... 6

42 Pa.C.S. § 5802 ..... 6

71 P.S. § 732-205 ..... 2

75 Pa.C.S. § 9405(a)..... 6

**Other Authorities**

Act No. 2017-13, P.L 247, No. 13 ..... 6

## I.

### **STATEMENT OF QUESTION INVOLVED**

1. In this matter in which the Commonwealth Court held that the Commonwealth may not seek forfeiture absent specific statutory authority—a ruling that conflicts with both the Commonwealth Court’s prior holdings and with those of the Superior Court—and where there is now a split in coequal appellate authority—should the Court grant the Commonwealth’s Petition in order to provide prompt and definitive guidance regarding the status of common law forfeiture with the Commonwealth?

(Suggested answer in the affirmative.)

## II.

### **STATEMENT OF THE INTEREST OF *AMICUS CURIAE***

This is an appeal by leave from an Opinion and Order of the Commonwealth Court of Pennsylvania determining that common law forfeiture does not exist in Pennsylvania. *Commonwealth v. Irland*, No. 448 C.D. 2015 (Pa. Commw. January 13, 2017) (published at *Commonwealth v. Irland*, 153 A.3d 469 (Pa. Commw. 2017)). On July 18, 2017, this Court granted the Commonwealth's Petition for Allowance of Appeal from that Opinion and Order. *Amicus Curiae*, the Pennsylvania Office of Attorney General, submits the instant Brief based on its interest as the Attorneys for the Commonwealth and specifically its role as prosecutor under 71 P.S. § 732-205. Civil forfeiture generally, and common law forfeiture specifically, plays a vital role in the enforcement of the criminal laws of the Commonwealth and in promoting the safety of its citizens by removing the fruits and instrumentalities of criminal conduct from the hands of those who demonstrate a willingness to engage in such conduct.

### III.

#### SUMMARY OF ARGUMENT

Contrary to the Opinion of the Commonwealth Court, common law forfeiture existed in Pennsylvania prior to the 1980's. Tracing the authority cited even by the Commonwealth Court demonstrates that authority for common law forfeiture dates back to at least 1924.

Irland's alternative argument, that common law forfeiture has been displaced by statute, is contradicted by a closer examination of the forfeiture statutes. The statutes reflect an intent to broaden the categories of property subject to forfeiture for certain crimes and to establish procedures, not to displace common law forfeiture. Moreover, the legislature has never indicated an intent to displace common law forfeiture despite repeated opinions of the Superior Court approving of the practice.

#### IV.

#### ARGUMENT

1. **IN THIS MATTER IN WHICH THE COMMONWEALTH COURT HELD THAT THE COMMONWEALTH MAY NOT SEEK FORFEITURE ABSENT SPECIFIC STATUTORY AUTHORITY—A RULING THAT CONFLICTS WITH BOTH THE COMMONWEALTH COURT’S PRIOR HOLDINGS AND WITH THOSE OF THE SUPERIOR COURT—AND WHERE THERE IS NOW A SPLIT IN COEQUAL APPELLATE AUTHORITY—THE COURT SHOULD GRANT THE COMMONWEALTH’S PETITION IN ORDER TO PROVIDE PROMPT AND DEFINITIVE GUIDANCE REGARDING THE STATUS OF COMMON LAW FORFEITURE WITH THE COMMONWEALTH.**

Based on the issue presented for the Court’s review and as discussed in the Petition for Allowance of Appeal, the Appellant, the Commonwealth of Pennsylvania, through its counsel, the District Attorney of Adams County, argues that common law forfeiture exists in Pennsylvania, as recognized by the Superior Court of Pennsylvania. The Commonwealth Court of Pennsylvania in this case issued an Opinion and Order determining that common law forfeiture does not exist in Pennsylvania. *Commonwealth v. Irland*, No. 448 C.D. 2015 (Pa. Commw. January 13, 2017) (published at *Commonwealth v. Irland*, 153 A.3d 469 (Pa. Commw. 2017)). The Office of Attorney General writes in support of the District Attorney to address two points: 1) that common law forfeiture was a concept present in the jurisprudence of the Commonwealth prior to the 1980’s; and 2)



Appellee Justen Irland's alternative argument,<sup>1</sup> that common law forfeiture has been displaced by statute, is misplaced.

*A. Existence of Common Law Forfeiture Prior to the 1980's*

In its Opinion, the Commonwealth Court stressed that the initial opinions recognizing the concept of common law forfeiture were issued by the Superior Court in the 1980's. *Irland* at 479-482 (citing and reviewing *Petition of Maglisco*, 491 A.2d 1381 (Pa. Super. 1985); *Estate of Peetros v. County Detectives*, 492 A.2d 6 (Pa. Super. 1985); *Commonwealth v. Coghe*, 439 A.2d 823 (Pa. Super. 1982)). In *Coghe*, for example, the Superior Court cited *Commonwealth v. Landy*, 362 A.2d 999 (Pa. Super. 1976), to support the forfeiture to the Commonwealth of the "blood money" paid by the defendant to a person he hired to murder his wife. *Coghe* at 824. In *Landy*, the Superior Court affirmed forfeiture of the proceeds of the sale of a controlled substance, since the money represents the fruits of the sale and takes on the illegal characteristics of the controlled substance. *Id.* at 1002.

The *Landy* Court cited *Commonwealth v. Blythe*, 115 A.2d 906 (Pa. Super. 1955), and *Panulla v. Rosenberg*, 90 A.2d 267 (Pa. Super. 1952), both of which involved the forfeiture of money that was integrally a part of gambling activities. *Blythe* at 909; *Panulla* at 268. The Court in *Panulla*, in turn, cited *inter alia* *Schuetzler v. Maurer*, 46 A.2d 586 (Pa. Super. 1946), for the same proposition.

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<sup>1</sup> Because of its holding, the Commonwealth Court did not address this argument.

The *Schuetzler* Court (at 588) cited *Rosen v. Superintendent of Police*, 181 A. 797 (Pa. Super. 1935), for this same rule of law. Finally, that Court (*Rosen* at 798) cited *Commonwealth v. Sinn*, 82 Pa. Super. 482, 484 (1924).

Based on these authorities, it is simply not accurate to say that common law forfeiture did not exist in Pennsylvania prior to the 1980's.

***B. Statutory Displacement***

Contrary to Ireland's argument before the Commonwealth Court, our legislature has not displaced common law forfeiture by statute. To the contrary, the General Assembly has never indicated that common law forfeiture should be displaced. No statute bars the practice, and statutory enactments have merely established a procedure for forfeiture or broadened the potential property that might be viewed as derivative contraband. *See, e.g.*, 18 Pa.C.S. § 2717(b.1) (subjecting to forfeiture all assets relating to terrorism); 18 Pa.C.S. § 7707 (defining broadly property subject to forfeiture as a result of operation of chop shop); 42 Pa.C.S. § 5802 (same for controlled substances offenses); 75 Pa.C.S. § 9405(a) (subjecting to forfeiture all liquid fuels or fuels without a fuel or tax permit as well as any conveyance used to transport such liquid fuels or fuels).

Recently, the General Assembly enacted and the Governor approved a new forfeiture law that sets forth a procedure to be used when the forfeiture relates to specified offenses and statutes. Act No. 2017-13, P.L 247, No. 13 (effective July

1, 2017). Notably absent from this legislation is any indication that property may be subject to forfeiture *only* as provided in the Act. Given the lengthy history of opinions indicating that property may be subject to forfeiture under certain circumstances, the General Assembly's decision not to bar the practice, despite the enactment of the statutes cited above, supports the conclusion that the practice is accepted by the Commonwealth's lawmakers. That is, despite repeated rulings by the Superior Court to the effect that the forfeiture statutes did not govern all forfeiture, the General Assembly did not amend the statutes to preclude common law forfeiture. *Cf.* 1 Pa.C.S. § 1922(4); *Commonwealth v. Dickson*, 918 A.2d 95 (Pa. 2007) (where decision of Superior Court is never modified by Supreme Court, subsequent enactment on same subject leads to presumption that legislature intended same interpretation).

V.

**CONCLUSION**

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court enter an Order reversing the Opinion and vacating the Order of the Commonwealth Court, and finding common law forfeiture an established and accepted practice within the Commonwealth of Pennsylvania.

**Respectfully submitted,**

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**Date: September 5, 2017**

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving one copy of the foregoing *Brief of Amicus Curiae* upon the persons and in the manner indicated below:

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