

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA : NO: 99-00,140
: :
: :
v. : :
: :
TWO THOUSAND TWO HUNDRED SIXTY :
THREE DOLLARS (\$2,263.00) :
REPUTED OWNER: DEREK SMITH :

OPINION AND ORDER

Prior to addressing the merits of this case, the court must address the Motion to Dismiss presented by the Defendant. The Defendant first argued that the civil court lacks jurisdiction over this matter because the Commonwealth's Petition included the notation "Criminal Division." The Defendant argued that forfeiture proceedings are civil and not criminal in nature, and because no formal transfer of the Petition was made, the civil court has no jurisdiction to entertain the Commonwealth's Petition.

A review of the procedural history of this case reveals that on December 3, 1998 Derek Smith filed a Motion for Return of his property. This petition was filed in the Criminal Division of the Court of Common Pleas of Lycoming County. On February 1, 1999, the Commonwealth filed its Petition for Forfeiture/Disposition of Property. Although the Petition contained the notation "Criminal Division," the petition received a civil docket number. After a hearing on Defendant's Motion to Return Property, and pursuant to the Commonwealth's filing of a Petition for Forfeiture/Disposition of Property in the Civil Division, Judge Butts ordered that the matter be continued until the date and time set for a non-jury trial. All subsequent court documents in this case contain the civil docket number assigned to the Commonwealth's petition. A civil pre-trial was held in this matter, and the case was scheduled in the civil trial list for a non-jury trial. Although the Defendant initially filed its Motion for

Return of property in the Criminal Division, the court finds that the Commonwealth's Petition was appropriately filed in the Civil Division of the Lycoming County Court of Common Pleas. The court further finds that the notation "Criminal Division" did not divest the civil court of jurisdiction over this matter.

The Defendant additionally argues that the action should be dismissed because the Defendant was never criminally charged or convicted of possession with intent to distribute marijuana but was charged only with possession of marijuana and possession of drug paraphernalia. Forfeiture proceedings are in rem proceedings, and accordingly, while the burden of proof in criminal proceedings is "beyond a reasonable doubt," proceedings under the Forfeiture Act are civil in nature and governed by the "preponderance of the evidence" standard. Strand v. Chester Police Dept., 687 A.2d 872 (Pa.Cmwlth. 1997). Pennsylvania courts have repeatedly held that conviction of a crime is not necessary to support forfeiture proceedings. The Commonwealth can seek forfeiture of property regardless of whether a criminal conviction can even be gained from the evidence. Commonwealth v. One 1984 Chrysler Fifth Avenue Sedan, 638 A.2d 370 (Pa.Cmwlth. 1994); Commonwealth v. 502-504 Gordon Street in Ninth Ward of City of Allentown, County of Lehigh, 607 A.2d 839 (Pa.Cmwlth. 1992), *appeal granted* 625 A.2d 1195, 533 Pa. 663, *affirmed* 636 A.2d 626, 535 Pa. 515.

Accordingly, the Defendant's Motion to Dismiss is hereby denied.

FINDINGS OF FACT

On July 11, 1998, police officers of the Williamsport Bureau of Police, while acting as a warrant team, attempted to apprehend a Curtis Mitchell on a felony warrant. The police officers had information that Mitchell was at 505 Park Avenue, Williamsport, Pennsylvania. After Officer Mark Lindauer announced from the front door of the residence that he was a police officer, Officer Steven Helm saw through a first floor window a black male hide in what appeared to be a closet or small room. The police were permitted to enter the residence to search for Mitchell.

During the search Derek Smith was found hiding in a stairwell to an adjoining apartment. He was secured prior to continuing the search. After the residence was secured, Officer Helm went back to Smith and noticed a plastic baggie near Smith's left pants pocket. The baggie contained six separately packaged baggies containing marijuana. Smith was arrested and searched incident to arrest. The search of Smith's person revealed \$2,263.00 rolled into various denominations in both his front pants pockets. The currency had a noticeable odor of marijuana. After being arrested and prior to being transported, Smith provided a false name to the police. While at the Williamsport City Hall in police custody, Smith denied that the money was his, and instead indicated that he was "holding the money for somebody." Four days later, on July 15, 1998, Mr. Smith told a police officer that the money was his, and that it was money obtained from his income tax return.

Derek Smith was charged with the possession of a small amount of marijuana and possession of drug paraphernalia relating to the six baggies of marijuana. On November 24, 1998, Mr. Smith pled guilty to the charges of possession of a small amount of marijuana and possession of drug paraphernalia and was sentenced to serve nine (9) months probation and perform forty (40) hours of community service.

DISCUSSION:

The Controlled Substance Forfeiture Act provides that all money which is used or intended to be furnished in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, is subject to forfeiture to the Commonwealth. 42 Pa.C.S.A. § 6801(a)(6)(I)(A) additionally provides that "all proceeds traceable to such an exchange" is forfeitable to the Commonwealth.

In a forfeiture proceeding involving currency, the Commonwealth has the burden to establish by a preponderance of the evidence the existence of a nexus between the property subject to forfeiture, and an unlawful activity. Commonwealth v. \$26,556.00 Seized from Polidoro, 672 A.2d 389

(Pa.Cmwlth. 1996).¹ Pennsylvania courts have additionally held that if the money is found in close proximity to unlawfully possessed controlled substances, a rebuttable presumption arises that such money constitutes proceeds from the sale of a controlled substance, thereby subjecting it to forfeiture under the Act. Commonwealth v. \$26,556.00, *supra*; Commonwealth v. \$16,208.38 United States Currency, 635 A.2d 233 (Pa.Cmwlth. 1993), *petition for allowance of appeal denied*, 647 A.2d 509 (Pa. 1994).

It is undisputed that the baggie containing marijuana was located on the floor beside the Defendant's pant's pockets. The money at issue was found in the Defendant's pant's pockets. A presumption therefore arises that the money constituted proceeds from the sale of marijuana. The packaging of the marijuana also constitutes evidence that the money at issue was from the sale of the marijuana. The plastic baggie contained six "dime" bags, or six individual packages with about 1 gram of marijuana in each.

Although the Defendant told an officer on July 15, 1998, four days after his arrest, that the money at issue constituted a portion of his income tax return, at the time of his arrest the Defendant denied ownership of the money by stating that "he was holding it for someone." According to Detective Turner of the narcotics unit, the expression "holding it for someone" is language used in the drug world by drug runners holding money for their drug suppliers. The money smelled of marijuana, and the bill denominations, a number of tens, and twenties suggested that it was money from the sale of drugs.

The Defendant's behavior also supports forfeiture of the currency. Mr. Smith initially hid from the police when he heard Officer Lindauer's announcement at the door. When questioned by the

¹ Although the Defendant contends that the burden is one of clear and convincing evidence to prove a "pattern of similar incidents" pursuant to In Re King Properties, 635 A.2d 128 (Pa. 1993), the court find's the Defendant's reliance on In Re King Properties, *supra*, to be misplaced. In In Re King Properties, the property subject to forfeiture was real property used or intended to be used to facilitate violations of the Drug Act under Section 6801(a)(6)(I)(C). In the case at bar, the property subject to forfeiture is currency, governed by Section 6801(a)(6)(I)(A) & (B) of the Forfeiture Act, for which a preponderance of the evidence standard is applied. Commonwealth v. \$26,556.00 Seized from Polidoro, 672 A.2d 389 (Pa.Cmwlth. 1996); Commonwealth v. \$9,310.00 U.S.C., 638 A.2d 480 (Pa.Cmwlth. 1994).

police, he provided the police with a false name. He then denied that the money was his when questioned. Although Mr. Smith testified that he lied regarding ownership of the money on the night of his arrest because he was scared and high from the drugs he had taken, this Court finds the testimony of Derek Smith is not credible. On the contrary, this Court finds Detective Turner's testimony to be credible. The Court accordingly finds the Commonwealth has established a sufficient nexus between the \$2,263.00 and the trafficking of a controlled substance.

ORDER

AND NOW, this 6th day of July, 2000, the Court finds that the \$2,263.00 found on Derek Smith's person at the time of his arrest was money furnished or intended to be furnished in exchange for a controlled substance, and the \$2,263.00 is hereby adjudged forfeited to the Commonwealth to be used as prescribed by law.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Hon. Clinton W. Smith
Robert W. Ferrell, III, Esq.
Emmanuel Izugo, Esq.
Gary Weber, Lycoming Law Reporter
Karen Stapp, Esq., Law Clerk