

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA :
 : NO: 07-00058
 vs. :
 :
 \$500.00 U.S. CURRENCY :

Reputed Owner: Troy Berry – HD0534
SCI Forest
P.O. Box 945
Marienville, PA 16239

OPINION

On January 8, 2007 the Commonwealth filed a Petition for Forfeiture/Disposition of Property pursuant to the Controlled Substance Drug, Device and Cosmetic Act of Pennsylvania and the Controlled Substance Forfeiture Act.

In its Petition, the Commonwealth alleges that Troy Berry was arrested for delivery of cocaine. During a search incident to his arrest, officers discovered \$500.00 in U.S. currency. The Commonwealth asserts that the money seized was procured from proceeds from illegal drug transactions.

Mr. Berry subsequently filed a Motion for return of the property. Mr. Berry avers that as the seized money is not contraband or subject to forfeiture, the money should be returned to him.

42 Pa.C.S. § 6801 provides:

- (a) Forfeitures generally.-- The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

* * * * *

(6) (i) All of the following:

(A) Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

* * * * *

(ii) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge or consent of that owner. Such money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

In Commonwealth v. \$259.00 Cash U.S. Currency, 860 A.2d 228 (Pa. Commw.

2004), the court stated:

In any forfeiture of currency under the Forfeiture Act, the Commonwealth has the initial burden of proof. The Commonwealth must show that the currency was ‘furnished or intended to be furnished ... in exchange for a controlled substance ... [or represents] proceeds traceable to such an exchange ...’ or that the currency was ‘used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.’ 42 Pa. C.S. 6801(a)(6)(i)(A) & (B). Id. at 231.

The Commonwealth must establish a nexus between the confiscated currency and the illegal activity by a preponderance of the evidence. Id. citing Commonwealth v. Marshall, 698 A.2d 576, 578 (1997). “If the Commonwealth establishes this nexus, the burden then shifts to the claimant to establish that he owns the money, that he lawfully acquired it, and that it was not unlawfully used or possessed by him.” Id.

42 Pa.C.S.A. § 6802(k) states that if the defendant proves by “competent evidence to the satisfaction of the court that the property was lawfully acquired, possessed and used by him...” then “the court may order the property returned or delivered to the claimant.”

In this case, the Commonwealth satisfied its burden. Mr. Berry was arrested as a result of a controlled drug buy set up by the Lycoming County Drug Task Force with the assistance of a confidential informant. On July 11, 2006 the Drug Task Force used a confidential informant to purchase \$200.00 worth of crack cocaine from Mr. Berry. On July 13, 2006 a second purchase of crack cocaine was made using the same confidential informant, again for \$200.00. On July 27, 2006 Mr. Berry was arrested within a few minutes of delivering crack cocaine to the same confidential informant. A search conducted incident to arrest revealed \$700.00 in Mr. Berry’s left jean pocket - \$200.00 of the \$700.00 was identified as the “buy” money provided by the Lycoming County Drug Task Force to facilitate the purchase. The \$500.00 was in \$20.00 denominations, which according to the officers that testified, was indicative of drug activity, as drugs are often sold in \$20.00 increments.

As the Commonwealth established a nexus between the confiscated currency and the illegal activity, the burden then shifts to Mr. Berry to show that he “owns the money, that he lawfully acquired it, and that it was not unlawfully used or possessed by him.” 42 Pa.C.S.A. § 6802(j). Mr. Berry failed to meet this burden. Mr. Berry stated that the currency seized was his personal money derived from social security benefits. Mr. Berry testified that he received approximately \$700.00 at the first of each month in the form of SSI benefits. This money was used by Mr. Berry for food,

clothes, necessities, to support his son, and to travel back and forth from Philadelphia to Williamsport. Mr. Berry was arrested on the 27th of the month with \$500.00 in cash in his pocket. This Court does not find Mr. Berry credible. As Mr. Berry failed to meet his burden in this case and prove to the Court by “competent evidence...that the property was lawfully acquired, possessed and used by him” the Court will not order the return of Mr. Berry’s property. 42 Pa.C.S.A.§ 6802(k). The Court therefore concludes that the \$500.00 cash is subject to forfeiture.

ORDER

AND NOW, this 30th day of March, 2011, the Commonwealth’s Petition for Forfeiture/Disposition of Property is hereby GRANTED and the \$500.00 in U.S. currency is adjudged forfeited to the Commonwealth to be used as prescribed by law. Mr. Berry’s “Motion on Why the Property Should Be Return to the Defendant” is DENIED.

BY THE COURT,

Richard A. Gray, J.

cc: District Attorney (KO)

Troy Berry – HD0534
SCI Forest
P.O. Box 945
Marienville, PA 16239

Gary Weber, Esquire