

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

|                               |   |                      |
|-------------------------------|---|----------------------|
| JONATHAN BROWN,               | : |                      |
|                               | : | DOCKET NO. 10-00,935 |
| vs.                           | : | CIVIL ACTION – LAW   |
|                               | : |                      |
| COMMONWEALTH OF PENNSYLVANIA, | : |                      |

\* \* \* \* \*

|                                  |   |                      |
|----------------------------------|---|----------------------|
| COMMONWEALTH OF PENNSYLVANIA,    | : |                      |
|                                  | : | DOCKET NO. 12-00,972 |
| vs.                              | : | CIVIL ACTION – LAW   |
|                                  | : |                      |
| \$2,052.00 US CURRENCY           | : |                      |
|                                  | : |                      |
| REPUTED OWNER: JONATHAN L. BROWN | : |                      |
| SCI CAMP HILL                    | : |                      |
| INMATE NO. GU4051                | : |                      |

**OPINION AND ORDER**

The above-captioned matters come before this Court on Petitioner Jonathan Brown’s Motion for Return of Property (Docket No. 10-00,935) and the Commonwealth’s Petition for Forfeiture/Disposition of Property (Docket No. 12-00,972), pursuant to the Controlled Substances Forfeiture Act, 42 Pa. C.S. §§ 6801-02. A hearing was held in both matters on October 8, 2012. The Court enters the following findings of fact and conclusions of law.

**I. Findings of Fact**

1. On or about January 30, 2009, a traffic stop occurred in the area of High Street and Sixth Avenue in Williamsport, PA; this stop was conducted by Officer Jeremy Brown of the Williamsport Bureau of Police. Petitioner/Reputed Owner Jonathan Brown was the sole passenger in that vehicle, a gold Saturn, at the time of the stop.
2. Officer Brown has been with the Williamsport Bureau of Police since January 2001. Officer Brown has been a member of the Lycoming County Drug Task Force since 2002.

3. Officer Brown testified that the area surrounding High Street and Sixth Avenue in the City of Williamsport has a high rate of crime and drug activity.
4. Prior to stopping the vehicle, Officer Brown observed the gold car in a convenience store parking lot. Officer Brown observed Petitioner exit the gold car, approach a window of a second car, and then walk back to the gold car. Officer Brown believed that a drug transaction occurred.
5. Before entering the roadway, Petitioner failed to stop the gold car at the sidewalk between the roadway and the parking lot. Officer Brown stopped the gold car based on this traffic violation.
6. When Officer Brown approached Petitioner after the stop, Petitioner appeared very nervous and distracted. Petitioner made inconsistent statements to the Officer.
7. When Officer Brown ran Petitioner's name, he identified the Petitioner as Jonathan Brown. Petitioner had a Philadelphia address. Petitioner told the Officer that he was in town for a birthday party.
8. After running the Petitioner's name through the Officer's database, the Officer discovered Petitioner had a suspended driver's license and that Petitioner was on parole in the City of Philadelphia. Officer Brown contacted the Philadelphia parole office. The Office told the Officer that Petitioner's leaving Philadelphia violated Petitioner's parole. The Office issued a warrant to commit and detain for Petitioner. Cmwlth. Ex. 3. The original charge underlying the parole was Manufacture, Delivery, or Possession with Intent to Deliver (crack cocaine). Cmwlth. Ex. 7.

9. Based on this detainer, the Officer took Petitioner into custody. During a search incident to arrest, the Officer found \$1,385.00 in U.S. currency on Petitioner's person. The Officer found at least one cell phone on Petitioner's person. Cmwth. Ex. 2.
10. The Officer brought a canine to the scene to perform a sniff of the gold car. The canine alerted on the car. The Officer obtained consent to search the car after the alert. The vehicle was subsequently impounded in a secure garage. *See* Cmwth. Ex. 2.
11. On February 4, 2008, a vehicle search was conducted. The Bureau found a pair of brand new blue jeans in the car. In the back pocket of the jeans, the Bureau discovered \$667.00 in U.S. currency. Cmwth. Ex. 2.
12. The \$1,385.00 and \$667.00 in U.S. currency found on Petitioner and in the gold car were placed into evidence under the incident number 1154-2011. Cmwth. Ex. 2.
13. Officer Brown testified that a second cell phone was found, either on Petitioner's person or in the gold car. He also testified that the use of two cell phones is a sign of drug-dealing.
14. When the Officer questioned Petitioner about the large quantity of cash found on his person, Petitioner responded that it was rent money. Petitioner later recanted that statement and told the Officer that Petitioner's girlfriend had given him the money. When the Officer asked Petitioner if Petitioner was employed, Petitioner responded that he was not.
15. After further investigation, the Officer discovered that Petitioner was staying at Bing's Hotel, on Lycoming Creek Road, Williamsport. The Officer discovered Petitioner had paid for five (5) weeks of accommodations at the hotel, in cash. Petitioner had been staying at the hotel since December 28, 2008. Cmwth. Ex. 1.

16. The Court finds Officer Brown's testimony to be credible.
17. Officer Ed Lucas is a member of the Williamsport Bureau of Police; Officer Lucas has worked in this capacity since January 2001. Officer Lucas has worked full-time with the narcotics enforcement unit since January 2009. Officer Lucas also works with the Lycoming County Drug Task Force.
18. Officer Lucas testified that Petitioner's stay in Bing's Hotel is consistent with dealing drugs. The Officer testified that dealers like to stay at hotels outside of the city limits and that they like to pay in cash, so that they leave little paper trail.
19. On August 7, 2009, Officer Lucas removed from evidence the \$1,385.00 and \$667.00 in U.S. currency found at incident number 1154-2011 to scan for evidence of contraband. Officer Lucas and a member of the Pennsylvania National Guard Counterdrug Program scanned the currency for contraband using an ion scanner. High levels of cocaine were found on both sets of currency retrieved from Petitioner and the gold vehicle. Cmwlt. Ex. 4.
20. Sergeant First Class Joshua Cesavice is a member of the Pennsylvania National Guard Counterdrug Program. Sergeant Cesavice is responsible for ion scan operations maintenance. The Court admitted Sergeant Cesavice as an expert in ion scan technology.
21. SFC Cesavice testified, in particular, that the casual contact level of money within the Commonwealth with cocaine is 277.43. Cmwlt. Ex. 6. The \$1,385.00 in U.S. currency found on Mr. Brown tested at 888 (cocaine) and 1139 (cocaine high). The \$667.00 in U.S. currency found in the gold car tested at 876 (cocaine) and 1115 (cocaine high). Cmwlt. Ex. 4. Based on the ion testing, SFC Cesavice testified to a reasonable degree

of scientific certainty that the two samples of money have been in close contact with narcotics, specifically cocaine.

22. In early 2010, Officer Lucas worked undercover with the Bureau. During early 2010, while undercover, Officer Lucas bought crack cocaine three (3) times from Petitioner. *See* Cmwlth. Ex. 5.
23. In May 2010, the Bureau arrested Petitioner in a boarding room on Cherry Street in the City of Williamsport.
24. On June 22, 2011, the Court sentenced Mr. Brown at CR-920-2010 for Delivery of a Controlled Substance, Possession with Intent to Delivery, Criminal Use of a Communication Facility, and Possession of Drug Paraphernalia. Cmwlth. Ex. 8.
25. On June 25, 2012, the Court sentenced Mr. Brown at CR-874-2010 and CR-1026-2010 for three counts of Delivery of a Controlled Substance (crack cocaine). Cmwlth. Ex. 9.
26. After several continuances, a hearing commenced on October 8, 2012. The hearing date had been scheduled since July 3, 2012. Mr. Brown was served with a copy of the hearing date while he was in the Lycoming County Prison. Mr. Brown was in the County Prison until approximately July 17, 2012. The Court's file does not indicate that Mr. Brown did not receive this notice. Additionally, the Court's file indicates that Mr. Brown knew the procedure by which he could obtain a court date and continue a court hearing.

## **II. Conclusions of Law**

1. This matter is governed by the Controlled Substances Forfeiture Act, 42 Pa. C.S. §§ 6801-02.

2. Section 6801 of the Act 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) ... 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.

42 Pa. C.S. § 6801.

3. In any forfeiture under the Act, the Commonwealth bears the initial burden of proof.

*Commonwealth v. \$259.00 Cash U.S. Currency*, 860 A.2d 228, 231 (Pa. Cmwlth. Ct.

2004) (en banc). Pursuant to the statute, the Commonwealth must show that the money

was “furnished or intended to be furnished... in exchange for a controlled substance...

[or represents] proceeds traceable to such an exchange...” or that it 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). Therefore, courts have held that the

Commonwealth must prove a nexus between the seized money and the drug trafficking.

860 A.2d at 231. This nexus must be proven by a preponderance of the evidence. If the

Commonwealth proves a nexus, the burden shifts to the reputed owner. The owner must

then establish that he owns the funds, that they were lawfully acquired by him, and that

he did not use or possess the funds unlawfully. *Id.*

4. If money is found in close proximity to contraband, a rebuttable presumption arises that the money is related to drug trafficking. 42 Pa. C.S. § 6801(a)(6)(ii); *Commonwealth v. Burke*, 49 A.3d 542, 546 (Pa. Cmwlth. Ct. 2012). If contraband is not found in close proximity to the money, the Commonwealth may establish a nexus through circumstantial evidence. 49 A.3d at 546.
5. To determine whether a nexus exists, the Court must look at the totality of the circumstances, including whether money was found around drugs or drugs paraphernalia, whether the reputed owner has a criminal history of drug activity, whether a drug sniffing dog alerted to the money, and whether the seizing officer observed what he believed to be an illegal drug transaction. *Burke*, 49 A.3d at 547; *Commonwealth v. \$6,425.00 Seized From Esquilin*, 880 A.2d 523, 534 (Pa. 2003); *Commonwealth v. Marshall*, 698 A.2d 576, 579 (Pa. 1997).
6. Ion scans may be considered relevant in determining whether a nexus exists as long as the Commonwealth establishes that the casual contact level that the money is compared to was obtained from a geographic area that is relevant to the case at hand. *Commonwealth v. \$9,000 United States Currency*, 8 A.3d 379, 388 (Pa. Cmwlth. Ct. 2010). *See also* 49 A.3d at 548 n.5.
7. In this matter, the Court deems the ion scan of the money to be relevant. The Commonwealth provided the casual contact level within Pennsylvania. In this incident, the observed drug transaction and the traffic stop occurred in Williamsport. Mr. Brown was staying in a hotel in Williamsport. Mr. Brown lived and was on parole in Philadelphia. No facts suggest that the funds were obtained from outside of the Commonwealth.

8. Based upon the totality of the evidence, in this instance, the Commonwealth proved that there was a nexus between the cash found and drug trafficking.
9. After the Commonwealth established this nexus, the burden shifted to Mr. Brown to establish that he owned the money, that he obtained it lawfully, and that he was not in possession of the money for an illegal purpose. *See* 49 A.3d at 546.
10. Mr. Brown did not rebut the presumption of forfeiture because he did not present credible evidence that he obtained the cash lawfully. Officer Brown testified that Mr. Brown appeared nervous and proffered inconsistent statements as to where the large amount of money on his person came from. Additionally, Mr. Brown told Officer Brown that he did not have a job.
11. Based upon Mr. Brown's failure to rebut the presumption of forfeiture, the Court will not order the return of his property. *See* 42 Pa. C.S. § 6802(k).
12. The Court finds that Mr. Brown had notice of the hearing date and time.

### **III. Discussion**

The Court finds that the forfeiture of the \$2,052.00 in U.S. currency seized from Mr. Brown is justified. The Commonwealth provided circumstantial evidence supporting a nexus between the seized funds and drug trafficking. Officer Brown testified that he witnessed Mr. Brown engage in a drug deal in an area of Williamsport well-known for drug activity. Officer Brown is an experience narcotics officer within the City and has been a member of the County's Drug Task Force for a number of years. After the Officer stopped Mr. Brown for a traffic violation, Mr. Brown appeared nervous. During the stop, the Officer talked to the Philadelphia parole office; the office confirmed that it was a violation of Mr. Brown's parole to be in Williamsport and that it would issue a warrant to arrest and detain him for this violation. The



warrant confirms that the charge underlying Mr. Brown's parole pertained to drugs. After a search incident to arrest, Officer Brown found a large amount of cash on Mr. Brown. Mr. Brown gave Officer Brown inconsistent answers about the origin of this money and confirmed that he did not have a job. Once on the scene, drug sniffing dog alerted to the cash inside of Mr. Brown's car. Two cell phones were found during the search of Mr. Brown and the vehicle. These factors establish a nexus between the seized money and drug trafficking. Additionally, ion scanning was performed on the seized funds. The ion scan confirmed that the cocaine contact level on the money was approximately three to four times that of the casual contact level within the Commonwealth. The ion scan also supports a nexus between the funds and drug trafficking.

After proving a nexus, the burden shifted to Mr. Brown to prove that he owned the money, obtained it lawfully, and it was not possessed for unlawful purposes. Mr. Brown did not meet his burden. Mr. Brown stated to the Officer that he did not have a job. Mr. Brown made inconsistent statements to the Officer as to the origin of the money. Despite notice, Mr. Brown failed to appear to the hearing. Therefore, based on the present record and Mr. Brown's failure to meet his burden of proof, the Court finds that the forfeiture of the funds is justified.

The Court enters the following Order.

### **ORDER**

AND NOW, this 15<sup>th</sup> day of October, 2012, for the reasons stated above and pursuant to the Controlled Substances Forfeiture Act, 42 Pa. C.S. § 6801-02, it is hereby ORDERED and DIRECTED that Mr. Brown's Motion for Return of Property is DENIED and that the Commonwealth's Petition for Forfeiture/Disposition of Property is GRANTED. The \$2,052.00 in U.S. currency is adjudged FORFEITED to the Commonwealth to be used as prescribed by law.

BY THE COURT,

---

Date

---

Richard A. Gray, J.

RAG/abn

cc: DA (MW)  
Jonathan L. Brown, i.e. John Brown, GU4051  
SCI CAMP HILL  
P.O. Box 200, Camp Hill, PA 17001-8837  
Gary L. Weber, Esquire