

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
vs.	:	NO. 19-1675
	:	
\$7,782.00 U.S. CURRENCY,	:	
Defendant	:	CIVIL ACTION – LAW
	:	

OPINION AND ORDER

On September 30, 2019, the Commonwealth filed a Petition for Forfeiture and Condemnation wherein it alleges that on July 26, 2017, at approximately 1:23 p.m., Trooper Thompson of the Pennsylvania State Police conducted a traffic stop of a vehicle being driven by James Farmer [hereinafter “Farmer”] for changing lanes without signaling and cutting off another vehicle. *See Petition at Paragraph 7(a)*. Trooper Thompson observed multiple air fresheners in the vehicle, a uniform shirt “placed in a purposeful manner across the center console,” and, upon his approach, Farmer had all of his documentation presented immediately. *See Petition at Paragraph 7(b)*. Farmer told Trooper Thompson that he had just sold a vehicle to a woman in Williamsport for \$7,000 but had no paperwork from the sale. *See Petition at Paragraph 7(c)*.

Trooper Thompson asked Farmer to exit the vehicle and Farmer consented to a pat down at which point Trooper Thompson discovered a flip phone and a large sum of cash. *See Petition at Paragraph 7(d)*. Farmer also provided consent to a vehicle search whereupon a K9 alerted to “the odors of controlled substances within the vehicle” and Trooper Thompson observed that “the rear seat covers were loose, the top clips of the vehicle had been popped

open, the rear void in the front passenger seats emitted an odor of marijuana, and the driver's side tail light had stripped screws containing lock washers” See *Petition at Paragraphs 7(e) and (f)*. According to the Petition, these are all indicators of drug smuggling. See *Petition at Paragraph 7(f)*. Trooper Thompson also discovered three (3) additional cell phones, a box of sandwich baggies, and another bundle of cash. See *Petition at Paragraph 7(g)*. The two currency bundles, totaling \$7,728.00, were seized and an ion scan revealed high levels of cocaine on the cash. See *Petition at Paragraphs 7(h) and (j)*.

Farmer, the reputed owner of the Defendant Property, filed an Answer on November 25, 2019. The Commonwealth filed Preliminary Objections on December 2, 2019, which were sustained, and Farmer was directed to file an amended Answer in compliance with Pa.R.C.P. 1029(a). Farmer was also Ordered to respond to the Commonwealth's Interrogatories and Request for Production of Documents by the end of August 2020.

Farmer's amended Answer was filed August 26, 2020 wherein Farmer states several factual distinctions including: that the uniform shirt was on the passenger seat, that not all of the cell phones recovered were activated, and that there were no sandwich baggies in the vehicle. Additionally, he includes a Counterclaim requesting \$30,000 for violations of his rights and states that a traffic citation was never issued for the stop, but that his property was seized anyway. The Commonwealth filed an Answer to the Counterclaim on August 18, 2020. On October 15, 2020, the Commonwealth filed a Motion for Relief stating that Farmer has failed to respond to the Commonwealth's discovery and arguing

that, due to his failure, the Commonwealth is entitled to default judgment and an order granting forfeiture.

Following several continuances due to the COVID-19 pandemic and scheduling issues with the prison in which Farmer is housed, a hearing on the Motion was held October 14, 2021. Farmer appeared by video and Attorney Jarbola, the attorney for the Commonwealth failed to appear. Attorney Jarbola later explained that he mixed up the time of the hearing. At the hearing, Farmer testified that at the time of the traffic stop, he was a registered vehicle dealer and had just sold a vehicle for \$7,500 in cash. No criminal charges or traffic citations were ever brought against him as a result of the stop. The Court issued a Rule upon the Commonwealth to show cause why it should not accept Farmer's testimony as true.

The Commonwealth issued a Response on November 9, 2021 wherein it sets forth the same facts as in its Petition as well as the same legal argument regarding Farmer's failure to answer its discovery. Additionally, the Commonwealth posits that Farmer's statements are not true because he never proved that he was a registered car dealer, that he actually sold a car on the date in question, and because the facts and circumstances of the stop disprove Farmer's claims. On the contrary, they argue that Farmer was engaged in drug trafficking.

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

traceable to such an exchange, are all subject to forfeiture by the Commonwealth and the reputed owner shall have no property right in them. 42 Pa.C.S.A. § 5802(6)(i)(A) and (B). Property subject to forfeiture may be seized when “[t]here is probable cause to believe that the property has been used or is intended to be used in violation of . . . The Controlled Substance, Drug, Device and Cosmetic Act, or another offense for which forfeiture is expressly authorized as a sanction.” 42 Pa.C.S.A. § 5803(b)(4).

Initially the burden is on the Commonwealth to prove by a preponderance of the evidence that the property is subject to forfeiture. 42 Pa.C.S.A. § 5805(j)(1); *Com. v. \$11,600.00 Cash*, 858 A.2d 160, 163–64 (Pa.Cmwlth. 2004). A preponderance of the evidence is established when the Commonwealth proves that “a nexus exists between the pertinent unlawful activity and the property subject to forfeiture. [It] is tantamount to a ‘more likely than not’ standard.” *\$11,600.00 Cash*, 858 A.2d at 164 (internal citations omitted). Once the Commonwealth has satisfied this burden, the burden shifts to the reputed owner to show by a preponderance of the evidence that: (i) the claimant is the owner of the property . . . ; and (ii) the claimant lawfully acquired the property. 42 Pa.C.S.A. § 5805(j)(2). Once this burden is satisfied, the burden shall be back on the Commonwealth to establish by clear and convincing evidence “that the property in question was unlawfully used, possessed or otherwise subject to the forfeiture.” Pa.C.S.A. § 5805(j)(3).

Here, there were no drugs that were found either on Farmer’s person or in his vehicle. Farmer provided the name of the person to whom he sold a vehicle, but there is no evidence that Trooper Thompson attempted to confirm that.

Additionally, while there was cocaine residue found on Farmer's money, this was not discovered until after it was illegally confiscated. For these reasons, the Court finds that the Commonwealth has not met its burden of proof.

Even if, *arguendo*, Commonwealth has proven its burden, Farmer offers a plausible explanation for the possession of the large amount of cash – that he had just sold a vehicle to a woman named Andrea Polchin. The Court notes that while the Commonwealth is not required to criminally prosecute the owner of the property to be able to confiscate it, Farmer was never even charged with a traffic citation as a result of this incident. Without more, the Court finds that there is insufficient proof to link the property to illegal activity under the Act.

For these reasons, the Commonwealth's Motion for Relief is denied.

ORDER

AND NOW, this **22nd** day of **February, 2022**, upon consideration of the Commonwealth's Motion for Relief, and the Defendant Property's reputed owner's response thereto, and for the reasons set forth above, the Motion is **DENIED**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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