

COMMONWEALTH OF PENNSYLVANIA VS. \$16,934.64  
CASH, C.P. Franklin County Branch, Misc. Docket Vol. 1, Page  
52-1987

*Forfeiture - Violation of Controlled Substance Act - Evidentiary Standard*

1. Where cash is not found in close proximity to an illegal substance there can be no rebuttable presumption that the cash was derived from selling the substance.
2. Money may be forfeited where it is shown that it was used or intended to be used to facilitate any violation of the Controlled Substance Act.
3. Forfeiture proceedings are civil in form and the standard of proof is by a preponderance of evidence.

*Anthony W. Forray,*  
Deputy Attorney General for the Commonwealth  
*Thomas E. Leipold, Esq.,*  
Counsel for Curtis Lee McKeithan, Respondent

KELLER, P.J., October 11, 1988:

**OPINION AND ORDER**

On August 18, 1987, the petition of Richard W. Sponseller, Deputy Attorney General of the Commonwealth of Pennsylvania seeking forfeiture of various sums of money seized from the persons, wallet, place of business and home of various persons totalling \$16,934.64, under the Act of April 14, 1972, P.L. 233, No. 64 §1 et seq. as amended, 35 P.S. 780-101 et seq. was presented. On August 20, 1987 the Honorable John R. Walker signed orders directing a rule to issue upon Curtis Lee McKeithan, Roosevelt Harris and David Major King to show cause why the petition of forfeiture should not be granted. The rule was made returnable for the purpose of filing an answer only thirty (30) days from date of service. On November 6, 1987, an answer to Commonwealth's petition for forfeiture and condemnation on behalf of Curtis McKeithan and signed by Michael R. Lynn, Esq., Counsel for the Respondent, was filed. The answer admits the sums of \$393.75 and \$15,393.66 are the funds of Mr. McKeithan; were within his constructive possession; denied they were proceeds of illicit drug trafficking, and prays the entry of an order returning the unlawfully confiscated property subject to the Commonwealth's petition to the respondent. Motions for a hearing on the Commonwealth's petition and the respondent's cross petition were filed and an order was entered July 8, 1988 consolidating the hearings on the petition and cross petition, and

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scheduling hearing on the matter for August 9, 1988 at 1:30 p. m. On the petition of the respondent for a writ of habeas corpus ad testificandum the writ was issued July 27, 1988 directing the Superintendent of the Federal Prison Camp, Allenwood, Pennsylvania to surrender the respondent to the Sheriff of Franklin County on August 8, 1988 so that he could be brought before the Court for the hearing August 9, 1988.

No answers were filed to the Commonwealth's petition for forfeiture by or on behalf of Roosevelt Harris or David Major King. On August 25, 1988 the motion of Deputy Attorney General, Anthony W. Forray, for an order of forfeiture in default of answers as to \$134.23 seized from the person of Roosevelt Harris, and \$1004.00 seized from the wallet of David Major King was filed, and an order entered August 26, 1988 declaring the right, title and interest of the two respondents to be terminated, revoked, and rendered null and void, and the total sum of \$1,147.23 declared to be forfeited to the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Narcotics Investigations and Drug Control pursuant to the said Act.

Hearing was held August 9, 1988. Counsel for the parties have pursuant to the request of the Court filed their proposed Findings of Fact, Conclusions of Law and Discussion. The matter is now ripe for disposition.

#### FINDINGS OF FACT

1. Curtis L. McKeithan was the subject of an investigation by Pennsylvania State Police and Internal Revenue Service Officers for the United States Attorney's Office for violations of the Commonwealth's Controlled Substance, Drug, Device and Cosmetic Act, Hereafter referred to as "Act", and income tax law violations prior to January 28, 1987. During 1986 and early 1987, Mr. McKeithan, hereinafter respondent, was involved in eight sales of cocaine at or near his place of business at 77 Kyle Avenue, Chambersburg, and other locations in the Borough of Chambersburg.

2. The Pennsylvania State Police had scheduled January 29, 1987 as the date when they would obtain and execute search warrants at the residence and place of business of the respondent. However, on January 28, 1987, a search warrant was executed at the residence of Leroy Tyler in Adams County, Pennsylvania. The respondent was either in the Tyler home or entered that home while the search was in progress. He was searched and found to

possess two ounces of cocaine hidden in the false bottom of a W-D 40 can, \$2,100 in cash, scales and a pager. He was placed under arrest and while in Custody received several messages on the pager not to go to the Tyler residence.

3. As a result of the arrest of the respondent on January 28, the date for the search of his place of business and home was advanced to January 28, 1987, a Wednesday.

4. Cpl. Harold Wilson executed the search warrant at the respondent's place of business, which is an automobile repair garage, an auto sales business and also a taxicab business. A "drug dog" was used in the search and pointed to a cabinet described as an unlocked four-drawer file cabinet. It was searched and several syringes and \$393.75 in cash was found. No other cash, checks of I.O.U.'s and no controlled substances were found. The cash was seized at about 3:43 p.m.

5. Cpl. Wilson did not remember if there was a cash register or safe on the premises of respondent's place of business.

6. On cross-examination Cpl. Wilson testified that the respondent was involved in the sale of one-half ounce of cocaine for \$1,000 on September 29, 1986, one gram of cocaine for \$100 on December 29, 1986, and one gram of cocaine for \$100 on January 2, 1987. The confidential informant used in those drug transactions had been given currency after the serial numbers of the bills had been recorded. None of that currency appeared in the cash seized at respondent's place of business or home.

7. The search of the respondent's place of business and seizure of the cash occurred during normal business hours.

8. At or about 3:55 p.m. January 28, 1987, a warrant for the search of respondent's home at 62 Fifth Avenue, Fayetteville, Pennsylvania was executed.

9. Testimony given by Tpr. Michael A. Ruda, who was the inventory officer at the search of the home, indicated:

(a) A small quantity of methamphetamines was found and field tested positive but the officer doesn't know if it was sent to the Crime Lab for analysis.

(b) In a rear room of the garage on a shelf a white metal container was found which contained a sifter, clear plastic baggies and a

cutting agent such as inosital. (The officer explained cutting agents are mixed with cocaine for sale).

(c) Another box of clear plastic baggies was found in the garage attic.

(d) Items identified as drug paraphernalia were found in the kitchen. (The officer could not recall precisely what the items were but remembered that they were in his judgment drug paraphernalia. He conceded some of the items could have had innocent uses.)

(e) Cash in the total amount of \$15,393.66 was found hidden in places throughout the home that had to be searched in order to locate the funds. Reviewing the inventory, the witness testified as to amounts and places found as follows:

1. Chambersburg Trust Co. money bag with bank records and \$4.96 - back master bedroom.
2. Farmers and Merchants Trust Co. money bag with \$1.95 - back master bedroom.
3. Farmers and Merchants Trust Co. money bag with \$25.46 - back master bedroom.
4. Farmers & Merchants Trust Co. money bag - \$35.00 in one dollar bills and coins - back master bedroom.
5. Farmers & Merchants Trust Co. money bag \$95.00 in quarters, \$15.00 in dimes and \$2.00 in nickels - back master bedroom.
6. Chambersburg Trust Co. bag with \$50.00 in quarters in Farmers & Merchants Trust Co. rolls - back master bedroom.
7. Ziploc plastic bags with \$15 in coins - back master bedroom.
8. Farmers & Merchants Trust Co. paper bag with \$9 in coins - back master bedroom.
9. Farmers & Merchants Trust Co. paper bag with \$16.75 in coins - back master bedroom.
10. \$10 roll of quarters - back master bedroom.
11. Farmers & Merchants Trust Co. bag with five \$100 dollar bills - back master bedroom.
12. Farmers & Merchants Trust Co. bag containing four \$20 dollar bills - eight \$50 bills - two \$100 dollar bills - back master bedroom (dresser drawer).
13. \$20 in dimes and \$70 in quarters - back master bedroom ( in upright dresser).
14. Farmers & Merchants Trust Co. paper bag \$822 - back master bedroom (in dresser).
15. Farmers & Merchants Trust Co. paper bag with \$1,165 - back master bedroom (in dresser).
16. Farmers & Merchants Trust Co. paper bag \$50 - back master bedroom - in dresser.
17. Farmers & Merchants Trust Co. paper bag with \$243 - back master bedroom (in dresser).
18. Wallet calculator container \$13 - back master bedroom (in

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dresser).

19. \$87 in pockets of various articles of clothing - in closet - back master bedroom.

20. Farmers & Merchants Trust Co. bag with \$468 - back master bedroom (in closet with clothing and yarn).

21. Farmers & Merchants Trust Co. bag with \$127 - back master bedroom (in yarn bag in closet).

22. Farmers & Merchants Trust Co. bag with \$500 - back master bedroom (in clothes closet).

23. Valley Bank bag with \$490 - back master bedroom (in closet).

24. White envelope with \$970 - back master bedroom (in closet).

25. Farmers & Merchants Trust Co. bag with \$550 - back master bedroom.

26. Farmers & Merchants Trust Co. bag with \$750 - back master bedroom.

27. \$60 in coat pocket in closet in Fred McKeithan's bedroom.

28. \$1,100 in rolled coins in a brown wastepaper basket.

29. Bag of coins found in safe - value unknown for it was to be counted by IRS agent.

30. \$4,000 in three Farmers & Merchants Trust Co. envelopes wrapped in foil as one package found in freezer buried underneath frozen food items some of which were also wrapped in foil.

31. Right Guard spray deodorant can with false bottom containing \$700 in the false bottom - rear bedroom.

(f) Several marihuana smoking pipes in upright dresser in back master bedroom.

(g) 45 cal. automatic handgun in back master bedroom.

10. Trooper Dennis Wible of the Criminal Investigation Section assigned to the Pennsylvania State Police Barracks at Chambersburg interviewed the respondent at 4:45 p.m. January 28, 1987, after his arrest and prior to or during the searches of his place of business and home. the interview was conducted at the Army Reserve Center, Chambersburg Pennsylvania. After the respondent had been advised of his Miranda rights, he was specifically interrogated concerning his acquisition and distribution of narcotics other than marihuana. The trooper testified that the respondent orally informed him:

(a) He had been involved in cocaine distribution for less than one year and before that was involved in methamphetamine distribution.

(b) He was unable to give the average quantity of cocaine he distributed per month but picked it up in quantities ranging from ounces to one-half pounds.

(c) He acquired his cocaine from a man named Roy in West Virginia, who could provide in excess of 10 kilos per month.

(d) He had a call for a couple ounces of cocaine to be delivered to Leroy Tyler's place and he picked up the couple ounces to give to Leroy to front for him.

11. He stated that he had won \$40,000 in the lottery in 1986, and that was where some of the money seized came from.

12. Robert Herb, an employee of the Pennsylvania State Lottery Commission in the On-Line Games Control Section, explained that a claim must be filed by winners of over \$100 in the Instant Game and over \$600 in the On Line Game. The name of the winner must be given if there is such a claim and that name is forwarded to the lottery office. He had checked the records in his office and the name of Curtis McKeithan did not appear as having filed a claim as a winner of any on line or instant games.

13. Mr. Herb testified that he had made no investigation of records of winnings by Mary McKeithan, wife of the respondent. He conceded that the records in his office would not reveal if the respondent consistently won prizes of \$600 or less, but there was no record that he won any lottery prize of \$600.50 or more.

14. The respondent testified that his weekly gross income from the auto repair and auto sales business averaged \$2,000. Sometimes he would purchase cars for \$200 and sell them for \$1,000 after they were repaired. They were less expensive older cars and he would sell one to three per week and during the apple season sold more to the migrant workers. He operated strictly on a cash basis and would accept no checks or credit cards. The respondent was not certain that \$15,393.66 was the exact amount of cash seized from his home because he wasn't present when the home was searched, but agreed that it would be close to the amount of money in his home. He testified that it was customary to keep money in his home so it would be available to buy cars with cash, and most of his automobile purchases were with cash especially when he purchased vehicles out-of-state in Maryland or the District of Columbia.

15. The respondent's son, Fred, was in the 12th grade in 1987 and the \$4,000 in the freezer was money he had saved for his son's college education.

16. Respondent testified that most of the money was kept in

the bedroom of he and his wife, and it represented shop money and his lottery winnings. None of the money came from drug transactions and it wasn't intended for use in drug transactions.

17. Respondent testified on direct examination that he did not believe in banks, but on cross-examination conceded that he had \$21,000 on deposit in the Farmers & Merchants Trust Company and he trusted banks to a certain extent.

18. Mrs. McKeithan did most of the financial management of the business and home and did the family banking. She would put money in envelopes until he needed it to go buy a car.

19. The scale found in the garage at his home was used by him to weigh pecans.

20. The \$393.75 found in the place of business represented receipts from one-day's auto repairs. He usually took all money home from the shop each day.

21. The respondent contradicted Tpr. Wible's testimony in the following areas:

- (a) He denied that he was a drug dealer and was involved in eight separate drug sales. He was not a major drug dealer.
- (b) He did not tell the officer that he was into selling cocaine at any particular time.
- (c) The officer was asking him about Harris and King not about him.
- (d) He didn't tell the officer that he got a call on his pager to take two ounces to Leroy who wouldn't pay for it but would front for him.
- (e) He didn't state that he was to deliver the cocaine to Leroy, he was just to drop it off and he didn't say it was cocaine.
- (f) A lot of the incidents charged to him never took place.
- (g) He never had a large amount of cocaine in his possession or saw or had large quantities such as Tpr. Wible referred to.
- (h) He may have given the officer the name of Roy in West Virginia but he never said large amounts of cocaine were available or that he had gotten them from him.
- (i) He did act as a middle man in cocaine purchases from his garage but never from his home, and he was just a conduit for the money and the drug sales and never made a profit. Sometimes he would get some of the drugs because he was a user.
- (j) All of the transactions he was involved in were just doing people favors. If someone asked him to get them a gram or so he would walk down the street and get it for them.
- (k) He hit the lottery a lot of times with \$500 winners, which you

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## ESTATE NOTICES, cont

Maxwell, Maxwell, Dick & Walsh  
11 North Carlisle Street  
Greencastle, PA 17225  
11/18, 11/25, 12/2/88

Estate of Thelma R. Shipley, deceased, late  
of Greencastle, Franklin County, Pennsylvania.

Executor:

Don F. Ryder, Jr.  
27 West Jefferson Street  
Rockville, MD 20850

Attorney:

William S. Dick, Esq.  
Maxwell, Maxwell, Dick & Walsh  
11 North Carlisle Street  
Greencastle, PA 17225  
11/18, 11/25, 12/2/88

don't have to give a receipt for. He told Tpr. Wible He made \$20,000 from his lottery wins not \$40,000.

22. Respondent testified that he didn't know the syringes were in the file cabinet in his place of business. He believed they were "planted". He is not a diabetic and knows of no lawful purpose for the syringes that were found.

23. He didn't know of the file cabinet in his office being used to keep drugs. He used it for other purposes.

24. Respondent conceded that he had never declared more than \$20,000 gross income from his businesses on his United States Income Tax Return.

25. He agreed that the more than \$15,000 found in his home was a significant sum of money.

26. He knows there were no drugs of any kind in his home.

27. He had sandwich bags in the home for his wife to use in making him sandwiches and those in the garage might have been used by him or his wife for proper purposes.

28. He had had the pipes that were found for years.

29. His wife put the \$700 in the false bottom of the Right Guard deodorant can.

30. Mrs. McKeithan testified that she operated the taxi business and was involved in other business and took care of the bills, and collected most of the money.

31. She testified that the \$393.75 seized from the cabinet in the place of business represented receipts from the garage and taxi service that day plus "start out" cash.

32. The \$15,400 more or less Tpr. Ruda said was found in and about the home was approximately the amount of money in the home. She stuck money in coats or shirt pockets or in drawers. The \$4,000 in the freezer was for her son's education. There was no money except the child's personal money in his room.

33. She won \$12,000 or a little more from the lottery in a period of one year. She won \$996 or \$997 in one win in 1986. She won \$5,000 around January 20, 1987.

## LEGAL NOTICES

**Please Note:** Legal notices are published in 6-point type, exactly as worded by the advertiser. Neither the Journal nor the printer will assume any responsibility to edit, make spelling corrections, or eliminate errors in grammar. All legal notices must be submitted in typewritten form and will be printed using the spelling, punctuation and vocabulary of the copy as submitted. The Journal also reserves the right to reject illegible or other inappropriate copy.

### FICTITIOUS NAME REGISTRATION

Notice is hereby given that Daniel Z. Beiler, 17475 Path Valley Road, Spring Run, PA 17262, Daniel Y. Swarey, 15578 Mt. Green Road, Spring Run, PA 17262, and Daniel U. Stoltzfus, 14500 Creek Road, Willow Hill, PA 17271, Thomas Y. Swarey, 13877 Path Valley Road, Willow Hill, PA 17271, John D. Peachey, 21131 Parson Road, Dry Run, PA 17220, Menno Swarey, 16945 Dry Run Road, South, Dry Run, PA 17220, Samuel D. Beiler, 17475 Path Valley Road, Spring Run, PA 17262, Benjamin Z. Beiler, 18032 Amberson Road, Spring Run, PA 17262, Aaron Z. Beiler, 16832 Dry Run Road, South, Dry Run, PA 17220, John Yoder, 20493 Stony Road, Willow Hill, PA 17271, Enos Beiler, 17465 Path Valley Road, Spring Run, PA 17262, Menno Swarey, 15632 Mt. Green Road, Spring Run, PA 17262, Jacob Mast, 21345 Back Road, Doylesburg, PA 17219, and Amos J. Stoltzfus, Creek Road, Willow Hill, PA 17271, have filed an application for Registration of Fictitious Name in the office of the Secretary of the Commonwealth of Pennsylvania on September 14, 1988, for registration of the name:

"PATH VALLEY LUMBER & PALLETS" under which they intend to do business at 17475 Path Valley Road, Spring Run, PA 17262, pursuant to the provisions of the Act of Assembly of December 16, 1982, Chapter 3, known as the "Fictitious Name Act."

Michael D. Smoker  
Attorney

12/2/88

ARTICLES OF INCORPORATION  
NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania,

**LEGAL NOTICES, cont.**

on the 6th day of September, 1988, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, and its amendments and supplements. The name of the proposed organization is THOMASA. TAYLOR, INC.

The purposes for which it was organized are: The corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which the corporation may be incorporated under the Business Corporation Law, Act of May 5, 1933, P.L. 364, as amended.

Ullman, Painter and Misner  
10 East Main Street  
Waynesboro, PA 17268

12/2/88

NOTICE IS HEREBY GIVEN THAT Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 8th day of November, 1988, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under Section 373 of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of May 5, 1933, P.L. 364, as amended.

The name of the proposed corporation is SAFE-T-BAL, INC.

The purposes for which it is organized are: The manufacture and distribution of trailer hitches, balls and attachments and to engage in and to do any lawful act concerning any lawful business for which businesses may be incorporated under the Business Corporation Law.

William C. Cramer, Esq.  
414 Chambersburg Trust Bldg.  
Chambersburg, PA 17201

12/2/88

**IN THE COURT OF COMMON PLEAS  
OF THE 39TH JUDICIAL DISTRICT  
OF PENNSYLVANIA  
Franklin County Branch**

Gerald D. Talhelm, : Civil Action - Law  
Gregory M. Talhelm, :  
and Harold E. Talhelm, :  
Plaintiffs:

:  
vs. : A.D. 1988 - 134  
:

Richard Townsend, :  
Defendant: Action to Quiet Title

**NOTICE OF COMMENCEMENT  
OF ACTION**

**LEGAL NOTICES, cont.**

To: Richard Townsend, or his legal representatives, heirs, and assigns, or whoever may be the holder of a certain right-of-way over lands of the plaintiffs:

TAKE NOTICE that on April 26, 1988, Gerald D. Talhelm, Gregory M. Talhelm, and Harold E. Talhelm filed their Complaint averring that they are the owners of a certain tract or piece of real estate lying and being situate in Peters Township, Franklin County, Pennsylvania, more fully described in Franklin County Deed Book Volume 919, Page 504.

You are further notified that the plaintiffs have alleged that you are the owner of a right-of-way over their above described real estate, you being the owner of the said right-of-way pursuant to a deed from the McConnellsburg and Ft. Loudon Railway Company dated May 27, 1918, and recorded in Franklin County Deed Book Volume 192, Page 26, and that you have abandoned said right-of-way for a period in excess of twenty-one (21) years, and that the plaintiffs and their successors of title have exercised adverse possession over the said right-of-way for a period in excess of twenty-one (21) years, and that the plaintiffs have asked the Court to enter an Order extinguishing and declaring null and void your aforesaid right-of-way.

You are further notified that the plaintiffs have alleged that your whereabouts are unknown, that they have no knowledge of your present existence or whereabouts, or that of your heirs or assigns, and therefore the Court has ordered that notice of these facts be served by the Sheriff of Franklin County on you, the said Richard Townsend, or your legal representatives, or whoever may be known to be the holder of the said right-of-way, by advertisement, requiring you to answer the said Complaint of the plaintiffs within twenty (20) days from the 2nd day of December, 1988.

Raymond Z. Hussack  
Sheriff of Franklin County

12/2, 12/9, 12/16/88

ROBERT S. DAVIS : In the Court of Com-  
and EDOUARDA B. : mon Pleas of the 39th  
DAVIS, : Judicial District, PA  
husband and wife, :  
Plaintiffs : Franklin County Branch  
:  
: Civil Action - Law

JOHN W. BROWN, :  
his heirs and assigns; :  
J.H. STONER and :  
CHARLES WALTER, :  
Executors of the Last: A.D. 1988-253  
Will of JOHN W. :

34. She testified that in 1986 they received close to \$5,000 from the Labor Union in Washington, D.C. for her husband being fired. Her husband also collected money from crew leaders for migrant workers for repairing their cars. In addition she received \$10,000 from her sister for helping take care of her sister's husband.

35. The coins found in the home came from the soda machine at their business property.

36. The cash was kept in the home so she would have ready access to it at any time, and she put it in various places. None of it came from or for drug transactions.

37. She agreed that on January 28, 1987 they had \$21,000 in a bank account at the Farmers and Merchants Trust Company.

38. When the respondent was arrested with two ounces of cocaine, she was trying to call him on the pager to tell him not to go to Leroy's because someone was trying to set him up. She called him three times not five times as the police report stated. She made the calls because she had received a call from someone who said he shouldn't go to a certain house because it was a setup.

39. She did not know anything about her husband's drug involvement or drug business and was shocked to hear about it. She knew nothing about any drugs in the home, including the suspected methamphetamines, which tested positive.

40. She agreed that they had never declared more than \$20,000 gross income in any year for tax purposes, and they did not declare the winnings from the lottery that weren't "claims".

41. Fred McKeithan who was the son of the respondent and Mary McKeithan lived in their home on January 28, 1987. He had his own bedroom. The State Police took \$60 from his coat in his room. That was money that he had earned working at Sunnyhill Farm Restaurant. It has never been given back.

42. He wanted to go to Penn State University and his parents had told him they were putting money away for him, but he didn't know that the money was in the freezer.

43. He used to give his mother money to save for him - perhaps \$200. He doesn't know where she put it.

44. Respondent was charged with eight counts of delivery of cocaine; one count of conspiracy and income tax evasion. Under a negotiated plea with the United States Attorney he entered pleas of guilty in the United States District Court for the Middle District of Pennsylvania to two counts of delivery and one count of income tax evasion. He was sentenced to five years in a federal correctional institution on the delivery counts and one year concurrent on the tax evasion count.

45. Mary McKeithan entered a plea of guilty to one count of income tax evasion and a six months suspended sentence was imposed upon her by the U.S. District Court.

46. The testimony of Mary McKeithan corroborated that of Fred McKeithan that the \$60 found in his room represented his funds which he had earned.

47. The \$60 found in Fred McKeithan's room was not in proximity to any other funds or anything associated with drugs or involvement in drugs.

48. The \$393.75 found in a cabinet in the office area of the place of business of respondent and his wife can reasonably be attributed to the daily receipts of the taxi business and auto repair/sales business plus daily "start up" money, since the business was operated on a cash only basis and there was no evidence of a cash register or safe on the premises.

49. The fact that a "drug dog" pointed out the cabinet in which the \$393.75 was found is not persuasive because no evidence was introduced as to the reliability of drug dogs. The fact that syringes were also found in the cabinet, while suspicious, does not sustain the burden of proof required.

50. The testimony of the respondent and his wife as to respondent winning either \$20,000 or \$40,000 in the lottery and Mrs. McKeithan winning \$12,000 per year in the lottery, and receiving \$5,000 from a labor union and \$10,000 from Mrs. McKeithan's sister without any corroboration is incredible and unbelievable.

51. Respondent and Mrs. McKeithan's ownership of a \$21,000 bank account at the Farmers & Merchants Trust Company and over \$15,000 in cash in their home, when both conceded that they never declared more than \$20,000 per year gross income for

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income tax purposes, demonstrates a source of income other than that connected with the auto repair/sales business and a two-vehicle taxicab business.

52. The presence of drug paraphernalia, a cutting agent such as inositol, a sifter, clear plastic baggies, marihuana pipes and substance field tested as an amphetamine, coupled with the large sum of cash distributed throughout the home in many strange places, including the freezer and false bottom of the deodorant can, establishes a direct connection between the funds and illegal drug activities of the respondent as well as a conscious knowledge of the source of those funds.

53. In the Answer to Commonwealth's petition for forfeiture and condemnation counsel for Curtis Lee McKeithan and on his behalf alleged Curtis McKeithan's ownership of the funds here under consideration in the preamble and in paragraph 5.

54. Curtis Lee McKeithan never recanted his claim of ownership to the said funds nor did he in any way concede a co-ownership in Mary McKeithan.

55. Mary McKeithan did not file a claim alleging her ownership to any of the funds.

#### DISCUSSION

The Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act<sup>1</sup> provides in pertinent part that:

##### Section 780-128 Forfeiture

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

(6)(i) Consideration as follows:

(A) Money . . . furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this act.

(B) *Proceeds traceable to such an exchange*

(C) Money . . . used or intended to be used to facilitate any violation of this act.

(ii) No property shall be forfeited under this clause, 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 the owner. Such money . . .

<sup>1</sup> 35 P.S. Sections 789-101-780-144.

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LEGAL NOTICES, cont.

distribution of Valley Bank and Trust Company, Trustee under item twelfth of the Will of Charles M. Wood, late of Chambersburg, Franklin County, Pennsylvania, deceased.

Robert J. Woods  
Clerk of Orphan's Court  
Franklin County, Pennsylvania  
12/9, 12/16, 12/23, 12/30/88

found in close proximity to controlled substances possessed in violation of this act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of this act. 35 P.S. Section 720-128(a) (emphasis added).

However, establishing the aforementioned rebuttable presumption is not the exclusive way that a forfeiture can successfully occur. Alternatively, if the Commonwealth proves by a preponderance of the evidence that the types of consideration listed in 780-128(a)(6)(i)(A-D) were transferred in exchange for a controlled substance or used or intended to be used to facilitate any violation of the act, the item will also be subject to forfeiture. *Commonwealth v. Tate*, Pa. Super. , 538 A.2d 903 (1988) [hereinafter cited as *Tate*]. What this court must determine is whether the \$15,393.66 found in Curtis Lee McKeithan's home and at his place of business is forfeitable under either of these evidentiary standards.

The cash hereunder was not found in close proximity to an illegal substance. Therefore, the standard of the rebuttal presumption is inapplicable. Consequently, the Commonwealth must prove by a preponderance of the evidence that this cash is subject to forfeiture "under section 780-128 (a)(6)(i)(c) because it was "used or intended to be used to facilitate any violation" of the act. *Tate*, Pa. Super. at , 538 A.2d at 907.

Forfeiture proceedings are dogs of a mixed breed. They are civil in form but quasi-criminal in character. *Commonwealth v. 1978 Toyota*, 321 Pa. Super. 549, 468 A.2d 1125 (1983) [hereinafter cited as *1978 Toyota*]. The respondent does not receive "the full panoply of rights due a criminal defendant in a criminal proceeding." *Tate*, Pa. Super. , 538 A.2d at 905 citing *1978 Toyota*, 321 Pa. at 552, 362 A.2d at 1126. "For this reason, in a forfeiture proceeding the Commonwealth is required to prove the material allegations by a preponderance of the evidence only." *Tate*, Pa. Super. at , 538 A.2d at 905 citing *Estate of Peetros v. County Detectives*, 341 Pa. Super. 558, 492 A.2d 6 (1985) (remaining citations omitted).

To prove an allegation by the preponderance of the evidence, the Commonwealth must establish that the:

...measure or quantum of proof that leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence. *McCormick on Evidence* (2nd Ed.) Section 339, p. 794; *Se-Ling Hosiery Co. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). In order to prevail, the evidence produced by the party having the burden must so preponderate in the mind of the fact finder as to

outweigh any other evidence and reasonable inferences therefrom which are inconsistent with the proposition sought to be proved. *Smith v. Bell Telephone Co. of Penna.*, 397 Pa. 134, 139, 153 A.2d 477, 480 (1959).

*Gable v. Commonwealth*, 24 Ches. Co. Rep. 231 (1976).

Based on the evidence presented, we find that most of the monies seized at the McKeithan home on January 28, 1987 are proper subjects of forfeiture proceedings.

During the search of Mr. McKeithan's person and the McKeithan home on January 28, 1987, police officers seized evidence that indicated, more probably than not, Mr. McKeithan's involvement with illegal substances. These items included: two ounces of cocaine hidden in a false bottom of a W-D 40 can, a small quantity of methamphetamines, syringes, cutting agents that are commonly mixed with cocaine, drug paraphernalia, clear plastic baggies and several marijuana smoking pipes. This evidence, when coupled with the extraordinarily large amount of cash found about his home for a man who claims to gross no more than \$20,000 a year, leaves this Court with no other reasonable inferences than the conclusion that Mr. McKeithan was involved in trafficking illegal narcotics.

The testimony of both Mr. And Mrs. McKeithan and their explanation of the fund's sources lacked serious credibility. Although both conceded that they never cleared or declared more than \$20,000 in gross income, the found and seized cash demonstrates a source of income other than that connected with the auto repair/sales business and a two vehicle taxicab business [See Finding of Fact 9(e)]. Their explanations as to those other sources of income were simply not credible.

Mr. McKeithan stated that \$40,000 in lottery winnings in 1986 was a partial source of the funds seized. However, Robert Herby, an employee of the Pennsylvania State Lottery Commission could not verify any winnings under the name of Curtis McKeithan. Although it is true that prizes under \$600 or less need not be recorded, we find it difficult to believe that the McKeithan luck was that extraordinarily consistent as to accrue such cumulative, sizeable winnings in a single year. Our failure to find this explanation creditable is further substantiated by the fact that the winnings were never legally reflected in the McKeithans' testimony concerning their gross taxable income. Such winnings are inconsistent with their testimony of never grossing more than \$20,000 for any given year.

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## LEGAL NOTICES, cont.

distribution of Valley Bank and Trust Company, Trustee under item twelfth of the Will of Charles M. Wood, late of Chambersburg, Franklin County, Pennsylvania, deceased.

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### NOTICE OF PUBLIC HEARING

Notice is hereby given that the Board of School Directors of the Chambersburg Area School District will hold a Public Hearing on Wednesday, January 18, 1989, at 7:30 p.m., in the Auditorium of the Chambersburg Area Middle School Building, 1151 East McKinley Street, Chambersburg, Pennsylvania, as required by Section 701.1 of the Public School Code of 1949, as amended by the Act of 1973, P.L. 75, in connection with the proposed construction of a New Elementary School Building on a tract of land located along the western side of the Warm Spring Road in Hamilton Township, Franklin County, Pennsylvania. The maximum project cost which has been authorized is \$4,300,000.00 and the maximum building construction cost to be financed by the School District is \$4,100,000.00. A description of the project is available at the office of the Chambersburg Area School District, 511 South Sixth Street, Chambersburg, PA. At said hearing the project will be explained, including initial building construction cost estimates, the maximum project cost, and the maximum building construction cost. A resident of the school district may speak or submit written evidence relative to the project, or both, at the hearing without prior notice or approval.

M. Richard Bowers  
Secretary

Black, Davison, Attorneys  
Pepper, Hamilton & Scheetz, Attorneys  
12/23/88

## LEGAL NOTICES, cont.

### NOTICE

Notice is hereby given that Chambersburg Art Alliance, having its principal address P.O. Box 1341, Chambersburg, Pennsylvania, has filed Articles of Amendment with the Secretary of the Commonwealth of Harrisburg, Pennsylvania, October 12, 1988, pursuant to the provision of the Business Corporation Law Act of May 5, 1933 (P.L. 364, Section 1806). The Amendment to the Articles of Incorporation "The name of this organization shall be the Franklin County Art Alliance."

12/23/88

Mr. McKeithan stated that \$40,000 in lottery winnings in 1986 was a partial source of the funds seized.<sup>2</sup> However, Robert Herby, an employee of the Pennsylvania State Lottery Commission could not verify any winnings under the name of Curtis McKeithan. Although it is true that prizes under \$600 or less need not be recorded, we find it difficult to believe that the McKeithan luck was that extraordinarily consistent as to accrue such cumulative, sizeable winnings in a single year. Our failure to find this explanation creditable is further substantiated by the fact that the winnings were never legally reflected in the McKeithans' testimony concerning their gross taxable income. Such winnings are inconsistent with their testimony of never grossing more than \$20,000 for any given year.

Mrs. McKeithan also testified that she received \$10,000 from her sister for helping with the care of her sister's late husband. However, at no time was this fact corroborated by testimony from Mrs. McKeithan's sister. Mrs. McKeithan also testified that her husband received close to \$5,000 from her husband's union as a result of a labor dispute. But no evidence was offered to support this fortuitous happenstance such as a cancelled check, a receipt or verification from a union official.

The suspicious origins of these funds are further sustained by their "stashing" throughout the home in many strange places including the freezer, articles of clothing and the false bottom of a can. The justification for such actions was that the McKeithans do not trust banks. However, this testimony is totally inconsistent with the fact that Mr. and Mrs. McKeithan currently possess an account in a local bank in an amount in excess of \$20,000. Parenthetically, we feel it appropriate to observe that Curtis Lee McKeithan has claimed funds here under consideration as his property. Mary McKeithan filed no claim of ownership. Her testimony evidences her contention of partial ownership. This familial disagreement as to ownership adversely affects the creditability of both Mr. and Mrs. McKeithan.

However, this is not to say that we find all the funds found in the McKeithan home an appropriate subject of these forfeiture proceedings. The amount of \$60.00 and \$393.75 representing monies owned by Fred McKeithan, the McKeithan's son, and

<sup>2</sup>At the forfeiture hearing, Mr. McKeithan denied his prior statement to Trooper Wible regarding this amount. He testified that he won only \$20,000 in cash prizes.

start-up cash plus day receipts of the McKeithan family business respectively, should be returned.

The \$60.00 of Fred McKeithan's is the money found in his coat pocket in his room which represents his personal funds earned by working at Sunnyhill Farm Restaurant. The \$60.00 in cash seized from Fred's room was not in proximity to any other funds or anything associated with drugs or involvement in drugs. The testimony of Mary McKeithan also corroborated that of Fred McKeithan regarding the \$60.00 as earned personal funds.

The only other funds that should be returned is to Mr. and Mrs. McKeithan in the amount of \$393.75. This represents the amount of money seized from their business office area. Because the business was operated solely on a cash basis, there is a reasonable ground for concluding that this amount does reflect the daily receipts of a two-car taxi business, an auto repair/sales business plus daily "start-up" money. This conclusion is further reinforced by the lack of evidence indicating either a cash register or a safe on the premises. Although a "drug dog" did point out the cabinet that contained both the money and suspicious syringes, no evidence was introduced as to the dog's reliability.

The amounts of \$60.00 and \$393.75 will be returned to the proper parties. The sum of \$15,383.66 will be forfeited to the Commonwealth.

#### ORDER OF COURT

NOW, this 11th day of October, 1988, IT IS ORDERED AND DECREED THAT:

1. The Commonwealth of Pennsylvania will pay over to Fred McKeithan the sum of \$60.00 representing his personal funds seized by officers of the Commonwealth of Pennsylvania.
2. The Commonwealth of Pennsylvania shall pay over to Curtis Lee McKeithan and Mary McKeithan the sum of \$303.75 representing funds seized by officers of the Commonwealth of Pennsylvania from their place of business.
3. All claims of right, title and interest of Curtis Lee McKeithan in and to the sum \$15,333.66 is hereby declared to be terminated, revoked and rendered null and void. The \$15,333.66 is hereby declared to be forfeited to the Commonwealth of Pennsylvania,

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Office of Attorney General, Bureau of Narcotics Investigations and Drug Control, pursuant to the Controlled Substance, Drug, Device and Cosmetic Act of April 14, 1972, P.L. 233, No. 64, as amended, 35 P.S. 780 et seq. for use in accordance with law.

COMMONWEALTH v. POGUE, C.P., Cr.D., Franklin County Branch, No. 220 of 1988

*Criminal Law - Defiant Trespass - Other Authorized Person - Borough Code*

1. A police officer can fall into the category of "other person" under §3503 of the Crimes Code.
2. The language of the Borough Code and the act of 1980, July 11, P.L. 580, No. 122 provide statutory authority to borough policemen assigned to a fire scene to give the necessary notice to an individual charged with defiant trespass.
3. Section 3503 is not unconstitutionally vague due to lack of specificity as to who may give notice to leave a property.

*Theodore E. Hinckley, Esquire*, Asst. District Attorney for the Commonwealth

*J. McDowell Sharpe, V, Esquire*, Attorney for Defendant

#### OPINION AND ORDER

KELLER, P.J., September 1, 1988:

On February 22, 1988 Detective R.S. North of the Chambersburg Police Department filed a criminal complaint before District Justice J. William Stover charging Tommie Lynn Pogue with commission of the crime of defiant trespass on February 19, 1988 at approximately 10:45 p.m. The complaint alleged that the defendant did enter into the Wolfe Avenue Complex fire scene after being advised repeatedly by Chambersburg Police Department personnel that he was not permitted inside the chain link compound for the safety of fire personnel and himself. The matter was bound over for court. On June 1, 1988 the defendant waived arraignment and entered a plea of not guilty. A timely omnibus pre-trial motion in the nature of a motion to quash was filed. Hearing was scheduled on the motion for August 4, 1988. At the date and time scheduled for hearing counsel for the Commonwealth and the defendant stipulated that the Court should consider the allegations set forth in the affidavit of probable cause signed by Detective North and attached to the criminal complaints as all of

the evidence that would be presented in court, and the Court could dispose of the omnibus pre-trial motion on the basis of that evidence and the memorandum of law to be submitted by counsel on or before August 22, 1988. The memoranda have been submitted and the case is ripe for disposition.

We make the following Findings of Fact from the affidavit of probable cause.

#### FINDINGS OF FACT

1. On Friday, February 19, 1988 between the approximate hours of 7:30 p.m. and 8:45 p.m. there was a fire at the Wolfe Avenue Complex in the Borough of Chambersburg, Pennsylvania.
2. Detective North and Patrolman William Sheppard, II were assigned to control pedestrian traffic into the chain link compound around the Wolfe Avenue Complex, and the fire scene.
3. The defendant approached Detective North approximately 10 feet inside the compound and inquired what was taking place and the officer advised him that he would have to remain outside the chain link fence. Mr. Pogue proceeded to the exterior side of the fence.
4. Approximately three times after the Detective's first meeting with the defendant inside the fence, he was observed trying to walk past the perimeter guards and each time he was advised that he would have to stay outside the fence.
5. On the last occasion of being warned to stay outside the chain link fence, he was also advised by the officer that if he entered Wolfe Avenue Complex/the fire scene again, he would be charged with the misdemeanor charge of trespass.
6. At approximately 8:30 p.m. Detective North observed the defendant's companion, Phyllis Kemp, standing outside the compound with her daughter but the defendant was not in sight.
7. At 8:45 p.m. Detective North observed the defendant inside the compound walking from the direction of the fire scene toward the gate under the guard of Patrolman Sheppard.
8. Detective North approached the defendant and when he was within approximately ten feet of him said, "Tommie I told you, you would . . .", but his words were cut off as the defendant began to shout profanities at the officer claiming that he had a right to be inside the fence because "I work there", and "that's where I work and you can't keep me out!"
9. The defendant resisted as Detective North and Patrolman Sheppard escorted him toward the fence.