

COMMONWEALTH OF PENNSYLVANIA vs. \$1,023 U.S.  
CURRENCY, Franklin County Branch, Criminal Action  
Miscellaneous Volume 2, Page 24

*Commonwealth v. \$1,023.00 in U.S. Currency*

*Money in driver's pocket, in which a small amount of marihuana was found, was forfeitable under 42 Pa.C.S.A. §6801(a)(6)(i); money found in the glove compartment was not.*

1. Money found in close proximity to drugs gives rise to rebuttable presumption that money is proceeds from the selling of drugs; in absence of rebuttal, such money is forfeitable.
2. There is no requirement under 42 Pa.C.S.A. § 6801 that there must be a minimum amount of drugs present in order to permit forfeiture of money related to illegal drug activity.
3. \$623.00 found in driver's pocket, together with a small amount of marihuana and a razor blade containing cocaine residue, was in close proximity to the drugs, and gave rise to the rebuttable presumption that the money was proceeds from drug sales; because driver did not rebut the presumption, the money was forfeitable.
4. \$400.00 found in glove compartment of truck was not in close proximity of drugs, and therefore the rebuttable presumption did not apply.
5. Commonwealth did not meet its burden to prove nexus between drugs in driver's pocket and money in glove compartment; facts that driver was out at 2.35 a.m., that he possessed a pager, and that he was subsequently convicted of drug deliveries was not sufficient.

*T. R. Williams, Assistant District Attorney, Counsel for  
Commonwealth*

*Charles Jenkins, Pro Se  
David King, Sr., Pro Se*

**OPINION AND ORDER**

Walker, P. J., September 19, 1997:

**Factual and Procedural Background**

This case involves the forfeiture of a sum of money seized from Charles Jenkins and the vehicle he was driving on the basis of its relation to a violation of The Controlled Substance, Drug, Device and Cosmetic Act ("Drug Act"). Mr. Jenkins was validly stopped at a DUI checkpoint at 2.35 a.m. in the morning of September 3, 1994. He was driving a vehicle owned by David King, Sr., the father of his passenger, David King, Jr. The occupants of the vehicle consented to a search. In Mr. Jenkins' pocket, the police found a small quantity of marihuana (6.9 grams), a razor-blade which contained cocaine

residue, and \$623 in cash. The police also found \$400 in cash in the glove compartment of the vehicle.

A hearing was held on August 21, 1997, to determine whether the money, totaling \$1,023, is forfeitable. At the conclusion of the hearing, the court afforded the district attorney's office and claimants Charles Jenkins and David King, Sr. the opportunity to submit a letter citing relevant case law. Assistant District Attorney Todd R. Williams has submitted a letter to the court. Claimants Jenkins and King did not submit a letter to the court. The court now makes the following findings.

**Discussion**

Under 42 Pa.C.S.A. § 6801(a)(6)(I), the following items are forfeitable:

(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.

The Commonwealth has the burden to prove by a preponderance of the evidence that a nexus exists between the money to be forfeited and some unlawful drug activity. *Commonwealth v. \$26,556.00 seized from Polidoro*, 672 A.2d 389, 392 (Pa. Cmwlth.1996). When the money is found in "close proximity" to the controlled substances possessed in violation of the Drug Act, such money shall be rebuttably presumed to be proceeds derived from the selling of drugs. 42 Pa.C.S.A. § 6801(a)(6)(ii).

The court has been unable to find any requirement that a minimum amount of controlled substances must be present before forfeiture is permitted. Thus, it is this court's task to decide whether the Commonwealth has met its burden of proof to establish a sufficient connection between the money and the small amount of marihuana found on Mr. Jenkins' person.

The question of what constitutes "in close proximity" must first be resolved in order to determine whether the rebuttable presumption described above applies. The Court of Common Pleas of Dauphin County has pointed out that there does not appear to be any Pennsylvania authority on the question of what constitutes "close proximity." *Commonwealth v. \$2,275 U.S. Currency*, 4 D.&C.4th 212, 214 (1989). The Dauphin County Court cited related case law from other states, which referred to close proximity as being close physical proximity, not closeness in time. *\$2,275 U.S. Currency*, at 215. Close physical proximity means simply "very near." *Id.*, at 214, citing *Limon v. State*, 685 S.W.2d 515 (Ark. 1985).

The court finds that the \$623 seized from Mr. Jenkins' pocket was in close proximity to controlled substances, being the marijuana and the cocaine residue on the razor blade. This was sufficiently close to give rise to the rebuttable presumption that the money was obtained from the selling of illegal drugs. The court also finds that Mr. Jenkins failed to rebut this presumption. The court considered Mr. Jenkins' testimony at the hearing that the money was saved up from his job at Razzles and a temporary agency. However, the court does not find this evidence credible, considering the fact that Mr. Jenkins did not know how much money he had on him, nor did Mr. Jenkins provide the court with any additional evidence, such as pay stubs from his jobs. The court therefore finds that the \$623 found in Mr. Jenkins' pocket is forfeitable under 42 Pa.C.S.A. § 6801.

With regard to the \$400 found in the glove compartment of the vehicle, the court is of the opinion that this was *not* close enough to the drugs found in Mr. Jenkins' pocket to say it was "in close proximity." Therefore, the rebuttable presumption does not apply. The burden is thus on the Commonwealth to prove by a preponderance of the evidence that a nexus exists between the \$400 to be forfeited and unlawful drug activity. The court finds that the Commonwealth has not met its burden. The Commonwealth in its letter to the court has cited a case where factors such as the time of night of the stop, the lack of a reasonable explanation for the amount of money found in the car, and the fact that the driver had subsequently been arrested for drug trafficking, were found to be probative to the determination that the money found in the car was drug-related. *Commonwealth v. Fontanez*, 679 A.2d 1361 (Pa. Cmwlth. 1996). However, in that case, the money was found on the

floor of the car, next to the bag filled with drugs, as well as inside the bag. *Fontanez*, at 1363. That established a sufficient nexus between the drugs and the money. Here, however, the \$400 was found in a separate compartment in the vehicle. Therefore, the facts of the case cited by the Commonwealth and this case are not comparable. The circumstances pointed to by the Commonwealth, such as the time of night of the stop, Mr. Jenkins' possession of a pager, or the fact that he had subsequently been convicted for two delivery offenses do not establish the required link between the glove compartment money and to the drugs found in Mr. Jenkins' pocket. In the absence of any other facts, the Commonwealth's assertion that the money in the glove compartment was related to the marijuana and cocaine residue in Mr. Jenkins' pocket is mere speculation. Therefore, the \$400 found in the glove compartment of the vehicle is not forfeitable.

#### ORDER OF COURT

September 19, 1997, the court orders that cash in the amount of \$623 found in Charles Jenkins' pocket be forfeited to the Franklin County District Attorney's Office. The court orders the Commonwealth to return the \$400 found in the glove compartment to David King, Sr.