

COMMONWEALTH OF PENNSYLVANIA v. \$2,432.00 in U.S. CURRENCY, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch

Misc. Action, No. 249 of 2007

Forfeiture

1. The Controlled Substance Forfeiture Act allows for the forfeiture of money which has been exchanged or is intended to be exchanged for illegal drugs or which has been used or is intended to be used to facilitate any violation of the Controlled Substance, Drug, Device and Cosmetic Act.
2. Money which is found in close proximity to drugs possessed in violation of the Controlled Substance, Drug, Device and Cosmetic Act is reputedly presumed to be proceeds derived from the sale of a controlled substance in violation of that Act.
3. The Commonwealth has the initial burden in this proceeding, which is civil by nature, of proving by a preponderance of the evidence that there is a nexus between the money and a violation of the Controlled Substance, Drug, Device and Cosmetic Act.
4. If the Commonwealth meets its initial burden, it then falls to the claimant to rebut the presumption that the money is subject to forfeiture, and this is done by showing that he owned the money, lawfully acquired it, and did not unlawfully use or possess it.
5. Where numerous factors were at play which enabled the Commonwealth to meet its initial burden under the Forfeiture Act, the money seized in connection with a drug raid of a residence for which police had a warrant to search the residence and all persons present was subject to forfeiture where the claimant failed to prove that the money was his and to rebut the presumption that the monies were proceeds from the sale of crack cocaine.

OPINION SUR PA.R.A.P. 1925(a)

Herman, J., April 9, 2008

Introduction

The Commonwealth filed a petition for forfeiture under §6801(a) of the Controlled Substance Forfeitures Act.[1] The property to be forfeited, \$2,432.00 in U.S. currency, was seized by the Franklin County Drug Task Force in connection with a drug investigation of a residence. Hasan Shareef, a person with an interest in the money, filed an answer and the Court held a hearing on January 25, 2008 to address his challenge to the petition.[2] The Court issued an Order on January 28, 2008 granting the Commonwealth's petition. Mr. Shareef now appeals that ruling.

Facts and Procedural History

The mobile home at 1671 Letterkenny Road, Hamilton Township, Franklin County, became the target of an undercover investigation by the Franklin County Drug Task Force, a multi-jurisdictional agency operating under the auspices of the Franklin County District Attorney's office. Neighbors reported to police that many persons would arrive at the home, stay for only short periods of time and then leave, with this activity occurring in the very early morning hours. These reports led the Task Force to suspect that the home was being used as a location to buy and sell crack cocaine. The Task Force then learned of a separate investigation already underway of Mr. Shareef and one Dwight Adams in which confidential informants working with Chambersburg Borough Police had purchased crack cocaine from Mr. Shareef and

Mr. Adams. Borough Police followed Mr. Adams to the Letterkenny Road home immediately after one of the controlled buys.

The Task Force and the Borough Police Department decided to coordinate their respective investigations using a confidential informant to conduct more controlled buys of crack cocaine from the residence. One buy took place on or about November 4-5, 2005 and another took place on or about November 10-12, 2005. Investigators supplied the informant with small denominations of U.S. currency and kept track of the serial numbers on each of the bills. The informant described to police the layout of the residence, the persons present and where drugs were being stored.

Police obtained a warrant to search the Letterkenny Road home and all persons present therein. The affidavit of probable cause was drafted by Detective Darren North, a veteran police officer and member of the Task Force and stated that individuals who go to locations where drugs are sold are either users or dealers, they conceal drugs on their person or inside the residence and carry large amounts of money in small denominations in order to buy or sell crack in either gram or half-gram amounts. The affidavit also stated that officer safety demanded all persons present be searched because they often carry firearms and other weapons during drug transactions. The Magisterial District Justice reviewed the warrant application and authorized a search of the premises and/or persons as follows: "1671 Letterkenny Road, in Hamilton Township, Franklin County. Any vehicles present when the warrant is served and any persons present when the warrant is served." (Commonwealth exhibit #6.)

Officers from several law enforcement agencies took part in the execution of the warrant on November 12, 2005 at approximately 6:30 a.m. Detective North testified that the mobile home shook as the many people inside began running during police efforts to gain entry. As he entered the home, Detective North saw Mr. Shareef running directly toward him and then into a bathroom. Hearing a toilet flush and knowing drug dealers often destroy evidence by flushing it down the toilet, Detective North tried to enter the bathroom only to have Mr. Shareef twice slam the door in his face. Police eventually subdued Mr. Shareef and the other persons present.

During a pat down search for weapons, \$2,391.00 in cash fell from Mr. Shareef's right sock and spilled onto the floor. An additional \$41.00 was found on the bathroom sink behind him. He was placed on a couch alongside Mr. Adams and both men were searched again because they appeared to be trying to hide something in the cushions. Police found 41 individually wrapped pieces of crack cocaine in a plastic baggie wedged into the cushions near where the two men were seated; no drugs were in the cushions before the two men were placed there. (Commonwealth exhibits #1-A and #1-B.) The sum of \$1,585 was found in Mr. Adams's pants pocket. Some of the bills found in Mr. Shareef's sock bore the same serial numbers as those appearing on the bills used in the two controlled buys conducted at the residence before police obtained the warrant. (Commonwealth exhibits #2, #3 and #4.) As a result of the investigation, Mr. Shareef was charged with Possession with Intent to Deliver Crack Cocaine and Possession of Drug Paraphernalia. He entered a counseled, negotiated guilty plea on April 27, 2007 to Possession with Intent to Deliver crack cocaine and was sentenced that same date to 7½ - 15 months at a state correctional institution.

The Court found at the forfeiture hearing that the Commonwealth met its burden of proving by a preponderance of the evidence that there was a sufficient nexus between the \$2,432.00 and a violation of the Controlled Substance, Drug, Device and Cosmetic Act to justify the money's forfeiture to the Commonwealth and to extinguish any interest of Mr. Shareef's.[3]

Mr. Shareef filed a notice of appeal on February 15, 2008. The Court issued an Order on February 22, 2008 directing him to file a concise statement of matters complained of on appeal within 14 days. The Court granted Mr. Shareef's request for an extension until March 24, 2008 in which to file his statement. The Clerk of Courts received and docketed his statement on March 27, 2008.[4]

Discussion

The Forfeiture Act allows for the forfeiture of money which has been exchanged or is intended to be exchanged for illegal drugs or which has been used or is intended to be used to facilitate any violation of the Controlled Substance Act. §6801(a)(6)(i). Also, money which is found in close proximity to drugs possessed in violation of the Controlled Substance Act is rebuttably presumed to be proceeds derived from the sale of a controlled substance in violation of the Controlled Substance Act. §6801(a)(6)(ii). Commonwealth v. Heater, 899 A.2d 1126 (Pa.Super. 2006); Commonwealth v. \$6,425.00 Seized from Esquilin, 880 A.2d 523 (Pa. 2005).

The Commonwealth has the initial burden in this civil proceeding to prove by a preponderance of

the evidence that there is a nexus between the money and a violation of the Controlled Substance Act. The trial court presiding over the hearing makes its ruling based on the totality of the circumstances. Once the Commonwealth meets its initial burden, the burden shifts to the claimant to rebut the presumption that the money is subject to forfeiture. To do this, the claimant must show that he owned the money, lawfully acquired it and did not unlawfully use or possess it. Heater, supra; Esquilin, supra.

The Commonwealth met its initial burden of proving by a preponderance of the evidence that the cash seized from Mr. Shareef's person while he was at the Letterkenny Road home was connected with illegal drug activity. The facts which established this nexus were as follows: Mr. Shareef and Mr. Adams had previously been observed engaging in illegal drug transactions and police followed Mr. Adams to this home immediately after one of those controlled buys. The serial numbers on the bills found concealed on Mr. Shareef's person and in the open at the residence matched the serial numbers on bills used in previous controlled buys of crack cocaine during the investigation. Mr. Shareef forcibly prevented Detective North from immediately entering the bathroom during the raid and a reasonable inference can be drawn that he was successful in flushing incriminating evidence of some sort (most likely crack cocaine) down the toilet. A substantial quantity of crack cocaine packaged specifically for sale was found wedged into the sofa cushions under or behind Mr. Shareef and Mr. Adams after both men were seen fidgeting in an attempt to hide something in those cushions. Both men carried large amounts of cash in small denominations as is commonly done in the drug trade. Finally, Mr. Shareef pled guilty to possessing crack cocaine with intent to deliver arising from the search of this residence and this plea was entered with the assistance of counsel.

Having met its initial burden of proving the required nexus, the burden then shifted to Mr. Shareef to prove that he was the owner of the money, had obtained it lawfully and that it was being used for a legal purpose. Although he asserted that the money was his and that he is entitled to it, this remained a bald assertion insofar as he failed to produce any actual evidence of his ownership or of the money's lawful origin and/or purpose. Heater, supra; Esquilin, supra.

Mr. Shareef now raises the following issue on appeal: "Did the police lack the authority to search [Mr. Shareef] who was in [the] residence which police were authorized to search pursuant to [a] warrant?" Mr. Shareef's position at the hearing was that police lacked probable cause to search him on the morning of November 12, 2005 because his name did not appear on the affidavit or elsewhere in the warrant application, those documents did not specifically state he ever sold drugs to anyone, he did not live at the Letterkenny Road residence but was merely a visitor there, and his flight from police as they entered the home did not give them grounds to search him. It is clear that Mr. Shareef continues to misconstrue the purpose of this proceeding despite the Court's efforts during the hearing to explain this to him.

The issue in this proceeding is not whether the "all persons present" warrant was supported by sufficient probable cause and/or whether police exceeded the scope of the warrant by searching him simply because he was at the residence during the raid. Rather, the issue is whether the Commonwealth has proven by a preponderance of the evidence that there was a nexus between the \$2,432.00 and criminal activity such that forfeiture is justified under the specific provisions of the Forfeiture Act.

Mr. Shareef relied on Commonwealth v. Wilson, 631 A.2d 1356 (Pa.Super. 1993) at the hearing. The trial court in Wilson refused to suppress contraband found on the defendant during a search of a residence pursuant to a warrant. The affidavit requested an "all persons present" search but the warrant did not authorize such a broad search nor were there sufficient facts in the affidavit to justify such a broad search. The appellate court found police acted beyond the scope of the warrant and that mere flight from police does not by itself constitute probable cause to search a person not otherwise specified in the affidavit or the warrant. Wilson in no way undermines the Commonwealth's right to the \$2,432.00 at stake in the instant case as established by the factors listed above. Wilson was not a forfeiture case but was instead a direct pretrial challenge to the factual sufficiency of the warrant and to the lack of probable cause to search Wilson simply because he fled from police during the warrant's execution. The instant civil forfeiture proceeding is not the appropriate forum in which to raise those kinds of legal challenges.

The totality of the circumstances makes it amply clear that the Commonwealth proved by a preponderance of the evidence that there was a nexus between the \$2,432.00 found in Mr. Shareef's possession and drug transactions which violate the Controlled Substance Act. Mr. Shareef utterly failed to rebut the presumption that the cash found in close proximity to the crack cocaine was derived from the sale of that illegal drug. We submit that this Court committed no error in any aspect of this proceeding and respectfully request that this appeal be dismissed and the Order of January 28, 2008 be affirmed.

ORDER OF COURT

Now this 7th day of April 2008, pursuant to Pennsylvania Rule of Appellate Procedure 1931(c), it is hereby

ordered that the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Commonwealth Court the record in this matter, along with the attached Opinion sur Pa.R.A.P. 1925(a).

[1] 42 Pa.C.S.A. §§ 6801-6802.

[2] Mr. Shareef was incarcerated at the time of the hearing but was present via videoconferencing technology which allowed him to fully see, hear and participate in the proceedings.

[3] 35 P.S. § 780-101 et seq.

[4] The Superior Court entered an Order on March 20, 2008 transferring this case to the Commonwealth Court for appeal purposes. Pa.R.A.P. 751; 42 Pa.C.S.A. §762(a)(1)(ii); In re One 1988 Toyota Corolla, 675 A.2d 1290 (Pa.Cmwlt. 1996).