STATE OF MICHIGAN

COURT OF APPEALS

STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ONE-HUNDRED SIXTY-TWO THOUSAND DOLLARS, ONE 1994 HARLEY DAVIDSON, ONE 1996 FORD THUNDERBIRD, ONE 1996 FORD PICK-UP TRUCK, MISCELLANEOUS ITEMS, and RAYMOND SCOTT GONZALEZ,

Defendants,

and

WILLIAM JOHN CONNOLLY,

Claimant-Appellant.

UNPUBLISHED
March 16, 1999

No. 201567
Wayne Circuit Court
LC No. 96-649270-CF

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

The trial court issued a final judgment of forfeiture ordering that all currency, firearms, ammunition, and one bullet-proof vest seized from claimant be forfeited. His motorcycle and personal papers, however, were to be returned to him at the conclusion of the criminal proceedings against him. Claimant appeals as of right the forfeiture of the currency, and we affirm.

Claimant and others were arrested for engaging in marijuana trafficking, and the facts of the underlying criminal case are set forth in *People v Connolly*, 232 Mich App 425; ___NW2d___(1998), lv pending.

I

Claimant first argues that the affidavit supporting the search warrant for his residence contained insufficient information to establish probable cause to believe that contraband would be found on the premises. He argues that because the search warrant was invalid for lack of probable cause, the evidence seized during its execution should have been suppressed. We disagree. Under the facts of this case, the judge was justified in issuing the search warrant where probable cause existed, and there was a fair probability that evidence of criminal conduct would be found at claimant's address.

> A search warrant should be upheld if a substantial basis exists to conclude that there is a fair probability that the items sought will be found in the stated place. The reviewing court should ask whether a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. [*People v Head*, 211 Mich App 205, 208-209; 535 NW2d 563 (1995), citing *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992).]

We review for clear error. *Head, supra* at 209. In reviewing the matter, we read the underlying affidavit in a common sense and realistic manner. *Id.*

First, we find that there was sufficient evidence to establish probable cause. At the very least, the affidavit states that claimant admitted that firearms and steroids were in the home. Furthermore, the affidavit contains information that claimant admitted that money, approximately $41,000, which was found in the trunk of his car *and taken from his home*, was going to be used for the purchase marijuana. Claimant's admissions alone form a reasonable basis to believe that guns, steroids, and perhaps additional, large sums of cash would be found at his residence. The search warrant enumerated additional money, firearms, other narcotics, and steroids. Because we hold that the affidavit supported a finding of probable cause based on claimant's admissions, it is unnecessary to address claimant's assertions with regard to the statements of the unnamed informant[1].

Second, we disagree that the "security sweep" of the claimant's residence rendered the subsequently issued search warrant invalid. Arguably, the protective sweep was improper. Under the facts of this case, it could only have been proper if the police officers reasonably believed that the area in question harbored an individual who posed a danger to them or others. *People v Cartwright*, 454 Mich 550, 556-557; 563 NW2d 208 (1997), citing *Maryland v Buie*, 494 US 325, 334-336; 110 S Ct 1093; 108 L Ed 2d 276 (1990). There was evidence that the officers believed a twelve-year old male was on the premises and had access to firearms. Officers who secured the residence and were posted nearby while waiting for a search warrant could have been in danger. We find it unnecessary to determine under the facts whether the protective search was proper, however, because the facts of the case reveal that the search warrant was not based on anything found or seen in the house during the sweep[2]. The remedy for an unlawful search is suppression of the unlawfully obtained evidence. *Id.* at 558. The search warrant in this case was based on facts, which were obtained before the sweep and statements made by claimant and other participants to the drug deal. There was no evidence that the officers involved in the protective sweep saw anything related to narcotic trafficking or confiscated anything related to narcotic trafficking, which was subsequently used at trial or to obtain the search warrant. Because the sweep yielded no evidence, there was no tainted evidence to suppress. With or without the sweep, the search warrant would have been issued and the evidence now at issue would

have been found. Thus, we find that the trial court properly refused to suppress the evidence based on the allegedly improper protective sweep.

Finally, we disagree with claimant's argument that the Livonia district judge, who issued the warrant, was without authority to do so because the subject residence was located in the city of Detroit and not in Livonia. In *People v Fiorillo*, 195 Mich App 701, 703; 491 NW2d 281 (1992), this Court stated:

> Unlike the Detroit Recorder's Court and the abolished Common Pleas Court of Detroit, the statutes conferring jurisdiction on the district court are not territorially limited. Likewise, the statute governing the issuance of search warrants does not limit the authority of the warrants territorially. MCL 780.651; MSA 28.1259(1).
>
> No constitutional or statutory limits exist which prevent the district court from issuing search warrants to be executed outside the county of issuance. Since there is only one district court within the state, there is no need for explicit statutory authorization allowing the district court to issue statewide search warrants.

The district court had authority to issue a search warrant for the Detroit premises. Accordingly, claimant's argument in this regard is without merit.

II

Claimant next argues that because the criminal charges against him were dismissed for reprehensible police conduct, his arrest and the search warrant, which was supported by information obtained as a result of the arrest, were invalid. He argues that therefore, the evidence seized pursuant to the warrant is not subject to forfeiture. We disagree.

The trial court dismissed the charges against claimant after finding that the police had engaged in reprehensible conduct, which constituted entrapment. *Connolly, supra* at 428. This Court reversed, finding that the police conduct was not intolerably reprehensible. *Id.* at 431-432. Because it has been determined that claimant's arrest was proper and was not the product of entrapment, claimant's argument that an unlawful arrest rendered the search and seizure unlawful is moot. Claimant is estopped from relitigating this issue. See *In re Forfeiture of $1,159,420*, 194 Mich App 134, 145-146; 486 NW2d 326 (1992).

III

Finally, claimant argues that the prosecution failed to establish the necessary connection between the seized currency and any allegedly illegal drug trafficking activities, so as to warrant the forfeiture of the property pursuant to MCL 333.7521; MSA 14.15(7521). We disagree.

"Forfeiture proceedings are in rem civil proceedings, and the party bringing the action must prove its case by a preponderance of the evidence." *In re Forfeiture of $1,159,420*, 194 Mich App

134, 146; NW2d (1992). "In order for an asset to be ordered forfeited, the trial court must find that there is a substantial connection between that asset and the underlying criminal activity." *Id.*

> The findings of fact of a trial court sitting without a jury will not be set aside on appeal unless we find that they are clearly erroneous. A finding is clearly erroneous when 'although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. [*In re Forfeiture of $18,000*, 189 Mich App 1, 4; 471 NW2d 628 (1991) (citations omitted).]

MCL 333.7521(f); MSA 14.15(7521)(f) provides for the forfeiture of anything of value obtained from or used in the transaction of illegal drug activities. At the forfeiture proceeding, claimant contested the seizure of approximately $160,000 in currency. The trial court found that the prosecution presented sufficient evidence to establish a substantial connection between the forfeited currency and illegal narcotics trafficking. This finding was not clearly erroneous.

There was evidence that claimant admitted that the $41,000 from the trunk of his car was going to be used to purchase narcotics. This admission established a connection between that money and illegal narcotics trafficking, which was sufficient to sustain a forfeiture. With regard to the remainder of the money, approximately $121,000 that was found in claimant's basement, there was also a sufficient nexus. There was evidence that the money was almost identically packaged like the money from the trunk of claimant's car. In addition, there was evidence that claimant had an extremely limited income and significant expenses. Although his sister testified that claimant had been given large sums of money from an insurance claim and from their mother's estate, there was no evidence that a significant portion of this income remained, especially given that claimant had living expenses. Certainly there was no evidence that defendant had an income or other source of money that would allow him to stuff approximately $121,000 in his basement walls and ceiling, and loan approximately $41,000 for the purchase of marijuana. In *In re Forfeiture of $1,159,420, supra* at 147, this Court upheld a finding of substantial connection where the prosecution presented evidence to establish that the claimants were drug dealers who possessed assets "beyond what could legitimately be accounted for," even taking into consideration their legitimate sources of income, including proceeds allegedly obtained from a personal injury lawsuit.

We also note that there was testimony that claimant had indicated that he would be able to purchase approximately fifty to one-hundred pounds of marijuana per week. Thus, he indicated his involvement in drug trafficking and his access to large sums of money for use in drug trafficking.

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Kelly
/s/ Harold Hood

[1] Claimant argues that there was no probable cause based on any information provided by the unnamed informant because the affidavit failed to set forth that the unnamed informant was credible or reliable, or spoke from personal knowledge. A discussion of this issue is unnecessary where we find that there was probable cause on other grounds.

[2] The intrusion was minimal and had no bearing on the outcome of the case. We also note that while one officer was in the house for approximately seven minutes, he testified that he was in the home with claimant's wife while she made a telephone call and located her cigarettes. There was no indication that the officers were looking through the house for seven minutes.