[Cite as *In re S.L.*, 2010-Ohio-1440.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93986

IN RE: S.L.
A MINOR CHILD

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Court Division
Case No. DL 09100239

BEFORE: McMonagle, P.J., Sweeney, J., and Cooney, J.

RELEASED: April 1, 2010

JOURNALIZED:

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CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} Plaintiff-appellant the state of Ohio appeals the trial court's judgment ordering in part the return of seized property to its owner and the remainder to be forfeited to the North Royalton Police Department. We affirm.

I.

{¶ 2} Two delinquency complaints were filed by the State against defendant-appellee S.L. The first charged him with burglary and criminal damaging. The second charged him with trafficking in marijuana, possession of criminal tools, and theft. S.L. admitted to the charges in both cases.

{¶ 3} S.L.'s grandfather, S.L., Sr., filed a motion for return of property. A magistrate ordered that $7,300[1] held by the North Royalton Police Department be released to S.L., Sr. The State did not object. However, the State subsequently filed a motion to vacate the magistrate's decision and a petition for civil forfeiture.

{¶ 4} A hearing was held on the State's petition and the magistrate found that the property was subject to forfeiture. After another hearing, the magistrate found that $6,800 was the property of S.L., Sr., and $203 was to be forfeited to the North Royalton Police Department. The State filed objections

[1]As will be shown below, the correct amount was $7,003.

to the magistrate's decision. The court overruled the State's objections and adopted, approved, and affirmed the magistrate's decision.

II.

{¶ 5} The record reveals the following facts. On December 17, 2008, the North Royalton police were dispatched to a condominium in its city. The condominium belonged to S.L.'s aunt, and S.L. was living in the basement. When the responding officer arrived, he was met by S.L.'s father, who told him that S.L. had been selling drugs and had a large amount of cash. S.L.'s father led the police to the basement where S.L. was. The police saw various drug paraphernalia and packages of marijuana in plain view. The father gave the cash to the police; it totaled $7,003 and was in $100, $20, $10, $5, and $1 bills.

{¶ 6} After being advised of his *Miranda* rights, S.L. gave a statement to the police. S.L. said that in October he stole checks from his aunt and used them to buy marijuana that he intended to sell. S.L. further stated that half of the $7,003 seized by the police came from drug transactions. The police observed that 15 of the $100 bills had what appeared to be blood on them.

{¶ 7} The following day, December 18, the Brecksville Police Department responded to a report of a burglary at the grandfather's house. The housekeeper was at the house and discovered that a window in the in-law suite had been broken. There was blood on the window and surrounding drapes, wall, and carpet. The police spoke with the grandfather, who was at

work, and learned that he kept money in tin cans in a kitchen cupboard. The police found the cans and observed that the can that contained $100 bills was less full than the other cans. The police further learned from the grandfather that S.L. had been arrested the day before and had a large amount of money in his possession. S.L. was apprehended later that day and admitted breaking into his grandfather's house and stealing cash.

{¶ 8} S.L. testified at the forfeiture hearing that he broke into his grandfather's house and stole $100 bills. He stated that he injured himself during the break-in and bled. He returned to his aunt's condominium and counted the money, which totaled "somewhere close to $8,500." He spent some $400 of that money on clothes and some $1,000 on marijuana. S.L. testified that all of the money recovered by the North Royalton police was money he stole from his grandfather. He explained that some of it was in denominations other than $100 bills because he broke some $100 bills for his purchases and received change. He also admitted that he previously lied when he told the North Royalton police that half of the money was from drug purchases, because at that time no one was aware of the break-in at his grandfather's house and he did not want to implicate himself.

{¶ 9} The grandfather testified that it had been his custom for years to "save" his money in his house and that his family was well aware of it. He did not know how much money he had in the house, but apparently was not

surprised that the police discovered, in addition to the money in the cans, an envelope in a kitchen cupboard with $9,300 in $100 bills. He testified that the in-law suite was rarely used and he did not go in there often,[2] but stated that a day or two before December 18, he noticed it was cold in there and went to check the thermostat, but did not see the broken window.

III.

A. Review of Trial Court's Judgment

{¶ 10} We disagree with the parties' contentions that our standard of review is a determination of whether the trial court abused its discretion. Under R.C. 2981.09(A) and 2981.04(B), governing forfeiture, "the trier of fact shall return a *verdict* of forfeiture that specifically describes the extent of the property subject to forfeiture." (Emphasis added.) Upon review of a trial court's verdict, we determine whether there is relevant, competent, and credible evidence upon which the fact finder could base its judgment. *In re 1986 Chevy Pick-Up Truck*, Guernsey App. No. 08 CA 17, 2009-Ohio-174, ¶40. Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.* (1978),

[2]He lived alone.

54 Ohio St.2d 279, 376 N.E.2d 578, syllabus. It is based on this standard that we review the State's sole assignment of error.

B. Forfeiture

{¶ 11} Under R.C. 2981.05(D), the State bears the initial burden of proving by a preponderance of the evidence that contraband involved in an offense is subject to forfeiture. If the State satisfies this burden, the trier of fact shall issue a forfeiture order. Id. If a forfeiture order is issued, a person with an interest in the forfeited property may rebut the State's charges and petition the court to determine the validity of the third party's interest in the property. Id.; see, also, R.C. 2981.05(C)(l). Under R.C. 2981.01(F)(1)(a), the trier of fact may amend its forfeiture order only if the third party establishes by a preponderance of the evidence that:

{¶ 12} "The petitioner has a legal interest in the property that is subject to the forfeiture order that renders the order completely or partially invalid because the legal interest in the property was vested in the petitioner, rather than the * * * delinquent child whose * * * delinquency adjudication is the basis of the order, or was superior to any interest of that * * * delinquent child, at the time of the commission of the * * * delinquent act that is the basis of the order."

{¶ 13} The State contends that the magistrate's decision amending the forfeiture order, and granting $6,800 to S.L., Sr., and $203 to the North

Royalton police was erroneous because S.L., Sr. did not satisfy his burden of proof. The State cites *State v. Griffie*, Cuyahoga App. No. 89009, 2007-Ohio-5325, in support of its contention. Griffie was stopped for a traffic violation when the police saw him make a furtive movement and "baseball" throw of a large white object. The police found 11 baggies with cocaine scattered by the road and two more inside Griffie's car. A subsequent search of his home revealed several weapons and $8,240 cash in some socks in a footlocker. Griffie told the police that he got the cash from a home equity loan. He claimed that his lawyer had documentation of the loan, but no such documentation was ever produced. Griffie was convicted of drug trafficking and possession of drugs and ordered to forfeit the weapons and cash.

{¶ 14} In upholding the forfeiture of the money, this court stated the following:

{¶ 15} "the large amount of cash found in Griffie's bedroom is suspicious not only because it had been hidden in some socks in a footlocker, but because Griffie failed to substantiate his claim that the money constituted proceeds of a home equity loan. Had Griffie's explanation been true, it would have been a simple matter to produce documents showing that he had obtained a large amount of cash from a lender. Instead of producing these documents, he claimed on cross-examination that his 'attorney had those papers.' Those documents, if they existed, were not offered into evidence.

{¶ 16} "The failure to produce a provenance for the cash gave credence to the state's theory that the money could have been the proceeds of drug trafficking. Moreover, Griffie's decision to hide such a large amount of money tends to suggest that the cash may have been illicit. A reasonable trier of fact could have concluded by a preponderance of the evidence that, in consideration of Griffie's possession of a large quantity of cocaine, the large amount of cash hidden in his bedroom was the proceeds of drug trafficking, and thus had been used to commit or facilitate the commission of the offense." Id. at ¶19-20.

{¶ 17} The State argues that this case is similar to *Griffie* because: (1) the grandfather failed to show that the money had a legal source; (2) S.L. told the North Royalton police that half of the money came from drug transactions; (3) S.L. did not tell the Brecksville police how much money he stole from his grandfather; and (4) the grandfather could not say how much money was taken from his house. We disagree.

{¶ 18} The grandfather testified that it had been his custom for years to keep money in his home — that was how he saved his money. Although he could not say how much money he had in the cans and, therefore, how much money was taken, the evidence showed that he kept large sums of cash in his house. Moreover, S.L. testified that he injured himself and bled while breaking in, blood was at the scene, and some ($1,500) of the money had blood on it.

{¶ 19} In regard to S.L. telling the North Royalton police that half of the money came from drug transactions, S.L. admitted that was a lie and explained that he lied because at the time no one knew of the break-in and he did not want to implicate himself. Further, S.L. testified that after the break-in, and upon returning to his aunt's condominium, he counted the money and it totaled "somewhere close to $8,500."

{¶ 20} On this record, there was relevant, competent, and credible evidence upon which the trial court could base its decision that $6,800 was the property of S.L., Sr., and $203 was to be forfeited to the North Royalton Police Department. The sole assignment of error is therefore overruled.

{¶ 21} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, PRESIDING JUDGE

JAMES J. SWEENEY, J., and
COLLEEN CONWAY COONEY, J., CONCUR