

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 124 C.D. 2010
 :
 \$9,330.00 Cash : Submitted: June 25, 2010
 :
 Appeal of: Terri Valentine :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE KELLEY

FILED: August 6, 2010

Terri Valentine (Valentine) appeals from an order of the Court of Common Pleas of York County (trial court) granting the Commonwealth of Pennsylvania's petition for forfeiture pursuant to what is commonly referred to as the Controlled Substances Forfeiture Act (Forfeiture Act), 42 Pa. C.S. §§ 6801-6802, and terminating Valentine's claims of right, title or interest in \$9,330 in U.S. currency. We affirm.

On September 9, 2009, the Commonwealth filed a petition for forfeiture of property seeking to forfeit \$9,330 in U.S. currency seized from Valentine's apartment on April 24, 2008. On September 18, 2009, the trial court issued a rule returnable. On September 22, 2009, Valentine filed an answer to the Commonwealth's forfeiture petition along with new matter seeking the return of \$5,000 of the \$9,330 seized. The Commonwealth timely responded. On

November 23, 2009, the trial court held a hearing. At the hearing, David Bixler, a trained narcotics officer, testified on behalf of the Commonwealth. Valentine testified on her own behalf.

The facts, as found by the trial court, are as follows. On April 24, 2008, the West Manchester Township Police (Police) went to Valentine's apartment at 1706 Baron Drive (residence). The Police went to the residence at the request of state parole officers who suspected drug activity by Jomo Barnett, who resided with Valentine at the residence. The search yielded suspected drugs and a lockbox containing the \$9,330 in cash. Police Detective Bixler suspected that the substance was cocaine and used field equipment to confirm that the substance was approximately 100 grams of cocaine. Barnett's nephew, Darien Wallace, was staying at the house and was using the bedroom where the suspected drugs were found. The lockbox was found under the bed in the room used by Valentine and Barnett. Of the two keys to the box, Barnett possessed one and Wallace possessed the other.

Barnett and Wallace were initially charged with possession with intent to deliver cocaine, based upon the search and seizure at the residence. Charges against them were subsequently dropped, apparently due to events that compromised the integrity of the evidence.

The cash, when found, was bundled into four packets; three bundles contained \$3,000 each and the fourth contained \$330. During the forfeiture hearing, Valentine testified that of the money contained in the lockbox, \$5,000 was the proceeds of a flea-market type of business that she operates selling flip flops, sunglasses and other similar merchandise. She produced receipts showing the purchase of \$934 in goods, the resale of which reportedly produced the cash that she claims. Although she had a bank account, Valentine testified that she stored her cash

in the lockbox because she had problems saving money. Although she testified that she used the lockbox to store income from her business, she claimed a net loss of \$225 from her business on her 2008 tax return. Valentine also testified that when she counted \$5,000 in the box approximately two weeks before the police search, it was not bundled; after counting the money, she gave the lockbox key to Barnett to hold for her. She neither explained the source of the additional \$4,330 found in the box, nor could she explain why or when the money was bundled into packets with the unexplained cash.

Ultimately, the trial court found that Valentine's claims were not credible and that her testimony was inconsistent with the evidence. The trial court deduced that the funds claimed by Valentine were co-mingled with drug funds and even if the substances found at her residence were not drugs, they were non-controlled substances intended/attempted to be sold as drugs. Ultimately, the trial court concluded that the Commonwealth established a sufficient nexus between the property and the illegal activity. By order dated November 23, 2009, the trial court granted the Commonwealth's forfeiture petition and denied Valentine's petition for the return of forfeited funds. This appeal now follows.^{1,2}

¹ We note that Valentine initially filed her appeal with the Pennsylvania Superior Court. As this Court is the proper forum for a forfeiture appeal, the Superior Court transferred the matter to this Court for disposition by order dated February 2, 2010.

² This Court's scope of review of a trial court's decision in a forfeiture proceeding is limited to determining whether the findings of fact made by the trial court are supported by competent evidence, and whether the trial court abused its discretion or committed an error of law. Commonwealth v. One Thousand Two Hundred and Twenty Dollars (\$1,220) Cash, 749 A.2d 1013 (Pa. Cmwlth.), petition for allowance of appeal denied, 563 Pa. 704, 761 A.2d 551 (2000).

Valentine contends that the trial court improperly found that the \$5,000 claimed by her were proceeds from illegal activity and subject to forfeiture. We disagree.

In any forfeiture of currency under the Forfeiture Act, the Commonwealth has the initial burden of proof. Commonwealth v. \$259.00 Cash U.S. Currency, 860 A.2d 228 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 583 Pa. 684, 877 A.2d 463 (2005), cert. denied, Cornish v. Pennsylvania, 546 U.S. 965 (2005). The Commonwealth must show that the currency was “furnished or intended to be furnished ... in exchange for a controlled substance ... [or represents] proceeds traceable to such an exchange ...” or that the currency was “used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.^[3]” Sections 6801(a)(6)(i)(A)&(B) of the Forfeiture Act, 42 Pa. C.S. §§6801(a)(6)(i)(A)&(B); \$259.00 Cash. The Commonwealth is required to establish a nexus between the confiscated currency and the illegal activity by a preponderance of the evidence. Commonwealth v. Marshall, 548 Pa. 495, 499, 698 A.2d 576, 578 (1997). The Commonwealth need not produce evidence directly linking seized property to illegal activity in order to establish a nexus between the seized property and unlawful activity. Id.

The Forfeiture Act creates a rebuttable presumption that cash found in close proximity to a controlled substance is “derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.” Section 6801(a)(6)(ii) of the Forfeiture Act, 42 Pa. C.S. §6801(a)(6)(ii). This rebuttable presumption is a legal presumption that requires the factfinder to reach a

³ Act of April 14, 1972, P.L. 233, as amended, 35 P.S. §§780-101 - 780-144.

conclusion in the absence of contrary evidence from the opponent. Waugh v. Commonwealth, 394 Pa. 166, 146 A.2d 297 (1958); \$259.00 Cash.

If the Commonwealth proves the nexus between the money and the illegal activity, the burden shifts to the claimant to establish that he owns the money, that he lawfully acquired it, and that it was not unlawfully used or possessed by him. Section 6802(j) of the Forfeiture Act, 42 Pa. C.S. §6802(j); Marshall, 548 Pa. at 499, 698 A.2d at 578; Commonwealth v. One Thousand Two Hundred and Twenty Dollars (\$1,200) Cash. In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Section 6802(j)(3) of the Forfeiture Act, 42 Pa. C.S. §6802(j)(3). Such absence of knowledge or consent must be reasonable under the circumstances presented. Id.

Herein, approximately 100 grams of cocaine and \$9,330 in U.S. currency were found in Valentine's residence. The cocaine was seized from the bedroom used by Wallace. The money was found in a locked lockbox in the bedroom used by Barnett and Valentine. Both Wallace and Barnett had keys to the lockbox; Valentine did not. Wallace and Barnett were charged with possession with intent to deliver cocaine. Since Barnett was in possession of the key to the lockbox and the cocaine was found in Barnett's bedroom, a close proximity between the cash and controlled substance was established thereby creating a rebuttable presumption that the cash was proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

The burden shifted to Valentine to establish that the money was hers and was lawfully acquired and was not unlawfully used or possessed by her. To this end, Valentine testified that \$5,000 belonged to her and was the legitimate proceeds of her business. However, the trial court did not find Valentine's testimony credible.

The trial court explained that Valentine did not have a key to the lockbox; she believed there was only \$5,000 inside the box and could not explain the additional \$4,330 or why the money was divided into four bundles. While Valentine claimed that the money was profits from her business, the trial court noted that Valentine reported a loss on her 2008 income tax return. Thus, Valentine failed to establish that she lawfully acquired the money and that it was not unlawfully used or possessed by her. We, therefore, conclude that the trial court did not err in determining that the \$9,330 in currency was properly subject to forfeiture as money used to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act.

Accordingly, the order of the trial court is affirmed.

JAMES R. KELLEY, Senior Judge

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ORDER

AND NOW, this 6th day of August, 2010, the order of the Court of Common Pleas of York County, at Docket No. MD-1868-2009, dated November 23, 2009, is AFFIRMED.

JAMES R. KELLEY, Senior Judge