

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Commonwealth of Pennsylvania | : | |
| | : | |
| v. | : | No. 1436 C.D. 2010 |
| | : | SUBMITTED: September 24, 2010 |
| John O'Grady, | : | |
| Appellant | : | |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER

FILED: November 9, 2010

John O'Grady appeals, *pro se*, from the decision of the Court of Common Pleas of York County, which ordered the forfeiture to the York County District Attorney's office of \$4000 cash found in O'Grady's pocket when he was arrested.¹ We affirm.

O'Grady's arrest was the culmination of a kidnapping investigation. The victim in that case alleged that he had been forced into a burgundy Oldsmobile Bravada at gunpoint by men who accused him of robbing a substantial amount of money from a drug stash house, drove him to a remote location and beat him. The detectives investigating this case received information about the location of the

¹ This case was originally filed with the Superior Court, but was transferred to this court, which has jurisdiction over civil actions initiated by the Commonwealth. *See* 42 Pa. C.S. § 762(a)(1)(ii).

Bravada used in the kidnapping and went to investigate. They eventually confronted and arrested three individuals standing outside the vehicle, including O’Grady. One of the individuals ran away from the detectives, but was caught after a short chase. In the course of the chase, he threw away several objects, which were recovered and determined to be 10 bags of marijuana, weighing in total approximately 20 grams. At the time of his arrest, O’Grady had \$4000 cash and two cell phones in his pants’ pockets. O’Grady was eventually charged with numerous kidnapping-related offenses, but was not charged with any drug offenses.

Under Section 6801 of the Judicial Code, money found in close proximity to controlled substances is rebuttably presumed to be proceeds from the sale of controlled substances that is subject to forfeiture. 42 Pa. C.S. § 6801(a)(6)(ii).² Common pleas determined that the Commonwealth established that the money in this case was found in close proximity to the controlled substances, based on the testimony of the two detectives who made the arrests that they observed O’Grady, who was later found to have the money, standing within five feet of another individual, who was later found to be carrying marijuana. To rebut the presumption that the money was the proceeds from the sale of controlled substances, O’Grady made two main arguments. He first submitted evidence of prior employment, but admitted on cross-examination that he had been unemployed for six months prior to his arrest. Second, he argued that, because he

² Section 6801(a)(6)(ii) reads, in part: “Such money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act [Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. §§ 780-1 - 780-144], shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.”

was arrested and eventually charged with kidnapping and related offenses, and not the sale of drugs, the court could not find that the money in question was related to the sale of drugs. Common pleas found that O’Grady had failed to rebut the presumption that the money in question was the proceeds from the sale of controlled substances, and ordered its forfeiture. An appeal to this court followed.

On appeal, O’Grady renews his argument that, because he was arrested for kidnapping, and not the sale of controlled substances, common pleas was somehow precluded from finding that the money was subject to forfeiture. Specifically, O’Grady argues that “[t]here was no probable cause to arrest the appellant on May 3, 2007 for a drug case, thus all testimony was not relevant to the facts of the actual arrest. As the only specific evidence was for Kidnapping, Unlawful Restraint, False Imprisonment, Terroristic threats and Criminal Conspiracy.” Appellant’s Brief at 8. This argument is meritless.

Forfeiture actions are civil proceedings, and thus, the numerous criminal cases cited by O’Grady do not apply. *See In re One 1988 Toyota Corolla (Blue Two-Door Sedan) Pa. License TPV 291*, 675 A.2d 1290 (Pa. Cmwlth. 1996). Section 6801 of the Judicial Code, which governs forfeiture, includes no requirement that the owner of the forfeited property be charged with a drug crime. Section 6801(a)(6)(ii) makes clear that, when seeking the forfeiture of cash, the Commonwealth’s burden is to show that the money was in close proximity to illegal controlled substances. Common pleas found that the money was in close proximity to the marijuana, and O’Grady does not challenge that finding. Once proximity was established, the burden shifted to O’Grady to establish that he owned and lawfully acquired the money. *Commonwealth v. Marshall*, 548 Pa. 495, 698 A.2d 576 (1997). Common pleas found that O’Grady did not meet that

burden, and O'Grady does not challenge that finding. Contrary to O'Grady's assertion, the reason for his arrest and the crimes he was ultimately charged with are simply not relevant to forfeiture proceedings.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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| | : | |
| Appellant | : | |

ORDER

AND NOW, this 9th day of November, 2010, the order of the Court of Common Pleas of York County in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge