

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
\$2,550.00 USC Seized from Ex Rel	:	
Thomas Drew Property Receipt	:	
No: 2728529	:	
	:	
Thomas Drew,	:	No. 506 C.D. 2011
Appellant	:	Submitted: September 2, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 7, 2011

Thomas Drew (Drew) appeals from the January 12, 2011 order of the Court of Common Pleas of Philadelphia County (trial court) ordering that the property listed on property receipt number 2728529 (\$2,550.00), be forfeited and transferred to the custody of the Philadelphia District Attorney's Office for enforcement of what is commonly known as the Controlled Substances Forfeitures Act (Forfeiture Act).¹ Essentially there is one issue before the Court: whether property can be forfeited without requiring the Commonwealth to satisfy its burden of proving that the property was contraband. For reasons that follow, we affirm the trial court.

¹42 Pa.C.S. §§ 6801-6802.

On June 20, 2007, the property at issue was recovered from Drew's residence, via a search warrant, at the time of his arrest on drug related charges. U.S. currency in the amount of \$1,480.00 was also confiscated at that time from his person and placed on property receipt number 2728525. On December 19, 2007, the charges were withdrawn. On January 25, 2008, Drew filed a petition for return of the property on both property receipts. On February 4, 2008, the charges were reinstated. On March 3, 2008, the petition for return of property was deferred until after final disposition of the charges. On November 25, 2009, the charges were dismissed due to delay of trial. On January 8, 2010, Drew filed a pro se motion for return of property for the \$2,550.00 placed on property receipt 2728529. On February 5, 2010, the Commonwealth filed a petition for forfeiture seeking forfeiture of the same property. On January 12, 2011, the trial court denied Drew's motion for return of property, and granted the Commonwealth's motion for forfeiture. On March 10, 2011, Drew appealed pro se to this Court *nunc pro tunc*.²

Drew argues that property cannot be forfeited without requiring the Commonwealth to satisfy its burden of proving that the property was contraband. Specifically, Drew contends the hearing was a "paperwork" trial which included proof that he had taken out a \$6,000.00 loan from the credit union, and since he has proven where the money came from, he is entitled to its return. We disagree.

Initially, we acknowledge that the Forfeiture Act provides that the following are subject to forfeiture:

Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in

² The trial court granted Drew leave to file *nunc pro tunc*, and the Commonwealth does not dispute that ruling. "Our review of a forfeiture appeal is limited to determining whether the trial court's findings of fact are supported by substantial evidence and whether it abused its discretion or committed an error of law." *Commonwealth v. 5444 Spruce St.*, 890 A.2d 35, 38 (Pa. Cmwlth. 2006).

exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act,³ and all proceeds traceable to such an exchange [and] . . . [m]oney, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

42 Pa.C.S. § 6801 (a)(6)(a) and (b) (emphasis added). Further,

[t]o meet its burden, the Commonwealth must establish, by a preponderance of the evidence, that a nexus exists between the money and a violation of the Controlled Substance Act. A preponderance of the evidence is tantamount to a ‘more likely than not’ standard. Moreover, the Commonwealth need not produce evidence directly linking seized property to illegal activity in order to establish the requisite nexus between seized property and unlawful activity. Although illegal drugs are often present at the time of seizure, there is no requirement that such drugs be present; instead, *circumstantial evidence may suffice to establish a party’s involvement in drug activity.* Furthermore, for property to be deemed forfeitable, neither a criminal prosecution nor a conviction is required.

Commonwealth v. \$6,425.00 Seized From Esquilin, 583 Pa. 544, 555-56, 880 A.2d 523, 529-30 (2005) (footnote and citations omitted) (emphasis added).

Drew is correct that the hearing was a stipulated trial containing, among other things, his evidence, and the police report of his arrest. The information contained in the police report establishes that during a narcotics investigation, Drew was arrested with 78 packets of heroin, and \$1,480.00 cash, in his possession. Original Record, Philadelphia Police Department Investigation Report (O.R.). During that same investigation, pursuant to a search and seizure warrant, drug paraphernalia, i.e., a baggie containing blue tinted zip-lock packets, another baggie containing clear zip-lock packets; purple gloves, a plate, and cardboard all with contraband residue; and \$2,550.00 cash were confiscated from Drew’s residence.

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

O.R. Clearly, it is more likely than not that the money in Drew's house was either received from the sale of drugs or going to be used to purchase more drugs to sell. Accordingly, the Commonwealth has met its burden in proving that the \$2,550.00 was subject to forfeiture.

Once the Commonwealth shows a nexus between the property and the crime, the burden shifts to the defendant to prove the source of the money, and that it was not unlawfully used. *Commonwealth v. Funds in Merrill Lynch Account*, 937 A.2d 595 (Pa. Cmwlth. 2007). Drew produced loan papers which showed that he took out a line of credit for overdraft protection in the amount of \$6,000.00. This evidence does not establish that he lawfully acquired the money seized and that it was not unlawfully used or possessed by him.

This Court notes that the Commonwealth raises an issue regarding which petition Drew is actually appealing, his petition for return of property or the Commonwealth's petition for forfeiture. A review of Drew's Notice of Appeal (Notice) reveals that he is attempting to appeal both. The Notice specifically states: "The Relator, [Drew], does hereby submit NOTICE OF APPEAL to [this court] from the final order . . . which denied Relator's Petition for return . . . and FORFEITED \$2,550.00" In addition, Drew mentions both petitions in his brief. While the trial court limited its opinion to Drew's petition for return of property, this Court addressed the issue as framed in Drew's brief: whether the trial court properly granted the forfeiture where the Commonwealth did not meet its burden in proving the property was contraband. This Court holds that the trial court did not err or abuse its discretion in forfeiting the property at issue.

For all of the above reasons, we affirm the order of the trial court.⁴

JOHNNY J. BUTLER, Judge

⁴ “This court may affirm the order of the court below if the result reached by the lower court is correct without regard to the grounds relied upon by that court.” *Pennsylvania Game Comm’n v. State Civil Serv. Comm’n (Toth)*, 561 Pa. 19, 21 n.1, 747 A.2d 887, 888 n.1 (2000).

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ORDER

AND NOW, this 7th day of October, 2011, the January 12, 2011 order of the Court of Common Pleas of Philadelphia County is affirmed.

JOHNNY J. BUTLER, Judge