

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 797 C.D. 2010
	:	Submitted: October 15, 2010
Ronald A. Woods,	:	
Appellant	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: November 22, 2010

Ronald A. Woods appeals, *pro se*, from the November 23, 2009, order of the Court of Common Pleas of York County (trial court) forfeiting \$5,696.00 in U.S. currency to the Commonwealth pursuant to sections 6801-6802 of the Judicial Code, 42 Pa. C.S. §§6801-6802, commonly known as The Controlled Substances Forfeiture Act (Forfeiture Act).¹ We affirm.

On the evening of April 16, 2008, the U.S. Marshal's Office contacted Detective David Bixler of the West Manchester Township Police Department and other members of the York County Drug Task Force, asking for their help in locating Woods. (N.T., 11/23/09, at 5.) Woods was wanted for a homicide in Harrisburg and

¹ The Forfeiture Act requires forfeiture to the Commonwealth of, *inter alia*, money furnished in exchange for drugs or money used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act, Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. §§780-101 to 780-144. 42 Pa. C.S. §6801(a)(6)(i)(A) & (B).

was believed to be at 1745F Yorktown Drive in West Manchester Township. When Detective Bixler and his fellow officers arrived at that address, they knocked on the front door but received no response. Shortly thereafter, they saw a woman exit the back door of the residence and stopped her. (*Id.* at 5-6.) Detective Bixler knew that the woman was Latisha Burton and that she lived at that address. (*Id.* at 6.) When the officers tried to gain further entry, they discovered that the front door was barricaded. (*Id.*)

Upon executing a search warrant for the residence, the officers discovered several items of clothing, including a jacket containing two small baggies of marijuana and a bag of crack cocaine. They also found an AK-47 assault rifle with its serial numbers ground off under a mattress. (*Id.*) Burton told Detective Bixler that the jacket belonged to Woods and that Woods had been living in her apartment. (*Id.* at 8.) Woods was not present in the apartment at that time.

Later, the officers received information that Woods was at the nearby Holiday Inn, which was about one-half to three-quarters of a mile away from Burton's apartment. (*Id.*) Detective Anthony Fetrow of the York Police Department apprehended Woods in a wooded area adjacent to the Holiday Inn. The arresting officers searched Woods and recovered \$5,696.00 in U.S. currency from his person. (*Id.*) Woods was arrested and charged with various possessory offenses.²

² On March 26, 2009, Woods entered a plea of *nolo contendere* to possession of cocaine with intent to deliver and possession of a firearm and was sentenced to ten to twenty years in prison.

On August 30, 2008, the Commonwealth filed a petition for forfeiture of the cash seized from Woods at the time of his arrest. At the forfeiture hearing, Detective Bixler testified on behalf of the Commonwealth, and Woods, who was unrepresented by counsel,³ testified on his own behalf.

Woods testified that, on the night in question, he was waiting in Burton's apartment for someone to pick him up and take him back to Lancaster where he lived. (N.T., 11/23/09, at 15.) Woods testified that he was in Burton's apartment for approximately six hours. (*Id.* at 12, 16.) According to Woods, he neither lived in the apartment nor had any personal belongings there. (*Id.* at 12, 16.) Woods testified that he ran from the apartment when the police arrived because he knew that he was wanted for a crime in Harrisburg. (*Id.* at 16-17.) Woods also testified that his mother and his girlfriend had given him the cash to pay for a lawyer. (*Id.* at 14.) In support of this testimony, Woods attempted to introduce into evidence two affidavits and pay stubs, which he claimed established his lawful right to the money. (*Id.* at 12-13.)

At the conclusion of the hearing, the trial court determined that the Commonwealth proved a nexus between the cash seized and unlawful drug activity. The trial court also refused to consider Woods' extra-judicial evidence to support his claim of lawful ownership of the seized property. (*Id.* at 17-18.) Therefore, the trial court granted the forfeiture petition.⁴

³ Woods' attorney withdrew from the case before the forfeiture hearing.

⁴ Our scope of review in an appeal from a forfeiture proceeding is limited to examining whether the trial court's findings are supported by substantial evidence and whether the trial court **(Footnote continued on next page...)**

On appeal, Woods claims that: (1) the Commonwealth failed to prove a nexus between the cash seized from his person and any unlawful drug activity; and (2) the trial court erred in excluding evidence that allegedly established Woods' lawful right to the seized cash. Neither claim has merit.

In a forfeiture case, the Commonwealth has the initial burden of proving, by a preponderance of the evidence,⁵ a nexus between the property seized and unlawful drug activity. *Commonwealth v. Three Hundred Ten Thousand Twenty Dollars*, 894 A.2d 154, 161 (Pa. Cmwlth. 2006). The Commonwealth need not produce evidence directly linking the seized property to illegal activity and may establish a nexus by circumstantial evidence. *Commonwealth v. Esquilin*, 583 Pa. 544, 555, 880 A.2d 523, 529-30 (2005). Once the Commonwealth satisfies its burden, the burden then shifts to the person claiming the property to prove that he or she owns the property, lawfully acquired it, and did not unlawfully use or possess it. *Id.* at 556, 880 A.2d at 530 (citing 42 Pa. C.S. §6802(j)).

Here, Woods admitted that he was in Burton's apartment on the night in question and that he fled from the apartment when the police arrived. (N.T., 11/23/09, at 12, 16-17.) Upon searching the residence, police found items belonging

(continued...)

abused its discretion or committed an error of law. *Commonwealth v. \$259.00 Cash U.S. Currency*, 860 A.2d 228, 230 n.5 (Pa. Cmwlth. 2004).

⁵ "A preponderance of the evidence is tantamount to a 'more likely than not' standard." *Commonwealth v. Esquilin*, 583 Pa. 544, 555, 880 A.2d 523, 529 (2005).

to Woods that indicated he was living there, which Burton confirmed. (*Id.* at 6, 8.) Police also found crack cocaine and marijuana in Woods' jacket. (*Id.* at 6.) When Woods was apprehended a short time later, he was carrying \$5,696.00 in cash on his person. (*Id.* at 8.) Based on this evidence, the trial court concluded that it was more likely than not that the cash on Woods' person was exchanged or intended to be exchanged for a controlled substance.⁶ We find no error.

Next, Woods claims that the trial court erred in excluding his proffered affidavits and pay stubs from evidence. The trial court read the contents of the documents into the record at the hearing but *sua sponte* ruled that such evidence was inadmissible. (N.T., 11/23/09, at 12-14, 17.) Although the trial court did not specify the grounds for its evidentiary ruling on the record, the evidence was clearly inadmissible on hearsay grounds. *See In re Farnese*, 948 A.2d 215, 219 (Pa. Cmwlth. 2008) (because affidavit is out-of-court statement offered to prove truth of matter asserted, it "is inadmissible hearsay unless it is corroborated by other evidence or falls within an exception to the hearsay rule"). In any event, the trial court specifically disbelieved Woods' testimony that he lawfully acquired the money from his mother and his girlfriend to pay legal fees. (Trial Court Op., 2/3/10, at 5.) As the factfinder, the trial court was solely responsible for evaluating the witnesses'

⁶ We recognize that much of the evidence on which the trial court relied was hearsay, as it was based on Detective Bixler's account of what Burton told him, and Burton herself did not testify. *See* Pa. R.E. 801(c). However, Woods failed to object to this testimony at the hearing and failed to raise the hearsay issue in his statement of errors complained of on appeal. Woods raised the hearsay issue for the first time in his appellate brief. Therefore, we cannot consider it. *See* Pa. R.A.P. 302(a) (stating that issues not raised in lower court are waived for purposes of appeal). Moreover, "where hearsay evidence is admitted without objection, and is relevant and material to the fact in issue, a trial court may give it the value of direct evidence and base findings of fact on it." *Patterson v. Commonwealth*, 587 A.2d 897, 900 (Pa. Cmwlth. 1991).

credibility and weighing their testimony, *Commonwealth v. McJett*, 811 A.2d 104, 111 (Pa. Cmwlt. 2002) (*en banc*), and we will not disturb its credibility determinations.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 22nd day of November, 2010, we hereby affirm the November 23, 2009, order of the Court of Common Pleas of York County.

ROCHELLE S. FRIEDMAN, Senior Judge