

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-003119-MR

MARK WELLS

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
INDICTMENT NO. 98-CR-00078

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: BARBER, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE: On April 8, 1998, Mark Allen Wells was arrested for trafficking in marijuana, possession of a controlled substance (crack cocaine), prescription drug (Valium) not in proper container, possession of a handgun by a convicted felon, and parole violation.¹ Money, weapons, and personal belongings were seized at the time of Wells's arrest. Wells moved for the return of his property, but the Commonwealth later moved to

¹Wells entered pleas of guilty to five charges (including an amended charge of persistent felony offender in the second degree) and received a total of ten years' imprisonment.

forfeit most of it, and the trial court signed an order to that effect on December 21, 1998; the order was entered on January 21, 1999. An order directing the distribution of items forfeited was entered on February 5, 1999; on February 17, 1999, the trial court entered a further order clarifying distribution.

Wells again moved for the return of the cash and two knives on November 17, 1999. The Commonwealth responded that the trial court had already ruled on this matter. The Marshall Circuit Court entered an order denying Wells's motion on December 9, 1999, and Wells appeals.

Wells claims that the trial court erred in two respects in denying the motion to return the property. He first contends that the Commonwealth produced insufficient evidence that the confiscated property had been used or was intended to be used in a drug transaction. We disagree.

Kentucky Revised Statute [KRS] 218A.410(j) permits forfeiture of currency involved in drug transactions. That statute specifically states that "[it] shall be a rebuttable presumption that all moneys, coin, and currency **found in close proximity** to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, **are presumed to be forfeitable** under this paragraph." (Emphases added.) There is no doubt that the Commonwealth met this initial burden of "producing slight evidence of traceability." Osborne v. Commonwealth, Ky., 839 S.W.2d 281, 284 (1992).

"Production of such evidence plus proof of close proximity, the weight of which is enhanced by virtue of the presumption, is sufficient to sustain the forfeiture in the absence of clear and convincing evidence to the contrary." Id. Wells contends that, even had the Commonwealth made its *prima facie* case, he submitted evidence that the source of the currency was legitimate. Therefore, Wells continues, the trial court erred in ordering the money forfeited.

Again we cannot agree with appellant. While he may have offered evidence that he had recently acquired sums of cash from various sources not related to drug activity (such as payment for carpentry work and funds from his grandparents), the trial court did not find this evidence to the contrary to be clear and convincing. We find no error in this regard.

The Commonwealth had moved pursuant to KRS 527.060 for forfeiture of the deadly weapons found in Wells's possession. The fact that the knives had previously belonged to appellant's deceased father did not convince the trial court, nor does it us, that they should not be ordered forfeited. We find no impropriety in the order forfeiting the knives.

The order of the Marshall Circuit Court is affirmed.

ALL CONCUR.

APPELLANT *PRO SE*:

Mark Wells
St. Mary, Kentucky

BRIEF FOR APPELLEE:

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