

RENDERED: AUGUST 21, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001910-MR

SAMUEL RAY PRATHER, II

APPELLANT

APPEAL FROM MASON CIRCUIT COURT
v. HONORABLE LEWIS D. NICHOLLS, SPECIAL JUDGE
ACTION NO. 05-CR-00047

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, CHIEF JUDGE; STUMBO, JUDGE; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Samuel Ray Prather, II,² appeals the order of vehicle forfeiture entered by the Mason Circuit Court on September 6, 2007.

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

² Prather is referred to in the record as either Samuel Ray Prather, II, or Samuel Ray Prather, Jr.

Pursuant to said order, Prather's brown 1975 Camaro was ordered to be sold at public auction and the proceeds to be distributed to the Buffalo Trace Narcotics Task Force and the Commonwealth Attorney's office for the 19th Judicial Circuit. We affirm.

Prather was indicted in a five-count indictment returned by the Mason County grand jury on May 27, 2005. The indictment alleged that on April 11, 2005, Prather was driving on a suspended license (KRS 186.620), was trafficking in a controlled substance, cocaine (KRS 218A.1412), was in possession of drug paraphernalia while in possession of a firearm (KRS 218A.500), was in possession of a handgun by a convicted felon (KRS 527.040), and was a persistent felony offender in the second degree (KRS 532.080). Prather filed a motion to suppress, to exclude the handgun enhancement, and to sever the possession of a handgun charge. The trial court denied his motions to suppress and to exclude the handgun enhancement.

Following the court's rulings in these matters, Prather entered a conditional guilty plea on December 22, 2005. Pursuant to the plea agreement, Prather pled guilty to trafficking in a controlled substance, possession of a handgun by a convicted felon, possession of drug paraphernalia, and driving on a suspended license. The PFO II offense was dismissed. He was sentenced to ten years, five years, one year, and ninety days, respectively, with all time running concurrently for a total sentence of ten years. Final judgment and sentence on plea of guilty was entered on February 27, 2006.

Prather appealed his case to this Court. In a not-to-be-published opinion rendered February 27, 2007 (Appeal No. 2006-CA-000649-MR), another panel of this Court affirmed the judgment of the Mason Circuit Court. Thereafter, on May 30, 2007, Prather filed a motion to release “the 2 door brown Chevrolet Camaro, VIN 1Q87D5N622455, being held by the Buffalo Trace Task Force as evidence in the above styled case [05-CR-00047] unto the defendant’s father, Samuel Ray Prather, Sr.” The motion alleged that Prather’s father had a property interest in the vehicle. The next day (May 31, 2007), the Commonwealth filed a motion captioned Renotice of Commonwealth’s Motion for Forfeiture. In the motion, the Commonwealth stated that a hearing had been scheduled to address the forfeiture of the vehicle in question for November 20, 2006, but was continued “due to the lack of presence of the Defendant.”

On June 6, 2007, the Commonwealth noticed the filing of the affidavit of Kelly Flora. Flora alleged that she had been the owner of the 1975 Camaro and that she sold the vehicle to Samuel Prather II, who was personally known to her, for \$1800, and that the vehicle was transferred through the Fleming County Clerk to Samuel Prather II, whose social security number is ***-**-2573³ and whose date of birth is June 7, 1974, on October 8, 2004. Flora stated that she was now residing in Idaho. After several continuances, the matter was set for a hearing on the motions on August 29, 2007.

³ In order to protect Prather’s privacy, we have not included his complete social security number.

At the hearing, Prather's father testified that the vehicle was registered in his name and that he gave his son \$600 to purchase the vehicle. He claimed he spent approximately \$200 to fix the car up, and paid the taxes and insurance on the vehicle. He stated that he has several vehicles that are registered in his name but with his son's social security number. He stated that he is Samuel Raymond Prather, Sr., but also goes by S.R. Prather, while his son goes by Ray. He stated that the vehicle was his, that he had no knowledge of any illegal activity, and that he wanted the vehicle returned to him. He acknowledged that his son actually gave the money to Flora, that he was not present when it was purchased or transferred at the clerk's office, and that the social security number and the signature were his son's.

Prather also testified at the hearing. He confirmed his father's testimony that the vehicle was his father's, but that he actually purchased the vehicle and that he signed the paperwork and used his social security number. He admitted that he pled guilty to the trafficking charge in the indictment but denied knowledge of any illegal activity.

The next witness to testify was the Fleming County Clerk, Mr. Jarrod Fritz. He presented the court with copies of the transfer of title by owner, dated October 8, 2004, and two registrations for the vehicle. Finally, Tim Fegan, special agent with the Buffalo Trace Narcotics unit, testified. Agent Fegan testified as to the circumstances surrounding Prather's arrest and the entry of the conditional

guilty plea. He also testified that the vehicle had been impounded as evidence and could not be released without a court order.

At the conclusion of the hearing, the circuit court verbally made the following findings: that the vehicle was transferred to S.R. Prather on October 8, 2004; that the defendant signed the paperwork transferring the vehicle; and that the defendant's social security number was used. Based upon these findings, the court ordered the vehicle to be forfeited and sold at public auction pursuant to KRS 500.090. On September 5, 2007, the circuit court entered a written order of vehicle forfeiture. In its order, the court held:

This Court finds that on October 4, 2004, the defendant Samuel Ray Prather, Jr., went to the Fleming County Clerk's office to transfer a brown, 1975 Camero [sic], VIN # 1Q87D5N622455 into his name; That the defendant, Samuel Ray Prather, Jr., gave his name, social security number and signed the transfer of title before the Fleming County Clerk; That the defendant's social security number is [***-**-2573]. That the Certificate of Registration, which expired on March 1, 2005, shows the name of Samuel Ray Prather, Sr., but Samuel Ray Prather, Sr. did not sign the transfer of title; That on April 11, 2005, the defendant utilized the 1975 Camero [sic] as a conveyance for the illegal drug cocaine and the defendant later entered a guilty plea in this case to the charge of Trafficking in a Controlled Substance First Degree.

The Court believes that the Certificate of Title is the only document that can truly show who is the rightful owner of this 1975 Camero [sic] and Samuel Ray Prather, Sr. testified that he had the title for the vehicle but he had left it at home.

This Court further finds that Samuel Ray Prather, Sr. is not the rightful owner of the 1975 Camero [sic]

vehicle. This is based upon the Certificate of Title Transfer documents indicating the social security number of the defendant, Samuel Ray Prather, Jr.

This Court finds that the forfeiture provisions of KRS 218A.410 and 218A.415 have been met and complied with;

IT IS HEREBY ORDERED that the above-named defendant, Samuel Ray Prather, Jr. hereby forfeits, pursuant to KRS 218A, the following property:

1975 Camero [sic], VIN # 1Q87D5N622455

IT IS FURTHER ORDERED that the above-mentioned property be sold at public auction and the proceeds of that sale are to be distributed IAW KRS 218A.435(12) to the Buffalo Gateway Narcotics Task Force and the Commonwealth's Attorney for the 19th Judicial Circuit.

This appeal followed.

On appeal, Prather argues that the circuit court erred in finding that he was the owner of the 1975 Camaro when in fact his father owned the vehicle.

Prather also contends that there was insufficient evidence that the car was used to traffic drugs. The second issue was not raised at the trial court level and thus not properly before this Court. However, even if it had been preserved, it would be easily disposed of since Prather entered a guilty plea to the trafficking in a controlled substance charge that began with the stop of the 1975 Camaro he was driving while his license was suspended. His motion to suppress was denied and his guilty plea to the charged offenses negates any argument to the contrary that

the use of the vehicle was not traceable to the trafficking charge. *See Brewer v. Commonwealth*, 206 S.W.3d 343 (Ky. 2006).

We also believe that the circuit court did not abuse its discretion when it found, based upon the evidence, that Prather was the owner of the vehicle. The trial court is vested with the discretion to determine whether the burdens contained in KRS 218A.410 are met as well as discretion in ordering the forfeiture. *Gray v. Commonwealth*, 233 S.W.3d 715, 717 (Ky. 2007), *citing Brewer v. Commonwealth*, 206 S.W.3d 313, 325. “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted). While there was conflicting testimony and both Prather and his father testified as to who they believed owned the vehicle, there was sufficient proof that Prather actually purchased it, signed the transfer of title, used his social security number on the title, and exercised dominion and control over the Camaro from the date of purchase until his arrest.

The Supreme Court of Kentucky recently addressed the issue of ownership and forfeiture in *Commonwealth v. Coffey*, 247 S.W.3d 908 (Ky. 2008).

It held:

In this way, a transfer of title simply to avoid the potential effects of forfeiture statutes works an inequity and cannot be asserted to avoid the forfeiture. Thus, since the forfeiture portion of the controlled substances chapter contains its own definition, it is not appropriate to look to the licensing chapter to define “owner.” At the same time, under KRS 218A.410(1)(h)(2), if a title

holder can establish that he or she acts as an owner of the property through dominion and control of the vehicle, and that he or she had no knowledge of or did not consent to use of the vehicle for illegal drug activity, then he or she has the innocent owner defense. The facts specific to each claim of ownership will determine who the owner is for purposes of forfeiture, and the statute does require an innocent owner to establish his or her status, not the Commonwealth.

While forfeiture statutes do have certain punitive aspects that often make their application harsh, they also serve important nonpunitive goals. *Smith v. Commonwealth*, 205 S.W.3d 217 (Ky.App. 2006). When it comes to drug trafficking, the preventive aspect is clear. If one stands to lose valuable property, then one should think twice about using it in the commission of a drug crime. If that property has been obtained as the fruits of criminal drug related activities, then those ill-gotten gains should not be left to the benefit of the criminal. Given that the very purpose of Chapter 218A is to curb misuse of controlled substances, defining “owner” as one who has an interest in property when title is being held by another appropriately prevents a drug dealer from titling vehicles or other property in someone else's name in order to use the property in illegal activity and yet escape forfeiture. At the same time, in factual scenarios where there is bona fide ownership in another person, such as when a mother loans her son a car that she exercises general dominion and control over, which he then uses to traffic drugs without her knowledge, the innocent owner defense offers protection.

Under this definition, while Geralean [Coffey's sister] held legal title, the real interest in the property came from Coffey who exercised dominion and control over the vehicle. It must be noted here that Geralean produced no evidence of treating the car as if it were hers, or in any way exercised the rights and obligations of ownership. In fact, the record indicates that she professed no knowledge as to why the vehicle had been titled in her name-until her brother got caught selling drugs in it. The Malibu was thus subject to forfeiture,

which was appropriately ordered by the trial court. The fact that this definition comes from the controlled substances chapter makes this definition appropriate, but necessarily narrow. It is not intended to apply outside the chapter or when innocent ownership can be established.

Id. at 911-12.

The circuit court did not abuse its discretion in finding that Prather was the true owner of the vehicle and that the 1975 Chevrolet Camaro was subject to forfeiture based upon his criminal actions. Therefore, the order of vehicle forfeiture entered by the Mason Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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