

RENDERED: OCTOBER 29, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-001075-MR  
AND  
NO. 2009-CA-001076-MR

DARRELL RAY KEELING

APPELLANT

v. APPEALS FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NOS. 08-CR-00267 AND 08-CR-00365

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; LAMBERT, JUDGE; HENRY,<sup>1</sup> SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Darrell Ray Keeling brings Appeal No. 2009-CA-001075-MR and Appeal No. 2009-CA-001076-MR from a May 26, 2009, order of

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<sup>1</sup> Senior Judge Michael L. Henry 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.

the McCracken Circuit Court ordering forfeiture of personal property seized at the time of Keeling's arrest. We affirm.

Keeling was served with an arrest warrant in a hotel room in McCracken County. The warrant stemmed from several credit card and check theft related offenses that occurred in Hardin County, Kentucky.<sup>2</sup> Incident to the arrest, Keeling was found to be in possession of marijuana and cocaine. Police officers also found several recently purchased items in the hotel room including a lawn mower, a compressor, an electric torch, and several other tools. Keeling admitted to an officer that the tools and equipment were purchased with checks and credit cards stolen from Hardin County. The tools and equipment were seized at the time of Keeling's arrest.

Eventually, Keeling was indicted by a McCracken County Grand Jury upon possession of a controlled substance in the first degree, tampering with physical evidence, possession of marijuana, possession of drug paraphernalia, four counts of theft by deception over \$300, and with being a persistent felony offender in the first degree. The McCracken County Grand Jury also returned a second indictment charging Keeling with six counts of theft by deception over \$300 and one count of being a persistent felony offender (PFO) in the first degree. Pursuant to a plea agreement, Keeling pleaded guilty to all counts contained in both indictments except PFO in the first degree; this charge was amended to PFO in the second degree. Prior to sentencing, Keeling filed a motion for return of property

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<sup>2</sup> Darrell Ray Keeling was indicted by a Hardin County Grand Jury upon numerous felony counts involving theft of credit cards and checks.

seized. The court ultimately sentenced Keeling to a total of ten years' imprisonment. Thereafter, Keeling renewed his motion for return of the property. Following a hearing on the motion, the circuit court denied Keeling's motion for return of the property and entered an order forfeiting the seized personal property (forfeiture order). These appeals follow.

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**AND APPEAL NO. 2009-CA-001076-MR**

Keeling contends the circuit court "lacked jurisdiction" to order forfeiture of his personal property. As the forfeited property was purchased with credit cards stolen from Hardin County, Keeling maintains that the forfeited property has no connection to any crimes committed in McCracken County. Keeling believes that only Hardin County has jurisdiction to order "forfeiture of the property" and that the McCracken Circuit Court lacked such jurisdiction. We disagree.

In the case at hand, the facts are undisputed that the McCracken Circuit Court properly exercised *in personam* jurisdiction over Keeling. In a forfeiture action arising from a criminal prosecution, it is only required that the court have *in personam* jurisdiction over defendant. 37 C.J.S. *Jurisdiction and Venue* § 53 (2008). As the McCracken Circuit Court possessed *in personam* jurisdiction over Keeling, we hold that the McCracken Circuit Court, likewise,

possessed jurisdiction to order forfeiture of Keeling's personal property under KRS 514.130. Thus, we view Keeling's argument regarding jurisdiction.

Keeling alternatively argues that forfeiture was improper due to lack of evidence that the property was obtained in violation of KRS Chapter 514. In particular, Keeling argues:

Again, all parties and the trial court agreed that the property at issue was subject to Appellant's Hardin Circuit Court case. If the property at issue had been subject to the McCracken Circuit Court charges, the McCracken Commonwealth Attorney would have been able to offer proof as to which of each item of property was obtained in violation of KRS [C]hapter 514, if any of it was so obtained. This did not occur.

If any of the property at issue was obtained in violation of KRS [C]hapter 514 according to the Hardin Circuit Court case, no such proof was introduced. No evidence from the Hardin County case was ever introduced showing what items, if any, were bought by the fraudulent use of credit cards and if such items matched the property at issue. Moreover, even if the items were bought by the fraudulent use of credit cards such an offense is a violation of KRS Chapter 434 and property so obtained is not subject to forfeiture under KRS 514.130(1). There was simply no evidence that upon a conviction of an offense under KRS [C]hapter 514 the property at issue was obtained in violation of KRS [C]hapter 514.

The forfeiture statute at issue is KRS 514.130.<sup>3</sup> Under KRS 514.130(1), personal property is subject to forfeiture if defendant is convicted of an offense under KRS Chapter 514 and the property was utilized in connection with an offense under KRS Chapter 514.

In this case, a police officer testified that Keeling admitted that the property seized from his hotel room had been purchased with stolen credit cards and/or checks. In fact, several partially destroyed credit cards were found in Keeling's hotel room, and the credit cards did not belong to Keeling. Additionally, Keeling was convicted of numerous theft offenses under KRS Chapter 514 in both McCracken County and Hardin County. As such, we conclude that Keeling's personal property was subject to seizure under KRS 514.130 and the circuit court did not err by ordering forfeiture of same.

For the foregoing reasons, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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<sup>3</sup> The relevant portions of KRS 514.130 reads:

(1) Upon the conviction of any person for the violation of any offense in this chapter all property held in violation of this chapter, and any personal property, including but not limited to vehicles or aircraft, used in the commission or furtherance of an offense under this chapter or in the transportation of stolen property shall be forfeited as provided in [KRS 500.090](#) by court order and sold, destroyed or otherwise disposed of in accordance with [KRS 500.090](#).

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