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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001269-MR

TOMMY DALE MARTIN

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NOS. 16-CR-00054 AND 16-CR-00055

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

** ** * ** * **

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND LAMBERT, JUDGES.
LAMBERT, JUDGE. Tommy Dale Martin appeals from the May 11, 2017, order by the Clark Circuit Court granting the Commonwealth's motion, pursuant to Kentucky Revised Statutes (KRS) 218A.410(1)(j) and 218A.415, to forfeit Martin's property, namely, his truck, an enclosed utility trailer, and the tools contained within the trailer, as a result of his convictions for theft, drug-related

offenses, and possession of a handgun. We affirm in part, reverse in part, and remand for further proceedings on the issue of traceability of Martin's tools.

On April 4, 2017, Martin entered pleas of guilty to various drug-related offenses, as well as theft by unlawful taking and possession of a handgun by a convicted felon, in two separate indictments. He was sentenced to a total of four years' imprisonment. Subsequently, the Commonwealth moved for forfeiture of property seized from Martin in relation to his arrest. Martin requested a hearing, which was held on May 11, 2017. On that same date, the circuit court entered its forfeiture order (tendered by the Commonwealth at the hearing's conclusion), listing Martin's seized property as: "the 1997 Chrysler Dakota pickup truck, VIN 1B7FL26X5VS252131, purple in color, which Defendant [Martin] used to traffic[] controlled substances, and a 5x8 enclosed utility trailer, containing miscellaneous tools, white in color, in which the Defendant was in possession of at the time of his arrest."

We initially ordered Martin's appeal dismissed because he allegedly had absconded from parole supervision and had thus forfeited his constitutional right to appeal. *See Lemaster v. Commonwealth*, 399 S.W.3d 34 (Ky. App. 2013). Upon Martin's motion to reconsider, the panel granted the motion and ordered the opinion and order entered November 30, 2018, withdrawn. We now consider Martin's appeal on its merits.

We begin by citing the applicable law and standard of review. KRS

218A.410(1)(j) allows for the following to be subject to forfeiture:

Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, **traceable to the exchange**, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him or her to have been committed or omitted without his or her knowledge or consent. 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. **The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph[.]**

(Emphasis ours.) “[T]he Commonwealth bears the initial burden of producing some evidence, however slight, to link the [property] it seeks to forfeit to the alleged violations of KRS 218A. The burden only shifts to the opponent of the forfeiture if the Commonwealth meets its initial tracing burden.” *Brewer v. Commonwealth*, 206 S.W.3d 343, 348 (Ky. 2006). “If the Commonwealth establishes its *prima facie* case, the burden is then on the defendant to rebut this presumption **by clear and convincing evidence.**” *Smith v. Commonwealth*, 339

S.W.3d 485, 487 (Ky. App. 2010) (emphasis added) (citing *Osborne v. Commonwealth*, 839 S.W.2d 281, 284 (Ky. 1992)). And, “on appeal, regardless of the class of property at issue, the trial court's factual findings are reviewed for clear error, while its rulings of law are reviewed *de novo*.” *Gritton v. Commonwealth*, 477 S.W.3d 603, 606 (Ky. App. 2015) (citing *Commonwealth v. Coffey*, 247 S.W.3d 908, 910 (Ky. 2008)). “We review the trial court’s decision using the abuse of discretion standard.” *Hill v. Commonwealth*, 308 S.W.3d 227, 230 (Ky. App. 2010) (citing *Johnson v. Commonwealth*, 277 S.W.3d 635, 641 (Ky. App. 2009)).

Here, we have no written factual findings. The court made oral findings at the conclusion of the hearing, namely: that it was clear that Martin made use of his truck to arrive at the locations of the drug transactions, some of which took place inside the truck; that, according to Martin’s own testimony, the trailer was purchased with the proceeds of drug transactions; and that at least some of the tools found within the trailer were “ill-gotten gains of drug trafficking.” These findings are supported by the testimony given at the forfeiture hearing, both by the Commonwealth’s detective and at least partially by Martin himself.

The only evidence Martin presented that his pickup truck as well as the tools contained within the trailer were not involved in the drug transactions was his self-serving testimony that some of the tools were inherited from his late father

and brother and others were purchased with money he made from construction work. *See Hill*, 308 S.W.3d at 230. However, because the record contains insufficient findings regarding traceability of the many tools in question, we are compelled to reverse and remand this matter:

In its order, the trial court failed to make findings with respect to traceability and failed to determine whether appellant's evidence as to the source of the [property] was credible. As such, it is necessary to remand this cause to the Circuit Court for the taking of additional evidence and additional findings of fact. On conclusion of the foregoing, the court should apply the law as set forth herein and render its judgment with respect to forfeiture.

Osborne v. Commonwealth, 839 S.W.2d 281, 284 (Ky. 1992). Here, the circuit court made sufficient findings regarding traceability of Martin's truck, and we affirm its decision to that extent. But further findings are necessary to determine whether some or all of the tools were traceable to drug trafficking activities. *Id.* Furthermore, because a court speaks only through its written orders entered upon the official records (*see Midland Guardian Acceptance Corp. of Cincinnati, Ohio v. Britt*, 439 S.W.2d 313 (Ky. 1968); and *Commonwealth v. Wilson*, 280 Ky. 61, 132 S.W.2d 522 (1939)), the best practice is for the circuit court to render written findings pertaining to this issue upon remand. *Boone v. Boone*, 463 S.W.3d 767, 769 (Ky. App. 2015).

The order of the Clark Circuit Court is reversed, and this matter is remanded for proceedings consistent with this opinion.

ALL CONCUR.

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