

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, :
Appellant :
 :
v. : No. 1011 C.D. 2008
 : Submitted: October 10, 2008
1999 Ford Truck, PA Reg. YSX3527, :
VIN# 1FTRX18L9XNB41962 :
 :
Re: Jeffrey Hoachlander :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN

FILED: November 25, 2008

The Commonwealth of Pennsylvania (Commonwealth) appeals from the April 11, 2008, order of the Court of Common Pleas of York County (trial court), which denied the Commonwealth's petition for forfeiture of a 1999 Ford Truck (Vehicle) registered to Jeffrey Hoachlander. We affirm.

On March 23, 2007, Officer Christopher Ford of the Springettsbury Township Police Department was on patrol duty when, at approximately 3:00 a.m., he stopped the Vehicle. Hoachlander was operating the Vehicle, and he had an adult male front-seat passenger. After ascertaining their identities, Officer Ford discovered that there was an outstanding warrant for the passenger. The officer searched the passenger and found a small amount of marijuana. Officer Ford then asked permission to search the Vehicle, and Hoachlander consented.

When Hoachlander stepped from the Vehicle, Officer Ford noticed a cigarette package in Hoachlander's shirt pocket and asked permission to search it. Hoachlander produced it for inspection. Officer Ford found two small chunks of crack cocaine weighing .03 grams. Hoachlander volunteered that he had smoked crack cocaine at an earlier time but believed that he had smoked all of it. Officer Ford also found on Hoachlander a device to smoke crack cocaine. The officer asked about the men's travels that night, and Hoachlander answered that they had provided transportation to a friend from the York area.

Subsequently, the Commonwealth filed a petition for forfeiture of the Vehicle with the trial court. After a hearing on the matter, the trial court stated that, although vehicles used to transport drugs are subject to forfeiture, there is a statutory exception for small amounts of marijuana. In support of this statement, the trial court cited section 6801(a)(4)(iv) of the Judicial Code, 42 Pa. C.S. §6801(a)(4)(iv), which states that no conveyance shall be forfeited for possession of a small amount of marijuana only for personal use. *See* section 13(a)(31) of The Controlled Substance, Drug, Device and Cosmetic Act (Drug Act), Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. §780-113(a)(31) (prohibiting possession of a small amount of marijuana only for personal use).

With respect to the device that Officer Ford found for smoking crack cocaine, the trial court relied on *Commonwealth v. One (1) 1993 Pontiac Trans Am*, 809 A.2d 444 (Pa. Cmwlth. 2002), in which this court held that the presence of drug paraphernalia in a motor vehicle that has not been proven to be anything

more than ancillary to a small amount of marijuana also discovered in the vehicle is not sufficient to sustain a forfeiture of the vehicle.

Finally, with respect to the crack cocaine, the trial court concluded that the Commonwealth failed to establish a proper nexus between the .03 grams of crack cocaine and the Vehicle. The trial court also concluded that the presence of an insignificant or *de minimis* amount of cocaine for personal use does not support forfeiture of the Vehicle. Therefore, the trial court denied the Commonwealth's petition. The Commonwealth now appeals to this court.¹

The Commonwealth argues that the trial court erred in concluding that the Commonwealth failed to establish a nexus between the .03 grams of crack cocaine and the Vehicle. The Commonwealth contends that it established a nexus simply by showing that Hoachlander possessed the crack cocaine while driving the Vehicle. Although the Commonwealth did establish such a nexus, that sort of nexus is not sufficient to justify forfeiture of the Vehicle.

Conveyances used to transport drug paraphernalia and controlled substances are subject to forfeiture. Section 6801(a)(4) of the Judicial Code, 42 Pa. C.S. §6801(a)(4). However, where the Commonwealth fails to establish a significant relationship between the property sought to be forfeited and the offense,

¹ This court's scope of review is limited to determining whether the trial court's findings of fact are supported by substantial evidence and whether the trial court has committed an error of law or abused its discretion. *One (1) 1993 Pontiac Trans Am.*

the forfeiture is unconstitutional.² *In re King Properties*, 535 Pa. 321, 635 A.2d 128 (1993), *overruled in part by Commonwealth v. 5444 Spruce Street*, 574 Pa. 423, 832 A.2d 396 (2003).

As to what constitutes a significant relationship between the property sought to be forfeited and the offense, our supreme court has stated:

Where the evidence is that the criminal incident on which the forfeiture is based is not part of a **pattern of similar incidents**, there is no “significant” relationship between the property sought to be forfeited and the offense. Otherwise, significant property interests might become forfeit based on an unusual and unaccustomed incident.

Further, the burden of establishing a relevant pattern of criminal conduct should fall on the Commonwealth. If the owners were required to establish that the offending conduct is not a pattern, they would be forced to prove a negative. Therefore, it shall be the Commonwealth’s burden to establish by clear and convincing evidence that the criminal conduct in question is **not a onetime occurrence**, and the Commonwealth may meet this burden by utilizing circumstantial evidence.

King Properties, 535 Pa. at 331, 635 A.2d at 133 (emphasis added). Thus, in a proceeding for forfeiture of a vehicle based on the transporting of illegal drugs, the Commonwealth must establish by clear and convincing evidence that the vehicle

² In ascertaining the intention of the General Assembly in the enactment of a statute, we presume that the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth. Section 1922(3) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1922(3).

was used to transport illegal drugs on more than one occasion as part of a pattern of criminal conduct.

Here, the Commonwealth failed to establish by clear and convincing evidence that Hoachlander's transporting of crack cocaine in the Vehicle was part of a pattern of criminal conduct, rather than a onetime occurrence. Thus, the Commonwealth failed to establish a significant relationship between the Vehicle and the offense of transporting illegal drugs.³

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Judge

³ Because of our disposition of this issue, we need not address the other issue that the Commonwealth has raised in its brief.

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ORDER

AND NOW, this 25th day of November, 2008, the order of the Court of Common Pleas of York County, dated April 11, 2008, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Judge