

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :  
 :  
 v. : No. 1485 C.D. 2010  
 : Submitted: July 22, 2011  
 Leroy Pruitt, :  
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
 HONORABLE P. KEVIN BROBSON, Judge  
 HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE PELLEGRINI

FILED: August 22, 2011

Leroy Pruitt (Pruitt) appeals from an order of the Court of Common Pleas for the County of Philadelphia, Criminal Trial Division (trial court) forfeiting the property at 1431 W. Somerset Street in the City and County of Philadelphia, pursuant to the Controlled Substances Forfeiture Act, 42 Pa. C.S. §§6801-6802. For the reasons that follow, we affirm the trial court's order.

Pruitt is the owner of the residential property at 1431 W. Somerset Street (the Property). On July 11, 2009, the Commonwealth of Pennsylvania (Commonwealth) filed a petition for forfeiture arising out of Pruitt's arrest on October 9, 2008, for possession with intent to deliver a controlled substance, knowing and intentional possession of a controlled substance, and possession of drug paraphernalia and criminal conspiracy. A preliminary hearing was held on

December 9, 2008, at which time Pruitt was held for court on all charges except criminal conspiracy. Pruitt was tried on the remaining charges on February 8, 2010, and found guilty only of possession of drug paraphernalia.<sup>1</sup>

A hearing on the forfeiture petition was held on June 15, 2010. At that hearing, police officer Regino Hernandez (Officer Hernandez) testified that he was involved in the investigation at the Property and he conducted surveillance of the property between October 5 and 8, 2008. During that time, he provided a confidential informant (CI) with \$20 of pre-recorded buy money. He observed the CI knock on the door of the Property which was answered by Pruitt. After a short conversation, the CI was let inside the Property. He came back outside about two minutes later and handed the police four green-tinted packets. Officer Hernandez stated that he conducted a NIK test G on the substance which was positive for crack cocaine.

Officer Hernandez stated that on October 9, 2008, police executed a search warrant at the Property and arrested Pruitt in the hallway of his home.<sup>2</sup> They confiscated \$2,013 from his person, including \$20 of the pre-recorded buy money. Inside the Property, they confiscated proof of residence for Pruitt in the living room; in the kitchen, they confiscated one portable scale, one clear plastic baggy of a white powder substance; and one bag of new and unused packets. They

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<sup>1</sup> Pruitt was given one-year probation for his possession charge.

<sup>2</sup> Officer Hernandez stated that a seizure warrant was served the day following Pruitt's arrest.

also confiscated a small blue shaving bag containing a minty-green type substance; stoppers; jars; small jars with caps; medicine droppers and new and unused powder. The powder was clear and green. He also had assorted packets in other colors.<sup>3</sup> Officer Hernandez admitted that no drugs were seized from Pruitt during the arrest.

Police officer Brian Reynolds (Officer Reynolds) also testified that during that same time period in October 2008, he directed a CI to make a controlled buy at the Property using \$600 of pre-recorded buy money. Officer Reynolds observed the CI knock on the door of the Property, Pruitt answered the door, and Pruitt spoke with the CI who then returned to the police. About 20 minutes later, the police observed a 2005 Chrysler Pacifica arrive at the Property driven by a person later identified as Alan Watson. Pruitt exited the Property and spoke briefly with Watson who handed Pruitt a black bag. After Watson drove off, Pruitt remained outside. The CI went back and spoke with Pruitt. The CI handed Pruitt the \$600 and Pruitt reached into the black bag and removed a clear bag containing a white object and handed it to the CI. Pruitt then went back into the Property with the black bag. The CI returned to the police and handed over the clear plastic bag containing approximately 23 grams of powder. Officer Reynolds stated that a chemical analysis was performed for the powder but was never

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<sup>3</sup> Officer Hernandez stated that Pruitt's son, Damien, was also arrested in the second floor front bedroom where police confiscated two small scales and a clear plastic bag of marijuana. Damien was charged with the same charges as his father but all charges against Damien were dismissed.

produced by the Commonwealth and Pruitt was not arrested for that sale. Officer Reynolds also related two other sales of “small items” from two other individuals.

Pruitt testified that he was the owner of the Property but that he never sold drugs at the Property and was unaware of any drugs being inside of the Property. He stated that two of his son’s friends were living in the Property during the time period testified to by the police. He also stated that he was working as a roofer at the time in question making \$16.50 per hour but that he was currently disabled. As for the money that was found in his pocket upon arrest, he stated that \$2,000 of the money was given to him by his cousin and his son who gave him cash to pay real estate taxes on a house that he had inherited from his mother.<sup>4</sup>

Crediting the testimony of the police officers, the trial court determined that the Commonwealth established a nexus between the unlawful activity and the Property subject to forfeiture. The trial court then determined that Pruitt failed to prove an “innocent owner defense” pursuant to 42 Pa. C.S. §6802(j) because, among other things, he was arrested with \$2,013, \$20 of which was the pre-recorded buy money used in the narcotics transaction on October 8, 2008, on his person.

The trial court then determined that forfeiture of the Property was not excessive because:

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<sup>4</sup> Pruitt stated that his son had gotten into Temple University and received grants so his son gave him \$500. His cousin gave him \$1,500. His mom had passed away and he had inherited her house.

The parties stipulated that the maximum fine for the conduct at the Property is \$400,000, and the stipulated value of the Property itself is \$20,000. N.T. 6/15/10, p. 46. Even if the Property's value exceeds the statutory sanctions for the conduct, a court must also carefully consider the remaining factors noted by the Pennsylvania Supreme Court in *5444 Spruce Street*, including whether the conduct was isolated or part of a pattern, as well as the harm caused to the community. This case clearly presented a pattern of wrongdoing, as multiple narcotics transactions were observed. Further, it is essentially self-evident that illegal narcotics sales harm the surrounding community. *Commonwealth v. 542 Ontario St.*, 989 A.2d 411, 419 (Pa. Commw. Ct. 2010.)

(Trial Court's February 22, 2011 opinion at 7.) The trial court issued an order granting the Commonwealth's forfeiture petition, and Pruitt filed this appeal. Subsequently, the trial court issued an order staying its order pending the determination of our appeal.<sup>5</sup>

Pruitt contends that the trial court erred in granting the Commonwealth's forfeiture petition because the evidence presented by the Commonwealth failed to establish by a preponderance of the evidence that the Property was used by him for an unlawful purpose or that he knew that the Property was being used by another for an unlawful purpose other than possession of drug paraphernalia. Specifically, Pruitt argues that there was no evidence that he sold any drugs, that he had actual knowledge of any drug sales and that he

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<sup>5</sup> Our scope of review of the trial court's order is limited to determining whether the findings of fact made by the trial court are supported by substantial evidence and whether the trial court abused its discretion or committed an error of law. *Commonwealth v. \$6,425.00 Seized from Esquillin*, 583 Pa. 544, 880 A.2d 523 (2005).

consented to any drug sales at the Property. He testified that he never sold drugs at the Property and was unaware of any drugs being in the Property. At most, the Commonwealth established that two drug sales involving crack cocaine occurred at the Property. No crack cocaine was recovered from the Property. Pruitt also argues that in the criminal prosecution, he was only found guilty of possession of drug paraphernalia.

In forfeiture proceedings under the Forfeiture Act, the Commonwealth's burden is to establish by a preponderance of the evidence a nexus between the subject property and illegal activity. *Esquilin*. When the Commonwealth sustains its burden of proof, the burden shifts to the claimant to disprove the Commonwealth's evidence to establish a statutory defense to avoid forfeiture. 42 Pa. C.S. §6802(j).<sup>6</sup> Because Pruitt was asserting the “innocent

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<sup>6</sup> 42 Pa. C.S. §6802 provides:

**(j) Owner's burden of proof.** – At the time of the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under 6801(a), the burden shall be upon the claimant to show:

(1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.

(2) That the claimant lawfully acquired the property.

(3) That it was not unlawfully used or possessed by him. In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

owner” defense, he bore the burden of proving that he either did not know about or did not consent to the illegal drug activity on the Property and that his lack of knowledge or consent was reasonable under the circumstances. 42 Pa. C.S. §6802(j)(3).

In this case, the trial court accepted the police officers’ testimony that Pruitt conducted two drug sales with the CI, accepted money from the various other individuals who came to his door over the three-day period of the surveillance in return for what appeared to be drugs,<sup>7</sup> and that he had pre-recorded buy money on him when he was arrested. Also, the trial court did not find Pruitt’s testimony credible that he did not sell drugs or have any involvement in selling drugs from his house, and that the \$2,000 in his pocket when arrested came from a cousin and his son who gave him the money to pay real estate taxes. Because Pruitt had the pre-recorded buy money in his pocket upon his arrest and there was sufficient evidence that he was in and at the Property when the CI was making the drug buys, as well as when other individuals were coming to his home to make drug buys, the trial court properly found that Pruitt could not successfully argue the “innocent owner” defense.

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<sup>7</sup> Although evidence was not submitted by the Commonwealth that drugs were actually purchased by these other individuals, the trial court was entitled to draw reasonable inferences from the testimony presented by the police officers that their conduct was similar to that of the CIs. The police officers testified that these individuals stopped briefly at Pruitt’s house; Pruitt answered the door; accepted money; and handed back something to them in return. From these actions, the trial court could reasonably infer that these transactions, like those Pruitt conducted with the CI, were drug sales. *See Nine Thousand Three Hundred Ten Dollars U.S.C. v. Bennett*, 638 A.2d 480 (Pa. Cmwlth. 1994).

Pruitt also contends that the forfeiture was unconstitutional, an excessive fine and grossly disproportionate to the gravity of the offense. Pruitt argues that because he was only convicted of possession of drug paraphernalia, which carries a maximum fine of \$2,500, forfeiture of the Property is excessive and unconstitutional. Finally, he argues that the forfeiture is grossly disproportional because he was never convicted of the offense giving rise to the forfeiture. Pruitt further argues that the forfeiture of his home was excessive because the trial court did not take into consideration mitigating factors that illegal drug activity was isolated, based on two separate sales, and was not part of a pattern of misbehavior as there were only two drug sales of small amounts at the Property.

Initially, we note that forfeiture is a civil sanction rather than a criminal penalty. “Property is forfeited not as the result of a criminal conviction, but through a separate proceeding, civil in form but quasi-criminal in nature, in which the agency seeking the property must show, by a preponderance of the evidence, a nexus between the property sought and the possessor’s illegal activity.” *Commonwealth v. 542 Ontario St.*, 989 A.2d 411, 417 (Pa. Cmwlth. 2010). In *542 Ontario St.*, we found that it was no moment that an actor was acquitted of all the criminal charges, noting that, “Of primary importance here, ‘[i]t is not necessary, therefore, that a forfeiture be supported by an underlying criminal convict.’” *Id.* Consequently, it is not necessary that a forfeiture be supported by an underlying criminal conviction under the Drug Forfeiture Act or the Excessive Fines Clause of the Pennsylvania Constitution.



Our Supreme Court in *Commonwealth v. 5444 Spruce Street*, 574 Pa. 423, 832 A.2d 396 (2003), provided some guidance as to how to determine whether a fine is excessive, stating that a court should “compare the amount of the forfeiture to the gravity of the defendant’s offense; the penalty imposed as compared to the maximum penalty available; whether the violation was isolated or part of a pattern of misbehavior, and the harm resulting from the crime charged.” 574 Pa. at 432, 832 A.2d at 402. Contrary to Pruitt’s allegations, the trial court did take into consideration those factors in determining whether the forfeiture of his home was excessive, finding that the house was the situs of that illegal conduct and that there was a pattern of multiple illegal drug transactions. As the trial court stated, “it is essentially self-evident that illegal narcotics sales harm the surrounding community. *Commonwealth v. 542 Ontario St.*, 989 A.2d 411, 419 (Pa. Commw. Ct. 2010).” (Trial Court’s February 22, 2011 decision at 7.)

As to whether the fine of forfeiting the house was excessive because the house was worth \$20,000 when he was only convicted of possession of drug paraphernalia with a maximum fine of \$2,500, this Court, in *Commonwealth v. 5444 Spruce Street*, 890 A.2d 35 (Pa. Cmwlth 2006), set forth the standard by which a fine is considered excessive in a forfeiture case:

As part of the excessive fines analysis, where the constitution prohibits “grossly disproportional” fines, a court is concerned with the statutory limits of punishment, which may not be exceeded. To consider only the penalties imposed would limit the forfeiture more to an unreasonableness standard than to a grossly disproportional standard. A penalty is not grossly disproportional if it does not exceed the reprehensibility

of the defendant's conduct of the statutory sanctions for that conduct.

890 A.2d at 40. (Citations omitted.) However, in determining the statutory limits of punishment against which we measure the excessiveness of fines, we do not use the amount of the fine that could be levied based on the criminal verdict. In other words, if the measure of excessiveness of the forfeiture in this case was only the \$2,500 maximum fine for possession of drug paraphernalia, the only crime of which Pruitt was convicted, the forfeiture of a \$20,000 house would violate the constitutional provision against excessive fines. In *542 Ontario St.*, we held that even though a person was found not guilty of the charges in a criminal case, the statutory sanctions used to determine the excessiveness of fines are all crimes that can be made out in a civil forfeiture proceeding.

In this case, the parties stipulated that the maximum fine for Pruitt's criminal conduct at the Property, though not made out in the criminal case, was \$400,000, and they stipulated that the value of his Property was \$20,000. Because the penalty in this case – the forfeiture of Pruitt's Property – was way under the statutory amount of the fine that could have been imposed based on the criminal charges, even though those charges were not made out in the criminal case, the forfeiture is not disproportional and was not unconstitutional.

Accordingly, the order of the trial court is affirmed.

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DAN PELLEGRINI, JUDGE

