

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 2022 C.D. 2007
	:	Submitted: April 7, 2008
Rasheem J. Sanders,	:	
Appellant	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: May 19, 2008**

Rasheem J. Sanders appeals the order of the Luzerne County Court of Common Pleas (trial court) denying his motion for the return of \$46,044.00 U.S. cash. Sanders argues the trial court erred in not granting his motion because the Commonwealth failed to prove the requisite nexus between the seized currency and a violation of the Controlled Substance, Drug, Device and Cosmetic Act (Controlled Substance Act), 35 P.S. § 780-113(a)(30).<sup>1</sup> For the following reasons, we affirm.

Police arrested Sanders in February of 2006 following a drug investigation during which police arranged purchases of drugs from him. He later pled guilty to three counts of violating the Controlled Substance Act related to the

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<sup>1</sup> Act of April 14, 1972, P.L. 233, *as amended*.

delivery of cocaine and heroin. At the time of his arrest, police found a safe deposit box key in his possession. This key was traced to a box at a PNC Bank (PNC). Police obtained a search warrant and conducted a search of the box. They found several photo identifications for Sanders, a checkbook register and \$46,044.00 in United States currency. The currency was bundled in increments of \$1,000.00. Police seized the items found in the box.

Sanders filed a motion for the return of his property on May 3, 2006. A hearing was held before the trial court, at which the Commonwealth presented the testimony of several witnesses. Trooper Chris Maguire of the Pennsylvania State Police testified that the manner of packaging the currency found in the box was consistent with the packing of currency he had seen in other drug investigations. On cross-examination, Trooper Maguire testified that, while banks often bundle their currency in \$1,000.00 increments, they use bands instead of the rubber bands that were used here and found in other criminal drug investigations.

Trooper Kevin Seidel of the Pennsylvania State Police Bureau of Criminal Investigations Asset Forfeiture and Drug Law Enforcement testified that he arranged for the Pennsylvania National Guard to perform an ion scan on the seized currency. He also initiated a check on Sanders with the Pennsylvania Department of Labor and Industry. The check revealed that Sanders' wages in 2005 consisted of \$558.00 in the first quarter, \$1,877.00 in the second quarter, and nothing in the remaining two quarters.

Technical Sergeant Brian Witmere of the Pennsylvania National Guard Drug Program testified as an expert on ion scan technology. Witmere testified that he performed an ion scan on the currency, which revealed that it

contained twice the amount of cocaine residue of currency found circulating in Pennsylvania.

Finally, Lori Charnogursky of PNC testified that Sanders accessed the safe deposit box eight times between July of 2005 and February of 2006. On cross-examination, she admitted that because customers have privacy while accessing their safe deposit boxes, she had no personal knowledge of what Sanders put in or took out of the box.

Sanders offered the testimony of his aunt, Cotty Selby. Selby testified that Sanders' mother died from complications during his birth. She testified that a lawsuit resulted in a settlement, with \$250,000 going into a trust fund for Sanders. Selby had several unauthenticated documents purporting to establish this, but the trial court did not admit them.

Sanders also testified. He stated that he received a large settlement because of his mother's death and that he kept the money remaining from that settlement in the PNC safe deposit box.

The trial court denied Sanders' motion for return of property. The trial court concluded that the Commonwealth established a nexus between the seized property and criminal drug activity. The trial court further found that Sanders failed to produce any credible or authenticated evidence to support his contention that the currency was the remainder of a settlement.

Sanders argues that the trial court erred in not granting the motion for return of property because the Commonwealth failed to meet its burden of proof. Motions to secure the return of property seized by police are filed pursuant to Pa.

R. Crim. P. 588.<sup>2</sup> Under this rule, the moving party must first establish by a preponderance of the evidence entitlement to lawful possession. The burden then shifts to the Commonwealth to prove the property is contraband. *Commonwealth v. Johnson*, 931 A.2d 781 (Pa. Cmwlth. 2007). In order to meet this burden, the Commonwealth must establish a specific nexus between the property and the criminal activity. *Ex rel. Singleton v. Johnson*, 929 A.2d 1224 (Pa. Cmwlth. 2007). If the Commonwealth meets this burden, the burden shifts back to the moving party to disprove the Commonwealth's evidence or establish statutory defenses. *Id.*

Sanders must first establish that he is entitled to lawful possession. This burden is a low one, as a mere allegation of entitlement will satisfy it. *Johnson*, 931 A.2d at 784. “[W]here the property at issue is currency, ‘the petitioner need only allege that the money belongs to him.’” *Id.* [quoting *Commonwealth v. Fontanez*, 559 Pa. 92, 95, 739 A.2d 152, 154 (1999)]. In the case *sub judice*, Sanders testified that the money found in his PNC safe deposit box was the remainder of the settlement from his mother's death. Thus, he met this initial burden.

The burden then shifted to the Commonwealth to prove by a preponderance of the evidence that a nexus existed between the currency seized and a violation of the Controlled Substance Act. Sanders argues that the Commonwealth failed to meet this burden because its only evidence in support of the required nexus was the ion scan.

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<sup>2</sup> The trial court analyzed this case as a forfeiture instead of a motion for the return of property. Although these are two distinct proceedings, *see Commonwealth v. Johnson*, 931 A.2d 781 (Pa. Cmwlth. 2007), neither party raises the issue and it is of little consequence to the analysis of this case.

We must examine the totality of the circumstances to determine whether the Commonwealth demonstrated a sufficient nexus between the seized currency and a violation of the Controlled Substances Act. In a prior case, we opined that

the huge sums of cash involved, the way the cash was bundled, the scientific evidence of recent contact between the cash and controlled substances that cannot be explained by casual contact and the inability of Phung and Keese to offer a credible explanation for their possession of the cash seized, all support the existence of a nexus between the currency seized and its involvement in drug trafficking.

*Commonwealth v. Three Hundred Ten Thousand Twenty Dollars*, 894 A.2d 154, 165 (Pa. Cmwlth. 2006). In *Commonwealth v. \$11,600 Cash*, 858 A.2d 160 (Pa. Cmwlth. 2004), we affirmed the trial court's conclusion that the currency seized was, more likely than not, used in drug trafficking. In doing so, we pointed to the inconsistent statements about the origin and amount of currency, ion scan results showing drug residue approximately five times the amount normally found on currency, the lack of admissible evidence establishing a legitimate source for a large amount of currency and the minimal earnings of the putative owner as shown by his tax return.

Despite Sanders' contentions, the case *sub judice* contains many of these same elements. A police officer testified that Sanders' method of bundling the currency was similar to that found in other drug investigations in which he had participated. An ion scan of the seized currency revealed that it contained twice the

amount of cocaine residue normally found on currency in Pennsylvania.<sup>3</sup> In addition, Sanders earned minimal wages the year prior to the seizure of the currency. The amounts of currency seized in *Three Hundred Ten Thousand Twenty Dollars* were significantly larger than here, but the amount seized here was still substantially larger than Sanders' known income. In addition to Trooper Maguire's testimony that Sanders conducted drug sales, Sanders pled guilty to three violations of the Controlled Substances Act for delivery of cocaine and heroin. In both *Three Hundred Ten Thousand Twenty Dollars* and *\$11,600 Cash*, the putative owners of the currency were not charged with any crime connected to the seizure. The totality of the circumstances supports the trial court's holding that a nexus exists between the seized currency and a violation of the Controlled Substances Act.

Because the Commonwealth satisfied its burden, the burden then shifted to Sanders to establish that he lawfully acquired the currency. To accomplish this, Sanders offered his own testimony as well as that of his aunt. They both testified that he received a large settlement when his mother died. Sanders argued that the currency found in the box was the remainder of this settlement. The trial court did not accept this account. "It is the function of the trial court, not the appellate court, to decide matters of credibility." *Three Hundred Ten Thousand Twenty Dollars*, 894 A.2d at 165. Thus, Sanders failed to meet his burden.<sup>4</sup>

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<sup>3</sup> Sanders attempts to diminish the value of these results by arguing that two of his three convictions were for the delivery of heroin. However, he ignores the fact that the third conviction was for the delivery of cocaine. Furthermore, neither a criminal prosecution nor a conviction is necessary to support the seizure and forfeiture of property. *See \$11,600 Cash*, 858 A.2d at 167.

<sup>4</sup> Sanders also argues that the trial court erred in not granting his motion for return of property because "the order granting the Commonwealth's motion for forfeiture was against the **(Footnote continued on next page...)**

Accordingly, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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**(continued...)**

weight of the evidence and/or in violation of due process of law.” Appellant’s brief at 7. This argument does not require any discussion. Despite the trial court’s reference to the Commonwealth’s motion, there is no evidence of one in the record. Moreover, even if one was filed, as we concluded above, the trial court did not err in concluding that the Commonwealth proved the requisite nexus between the seized currency and a violation of the Controlled Substances Act. *See \$11,600 Cash*, 858 A.2d at 164 (detailing Commonwealth’s burden in forfeiture actions).

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Appellant	:	

**ORDER**

AND NOW, this 19th day of May, 2008, the order of the Court of Common Pleas of Luzerne County in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge