

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. :
 :
 \$2,432.00 in U.S. Currency :
 : No. 553 C.D. 2008
 Appeal of: Hasan Shareef : Submitted: August 1, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McGINLEY

FILED: September 4, 2008

Hasan Shareef (Shareef) appeals from an order of the Court of Common Pleas of the 39th Judicial District of Pennsylvania-Franklin County Branch (trial court) that granted the Commonwealth of Pennsylvania's (Commonwealth) petition for forfeiture in the amount of \$2,432.00.

On July 16, 2007, the Commonwealth petitioned for forfeiture and alleged:

6

....

A. On November 12, 2005, members of the FCDTF [Franklin County Drug Task Force] executed a search warrant at the above reference location [1671 Letterkenny Road, Hamilton Township, Franklin County, Pennsylvania].

B. The search warrant authorized the search of the residence and any persons present in the residence.

C. Hasan Shareef was present in the residence at the time of execution of the search warrant.

D. \$2,391.00 of the defendant/property was on the person of Hasan Shareef and was uncovered in his right sock during the search of his person.

E. \$41.00 of the defendant/property was located in the bathroom of the residence during the search.

F. While Hasan Shareef and another individual were being detained, they were sitting on a couch which had been previously searched.

G. The officers observed Hasan Shareef and the other individual moving around in a fidgety manner.

H. After removing Hasan Shareef and the other individual from the couch, officers discovered a plastic bag containing 41 pieces of crack-cocaine wedged in the cushions.

I. The officers also observed various pieces of drug paraphernalia in plain view of the residence.

J. Upon review of the U.S. Currency seized from Hasan Shareef's person, members of the Franklin County Drug Task Force discovered 2 \$20.00 bills and a \$5.00 bill which, based upon their previously recorded serial numbers, were used by FCDTF in controlled buys from this residence.

K. Also found among the Defendant/Property seized from Hasan Shareef's person was a \$10.00 bill which, based upon its previously recorded serial number, was used by the Chambersburg Police Department as buy money in a drug delivery investigation.

L. On April 27, 2007, as part of a negotiated agreement, Hasan Shareef entered a plea of guilty to Possession with the Intent to Deliver-Crack-cocaine. He was sentenced the same date to not less than seven and one-half months (7 1/2) to no more than fifteen (15) months in a State Correctional Institution.

The defendant/property was furnished or intended to be furnished by any person in exchange for a controlled substance, in violation of the Controlled Substance, Drug, Device and Cosmetic Act, or, its proceeds traceable to such an exchange, or used or intended to be used to facilitate any violation of said “Act”, or is otherwise subject to forfeiture under the “Act”.

Petition for Forfeiture and Condemnation, July 16, 2007, Paragraph 6(B-L) and Paragraph 7 at 2-3; Certified Record (C.R.).

Shareef responded¹ that the search warrant issued for 1671 Letterkenny Road, Hamilton Township did not authorize the Commonwealth to conduct a search of his person and as a result of the illegal search he was entitled to a return of his seized property with interest. See Motion for Return of Property, August 10, 2007, at 2; C.R.

Following a January 25, 2008, hearing, the trial court recounted the testimony of Detective Darren North of the Franklin County Drug Task Force:

The mobile home at 1671 Letterkenny Road . . . became the target of an undercover investigation by the Franklin County Drug Task Force

The Task Force and the Borough Police Department decided to coordinate their respective investigations using a confidential informant to conduct more controlled buys of crack cocaine from the residence Investigators supplied the informant with small denominations of U.S. currency and kept track of the

¹ The trial court entered an order that stated “despite irregularities in the defendant’s [Shareef’s] motion that it is in effect an Answer to the Commonwealth’s Petition for Forfeiture and, therefore, pursuant to 42 Pa. C.S.A. 6802(b)(i) the matter is now ready for a hearing.” Order of the Trial Court, October 11, 2007, at 1; C.R. at 5.

serial numbers on each of the bills. The informant described to police the layout of the residence, the persons present and where drugs were being stored.

Police obtained a warrant to search the Letterkenny Road home and all persons present therein. The affidavit of probable cause was drafted by Detective Darren North . . . and stated that individuals who go to locations where drugs are sold are either users or dealers, they conceal drugs on their persons or inside the residence and carry large amounts of money in small denominations in order to buy or sell crack cocaine in either gram or half-gram amounts. The affidavit also stated that officer safety demanded all persons present be searched because they often carry firearms and other weapons during drug transactions

. . . .
During a pat down search for weapons, \$2,391.00 in cash fell from Mr. Shareef's right sock and spilled onto the floor. An additional \$41.00 was found on the bathroom sink behind him. He was placed on a couch alongside Mr. Adams and both men were searched again because they appeared to be trying to hide something in the cushions. Police found 41 individually wrapped pieces of crack cocaine in a plastic baggie wedged into the cushions near where the two men were seated

Opinion of the Trial Court, April 7, 2008, at 2-3; C.R.

Shareef testified “[t]hat is my money, and I ain’t got much to say other than I think the warrant wasn’t no good . . . I wasn’t in possession of no drugs, and he knows they wasn’t my drugs” and that “numerous people [were] in the house, ten people in the house . . . [a]nybody in there can tell you it wasn’t my drugs and that was it . . . [t]hat’s my money.” Hearing Transcript, January 25, 2008, at 39; C.R.

The trial court granted the Commonwealth's petition and concluded that "[t]he totality of the circumstances makes it amply clear that the Commonwealth proved by a preponderance of the evidence that there was a nexus between the \$2,432.00 found in Mr. Shareef's possession and drug transactions which violate the Controlled Substance Act" and that "Mr. Shareef utterly failed to rebut the presumption that the cash found in close proximity to the crack cocaine was derived from the sale of that illegal drug." Opinion of the Trial Court at 8.

Before this Court², Shareef, appearing *pro se*, contends that the trial court erred when it denied the return of his seized currency in the amount of \$2,432.00.³ This issue was raised before the trial court and ably disposed in the opinion of the Honorable Douglas W. Herman. Therefore, this Court shall affirm on the basis of that opinion. Commonwealth of Pennsylvania v. \$2,432.00 in U.S. Currency, (No. 249 of 2007), filed April 7, 2008.

BERNARD L. McGINLEY, Judge

² In an appeal from a forfeiture proceeding, this Court's review is limited to a determination of whether the trial court's findings are supported by competent evidence and whether the trial court abused its discretion or committed an error of law. Strand v. Chester Police Department, 687 A.2d 872 (Pa. Cmwlth. 1997).

³ In the argument section of his brief, Shareef argues that the search warrant was defective because it authorized a broad search without sufficient facts in the affidavit to support such an expansive search.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
\$2,432.00 in U.S. Currency	:	
	:	No. 553 C.D. 2008
Appeal of: Hasan Shareef	:	

ORDER

AND NOW, this 4th day of September, 2008, the order of the Court of Common Pleas of the 39th Judicial District of Pennsylvania-Franklin County Branch in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge