

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
Appellant	:	
	:	
v.	:	No. 769 C.D. 2008
	:	
1999 Dodge Durango, Pennsylvania	:	Submitted: October 3, 2008
Registration Number GSA1444, VIN	:	
Number 1B4HS28YXXF576248,	:	
\$357.00 cash, 2 cell phones	:	
	:	
Re: Lancelot Hylton	:	
	:	
BEFORE: HONORABLE BERNARD L. McGINLEY, Judge		
HONORABLE ROBERT SIMPSON, Judge		
HONORABLE JAMES R. KELLEY, Senior Judge		

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: November 17, 2008

The Commonwealth of Pennsylvania, Office of the District Attorney of York County (Commonwealth), appeals an order of the York County Common Pleas Court (trial court) denying the Commonwealth's request for forfeiture of a 1999 Dodge Durango (Vehicle). The Commonwealth asserts the trial court erred in not finding a nexus between the Vehicle and illegal drug activity justifying forfeiture under the Controlled Substances Forfeiture Act (Forfeiture Act), 42 Pa. C.S. §§6801-02. We affirm.¹

¹ Following Lancelot Hylton's (Appellee) failure to timely file a brief as ordered, this Court precluded Appellee from participation in the appeal and directed that it be submitted on the Commonwealth's brief alone.

I.

In May 2007, York City Police Department Detectives Nazdom and Shaffer targeted Lancelot Hylton (Appellee) for a drug investigation. On May 16, 2007, Officer Shaffer instructed a confidential informant (CI) to call Appellee's cell phone number, (215) 207-4707, and order \$50 worth of cocaine. At approximately 1:20 p.m., Officers Nazdom and Shaffer observed Appellee meet with the CI and deliver cocaine to the CI. The CI immediately returned to the officers and turned over the cocaine.

The officers then observed Appellee return to the area of 20/22 North Belvedere in York. They began surveillance. Later that afternoon, Officer Shaffer again instructed the CI to call Appellee at (215) 207-4707 and order another \$50 worth of cocaine. Officer Shaffer called Officer Nazdom, who observed Appellee emerge from the breezeway, retrieve an object from the passenger side of the Vehicle and go back into the breezeway. The officer did not see what Appellee retrieved from the Vehicle. Shortly thereafter, Officer Nazdom observed Appellee re-emerge from the breezeway and walk to the area of Philadelphia and Belvedere, where he delivered the second quantity of cocaine to the CI.

Two hours later, Appellee left the residence at 22 North Belvedere in the Vehicle to take his fiancé to the hospital. In route, Officer Nazdom arrested Appellee and took him into custody on drug charges. The officer searched Appellee and found three bundles of cash in his pockets totaling \$357. The bundles included money supplied by the police to the CI and used in the two drug transactions. Inside the Vehicle, Officer Nazdom found two cell phones, one of which bore the number (215) 207-4707, the number the CI called to arrange the two drug transactions. The officer seized the cash and the two phones.

Thereafter, the Commonwealth charged Appellee with two counts of delivery of cocaine; he later pled guilty to both charges. In August 2007, the Commonwealth filed a forfeiture petition seeking to have the \$357 in cash, the two cell phones and the Vehicle forfeited to the Commonwealth. Appellee filed an answer claiming the majority of the cash, the (717) area code cell phone and the Vehicle, were not used to facilitate a drug sale.

In January 2008, the trial court held a forfeiture hearing at which Officer Nazdom and Appellee testified. At the close of the hearing, the trial court granted forfeiture of the \$357 in cash and the cell phones, but denied the request for forfeiture of the Vehicle. In her opinion, the trial judge reasoned (with emphasis added):

At issue before this Court on the forfeiture petition is whether there was a nexus established between the drug dealing by [Appellee] and the [Vehicle], which is the subject of this forfeiture petition.

* * *

Officer Nazdom testified that as to the first delivery, the [Vehicle] was not involved, but was parked outside of the house in which the drug dealing occurred. Between the first and second drug deals, [O]fficer Nazdom testified that he saw [Appellee] leave the house in which he was in, go to the [Vehicle], open the passenger door and [take] something out which Officer Nazdom could not identify.

* * *

It is clear that [Appellee] is a drug dealer. It is clear that he accepted moneys from the CI as to the sale and that was not contested [at] the time of his guilty plea. It is also clear that a cellphone was used and even though

[Appellee] indicated that he was not the owner of the cellphone, he used the cellphone. With respect to the moneys and the cellphone there is an absolute nexus and those will be forfeited to the Commonwealth.

However, it is noted that with respect to the vehicle that because of [sic] it was outside during the entire course of these incidents of drug dealing and that there was no nexus established that drugs were taken out of the car nor even in the car once [Appellee] was arrested that there is no nexus.

Given that the Forfeiture Act is strictly construed, the Court at this point finds that there was no nexus in the drug dealing and that the Commonwealth has failed to meet its burden by preponderance of the evidence that there was a connection. The Court notes for the Commonwealth's attention, [Commonwealth v. One (1) 1993 Pontiac Trans Am, 809 A.2d 444 (Pa. Cmwlth. 2002)].

Additionally, the Court also notes that there was a problem in that there was no offer of any documentation from the Pennsylvania Department of Transportation that [Appellee] even owned the vehicle.

Trial Ct. Op., 02/04/08, at 1-2. The Commonwealth appeals.²

II.

Initially, we note, a trial court has the discretion to grant or deny a forfeiture petition. Commonwealth v. One 2001 Toyota Camry, 894 A.2d 207 (Pa.

² An appellate court's scope of review in a forfeiture proceeding appeal is limited to reviewing whether the trial court's findings were supported by substantial evidence and whether the trial court abused its discretion or committed an error of law. Commonwealth v. Real Prop. & Improvements Commonly Known as 5444 Spruce Street, Phila. Pa., 574 Pa. 423, 832 A.2d 396 (2003); Commonwealth v. Funds in Merrill Lynch Account, 937 A.2d 595 (Pa. Cmwlth. 2007), appeal denied, ___ Pa. ___, 956 A.2d 436 (2008).

Cmwlth.), appeal denied, 588 Pa. 766, 903 A.2d 1234 (2006). We will not disturb the trial court's decision absent an abuse of that discretion. Id.

Moreover, a trial court's findings of fact are entitled to the same deference as those of a jury. Commonwealth v. \$23,320.00 U.S. Currency, 733 A.2d 693 (Pa. Cmwlth. 1999). As fact-finder, it is the trial court's function to decide what evidence is credible and to draw any reasonable inferences from the evidence. Id.

In a forfeiture proceeding, the Commonwealth bears the burden of proving forfeiture is appropriate. Commonwealth v. \$6,425.00 Seized from Esquilin, 583 Pa. 544, 880 A.2d 523 (2005). The Commonwealth must show, by a preponderance of the evidence, a nexus exists between the money and a violation of The Controlled Substance, Drug, Device and Cosmetic Act (Drug Act).³ Id. However, the Commonwealth need not produce evidence directly linking the seized property to illegal activity in order to show the requisite nexus. Id. Also, there is no requirement that illegal drugs be present at the time of seizure; circumstantial evidence may show a party's involvement in illegal drug activity. Id.

The Commonwealth asserts it demonstrated a nexus between the Vehicle and Appellee's violation of the Drug Act. Appellee used the Vehicle to transport property used in illegal drug sales: the drug buy money and the cell phone used to arrange the transactions. At the time of his arrest, Appellee had the buy money in his possession. Also, Officer Nazdom found, on the driver's side of

³ Act of April 14, 1972, P.L. 233, as amended, 35 P.S. §§780.101-780.144.

the front seat of the Vehicle, the cell phone the CI called to arrange both drug transactions. Thus, the Commonwealth asserts the Vehicle is subject to forfeiture under 42 Pa. C.S. §6801(a)(4) on the basis Appellee used it to facilitate the transportation, possession and concealment of property used in the delivery of illegal narcotics.

The Commonwealth asserts 42 Pa. C.S. §6801(a)(4) is to be interpreted broadly. Strand v. Chester Police Dep't, 687 A.2d 872 (Pa. Cmwlth. 1997). It also cites Esquilin as support for its position. In that case, the police arrested Richard Esquilin for participating as a “money man” in an illegal drug transaction and seized \$6,425 found on his person. The common pleas court ordered the entire sum forfeited on the basis a sufficient nexus existed between the money and the illegal drug transactions. This Court affirmed the forfeiture only as to \$60 representing three \$20 sales of crack-cocaine observed by the police.

In reversing, the Supreme Court noted the police need not observe enough drug sales to account for the total amount of money seized in order to establish a nexus between the money and the illegal activity. It held the trial court properly considered the totality of the circumstances and drew logical inferences in finding a nexus between the seized money and violations of the Drug Act.

Relying on Esquilin, the Commonwealth argues the evidence produced at the forfeiture hearing established a nexus between the Vehicle and the illegal drug trade because Appellee used the vehicle to transport and conceal the proceeds of his drug deliveries and the cell phone used to arrange the drug transactions. The Commonwealth asserts the trial court focused too narrowly on Officer Nazdom’s observation of Appellee during the two drug transactions. The

Commonwealth concedes, if this were the only evidence presented, it would agree there was not a sufficient nexus between the Vehicle and the illegal drug activity.

Arguing the evidence established Appellee used the Vehicle to transport drug sale proceeds and equipment used to sell drugs, the Commonwealth asserts it established a sufficient nexus between the Vehicle and Appellee's illegal drug activities.

Here, the trial court granted the forfeiture petition as to the \$357 and both cell phones. However, the trial court found Appellee did not use the Vehicle in any manner during the course of the two drug transactions witnessed by Officer Nazdom. The Commonwealth did not establish Appellee took drugs out of the Vehicle or that drugs were ever in the Vehicle. Trial Ct. Op. at 2.

In Strand v. Chester Police Department, we determined a sufficient nexus existed between the vehicle and illegal activity where no drugs were found in the vehicle. There, the arresting officers observed two individuals exchanging money at the rear of a vehicle. They fled on foot, but were soon apprehended. One individual was in possession of cocaine and \$225. A search of the vehicle yielded a beeper, a pistol and a substantial amount of cash. Viewing this evidence in its entirety, we concluded substantial evidence supported the trial court's finding that the vehicle was used to facilitate illegal drug activity.

In Commonwealth v. One 1979 Lincoln, Four Door Sedan, 496 A.2d 397 (Pa. Super. 1985), the Superior Court, in interpreting identical language in the predecessor statute to 42 Pa. C.S. §6801(a)(4), affirmed a forfeiture of a vehicle

used to bring sandwiches and coffee to individuals operating a methamphetamine laboratory. In One 1979 Lincoln, the Court stated:

Our research locates no Pennsylvania forfeiture cases on point with the facts of the instant case. Hence, we look to the case law construing 21 U.S.C. §881(a)(4). The federal forfeiture provision is a mirror-image of 35 Pa. C.S. §780-128(a)(4), *i.e.*, an intentional patterning of the Pennsylvania Legislature, allowing the forfeiture remedy to become available as a means of combating drug trafficking in Pennsylvania.

The statutory language of the federal forfeiture statute provides that a vehicle is subject to forfeiture if it is used in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [contraband].” 21 U.S.C. §881(a) (emphasis added). Facilitation has been broadly construed to encompass any use or intended use of a vehicle which makes trafficking in contraband “less difficult and laborious.” There is no requirement that contraband actually be found within the vehicle. United States v. One 1980 BMW 3201, 559 F. Supp. 382, 384 (E.D. N.Y. 1983). A district court within the Third Circuit has defined “facilitation” by asking whether there was a reasonable ground for belief that the use of the automobile made the sale [transportation, receipt, possession, or concealment of contraband] less difficult and allowed it to remain more or less free from obstruction or hinderance. United States v. One 1981 Datsun 280ZX, 563 F. Supp. 470, 473 (E.D. Pa. 1983) (citations and quotations omitted).

496 A.2d at 400.

Unlike the foregoing cases, where the fact-finder was affirmed, the Commonwealth asks that we reverse the fact finder here. The trial court

determined the evidence does not show Appellee used the Vehicle to facilitate or further his drug dealing in any manner.

At the time of his arrest, Appellee was using the Vehicle to transport his fiancé to the hospital. R.R. at 69a. Legal use of a vehicle by a suspected drug dealer does not render the vehicle subject to forfeiture. Commonwealth v. One 1985 Dark Blue Mercedes Benz Car, 571 A.2d 482 (Pa. Super. 1990).

42 Pa. C.S. §6801, provides in part (with emphasis added):

(a) Forfeitures generally.—The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or other drug in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of, property described in paragraph (1) or (2)

* * *

(6)(i) All of the following:

(A) Money, negotiable instruments, securities or other things of value 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, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

We discern neither error of law nor abuse of discretion in the failure to order forfeiture of the Vehicle despite the presence of the (215) area code cell phone in the Vehicle at the time of arrest. The cell phone is not drug paraphernalia or a controlled substance under subsection (a)(1). Also, the cell phone is not equipment intended for use in manufacturing, compounding, processing, delivering, importing or exporting a controlled substance under subsection (a)(2). Instead, evidence established it was equipment used in arranging sales of controlled substances but was not used at the time of deliveries. Based on this record, the trial court was not compelled to find otherwise.

Similarly, we discern neither error of law nor abuse of discretion in the failure to order forfeiture despite the presence of drug buy money in the Vehicle at the time of arrest. The money is not drug paraphernalia or a controlled substance under subsection (a)(1). Also, the money is not raw materials, products or equipment under subsection (a)(2).

Because forfeitures are not favored in the law, the Forfeiture Act is subject to strict construction. Esquilin. Absent any evidence showing Appellee used the (215) area code cell phone for drug activity while in the Vehicle, or that Appellee otherwise used the Vehicle as part of his drug sales, there is insufficient support for the Commonwealth's assertion the Vehicle is subject to forfeiture. One 1985 Dark Blue Mercedes.

Moreover, Esquilin does not compel a different result here. In Esquilin, the Supreme Court held the trial court, in finding a nexus between the seized cash and illegal activity, properly considered the totality of the evidence and drew logical inferences from it. Here, the trial court also viewed the evidence in its entirety and found no link or connection between the Vehicle and the drug transactions. The record supports the trial court's findings. The Forfeiture Act is strictly construed. Esquilin. Therefore, we discern no error or abuse of discretion in the trial court's conclusion the Commonwealth failed to establish a sufficient nexus between the Vehicle and Appellee's illegal drug activities to render the Vehicle subject to forfeiture. One 1985 Dark Blue Mercedes.

Discerning no error in the trial court's decision, we affirm.

ROBERT SIMPSON, Judge

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\$357.00 cash, 2 cell phones	:	
	:	
Re: Lancelot Hylton	:	

ORDER

AND NOW, this 17th day of November, 2008, the order of the court of Common Pleas of York County is AFFIRMED.

ROBERT SIMPSON, Judge