

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	DOCKET NO. 13-00529
Plaintiff.	:	
	:	CIVIL ACTION
vs.	:	
	:	FORFEITURE
\$ 34,077.00 U.S. CURRENCY and	:	
TWO CELL PHONES and ONE DIGITAL SCALE,	:	
Defendants.	:	NON-JURY VERDICT

Reputed Owners: Dale and Jane Matthews and Brenda Houseweart

**VERDICT and ORDER**

In this matter, the Commonwealth seeks a forfeiture of property seized during execution of a search warrant on September 14, 2012 from Dale and Jane Matthews' residence located at 1836 Fry Avenue ("residence"), Williamsport. The Court grants the forfeiture.

**I. Findings of Fact**

In July 2012, law enforcement initiated an investigation regarding potential drug activity occurring at the Matthews' residence. Surveillance of the residence revealed suspicious activity, including heavy vehicle traffic. On September 14, 2012, after observing Brenda Houseweart leave the residence, Sgt. Chris Kriner, of the Old Lycoming Police Department, conducted a stop of her vehicle near the residence. Houseweart admitted that she purchased 1 oz. of marijuana for \$150.00 from Dale Matthews at his Fry Avenue residence.

On that same day, September 14, 2012, law enforcement obtained a search warrant and seized \$34,077.00 in U.S. currency, two cell phones and one digital scale from Dale and Jane Matthews' residence at 1836 Fry Ave., Williamsport, Pa. 1770. One envelope containing \$26,800 in U.S. Currency, and another envelope containing \$5,500 were seized from a safe built into the wall in the master bedroom of the residence. They also seized an envelope containing \$1,777.00 in U.S. Currency from the top of a refrigerator located in the master bedroom. The

currency tested positive for cocaine. In addition, they seized a digital scale, two cell phones, “O” sheets (ledger used for drug sales), and pill bottles with other people’s names on them from the master bedroom. A Ziploc bag, containing a large amount of marijuana (8.2 oz.), was seized as well as a sandwich bag of marijuana that was found in the night stand drawer. Marijuana was also in a candle jar in the shelf above the bed. Drug paraphernalia was found throughout the residence.

Dale Matthews was charged on September 14, 2012. On May 30, 2014, Dale Matthews pleaded guilty to possession with intent to deliver for the occurrence on September 14, 2012, pursuant to 35 P.S. § 780-113(A)(30); 18 Pa. C.S.A. § 7512.

At the time of the seizure, Dale Matthews had been unemployed for more than a year and did not file tax returns for 2012. Jane Matthews also was not employed during the relevant time period. Despite a lack of employment income, Mr. Matthews purchased \$3,000 worth of exotic marijuana in July and 5 pounds of regular marijuana for \$7,000 five months prior to his arrest. At the time of trial, the Matthews conceded that all of the property was forfeitable except the \$26,800 found in \$100 denominations in an envelope in the wall safe. The Matthews contend the \$26,800 originated from proceeds dispersed from a settlement in 2009 for a work related injury.<sup>1</sup> Dale Matthews contends that he used the proceeds to purchase real property which sold for \$47,000 on September 30, 2009. Matthews further asserts that the \$47,000 from the sale was deposited in his account on October 1, 2009 and was withdrawn to purchase property at sheriff sale that had been scheduled for September 5, 2012 but was continued to November 2012.

The Matthews contend that the settlement money was used for living expenses but was not used for drug sales. When confronted with the fact that there were no withdrawals for \$26,800

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<sup>1</sup> The settlement was not stated at pretrial or in trial brief, but for the first time by Mr. Matthews on the witness stand.

shortly before the date anticipated for the sheriff sale (Sept. 5), Mr. Matthews contended that he withdrew the money little by little over the years. Mr. Matthews attributed some inexplicable withdrawals and deposits to bingo. Upon cross examination, Mr. Matthews admitted that the \$26,000 was profit, \$5,000 was buy money and the \$ 1777 was day to day funds. Mr. Matthews testified that he had memory deficits which explained some of his inconsistencies. However, Mr. Matthews did not rehabilitate his admission. Jane Matthews did not testify. No other witness testified on behalf of the Matthews. The only documents submitted by Mr. Matthews was the HUD settlement sheet for the sale of property on September 30, 2009.

## **II. Conclusions of Law**

1. The Controlled Substances Forfeiture Act (Forfeiture Act) provides in pertinent part the following:

- (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.

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- (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. 42 Pa. C.S. §6801(a)(1), (2), & (6)(i)(A) and (B) (emphasis added).

2. The Forfeiture Act further provides that:

“Such money and negotiable instruments **found in close proximity** to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act **shall be rebuttably presumed to be proceeds derived from the selling** of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.” 42 Pa.C.S. § 6801 (6)(ii) (emphasis added)

3. To forfeit *funds* under the Forfeiture Act, the Commonwealth must establish by a preponderance of the evidence that the funds were furnished or intended to be furnished in exchange for drugs, were proceeds traceable to a drug exchange or that the funds were used or intended to be used to facilitate any violation of the of The Controlled Substance, Drug, Device and Cosmetic Act.
4. “The term "facilitate" as used in Section 6801(a)(6)(i)(B) broadly encompasses any use or intended use of the property which makes trafficking in contraband less difficult and laborious.” Commonwealth v. Funds in Merrill Lynch Account, 777 A.2d 519, 525 (Pa. Cmwlth. 2001)(further citation omitted)
5. The Court concludes that the \$34,077.00 in U.S. Currency, the two cell phones and the digital scale were furnished or intended to be furnished in exchange for controlled substances or are proceeds traceable to such an exchange or used or intended to be used to facilitate a violation of the controlled substance Drug, Device and Cosmetic Act.
6. The Court concludes that the Commonwealth established the nexus between the currency, two cell phones and the digital scale and the illegal drug related activity. Specifically, Dale Matthews plead guilty to possession with intent to deliver, with the offense

occurring on the date the property was seized. Mr. Matthews admitted that his primary source of income for at least a year around that time was through the sale and delivery of drugs. The property was found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act. All of the property was located in the residence where drugs sales/purchases occurred; the currency was in a wall safe with pill bottles in the master bedroom where pills and marijuana and a notebook evidencing sales were also found.

7. Since the Commonwealth established a nexus between the money and property with the illegal activity by a preponderance of the evidence, the burden shifts to the claimants to show that they own the money, acquired it lawfully, and did not use it or possess it unlawfully. Commonwealth v. \$17,182.00 United States Currency, 42 A.3d 1217, 1220 (Pa. Cmwlth. 2012); see, The Fofeiture Act, 42 Pa.C.S. § 6802 (j).
8. “[T]o discharge this burden, the claimant must establish that: (1) he owned the money; (2) he lawfully acquired it; and (3) it was not unlawfully used or possessed by him.” Commonwealth v. \$6,425.00 Seized from Esquilin, 583 Pa. 544, 556 (Pa. 2005)(further citations omitted)
9. In this case, the Court concludes that Dale and Jane Matthews did not meet their burden of establishing that they lawfully acquired any of the currency or property or that they did not possess it unlawfully or intend to use it unlawfully.

### **III. Discussion**

Since the Commonwealth established a nexus between the currency and the illegal drug activity by a preponderance of the evidence, the burden shifts to the claimants to show that they own the money, acquired it lawfully, and did not use it or possess it unlawfully. Commonwealth

v. \$17,182.00 United States Currency, 42 A.3d 1217, 1220 (Pa. Cmwlth. 2012); see, The Forfeiture Act, 42 Pa.C.S. § 6802 (j). The critical issue in the present case is whether the Dale and Jane Matthews met their burden of establishing that the \$26,800 seized on September 14, 2012 came from a legitimate source and was to be used for a legitimate purpose.<sup>2</sup> The Court concludes that the Matthews did not present sufficiently credible evidence to establish a legitimate source of the funds, the lawful possession of the funds or the intent to use the funds for a lawful purpose.

The Matthews' banking patterns and income sources are not consistent with the \$26,600 being from legitimate sources or being withdrawn to purchase property at a Sheriff Sale on September 5, 2012. Neither Dale nor did Jane Matthews have a legitimate source of income since Mr. Matthews left his work as a laborer at Staimans in 2011. Mr. Matthews admitted that their source of income from June 2011 to September 14, 2012 was selling marijuana. They also lived off of funds received from work-related settlement, the first installment of which was received in about 2008.<sup>3</sup> The Matthews contend that they purchased the 432 Wyoming Street property with settlement funds, and then deposited the sale proceeds of \$ 47,000, in their Sovereign Bank on October 1, 2009. As of September 9, 2010, the balance in that account was

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<sup>2</sup> Dale and Jane Matthews Defendant concede that the balance of the currency as well as the two cell phones and digital scale are forfeitable and that the Commonwealth has met its burden with respect to that property. See, Matthews's Trial Memorandum, at fax page numbered 4 and Ex. 14. Furthermore, the Commonwealth met its burden to establish that the remaining \$26,000 currency was furnished or intended to be furnished in exchange for drugs, were proceeds traceable to a drug exchange or that the funds were used or intended to be used to facilitate any violation of the of The Controlled Substance, Drug, Device and Cosmetic Act. The currency was seized from a house where drug sales took place which belonged to Mr. Matthews who admitted selling drugs for income for over a year. The currency was in close proximity to other evidence of illegal drug activity; it was seized from a wall safe which contained conceded to drug money, pill bottles, with other people's names on them, and drug paraphernalia. The safe was in the master bedroom where drugs and pill bottles and drug paraphernalia and a notebook related to drug sales were found.

<sup>3</sup> Given Mr. Matthews admitted difficulty with memory, although he testified that it was received in 2009, the Court concludes the date would have been 2008 because Mr. Matthews indicated that the funds were immediately used to purchase property which he also stated was in 2009, but which actually occurred in 2008. On September 5, 2008, Dale Matthews purchased real estate at 432 Wyoming Street, Williamsport for \$19,500. (Ex 25) On March 6, 2008, Dale and Jane Matthews purchased their residence at 1836 Fry Avenue, Williamsport for \$48,000. (Ex 27)

\$12,244.56. The balance for December 9, 2010 was \$5,045.31. The ending balance for July 10, 2011 was \$3,095.51. The ending balance for August 9, 2011 was \$1,331.82. The ending balance on June 8, 2012 was \$950. There were no withdrawals of \$26,600 or anything close to that amount. The Matthews failed to provide sufficiently credible evidence that the \$26,600 possessed in an envelope in their wall safe on September 14, 2012 was derived from a deposit made on October 1, 2009. This is especially true where the funds in that account were already substantially dissipated by December 9, 2010 and where Mr. Matthews admitted receiving about \$25,500 in sales of marijuana for the period between 2011 and 2012 (*See* response to interrogatory 23, “sold approximately 17 pounds at 1.5 thousand a pound” for that period).

In addition, the Court finds that there were substantial inconsistencies in Mr. Matthews’ testimony. On cross examination, Mr. Matthews admitted that the \$26,000 was profit from drug sales. While he further testified that some inconsistencies in his testimony were due to his memory deficits, Mr. Matthews presented no other testimony, besides his own, to support of his contention as to the source and purpose of the funds. The Court finds his testimony to be not credible. Notably, Mrs. Jane Matthews did not testify or provide discovery responses.

The Matthews must carry their burden to establish by a preponderance of the evidence that the \$26,800 was from a legitimate source and was possessed and to be used for a legitimate purpose. While Mr. and Mrs. Matthews presented evidence in support of their contention being within the realm of possibility, the Court believes they failed to meet their burden of proof by a preponderance of the evidence that the funds were from a legitimate source and were possessed and to be used for a lawful purpose.

The Court enters the following Order.

**ORDER**

AND NOW, this 12<sup>th</sup> day of **September, 2014** following a non-jury trial held on September 9, 2014, in the above-captioned matter, it is hereby ORDERED and DIRECTED as follows:

1. The relief requested in the Commonwealth's complaint to forfeit property is GRANTED;
2. All claims of right, title or interest of Dale Matthews, Jane Matthews, Brenda Housewart, and any other claimants in the defendant/property are hereby declared to be terminated, revoked and rendered null and void. The \$ 34,077.00 U.S. CURRENCY TWO CELL PHONES AND ONE DIGITAL SCALE are hereby condemned and forfeited to the Office of Attorney General, pursuant to the Judicial Code, Chapter 68, Controlled Substances Forfeiture, Sections 6801-6802, 42 Pa. C.S.A. Section 6801 et. seq., for use of disposition in accordance with law. Funds received from the sale of forfeited property and/or from forfeited cash shall be deposited into an interest-bearing account held by the Office of Attorney General and the interest generated therefrom shall be used in accordance with the Controlled Substances Forfeitures Act, 42 Pa.C.S.A. 6801, et. seq.

BY THE COURT,

September 12, 2014  
Date

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Richard A. Gray, J.

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