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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000598-MR

VICTOR ANTONIO JACKSON

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 17-CR-00272

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND LAMBERT, JUDGES.

CLAYTON, CHIEF JUDGE: Victor Jackson appeals from the Hardin Circuit Court's order for the forfeiture of \$1,960 in cash and a 2001 Chevy Impala (the "Impala"), arguing that the Commonwealth did not have sufficient evidence to link the money and the Impala to drug activity. Upon review of the record and applicable legal authority, we affirm.

BACKGROUND

On February 9, 2017, Jackson was present in a property located at 3040 Liberty Street in Radcliff. Police were called to the bank-owned property because it was listed for sale by a realtor and was supposed to be vacant. The home's locks had been changed and utilities for the home had been established by Devonaire Bates, an individual known to at least one of the officers to be involved in the drug trade.

When police arrived, Jackson and Bates fled. During his pursuit by police, Jackson hid \$1,900 in nearby brush. Jackson was subsequently apprehended by the police and arrested. Police retrieved the \$1,900 in cash, as well as \$60 from Jackson's wallet. During a search of the house, police also found at least 400 grams of synthetic marijuana ("Spice"), most of which was located in Bates' backpack. Other signs of drug trafficking were present in the house, such as baggies, scales, and prepackaged Spice. The Impala was also found in the property's driveway.

A two-day jury trial was held, at which both Jackson and the involved officers testified. Jackson denied any knowledge of the drugs and stated that he told one of the officers that he "smoked a little Spice," while the officer contended Jackson stated that he "sold a little Spice." Jackson claimed that he rented the house from a person named Valerie Maes for \$11,700. However, that person was

never identified or located, and the circuit court noted that “Valerie Maes” is the name of a popular French actress. Jackson further explained that the cash resulted from a \$15,000 cash inheritance from his late mother. However, since Jackson stated that both he and his mother did not believe in banks, there were no records of such a transfer. Additionally, Jackson claimed that his wife, Brittany, had given him some of the money to buy a refrigerator for the house in Radcliff. No receipts documenting a withdrawal of the funds by his wife were produced. Jackson admitted that he was unemployed.

Jackson stated that he bought the Impala for \$500 in cash. However, there was no documentation of this transfer. Moreover, the title owner could not be located, and Jackson had not properly transferred the title to his name by documentation with the county clerk. Jackson also admitted that Bates, who he acknowledged was connected with drug trafficking, connected him with the seller of the Impala.

Jackson testified that he had fled the home because he believed they were being robbed, while detectives testified that they arrived in a marked car with a uniformed officer and donned vests with “POLICE” on the front.

On September 22, 2017, Jackson was convicted by the jury of possession of synthetic drugs, second-degree fleeing and evading, and possession of a handgun by a convicted felon. On February 6, 2018, the circuit court held a

forfeiture hearing, after which the court ordered the forfeiture of the \$1,960 and the Impala but ordered the return of a television and sound bar to Jackson. This appeal followed.

ANALYSIS

a. Standard of Review

For forfeiture decisions on appeal, “regardless of the class of property at issue, the trial court’s factual findings are reviewed for clear error, while its rulings of law are reviewed *de novo*.” *Gritton v. Commonwealth*, 477 S.W.3d 603, 606 (Ky. App. 2015) (citing *Commonwealth v. Coffey*, 247 S.W.3d 908, 910 (Ky. 2008)). A trial court’s decision regarding forfeiture is reviewed under the abuse of discretion standard. *Hill v. Commonwealth*, 308 S.W.3d 227, 230 (Ky. App. 2010) (citing *Johnson v. Commonwealth*, 277 S.W.3d 635, 641 (Ky. App. 2009)). An abuse of discretion concerns “whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

b. Issue on Appeal and Applicable Law

The issue on appeal is whether the circuit court erred in ordering the forfeiture of the cash and the Impala. Kentucky Revised Statutes (KRS) 218A.410 governs the types of property subject to forfeiture. Under the statute, in order to succeed on a forfeiture motion, “the Commonwealth bears the initial burden of

producing some evidence, however slight, to link the [property] it seeks to forfeit to the alleged violations of KRS 218A. The burden only shifts to the opponent of the forfeiture if the Commonwealth meets its initial tracing burden.” *Brewer v. Commonwealth*, 206 S.W.3d 343, 348 (Ky. 2006). If that initial burden is met, the defendant then bears the burden to rebut that presumption by clear and convincing evidence. *Smith v. Commonwealth*, 339 S.W.3d 485, 487 (Ky. App. 2010) (citing *Osborne v. Commonwealth*, 839 S.W.2d 281, 284 (Ky. 1992)).

Vehicles may be forfeited if they were used in any part of the drug trafficking process. KRS 218A.410(1)(h). Moreover, even if the vehicle was not directly involved in trafficking, it can still be subject to forfeiture if it was purchased with money from drug trafficking, as it is thus a traceable proceed of drug trafficking. *Gritton*, 477 S.W.3d at 605. Forfeitures of cash, however, are different. A connection to drug trafficking is presumed if the money is found in close proximity to drugs. KRS 218A.410(1)(j). The defendant then bears the burden to rebut that presumption by showing a legitimate source for the cash by clear and convincing evidence. *Osborne*, 839 S.W.2d at 284.

c. Discussion

Dealing first with the cash, the circuit court correctly ordered its forfeiture because it was located in close proximity to the drugs and Jackson was unable to offer sufficient evidence to rebut the presumption thereby created. The

statutory presumption for forfeiture applies in this case, as the evidence indicated that the drugs were located in a backpack in the living room, and that Jackson had been standing in the living room - with the cash on his person - immediately prior to fleeing from the police.

Further, Jackson offered no evidence to rebut the Commonwealth's *prima facie* case. While Jackson claimed that the money was part of an inheritance from his mother and that his wife gave him the money to buy a refrigerator for the new house, he offered no evidence to support this claim. As seen in *Hill*, where the defendant claimed he won the money gambling but failed to provide any evidence in support of his claim, a defendant must offer more than an alternative story as to how he acquired the money in order to avoid forfeiture. *Hill*, 308 S.W.3d at 230. Moreover, trial courts are granted wide discretion in assessing the weight and credibility of witness testimony, as they are in the best position to do so. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003); *see also Smith*, 339 S.W.3d at 488. We can find no abuse of discretion regarding the circuit court's order of forfeiture as to the cash.

Turning next to the Impala, Jackson has again been unable to meet his burden of proof to prevent forfeiture. The state met its slight burden of traceability by showing that Jackson purchased the Impala from a friend of Bates, who was trafficking drugs in the house, and by showing that Jackson had no job that would

provide a legitimate source of income to purchase the Impala. Jackson was unable to prove otherwise by clear and convincing evidence. Jackson's sole claim for the source of the money used to purchase the Impala was the inheritance he allegedly received from his mother. However, as previously discussed, he failed to produce any documentation or witnesses to support this claim. It was therefore within the circuit court's discretion to weigh that evidence, or lack thereof, and determine that Jackson's claim was not credible. Once again, Jackson's alternative theory for how he purchased the Impala was not enough on its own to meet his burden of clear and convincing evidence.

CONCLUSION

For the foregoing reasons, we affirm the Hardin Circuit Court's order of forfeiture for both the cash and the Impala.

ALL CONCUR.

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