

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERTO MAGOBET,
Defendant¹

NO. MD-74-2022

Adrian Shchuka, Esquire
Assistant Chief Deputy Attorney General
Roberto Magobet

Counsel for Commonwealth

Pro se

MEMORANDUM OPINION

Nanovic, P.J. – March 1st, 2023

Under the Forfeiture Act, money found in close proximity to illegal controlled substances is rebuttably presumed to be the proceeds from the selling of a controlled substance. At issue here is the effect, validity and application of this presumption when the amount of money found and subject to forfeiture is vastly disproportionate and greater in value than the amount of the controlled substance found in close proximity.

¹ In a forfeiture case, an *in rem* proceeding, the property subject to forfeiture is to be designated as the defendant. See 42 Pa.C.S.A. §5805(a). This notwithstanding, the caption as it appears above is that originally chosen by Mr. Magobet in his Petition for Return of Property, the initial filing in these proceedings, and has remained the same ever since. Consequently, for the sake of consistency, we have retained the same caption for this opinion.

PROCEDURAL AND FACTUAL BACKGROUND

On August 25, 2021, Chief Audie Mertz and Officer Jeff Frace of the Mahoning Township Police Department were dispatched to a complaint about the driver of a Cadillac that was blocking access to the driveway for the residence at 147 Jamestown Street in Mahoning Township. (N.T., pp. 24-25). Officer Frace arrived on scene at approximately 1:17 P.M. Upon his arrival he observed the Cadillac parked in front of the driveway with Defendant, Roberto Magobet, as the sole occupant seated in the driver's seat. (N.T., pp. 25-26). Standing next to the vehicle was a known drug offender with whom Defendant was talking. (N.T., p. 25). Officer Frace also testified that the home at which Defendant was parked was a known drug house and the location a high-traffic drug area. (N.T., pp. 41-42).

During a background investigation, Officer Frace learned Defendant was driving under suspension, a misdemeanor offense due to Defendant's habitual offender status, and was on state parole. (N.T., pp. 16, 26-27, 60-61). Officer Frace also learned the vehicle was neither owned nor registered to Defendant, with Defendant advising Officer Frace he had purchased the vehicle from the last known owner. (N.T., pp. 26, 28). The vehicle had an expired inspection and did not have a valid registration. (N.T., p. 26).

On the basis of Defendant driving without a valid driver's license, the vehicle not being properly registered or inspected, and the parking violation, Defendant was arrested. (N.T., pp. 26-27, 60-61). A search incident to arrest found \$5,338.00 in U.S. currency on Defendant's person. (N.T., pp. 29, 61-62; Commonwealth Exhibit 1). A small amount of

methamphetamine was also found on the driver's floor of the vehicle near where Defendant had been sitting when Officer Frace first arrived on scene. (N.T., pp. 25-26, 30-33). The vehicle was towed from the scene, impounded and searched the following day pursuant to a search warrant. (N.T., pp. 30, 42, 50, 54-55). During this search, a glass pipe with residue and a clear plastic tube with residue was found. (N.T., pp. 50-52).

Six days later, on August 31, 2021, State Parole, who were making a supervised visit to Defendant's home in Jim Thorpe, observed a small amount of methamphetamine on the front porch. (N.T., pp. 66-67). Upon entering the home, State Parole discovered a large amount of narcotics and contacted the Jim Thorpe Police Department which secured a search warrant. (N.T., p. 68; Commonwealth Exhibit 2). A search of Defendant's home located significant amounts of fentanyl and heroin (*i.e.*, 175.7 grams), with a street value in excess of \$26,000.00, and methamphetamine (*i.e.*, 256.9 grams), with a street value in excess of \$20,000.00, as well as various items of drug paraphernalia. (N.T., pp. 70, 72-73). After Defendant was arrested and Mirandized, he admitted that the contraband was his and that he was a major drug dealer in the area. (N.T., pp. 74-75). At the time of this arrest, \$2,000.00 in U.S. currency was also found on Defendant's person. (N.T., p. 75).

According to Officer Frace, due to the quantity of drugs and severity of the offenses for which Defendant was facing charges from his August 31, 2021, arrest, no criminal charges were filed by the Mahoning Township Police arising out of the August 25, 2021,

incident or in relation to the \$5,338.00 in U.S. currency. (N.T., pp. 31-32, 60-61). Nevertheless, before a decision not to file charges was made, the money at issue in these proceedings was seized by the police as possible evidence in the event charges would be filed, as well as to secure the money, and because of the officer's belief under the totality of the circumstances that the money was linked to illicit drug transactions since drugs were found in the vehicle, the vehicle was illegally parked, the area was a known drug area for drug transactions, the person Defendant was conversing with in front of a drug house was a known drug offender, and Defendant had prior contacts with police under similar circumstances. (N.T., pp. 41-42). As a result, Defendant was provided with a forfeiture notice pursuant to 42 Pa.C.S.A. §5803 advising him of the seizure of the \$5,338.00 in U.S. currency pursuant to the Forfeiture Act and his right to seek return of the seized property under 42 Pa.C.S.A. §5806. (N.T., pp. 61-62).

On March 11, 2022, Defendant filed a *pro se* Petition for Return of Property pursuant to Pa.R.Crim.P. 588(A).² In the Commonwealth's Answer to this Petition which opposed return of the \$5,338.00 to Defendant, the Commonwealth referred to the drugs and monies recovered from Defendant on August 31, 2021, Defendant's admission that he was involved in drug trafficking, claimed that the \$5,338.00 seized was related to Defendant's drug trafficking business, and requested forfeiture of both the \$5,338.00 in

² Defendant filed an earlier petition for return of property on February 25, 2022, which was treated by Judge Serfass of this court as a petition requiring no further action pursuant to Pa.R.Crim.P. 576(A)(4) (when a represented defendant submits *pro se* filing, clerk of courts shall make a docket entry reflecting date of receipt and forward filing to defendant's attorney and the Commonwealth).

U.S. currency seized on August 25, 2021, and the \$2,000.00 in U.S. currency seized on August 31, 2021, pursuant to 42 Pa.C.S.A. §5802.

A hearing on Defendant's Petition was held on November 28, 2022. At this hearing, Defendant testified the money seized by the police on August 25, 2021, was his and that it was legally acquired. Specifically, Defendant testified to two stimulus check payments he received from the federal government totaling \$2,000.00: one U.S. Treasury check dated January 6, 2021, in the amount of \$600.00 and one U.S. Treasury check dated March 26, 2021, in the amount of \$1,400.00 which were direct deposited into an account for him. (N.T., pp. 8-9, 12-13; Defense Exhibit A). Defendant testified the source of the additional \$3,338.00 found on his person was from under-the-table employment he had with Chris Lyden 570 during the course of two months - between June 28, 2021, and the Friday immediately preceding August 24, 2021 - during which time he received cash payments of approximately \$500.00 every week. (N.T., pp. 10-11). Defendant claimed the \$2,000.00 was withdrawn by him during the week immediately preceding his arrest and that he never deposited the cash payments he received from Chris Lyden 570 because he didn't have a bank account. This, Defendant testified, explained how \$5,338.00 came to be on his person at the time of his arrest on August 25, 2021. (N.T., pp. 13-15).

At the conclusion of the hearing held on November 28, 2022, the court stated it would be issuing an order denying Defendant's Petition for Return of Property, did not

believe the \$2,000.00 seized on August 31, 2021, was properly before the court,³ and requested the parties brief the issue whether it was appropriate for the court to order forfeiture of the \$5,338.00 in the context of a defendant's motion for return of property. (N.T., pp. 88-90). Accordingly, our Order dated November 29, 2022, denied Defendant's Petition for Return of Property and directed the Commonwealth to file a memorandum of law providing the court with legal authority for its position that based upon the filings made in the case and the evidence presented, the court would be within its authority to order the forfeiture of the \$5,338.00 in U.S. currency seized from Defendant. This order also provided Defendant with an opportunity to respond to the Commonwealth's memorandum. Subsequently, by Order dated January 6, 2023, we granted the Commonwealth's request for forfeiture of the \$5,338.00 in U.S. currency.

³ Defendant's Petition for Return of Property was limited to the \$5,338.00 in U.S. currency seized on August 25, 2021, and no petition for forfeiture complying with the dictates of 42 Pa. C.S.A. §5805(a) was ever filed by the Commonwealth. Additionally, criminal charges for Defendant's arrest on August 31, 2021, were still pending at the time of the hearing held in this matter. (N.T., pp. 18-20). See Commonwealth v. Bowers, 185 A.3d 358, 363 (Pa.Super. 2018) holding that "while an underlying criminal action remains pending, an appeal from an order deciding the Commonwealth's forfeiture petition [filed in the same criminal proceeding] is interlocutory and unappealable if the forfeiture petition relates in any way to the criminal prosecution". Cf. Commonwealth v. Latimer, 242 A.3d 428 (Non-Precedential Decision) (Pa.Super. 2020) (declining to address the merits of defendant's *pro se* petition for return of seized property on *res judicata* grounds - which petition was filed to the same docket number as criminal proceedings against the defendant which had been dismissed two months earlier - where the Commonwealth had filed a petition for forfeiture filed to a separate civil forfeiture docket and which had been granted more than a year earlier with no petition for reconsideration or for return of property or notice of appeal filed by defendant).

Defendant filed a Notice of Appeal from the November 29, 2022, Order on December 5, 2022.⁴ On January 6, 2023, simultaneously with the filing of the January 6, 2023, Order granting the Commonwealth's request for forfeiture, we directed Defendant to file a concise statement of the errors complained of on appeal within twenty-one days of the entry of the January 6, 2023, Order. Defendant timely filed his concise statement on January 20, 2023. Therein, Defendant claims the Commonwealth failed to meet its burden of establishing a nexus between the money seized and a violation of The Controlled Substance, Drug, Device and Cosmetic Act (the "Drug Act")⁵; that the court abused its discretion in not accepting Defendant's evidence that the monies were lawfully acquired by him; and that it was an abuse of discretion for the court to consider the August 31, 2021, evidence of Defendant's drug trafficking in deciding whether the money seized on August 25, 2021, should be forfeited. As to the latter issue, Defendant cites to Commonwealth v. Fontanez, 739 A.2d 152 (Pa. 1999).

DISCUSSION

The Forfeiture Act, 42 Pa.C.S.A. §§5801-5808, permits the forfeiture of money if the Commonwealth proves that the money was (1) "furnished or intended to be furnished... in exchange for a controlled substance" or (2) represented "proceeds traceable to such an exchange," or (3) that the currency was "used or intended to be used to facilitate any violation of [the Drug Act] or is otherwise subject to forfeiture under [the

⁴ In his Notice of Appeal, Defendant incorrectly refers to the date of entry of the order as November 28, 2022.

⁵ 35 P.S. §§780-101--780-144.

Drug Act].” 42 Pa.C.S.A. §5802(6)(i)(A), (B); Commonwealth v. \$301,360.00 U.S.

Currency, 182 A.3d 1091, 1097 (Pa.Cmwth. 2018) (*en banc*).

Civil forfeitures are the *in rem* consequence for wrongdoing prescribed by statute. Property is forfeited not as a result of [a] criminal conviction, but through a separate proceeding, civil in form but quasi-criminal in nature, in which the agency seeking the property must show, by a preponderance of the evidence, a nexus between the property sought and the possessor's illegal activity ... Regardless of whether a conviction can be gained from the evidence, the Commonwealth may seek to forfeit property as long as it establishes that the property constitutes contraband.

Commonwealth v. Bowers, 185 A.3d 358, 361-62 (Pa.Super. 2018) (quoting Commonwealth v. Jackson, 53 A.3d 952, 956 (Pa.Cmwth. 2012)).

In a motion for return of property, the moving party must establish lawful possession of cash seized from him. Commonwealth v. Porrino, 96 A.3d 1132, 1138 (Pa.Cmwth. 2014) (*en banc*).

Where the Commonwealth does not dispute that currency was taken from the petitioner's possession, the petitioner need only allege that the money belongs to him. The burden then shifts to the Commonwealth to prove that the cash was obtained through illegal drug activity.

Id. at 1138 (citations and quotation marks omitted).

Rule 588 of the Pennsylvania Rules of Criminal Procedure provides in relevant part as follows:

Rule 588. Motion for Return of Property

(A) A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

(B) The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon. If the motion is granted, the property

shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

Pa.R.Crim.P. 588(A), (B).

A trial court's denial of a motion for return of property does not mean that the property in question is automatically forfeited. Rather, it is improper to award forfeiture, under the Controlled Substances Forfeiture Act, unless a request for forfeiture has been duly made by the Commonwealth.

Porrino, 96 A.3d at 1138 (citation and quotation marks omitted).⁶

Forfeiture does not automatically ensue when a motion for return of property is denied upon a finding that the property at issue is contraband; before forfeiture may be granted, a request for forfeiture must have been "duly made." Commonwealth v. Mosley, 702 A.2d 857, 859 (Pa. 1997). At the heart of this requirement is the need to afford procedural due process to the forfeiting party, with notice and an opportunity to be heard being integral to forfeiture proceedings. Commonwealth v. Smith, 757 A.2d 354, 358-59 (Pa. 2000); See also Porrino, 96 A.3d at 1138.

To meet its burden of establishing that the cash seized was obtained through illegal drug activity, the Commonwealth must establish a "sufficient or substantial nexus" between a violation of the Drug Act and the property subject to forfeiture. Commonwealth v. Freeman, 142 A.3d 156, 160-61 (Pa.Cmwth. 2016) (*en banc*); Commonwealth v. \$9,000 U.S. Currency, 8 A.3d 379, 384 (Pa.Cmwth. 2010).

⁶ See also Commonwealth v. Irland, 193 A.3d 370, 395 (Pa. 2018) ("[A] forfeiture pursuant to Rule 588 may occur prior to conviction and in the absence of a criminal conviction. Accordingly, such forfeitures, although founded in a rule of criminal procedure, must be denominated civil in nature...").

The Commonwealth must prove this nexus by a preponderance of the evidence, *i.e.*, a "more likely than not" standard. Circumstantial evidence is sufficient to show a nexus. If the Commonwealth establishes a nexus, then the burden shifts to the person opposing the forfeiture to prove that he owns the money; lawfully acquired the money; and did not use or possess the money for unlawful purposes.

Id. at 384 (citations omitted).⁷ If the claimant satisfies his burden, the burden then shifts to the Commonwealth "to establish by clear and convincing evidence that the property in question was unlawfully used, possessed or otherwise subject to the forfeiture." 42 Pa. C.S.A. §5805(j)(3); Commonwealth v. Edmundson, 2019 WL 6332691 *6 (Pa.Cmwlt. 2019) (Opinion Not Reported), appeal denied, 236 A.3d 1041 (Pa. 2020).⁸

⁷ Under Section 5805 of the Forfeiture Act as it now exists, the third prong of the innocent owner defense (*i.e.*, "did not use or possess the money for unlawful purposes") has been omitted in the burden first imposed upon the claimant once the Commonwealth has met its initial burden of establishing a nexus. See 42 Pa.C.S.A. §5805(j)(2).

⁸ Prior to codification of the Forfeiture Act now found at 42 Pa.C.S.A. §§5801-5808, effective July 1, 2017, forfeiture of property for violation of the Drug Act was governed by 42 Pa.C.S.A. §§6801-6802. The burden of proof under that former statute as interpreted by the Pennsylvania Supreme Court was by a preponderance of the evidence, with the initial burden on the Commonwealth to establish a substantial nexus between the property subject to forfeiture and a violation of the Drug Act. Commonwealth v. \$34,440.00 U.S. Currency, 174 A.3d 1031, 1040 (Pa. 2017); Commonwealth v. \$301,360.00 U.S. Currency, 182 A.3d 1091, 1097 (Pa.Cmwlt. 2018) (*en banc*). If the Commonwealth met its initial burden, the burden shifted to the claimant to disprove the Commonwealth's case that the property in question was unlawfully acquired or to establish the statutory defense of being the lawful owner of the property, lawfully acquired, used and possessed (*i.e.*, the innocent owner defense). \$34,440.00 U.S. Currency, 174 A.3d at 1041.

Section 5805(j) of the current Forfeiture Act sets forth a series of shifting burdens of production with, as we interpret the Act, the burden of persuasion at all times remaining on the Commonwealth to prove that the property in question was unlawfully used, possessed or otherwise subject to forfeiture. Section 5805(j) as it currently reads states:

(j) Burden of proof.—

(1) The burden shall be on the Commonwealth to establish in the forfeiture petition that the property is subject to forfeiture.

Central to a civil forfeiture case, is that money found "in close proximity" to drugs is rebuttably presumed "to be proceeds derived from the selling of a controlled substance." 42 Pa.C.S.A. §5802(6)(ii). Absent that presumption, in accordance with the foregoing, the Commonwealth must prove by other means a "sufficient or substantial nexus" between the cash in question and a transaction involving controlled substances.

[T]he Commonwealth need not produce evidence directly linking seized property to illegal activity in order to establish the requisite nexus between seized property and unlawful activity. Although illegal drugs are often present at the time of the seizure, there is no requirement that such drugs be present; instead, circumstantial evidence may suffice to establish a party's involvement in drug activity. Furthermore, for property to be deemed forfeitable, neither a criminal prosecution nor a conviction is required.

(2) If the Commonwealth satisfies the burden under paragraph (1), the burden shall be on the claimant to show by a preponderance of the evidence that:

(i) the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale on the property or holds some other documented interest in the property; and

(ii) the claimant lawfully acquired the property.

(3) If the claimant satisfies the burden under paragraph (2), the burden shall be on the Commonwealth to establish by clear and convincing evidence that the property in question was unlawfully used, possessed or otherwise subject to the forfeiture.

(4) If the Commonwealth satisfies the burden under paragraph (3) and the claimant alleges that he did not have knowledge of the unlawful activity or consent to the unlawful activity, the burden shall be on the Commonwealth to establish by clear and convincing evidence:

(i) that the property was unlawfully used or possessed by the claimant; or

(ii) if it appears that the property was unlawfully used or possessed by a person other than the claimant, that the person unlawfully used or possessed the property with the claimant's knowledge and consent.

42 Pa.C.S.A. §5805(j). Though the second-level evidentiary burden of persuasion placed upon the Commonwealth in the current statute has been heightened to clear and convincing evidence, significantly, this is still a civil standard.

Commonwealth v. \$6,425.00 Seized From Esquilin, 880 A.2d 523, 529-530 (Pa. 2005) (citations omitted); *but cf.* Commonwealth v. Fontanez, 739 A.2d 152, 154 (Pa. 1999) (stating that, while not dispositive, the fact that the claimant was never charged with a crime in relation to the seized money is probative of whether the money was indeed contraband).

Forfeiture cases are "fact sensitive" and require - particularly where the evidence relied upon to establish the requisite nexus between a violation of the Drug Act and the seized money is circumstantial - that the evidence demonstrate more than a mere "possibility" or "suspicion" that the money seized is tied to some unlawful activity. Freeman, 142 A.3d at 160-161. Whether a sufficient nexus has been proven is based on the totality of the evidence. Freeman, 142 A.3d at 161. Additionally, it must be kept in mind that forfeitures are disfavored under the law and that the Forfeiture Act is to be strictly construed. Commonwealth v. \$34,440.00 U.S. Currency, 174 A.3d 1031, 1038 (Pa. 2017).

Instantly, upon his arrival on the scene, Officer Frace observed Defendant parked in front of a known drug house speaking with a known drug offender in a high-traffic drug area at a time when Defendant was known to have a history of engaging in similar contacts in the past. Defendant was seated in the driver's seat of a black Cadillac which he had been operating while under a suspended license and in which he was the lone occupant. The vehicle was illegally parked and was not registered in Defendant's name. Upon his arrest, \$5,338.00 in U.S. currency was found on his person and a small amount

of methamphetamine found on the driver's floor of the vehicle in close proximity to where Defendant had been sitting. A subsequent search of the vehicle located a glass pipe with residue and a clear plastic tube with residue. The cash found on Defendant's person was seized as probable contraband.

In \$34,440.00 U.S. Currency, the Pennsylvania Supreme Court held the Commonwealth could satisfy its evidentiary burden of proving a substantial nexus between seized currency and a violation of the Drug Act by relying solely on the statutory presumption at 42 Pa.C.S.A. §6801(a)(6)(ii) (since repealed and now found at 42 Pa.C.S.A. §5802(6)(ii)), which provides that money found in close proximity to controlled substances is rebuttably presumed to be the proceeds derived from the sale of a controlled substance. \$34,440.00 U.S. Currency, 174 A.3d at 1040. The Supreme Court further held that this presumption could be rebutted by either the innocent owner defense set forth at 42 Pa.C.S.A. §6802(j) (since repealed and now found at 42 Pa.C.S.A. §5805(j)(2)) or by demonstrating that the seized currency, notwithstanding its proximity to illegal controlled substances, was nevertheless not the proceeds of drug sales based upon the evidence of record, or both. \$34,440.00 U.S. Currency, 174 A.3d at 1045-1046.

In \$34,440.00 U.S. Currency, after stopping the driver of a vehicle owned by the driver's sister, the police uncovered ecstasy pills in a cigarette outlet in the center console area of the vehicle and a small amount of marijuana in the rear passenger door. They also found \$34,440.00 in cash hidden in the seatbelt attachment of the "b-pillar" on the passenger side of the vehicle. The driver admitted the controlled substances were his for

personal use and pled guilty to misdemeanor possession of a small amount of marijuana for personal use, but denied ownership or knowledge of the currency found in the vehicle. A longtime friend of the driver's sister ("claimant") claimed the money was his, that the money represented proceeds of a personal injury lawsuit settlement which he had received in two separate payments - one made approximately two months before the stop and the other made approximately one month before the stop - as evidenced by settlement checks he presented, and that he had concealed the money in the vehicle because he did not want to use a bank.

The trial court granted the Commonwealth's petition for forfeiture in large part based upon the proximity of the money to the drugs found in the cigarette outlet and rear passenger door in reliance upon the 42 Pa.C.S.A. §6801(a)(6)(ii) statutory presumption (providing that money found in close proximity to controlled substances is rebuttably presumed to be the proceeds derived from the sale of a controlled substance) and finding the claimant's innocent owner claim incredible and implausible. On appeal, the Commonwealth Court held that the innocent owner defense was the sole method of rebutting the Section 6801(a)(6)(ii) presumption and therefore did not consider that the quantity of drugs involved was minimal; that there was no evidence, apart from the proximity of the small amount of drugs, linking the \$34,440.00 to drug sales; or that the claimant would have no way of knowing the vehicle's owner would allow her brother to borrow her car or that the brother would have drugs in the car.

The Pennsylvania Supreme Court reversed the Commonwealth Court holding that "the Subsection 6801(a)(6)(ii) presumption [could] be rebutted by evidence that the seized currency [did] not represent the proceeds of a drug exchange, independent of the claimant's ability to demonstrate all the elements of the innocent owner defense," and, more specifically, that "the presumption that the money was derived from drug sales [could be] rebutted by evidence that [the driver] possessed only a small amount of drugs for personal use and did not own the money uncovered from the vehicle." \$34,440.00 U.S. Currency, 174 A.3d at 1036-1037. The Supreme Court remanded the case to the trial court "so that it may consider whether the record evidence before it rebuts the presumption that the seized currency represents the proceeds of drug sales, [thus] requiring the Commonwealth to put on additional evidence of a nexus to support its *prima facie* case." \$34,440.00 U.S. Currency, 174 A.3d at 1046. The Court did not hold that the presence of a small amount of drugs alone in close proximity to a large amount of money would rebut the presumption, but held instead that whether the presumption was rebutted must be based on the entirety of the record. \$34,440.00 U.S. Currency, 174 A.3d at 1046. The Court's remand order clearly signaled that even if the statutory presumption standing alone was insufficient for the Commonwealth to meet its burden, if combined with other additional evidence of record of a nexus, the Commonwealth could meet its burden of proving a *prima facie* case. Cf. \$34,440.00 U.S. Currency, 174 A.3d at 1040 n.13 (explaining the statutory presumption was one factor among several in Esquelin in finding the money represented the proceeds of drug transactions).

In this case, unlike in Fontanez cited by Defendant in his concise statement of matters to be raised on appeal, an illegal controlled substance, namely methamphetamine, was found in close proximity to where Defendant had been sitting in the driver's seat with \$5,338.00 on his person. This is sufficient under the holding in \$34,440.00 U.S. Currency to meet the Commonwealth's initial burden of establishing a substantial nexus between the money and a controlled substance so as to shift the burden to Defendant to establish not only that the money at issue was his, but that he lawfully acquired it. At this point, we find Defendant's explanation of the source of the \$5,338.00 found on his person to be incredulous.

Defendant claims \$2,000.00 of these monies came from two separate direct deposit stimulus transfers made into an account on his behalf made more than five months before his arrest on August 25, 2021, and that these monies were withdrawn by him within the week preceding his arrest. Defendant presented no corroborating evidence as to the account or documentation showing when the money was withdrawn. The balance of the monies claimed by Defendant, \$3,338.00, are attributable, according to Defendant, to under-the-table weekly payments he received in cash during the two-month period immediately preceding his arrest - approximately \$500.00 each week - which Defendant testified were never deposited into an account because he had no account. The latter appears to contradict Defendant's testimony about his withdrawal a week prior to his arrest of the stimulus monies from the account into which they had been deposited. Again, Defendant presented no corroborating evidence from his employer or otherwise

that such payments were ever made. Moreover, it strains credibility to believe that Defendant saved virtually every penny of the stimulus funds and under-the-table payments he claims to have received without using any of these monies to cover other expenses and coincidentally withdrew the stimulus monies within a week prior to his arrest, and by pure chance had on his person all of these monies when he drove to a known drug area, parked in front of a drug house, and was in contact with a known drug offender. And then, less than a week later, had an additional \$2,000.00 on his person. From what source if not from dealing drugs? Cf. Edmundson, *6 (holding that where a claimant is unable to demonstrate seized property was acquired lawfully, the burden of proof never shifts from the claimant to the Commonwealth, and the trial court need not reach the question of whether the Commonwealth met its burden by clear and convincing evidence).

Significantly, the record before us consists not only of the suspicious activity Officer Frace observed on August 25, 2021, including the small amount of methamphetamine and drug paraphernalia found in close proximity to the money in issue, but also other additional evidence of record relevant to establishing a nexus. Six days after Officer Frace's observations, a search of Defendant's home resulted in the seizure of significant amounts of illegal controlled substances, including methamphetamine (the same controlled substance found in Defendant's vehicle on August 25, 2021), with a street value in excess of \$46,000.00, as well as \$2,000.00 in U.S. currency found on

Defendant's person.⁹ During questioning, Defendant admitted his role as a major drug dealer in the area.

Rule 588 permits the court to receive evidence on any issue of fact necessary to its decision. Relevant evidence is any evidence which has "any tendency to make a fact more or less probable than it would be without the evidence." Pa.R.E. 401. To claim that this evidence is irrelevant and has no bearing as to whether the monies found on Defendant's person on August 25, 2021, were "furnished or intended to be furnished... in exchange for a controlled substance..., [or represented the] proceeds traceable to such an exchange," or were "used or intended to be used to facilitate any violation of the Drug Act" is naïve and defies common sense. The nature and chronology of the events of August 25, 2021, and August 31, 2021, and their proximity in time; the evidence of the presence of drugs and drug paraphernalia at the time of Defendant's arrest on August 25, 2021; the fact that the same person, Defendant, was the owner/possessor of both the money in question and drugs found in close proximity in Defendant's vehicle (unlike the separate ownership of drugs and money discussed in \$34,440.00 U.S. Currency); the large amounts of money found on Defendant's person without any credible explanation;

⁹ In Fontanez, in contrast, defendant's arrest for allegedly transporting drugs occurred approximately two months after the seizure at issue, not within a week, as here. No evidence appears to have been presented in Fontanez as to the amount of drugs involved. Nor is any mention made in the Court's opinion to defendant admitting his role as a major drug dealer. Finally, the Supreme Court in Fontanez noted that the drug charges against defendant were dismissed at the preliminary hearing and in this context stated that "[u]nproven allegations that a person transported drugs at a later date shed no light on whether money possessed by that same person, at a time when he undisputedly did not have any narcotics, may be considered contraband." 739 A.2d at 155 (emphasis added).

and Defendant's admission to trafficking in drugs; all logically, reasonably and legally support by clear and convincing evidence our conclusion that the \$5,338.00 found on his person on August 25, 2021, was used in and/or was the proceeds of drug trafficking operations.

CONCLUSION

In evaluating the totality of the circumstances, and drawing logical inferences from the evidence presented, for the reasons discussed above, we conclude that the \$5,338.00 in U.S. currency seized from Defendant on August 25, 2021, was either "furnished or intended to be furnished... in exchange for a controlled substance..., [or represented the] proceeds traceable to such an exchange," or were "used or intended to be used to facilitate any violation of the Drug Act" and have been properly forfeited in accordance with our final order dated January 6, 2023.

BY THE COURT:



P.J.