

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SENECA COUNTY**

STATE OF OHIO,

CASE NO. 13-14-25

PLAINTIFF-APPELLEE,

v.

JENNIFER L. MURPHY,

O P I N I O N

DEFENDANT-APPELLANT.

**Appeal from Seneca County Common Pleas Court
Trial Court No. 13-CR-0159**

Judgment Affirmed

Date of Decision: June 8, 2015

APPEARANCES:

Kent D. Nord for Appellant

Stephanie J. Reed for Appellee

PRESTON, J.

{¶1} Defendant-appellant, Jennifer L. Murphy (“Jennifer”), appeals the August 4, 2014 judgment entry of forfeiture of the Seneca County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} On September 26, 2013, the Seneca County Grand Jury indicted Jennifer on four counts: Count One of possession of cocaine in violation of R.C. 2925.11(A), (C)(4)(a), a fifth-degree felony; Count Two of aggravated possession of drugs in violation of R.C. 2925.11(A), (C)(1)(a), a fifth-degree felony; Count Three of permitting drug abuse with a forfeiture specification in violation of R.C. 2925.13(B), (C)(3), a fifth-degree felony; and Count Four of endangering children in violation of R.C. 2919.22(A), a first-degree misdemeanor. (Doc. No. 1). The indictment alleged that, on August 12, 2013, Jennifer, in the presence of her children, possessed cocaine and oxycodone and permitted Jillian Murphy (“Jillian”), Jennifer’s sister, to traffic drugs in Jennifer’s apartment. (*Id.*). With respect to the forfeiture specification, the indictment alleged that the following U.S. currency is subject to forfeiture under R.C. 2981.02 as proceeds derived from the commission of the offense alleged in Count Three of the indictment:

\$20 in US currency found on [Jennifer’s] person, \$20 in US
currency found under couch pillow in living room, \$181 in US
currency found in [Jennifer’s] wallet in [Jennifer’s] purse in living

room, and \$242 in US currency found in [Jennifer's] purse in living room.

(*Id.*).

{¶3} On October 7, 2013, Jennifer appeared for arraignment and entered pleas of not guilty. (Doc. No. 7).

{¶4} On May 8, 2014, Jennifer withdrew her pleas of not guilty and entered a “plea [sic] of no contest with consent to finding of guilty,” under a written plea agreement, to the indictment. (Doc. No. 38). In exchange for her change of pleas, the State agreed to recommend that Jennifer be sentenced to 10 months in prison as to Counts One, Two, and Three and 90 days in jail as to Count Four. (Doc. No. 37). Further, the State agreed to recommend that Jennifer serve the sentences for Counts One, Two, and Four concurrently and the sentence for Count Three consecutive, for an aggregate sentence of 20 months. (*Id.*). The trial court accepted Jennifer's pleas, found her guilty as to the charges in the indictment, and sentenced her in accordance with the State's recommendation. (Doc. No. 38).

{¶5} On June 5, 2014, Jennifer filed a notice of appeal of the trial court's sentencing entry. (Doc. No. 43). This court affirmed the trial court's judgment on November 10, 2014. *State v. Murphy*, 3d Dist. Seneca No. 13-14-13, 2014-Ohio-5002, ¶ 16.

{¶6} On June 17, 2014, the State requested a forfeiture hearing under R.C. 2981.04. (Doc. No. 50).

{¶7} On August 1, 2014, the trial court held a forfeiture hearing and ordered Jennifer to forfeit the U.S. currency identified in the indictment as proceeds derived from the permitting-drug-abuse offense—in the sums of \$20, \$20, \$181, and \$242, totaling \$463. (Doc. No. 62). The trial court filed its judgment entry on August 4, 2014, and Jennifer filed her notice of appeal on September 2, 2014. (Doc. Nos. 62, 64). She raises one assignment of error for our review.

Assignment of Error

The forfeiture in the trial court should be reversed because it was against the manifest weight of the evidence and because the evidence supporting it was insufficient as a matter of law to prove that the funds were proceeds from criminal activity of Jennifer L. Murphy by a preponderance of the evidence.

{¶8} In her assignment of error, Jennifer argues that the forfeiture of the U.S. currency identified in the indictment as proceeds of criminal activity is based on insufficient evidence and is against the manifest weight of the evidence. However, Jennifer does not argue in her brief how the forfeiture is based on insufficient evidence or how it is against the manifest weight of the evidence. Instead, she argues that the State failed to meet its burden that the currency seized during Jennifer’s arrest was used for “drug transactions.”

If a person pleads guilty to or is convicted of an offense * * * and the complaint, indictment, or information charging the offense or act contains a specification covering property subject to forfeiture under section 2981.02 of the Revised Code, the trier of fact shall determine whether the person's property shall be forfeited.

R.C. 2981.04(B). "A forfeiture action, while criminal in nature, is a civil proceeding against the seized property." *State v. Watkins*, 7th Dist. Jefferson No. 07 JE 54, 2008-Ohio-6634, ¶ 31, citing *State v. Lilliock*, 70 Ohio St.2d 23, 25 (1982). "[T]he law generally does not favor forfeiture, and such statutes must be strictly construed against the state." *Id.*, citing *Lilliock* at 25 and *State v. Hill*, 70 Ohio St.3d 25, 31 (1994).

{¶9} "R.C. 2981.02(A)(2) provides that 'proceeds derived from or acquired through the commission of an offense' may be forfeited provided the requisite showing is made." *MARMET Drug Task Force v. Paz*, 3d Dist. Marion No. 9-11-60, 2012-Ohio-4882, ¶ 23, quoting R.C. 2981.02(A)(2). "In cases involving unlawful * * * activities, 'proceeds' means any property derived directly or indirectly from an offense." R.C. 2981.01(B)(11)(a). Under the statute, "'proceeds' is not limited to the net gain or profit realized from the offense." R.C. 2981.01(B)(11)(a).

{¶10} In a forfeiture proceeding under R.C. 2981.04, the State bears the burden of proof by a preponderance of the evidence that property is subject to

forfeiture under R.C. 2981.02. R.C. 2981.04(B). *See also State v. Bustamante*, 3d Dist. Seneca Nos. 13-12-26 and 13-13-04, 2013-Ohio-4975, ¶ 32.¹ “We do not disturb a trial court’s findings in forfeiture cases if there is “some competent, credible evidence going to all the essential elements of the case.”” *Bustamante* at ¶ 34, quoting *Watkins* at ¶ 34, quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶11} Notwithstanding the caption of Jennifer’s assignment of error, since Jennifer argues that the State failed to meet its burden, and because she acknowledges that we review a trial court’s order of forfeiture for some competent, credible evidence, we will not disturb the trial court’s forfeiture decision so long as there is some competent, credible evidence that the currency seized during Jennifer’s arrest was derived *directly or indirectly* from the

¹ In her brief, Jennifer suggests, as also incorrectly stated by this court in past opinions, that “[t]here is a ‘rebuttable presumption that the property is subject to forfeiture if the State proves, by a preponderance of the evidence, that 1) the defendant acquired the property during the commission of an offense or within a reasonable time afterwards, and 2) that there is no likely source of that property other than as proceeds of the offense.’” (Appellant’s Brief at 6-7, quoting *State v. Balwanz*, 7th Dist. Belmont No. 02-BE-37, 2004-Ohio-1534, ¶ 45-47). *See also State v. Brownridge*, 3d Dist. Marion No. 9-09-24, 2010-Ohio-104, ¶ 24, citing R.C. 2981.03(A)(5)(a) and *State v. Watkins*, 7th Dist. Jefferson No. 07 JE 54, 2008-Ohio-6634, ¶ 33 (“finding that, where the State demonstrates by a preponderance that both R.C. 2981.03(A)(5)(a)(i) and 2981.03(A)(5)(a)(ii) are present, a rebuttable presumption arises that the property is subject to forfeiture”); *Id.* at ¶ 28 (“In light of the preceding, we conclude that the trial court possessed some competent, credible evidence that the \$3,821 was subject to forfeiture because Brownridge acquired the cash during the commission of a drug trafficking offense, and there was no other likely source of the cash.”), citing *Watkins* at ¶ 33, R.C. 2981.02(A)(2), and R.C. 2981.03(A)(5)(a). However, a plain reading of R.C. 2981.03 indicates that statutory section is applicable to the seizure of property and the State’s provisional-title determination, *not* to the forfeiture of property. Forfeiture proceedings are governed by R.C. 2981.04 and 2981.05. Because the forfeiture proceeding in this case was initiated under R.C. 2981.04, the State was required to show by a preponderance of the evidence that the property is in whole or part subject to forfeiture under R.C. 2981.02. *See* R.C. 2981.04(B).

commission of a drug offense. *See State v. McGowan*, 7th Dist. Jefferson No. 09 JE 24, 2010-Ohio-1309, ¶ 79.

{¶12} On appeal, Jennifer challenges the forfeiture of the \$463, arguing that there was a likely other source for the money—her mother. As we stated above, the State was not required to demonstrate that “there is no likely source of that property other than as proceeds from the offense” at a R.C. 2981.04 proceeding. Instead, the State was required to demonstrate by a preponderance of the evidence that the \$463 is proceeds—that is, “any property derived directly or indirectly from an offense.” *See* R.C. 2981.04(B); R.C. 2981.02(A)(2); R.C. 2981.01(B)(11). There is some competent, credible evidence that the \$463 is proceeds derived directly or indirectly from a drug offense.

{¶13} At the forfeiture hearing on August 1, 2014, the State offered the testimony of Detective Charles W. Boyer (“Boyer”) of the Seneca County Drug Task Force METRICH Enforcement Unit (“METRICH Unit”). (Aug. 1, 2014 Tr. at 28-29). Boyer testified that the METRICH Unit conducted “a controlled purchase operation on [August 11, 2013] involving Jillian Murphy,” at which Jillian sold heroin to confidential informants at Jennifer’s apartment, while Jennifer was present. (*Id.* at 30-33). Boyer testified that the confidential informants each used “[a] hundred dollars of U.S. currency” of varying denominations to purchase the heroin from Jillian. (*Id.* at 32-34). According to Boyer, the funds that the confidential informants used to purchase the heroin from

Jillian were specially “marked” and documented prior to being given to the confidential informants to purchase the heroin. (*Id.* at 34).

{¶14} As a result of the controlled-purchase operation, the METRICH Unit obtained and executed a search warrant at Jennifer’s apartment on August 12, 2013. (*Id.* at 34-35). The State introduced as evidence a copy of the search warrant and a list of the property seized. (*See* State’s Exs. 1, 2). (*See also* Aug. 1, 2014 Tr. at 36-37, 56). Specifically, State’s Exhibit 1 reflects that the METRICH Unit seized the following items:

Item No.	Quantity	Description of Property
1	\$20.00	US Currency/2(Two) Half Pills/Powder Residue Folded in Bill/Found Left Bra – Jennifer Murphy/AMR
2	1	Baggy White Powder/Found Left Bra – Jennifer Murphy AMR
3	12	Unknown Blue Pills in Baggy/Found Left Bra Jennifer Murphy/AMR
4	\$998.00	US Currency/Found in Bra of Jillian Murphy AMR
5	1	LG/Verizon/Cell Phone/Found in Possession of Jennifer Murphy/AMR
6	1	LG/Verizon/Cell Phone/Found in NE Bedroom on Floor w/ Charger/SDV w/ Charger
7	1	Digital Scale Found on Back of Couch in Living Room GMW
8	1	Dish w/ White Powder Residue/Straw/Razor/Card Found on Speaker in Living Room/SDV
9	1	Acetaminophen Bottle/Containing Baggy Containing White Powder/Found in Closet on Water Heater JDW
10	\$20.00	US Currency Found Under Pillow on Couch in Living Room/GMW
11	1	Baggy of White Powder/Found in Jennifer Murphy’s Purse/SDV
12	1	Baggy of green vegetation/found in Jennifer Murphy’s Purse in Living Room/SDV
13	2	Cell Phones Found in Jennifer Murphy’s Purse in

		Living [sic]/SDV
14	\$181.00	US Currency/Found in Jennifer Murphy's Purse Found in Living Room in Wallet/SDV
15	\$242.00	US Currency/Found in Jennifer Murphy's Purse in Living Room/"Loose"/JDW
16	1	Pill in RX Bottle/Found in Jennifer Murphy's Purse in Living Room/SDV
17	3	Check Name of Jennifer Murphy/Keno Paper/Old Fort Bank-Ryan Smith Card/Found in Jennifer Murphy's Purse SDV
18	2	Keno Lotto Papers/Found in Living Room Couch Cushions GMW
19	MISC	Drug Paraphernalia/Found on Water Heater in Bedroom (NE) Closet/JDW
20	1	Baggy Containing Sandwich Baggies/Found on Living Room Floor/SDV
21	1	Cellophane Wrapper w/ Residue Top of Stereo in Living Room/GMW
22	1	Box of Sandwich Baggies/Found on Counter in Kitchen GMW
23	1	Plate w/ Residue Powder/Keno Ohio Lotto Paper and [sic]/Found Kitchen Counter/GMW
24	1	Pipe/Top of Cabinets in Kitchen/JAD
25	1	iPod Touch/Found in Kitchen Drawer/GMW
26	2	Knife/SAPP [sic]/Found in Mattress in NE Bedroom/GMW
27	Several	Blunt/1/2/Pinch [sic] Baggy/Found in Mattress in NE Bedroom(Floor)/GMW
28	Several	Keno/Lotto Papers/Found on Shelf in Closet of NE Bedroom/SDV
29	1	Baggy w/ Residue/Found on Shelf in Closet of NE Bedroom/GMW

(State's Ex. 1). (*See also* Aug. 1, 2014 Tr. at 39). The State also introduced as evidence photographs of a portion of the \$242 seized from Jennifer. (*See* State's Exs. 3, 4, 5). (*See also* Aug. 1, 2014 Tr. at 41-42). In particular, State's Exhibit 4 reflects two marked bills—two \$20 bills—and State's Exhibit 5 reflects three

marked bills—one \$10 bill and two \$5 bills—mixed with “non-marked” currency. (See State’s Ex. 4, 5). (See also Aug. 1, 2014 Tr. at 42).

{¶15} The METRICH Unit’s discovery of the \$463 in cash during the execution of the search warrant, which yielded the discovery of other drug-related contraband and the arrest of Jillian and Jennifer for drug-related crimes, is some competent, credible evidence that the \$463 was derived directly or indirectly from an offense. “There are a number of factors that might indicate that seized currency was derived from a drug offense, such as if the currency includes marked bills from a controlled buy, if the currency is a large sum in small denominations, if it was found with items associated with the drug trade, or if the defendant was caught in the act of selling drugs.” *McGowan*, 2010-Ohio-1309, at ¶ 80, citing *Watkins*, 2008-Ohio-6634, at ¶ 36-41.

{¶16} Clearly, the marked controlled-buy bills that Jennifer possessed were derived directly from a drug offense. Moreover, that the marked bills were comingled with other “non-marked” bills is some competent, credible evidence that that the “non-marked” bills were derived directly or indirectly from a drug offense. See *Watkins* at ¶ 41 (“The defendant possessed marked bills from an informant.”), citing *State v. Larios*, 8th Dist. Cuyahoga No. 83507, 2004-Ohio-5730, ¶ 28-29. The \$242, which included marked and non-marked bills, was discovered “loose” in Jennifer’s purse, located in the living room of her apartment. Also discovered in Jennifer’s purse was her wallet containing an additional \$181.

Discovered with both sums of money in Jennifer's purse were baggies of white powder and green vegetation, two cell phones (in addition to a cell phone in Jennifer's possession and a cell phone found charging in the bedroom), and a pill in a prescription bottle. These circumstances further indicate that the \$181 and \$242 were derived directly or indirectly from a drug offense. *See id.* at ¶ 38 ("The money was found with items associated with drug trade, such as a pager or cellular telephone."), citing *State v. Owens*, 9th Dist. Summit No. 23267, 2007-Ohio-49, ¶ 15 and *Larios* at ¶ 28; *id.* at ¶ 39 ("The money was found with tools of the drug trade, such as paraphernalia, scales, or the drugs themselves."), citing *State v. Harris*, 12th Dist. Butler No. CA2007-04-089, 2008-Ohio-3380, ¶ 28 and *Copley Twp. Trustees v. \$10,600.00 in U.S. Currency*, 9th Dist. Summit No. 18985, 1999 WL 1582, *3 (Dec. 30, 1998). Furthermore, that Jennifer's purse was discovered in the living room with other items associated with the drug trade is some competent, credible evidence that the money was derived directly or indirectly from a drug offense. Also discovered in the living room was a digital scale, which was on the back of the living-room couch, a dish with white-powder residue, a straw, a razor, and a card, which was on a speaker in the living room. These circumstances are correspondingly indicative that the \$20 that was found under a pillow on the living-room couch was derived directly or indirectly from a drug offense. *See id.* at ¶ 39.

{¶17} Last, of the \$463, another \$20 bill was found in Jennifer’s bra. Also discovered in Jennifer’s bra were “two half pills,” a baggy of white powder, and a baggy containing “unknown blue pills.” Similarly, \$998 was discovered in Jillian’s bra. State’s Exhibit 1 further reflects that a “powder residue” was discovered on the \$20 bill that was in Jennifer’s bra. These circumstances are some competent, credible evidence that the \$20 bill in Jennifer’s bra was derived directly or indirectly from a drug-related offense. *See id.* at ¶ 39.

{¶18} Moreover, Boyer testified that, based on his training and experience, it is common for individuals involved in drug trafficking to hide cash in places that are not easily detectable, such as in their “underwear, bras, socks, crevasses in televisions, walls. They don’t hide all their money in one spot in case they do get robbed or raided by law enforcement we don’t get all their cash or don’t find it all.” (Aug. 1, 2014 Tr. at 43). Boyer further testified that, based on his training and experience, it is common to find marked controlled-buy money mixed in with other money from drug trafficking. (*Id.*).

{¶19} Not only did the \$463 include marked bills, and not only did the METRICH Unit find the \$463 with items associated with the drug trade, but Jennifer and Jillian were “caught in the act” of committing drug offenses and were known to the METRICH Unit to be involved in drug-trafficking offenses. *See Watkins* at ¶ 40 (“The defendant was caught in the act of selling drugs.”), citing *Larios* at ¶ 28; *Bustamante*, 2013-Ohio-4975, at ¶ 38 (“the State introduced

evidence [from the affidavit used to obtain the search warrant] that Bustamante had otherwise been involved in selling drugs on and off for over a decade”). Specifically, State’s Exhibit 2, which contains Boyer’s affidavit used to obtain the search warrant, reflects that the METRICH Unit knew Jennifer and Jillian to be involved in drug-trafficking activities for two years before the METRICH Unit sought the search warrant in August 2013. (*See* State’s Ex. 2).

{¶20} Jennifer cites no case law in support of her argument that the State failed to meet its relatively low burden of preponderance of the evidence. Instead, Jennifer argues that her and Cheryl Murphy’s (“Cheryl”), Jennifer’s mother, testimony demonstrates “that the funds seized by the State were actually funds received from [Cheryl].” (Appellant’s Brief at 7). Jennifer argues that Cheryl lent her \$2,000 on August 2, 2013 so that Jennifer could pay her delinquent rent and electric bills. As evidence of the loan, Jennifer introduced as evidence a copy of Cheryl’s bank statement showing a \$2,000 withdrawal on August 2, 2013. (*See* Defendant’s Ex. A).

{¶21} Jennifer and Cheryl’s testimony lacked credibility. While Jennifer and Cheryl testified that Cheryl loaned Jennifer \$2,000 for her to pay her delinquent rent and electric bills, Cheryl could not positively identify any of the currency as being the currency she loaned her and testified that she was aware that Jennifer and Jillian were using drugs and that people who use drugs “[l]ie all of the time.” (Aug. 1, 2014 Tr. at 24-25, 27). Jennifer explained that she still had the

money that Cheryl loaned her ten days after the loan was made because she could not pay her delinquent rent since her landlord was unavailable and she had no other way to remit payment to her landlord. (*Id.* at 9, 15-16). And, as explanation for how the marked bills were mixed in with “her” money, Jennifer testified that Jillian “may have swapped it out.” (*Id.* at 12).

{¶22} Further, there is no credible evidence that Jennifer was gainfully employed at the time of her arrest. *See Bustamante*, 2013-Ohio-4975, at ¶ 38 (evidence that the defendant lacked gainful employment and did not file any tax returns in the years prior to his arrest is proof that the forfeited items were proceeds of a crime), citing *State v. Dodson*, 12th Dist. Butler No. CA2010-08-191, 2011-Ohio-6222, ¶ 60. Although Jennifer averred that she was employed at the time at Consumer Support Services in Fremont, Ohio and as a babysitter, she did not introduce as evidence any documentation of that employment or any other source of income. (*See* Aug. 1, 2014 Tr. at 10-11). Likewise, Boyer requested the prosecutor’s office to subpoena Jennifer and Jillian’s tax records to see if either was employed at that time. (*Id.* at 38-39). He testified that no tax records were obtained as a result of the subpoena. (*Id.* at 39).

{¶23} In light of the preceding, we conclude that there was some competent, credible evidence that the \$463 was derived directly or indirectly from drug-related offenses.

{¶24} Jennifer’s assignment of error is overruled.

{¶25} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

SHAW, J., concurs.

WILLAMOWSKI, J., concurs in Judgment Only.

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