Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106178

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTOINE D. WILLIAMS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-597808-C

BEFORE: Blackmon, J., Kilbane, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: June 7, 2018

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PATRICIA ANN BLACKMON, J.:

{¶1} Defendant-appellant, Antoine D. Williams ("Williams"), appeals from his conviction for forfeiture specifications requiring him to forfeit $385. He assigns the following errors for our review:

> I. The court erred and [Williams] was denied due process when the court without the benefit of any findings of fact forfeited certain monies seized in the wake of an arrest, this despite the absence of any proof that showed a nexus between the crimes on which [Williams] was convicted, and the monies ordered forfeited to the state.
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> II. Given all monies seized in the name of the state (whether in the wake of the execution of a search warrant, or otherwise), is subject to the orders of the court as to its disposition, thus it follows the absence of any proven nexus between the seized item and a crime for which [Williams] was convicted, any forfeiture to the state cannot survive meaningful scrutiny.

{¶2} Having reviewed the record and pertinent law, we affirm the decision of the trial court. The apposite facts follow.

{¶3} On August 10, 2015, Williams, Thessalonia Hardy ("Hardy"), and Dejuan Wells ("Wells") were indicted in a 12-count indictment. As is relevant herein, Williams was charged with knowingly conveying drugs into a detention facility, drug trafficking in a schoolyard and forfeiture specifications (cell phone and $385), drug possession with forfeiture specifications, and possessing criminal tools with forfeiture specifications.

{¶4} Williams moved to suppress the evidence, and the trial court held an evidentiary hearing on December 16, 2015. During the suppression hearing,

Det. Robert Kalal of the Parma Police Dept. testified that in June 2015 the police received information concerning suspicious activity and possible drug activity at a home on Brownfield Drive. The following month, they received an anonymous tip regarding drugs and weapons at the same address. The officers undertook surveillance of the single family home and, in less than two hours, the officers observed that nine or ten vehicles visited the home, with multiple people coming and going. According to the testimony, the officers examined license plates through a mobile data terminal and learned that a white Buick stopped at the residence had fictitious license plates. The officers followed the vehicle as it proceeded to Ridge Road and initiated a traffic stop. The vehicle slowed, then abruptly sped off before the driver exited and fled on foot. The occupants, including Williams, were apprehended, while the driver was arrested a short distance away. The officers determined that Williams had outstanding warrants, and he was arrested. The evidence further demonstrated that ecstacy tablets and a handgun were recovered from the vehicle. The trial court subsequently denied Williams's motion to suppress.

{¶5} After the denial of his motion to suppress, Williams attempted to enter a plea of no contest in order to preserve suppression-related issues for appeal. The trial court refused to accept the plea as a matter of policy. Williams pled guilty to the indictment, but appealed to this court. This court reversed and

remanded. *See State v. Williams*, 8th Dist. Cuyahoga No. 104202, 2016-Ohio-7782 ("*Williams* I").

{¶6} On remand, Williams pled guilty to the charges, but not the forfeiture specifications, and the court held a forfeiture hearing, but did not obtain additional evidence. However, defense counsel acknowledged that Williams had drugs on his person at the time of his booking into jail, and "[a]long with that contraband, * * * $385[.]" The court subsequently convicted Williams of the forfeiture specifications, and also sentenced Williams to concurrent nine-month terms for his offenses.

Forfeiture

{¶7} In his first and second assigned errors, Williams argues that the trial court failed to make factual findings in support of forfeiture, and that the evidence is insufficient to demonstrate a nexus between the offenses and the forfeited money.[1]

{¶8} The state bears the burden of proving by a preponderance of the evidence that property is subject to forfeiture. *State v. West*, 8th Dist. Cuyahoga Nos. 97391 and 97900, 2013-Ohio-96, ¶ 34; *State v. Fort*, 2014-Ohio-3412, 17 N.E.3d 1172, ¶ 17 (8th Dist.), citing *State v. Watkins*, 7th Dist. Jefferson No. 07 JE 54, 2008-Ohio-6634. On review, an appellate court may not reverse the trial

[1]Within his brief, Williams discusses seizure of his property, but he limits the instant challenge to the seizure and forfeiture of the $385.

court's decision where there is some competent, credible evidence going to all the essential elements of the case. *Id.* On an appeal from a forfeiture order, the scope of our review is limited to "an examination of the evidence presented to see if the evidence supports the finding that the items seized were an instrumentality or proceeds of a conduct that would constitute a felony drug offense." *State v. $765 in United States Currency*, 181 Ohio App.3d 162, 2009-Ohio-711, 908 N.E.2d 486, ¶ 26 (5th Dist.); *In re $75,000 United States Currency (Katz)*, 8th Dist. Cuyahoga No. 105314, 2017-Ohio-9158, ¶ 51. Further, "we defer to the trial court's determination of witness credibility in a civil forfeiture action." *State v. Baas*, 10th Dist. Franklin No. 13AP-644, 2014-Ohio-1191, ¶ 29.

{¶9} A defendant may plead guilty to an offense while contesting an attendant forfeiture specification. *State v. Trivette,* 195 Ohio App.3d 300, 2011-Ohio-4297, 959 N.E.2d 1065, ¶ 9 (9th Dist.). The state establishes its burden in forfeiture proceedings where it demonstrates, by a preponderance of the evidence, that: "contraband" was involved in an offense; "proceeds" were derived either directly or indirectly from an offense; or "instrumentalities" were "used in or intended to be used" in the commission or a felony. R.C. 2981.02; *Trivette* at ¶ 52-54, citing *State v. Bustamante,* 3d Dist. Seneca Nos. 13-12-26 and 13-13-04, 2013-Ohio-4975, ¶ 40.

{¶10} Forfeiture may be ordered only after the prosecuting attorney has identified and notified parties with an interest in the property, the trial court has conducted a hearing, and the trier of fact has found that the property is subject to forfeiture. *See* R.C. 2981.04(A) and (B), R.C. 2981.05(B) and (D), and R.C. 2981.03(A)(1); *State v. North*, 1st Dist. Hamilton No. C-120248, 2012-Ohio-5200, ¶ 9; *State v. Allen*, 2014-Ohio-1806, 10 N.E.3d 192, ¶ 28 (10th Dist.).

{¶11} In meeting this burden as to alleged cash proceeds, the state must demonstrate that it is more probable than not, from all the circumstances, that the defendant used the money in the commission of a criminal offense. *State v. Parks*, 8th Dist. Cuyahoga No. 90368, 2008-Ohio-4245, ¶ 29; *In re $75,000 United States Currency (Katz)*, at ¶ 54. Anything that can be traced to an exchange for a controlled substance is subject to forfeiture. *State v. Ihrabi*, 2017-Ohio-8373, 87 N.E.3d 267, ¶ 52 (2d Dist.).

{¶12} In *Fort*, this court affirmed the forfeiture of cash found on Fort's person at the time of his arrest for drug trafficking, following a high speed chase. *Id.* at ¶ 22, citing *State v. Parks*, 8th Dist. Cuyahoga No. 90368, 2008-Ohio-4245 and *State v. Brownridge*, 3d Dist. Marion No. 9-09-24, 2010-Ohio-104. *See also State v. Johnson*, 11th Dist. Trumbull No. 2009-T-0042, 2010-Ohio-1970, ¶ 28.

{¶13} In this matter, the trial court held a separate forfeiture hearing. The state did not present evidence, but, rather, the state reminded the court of Det. Kalal's testimony during the suppression hearing. This evidence, together

with Williams's guilty pleas to conveyance of drugs, drug trafficking, and possession, establishes that he was engaged in drug trafficking immediately before his arrest, and that the $385 and drugs were found on his person at the time of booking. Therefore, although the court did not take additional evidence, the record demonstrates by a preponderance of the evidence that it is more probable than not, from all the circumstances, that the defendant using the money constitutes proceeds subject to forfeiture. *Accord Dayton Police Dept. v. Thompson*, 2d Dist. Montgomery No. 24790, 2012-Ohio-2660 (upholding forfeiture of cash found on defendant's person during drug arrest, following a foot chase). *See also State v. Franklin*, 8th Dist. Cuyahoga No. 99806, 2014-Ohio-1422, ¶ 41 (testimony presented at the suppression hearing established that defendant's car and money were subject to forfeiture).

{¶14} With regard to findings of fact and conclusions of law, Civ.R. 52 provides, in part, that, "[w]hen questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless" a party timely requests findings of fact and conclusions of law. Upon such a request, "the court shall state in writing the findings of fact found separately from the conclusions of law." *State v. Adames Deli & Grocery, Inc.*, 9th Dist. Lorain No. 12CV177496, 2018-Ohio-442, ¶ 9.

{¶15} In this matter, Williams did not request findings of fact and conclusions of law under Civ.R. 52, so the court's general order of forfeiture,

together with the court's statements on the record, are sufficient. *State v. Coleman*, 8th Dist. Cuyahoga No. 91058, 2009-Ohio-1611, ¶ 63.

{¶16} The first and second assigned errors lack merit.

{¶17} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Patricia Ann Blackmon

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and
SEAN C. GALLAGHER, J., CONCUR