

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 2319

STATE OF LOUISIANA

VERSUS

BOBBY MATTHEWS, JR.

Judgment rendered AUG - 3 2010

Appealed from the
22nd Judicial District Court
in and for the Parish of Washington, Louisiana
Trial Court No. 95,564
Honorable Reginald T. Badeaux, III, Judge

HON. WALTER P. REED
DISTRICT ATTORNEY
JESSICA JENKINS BREWSTER
ASST. DISTRICT ATTORNEY
FRANKLINTON, LA

ATTORNEYS FOR
STATE OF LOUISIANA
PLAINTIFF-2ND APPELLANT

BOBBY O. MATTHEWS, JR.
ST. GABRIEL, LA

IN PROPER PERSON
DEFENDANT-1ST APPELLANT

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J.

Bobby Matthews, Jr. appeals a judgment of forfeiture rendered in favor of the State of Louisiana ("State") against a 1994 Chevrolet S-10 pick-up Truck (VIN#1GCCS1945R8147562) in an *in rem* proceeding initiated pursuant to the Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989, La. R.S. 40:2601 *et seq.* ("the Forfeiture Act"). The State of Louisiana appeals the same judgment in which the trial court denied forfeiture of \$327.00 from Mr. Matthews that was seized in addition to the 1994 Chevrolet pick-up truck. For the following reasons, we affirm the judgment of the trial court.

Following a narcotics investigation, officers with the Washington Parish Drug Task Force conducted a traffic stop on North Avenue, just east of Sullivan Drive, in Bogalusa, Louisiana, on February 22, 2007, on a black 1994 Chevrolet S-10 pick-up truck, bearing VIN #1GCCS1945R8147562. In connection with this stop, officers recovered three large rock-like substances suspected to be crack cocaine and a small amount of marijuana, together with the sum of \$327.00.

The State, through the assistant district attorney for the 22nd Judicial District, served a notice of pending forfeiture and a petition for forfeiture pursuant to La. R.S. 40:2601 *et seq.*, seeking forfeiture of \$327.00 in U.S. currency and a 1994 Chevrolet S-10 pick-up truck bearing VIN #1GCCS1945R8147562. Mr. Matthews filed an answer and objection to the petition for forfeiture wherein he alleged he had been the victim of an illegal stop and search "predicated on profiling and harassment of persons of his age group and complexion." The matter then proceeded to trial. After considering the testimony and evidence, the trial court found that the 1994 Chevrolet S-10 pick-up truck bearing VIN #1GCCS1945R8147562 seized from Mr. Matthews had been "used to facilitate conduct giving rise to forfeiture, pursuant to La. R.S. 40:2604", and entered judgment in favor of the State against said vehicle. The trial court further found in favor of Mr. Matthews with respect to the seized currency, and ordered that the \$327.00 in U.S. currency seized from Mr. Matthews be released and returned with interest. From this judgment, Mr. Matthews and the State have filed separate appeals.

In connection with his appeal in this matter, Mr. Matthews does not set forth any assignments of error, but appears to contest the sufficiency of the evidence relative to the forfeiture of his truck. The State urges that the portion of the trial court's judgment that denied the forfeiture of the \$327.00 in U.S. currency seized from Mr. Matthews be reversed, and that the judgment in all other respects be affirmed.

DISCUSSION

The Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989, La. R.S. 40:2601 *et seq.* ("the Act"), sets forth procedures for the forfeiture of property that is furnished by any person in exchange for a controlled dangerous substance in violation of R.S. 40: 961 (the Louisiana Uniform Controlled Dangerous Substances Law). Pursuant to the Act, property used or intended to be used in any manner to facilitate conduct in violation of the Controlled Dangerous Substances Law is subject to forfeiture upon the commission of an act or omission punishable by confinement for more than one year pursuant to La. R.S. 40:961 *et seq.* See La. R.S. 40:2603(1) and 2604(2)(b).

The initial burden is on the State to show probable cause for the forfeiture, and the evidence presented must be sufficient to form a reasonable ground for the belief that the property was connected with illegal drug transactions. **State v. Watkins**, 08-0688, p. 3 (La. App. 1 Cir. 9/23/08), 994 So.2d 675, 677. In this case, the State must show, by some credible evidence and by more than mere suspicion, a reasonable ground for the belief that the currency seized from Mr. Matthews was drug related and that Mr. Matthews' pick-up truck was used or available for use to facilitate the alleged drug transactions. **State v. Cash Totaling \$15,156.00**, 623 So.2d 114, 121 (La. App. 1 Cir.), writ denied, 629 So.2d 401 (La. 1993). If the State makes this initial showing, the burden shifts to the claimant to prove by a preponderance of the evidence, i.e., it is more likely than not, that the property is not subject to forfeiture. La. R.S. 40:2612(G). If the claimant proves by a preponderance of the evidence that the claimant and the property are not connected to the drug activity, and therefore exempt under La. R.S. 40:2605, "the court shall order the interest in the property returned or conveyed to the claimant." La. R.S. 40:2612(H).

While the ultimate determination of probable cause is a legal question, the findings of fact which lead to a probable cause determination are subject to the manifestly erroneous—clearly wrong standard. **State v. Gauthier**, 02-1227, p. 3 (La. App. 3 Cir. 4/17/03), 854 So.2d 910, 912. Thus, much deference must be given to the factual findings of the trial court as long as a review of the record as a whole shows those findings were reasonably supported. **Id.**

Vehicle Forfeiture

With respect to the judgment of forfeiture issued by the trial court as to Mr. Matthews' pick-up truck, the record reflects that in both his trial testimony and his brief to this court, Mr. Matthews admitted he utilized said vehicle to transport illegal drugs for his personal use. Accordingly, the trial court found the pick-up truck belonging to Mr. Matthews subject to seizure. Based upon the evidence and the admissions made by Mr. Matthews, we must conclude that Mr. Matthews has not met his burden of proving manifest error or abuse of discretion in the trial court's ruling on the truck forfeiture.

Forfeiture of Currency

As to the issue raised by the State, i.e., that the trial court erred in denying its request for forfeiture of the \$327.00 in U.S. currency seized from Mr. Matthews, we note that the State has not assigned as error the trial court's award of judicial interest on the seized currency which the court directed be returned to Mr. Matthews.¹ In support of its position, the State cites and relies on La. R.S. 40:2611(G) and (H), which provide:

G. The fact that money or a negotiable instrument was found in proximity to contraband or an instrumentality of conduct giving rise to forfeiture shall give rise to the permissible inference that the money or negotiable instrument was the proceeds of conduct giving rise to forfeiture or was used or intended to be used to facilitate the conduct.

H. There shall also be a rebuttable presumption that any property of a person is subject to forfeiture under this Section if the state establishes all of the following:

- (1) That the person has engaged in conduct giving rise to forfeiture.
- (2) That the property was acquired by the person during the period of the conduct giving rise to forfeiture or within a reasonable time after that period.

¹ In our previous opinion in **Watkins**, this court held that legal interest is not awardable on monies improperly seized pursuant to the Act. **Watkins**, 08-0688 at p. 5, 994 So.2d at 678.

(3) That there was no likely source for the property other than the conduct giving rise to forfeiture.

The State urged that it was entitled to the rebuttable presumptions set forth in La. R.S. 40:2611, and that Mr. Matthews failed to produce sufficient evidence to rebut those presumptions. In its brief to this court, the State argues that the sum of \$327.00 in cash was found on Mr. Matthews at the time he was arrested while transporting drugs in his vehicle. Mr. Matthews' defense at the hearing was that he earned the money in question through "small, temporary jobs." The State contended that while Mr. Matthews produced earning records for the years 2003 through 2006, he failed to produce evidence of income in 2007, the year in which this incident occurred. Accordingly, the State claimed there was no credible evidence to support Mr. Matthews' assertion that the money was obtained through lawful employment.

As part of its transcribed oral reasons for judgment, the trial court concluded:

I am going to give you the money back, because I can't see where the State has met their burden. . . . I can't say I'm convinced that the money was obtained through an illegal source.

. . . .

You can pick up that much money in a couple of days just doing a little heavy yard work. I'm going to order that you return the money.

. . . .

Plus any interest it may have earned.

Based upon our review of the record in this matter, we cannot say that the trial court committed manifest error in finding that the \$327.00 in U.S. currency seized from Mr. Matthews did not constitute proceeds of illegal conduct nor was it used or intended to be used to facilitate illegal conduct pursuant to La. R.S. 40:2601, *et seq.*

CONCLUSION

For the above and foregoing reasons, the judgment of the trial court is hereby affirmed. Appeal costs in the amount of \$689.75 shall be assessed equally against the State and the claimant, Bobby Matthews, Jr.

AFFIRMED.