

IN THE
COURT OF APPEALS OF INDIANA

No. 22A-MI-2910

ANGELA Y. SMITH
Appellant-Intervenor,
and
DYLAN WILLIAMS AND \$11,180 IN
UNITED STATES CURRENCY,
Appellant-Respondent,

v.

STATE OF INDIANA,
Appellee-Petitioner.

Appeal from the Marion Superior
Court,

No. 49D03-2009-MI-033278,

The Honorable Gary Miller, Judge.

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

I. Whether Intervenor Smith has established that she is the owner of the property.

II. Whether the trial court abused its discretion by granting a civil forfeiture.

STATEMENT OF THE CASE

Nature of the Case

Intervenor Angela Smith appeals the trial court's order granting forfeiture of \$11,180 in currency.¹

Course of Proceedings

On September 24, 2020, the State filed a complaint seeking forfeiture of \$11,180 in currency which had been seized from Dylan Williams by law enforcement officers on or about September 18, 2020 (App. 11-12). Also on September 24, 2020, the State filed a motion and a supporting affidavit seeking a finding of probable cause that the property is subject to forfeiture (App. 4; State App. 2-25). The trial court found that probable cause supported forfeiture on September 28, 2020 (App. 4; State App. 26).

On October 9, 2020, Intervenor Smith filed a motion to intervene (App. 4, 13-14). The trial court granted the motion to intervene on October 10, 2020 (App. 15). Intervenor Smith filed an answer to the complaint for forfeiture on October 14, 2020 (App. 4, 16-17).

¹ The property was seized from Dylan Williams. Williams not answer the forfeiture complaint, did not appear for the forfeiture hearing, and has not participated in this appeal.

A bench trial was held on December 2, 2022, and the matter was taken under advisement (App. 8). On December 7, 2022, the trial court issued an order granting the State's request for forfeiture (App. 8-10). This appeal follows.

STATEMENT OF FACTS

Intervenor Smith is appealing an order granting forfeiture of \$11,180 in currency seized from Dylan Williams in relation to an incident where Williams was found in possession of narcotics (Tr. 9-11). Based on that incident, Williams was charged with dealing in a Schedule I drug as a Level 3 felony, possession of a narcotic drug as a Level 6 felony, and possession of a controlled substance as a Class A misdemeanor (Ex. 1). Williams later pled guilty, pursuant to a plea agreement, to possession of a narcotic drugs as a Level 6 felony and was sentenced to two years of home detention (Ex. 1).

Following the initial seizure, the State filed a complaint seeking forfeiture of the currency (App. 11-12). As required by the forfeiture statutes, the State also filed a motion for a finding of probable cause with a supporting affidavit (App. 4; State App. 2-25). According to the supporting affidavit, Williams was a parolee who tested positive for "multiple types of narcotics" (State App. 5). Officers searched his home pursuant to his parole agreement (State App. 5). There, officers found in the closet of the only bedroom a baggie with "chunks of an off-white substance approximately the size of a golf ball" that was believed to be more than an ounce of cocaine (State App. 5-6). Officers also encountered a person in the apartment who claimed to be Williams's cousin that was in possession of a "digital scale with a

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white powdery substance on it” (State App. 5).

During a subsequent search pursuant to a warrant, police also found a baggie of “broken up green pills,” a baggie of suspected heroin weighing approximately one gram, \$7,680 in currency behind a television, and \$3,500 in currency in Williams’s wallet (State App. 6). Officers further found boxes of plastic baggies, boxes of latex gloves, and cans of acetone solvent consistent with processing drugs (State App. 6-7). Williams made a statement to police in which he denied that the recovered substances were drugs, claimed that the money from his apartment “was a mixture of his and his girl[’s]” money, and claimed the money in his wallet “was financial aid for his barber school at Kenny’s Barber School” (State App. 6-7).

The trial court found probable cause to support the forfeiture (App. 4; State App. 26). Intervenor Smith later intervened in the forfeiture action and was represented by the same counsel as Williams (App. 4, 13-15). In her motion to intervene, Intervenor Smith claimed she was the “exclusive” owner of the seized currency and the real party in interest (App. 13).

At a forfeiture bench trial, Williams did not appear or make any claim for the money (App. 9). The State presented testimony from Detective Ryan Graber who participated in the search and was present during Williams’s statement (Tr. 7-8, 11). Officer Graber is a member of the Metro Drug Task Force and was previously assigned to another narcotics unit (Tr. 7). In Williams’s apartment, Detective Graber observed “some cash” and “some narcotics” (Tr. 9). The officer identified photographs of the approximately \$7,600 found behind Williams’s television and the

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approximately \$3,500 found in his wallet as cash in the apartment (Tr. 9-10). The officer testified, based on his experience, that having “[d]ifferent amounts of money banded up for easy access and for quick change” is “pretty common” with “trafficking narcotics” (Tr. 12). He also testified that Williams was asked about the source of the money and his employment, but there was no evidence of employment and Williams never made the officer “aware of ... [Intervenor] Angela Smith and her claim to the [the] money” (Tr. 12).

Intervenor Smith testified that she is Williams’s aunt (Tr. 17). She claimed that during the summer of 2020 she was in an abusive relationship and withdrew money from her bank account to hide it from her abuser (Tr. 19-20). Her bank records show she withdrew \$29,000 on June 10, 2020, and she claims she gave \$15,000 of that money to Williams “to hold it for” her (Tr. 20-22). While Intervenor Smith lives in Milwaukee and Williams lives in Indianapolis, she explained that they met at her sister’s house in Illinois (Tr. 21, 23). Intervenor Smith acknowledged that there were no witnesses to this transaction (Tr. 31). In support of her claim, Intervenor Smith provided bank statements showing the withdrawal and domestic violence reports from July of 2021 (Ex. C, F). While the domestic violence report occurred a year after the search of Williams’s apartment, Intervenor Smith claimed the abusive relationship was also occurring in 2020 (Tr. 19-20). Intervenor Smith claimed the money came from her employment with the City of Milwaukee and “various sources” and that she was saving the money to buy a house (Tr. 24-25).

Following the bench trial, the trial court issued an order finding “that the currency in question is subject to forfeiture in this case and the State has met its burden of proof by a preponderance of the evidence that the currency should be seized” (App. 9). The court further ordered that the funds be distributed pursuant to the forfeiture statute (App. 9).

SUMMARY OF THE ARGUMENT

I. Intervenor Smith has not shown that she is the owner of the property and has a stake in the outcome of this forfeiture action. While the trial court’s order makes no factual findings with regard to Intervenor Smith, the court necessarily rejected her claim and innocent explanation for the property. Her farfetched and unsubstantiated testimony failed to support her claims. Instead, her claims were contradicted by the evidence showing that Williams did not mention Intervenor Smith when he was asked about the source of the money. Intervenor Smith was the only claimant below, and her claim lacks merit.

II. The trial court properly granted forfeiture because the circumstances allowed the court, acting as a factfinder, to infer that the money was furnished or intended to be furnished in exchange for an act that is in violation of a criminal statute or as proceeds of the violation of a criminal statute. This conclusion was supported by Williams’s contemporaneous possession of “some narcotics,” his companion’s possession of a scale, the way the money was kept in his small apartment and wallet, and his failure to show that the money was derived from lawful employment. The contrary arguments on appeal are improper requests to

reweigh the evidence.

ARGUMENT

I.

Intervenor Smith has not shown that she is the owner of the property.

Intervenor Smith has not proven that she has any interest in the property. The State recognizes Intervenor Smith is entitled to appeal the judgment because “[a]n intervenor is treated as if it was an original party and has equal standing with the parties.” *Becker v. State*, 992 N.E.2d 697, 701 (Ind. 2013). While her challenge is allowed, she would still only be entitled to the money on remand if she is “the owner” of that property. *See* Ind. Code § 34-24-1-4 (allowing return of money to owner).

The trial court’s order on the forfeiture includes no specific finding rejecting Intervenor Smith’s claim of ownership (App. 9). However, the grant of forfeiture following the evidentiary hearing necessarily required the court to reject her claims (App. 9). Had Williams merely been holding the money for Intervenor Smith, it would not have been subject to forfeiture as money “furnished or intended to be furnished in exchange for an act that is in violation of a criminal statute” or “as proceeds of the violation of a criminal statute.” I.C. § 35-24-1-1(a). On appeal, this court will not reweigh the evidence or reassess the credibility of witnesses. *Gonzalez v. State*, 74 N.E.3d 1228, 1230 (Ind. Ct. App. 2017). “When there is substantial evidence of probative value to support the trial court's ruling, it will not be disturbed.” *Id.* This Court “will reverse only when we are left with a definite and firm conviction that a mistake has been made.” *Id.*

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The evidence strongly supported the trial court's determination that Intervenor Smith was not the owner of the currency. Intervenor Smith's only probative evidence of ownership is her unsubstantiated testimony that she is related to Williams, that they met halfway between Indianapolis and Milwaukee for a money exchange with no other witnesses, and that she asked him to hold her money (Tr. 19-21). She presented no testimony from Williams nor documents that directly substantiate any of those claims. Her only meager attempt at corroboration was presenting her abuse complaint and bank records, but there was no reason to infer that her claim of abuse from a year later or her withdrawal of \$29,000 from months earlier was somehow related to the money in Williams's apartment (Ex. C, F). Detective Graber's testimony also contradicted Intervenor Smith's claims because he recalled that Williams was asked about the source of the money and never mentioned Intervenor Smith (Tr. 12). By not appearing at the hearing, Williams avoided being confronted with his own prior statements claiming the money was his and that it was scholarship money for barber school (State App. 6-7). Based on this evidence, the trial court properly rejected Intervenor Smith's claim.

Finally, the State recognizes that the forfeiture statutes do not directly address what occurs if the State fails to meet its burden at an evidentiary hearing but no owner is identified. As discussed below, this case does not present that scenario as the State did present sufficient evidence. However, if this Court disagrees, the Court should still find that the property was subject to forfeiture under Indiana Code Section 34-24-1-3(e). The State is entitled to a forfeiture, upon

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motion, where “there is no answer on file” within “the time allotted for an answer.”

Id. Here, the only timely Answer was filed by Intervenor Smith, and her claim was unsubstantiated and rejected. Forfeiture should still result in a case like this where the person found in possession of the property makes no claim and an intervenor fails to establish ownership. Otherwise, even an invalid intervening claim could thwart forfeiture actions. On that basis alone, the order of forfeiture should be affirmed.

II. Sufficient evidence supported the forfeiture.

Additionally, the State presented sufficient evidence at the forfeiture hearing that the money in Williams’s possession was money which was intended to be furnished in exchange for a violation of a criminal statute or is traceable as proceeds of a violation of a criminal statute. “Civil forfeiture is a device, a legal fiction, authorizing legal action against inanimate objects for participation in alleged criminal activity, regardless of whether the property owner is proven guilty of a crime—or even charged with a crime.” *Serrano v. State*, 946 N.E.2d 1139, 1143 (Ind. 2011). To obtain the right to dispose of property, use the property, or recover law enforcement costs, the State must demonstrate by a preponderance of the evidence that the property was subject to seizure under Indiana’s forfeiture statute. I.C. § 34-24-1-4(a); *Serrano*, 946 N.E.2d at 1142-43.

The standard of review for challenges to the sufficiency of the evidence supporting civil judgments is the same as that in criminal cases. *Lipscomb v. State*, 857 N.E.2d 424, 427 (Ind. Ct. App. 2006) (applying sufficiency standard to a

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forfeiture); *Gash v. Kohm*, 476 N.E.2d 910, 914 (Ind. Ct. App. 1985), *trans. denied*.

In reviewing a challenge to the sufficiency of the evidence, this court does not reweigh the evidence or assess the credibility of witnesses and all reasonable inferences from the evidence are viewed in a light most favorable to the verdict.

Bailey v. State, 979 N.E.2d 133, 135 (Ind. 2012); *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005).

Indiana's general forfeiture statute permits seizure of "money ... used to commit, used in an attempt to commit, or used in a conspiracy to commit ... an offense ... commonly used as consideration for a violation of IC 35-48-4 [Offenses Related to Controlled Substances]" including money "(A) furnished or intended to be furnished in exchange for an act that is in violation of a criminal statute; (B) used to facilitate any violation of a criminal statute; or (C) traceable as proceeds of the violation of a criminal statute." I.C. § 35-24-1-1(a)(2). "[T]o sustain a forfeiture the State must demonstrate that the property sought in forfeiture was used to commit one of the enumerated offenses under the statute." *Serrano*, 946 N.E.2d at 1143; *see also Gonzalez*, 74 N.E.3d at 1230 (State must demonstrate a nexus between the property and the commission of an offense).

Here, the evidence allowed the trial court to find by a preponderance of the evidence that Williams possessed the seized money as part of drug operation. During a search of Williams's small one-bedroom apartment, officers observed "some cash" and "some narcotics" (Tr. 9). Detective Graber identified photographs of the approximately \$7,600 found behind Williams's television in his bedroom and

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the approximately \$3,500 found in Williams's wallet (Tr. 9-10). The money behind the television was in a large pile and banded together with a rubber band (Ex. 5). Officer Graber testified, based on his experience, that having "[d]ifferent amounts of money banded up for easy access and for quick change" is "pretty common" with "trafficking narcotics" (Tr. 12). Detective Graber was also aware that the visitor found in the apartment had a scale in his pocket (Tr. 13). Williams was questioned about the money, and the officer found no evidence of lawful employment (Tr. 11). The State also presented evidence that Williams later pled guilty to possession of a narcotic drugs as a Level 6 felony pursuant to a plea agreement and was sentenced to two years of home detention (Ex. 1; Tr. 15).

Based on this evidence, the trial court properly found by a preponderance of the evidence that Williams possessed the money because it was "furnished or intended to be furnished in exchange for an act that is in violation of a criminal statute" or "as proceeds of the violation of a criminal statute." I.C. § 35-24-1-1(a). In finding that "the currency in question is subject to forfeiture in this case and the State has met its burden of proof by a preponderance of the evidence that the currency should be seized," the trial court made a reasonable inference that the money was related to one of the crimes enumerated in the forfeiture statute. Intervenor Smith's contrary argument suggesting other evidence that could have existed is simply an improper request to reweigh the evidence. *See Gonzalez*, 74 N.E.3d at 1230 (reweighing is improper). Williams's possession of "some narcotics," his guest's possession of a scale, and the pile of banded money in his small

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apartment are all consistent with drug trafficking and drug possession related to that money. *See Hodges v. State*, 125 N.E.3d 578, 583 (Ind. 2019) (“The large amount of cash, rubber banded into stacks of small bills that were mostly twenties, was consistent with stashes of currency traded in drug transactions.”). While Williams’s negotiated guilty plea resulted in a conviction based on five grams or less of narcotics, the forfeiture court was not limited to considering only criminal conduct resulting in a conviction. *See Serrano*, 946 N.E.2d at 1143. Additionally, Williams was unable to provide any evidence of income that would otherwise explain the money (Tr. 11). The order of forfeiture should be affirmed.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court’s decision.

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CERTIFICATE OF SERVICE

I certify that on March 9, 2023, I electronically filed the foregoing using the Indiana Electronic Filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS.

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