

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JEFFREY O. BRIGHT,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 634 MDA 2014

Appeal from the Order entered February 7, 2014,  
in the Court of Common Pleas of York County  
Criminal Division, at No(s): CP-67-CR-0001014-2002

BEFORE: ALLEN, OTT, and STRASSBURGER\*, JJ.

MEMORANDUM BY ALLEN, J.:

**FILED JULY 31, 2015**

Jeffrey O. Bright ("Appellant") appeals *pro se* from the trial court's order granting the York County Clerk of Court's petition for the destruction of evidence, which the Commonwealth joined,<sup>1</sup> regarding the marijuana which was forfeited relative to Appellant's February 21, 2002 jury trial convictions for possessing marijuana with the intent to deliver.<sup>2</sup> We affirm.

The trial court explained:

On August 5, 2002, our colleague, the Honorable Gregory M. Snyder, ordered forfeiture of a PCS Touchpoint phone, \$102.00 in cash, \$500.00 in cash, a Metrocall pager, and a 1993 Volvo bearing the VIN number: YVL1S5503P2089844. On

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<sup>1</sup> **See** Petition for Destruction of Evidence, 9/12/13, at 1.

<sup>2</sup> **See** 35 P.S. § 780-113(a)35 and (a)30.

\*Retired Senior Judge assigned to the Superior Court.

September 30, 2004, our colleague, the Honorable John S. Kennedy ordered the forfeiture of unnamed property; however, the record reflects that on May 24, 2005, the District Attorney's office requested, pursuant to the two forfeiture orders, as it relates to Appellant, that the PCS Touchpoint phone, Metrocall pager, and a total of \$602.00 be turned over to the District Attorney's office. Other items remained in evidence and on February 7, 2014, a hearing was held to consider the Appellant's Response to the Petition for Destruction of Evidence and Request to Preserve and Obtain Evidence to be Destroyed. At the conclusion of that hearing, this Court ordered all of the requested evidence returned to the Appellant with the exception that any marijuana be destroyed after 30 days in case of appeal.

On both February 21, 2014, and February 25, 2014, the Appellant filed Notice of Appeal in this matter. On March 7, 2014, despite notifying the Appellant of his right to appeal at the February 7, 2014 hearing, this Court, perhaps in haste, denied the Appellant's Petition for Leave to File an Appeal *in Forma Pauperis*. After reviewing the Appellant's Application for Permission to Appeal *Nunc Pro Tunc*, the Superior Court ordered this Court to forward to them [Appellant's] February 25, 2014 Notice of Appeal. As of February 12, 2015, this Court has been ordered, by the Superior Court, to submit an opinion on the forfeiture.

Trial Court Opinion, 2/18/15, at 1-2.

The trial court did not order Appellant to file a Pa.R.A.P. 1925(b) statement of matters complained of on appeal. The trial court issued its Pa.R.A.P. 1925(a) opinion on February 18, 2015.

On appeal, Appellant presents a single issue:

- I. WHERE THE EXISTENCE AND WEIGHT OF SEIZED MARIJUANA IS THE CRUX OF APPELLANT'S PROPOSED CIVIL CLAIMS, DOES [sic] THE TRIAL COURT ABUSE ITS DISCRETION IN ORDERING THE DESTRUCTION OF THE EVIDENCE BASED ON THE CLOSURE OF CRIMINAL PROCEEDINGS?

Appellant's Brief at 6.

In summarizing his argument, Appellant asserts that “[w]ithout the physical evidence in the form of the marijuana, the Appellant’s civil action<sup>3</sup> will be baseless, and he will be denied due process thereby.” Appellant’s Brief at 8. Appellant’s argument is unavailing.

We review this matter mindful of the following:

Our standard of review in an appeal from a forfeiture proceeding is limited. We review only to determine “whether the findings of fact made by the trial court are supported by substantial evidence, and whether the trial court abused its discretion or committed an error of law.” *Commonwealth v. \$6,425.00 Seized from Esquilin*, 583 Pa. 544, 554, 880 A.2d 523, 529 (2005).

***Commonwealth v. Heater***, 899 A.2d 1126, 1132 (Pa. Super. 2006). When reviewing the application of the forfeiture statute, our standard of review is *de novo* and our scope of review is plenary. ***Commonwealth v. Diamond***, 945 A.2d 252, 256 (Pa. Super. 2008).

In Pennsylvania, the relevant statute provides:

**6801. Controlled substances forfeiture**

**(a) Forfeitures generally.--The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:**

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<sup>3</sup> Appellant’s brief does not cite or specify which federal or state civil action Appellant could presently pursue which is not barred by applicable statutes of limitations given that 12 years have elapsed from Appellant’s convictions. Appellant asserted at the hearing that “I have four years to file a case from when it came down from the U.S. Supreme Court in Washington, D.C.” N.T., 2/7/14, at 10.

(1) **All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.**

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**(d) Custody of property.--Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney or the Attorney General.** When property is seized under this chapter, the law enforcement authority shall place the property under seal and either:

- (1) remove the property to a place designated by it; or
- (2) require that the district attorney or Attorney General take custody of the property and remove it to an appropriate location for disposition in accordance with law.

**(e) Use of property held in custody.--Whenever property is forfeited under this chapter, the property shall be transferred to the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or the Attorney General, if the law enforcement authority seizing the property has Statewide jurisdiction.** The district attorney or the Attorney General, where appropriate, may:

- (1) Retain the property for official use.
- (2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with in accordance with subsections (f) and (g).

42 Pa.C.S.A. § 6801 (a)(1), (d)(1)-(2), and (e)(1-2) (internal footnote omitted) (emphasis supplied).

It is undisputed that marijuana is a controlled substance pursuant to Schedule I of the Controlled Substance, Drug, Device and Cosmetic Act. **See** 35 P.S. 780-104(1)(iv); **see also Commonwealth v. Waddell**, 61 A.3d 198, 207 (Pa. Super. 2012). Accordingly, Appellant has “no property right” in the marijuana. **See** 42 Pa.C.S.A. § 6801(a).

The trial court correctly determined:

[B]y statutory construction, we were **required** to forfeit the marijuana by the legislature’s use of the operative word ‘shall’ [in 42 Pa.C.S.A. § 6801 (a)(1), *supra*.] At the hearing on forfeiture, the Appellant heard [the Commonwealth] state that the lab results showed the item in question was marijuana. (N.F.T., 2/7/14, at 8.) Absent the Appellant asserting that the item in question was not actually marijuana and the lab results were in error, this Court was left to find the item was marijuana and, therefore, we were required to forfeit the marijuana.

Trial Court Opinion, 2/18/15, at 3-4 (emphasis in original). We concur with the trial court that the marijuana is indeed in the rightful custody of the Commonwealth, and that the Commonwealth may dispose of it. **See** 42 Pa.C.S.A. § 6801(d) and (e).

The trial court further determined:

In *Commonwealth v. 6969 Forest Ave.*, the Commonwealth Court states that, “where the trial court ultimately orders forfeiture of the property pursuant to the Forfeiture Act, the subsequent custody and disposition of the forfeited property is governed by 42 Pa.C.S.A. § 6801(e).” 713 A.2d 701, 704 (Pa. Cmwlth. 1998). []

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[] Following an order for forfeiture, the property is no longer under the authority of the forfeiture court, but rather, the Attorney General or, as here, the District Attorney. Just as the

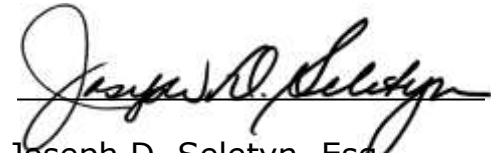
Commonwealth Court found that the trial court in *6969 Forest Ave.* lacked authority to devise an equitable remedy for property it had ordered forfeited, ... this Court ceded control of the marijuana the moment we were compelled to forfeit it to the District Attorney's Office.

Trial Court Opinion, 2/18/15, at 4-5.

We have reviewed the record and conclude that "the findings of fact made by the trial court are supported by substantial evidence." **Heater** 899 A.2d at 1232. Further, we can discern no basis on which to find that "the trial court abused its discretion or committed an error of law." **Id.** Accordingly, we affirm the trial court's order granting the destruction of the marijuana.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/31/2015