

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 828 C.D. 2014
	:	Argued: December 8, 2014
2005 BMW 728 SDN	:	
WBAGN63535DS8245	:	
\$1,082.00 in United States Currency	:	
Cellphone, Marijuana, Scale,	:	
Sandwich Bags	:	
	:	
Appeal of: Valerie Santiago	:	

**BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: January 6, 2015

Appellant Valerie Santiago appeals from an order of the Court of Common Pleas of Lehigh County, dated April 17, 2014, which granted the motion for forfeiture and condemnation filed by the Commonwealth of Pennsylvania (Commonwealth), through the District Attorney of Lehigh County, thereby ordering, in part, the forfeiture of one “2005 BMW 728” Sedan (the 2005 BMW),¹ pursuant to what is commonly known as The Controlled Substance Forfeiture Act

¹ It appears that the vehicle identification number (VIN) for the BMW is WBAGN63535DS8245.

(Forfeiture Act), 42 Pa. C.S. §§ 6801-6802. The trial court ordered the forfeiture of the 2005 BMW despite Appellant's contention that she is the "innocent owner" of the vehicle. We now affirm.

It is undisputed that Appellant is the title holder of the 2005 BMW. On May 20, 2013, Detective Alex De La Iglesia and Officer Ryan Koons of the Allentown Police Department observed Ezequiel Santiago (Santiago), Appellant's son, driving the 2005 BMW. The officers stopped the vehicle because its windows were heavily tinted. When the officers approached the BMW, they detected a strong odor of marijuana. A subsequent search of the vehicle revealed marijuana, a scale, and packaging materials. In addition, Santiago had \$1,082.00 in his possession at the time of the stop. The officers arrested Santiago and charged him with violations of The Controlled Substance, Drug, Device and Cosmetic Act (the Controlled Substance Act), Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. §§ 780-101 to -144. He subsequently pleaded guilty to charges related to simple possession of marijuana.²

On September 25, 2013, the Commonwealth filed a motion for forfeiture and condemnation under the Forfeiture Act, seeking, in part, forfeiture of the 2005 BMW. Appellant filed an answer, asserting that forfeiture of the vehicle is improper, because she is an "innocent owner" of the 2005 BMW. During a hearing on the matter, the trial court received testimony from Detective De La Iglesia, Santiago, and Appellant, regarding matters relating to the ownership of the 2005 BMW for purposes of the Forfeiture Act.

² See Court of Common Pleas of Lehigh County criminal docket at CP-39-CR-0004570-2013.

Detective De La Iglesia testified that on May 20, 2013, around 9:03 p.m., he pulled over a blue 2005 BMW 728 Series because the windows were heavily tinted. (Reproduced Record (R.R.) at 24-27.) When Officer Koons opened the driver's door, a "strong odor of marijuana came out of the vehicle." (*Id.* at 27.) The driver of the vehicle, Santiago, apologized about the marijuana and "handed Officer Koons a joint or a marijuana cigarette in a brown cigar wrapper." (*Id.*) There was a passenger, Iris Torres, in the front seat of the vehicle. (*Id.*) Detective De La Iglesia observed packaging material and asked Santiago "if there was any weight in the car." (*Id.* at 28.) He replied "yes" and, upon further questioning, informed the officer that it was over an ounce. (*Id.*) The officers performed an inventory of the vehicle and discovered "a digital scale, a gallon clear plastic bag which contained 129 grams of marijuana, [and] a quart-sized clear plastic bag which contained 36 grams of marijuana." (*Id.*) When asked if the passenger had any involvement with the drugs, Santiago denied that the passenger had any involvement and instead stated that they were his. (*Id.*)

Detective De La Iglesia further testified that he was familiar with the vehicle, because it "had drawn [their] attention several times due to that it had really dark black rims on it and heavy tint, so usually it catches your eye driving by." (*Id.* at 30.) Detective De La Iglesia "saw the vehicle several weeks in a row at 7th and Linden at the 7-Eleven, and it would appear those times that people were walking up to it." (*Id.* at 30-31.) He believed it was being used for the sale of narcotics. (*Id.* at 30.) He could see through the front windshield, which was clear, and once through the window when it was down, that Santiago was the individual using the vehicle. (*Id.* at 31.) He never saw Appellant driving the vehicle or as an

occupant of it. (*Id.*) Santiago pleaded guilty to possession of a controlled substance. (*Id.* at 33.)

On cross-examination, Detective De La Iglesia clarified that he had seen the 2005 BMW for at least two weeks before the arrest. (*Id.* at 35-36.) After being shown the vehicle's title, he testified that Appellant is the only one on the title, which is dated May 9, 2013. (*Id.* at 36.)

Santiago testified that he told the officers that

it wasn't my vehicle. It was actually a graduation present for my brother that I was fixing.

When they searched the car they did see the tools in the back trunk. I didn't have permission to drive it. Like I said I was doing work on it because we only had the car for about two weeks, and it was supposed to be fixed for my brother's graduation so he could go down to Florida.

Like I said, I probably drove it one or two times without my mother's permission. It was a nice car and I was just pretty much showing it off

(*Id.* at 41.) He testified that it was his mother's car at the time, and it was supposed to be a present for his brother's graduation. (*Id.* at 42.) He said that he drove the vehicle maybe once or twice because the vehicle was there only two weeks, and it sat about a week until it was fixed. (*Id.*) He recalls seeing Detective De La Iglesia at 7-Eleven one time, and he had the vehicle window down at that time. He reiterated that he drove the vehicle maybe two times. (*Id.* at 43.) He was driving the vehicle "that night because when my mother would go to sleep—I had the keys to the vehicle because I was doing the work on the vehicle." (*Id.*) When asked "[s]o every time you used the car—the police happened to see you every time you used that car?" and he replied "I mean the car did stand out." (*Id.*) He testified

I even told the detective that questioned me in the police department that it's not my vehicle, and that it was a

graduation present for my brother because my brother had—prior to this he had a lawsuit against, I think it was a hospital, which he received \$4,000, and my mother matched his money and purchased the vehicle for him.

(Id. at 44.)

Santiago further testified that he did not have a license to drive at the time he was operating the 2005 BMW. *(Id. at 46.)* His mother knew that he did not have a license at the time, and she did not give him permission to drive the car. *(Id.)* He testified that she goes to bed early and was sleeping at that time. *(Id.)* He then stated that he thinks that she might not have been feeling well. *(Id.)* When asked what he was doing with the vehicle, he stated:

Like I said, I did the work—because it was parked in a private lot behind the house. So I did the work. It took me about two days to do the work. I had to put a water pump in. So after that I drove it around once when [Detective De La Iglesia] did see me at 7-Eleven to make sure that everything was up to par, which I shouldn't have been doing.

And the second time I drove it I just went to go pick up my girlfriend. Like I said, I was trying to show off the car, and went to pick her up.

(Id. at 46-47.) The vehicle was in his mother's possession only two weeks, and he did not put any money toward the vehicle. *(Id. at 48.)*

Following Santiago's testimony, the Commonwealth recalled Detective De La Iglesia to the witness stand. He testified that on the night of the arrest, Santiago told him that his mother owned the vehicle, and he did not say anything about a brother. *(Id. at 49.)* Santiago admitted to Detective De La Iglesia that he drives the vehicle frequently. *(Id.)*

Appellant testified that Santiago is her son and that she is the owner of the 2005 BMW. *(Id. at 51.)* She testified that she purchased the vehicle on

May 9, 2013, and that she planned to give the vehicle to another son who was graduating from high school. (*Id.* at 50-51.) He wanted to go down to Florida, and she wanted to get him something. (*Id.* at 51.) She testified that she never gave Santiago permission to drive the vehicle, knew that he was not licensed to drive, and would not have given him permission to drive. (*Id.* at 52.) She learned that he had been driving the vehicle when his girlfriend called her and informed her of what happened. (*Id.*) She had been sleeping at the time and did not know that the vehicle was gone. (*Id.*) She testified that she did not know that her son had marijuana in the vehicle and would not have allowed him to do that. (*Id.* at 53.) She did not know what was going on that night, because Santiago must have taken the keys while she was sleeping. (*Id.*) She stated that it is possible he took the vehicle on other nights when she was sleeping, as she does not hide the keys because he was in the process of fixing it. (*Id.* at 53-54.)

On cross-examination, Appellant testified that she was not working during the relevant time period. (*Id.* at 54.) She believes she purchased the vehicle for “like \$7,000 or something,” on May 9, 2013, from an individual on 7th Street. (*Id.* at 54-55). She did not recall how many times she met with the seller, possibly once or twice. (*Id.* at 55.) She only looked at the vehicle. (*Id.*) She thought it looked good and did not cost a lot of money, so she decided to buy it. (*Id.* at 55-56.) When asked whether she or someone else met with the seller on May 9th when she purchased the car, she stated that she did not know when she got it. (*Id.* at 56.) She thought she “got it that night or something.” (*Id.*) She then testified that it was daylight when she got it, so it must have been around 4 or 5 o’clock. (*Id.*)

When questioned further as to how she paid for the vehicle, she testified:

Q: How did you pay for it; cash, a check?

A: Cash. Cash that I had laying around and plus my son, my 18 year old that was going to graduate, he had gotten some money from a lawsuit. He got like \$4,000.

....

Q: Mam, are you employed? You said you weren't, right?

A: No.

Q: And you just had money laying around the house?

A: I get disability.

Q: Do you have any proof of any sort of disability checks by any chance?

A: Not on me, no

Q: I'm just asking. And then your son—what is your son's name, the one who allegedly put some money towards this car?

A: Elijah.

....

Q: Your son Elijah, do you have any bank statements showing--

A: No. It's PNC Bank, but it's—he has an account at PNC Bank because the lawyer put it in the bank. When he was a baby, he was in a [class action] lawsuit. . . .

(*Id.* at 56-60). She explained that the money from the lawsuit was in a trust account until he turned 18. (*Id.* at 60.)

She further testified that she did not use the vehicle much for herself, “just driving maybe around the block and stuff like that because [she] didn't drive that much.” (*Id.* at 60.) She was not aware of the vehicle ever reeking of marijuana or of drugs or paraphernalia being in the vehicle. (*Id.* at 60-61.)

Answering questions from the trial court judge, Appellant testified that she was a licensed driver at the time she purchased the car, but she did not know whether she had another vehicle at the time she purchased the 2005 BMW. (*Id.* at 62.) She then testified that she purchased the vehicle with \$4,000 from her son's trust account, but then clarified that at the time of the purchase, he had not yet reached 18 years of age. (*Id.* at 62-63.) He did not turn 18 until November 2013. (*Id.* at 63.) She then testified that she "had saved up enough money plus other people," and that the money did not come from her son's trust account. (*Id.*) He was going to give her the money later. (*Id.*) The judge then asked whether she was saying she used all her money and then her son Elijah was going to pay you the \$4,000, she replied "yes." (*Id.*) When asked by the judge whether she ever drove the 2005 BMW, she again contradicted her earlier testimony when she replied "no." (*Id.* at 64.) She explained that she wanted to save it as a surprise for her son. (*Id.* at 65.)

Following the hearing, by order dated April 17, 2014, the trial court ordered that the 2005 BMW be forfeited to the Commonwealth. In its subsequent Pa. R.A.P. 1925(a) opinion, the trial court concluded:

Based on all the evidence presented, it was clear that [Santiago], not Appellant, exercised dominion and control over the vehicle, and was therefore the true "owner" of the vehicle. As such, Appellant failed to satisfy her burden, and [the trial court] did not err in rejecting her innocent owner defense.

(Pa. R.A.P. 1925(a) Opin. at 6.) The trial court explained that it did not find the testimony of Santiago to be credible, but it found the testimony of Officer De La Iglesia to be credible that he observed Santiago driving the vehicle on several occasions and never saw Appellant in the vehicle. The trial court also did not find

Appellant's testimony to be credible that she was the owner of the 2005 BMW, based on several reasons. Specifically, Appellant could not recall the name of the man from whom she purchased the vehicle or how many times she met with him, her testimony was unclear as to where the \$7,000 came from to purchase the vehicle, and she could not recall whether she owned another vehicle at the time she purchased the 2005 BMW. Moreover, she admitted that she purchased the car as a gift. Finally, there was no dispute that Santiago was making repairs on the car.

On appeal,³ Appellant essentially argues that the trial court erred in failing to conclude that Appellant was an "innocent owner" of the 2005 BMW and, as such, entitled to have the vehicle returned to her pursuant to the provisions of the Forfeiture Act.

Section 6801 of the Forfeiture Act, 42 Pa. C.S. § 6801, sets forth a list of property that "shall be subject to forfeiture," including controlled substances, drug paraphernalia, equipment, conveyances, if used or intended to be used in violation of the Controlled Substances Act, and it authorizes law enforcement authorities to seize such property. Section 6801(a)(4) of the Forfeiture Act, 42 Pa. C.S. § 6801(a)(4), specifically provides that vehicles "which are used or intended for use to transport, or in any manner to facilitate the transportation, sale receipt, possession or concealment of" controlled substances or other drugs in violation of the Controlled Substances Act are subject to forfeiture.

³ The Commonwealth Court's review of a forfeiture appeal is limited to determining whether the trial court's findings of fact are supported by substantial evidence and whether the trial court abused its discretion or committed an error of law. *Cmwlth. v. \$6,425.00 Seized from Esquilin*, 880 A.2d 523, 529 (Pa. 2005).

“In a forfeiture case, the Commonwealth bears the burden of establishing, by a preponderance of the evidence, that a nexus exists between the pertinent unlawful activity and the property subject to forfeiture.” *Commonwealth v. 1992 Chevrolet*, 844 A.2d 583, 585 (Pa. Cmwlth. 2004). “After satisfying its burden by a preponderance of the evidence, . . . the burden then shifts to the claimant or the person claiming ownership to . . . prove a statutory defense, such as the ‘innocent owner’ defense under Section 6802(j) of the Forfeiture Act” *In re One 1988 Toyota Corolla (Blue Two-Door Sedan) PA License TPV 291*, 675 A.2d 1290, 1295 (Pa. Cmwlth. 1996).

In *Commonwealth v. One 1988 Suzuki Samurai*, 589 A.2d 770 (Pa. Cmwlth. 1991), we explained:

Under the [Forfeiture] Act, where a conveyance has been used by a person other than the “owner” thereof for unlawful purposes and has been seized by law enforcement officials, the “owner” must establish certain elements to secure return of property. Section 6802(j) of the [Forfeiture] Act, 42 Pa. C.S. § 6802(j), indicates the burden is on petitioner to show:

- (1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.
- (2) That the claimant lawfully acquired the property.
- (3) That it was not unlawfully used or possessed by him. In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

Section 6802(j)(3)[of the Forfeiture Act], regarding unlawful use of property without claimant’s

knowledge or consent, is referred to as the “innocent owner” exception to the [Forfeiture] Act.

One 1988 Suzuki Samurai, 589 A.2d at 771-72 (citations omitted). Thus, where the property was used unlawfully by someone other than the lawful owner of the property, the innocent owner defense or exception provides that “[s]o long as the owner establishes that the act giving rise to the forfeiture action was committed without his or her knowledge or consent, the forfeiture cannot be upheld.” *Commonwealth v. One 1988 Toyota Truck*, 596 A.2d 1230, 1232 (Pa. Cmwlth. 1991), *appeal denied, sub nom. Commonwealth v. One 1998 Toyota Truck, Seized from Arnold*, 611 A.2d 713 (Pa. 1992).

An individual claiming to be an “innocent owner” must show that she is the owner of the property, that she lawfully acquired the property, and that it was not unlawfully used or possessed by her. “[H]olding title to an automobile does not, in and of itself, prove actual legal ownership for the purposes of the Forfeiture Act.” *Strand v. Chester Police Dep’t*, 687 A.2d 872, 876 (Pa. Cmwlth. 1997). Rather, to be considered an owner of a vehicle, an individual “must have a possessory interest in the property with attendant characteristics of dominion and control.” *One 1988 Suzuki Samurai*, 589 A.2d at 773.

Here, Appellant concedes in her brief that the Commonwealth established a nexus between the seized 2005 BMW and illegal drug activity, so the burden then shifted to Appellant to show that she was an “innocent owner” of the vehicle. In support of her argument that she is the “innocent owner,” Appellant summarizes the testimony that she and Santiago presented at the hearing. Based on that testimony, she maintains that she retained dominion and control over the 2005 BMW, because: she purchased the vehicle; she had title to the vehicle; the vehicle was parked behind her house; she did not give her son permission to drive

the vehicle; Santiago took the keys to the vehicle when she was not aware; she purchased the vehicle to give to another son in the future as a graduation present; Santiago admitted he did not have permission to drive the vehicle; and it would be illegal for Santiago to drive the vehicle.

The trial court, however, did not find Appellant's or Santiago's testimony to be credible regarding ownership of the vehicle, and it pointed to several aspects of their testimony in support of its credibility determinations, as discussed above. "As finder of fact, the trial court is the sole arbiter of questions concerning the credibility and weight of the evidence, and the trial court's determinations in these respects will not be disturbed unless the trial court abuses its discretion." *McKenna v. Dep't of Transp., Bureau of Driver Licensing*, 72 A.3d 294, 298 (Pa. Cmwlth.), *appeal denied, sub nom. Dep't of Transp. V. McKenna*, 81 A.3d 79 (Pa. 2013). Appellant is essentially asking the Court to reweigh the evidence and engage in our own credibility determinations in order to conclude that she purchased the vehicle for her son Elijah and exercised dominion and control over the vehicle. This we cannot do.

Accordingly, we affirm the order of the trial court.

P. KEVIN BROBSON, Judge

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ORDER

AND NOW, this 6th day of January, 2015, the order of the Court of Common Pleas of Lehigh County is AFFIRMED.

P. KEVIN BROBSON, Judge