

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil No. <u>09-2316-P</u>
SEVENTEEN THOUSAND TWO HUNDRED)	
SIXTY DOLLARS (\$17,260.00) IN)	
UNITED STATES CURRENCY,)	
)	
Defendant.)	

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND ORDER
OF FORFEITURE

Before the court is plaintiff United States of America's ("government") Motion for Summary Judgment and Order of Forfeiture. (D.E. 25.) For the reasons below, the government's motion is GRANTED.¹

I. BACKGROUND

This is an *in rem* forfeiture action brought by the government to enforce 21 U.S.C. § 881(a)(6), which provides for the forfeiture of property that constitutes proceeds traceable to, or was intended to be used in, the exchange of a controlled substance, in violation of Title II of the Controlled Substances Act, 21 U.S.C. §§ 801 et

¹All parties consented to have a United States Magistrate Judge conduct all proceedings in this case, including presiding at the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. (D.E. 26.)

seq. The defendant property is \$17,260.00 in United States currency and the sole claimant is Randy Cooper.

The undisputed facts are as follows.² On December 4, 2008, Officer Joseph Hoing, a criminal investigator with the State of Tennessee Attorney General's Office who at the time was assigned as a Task Force Officer with the Drug Enforcement Administration ("DEA"), was on duty at the Memphis International Airport observing passengers proceeding through the security checkpoint at Concourse C. He observed an individual later identified as Randy Cooper being taken to a secondary checkpoint by officers of the Transportation Safety Administration. Officer Hoing approached Cooper, identified himself as a DEA Task Force Officer, and asked Cooper if he would answer a few questions. In response to the officer's questions, Cooper stated that he lived in Jackson, Tennessee and that he was traveling to Los Angeles via US Airways

²These facts are based on Officer Joseph Hoing's affidavit, which was filed as an exhibit to the government's motion for summary judgment. Because claimant Cooper did not file a response to the government's motion, on January 20, 2010, the court entered an order directing Cooper to show cause why the government's motion should not be granted. The court specifically ordered Cooper to file a response to the summary judgment motion within thirty days and warned Cooper that "if he fails to comply with this order, the court will decide the Motion for Summary Judgment based solely on the government's brief." (D.E. 35 at 2.) The show cause order was delivered via U.S. Certified Mail to Cooper's residence in Jackson, Tennessee, and a signed return receipt card confirming delivery of the order was returned to the court and docketed on January 27, 2010. (D.E. 37.) Despite the court's show cause order, Cooper has not filed a response in opposition to the summary judgment motion, and the time for doing so pursuant to that order has expired.

to visit his girlfriend. Officer Hoing then asked Cooper for consent to search his carry-on bag, and Cooper gave his consent. Inside the bag, Officer Hoing discovered a portable digital scale which, based on the officer's experience, is commonly used by drug traffickers to weigh illegal drugs to be packaged for resale. Cooper stated that he used the scale to weigh his prescription medication. When Officer Hoing asked him what type of medication he used that needed to be weighed with a digital scale, Cooper produced several bottles of prescription pills. The labels on the bottles bore Cooper's name, the type of medication, and the dosage amounts to be taken. Each of the medications were in the form of pills, which had already been divided into dosage units by milligram and thus did not need to be weighed. When Officer Hoing confronted Cooper with this, Cooper changed his story and said that he had high cholesterol and used the scale to weigh table salt for his meals.

Officer Hoing then asked Cooper if he was carrying any large sums of cash, to which Cooper responded that he had no cash on him. Officer Hoing asked Cooper for consent to search his person, and Cooper gave his consent. Officer Hoing discovered an envelope containing \$2,000.00 in one hundred dollar bills in Cooper's back pocket, a second bundle of cash in the same pocket totaling \$260.00, and a bundle of one hundred dollar bills totaling \$15,000.00 hidden in Cooper's crotch area. Cooper explained that

the cash was spending money for his trip. Officer Hoing seized the currency, totaling \$17,260.00, and released Cooper so that he could make his flight. Cooper, however, did not board his flight to Los Angeles.

Officer Hoing brought his trained narcotics detection canine, "Tex," to the area where the money was being held. Tex, who is trained to detect the odor of marijuana, cocaine, heroin, and methamphetamine, gave a positive alert on the currency for the odor of narcotics. A subsequent criminal background check revealed that Cooper had several prior arrests for possession of cocaine with intent to distribute, as well as arrests for kidnapping and especially aggravated robbery.

On May 21, 2009, the government filed a Verified Complaint of Forfeiture against the currency seized from Cooper's pants. During the litigation, Cooper did not cooperate in the discovery process or with his attorney, which resulted in the court allowing his counsel to withdraw from the case. (D.E. 35.) Moreover, according to the affidavit filed by Staci Patterson-Dean, a paralegal for the government, Cooper did not respond to any of the government's interrogatories or requests for production of documents. In addition, Cooper did not produce any of his tax returns for the past five years or execute an IRS Form 4506 which would have allowed the government to obtain his tax returns directly from the IRS, as requested by the government. (Dean Aff. ¶¶ 2-3.) As

mentioned earlier, he has not filed a response to the summary judgment motion, despite the court's show cause order instructing him to do so.

II. ANALYSIS

A. Federal Forfeiture Law

Federal law renders subject to forfeiture to the United States

[a]ll moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

21 U.S.C. § 881(a)(6). The government may obtain title to such property by filing an *in rem* civil case naming as the defendant the property to be forfeited. United States v. One 1973 Chevrolet Impala, 640 F. Supp. 2d 993, 995 (W.D. Tenn. 2009). The Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), which applies to forfeiture proceedings after August 23, 2000, sets forth the government's burden of proof in forfeiture actions. United States v. \$39,000.00 in U.S. Currency, No. 04-2902, 2005 WL 2600217, at *2 (W.D. Tenn. Oct. 11, 2005). Under CAFRA, the "burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1). To meet this burden, the government is not required to show a direct connection between the property and the illegal

activity. Id. "The burden of showing something by a preponderance of the evidence merely requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." \$39,000.00, 2005 WL 2600217, at *4 (quotations omitted). "The aggregation of facts, each one insufficient on its own, may suffice to meet the government's burden." United States v. \$118,170.00 in U.S. Currency, 69 F. App'x 714, 715 (6th Cir. 2003) (citing United States v. \$67,220.00 in U.S. Currency, 957 F.2d 280, 284 (6th Cir. 1992)). Where the government's theory "is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense." \$39,000.00, 2005 WL 2600217, at *2 (quoting 18 U.S.C. § 983(c)(3)). "The 'substantial connection' requirement does not require the government to provide direct evidence that the property is linked to a specific drug sale." Id. at *4. "Instead, reasonable inferences may be drawn from the evidence presented to establish a nexus between the property and drug activity." United States v. Veggacado, 37 F. App'x 189, 190 (6th Cir. 2002).

B. Summary Judgment

The government moves for summary judgment and has attached affidavits and exhibits in support of its motion. Federal Rule of Civil Procedure 56(c) provides that

[t]he judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c)(2); see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Canderm Pharmacal, Ltd. v. Elder Pharms., Inc., 862 F.2d 597, 601 (6th Cir. 1988). In reviewing a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). When the motion is supported by documentary proof such as depositions and affidavits, the nonmoving party may not rest on the pleadings, but must present some "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324. It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. These facts must be more than a scintilla of evidence and must meet the standard of whether a reasonable juror could find by a preponderance of the evidence that the nonmoving party is entitled to a verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Finally, the "judge may not make credibility determinations or weigh the evidence." Adams v. Metiva, 31 F.3d 375, 379 (6th Cir. 1994).

Based on the record, the court finds that there are no genuine issues as to any material facts and that, because the government has established by a preponderance of the evidence that a

substantial connection exists between the seized property and drug trafficking, the government is entitled to judgment as a matter of law.

First, Cooper was traveling with more than \$17,000.00 in cash concealed in his pants - \$15,000.00 of which was hidden in his crotch area. "While the presence of a large amount of cash is insufficient, standing alone, to support forfeiture, 'carrying a large sum of cash is strong evidence of some relationship with illegal drugs.'" United States v. \$99,990.00 in U.S. Currency, 69 F. App'x 757, 763 (6th Cir. 2003) (quoting United States v. \$67,220.00 in U.S. Currency, 957 F.2d 280, 285 (6th Cir. 1992)). Moreover, evidence that seized property was concealed "supports a connection between the money and drug trafficking." United States v. \$117,920.00 in U.S. Currency, 413 F.3d 826, 829 (8th Cir. 2005). Not only was Cooper hiding a large sum of money in his pants, but he had previously lied to Officer Hoing when he said that he did not have any cash on him. See id.

Second, Officer Hoing found in Cooper's carry-on bag a portable digital scale, which is commonly used by drug traffickers to weigh illegal drugs to be packaged for resale. See id. Cooper's implausible and inconsistent explanations for why he had the scale - initially stating that he used the scale to weigh his pills and then later stating that he used it to weigh table salt for his meals - further support the strong inference that the

currency was connected to drug trafficking. See id.; see also \$99,990.00, 69 F. App'x at 763.

Third, a trained narcotics canine gave a positive indication for the odor of narcotics on the currency, which supports the existence of a connection between the money and drug trafficking. See United States v. \$110,873.00, 159 F. App'x 649, 652 (6th Cir. 2005); \$117,920.00, 413 F.3d at 829; \$99,990.00, 69 F. App'x at 763; \$118,170.00, 69 F. App'x at 717. Finally, there is simply no evidence before the court to support an alternative, legitimate explanation for the currency. Cooper has not responded to the government's discovery requests, nor has he produced his tax returns or other financial information in an effort to explain why he had over \$17,000.00 in cash hidden in his pants.

In sum, the undisputed facts demonstrate by a preponderance of the evidence that the defendant currency was either drug proceeds or money intended to be used to purchase drugs, or both. Cooper has presented no evidence to rebut the government's proof, nor has he presented any evidence to show a legitimate source for the currency, despite the government's efforts to obtain such evidence. Therefore, the court concludes that there are no genuine issues of material fact and the government is entitled to summary judgment.

III. CONCLUSION

For the reasons above, the government's Motion for Summary Judgment and Order of Forfeiture is GRANTED. The defendant

currency is hereby forfeited to the permanent custody and control of the United States.

IT IS SO ORDERED.

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

March 10, 2010
Date