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IN THE
COURT OF APPEALS OF INDIANA

Olympic Financial Group, Inc.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 17, 2021
Court of Appeals Case No.
21A-CR-1017
Appeal from the
Jasper Superior Court
The Honorable
Russell D. Bailey, Judge
Trial Court Cause No.
37D01-2104-MC-334

Kirsch, Judge.

- [1] Olympic Financial Group, Inc. (“Olympic”) is a Money Services Business conducting business in several states, which involves physically transporting currency from these states to the location of Olympic’s bank by using couriers. Two such couriers were pulled over as part of a routine traffic stop. The officer told the men he would be issuing the driver a warning, but because of some inconsistent answers provided by the men, the officer asked for consent to search the vehicle, which the driver gave. During the search, the officer found a

suitcase, and after the driver opened the suitcase, it was found to contain \$709,880 in U.S. currency. No criminal charges were filed, but the State seized the cash and filed a motion to turn the money over to the federal government, which the trial court granted. Olympic now appeals, arguing that the search was unlawful and that, even if the search was lawful, the seizure of the cash was unlawful because the State failed to show a nexus between the cash and any crime.

[2] We reverse and remand.

Facts and Procedural History

[3] Olympic, headquartered in Minneapolis, Minnesota, is a Money Services Business (“MSB”), as defined by the Bank Secrecy Act, which is administered by the Financial Crimes Enforcement Network. *Appellant’s App. Vol. 2* at 22-23, 29. Olympic is registered with the U.S. Department of Treasury and conducts certain MSB activities, including providing money transfers, in multiple states, including Vermont and Minnesota. *Id.* Olympic is a legitimate business serving the need of U.S. citizens, immigrants, and residents to send money to families, friends, and associates, who are disadvantaged and vulnerable, in East African countries, including Somalia. *Id.* at 18. Because very few U.S. banks carry accounts for MSBs, which is an urgent issue challenging legitimate MSBs, the Department of Treasury, lawmakers, and the Department of Justice in recent years, it is necessary for MSBs like Olympic to physically transport currency from around the country to the location of Olympic’s bank. *Id.* at 19.

[4] Abdinur Hassan (“Delegate”) is Olympic’s authorized delegate in Vermont. *Id.* at 23. Delegate accepted cash remitted by Olympic’s customers in Vermont, wired the funds to the intended recipients, and then had couriers physically transport the cash to Minnesota, where Olympic’s bank is located, to cover the wire transfers. *Id.* Olympic and Delegate engaged Mohamed Ali (“Driver”) and Daud Weydow (“Passenger”) (collectively, “the Couriers”) to transport the cash from Vermont to Minneapolis. *Id.* at 18-19.

[5] On April 19, 2021, the Couriers were driving from Vermont to Minneapolis, transporting the cash from Delegate to Olympic headquarters.¹ *Id.* The Couriers had stopped overnight in Columbus, Ohio, as they had been instructed to do. *Id.* at 10. The Couriers, who are both legal Somalian immigrants with a limited ability to speak and understand English, were traveling on I-65 through Jasper County, Indiana when Lake County Detective Rex Ibarra (“Detective Ibarra”), who was patrolling in his unmarked vehicle, observed them traveling northbound in the right lane. *Id.* at 8. Detective Ibarra noticed that the vehicle was “going slower than the normal flow of traffic” and “drift[ed] over the solid white fog line hitting the rumble strips.” *Id.* Detective Ibarra also observed Driver with “his hands at a ten two position on the steering wheel[,] stiffed [sic]

¹ The trial court did not hold a hearing in this matter, and therefore, the only evidence in the record is the Probable Cause Affidavit and the attachments to Olympic’s Motion to Reconsider. The Couriers dispute the version of events contained in the Probable Cause Affidavit, but because no evidentiary hearing was held, we rely on the evidence available in the record on appeal.

armed[,] locked at the elbows and back rigid,” and the “front seat [P]assenger look away” from the detective. *Id.* Detective Ibarra began to follow the vehicle and observed the vehicle again drift to the right and drive on the white solid fog line. *Id.* He also observed the “[P]assenger recline his seat than [sic] look over at [the detective] than [sic] immediately lay back down.” *Id.* Detective Ibarra then activated his emergency lights and initiated a traffic stop. *Id.*

[6] When Detective Ibarra approached the vehicle from the passenger side, he noticed a large red suitcase in the back seat area of the vehicle, which he found “odd” because in his experience, “[m]ost individuals place their luggage in the rear of the vehicle.” *Id.* at 8-9. The Couriers furnished the detective with their Vermont drivers licenses, and the detective informed them the reason for the stop was unsafe lane movement. *Id.* at 9. Detective Ibarra noticed that “[P]assenger was trying to control the conversation and not allowing [D]river to speak.” *Id.* Detective Ibarra inquired about the vehicle information, and Passenger told the detective that the vehicle was a rental and gave him the rental agreement, which was under someone else’s name because that individual had used his credit card to rent the vehicle, but also told him that Passenger was listed as the secondary driver. *Id.*

[7] At that point, Detective Ibarra asked Driver to come back to the police vehicle, so that the detective could conduct a check of Driver’s license and asked Passenger to stay behind. *Id.* Passenger asked if Detective Ibarra needed his license, and the detective took Passenger’s license to perform a check. *Id.* Detective Ibarra conducted a check of the driver’s licenses of the Couriers, both

of which “came back clear and valid.” *Id.* Detective Ibarra asked Driver where they were coming from and where their destination was, and when Driver told him that they were traveling from Vermont to Minnesota, the detective concluded that “the travel route doesn’t make sense.” *Id.* Detective Ibarra inquired as to what the purpose of the trip, and Driver informed him it was to visit family and that they would be staying a day or two. *Id.* During this questioning, Detective Ibarra’s K-9 partner was present in the vehicle.² *Id.* at 11.

[8] Detective Ibarra told Driver he would be issued a warning for the traffic violation and that he was going to head back to the Couriers’ vehicle to return Passenger’s driver’s license. *Id.* The detective left Driver in the police vehicle with the K-9 and returned Passenger’s license, asking him the same questions about the Couriers’ travel. *Id.* Passenger provided answers consistent with those given by Driver. *Id.*

[9] Detective Ibarra returned to his police vehicle and issued Driver a warning for his traffic violation. *Id.* As Driver was exiting the police vehicle, the detective asked him if there were any illegal narcotics in the vehicle; the driver “maintained eye contact and stated ‘no.’” *Id.* The detective then asked, “how about any large amounts of money,” at which time Driver “broke eye contact[,] looked at the vehicle and paused[,] than [sic] stated ‘no.’” *Id.* At that time,

² Detective Ibarra stated in the Probable Cause Affidavit that later in the traffic stop, he “retrieved [his] K-9 partner Koda from [his] vehicle.” *Appellant’s App. Vol. 2* at 11.

Detective Ibarra concluded, based on “[P]assenger trying to control the conversation[,] the implausible travel route[,] the quick turn around[,] the suitcase being on the back seat[,] also the car being rented by a third party whom [sic] was not present,” that “criminal activity was afoot.” *Id.*

[10] Detective Ibarra asked for consent to search the vehicle, and Driver gave his consent to search. *Id.* Another Lake County detective arrived on the scene, and the two detectives conducted a vehicle search. *Id.* at 10. The officers removed the suitcase in the back of the vehicle and observed that it was locked. *Id.* Detective Ibarra asked Driver if he had a key, and Driver responded that he did not. *Id.* Driver then opened the suitcase by prying a key in between the suitcase zipper track. *Id.* After Driver opened the suitcase, the detectives placed him back in the police vehicle. *Id.* Inside the suitcase, the detectives found three large, clear plastic bags containing a large amount of U.S. currency. *Id.* There was also another small black suitcase inside the larger suitcase, which also contained a large amount of U.S. currency inside two clear plastic bags. *Id.* A further search of the vehicle yielded no contraband. *Id.*

[11] The detectives then advised the Couriers of their *Miranda* rights. *Id.* Driver told Detective Ibarra that he was transporting the cash to Minneapolis for Delegate, whom he identified both as his cousin and his brother, explaining that in their culture, cousins are considered brothers, because “the place he was taking the money is the only institute that can wire such a large amount to Africa and there is only one bank in Africa which can receive the large amount.” *Id.* When Detective Ibarra spoke with Passenger, he confirmed that the money

came from Delegate, who was Driver’s cousin. *Id.* When Detective Ibarra asked Passenger why they were traveling on I-65 to get to Minnesota from Vermont, Passenger responded that they were told to stay in Columbus, Ohio, and they were following the GPS. *Id.* Detective Ibarra then asked Driver if he knew where in Minnesota they were going, and Driver responded that he had to call to get the exact location, which the detective believed to be indicative of individuals traveling with large amounts of drugs or money where the final destination is not known to keep law enforcement from obtaining the information. *Id.* at 11.

[12] Detective Ibarra then retrieved his K-9 from his police vehicle, and the K-9 performed a drug sniff of the vehicle and alerted at the passenger side front door. *Id.* No illegal substances were found in the vehicle. *Id.* at 10. The detectives seized the money but did not arrest or otherwise charge the Couriers with any criminal offenses. *Id.* at 11, 17. The next day, on April 20, 2021, a “pad test”³ of the money “resulted in a positive manner for the presence of illegal narcotics residue” on the cash. *Id.* at 11.

[13] On April 20, 2021, counsel for Olympic emailed Police Captain Jim Tatge regarding Olympic’s ownership of the money. *Id.* On April 21, 2021, the State filed a motion with the Probable Cause Affidavit attached, requesting that the trial court find probable cause existed for the seizure of the money. *Id.* at 6. On

³ A pad test is done by rubbing a pad on the U.S currency then spraying the pad with a chemical, which will react to the presence of illegal narcotic residue. *Appellant’s App. Vol. 2* at 11.

the same date, the trial court granted the motion and found that probable cause existed. *Id.* at 5. On April 28, 2021, Olympic sent the State a “Verified Claim to and Demand for Return of Property,” (“the Verified Claim”) in which Olympic’s Chief Financial Officer attested that Olympic “is an innocent owner of the Property” and “is not aware of, not involved in, nor facilitates criminal activity or violations of the law to sustain the confiscation of its Property and/or any forfeiture.” *Id.* at 22-23. The Verified Claim contained a description of the nature of Olympic’s business and attached Olympic’s Money Transmitters Licenses for Vermont and Minnesota and its MSB registration. *Id.* at 22-31. The Verified Claim also attached a written notice, dated April 18, 2021, which was on the person of Passenger at the time of the traffic stop, authorizing him to carry and transport Olympic’s money. *Id.* at 33.

[14] On May 7, 2021, the State filed a Verified Petition for a Turnover Order, seeking for the money seized to be transferred to the federal government for forfeiture proceedings. *Id.* at 13-15. The petition did not mention Olympic or that a third party was claiming ownership of the money. *Id.* The same day, without holding a hearing, the trial court granted the State’s petition and issued a Turnover Order authorizing the State to transfer the money for forfeiture proceedings in federal court. *Id.* at 4. On May 11, 2021, Olympic filed a Motion to Reconsider, requesting the trial court to deny the petition for a turnover order or to at least hold a hearing on the matter. *Id.* at 16-20. Olympic attached the Verified Claim and its attachments. *Id.* at 16-39. On May 19, 2021, the trial court issued an order indicating that the Motion to

Reconsider was deemed denied pursuant to Trial Rule 53.4. *Id.* at 40. Olympic now appeals.

Discussion and Decision

[15] Olympic argues that the trial court erred in granting the Turnover Order because both the search and seizure were unlawful. When a trial court conducts an evidentiary hearing, we give deference to its factual findings and judgment, and we will reverse only if the findings and judgment are clearly erroneous. *Walls v. Markley Enters., Inc.*, 116 N.E.3d 479, 483 (Ind. Ct. App. 2018), *trans. denied*. However, where the facts are in dispute, but the trial court rules on a paper record without conducting an evidentiary hearing, then no deference is afforded the trial court’s factual findings or judgment. *Id.* Under those circumstances, we are “in as good a position as the trial court to determine the issues, and we review de novo a trial court’s ruling where the facts before the court are disputed and the trial court rules on a paper record. *Id.*

[16] Olympic asserts that the trial court erroneously granted the State’s Turnover Order for several reasons. Specifically pertinent to our decision, Olympic contends that the seizure of the money was unlawful because there was no probable cause to support the seizure because there was no nexus between the money and any criminal activity. Because the seizure was unlawful, Olympic maintains that the trial court erred by issuing the Turnover Order, and therefore, Olympic is entitled to immediate reimbursement from the State.

[17] The statute authorizing the turnover of seized property provides as follows:

Upon motion of the prosecuting attorney, the court shall order *property seized under IC 34-24-1* transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

Ind. Code § 35-33-5-5(j) (emphasis added). Our Supreme Court has held that “if the search or seizure of . . . property was unlawful, the turnover order must be reversed.” *Membres v. State*, 889 N.E.2d 265, 269 (Ind. 2008).

[18] It is well established that “[t]he possession of large amounts of cash is not in and of itself illegal.” *Brown v. Eaton*, 164 N.E.3d 153, 159 (Ind. Ct. App. 2021), *trans. denied*. Recently, this court decided *Lewis v. State*, 125 N.E.3d 655 (Ind. Ct. App. 2019), which held that, under Indiana Code section 35-33-5-5(j), in order for property to be turned over to the federal government, “the State must show that the property was properly seized pursuant to Indiana Code chapter 34-24-1 -- the forfeiture statutes.” *Id.* at 659. Therefore, in regards to turnover proceedings, the State must offer evidence beyond the mere possession of money -- even large amounts of money -- to provide probable cause to seize the cash.

[19] In *Lewis*, a driver was pulled over as part of a routine traffic stop. 125 N.E.3d at 656. As in the present case, after a check revealed that Lewis’s driver’s license was in good standing and after the deputy asked a lengthy series of questions, Lewis was told he would receive a warning and was “just about good here.” *Id.*

at 657. The deputy then asked Lewis whether there were any narcotics, guns, or large sums of money in the vehicle, and Lewis paused before answering no, causing the deputy to be suspicious. *Id.* Lewis refused to consent to a search of the vehicle, and the deputy conducted a K-9 sweep of the vehicle, during which the dog alerted twice on the vehicle’s passenger side. *Id.* The deputy searched the vehicle, finding \$77,000 in cash and two digital scales but no evidence of drugs or contraband. *See id.* at 657 n.3 (“The K-9 must have alerted mistakenly as no evidence of drugs or contraband was found in the vehicle after a thorough search.”). The State seized the cash and filed a motion to turn it over to the federal government, which was granted by the trial court. *Id.* Lewis, who, as in the present case, was not arrested or charged with any criminal offense, appealed the grant of the turnover order. *Id.* at 657 n.5, 658.

[20] As previously noted, this court stated that, under Indiana Code section 35-33-5-5(j), to be turned over to the federal government, “the State must show that the money was properly seized pursuant to Indiana Code chapter 34-24-1” *Id.* at 659. This court then noted that Indiana Code section 34-24-1-1(a)(2), provides that money may be seized by the State if it was: (A) furnished or intended to be furnished by any person 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. We then concluded that “the General Assembly has reasonably decreed that for the State to seize cash and seek its forfeiture -- or turnover -- it must show a nexus between the cash and some sort of criminal activity.” *Lewis*, 125 N.E.3d at 659.

In looking for a nexus between the cash and criminal activity in *Lewis*, none was found: “there is *no evidence whatsoever that a crime occurred*. . . . The plain language of the statute requires the State to prove that the money is directly related to some sort of criminal activity. Here, there is a complete dearth of evidence in that regard.” *Id.* (emphasis original). We, therefore, reversed the grant of the turnover order because the State “wholly failed to prove that the cash was properly seized pursuant to Indiana Code chapter 34-24-1.” *Id.* at 659-60.

[21] Our present case presents an almost identical situation as in *Lewis*. Here, the seizure began when a traffic stop was conducted and after both Couriers’ driver’s licenses were found to be valid and in good standing. As in *Lewis*, the detective informed Driver that he would be issued a warning, and after issuing the warning, the detective asked Driver if there were any illegal narcotics or any large amounts of money in the vehicle. Detective Ibarra found Driver’s response to the question about the presence of money to be suspicious. As in *Lewis*, a K-9 unit alerted outside the vehicle, but no drugs or contraband were found in the vehicle, and the Couriers were neither arrested nor charged with any criminal offenses stemming from the incident.

[22] The only fact distinguishing the present case from *Lewis* is the fact that, the day after it had been seized, the currency tested positive for drug residue after a pad test was administered. However, although the later-administered pad test showed the presence of drug residue, there is no evidence that, at the time of the traffic stop, the K-9 alerted to the suitcase, or the money contained within the

suitcase. Additionally, the State provided a statement in the Probable Cause Affidavit that a pad test was done the day after the money was seized from the presence of the Couriers, but there is no evidence of how exactly the pad test was administered, including how many samples were taken from the currency and if there were multiple positive indications for the presence of drug residue. Further, courts have raised substantial questions as to the degree that a high percentage of all currency may be contaminated with drug residue. *See, e.g., Illinois v. Caballes*, 543 U.S. 405, 412 (2005) (Souter, J., dissenting) (noting “the pervasive contamination of currency by cocaine”); *Muhammed v. Drug Enforcement Agency*, 92 F.3d 648, 653 (8th Cir. 1996) (“it is well established that an extremely high percentage of all cash in circulation in America today is contaminated with drug residue”). Without knowing how many positive indications for drug residue were found on the currency, the mere presence of drug residue on currency in a suitcase in someone’s vehicle cannot on its own establish a nexus between the currency and criminal activity. For all these reasons, the mere fact that there was drug residue on the currency in this case does not distinguish this situation from *Lewis*. We, therefore, find that the holding in *Lewis* compels a reversal in this case.⁴

[23] The State points to *Hodges v. State*, 125 N.E.3d 578 (Ind. 2019) to support its position that the procedures under the turnover statute do not require the State

⁴ The State asserts that *Lewis* was wrongly decided and should not be followed. *Lewis* is good law and has not been overruled or questioned, and we, therefore, decline the State’s contention that it was wrongly decided.

to prove a nexus between money seized and criminal activity. Specifically, the State relies on language at the beginning of the opinion, where our Supreme Court stated: “[W]e cannot -- and do not -- speculate about whether civil forfeiture of the property would be appropriate.” *Id.* That case, however, considered, in the context of whether a turnover order was proper, whether the seizure of the property exceeded the scope of a search warrant and was thus unlawful. *Id.* at 581. Because in the present case, there was no search warrant, we are not faced with the same issue of whether a seizure exceeded the scope of a warrant, and we, therefore, find *Hodges* to be distinguishable.

[24] Under the circumstances of the present case, the State has failed to prove that the cash was properly seized pursuant to Indiana Code chapter 34-24-1. Therefore, it has failed to show that it is entitled to a turnover order under Indiana Code section 35-33-5-5(j), and the trial court erred by granting the State’s motion. However, Olympic’s money has been turned over to the federal government, which is now in possession of it, and it is unclear whether the money has yet been subject to forfeiture proceedings. Given the circumstances of this case, especially the fact that there is no evidence whatsoever that a crime was committed, we do not believe that it is fair to require Olympic to undertake the process of retrieving its money from the federal government. Therefore, as in *Lewis*, we reverse and remand with instructions that the State reimburse Olympic instantaneously, and the State may then try to recoup that money from the federal government. Because we have decided this case pursuant to the

turnover and forfeiture statutes, we need not consider Olympic's arguments regarding the constitutionality of the search.

[25] Reversed and remanded.

May, J., concurs.

Vaidik, J., concurs in result with separate opinion.

IN THE
COURT OF APPEALS OF INDIANA

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v.

State of Indiana,
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Vaidik, J., concurring in result.

[26] I concur in the majority’s reversal of the turnover order but not in its reliance on the standard set forth in *Lewis v. Putnam County Sheriff’s Department*, 125 N.E.3d 655 (Ind. Ct. App. 2019).

[27] As the majority notes, the *Lewis* panel stated that “for the State to seize cash and seek its forfeiture—or turnover—it must show a nexus between the cash and some sort of criminal activity.” *Id.* at 659. The problem with this statement is that it fails to distinguish the standard for the forfeiture of property from the standard for the initial seizure of property that necessarily precedes the forfeiture. To initially seize property under the forfeiture statutes, there must be “probable cause to believe” there is a nexus between the property and certain criminal activity. *See* Ind. Code § 34-24-1-2(a), (b). To then be entitled to

forfeiture of property, “the prosecuting attorney must show by a preponderance of the evidence” there is a nexus between the property and certain criminal activity. *See* Ind. Code § 34-24-1-4(a). Probable cause, of course, is a lower bar than a preponderance of the evidence. *See Heaton v. State*, 984 N.E.2d 614 (Ind. 2013).

[28] One month after *Lewis*, our Supreme Court addressed this important distinction in *Hodges v. State*, 125 N.E.3d 578 (Ind. 2019). The turnover order at issue in *Hodges* concerned cash believed to be related to drug dealing. The Court stated that “[t]he propriety of the turnover order depends on whether the seizure was supported by **probable cause to believe** the cash was proceeds of drug trafficking[.]” *Id.* at 581 (emphasis added). The Court held it was but clarified that the existence of probable cause to **seize** the cash (and then turn it over to federal authorities) did not mean **forfeiture** of the cash would be appropriate. *Id.* at 584. The Court explained:

Once the money is turned over, the government may either return the property or seek forfeiture. If it seeks forfeiture, the court overseeing that proceeding may assess any innocent explanations for the circumstances and determine who is entitled to the property. We decide only that the turnover from state to federal authorities is proper.

Id. *Hodges*, not *Lewis*, sets forth the proper standard for the initial seizure of property under the forfeiture statutes: probable cause to believe there is a nexus between the property and certain criminal activity.

[29] That said, not even this lower standard was met in this case. For all the reasons laid out by the majority, I see no probable cause to believe the cash seized is related to criminal activity. Therefore, I join in the reversal of the turnover order.

[30] I also agree that the State should be required to immediately return the seized funds to Olympic. The forfeiture statutes make clear that where, as here, the seizure of property is not supported by probable cause, the property must be “returned to the owner of record.” I.C. § 34-24-1-2(b). When the State turned the funds over to federal authorities before the time for appeal had run, it did so at its own peril.