

STATE OF MICHIGAN
COURT OF APPEALS

In re Forfeiture of \$19,840

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NINETEEN THOUSAND EIGHT HUNDRED
FORTY DOLLARS IN U.S. CURRENCY,

Defendant,

and

LINDA D. KYLE-GUEST,

Claimant-Appellant.

UNPUBLISHED

May 22, 2007

No. 267143

Kent Circuit Court

LC No. 01-007975-CF

Before: Hoekstra, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Claimant appeals as of right a judgment ordering the forfeiture of \$19,840 in currency seized from her home by the police following the arrest of her son, Rodney Kyle, on charges of distributing controlled substances. We affirm.

During questioning after his arrest, Kyle informed the police that he was storing approximately \$4,000 in cash generated from his illegal drug sales in a suitcase that could be found underneath his daughter's bed at claimant's home. Kyle then led the police to claimant's home, where they found nearly \$7,000 cash inside a plastic zip-lock bag located in a suitcase stored in his daughter's bedroom closet. Inside a zebra-striped purse located next to the zip-lock bag, the police found an additional \$19,840 in cash. When shown the zip-lock bag, Kyle identified the money inside as his and acknowledged that he had understated the amount accumulated by him from his drug sales. Claimant, however, asserted ownership of the \$19,840 cash found inside the purse, which she claimed was withdrawn by her from her 401(k) to make a down payment on a house. Despite claimant's assertion of ownership, the police seized the entirety of the currency found in the suitcase for forfeiture under the controlled substance provisions of the Public Health Code (PHC), MCL 333.7521 *et seq.* Under these provisions,

anything that can be traced to an exchange for a controlled substance is subject to forfeiture, MCL 333.7521(f), and may be seized without process if “[t]here is probable cause to believe that the property was used or is intended to be used” in violation of the controlled substance provisions of the PHC, MCL 333.7522(d).

At the outset of the subsequent forfeiture proceedings, claimant moved to suppress the currency seized as having been obtained in violation of her Fourth Amendment rights. The trial court denied the motion, finding that claimant consented to the search of her home and, therefore, her constitutional rights were not violated. Claimant argues on appeal that she could not be found to have knowingly and voluntarily consented to a search of her home, and that the trial court therefore erred in denying her motion to suppress. We disagree.

Although this Court reviews de novo the ultimate ruling on a motion to suppress, whether consent to search was granted is a question of fact determined by the totality of the circumstances, which we review for clear error. See *People v Goforth*, 222 Mich App 306, 309-310; 564 NW2d 526 (1997). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that the trial court made a mistake. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003).

To be valid, consent must be shown by the prosecution to have been made without duress or coercion, and must be unequivocal, specific, and freely and intelligently given. *People v Farrow*, 461 Mich 202, 206; 600 NW2d 634 (1999). However, valid consent to search does not have to consist of express verbal permission. To the contrary, a person’s conduct may be sufficient to show that consent was freely and voluntarily given. *People v Brown*, 127 Mich App 436, 441; 339 NW2d 38 (1983).

At the hearing on claimant’s motion, law enforcement officers testified that when they first asked to enter claimant’s home to retrieve the money Kyle claimed was inside, claimant refused to allow them to enter. However, after being permitted to briefly speak with Kyle outside the home, she returned to the house and did not stop the officers from following her inside the home. Rather, Sergeant Mark Davis testified that claimant nodded and then waved them in when asked by the officers if they could follow. Davis also testified that neither claimant nor her husband asked them to leave the home at any time, and that claimant herself showed the officers the suitcase after volunteering that she kept money in a suitcase stored in a bedroom closet. Claimant’s conduct implied that she freely consented to the search. Moreover, because she initially refused to allow entry to the officers until she spoke with her son, her conduct indicates that she knew that she could refuse permission to search, but did not do so. The trial court did not clearly err in finding that claimant’s conduct plainly reflects knowing and voluntary consent to search her home for the cash.

Claimant also argues that the officers’ conduct in opening and searching the suitcase violated her Fourth Amendment rights because the officers did not obtain a warrant before doing so. Again, we disagree. Consent to search, once given, extends to closed containers in the area to be searched that are reasonably within the scope of the consent. *Florida v Jimeno*, 500 US 248, 251; 111 S Ct 1801; 114 L Ed 2d 297 (1991). Consequently, the police may search any container where the object of the search may be found as long as it is objectively reasonable to believe the object could be found in the container. *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005). Here, the officers told claimant they were looking for money that Kyle

had informed them would be inside a suitcase stored in his daughter's bedroom. Thus, the money could reasonably be expected to be inside the suitcase at issue, which was both located and opened in the room his daughter used at claimant's house. Because claimant consented to the search for the money, the search of the suitcase was within the scope of her consent. More importantly, claimant volunteered the location of the suitcase. Claimant had the opportunity to limit the scope of her consent by not volunteering the location of the suitcase, or stopping the officers from searching further. She did not, however, do so. The trial court's denial of the motion to suppress was proper.

Next, claimant asserts that Kyle's statements concerning the money stored at her home were obtained by the police without the benefit of *Miranda*¹ warnings, in violation of his Fifth Amendment right against self-incrimination. Thus, claimant argues, those statements and any testimony derived from them were inadmissible in the forfeiture proceeding and the trial court, therefore, erred when it considered and relied on police testimony concerning those statements in determining whether to forfeit the cash seized from her home. However, "[t]he Fifth Amendment privilege against self-incrimination is a personal privilege and cannot be asserted on behalf of another." *People v Safiedine*, 152 Mich App 208, 212; 394 NW2d 22 (1986); see also *In re Morton*, 258 Mich App 507, 509; 671 NW2d 570 (2003) (noting that constitutional rights are personal, and a person generally does not have standing to assert a constitutional right on behalf of another). Thus, claimant cannot assert the constitutional right of her son in order to obtain the suppression of his statements or police testimony derived from those statements, because her constitutional rights are not implicated. *Morton, supra*; see also *Fieger v Comm'r of Ins*, 174 Mich App 467, 471; 437 NW2d 271 (1988) ("[a] plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties").

Claimant next argues that the trial court erred in finding probable cause to seize the \$19,840 contained in the purse. We review de novo whether the relevant facts support a finding of probable cause. See *Walsh v Taylor*, 263 Mich App 618, 628; 689 NW2d 506 (2004).

Probable cause to seize an item for forfeiture exists when the facts "would induce a fair-minded person of average intelligence and judgment to believe" that the statute regarding such forfeiture was violated. *In re Forfeiture of United States Currency*, 164 Mich App 171, 178; 416 NW2d 700 (1987). Circumstantial evidence may be sufficient to establish probable cause to support forfeiture. *People v McCullum*, 172 Mich App 30, 35-36; 431 NW2d 451 (1988). Whether there was probable cause to seize the evidence is determined at the time of the search; evidence discovered after the seizure cannot be considered. See *People v Williams*, 160 Mich App 656, 660; 408 NW2d 415 (1987).

The record discloses that the police officers were aware of Kyle's illegal drug activities at the time of the seizure. Indeed, the officers had several times previously acquired drugs from Kyle through controlled buys, and Kyle had himself directed the officers to his mother's house

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

for the purpose of obtaining money admittedly derived from his drug sales. Kyle further directed that this money was stored in a suitcase in the room where his daughter stayed, and the officers found that money in a suitcase in the closet of that room. The officers also found the \$19,840 in the same suitcase as the money Kyle expressly identified as his drug money. In addition, Kyle knowingly understated the amount of money he kept in the zip-lock bag. In light of this discrepancy, it is reasonable to infer that Kyle understated the total amount he stored in the suitcase by neglecting to tell the officers about the additional money in the suitcase. Finally, the trial court rejected claimant's alternative explanation of the source of the money as not credible. We will not second-guess the court's credibility assessment. See, e.g., *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Based on the record evidence, we find no error in the trial court's determination of probable cause.

Finally, claimant argues that the prosecution failed to prove by a preponderance of the evidence that the currency seized had a "substantial connection" to Kyle's drug transactions. We review the trial court's finding in this regard for clear error. *In re Forfeiture of One 1978 Sterling Mobile Home*, 205 Mich App 427, 429; 517 NW2d 812 (1994). As previously noted, anything of value is subject to forfeiture under MCL 333.7521(1)(f) if it is traceable to an exchange for a controlled substance or if it is used or intended to be used to facilitate a violation of the controlled substances laws. *Id.* at 430. However, the statute requires a "substantial connection" between the seized property and the underlying drug transaction; an "incidental or fortuitous connection" is not sufficient to support forfeiture. *In re Forfeiture of \$5,264*, 432 Mich 242, 260-262; 439 NW2d 246 (1989).

We are not left with a firm and definite conviction that the trial court erred in finding a substantial connection between the \$19,840 and Kyle's drug transactions. *Akins, supra*. Indeed, Kyle admitted to the police that he kept drug proceeds at his mother's house, and the \$19,840 was found by the officer in the same suitcase as other monies Kyle admitted were the proceeds of his illegal drug activities. Additionally, money marked by the police and used in one of the controlled buys with Kyle was found in the zebra-striped purse. Although Kyle denied at the forfeiture proceedings that he told police that all of the money in the suitcase was his or that he gave the \$19,840 to his mother for future bond or attorney fees, the trial court was free to disbelieve Kyle's testimony in that regard as well as claimant's explanation for why she kept money in the suitcase. The trial court did not clearly err in concluding that there was a substantial connection between the currency and Kyle's illegal drug sales. The judgment of forfeiture was properly entered.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens