

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2135

STATE OF LOUISIANA

VERSUS

MELISSA ROBINSON

Judgment rendered: MAY - 7 2010

**On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, State of Louisiana
2008-14671; Division: "I"**

The Honorable Reginald T. Badeaux, III, Judge Presiding

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**Counsel for Defendant/Appellee
Melissa Robinson**

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

McCleendon, J. dissents.

Handwritten initials and signature:
TAD
E.J. G.
J. G.

DOWNING, J.

This is an appeal from a judgment rendered in favor of claimant, Melissa Robinson, upon her motion for new trial, wherein the trial court ordered the State to return \$7,900.00 seized in connection with alleged illegal activities. For the following reasons, we affirm the trial court judgment.

The issue on appeal is whether the trial court was clearly wrong when it found that the State did not sufficiently prove that the cash found in claimant's vehicle, which was parked in the garage during the course of an armed robbery investigation, was contraband subject to forfeiture.

The First Circuit has generated little jurisprudence on civil forfeiture under La. R.S. 40:2601 *et seq* since the law was amended in 1997, changing the burden of proof to a preponderance of the evidence when a claim is timely filed. *See State v. Green*, 42,253, pp. 3-4 (La. App. 2 Cir. 6/20/07), 960 So.2d 1270, 1272, for a discussion of the amendment; *see also State v. Property Seized From Davede Davillier \$660.00 in U.S. Currency*, 08-1329, p. 1 (La.App. 1 Cir. 5/8/09)(unpublished), which held that in a contested forfeiture proceeding, the State has the burden of proving by a preponderance of the evidence, the connexity between the seized property giving rise to the forfeiture and the illegal activity. *Id.*

The State claims that even though the money and the evidence of drug activity were not found in "proximity" to each other¹, there was a direct connection between the evidence of drug packaging and the vehicle where the cash was found, i.e., a receipt for a wrecker service for the vehicle in question. Ms. Robinson, however, testified that the money had been given to her by her domestic partner to pay a lawyer handling a civil matter for her and also to repair the vehicle. Upon hearing claimant's testimony about how she acquired the money, the trial court

¹ Louisiana Revised Statute 40:2611G provides, in pertinent part, that money found in proximity to contraband or an instrumentality of conduct giving rise to forfeiture shall give rise to a permissible inference that the money was used to facilitate the conduct.

granted Ms. Robinson's motion for new trial. The trial court ruled that the State failed to satisfy its statutory burden of proof by a preponderance of the evidence.

Here, we conclude that the trial court was not clearly wrong in finding that the State has failed to prove by a preponderance of the evidence, pursuant to La. R.S. 40:2612G, that money found in the vehicle was a property subject to forfeiture, pursuant to La. R.S. 40:2604. Ms. Robinson was at the searched residence temporarily and no evidence was presented that Ms. Robinson was engaged in illegal conduct giving rise to the forfeiture. Further, the evidence supports the trial court's implicit finding that the State failed to establish the connexity between the seized property and the illegal activity. We accordingly affirm the trial court judgment. The costs of this appeal in the amount of \$803.53 are assessed against the State of Louisiana.

AFFIRMED