

IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

---

Nos. 29 EAP 2015 and 30 EAP 2015

---

COMMONWEALTH OF PENNSYLVANIA,  
*Petitioner,*

vs.

REAL PROPERTY AND IMPROVEMENTS KNOWN AS  
416 SOUTH 62<sup>ND</sup> STREET, PHILADELPHIA, PA AND 1997 CHEVROLET  
AND CONTENTS SEIZED FROM JAMES YOUNG,  
*Respondent,*

---

BRIEF OF THE PHILADELPHIA BAR ASSOCIATION, THE HISPANIC  
BAR ASSOCIATION OF PENNSYLVANIA, AND THE BARRISTERS'  
ASSOCIATION OF PHILADELPHIA, INC. AS *AMICUS CURIAE*  
IN SUPPORT OF APPELLEE ELIZABETH YOUNG

---

Appeal from the December 17, 2014, Order of the Commonwealth Court *En Banc*  
for Consolidated Appeals at Nos. 1990 CD 2012 and 1995 CD 2012, Vacating the  
Order of the Court of Common Pleas of Philadelphia County, Trial Division, dated  
May 1, 2012, at Docket Nos. CP-51-MD-0002972-2010 & CP-51-MD-0013471-2010

---

Matthew D. Lee (No. 85914)  
BLANK ROME LLP  
One Logan Square, Sixth Floor  
130 North 18th Street  
Philadelphia, PA 19103  
[Lee-m@blankrome.com](mailto:Lee-m@blankrome.com)

*Attorneys for Amicus Curiae*

March 23, 2016

## TABLE OF CONTENTS

	<u>Page</u>
INTEREST OF THE AMICUS CURIAE .....	1
COUNTERSTATEMENT OF THE QUESTIONS INVOLVED.....	4
COUNTERSTATEMENT OF THE SCOPE AND STANDARD OF REVIEW .....	5
COUNTERSTATEMENT OF THE CASE.....	6
SUMMARY OF ARGUMENT .....	7
ARGUMENT .....	10
I.    THE COMMONWEALTH COURT PROPERLY CONSTRUED THE CRITICALLY-IMPORTANT STATUTORY INNOCENT OWNER DEFENSE IN A MANNER WHOLLY CONSISTENT WITH THE FORFEITURE STATUTE AND THIS COURT’S PRECEDENT .....	13
A.    The Commonwealth Court Properly Concluded That Ms. Young Established Lack of Knowledge of Any Illegal Activity .....	15
B.    The Commonwealth Court Properly Concluded That Ms. Young Established Lack of Consent to Any Illegal Activity .....	24
CONCLUSION.....	28

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>Anderson v. City of Bessemer City</i> , 470 U.S. 564 (1984).....	18
<i>Bose Corp. v. Consumers Union of United States, Inc.</i> , 466 U.S. 485 (1984).....	22
<i>Boyd v. United States</i> , 116 U.S. 616 (1886).....	11
<i>Sourovelis v. City of Philadelphia</i> , Case No. 2:14-cv-04687-ER (E.D. Pa.).....	10
<i>United States v. 6109 Grubb Road</i> , 886 F.2d 618 (3d Cir. 1989) .....	11, 22
<i>United States v. 6625 Zumirez Drive, Malibu, California</i> , 845 F. Supp. 725 (C.D. Cal. 1994) .....	27
<i>United States v. Milbrand</i> , 58 F.3d 841 (2d Cir. 1995) .....	18
<i>United States v. Ollie</i> , 442 F.3d 1135 (8th Cir. 2006) .....	21
<i>United States v. Wilgus</i> , 638 F.3d 1274 (10th Cir. 2011) .....	21
<b>State Cases</b>	
<i>Commonwealth v. \$2,523.48 U.S. Currency</i> , 649 A.2d 658 (Pa. 1994).....	passim
<i>Commonwealth v. \$8,006.00 U.S. Currency Seized from Carter</i> , 646 A.2d 621 (Pa. Cmwlth. 1994).....	19
<i>Commonwealth v. \$9,847.00 U.S. Currency</i> , 704 A.2d 612 (Pa. 1997).....	9, 20

<i>Commonwealth v. 1997 Chevrolet</i> , 106 A.3d 836 (Pa. Cmwlt. 2014).....	passim
<i>Commonwealth v. 2338 North Beechwood Street</i> , 2016 WL 980419 (Pa. Cmwlt. March 15, 2016).....	20, 21
<i>Commonwealth v. 2338 North Beechwood Street</i> , 65 A.3d 1055 (Pa. Cmwlt. 2013), <i>vacated on other grounds</i> <i>and remanded</i> , 114 A.2d 1036 (Pa. 2015).....	20
<i>Commonwealth v. 502-504 Gordon Street</i> , 607 A.2d 839 (Pa. Cmwlt. 1992), <i>aff'd per curiam</i> , 636 A.2d 626 (Pa. 1994) .....	11, 12, 19, 22, 25
<i>Commonwealth v. DeHart</i> , 516 A.2d 656 (Pa. 1986).....	20
<i>Commonwealth v. One 1985 Cadillac Seville</i> , 538 A.2d 71 (Pa. Super. 1988) .....	19
<i>Commonwealth v. One 1988 Suzuki Samurai</i> , 589 A.2d 770 (Pa. Cmwlt. 1991).....	19
<b>Statutes</b>	
42 Pa. C.S. § 6802.....	passim

## **INTEREST OF THE *AMICUS CURIAE***

Founded in 1802, the Philadelphia Bar Association is the oldest association of lawyers in the United States, with a membership of 12,000 legal professionals in the Philadelphia area. The Charter of the Philadelphia Bar Association states, in part, that “[t]his Association is formed to further the cause of justice; to sustain and improve the law and its administration.” The mission of the Philadelphia Bar Association is “to serve the profession and the public by promoting justice, professional excellence and respect for the rule of law.” The Philadelphia Bar Association’s commitment to liberty and justice lies at the heart of this mission. The Philadelphia Bar Association acts when critical rights of individuals are at stake – including the potential loss of home and property by individuals who have committed no crime.

The Hispanic Bar Association of Pennsylvania (“HBAPA”) is a professional organization composed of members of the Bar and law students of Hispanic ancestry as well as other interested persons. The HBAPA was founded to provide a forum for Hispanic and other lawyers who are interested in effecting change in our communities. The HBAPA is committed to the social, economic, professional, and educational advancement of Latino/Hispanic attorneys, law students, and community members. To that end, we work collaboratively with other specialty, county, state, and national bar associations to promote the administration of justice

and the social, professional, and educational advancement of Latinos. In furtherance of its mission to promote the administration of justice, the HBAPA takes action to support the individual rights of persons in the community who are threatened with the potential loss of home and property, even though they have not committed any crime.

Established in 1950, the Barristers' Association of Philadelphia, Inc. is a non-profit organization of approximately 1,000 lawyers and jurists who serve society at the highest positions in both the private and public sectors of the legal profession in Philadelphia. The Barristers' Association is not only dedicated to the professional needs and development of Black lawyers in Philadelphia, but has always been a proactive advocate for the cause against injustice. For example, in 1978, the Barristers' Association joined other concerned groups in filing an action against the Philadelphia Registration Commission which resulted in the addition of 50,000 Philadelphians to the voter registration pools. More recently, in 2012, the Barristers joined the Pennsylvania Voter Rights Coalition to oppose Pennsylvania's proposed voter identification law; and in 2015, the Barristers took a stand against House Bill 1538, which proposes concealing the identities of police officers involved in shootings and other "use of force" scenarios. The Forfeiture Act, which operates to strip from homeowners their fundamental right to property by operation of law, is another such erosion of rights and disproportionately affects

the African-American community. The Barristers' Association cannot silently watch as hard fought civil rights are stripped from citizens without demanding that the needs of our communities be considered and due process be protected.

Consequently, *amicus curiae* have a substantial interest in the question before this Court, and present this brief in support of Appellee Elizabeth Young.

**COUNTERSTATEMENT OF THE QUESTIONS INVOLVED**

*Amicus curiae* write on the following question:<sup>1</sup>

I. Did the Commonwealth Court properly construe the “innocent owner” defense in a manner consistent with the Forfeiture Act, 42 Pa. C.S. § 6802(j), and this Court’s decision in *Commonwealth v. \$2,523.48 U.S. Currency*, 649 A.2d 658 (Pa. 1994)?

(Answered in the Affirmative by the Commonwealth Court)

(Suggested Answer in the Affirmative)

---

<sup>1</sup> *Amicus curiae* recognize that this Court granted the Commonwealth’s petition for allowance of appeal with respect to three issues. However, *amicus curiae* will only be addressing the third issue as identified by the Court in its Order dated July 30, 2015.

**COUNTERSTATEMENT OF THE SCOPE AND STANDARD OF REVIEW**

*Amicus curiae* hereby adopt the Counterstatement of the Scope and Standard of Review as stated by Appellee in her brief.

**COUNTERSTATEMENT OF THE CASE**

*Amicus curiae* hereby adopt the Counterstatement of the Case as stated by Appellee in her brief.

## SUMMARY OF ARGUMENT

Pennsylvania’s Controlled Substances Forfeiture Act affords innocent homeowners a vital procedural safeguard in the form of a statutory affirmative defense that, if established, will defeat a civil forfeiture claim. This affirmative defense – referred to as the “innocent owner” defense – provides critically-important protection to homeowners who can demonstrate that any illegal use of their property was without their knowledge or consent. The statutory innocent owner defense reflects a balance struck by the Pennsylvania legislature between stronger forfeiture provisions and prevention of harsh results to innocent owners.

It is well-settled that civil forfeiture proceedings, while nominally deemed “civil” in nature, are in fact quasi-criminal and inherently punitive, especially where the property sought to be forfeited is a home. For this reason, the forfeiture statutes are to be strictly construed. With this context, the Pennsylvania legislature chose to lessen a property owner’s burden in some measure by mandating that “the absence of knowledge or consent must be reasonable under the circumstances.” 42 Pa. C.S. § 6802(j). In *Commonwealth v. \$2,523.48 U.S. Currency*, 649 A.2d 658 (Pa. 1994), this Court had occasion to construe the innocent owner provision, holding that “what is reasonable for one property owner may not be reasonable for another, and that “[a]ll of the circumstances surrounding the property owner’s

actions, or lack of action, must be considered in determining if they were reasonable.” *Id.* at 662.

Here, the trial court failed to follow the text of the forfeiture statute and this Court’s instructions in §2,523.48 *U.S. Currency* that “all of the circumstances” must be considered in assessing whether the property owner, Appellee Elizabeth Young, demonstrated lack of knowledge or consent of alleged illegal activity involving her residence. As the Commonwealth Court correctly determined, the trial court overlooked key evidence in the record that demonstrated Ms. Young’s lack of knowledge, and instead focused solely on Ms. Young’s trial testimony, which it improperly rejected. As to consent, the trial court similarly failed to consider “[a]ll of the circumstances surrounding the property owner’s actions, or lack of action,” overlooking key evidence presented at trial that demonstrated Ms. Young’s lack of consent. Contrary to the Commonwealth’s contention that the Commonwealth Court “invent[ed] a *per se* rule” that a homeowner-parent never has to evict an adult child from the property, the Commonwealth Court properly followed §2,523.48 *U.S. Currency* in considering all of the circumstances surrounding the issue of whether Ms. Young consented to her son’s activities. Nor does the Commonwealth Court’s decision foreclose the possibility that in some future case, on a different set of facts, a homeowner may well be required to evict an adult child from the home in order to establish lack of consent.

The Commonwealth Court also appropriately recognized the difficulties that the forfeiture statute imposes on homeowners – many of whom must proceed *pro se* in light of this Court’s holding in *Commonwealth v. \$9,847.00 U.S. Currency*, 704 A.2d 612, 617 (Pa. 1997), that there is no due process right to court-appointed counsel in civil forfeiture proceedings – who must prove a negative in order to establish the innocent owner defense. In this regard, the Commonwealth Court appropriately held that a trial court may not simply disbelieve the testimony of the property owner; instead, a trial court must “identify the circumstances that make it reasonable to infer that the property owner had actual knowledge and did consent to the violation of the Drug Act.” *Commonwealth v. 1997 Chevrolet*, 106 A.3d 836, 870 (Pa. Cmwlth. 2014). In so holding, the Commonwealth Court preserved the statutory allocation of the burdens of proof and interpreted the innocent owner defense in a manner wholly consistent with the statutory text and this Court’s decision in *\$2,523.48 U.S. Currency*.

## ARGUMENT

As part of its efforts to combat illegal drug trafficking in the City of Philadelphia, the Philadelphia District Attorney's Office regularly employs Pennsylvania's Controlled Substances Forfeiture Act to seek forfeiture of real and personal property connected with narcotics activity. While the goal of cracking down on drug crimes is a laudable one, an unfortunate consequence is that innocent homeowners are often ensnared in the forfeiture net, and such individuals can be deprived of ownership of their primary residence upon a showing by prosecutors, using only a preponderance of the evidence standard, that the property was used to facilitate illegal activity and without convicting the homeowner of any wrongdoing.<sup>2</sup>

Innocent property owners are not without recourse, however, as the forfeiture statute provides that a property owner may defeat a forfeiture claim by

---

<sup>2</sup> In the City of Philadelphia, real property forfeitures are unfortunately commonplace, and innocent property owners are often the focus of these cases. In a federal class action proceeding in the United States District Court for the Eastern District of Pennsylvania, it is alleged that the Philadelphia District Attorney's Office files real property forfeitures on 300 to 500 real properties (primarily private residences) each year, with 100 properties on average being forfeited each year and the remainder of the cases settling. *See Sourovelis v. City of Philadelphia*, Case No. 2:14-cv-04687-ER (E.D. Pa.), First Amended Class-Action Complaint for Declaratory and Injunctive Relief ¶ 70 (November 17, 2014). Between 2002 and 2012 (the year of the forfeiture at issue in this case), there were 1,172 real property forfeitures in the City of Philadelphia, compared to 56 real property forfeitures in all other Pennsylvania counties combined. *Id.* ¶ 72.

showing that “the unlawful use or possession [of the subject property] was without his knowledge or consent.” 42 Pa. C.S. § 6802(j). This critical procedural safeguard – known as the “innocent owner” defense – serves to protect a property owner from the punitive effect of forfeiture because of illegal drug activity of which the owner lacked knowledge or did not consent. *See Commonwealth v. \$2,523.48 U.S. Currency*, 649 A.2d 658, 661 (Pa. 1994) (“The innocent owner defense is a means of protecting a property owner from the harsh result of forfeiture because of illegal drug use to which the owner did not consent.”); *Commonwealth v. 502-504 Gordon Street*, 607 A.2d 839, 845 (Pa. Cmwlth. 1992) (“The Pennsylvania legislature struck a balance between stronger forfeiture provisions and prevention of harsh results to an innocent owner by providing the innocent owner defense . . . .”), *aff’d per curiam*, 636 A.2d 626 (Pa. 1994); *accord United States v. 6109 Grubb Road*, 886 F.2d 618, 624 (3d Cir. 1989) (“Civil forfeitures could sometimes lead to harsh and surprisingly unjust results such as when the owner has no knowledge of the property’s use for illegal purposes.”).

In recognition of the quasi-criminal character of civil forfeiture, *Boyd v. United States*, 116 U.S. 616, 630 (1886); *Commonwealth v. 502-504 Gordon Street*, 607 A.2d at 842, and the well-settled proposition that forfeiture statutes are to be strictly construed, *Commonwealth v. \$2,523.48 U.S. Currency*, 649 A.2d 658, 660-61 (Pa. 1994), the statutory innocent owner provision softens a property

owner's burden, in some measure, by mandating that "absence of knowledge or consent must be reasonable under the circumstances presented." 42 Pa. C.S. § 6802(j). In *Commonwealth v. 502-504 Gordon Street*, 607 A.2d 839 (Pa. Cmwlth. 1992), the Commonwealth Court had occasion to construe the meaning of subsection (j) of the forfeiture statute in a case involving a bar/restaurant located in a drug-infested neighborhood in Allentown. Although the property owner had knowledge of the drug activity occurring in and around his establishment, the record demonstrated that he had undertaken significant steps to stem, albeit unsuccessfully, the illegal activity in question. Upon review of the entire record, the Commonwealth Court concluded that the property owners had established lack of consent, finding that they "did all that could reasonably be expected of them to prevent the illegal use of their property once they became aware of drug activities occurring within the cafe." *Id.* at 846. This Court affirmed the Commonwealth Court's decision *per curiam*. 636 A.2d 626 (Pa. 1994).

Two years later, this Court adopted the Commonwealth Court's interpretation of the innocent owner provision in *Commonwealth v. \$2,523.48 U.S. Currency*, 649 A.2d 648 (Pa. 1994). In that case, involving a bar located in Lebanon which was the site of several drug investigations and arrests, the Court followed *502-504 Gordon Street* and held that in order to establish lack of consent, a property owner must demonstrate that "the actions he took to discourage that

activity must have been reasonable in light of the surrounding circumstances.” *Id.* at 661. This Court cautioned, however, that “what is reasonable for one property owner may not be reasonable for another” and that “[a]ll of the circumstances surrounding the property owner’s actions, or lack of action, must be considered in determining if they were reasonable.” *Id.* at 662.

The Commonwealth Court’s decision below properly followed the text of the forfeiture statute, and this Court’s interpretation of that statute in §2,523.48 *U.S. Currency*, in holding that the trial court erroneously rejected Appellee Elizabeth Young’s assertion of the innocent owner defense. In so doing, the Commonwealth Court properly exercised its role as a reviewing court and its decision is fully in accordance with applicable law. For that reason, the Commonwealth Court’s decision should be affirmed.

**I. THE COMMONWEALTH COURT PROPERLY CONSTRUED THE CRITICALLY-IMPORTANT STATUTORY INNOCENT OWNER DEFENSE IN A MANNER WHOLLY CONSISTENT WITH THE FORFEITURE STATUTE AND THIS COURT’S PRECEDENT**

In a manner fully consistent with the forfeiture statute and this Court’s decision in §2,523.48 *U.S. Currency*, the Commonwealth Court properly concluded that the trial court erred by not considering “all of the circumstances” in assessing whether Ms. Young demonstrated lack of knowledge or consent. *See Commonwealth v. 1997 Chevrolet*, 106 A.3d 836, 868 (Pa. Cmwlth. 2014) (“All of the circumstances should have been considered, including Young’s refusal to have

anything to do with Graham in the past when he was involved with drugs.”). Ensuring that trial courts consider “all of the circumstances” when evaluating a property owner’s assertion of the innocent owner defense is critically important for several reasons. A forfeiture claimant may demonstrate lack of knowledge or consent in different ways, depending upon the underlying facts and circumstances, and such showing need not be made simply through testimony of the property owner. A single, objective “test” for determining whether a property owner is innocent is inconsistent with the Supreme Court’s recognition in *\$2,523.48 U.S. Currency* that “what is reasonable for one property owner may not be reasonable for another.” 649 A.2d at 662. Consideration of all the circumstances is also critical so as to ease what the Commonwealth Court aptly characterized as a forfeiture claimant’s “impossible” burden to prove a negative. *1997 Chevrolet*, 106 A.3d at 870.

Here, the trial court’s failure to fully consider all of the circumstances, and all of the evidence introduced below, failed to comport with the forfeiture statute and warranted the Commonwealth Court’s decision to reverse the order of forfeiture and remand for proper consideration of the innocent owner defense. In so doing, the Commonwealth Court appropriately followed this Court’s binding precedent and in no way “rewrote the statutory innocent owner defense” as the Commonwealth charges. The statutorily-created innocent owner affirmative

defense is critically important to protecting the legitimate interests of innocent owners in property subject to forfeiture, and the Court should not accept the invitation of the Commonwealth and its *amicus curiae* to narrow the scope and availability of this important statutory defense in future cases.

**A. The Commonwealth Court Properly Concluded That Ms. Young Established Lack of Knowledge of Any Illegal Activity**

The Commonwealth Court properly concluded that the trial court failed to follow this Court’s instruction in *\$2,523.48 U.S. Currency* that “[a]ll of the circumstances surrounding the property owner’s actions, or lack of action, must be considered in determining if they were reasonable.” *1997 Chevrolet*, 106 A.3d at 868. Instead, the trial court simply concluded that “the record in no way supports [the] contention” that Ms. Young lacked knowledge of illegal activity at her home, citing as support for that finding the search warrants served by the police and that the police informed Ms. Young of her son’s alleged illegal activities. Trial Court Op. at 11. The Commonwealth Court conducted a searching review of the record on appeal and identified numerous parts of the record seemingly overlooked, or not considered, by the trial court which contradicted its conclusion that Ms. Young was not an innocent owner.

While the Commonwealth points out that the trial court disbelieved Ms. Young’s testimony as to lack of knowledge, that testimony was but only one of the

“circumstances” that the trial court was required to consider.<sup>3</sup> Indeed, other evidence in the record supports the conclusion that Ms. Young lacked knowledge, including what the Commonwealth Court concluded were numerous discrepancies in the trial testimony of Officer Billips and Ms. Young that were left unresolved by the trial court. *1997 Chevrolet*, 106 A.3d at 868.<sup>4</sup> In addition, the Commonwealth called no witnesses in rebuttal following Ms. Young’s testimony, thereby leaving her testimony effectively unrebutted. The Commonwealth Court also faulted the trial court’s reliance on the fact that the police provided Ms. Young with a copy of the search warrant, finding the evidence on that point inconclusive, as the trial court made no reference to any specific allegations contained within that document. *Id.* at 868. The Commonwealth Court also found that the trial court disregarded relevant evidence, without explanation, such as the fact that Ms. Young refused to have anything to do with her son in the past when he was involved with drugs, the deposition of Ms. Young’s neighbor, and the fact that relatively small amounts of marijuana were involved, which could be hidden from plain view. *Id.* at 868, 870. Finally, the Commonwealth Court found significant

---

<sup>3</sup> The trial court notably made no mention of Ms. Young’s credibility in the portion of its opinion addressing the innocent owner defense.

<sup>4</sup> The Commonwealth Court’s majority opinion points out that Officer Billips “testified from his notes” and did not testify in rebuttal following Ms. Young’s testimony. *Id.* at 868.

the fact that at oral argument, the Commonwealth conceded that the police did not show Ms. Young any drugs or pictures when they executed the search warrant, instead contending that the police told Ms. Young about her son's alleged drug sales and provided her with a copy of the search warrant. *Id.* at 868. All of these factors should have been considered by the trial court, even if it rejected Ms. Young's testimony, in undertaking its analysis of all of the facts and circumstances.

While the trial court found that Ms. Young's testimony was not credible, the Commonwealth Court was not required to accord blind deference to that finding.<sup>5</sup> As the United States Supreme Court has held, a trial court may not cloak a finding of fact in the veil of credibility to protect it from appellate review:

This is not to suggest that the trial judge may insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness' story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it. Where such factors are present, the court of appeals may well find clear error even in a finding purportedly based on a credibility determination. *See, e.g., United States v.*

---

<sup>5</sup> As to credibility, the trial court's opinion simply states: "Moreover, this Court observed Ms. Young's demeanor and behavior during her testimony. This Court simply did not believe Ms. Young's testimony due to blatant inconsistencies." Trial Court Op. at 14.

*United States Gypsum Co., supra*, 333 U.S. [364], at 396, 68 S.Ct. [525], at 542.

*Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1984). Here, as noted, the Commonwealth Court identified numerous flaws in the record that contradict the trial court's credibility findings with regard to Ms. Young. Thus, even the trial court's credibility determinations were properly called into question by the Commonwealth Court as part of the appellate review process and its consideration of what was "reasonable under the circumstances presented." 42 Pa. C.S. § 6802(j).

In order to ensure that all circumstances are considered, and to facilitate effective appellate review, the Commonwealth Court was correct to conclude that a trial court may not simply reject a property owner's testimony in a forfeiture case, but must do more:

It is not enough simply to disbelieve the property owner; the trial court must identify the circumstances that make it reasonable to infer that the property owner had actual knowledge and did consent to the violation of the Drug Act.

*1997 Chevrolet*, 106 A.3d at 870. In this regard, this case stands in stark contrast to *United States v. Milbrand*, 58 F.3d 841 (2d Cir. 1995), where the Second Circuit affirmed the trial court's determination that the property owner failed to establish

the innocent owner defense under federal forfeiture law.<sup>6</sup> The trial court rejected the property owner's testimony that she never saw any evidence of her son's marijuana crop on her property as not credible in light of other evidence presented, including the "magnitude" of the marijuana growing operation, the fact that plants grew near the house, and the mother's own testimony that she viewed cabinets and drawers where police later discovered paraphernalia. *Id.* at 845. The trial court also expressly credited testimony of law enforcement agents that the son had been previously arrested for growing marijuana and that the mother told them during execution of a search warrant that she was aware of her son's previous arrest and his marijuana problem. *Id.* Under these circumstances, the Second Circuit had no difficulty affirming the trial court's conclusion that the claimant failed to carry her burden of establishing the innocent owner defense.

---

<sup>6</sup> Pennsylvania courts frequently look to federal law and federal cases when addressing forfeiture questions. Federal law provides appropriate guidance because the Pennsylvania civil forfeiture statute is patterned upon the federal forfeiture statute. *See Commonwealth v. \$8,006.00 U.S. Currency Seized from Carter*, 646 A.2d 621 (Pa. Cmwlth. 1994); *Commonwealth v. One 1988 Suzuki Samurai*, 589 A.2d 770, 772 (Pa. Cmwlth. 1991); *Commonwealth v. One 1985 Cadillac Seville*, 538 A.2d 71, 75 (Pa. Super. 1988). Pennsylvania courts often look to federal law for guidance on unsettled forfeiture issues under Pennsylvania's forfeiture law. *See, e.g., Commonwealth v. \$8,006.00 U.S. Currency Seized from Carter*, 646 A.2d 621, 623 (Pa. Cmwlth. 1994); *Commonwealth v. 502-504 Gordon Street*, 607 A.2d 839, 843 (Pa. Cmwlth. 1992).

The Commonwealth Court’s opinion also appropriately recognizes the difficulties faced by forfeiture claimants like Ms. Young who must prove a negative in order to establish the innocent owner defense: “the claimant shall show that the unlawful use or possession *was without his knowledge or consent.*” 42 Pa. C.S. § 6802(j); *see 1997 Chevrolet*, 106 A.3d at 869 (“It is problematic that a person can be deprived of her home because she is unable to prove a negative.”). The difficulty of proving a negative is compounded when the forfeiture claimant is *pro se*, which is an all-too often occurrence in real property forfeiture cases.<sup>7</sup> As this Court has held, requiring a litigant to prove a negative is a “virtually impossible burden.” *Commonwealth v. DeHart*, 516 A.2d 656, 668 (Pa. 1986); *see also Commonwealth v. 2338 North Beechwood Street*, 65 A.3d 1055, 1067, n.24 (Pa. Cmwlth. 2013) (“Moreover, the allocation of burdens and standards of proof

---

<sup>7</sup> This Court has held that there is no due process right to court-appointed counsel in forfeiture proceedings. *Commonwealth v. \$9,847.00 U.S. Currency*, 704 A.2d 612, 617 (Pa. 1997). In a recent case, the Commonwealth Court addressed whether a homeowner who had never been charged with any wrongdoing and proceeded to trial *pro se* (and lost her home) was entitled to court-appointed counsel. *See Commonwealth v. 2338 North Beechwood Street*, 2016 WL 980419 (Pa. Cmwlth. March 15, 2016). While acknowledging that the facts presented in that case were “different in many ways from those on which the Supreme Court based its analysis in *\$9,847.00 U.S. Currency*,” *id.* at \*6, the Commonwealth Court ultimately concluded that it was bound by this Court’s pronouncement in *\$9,847.00 U.S. Currency*. However, the Commonwealth Court did state that “[w]e . . . do not foreclose the possibility that the Pennsylvania Supreme court may conclude that under this different set of facts, court-appointed counsel to indigent claimants is an appropriate and necessary due process protection.” *Id.* at \*6.

requires that Claimant prove a negative, thereby creating a great risk of erroneous deprivation.”), *vacated on other grounds and remanded*, 114 A.2d 1036 (Pa. 2015), *on remand*, 2016 WL 980419 (Pa. Cmwlth. March 15, 2016); *see also United States v. Wilgus*, 638 F.3d 1274, 1288-89 (10th Cir. 2011) (noting that proving a negative is “inherently difficult”); *United States v. Ollie*, 442 F.3d 1135, 1143 (8th Cir. 2006) (stating that “the law generally frowns on requiring a party to prove a negative”).

The Commonwealth Court’s recognition of the difficulties associated with being required to prove a negative did not, as the Commonwealth contends, “reverse[] the burden of proof on the affirmative defense” (Appellant’s Br. at 51). Instead, the Commonwealth Court applied well-settled case law holding that a negative credibility finding does not permit the finder-of-fact to draw a contrary conclusion, *1997 Chevrolet*, 106 A.3d at 868-69, which is precisely what the trial court did here. In the same paragraph of its opinion in which it found that Ms. Young’s testimony was incredible due to “blatant inconsistencies,” the trial court found that the Commonwealth had “established to a preponderance of the evidence that Ms. Young either knew of or consented to her son’s illegal activities on the subject properties.” Trial Court Op. at 14. The trial court’s conclusion as to the extent of Ms. Young’s knowledge and consent appears to have been based directly upon its conclusion that her testimony on these very same issues was not

believable. *See Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 512 (1984) (“When the testimony of a witness is not believed, the trier of fact may simply disregard it. Normally the discredited testimony is not considered a sufficient basis for drawing a contrary conclusion.”); *United States v. 6109 Grubb Road*, 886 F.2d 618, 627 (3d Cir. 1989) (“In that connection, a failure to prove the first defense, *i.e.*, no knowledge, does not itself constitute proof of knowledge.”).

Moreover, instead of simply disregarding Ms. Young’s trial testimony and finding that she failed to satisfy her burden, the trial court was required to do more to consider all of the facts and circumstances, consistent with the forfeiture statute and \$2,523.48 U.S. Currency. *See 502-504 Gordon Street*, 607 A.2d at 845 (holding that the provisions of the Forfeiture Act are to be strictly construed, and “unnecessarily restricting an owner’s ability to prove the defense would defeat a fundamental component of the legislation”). Specifically, the Commonwealth Court held that “[i]t is not enough simply to disbelieve the property owner; the trial court must identify the circumstances that make it reasonable to infer that the property owner had actual knowledge and did consent to the violation of the Drug Act.” *1997 Chevrolet*, 106 A.3d at 870. In so holding, the Commonwealth Court did not disturb the statutory allocations of the burden of proof with respect to the innocent owner defense. Indeed, summarily rejecting a forfeiture claimant’s testimony due to “blatant inconsistencies,” as the trial court did here, does not

comport with this Court’s mandate that “[a]ll of the circumstances surrounding the property owner’s actions, or lack of action, must be considered in determining if they were reasonable.” *\$2,523.48 U.S. Currency*, 649 A.2d at 662.

Here, Ms. Young did present other evidence (beyond her own testimony) that supported a finding that she lacked knowledge, including the deposition testimony of a neighbor and the fact that relatively small amounts of marijuana were involved which could be hidden from plain view. 106 A.3d at 870. Given the quasi-criminal nature of civil forfeiture, and the admonition the forfeiture statute should be strictly construed, the Commonwealth Court’s conclusion that the trial court failed to consider all of the circumstances was proper and fully comports with *\$2,523.48 U.S. Currency*. The trial court failed to consider, *and identify*, all of the circumstances that made it reasonable to infer that the property owner had actual knowledge and did consent to illegal activity. Only if trial courts follow the letter of the forfeiture statute and the instructions of this Court in *\$2,523.48 U.S. Currency* may forfeiture orders be upheld. The Commonwealth Court’s application of the innocent owner defense under these circumstances was appropriate and consistent with the statute and this Court’s interpretation of that statute.

**B. The Commonwealth Court Properly Concluded That Ms. Young Established Lack of Consent to Any Illegal Activity**

Even if trial court properly determined that Ms. Young failed to establish lack of knowledge for purposes of the innocent owner defense, she could still prevail by establishing lack of consent. *See* §2,523.48 *U.S. Currency*, 649 A.2d at 661 (“evidence which establishes knowledge of illegal drug activity does not automatically establish consent to that activity”). With respect to the “consent” prong of the innocent owner defense, the trial court again erred in not following this Court’s mandate to consider “[a]ll of the circumstances surrounding the property owner’s actions, or lack of action.” *Id.* at 662.

The trial record is replete with evidence of Ms. Young’s lack of consent to any illegal activity involving her residence, as follows:

- She never saw drugs in her home or car, and would never allow drugs to be in her home or car (N.T. at 63);
- She would not allow her son to live at home when he was using drugs (N.T. at 64);
- She only allowed her son to return to live at her home in 2009 because she believed he had stopped using drugs (N.T. at 65);
- She would not have permitted her son to continue to live at home had she known he was selling drugs (N.T. at 67);
- If she ever found drugs in her house, she would have thrown her son out of the house and called the police (N.T. at 67);
- At no time did any neighbors or the block captain report any problems with her son (N.T. at 70-71); and

- She asked the police for proof that her son was selling drugs, but no proof was ever shown to her (N.T. at 81).

Ms. Young also introduced into evidence the deposition transcript of a neighbor who testified that she never heard anyone in the neighborhood voice concerns about any drug activity by Ms. Young's son and she never witnessed any suspicious activity involving Ms. Young's house and her son. N.T. at 83-84. Finally, police officers testified that they did not arrest Ms. Young's son after executing a search warrant at the home in November 2009 (N.T. at 43), critical testimony that should have been considered by the trial court in assessing whether it was reasonable for Ms. Young to demand that the police adduce proof that her son was selling drugs. None of this evidence was considered by the trial court, which instead focused on the single issue of whether Ms. Young sought to evict her son from the property.

Contrary to the Commonwealth's contention, the Commonwealth Court did not "invent[] a per se rule that an owner-parent never has to evict an adult child from a property" (Appellant's Br. at 49). Instead, the Commonwealth Court hewed to the mandate of the forfeiture statute and this Court's holdings in *\$2,523.48 U.S. Currency* and *502-504 Gordon Street* in assessing all of the circumstances surrounding the issue of whether Ms. Young consented to her son's activities. In concluding that "[i]t is not necessarily 'reasonable' to expect a parent to evict a child, even an adult child, from the family house in order to prove her lack of

consent to that child's consent," the Commonwealth Court in no way announced a "per se" rule or conferred "blanket immunity" to "landlord parents of adult drug-traffickers" (Appellant's Br. at 55, 56). The language of the Commonwealth Court's holding in this regard is necessarily subjective and based upon the unique facts of the case presented, including the fact that Ms. Young is a widow with serious physical problems who relied upon her son for assistance. 106 A.3d at 870; N.T. at 60.

The "consent" prong of the innocent owner defense, like the "lack of knowledge" prong, requires a forfeiture claimant to prove a negative. The statute thus imposes what the Commonwealth Court characterized as an "impossible burden" on an owner seeking to demonstrate that she did not consent to any illegal activity occurring on the property. *See 1997 Chevrolet*, 106 A.3d at 870. To ease that burden, the forfeiture statute provides that lack of consent must be reasonable under the circumstances. 42 Pa. C.S. § 6802(j). In determining whether Ms. Young was required to evict her son from the home in order to establish "lack of consent," the trial court should have considered what was reasonable under the circumstances of Ms. Young's case, and not what was objectively reasonable. *See \$2,523.48 U.S. Currency*, 649 A.2d at 662 ("what is reasonable for one property owner may not be reasonable for another.").

Far from establishing a “per se” rule, the Commonwealth Court’s decision does not foreclose the possibility that in some future case, on a different set of facts, a homeowner may well be required to evict an adult child from the home in order to demonstrate lack of consent for purposes of the innocent owner defense. Even the following sentence from *United States v. 6625 Zumirez Drive, Malibu, California*, 845 F. Supp. 725, 736 (C.D. Cal. 1994), which the dissenting opinion criticizes the majority for omitting, fully supports this view: “This does not mean that parents should be shielded from the forfeiture laws; rather, it means that the Court considers the relationship between the parties in evaluating the gravity of the landowner’s conduct.” 106 A.3d at 891 (Simpson, J., dissenting) (*quoting United States v. 6625 Zumirez Drive, Malibu, California*, 845 F. Supp. 725, 736 (C.D. Cal. 1994)). This statement is wholly consistent with this Court’s conclusion in *\$2,523.48 U.S. Currency* that “what is reasonable for one property owner may not be reasonable for another.” 649 A.2d at 662.

## **CONCLUSION**

For the foregoing reasons, *amicus curiae* respectfully requests that the Court affirm the decision of the Commonwealth Court.

Respectfully submitted,

BLANK ROME LLP

By:     /s/ Matthew D. Lee      
Matthew D. Lee (85914)  
One Logan Square, Sixth Floor  
130 North 18th Street  
Philadelphia, PA 19103  
(215) 569-5352  
(215) 832-5352 (fax)  
[Lee-m@blankrome.com](mailto:Lee-m@blankrome.com)

*Counsel for Amicus Curiae*

March 23, 2016

**CERTIFICATION PURSUANT TO PA. R. APP. P. 2135(d)**

The undersigned hereby certifies that the foregoing brief contains 5,772 words, excluding the supplementary matters described in Pa. R. App. P. 2135(b), as calculated by the word processing system used to prepare this brief.

BLANK ROME LLP

By: /s/ Matthew D. Lee  
Matthew D. Lee (85914)  
One Logan Square, Sixth Floor  
130 North 18th Street  
Philadelphia, PA 19103  
(215) 569-5352  
(215) 832-5352 (fax)  
[Lee-m@blankrome.com](mailto:Lee-m@blankrome.com)

*Counsel for Amicus Curiae*

**CERTIFICATE OF SERVICE**

I, Matthew D. Lee, hereby certify that on this 23<sup>rd</sup> day of March, 2016, I caused a true and correct copy of the Brief of Appellant and Reproduced Record to be served upon the person and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by electronic filing and by first class mail addressed as follows:

Jonathan Levy  
Philadelphia District Attorney's Office  
Three South Penn Square  
Philadelphia, PA 19107-3499  
(counsel for Appellant)

Jessica M. Anthony  
Jason A. Leckerman  
Lisa B. Swaminathan  
Ballard Spahr LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103-7599  
(counsel for Appellee)

BLANK ROME LLP

By:     /s/ Matthew D. Lee      
Matthew D. Lee (85914)  
One Logan Square, Sixth Floor  
130 North 18th Street  
Philadelphia, PA 19103  
(215) 569-5352  
(215) 832-5352 (fax)  
[Lee-m@blankrome.com](mailto:Lee-m@blankrome.com)

*Counsel for Amicus Curiae*