

ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-18-687

MICHAEL BOYD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 29, 2019

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION
[NO. 60CR-13-3549]

HONORABLE HERBERT T.
WRIGHT, JR., JUDGE

AFFIRMED

BRANDON J. HARRISON, Judge

Michael Boyd, an incarcerated appellant proceeding pro se, appeals the circuit court's denial of his motion for return of seized property. We affirm the circuit court's order.

This court explained the underlying facts in Boyd's direct appeal of his convictions for aggravated robbery and theft of property:

The crimes were alleged to have occurred at approximately 4:15 p.m. on September 13, 2013. A man had entered a Bank of the Ozarks branch in North Little Rock with what appeared to be a handgun in his waistband, demanded money, took \$4,000 of the bank's money, and left in a car that had been described by bank tellers. Appellant was stopped in his car about an hour after the armed robbery. Appellant had a similar appearance to the man described by bank tellers and seen in bank surveillance video. Appellant submitted to an interview at the police station and waived his *Miranda* rights. In the interview, appellant made incriminating statements, admitting to having visited three banks that day, to having been at the bank that was robbed, to having what he described as a fake gun, and to taking money from a bank teller.

Boyd v. State, 2016 Ark. App. 407, at 2, 500 S.W.3d 772, 775. When he was stopped by police, Boyd also had over \$2700 in his possession. *Id.* at 7, 500 S.W.3d at 777. He was convicted of aggravated robbery and theft of property and sentenced to thirty years' and ten years' imprisonment, respectively, to run consecutively. He was also ordered to pay costs, fees, and a \$4000 fine.

On 31 August 2017, Boyd moved for the return of seized property, asserting that the \$2700 in his possession at the time he was detained was not contraband. He explained: "The movant received a monthly check in the sum of \$1,574.00 and can present documents to confirm this[.] In addition, Detective Gibbons admitted he could not tie these funds to a robbery of the Ozarks bank." The State responded by arguing that "[n]o money was ever returned to Ozark Bank in this matter and the \$2700 is being held as evidence. . . . State would object to the return of the \$2700 to the defendant."

The circuit court convened a hearing on 29 May 2018. Detective Michael Gibbons admitted that at Boyd's trial, he (Gibbons) had testified that the money found on Boyd's person did not necessarily connect Boyd to the robbery because the bank had not recorded the serial numbers of the money that was stolen. Gibbons then clarified,

The money tied you to the robbery, just couldn't say that's the bank's money for sure. . . . Although circumstances was four thousand dollars, all one hundred dollar bills, was stolen from the bank, and someone who was unemployed had two thousand seven hundred fifty-three dollars, 20 of those, 21 of those, 27 of those being one hundred dollar bills tucked away in a wallet within an hour of robbing a bank. That was just one of the many facts that led to your arrest.

The circuit court orally denied Boyd's petition and expressed surprise that the money had not already been "turned over to the Bank." The court entered a written order finding that

the cash seized from Boyd no longer had any evidentiary value and that “after hearing evidence, this Court has determined that cash should be returned to its lawful owner, the Bank of the Ozarks[.]” Boyd has timely appealed the denial of his motion to this court.¹

Because this was a bench trial, our review determines whether the circuit court’s findings were clearly erroneous or clearly against the preponderance of the evidence. *Sharp v. State*, 350 Ark. 529, 88 S.W.3d 848 (2002) (citing *Pre-Paid Solutions, Inc. v. City of Little Rock*, 343 Ark. 317, 34 S.W.3d 360 (2001)). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.* Disputed facts and determinations of credibility are within the province of the fact-finder. *Id.*

Arkansas Rule of Criminal Procedure 15.2(b) (2018) provides that

[m]otions for return or restoration of seized things shall be based on the ground that the moving party has a valid claim to rightful possession of things seized, because:

(i) the things had been stolen or otherwise converted, and the moving party is the owner or rightful possessor;

(ii) the things seized were not in fact subject to seizure;

(iii) the moving party, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure; or

(iv) although the things seized were subject to seizure, the moving party is or will be entitled to their return or restoration on the court’s determination that they are no longer needed for evidentiary purposes.

¹This court previously remanded to settle and supplement the record regarding the May 29 hearing and for any required supplementation of the parties’ briefs. *See Boyd v. State*, 2019 Ark. App. 119. The record has been supplemented, and while Boyd’s abstract of the May 29 hearing is deficient, the State has provided a supplemental abstract that allows us to decide the merits of the case.

Boyd argues that the circuit court erred in denying his petition because the State had failed to establish that the money confiscated during his arrest belonged to Bank of the Ozarks. The State responds that Boyd failed to demonstrate rightful ownership of the money and that the record does not support a reasonable inference that Boyd rightfully owned or possessed the money.

We hold that the State presented sufficient circumstantial evidence to support the circuit court's conclusion that the bank, and not Boyd, was the lawful owner of the money in dispute. Determinations of credibility are for the fact-finder to make, and the circuit court was not required to believe Boyd's self-serving assertion that the money came from his Social Security benefits.

Affirmed.

GRUBER, C.J., and ABRAMSON, J., agree.

Michael L. Boyd, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Rachel Kemp*, Ass't Att'y Gen., for appellee.