

Circuit Court for Allegany County
Case No. C-01-CR-20-000553

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1727

September Term, 2022

RODDRICK LACY DAVIS

v.

STATE OF MARYLAND

Graeff,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 1, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Roddrick Lacy Davis, appellant, appeals from an order issued by the Circuit Court for Allegany County denying his request for the return of money seized pursuant to a search warrant. For the reasons that follow, we shall affirm.

In November 2021, appellant pleaded guilty to one count of possession of cocaine with intent to distribute. Approximately ten months later, he filed a petition for the release of money seized from the residence where he was arrested. At the hearing on that petition, Trooper Charles Whorton testified that in August 2020, he executed a search warrant at the residence of appellant’s ex-girlfriend, Asia Anthony. Appellant and Ms. Anthony were both inside the home at the time of the search. During the search, Trooper Whorton recovered narcotics, firearms, and \$7,371. All but \$151 of that money was found in a black lockbox, which also contained Visa cards belonging to Ms. Anthony.¹ Trooper Whorton further testified that none of the money was found in the vicinity of appellant and that appellant never made any statements claiming that the money was his. Appellant testified at the hearing that the money had belonged to him and that he “never forfeited” his claim to the money. The court ultimately denied the motion, finding that it was “not satisfied that there has been . . . proof which would permit the court to conclude that the money was, in fact . . . [appellant’s].” This appeal followed.

Section 12-304(d) of the Criminal Procedure Article provides that if the State fails to initiate forfeiture proceedings involving seized money “within 90 days after the final disposition of criminal proceedings that arise out of the Controlled Dangerous Substances

¹ The \$151 was found “lying loose on the coffee table[.]”

law[,]” then “the money seized . . . shall be returned to the owner on request by the owner.” Appellant contends that there was “no undisputed owner of the seized money[,]” and therefore, “in absence of the State producing [his] co-defendant Ms. Anthony” his “claim to the seized money should have been deemed unopposed and the same ordered returned to him.” However, the State was not required to call Ms. Anthony as a witness, or to present any evidence at all. Rather, appellant, as the moving party, bore both the burden of production and persuasion. *See Epps v. State*, 193 Md. App. 687, 702 (2010) (“As a general rule, the moving party on any proposition, civil or criminal, has both the burden of production and the burden of persuasion.” (quotation marks and citation omitted)).

Here, the court, as the finder of fact, was not persuaded by appellant’s claim of ownership as to the seized money. And “[a]lthough it is not uncommon for a fact-finding judge to be clearly erroneous when he [or she] is affirmatively PERSUADED of something, it is . . . almost impossible for a judge to be clearly erroneous when he [or she] is simply NOT PERSUADED of something.” *Bricker v. Warch*, 152 Md. App. 119, 137 (2003). This would be true even if the evidence presented by appellant was uncontroverted because “[i]n its assessment of the credibility of witnesses, the [c]ircuit [c]ourt was entitled to accept—or reject—all, part, or none of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.” *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011).

In any event, the evidence regarding ownership, was controverted, as there was testimony that the residence where the money was found belonged to Ms. Anthony and that the majority of the money was found in a lock box containing other items belonging

to her. Therefore, we cannot say that the court's failure to be persuaded by appellant's claim of ownership was clearly erroneous. Consequently, the court did not err in denying his petition for return of seized property.

**JUDGMENT OF THE CIRCUIT
COURT FOR ALLEGANY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**