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2012 IL App (3d) 120063-U

Order filed December 19, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-11-0063
\$47,980 UNITED STATES CURRENCY, LANCE WRIGHT,	)	Circuit No. 11-MR-9
Claimant-Appellant.	)	Honorable Charles H. Stengel, Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court properly found probable cause existed to believe the \$47,980, hidden in a back-seat armrest of a vehicle without the driver's knowledge, was related to illegal drug activity, thereby shifting the burden of proof to the claimant who presented no evidence to the court.

¶ 2 The State brought civil forfeiture proceedings, pursuant to the Drug Asset Forfeiture Procedure Act, against \$47,980 in currency discovered in a vehicle during a search conducted by

the Illinois State Police following a traffic stop on the interstate. The trial court found probable cause existed to believe the \$47,980, hidden in a back-seat armrest of the vehicle without the driver's knowledge, was related to illegal drug activity, thereby shifting the burden of proof to the claimant who presented no evidence to the court. The court granted the State's request for the forfeiture of the money to the State and claimant appealed. We affirm.

¶ 3

### BACKGROUND

¶ 4 On December 7, 2010, Illinois State Police sergeant Clint Thulen stopped a silver BMW vehicle with California license plates, traveling westbound on Interstate 80 (I-80) in Henry County, Illinois, for the offense of following another vehicle too closely. Jose Rodriquez was driving the BMW at the time of the stop and Evarardo Valencia was the sole passenger.

¶ 5 Valencia told Thulen he purchased the car from a person named Raúl for \$8,000, and claimed to be the current registered owner of the vehicle. Valencia produced an “open title” to the vehicle which listed a California business, Dealers Fleet/Lease, Peach Street C, in San Luis Obispo, California, as the seller and title holder of the car, but did not identify the name of the buyer or the date of transfer.

¶ 6 Thulen obtained consent to search the vehicle and, as a result of the search, \$47,980 in cash was discovered. The cash was secured with rubber bands into ten separate bundles and hidden in an armrest in the back seat. Both Valencia, who initially claimed ownership of the BMW, and Rodriquez, the driver of the BMW at the time of the stop, denied knowledge or ownership of the \$47,980 in cash. Thulen confiscated the cash, along with four cell phones and a camera located in the BMW, and issued a traffic citation to Rodriquez. Both Valencia and Rodriquez were questioned by Officer Alex Chavira, in Spanish, regarding their activities and the

money. Following the issuance of a traffic citation, Valencia and Rodriquez were allowed to leave the area in the BMW.

¶ 7 On January 27, 2011, the State filed a civil complaint for forfeiture regarding the \$47,980 in cash recovered from the BMW, pursuant to the Drug Asset Forfeiture Procedure Act (Forfeiture Act). 725 ILCS 150/9 (West 2010). Thereafter, Lance Christian Wright (claimant), through his attorney, filed a verified claim for the money asserting that the money recovered from the vehicle belonged to him and was legitimately acquired through: his business called “Modern Fleet” which buys and sells vehicles; his business called “Wholesale Auto Transport, LLC,” which transports vehicles; loans and gifts of cash from his father; and the sale of a trailer to MP Auto Carriers in January 2010.

¶ 8 The trial court held a hearing on the State’s forfeiture complaint on December 20, 2011, during which claimant and his attorney were present. The State first called Sergeant Thulen who testified that he observed a silver BMW vehicle with California license plates traveling westbound on I-80 with its turn signal activated, but the vehicle did not turn. Thulen stated the BMW was traveling too closely behind another vehicle and stopped the vehicle. During the traffic stop, Thulen learned that Jose Rodriquez drove the BMW and Evarardo Valencia was the sole passenger. Thulen said the occupants gave him several pieces of paperwork, including an “open title” to the vehicle that listed Dealers Fleet/Lease, Peach Street C, in San Luis Obispo, California, as the current owner. The title was signed by Dealers Fleet/Lease, as seller, but the seller did not reassign the vehicle to any buyer, including Valencia. Thulen testified Valencia produced an insurance card showing that Valencia acquired insurance for the vehicle in his name approximately one month prior to the stop.

¶ 9 According to Thulen, Valencia told him that he had traveled from California to Ithaca, New York, to visit family. Valencia advised Thulen that they stayed in New York for two days and were on their way back to California. Thulen said he received a criminal history on Valencia, while at the traffic stop, indicating Valencia had a prior criminal charge for “possession of narcotics for sale.”

¶ 10 Thulen testified Trooper Matt McFall arrived with his canine and conducted a canine sniff of the exterior of the BMW. Thulen stated that, after the canine alerted to the exterior of the vehicle, Thulen requested and received consent from Valencia to search the interior of the vehicle. During the search, McFall opened the rear seat armrest and found ten bundles of United States currency totaling \$47,980, bound with rubber bands, but no other illegal drugs were found during the search.

¶ 11 Thulen testified that Valencia’s explanation of their trip peaked his interest, based on his drug interdiction training, because the two occupants traveled a long distance across the United States to stay only one night in New York before heading back to California. Thulen explained that it was significant to him that the canine alerted to the vehicle, indicating an odor of illegal drugs remained even though the drugs were no longer present at the time of the stop.

¶ 12 Thulen further testified that, during the traffic stop, Valencia also handed him a copy of a hotel receipt from Ithaca, New York, showing he checked into the hotel on December 5, 2010, and checked out on December 6, 2010. Thulen said he recovered four cell phones and a camera during the search of the vehicle, which was also consistent with his drug interdiction training. In response to questions, Thulen stated that, although an innocent person may carry a large amount of cash in their vehicle, generally he would expect it to be placed in an envelope or bank bag, and

he also would expect some sort of paperwork, ledgers or receipts, to accompany legitimate money. There was no paperwork recovered in the vehicle to explain the large amount of bundled cash. Based on the totality of the circumstances, Thulen said it was his opinion that the money was, in fact, proceeds from the sale of illegal drugs.

¶ 13 Next, Trooper McFall testified that he was a canine handler with the Illinois State Police and he performed the “canine sniff” on the vehicle stopped by Thulen on December 7, 2010. McFall testified, based on Thulen’s report, that his dog alerted to Valencia’s vehicle, but he had no independent recollection of the alert. McFall testified that his dog is trained to alert to the odors of methamphetamine, cocaine, and cannabis, but he could not be certain which of these odors alerted his dog at the stop.

¶ 14 Officer Alex Chavira testified that he was employed as a City of Sterling police officer but was assigned to the Illinois State Police Blackhawk Area Task Force. Chavira interviewed Valencia, in Spanish, after advising him of his Miranda rights on December 7, 2010. Valencia told Chavira that he and Rodriquez were returning to California after traveling from Paso Robles, California, to Ithaca, New York, and that the day of the stop was their fifth day of travel. Chavira said Valencia told him that he (Valencia) bought the vehicle from his friend, Raúl, for \$8,000, but he had not made any payments to Raúl yet. Valencia told Chavira that Raúl owned Mission Pizza in California and provided Chavira with Raúl’s phone number and nickname. Chavira stated that Valencia told him, at one point, that he hoped that Raúl would give him the vehicle in exchange for the trip to New York.

¶ 15 According to Chavira, Valencia told him that he brought Rodriquez to help him drive. Valencia told Chavira that someone else scheduled Valencia to meet with a person in New York,

but Valencia refused to name either individual. Valencia said, while in New York, he gave his car keys to a white male he met at the hotel, that male took Valencia's vehicle and returned 45 minutes later, and Valencia and Rodriguez then left New York to return to California. Valencia told Chavira that he first received the vehicle approximately one week before the traffic stop, and Valencia did not place any illegal drugs or contraband in the vehicle to transport to New York. Chavira testified that Valencia stated the cash did not belong to Valencia. Chavira testified that he asked Valencia whether he was involved in drug trafficking from California to New York, and Valencia told Chavira that he (Valencia) was not involved. Chavira then asked Valencia whether Raúl or his associates were involved in drug trafficking and Valencia nodded in the affirmative. Chavira testified that Valencia refused to provide him with the name of the person who sent him to New York or the person with whom Valencia met in New York because Valencia explained to the officer that he was afraid for his safety. Valencia told Chavira that he "just drove and didn't ask questions."

¶ 16 Chavira also spoke with Rodriguez on the same date, in Spanish, after advising him of his Miranda rights. Rodriguez told Chavira that the money did not belong to him. Chavira stated Rodriguez told him that he took this trip to New York to look for employment and, if he found employment in New York, he would not have returned to California. Chavira said Rodriguez told him that Rodriguez and Valencia had separated for a time period, while in New York, when Rodriguez went to one restaurant to look for a job. Rodriguez said he was not aware of Valencia's activities during this period.

¶ 17 Chavira testified that, based on his training and experience in drug interdiction and drug trafficking, and based on the facts and the statements obtained from Valencia and Rodriguez, it

was his opinion that they either transported drugs to New York and were returning to California with the proceeds from the drug sales, or they went to New York to pick up payment for an earlier drug transaction from suppliers in New York and they were transporting the cash back to California.

¶ 18 Illinois State Police special agent John Clark testified, at this hearing, that he attempted to download the information on two cell phones obtained during the search of the vehicle. He said he was able to download the information on one phone, but did not find anything “of substance” in that download. Clark stated he was able to download the contact information from that phone, but there was no contact information regarding Wholesale Auto Transport or Lance Wright in Paso Robles, California. Clark said he did not follow up on the phone number Valencia gave for Raúl, but that number was not included in the contacts downloaded from the cell phone. Clark testified he contacted the police department in the town where Valencia said Raúl resided, but that police department had no information on Raúl.

¶ 19 Following arguments regarding the probable cause issue, the court specifically found Chavira to be a credible witness. The court noted both occupants of the BMW told Chavira that the money was not their money, they knew nothing about the money, and they were traveling from Paso Robles, California, to Ithaca, New York. The court found Valencia told Chavira that he would not give additional information because he was afraid for his safety, and Valencia should not have had reason to be afraid if the money originated from some legitimate source.

¶ 20 Further, the court found that Valencia said he purchased the vehicle from a Raúl, but he had not paid money yet because he hoped Raúl would:

“[G]ive him the car in exchange for Valencia transporting that car, that

particular car, all the way across the country, going into a hotel for a short period of time, where an unnamed individual picks up keys and brings back the car 45 minutes late, and then immediately they leave.”

Based on Officer Chavira's testimony, the court found there was “probable cause to believe that they took a load [of drugs], dropped it off, took the load out, replaced it with the money, and that they were driving back.” Following this finding, the court instructed the parties, the burden of proof now shifted to claimant to prove the money was obtained legitimately.

¶ 21 The claimant opted not to testify or present evidence following the finding of probable cause. Thereafter, the court granted the complaint for forfeiture. The court entered the final written order on December 21, 2011, and the claimant filed a timely notice of appeal.

¶ 22 **ANALYSIS**

¶ 23 Plaintiff argues, as his sole issue on appeal, that the court erred by granting the State's request for the forfeiture of the money because the State failed to present sufficient evidence to support a finding of probable cause that the money was connected to illegal drug activity. The State contends that the court’s finding of probable cause was not against the manifest weight of the evidence.

¶ 24 A civil hearing under the Forfeiture Act requires a two-step process. 725 ILCS 150/9 (West 2010). First, during the probable cause portion of the judicial *in rem* proceeding, the State must present its case-in-chief, during which the court may receive and consider, among other things, all relevant hearsay evidence and information. 725 ILCS 150/9(B) (West 2010). Thereafter, if the State shows probable cause, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to

forfeiture. 725 ILCS 150/9(G) (West 2010); *People v. \$52,204 U.S. Currency*, 252 Ill. App. 3d 778, 782 (1993) (hereinafter *\$52,204 U.S. Currency*).

¶ 25 Our supreme court has determined that, to satisfy the probable cause requirement under the Forfeiture Act, the State must allege and prove “facts providing reasonable grounds for the belief that there exists a nexus between the property and illegal drug activity, supported by less than *prima facie* proof but more than mere suspicion. [Citation]. Probable cause in this context requires only a probability or substantial chance of the nexus and not an actual showing.

[Emphasis in original].” *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 505 (2005) (hereinafter *1945 North 31st Street*) (citing *People v. \$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 336–38 (1997) (hereinafter *\$1,124,905 U.S. Currency*)). Thus, a trial court’s finding of probable cause requires only some nexus, not a substantial connection, between the currency and drug activity. *1945 North 31st Street*, 217 Ill. 2d at 505. It is well-established that the strength of the connection between the currency and drug activity need not be a substantial connection. *1945 North 31st Street*, 217 Ill. 2d at 505; *\$1,124,905 U.S. Currency*, 177 Ill. 2d at 338.

¶ 26 Our supreme court has determined that a totality of the circumstances test applies to a finding of probable cause under the Forfeiture Act. *1945 North 31st Street*, 217 Ill. 2d at 505; *People v. \$280,020 U.S. Currency*, 372 Ill. App. 3d 785, 793 (2007). Additionally, “the government's evidence need not exclude other plausible hypotheses of the source of the money” (*1945 North 31st Street*, 217 Ill. 2d at 505) and the State need not tie the money to a specific drug transaction (*\$1,124,905 U.S. Currency*, 177 Ill.2d at 336).

¶ 27 In any forfeiture case, the circuit court is the trier of fact and must determine the

credibility of the witnesses and evaluate their testimony, drawing reasonable inferences and reaching conclusions to which the evidence lends itself. *1945 North 31st Street*, 217 Ill. 2d at 507-08. Accordingly, a reviewing court will not reverse a trial court's decision regarding forfeiture unless it is against the manifest weight of the evidence. *Id.* at 508; see also *\$52,204 U.S. Currency*, 252 Ill. App. 3d at 782-83 (1993). A ruling is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*, at 508.

¶ 28 In the instant case, the parties do not contest the legality of the traffic stop or the consensual nature of the search. The only issue on appeal is whether the trial court properly found, based on a totality of the circumstances, the State met its burden to show probable cause that the confiscated funds were connected to illegal drug activity.

¶ 29 Both Valencia and Rodriquez told Chavira they drove from Paso Robles, California, to Ithaca, New York, where they stayed one night in a hotel in Ithaca during which time Valencia gave his car keys to an unnamed white male he met at the hotel, the male took Valencia's vehicle and returned 45 minutes later, and Valencia and Rodriquez then left New York for a return trip to California. A written hotel receipt confirmed the information provided to Chavira. Valencia refused to provide the name of the person who sent him to New York or the name of the person Valencia met in New York because he was "afraid for his safety." In exchange for the trip, Valencia reported to Chavira that he hoped Raúl would give him the BMW and not insist on payment for the car. Additionally, Valencia affirmatively nodded when asked whether Raúl or his associates were involved in drug trafficking.

¶ 30 The record reveals the officers found \$47,980 cash, grouped in ten separate bundles

secured by rubber bands, hidden in the back seat armrest area of the vehicle. Further, neither the driver nor passenger of the BMW claimed to have knowledge or an ownership interest in the money. It is also unrefuted that Valencia had a previous criminal charge for possession of narcotics for sale.

¶ 31 Significantly, the court found Chavira's testimony to be credible, but did not give any weight to Thulen's testimony that the dog alerted on the exterior of the BMW as part of his finding of probable cause. Instead, relying heavily on the testimony of officer Chavira, the trial court found there was “probable cause to believe that they [Valencia and Rodriguez] took a load [of illegal drugs], dropped it off, took the load out, replaced it with the money, and that they were driving back,” thus finding a nexus between the currency and illegal drug activity

¶ 32 Based on the testimony of Officer Chavira relating Valencia's and Rodriguez's recollection of the events in this case and their unequivocal denial that the cash belonged to them, we cannot conclude that the court's findings were unreasonable, arbitrary, not based on the evidence, or against the manifest weight of the evidence presented by the State in support of probable cause.

¶ 33 Having found probable cause existed, the trial court then advised claimant that the burden of proof shifted to him to establish the source of the funds was legitimate. However, in spite of his verified pleading alleging the source of the funds discovered in the BMW could be traced directly to legitimate loans, gifts, and proceeds from his businesses, “Modern Fleet” or “Wholesale Auto Transport, LLC,” as well as the sale of a trailer to MP Auto Carriers in January 2010, the claimant did not present any evidence in support of these allegations. Consequently, having failed to sustain his burden to present merely a preponderance of the evidence rebutting

the court's finding of probable cause, we conclude the trial court's decision should be affirmed.

¶ 34

#### CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 36 Affirmed.