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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CM-686
)	
HADEER M. SHOLKAMY,)	Honorable
)	Jane Hird Mitton,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in allowing the State to retain, for law-enforcement purposes, money recovered from defendant's apartment: the order was authorized by the Law Enforcement Disposition of Property Act, even though the money was seized during a search; the State's violation of a local rule as to the caption on its motion was harmless; given the State's evidence to that effect, the court was entitled to rule that the money was defendant's proceeds from prostitution and did not belong instead to her mother.

¶ 2 Defendant, Hadeer M. Sholkamy, was arrested in connection with a prostitution sting. In a search of her residence, police discovered \$11,860 on her person and in a safe hidden in her mother's bedroom. After defendant was convicted of attempting to keep a place of prostitution (720 ILCS

5/8-4(a), 11-17(a)(1) (West 2010)), the prosecution sought to retain the money for law enforcement purposes. Defendant and her mother sought to have the money returned to them. The trial court authorized the \$11,860 to be retained for law enforcement purposes. Defendant appeals, contending that (1) the trial court lacked statutory authority to award the money to law enforcement agencies; (2) the State's motion did not comply with local court rules; and (3) the trial court's finding that the funds did not belong to defendant's mother and were instead proceeds of prostitution was against the manifest weight of the evidence. We affirm.

¶3 On January 28, 2011, DuPage Metropolitan Enforcement Group (DuMEG) agents conducted a prostitution sting by responding to an advertisement. After a series of phone calls and emails, agents went to defendant's apartment. According to agent James McGreal, defendant initially denied being involved in prostitution but, after the agents explained how the investigation led them to her, she admitted that she was responsible for the ad and that prostitution was occurring in her apartment. Defendant said that she shared the apartment with her mother, Mona Saad, but that the prostitution occurred while her mother was at work.

¶4 The agents asked defendant whether the apartment contained any money related to prostitution. Defendant responded that she had about \$700 on her person and that about \$11,000 was in a safe concealed in her mother's bedroom. Defendant said that the safe was hers and that she kept it in her mother's bedroom to keep it out of sight of her customers. Defendant said that she had the only key. She eventually opened the safe using a key that she obtained from her pants pocket. The agents recovered approximately \$11,000 from the safe.

¶5 The trial court found defendant guilty of attempting to maintain a house of prostitution. After trial, the State filed a motion to retain for law enforcement purposes \$11,860 seized from defendant

and from the safe. Defendant moved to strike and dismiss, arguing, *inter alia*, that the State's motion cited no statutory basis for such an order. The trial court denied defendant's motion and granted the State's motion without a hearing. After defendant moved to reconsider, the court vacated its order and set the State's motion for a hearing.

¶ 6 At that hearing, the DuMEG agents testified generally consistently with their trial testimony. Saad testified that the safe and most of the money in it belonged to her. She had the only key. According to Saad, she received \$9,000 of the \$11,000 from her parents in Egypt. The remaining \$2,000 belonged to defendant, who earned it from a government job. Saad said that, shortly before defendant's arrest, she had given defendant \$860 for rent.

¶ 7 Defendant testified that she did not have a key to the safe. She denied that she gave the agents a key or led them to the safe. She did not tell McGreal that the money in the safe was the proceeds from prostitution. Following the hearing, the trial court awarded the money to the State. Defendant timely appeals.

¶ 8 Defendant first contends that the trial court lacked statutory authority to award the money to the State. The State responds that the Law Enforcement Disposition of Property Act (the Act) (765 ILCS 1030/0.01 *et seq.* (West 2010)), and *People v. Patterson*, 308 Ill. App. 3d 943 (1999), authorize the court's order.

¶ 9 Initially, we find it curious that, although defendant's contention is that most of the money belonged to Saad, the appellant's brief was filed solely on behalf of defendant. Nevertheless, Saad testified that \$2,860 of the money belonged to defendant, so defendant has standing at least to that extent.

¶ 10 The Act provides in relevant part as follows:

“This Act is applicable to all personal property of which possession is transferred to a police department *** under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen or otherwise illegally possessed[.]” 765 ILCS 1030/1 (West 2010).

Further:

“Such property believed to be abandoned, lost or stolen or otherwise illegally possessed shall be retained in custody by the sheriff *** which shall make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof, and shall return the property after such person provides reasonable and satisfactory proof of his ownership or right to possession ***.” 765 ILCS 1030/2(a) (West 2010).

¶ 11 In *Patterson*, this court held that the Act permitted law enforcement to retain \$6,000 seized from the defendant. Evidence showed that the defendant had received the money to fraudulently purchase a car for a gang member. We held that under the circumstances the defendant could not show a legal right to the money and that the statute allowed property illegally possessed to be retained by the police department. *Patterson*, 308 Ill. App. 3d at 948.

¶ 12 Here, as we discuss more fully below, the trial court reasonably found that the money did not belong to Saad and that defendant had obtained it illegally. Thus, under *Patterson*, the trial court was authorized to award the money to law enforcement.

¶ 13 Defendant argues, however, that the Act contains an exception for property seized during a search. A thorough reading of the statute shows that the exception does not apply here.

¶ 14 The full text of section 1 of the Act reads as follows:

“This Act is applicable to all personal property of which possession is transferred to a police department or other law enforcement agency of the State or a county, city, village or

incorporated town, under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen or otherwise illegally possessed, except property seized during a search, and retained and ultimately returned, destroyed or otherwise disposed of pursuant to order of a court in accordance with Section 108-11, 108-12 or 114-12 of the ‘Code of Criminal Procedure of 1963’ or other law hereafter applicable to property thus retained, and except property of which custody and disposition is prescribed by Article II of Chapter 4 of The Illinois Vehicle Code.” 765 ILCS 1030/1 (West 2010).

¶ 15 Defendant argues that the statute excepts property “seized during a search,” but neglects to consider the rest of the exception. 765 ILCS 1030/1 (West 2010). The exception applies to property that has been seized pursuant to a search *and* “retained and ultimately returned, destroyed or otherwise disposed of pursuant to order of a court in accordance with Section 108-11, 108-12 or 114-12 of the ‘Code of Criminal Procedure of 1963’ or other law hereafter applicable to property thus retained.” 765 ILCS 1030/1 (West 2010). In other words, the exception applies only when property has been seized pursuant to a search and when it has been disposed of by court order pursuant to one of three other statutory sections (or any other similar law), none of which applies here.¹ Thus, the exception does not apply.

¶ 16 Defendant contends that the trial court’s action deprived Saad of her money without due process of law. We again question whether defendant has standing to assert Saad’s rights but, in any

¹Section 108-11 provides for the temporary disposition of seized property “pending further proceedings.” 725 ILCS 5/108-11 (West 2010). Section 108-12 provides for the disposition of obscene material. 725 ILCS 5/108-12 (West 2010). Section 114-12 sets out procedures for a motion to suppress illegally obtained evidence. 725 ILCS 5/114-12 (West 2010).

event, the trial court ultimately held a hearing at which Saad was able to testify in support of her contention that the money was hers. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (judicial deprivation of property must be preceded by “notice and opportunity for hearing appropriate to the nature of the case”).

¶ 17 We can briefly dispose of defendant’s remaining contentions. Defendant argues that the State’s motion should have been stricken because it did not comply with local court rules. Specifically, defendant cites 18th Judicial Circuit Court Rule 6.04(a), which requires the title of each motion to “indicate the relief sought and the applicable section of the Code of Civil Procedure.” 18th Judicial Cir. Ct. R. 6.04(a) (May 10, 1993).² This appears to be largely a restatement of defendant’s first argument that the trial court lacked statutory authority to dispose of the property. In any event, defendant fails to allege prejudice from the lack of a statutory citation in the caption of the State’s motion. As defendant acknowledges, the State cited *Patterson* during its argument. *Patterson*, in turn, cites the statute. More importantly, as noted above, defendant and Saad had an opportunity to testify in support of their position. It would have been preferable for the State to set out its statutory authority at an earlier stage of the proceedings, but defendant has not established that she was prejudiced by the State’s failure to do so.

¶ 18 Defendant’s final contention is that the trial court erred by disregarding Saad’s “credible and un rebutted testimony” that the money belonged to her. We will not disturb a trial court’s findings of fact unless they are against the manifest weight of the evidence. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005). A finding is against the manifest weight of the evidence only if the

²Defendant also cites Local Rule 30.01(a), which does not contain the provision on which defendant relies. See 18th Judicial Cir. Ct. R. 30.01(a) (May 10, 1993).

opposite conclusion is clearly evident. *Kendall County Board of Review v. Property Tax Appeal Board*, 337 Ill. App. 3d 735, 737 (2003).

¶ 19 Although Saad and defendant testified that most of the money in the safe belonged to Saad, McGreal testified that defendant admitted that the money belonged to her and was the proceeds from prostitution. According to McGreal, defendant knew the amount of money in the safe, produced a key from her pocket, and opened the safe. Thus, defendant's claim that Saad's testimony was "unrebutted" is simply wrong, and the trial court could reasonably credit McGreal's testimony over Saad's and defendant's.

¶ 20 Defendant contends that McGreal's testimony was largely hearsay, repeating what defendant allegedly told him. However, defendant's own statements were admissions, not hearsay. Ill. R. Evid. 801(d)(2) (eff. Jan. 1, 2011). In any event, when hearsay is admitted without objection, it is to be given its natural probative effect. *People v. Akis*, 63 Ill. 2d 296, 299 (1976); *People v. Banks*, 378 Ill. App. 3d 856, 861 (2007).

¶ 21 Defendant further argues that circumstantial evidence supports a finding that the money belonged to Saad. She notes that it was found in a safe hidden under blankets in Saad's bedroom and that possession of personal property is *prima facie* evidence of ownership. However, other evidence showed possession by defendant. McGreal testified that defendant produced a key to the safe, despite Saad's insistence that she had the only key. Thus, defendant had access to the safe. Indeed, defendant told McGreal that the safe was hers and that she kept the safe hidden in her mother's room to keep it out of sight of her customers. In short, the trial court's finding that defendant's money was the proceeds of prostitution was supported by the evidence. A contrary conclusion is not clearly evident.

¶ 22 The judgment of the circuit court of Du Page County is affirmed.

¶ 23 Affirmed.