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2015 IL App (3d) 140635-U

Order filed August 4, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS <i>ex rel.</i> Brian J. Towne, State’s Attorney,)	of the 13th Judicial Circuit,
LaSalle County, Illinois,)	LaSalle County, Illinois,
)	
Plaintiff-Appellee,)	Appeal No. 3-14-0635
)	Circuit No. 11-MR-162
v.)	
)	Honorable
AKIBU L. REASE,)	Cynthia Raccuglia
)	Judge, Presiding.
Claimant-Appellant.)	

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied claimant’s motion to suppress currency detected during a consensual vehicle search following a traffic stop. In addition, the court’s order regarding forfeiture of the seized funds is affirmed.
- ¶ 2 The State initiated proceedings for the forfeiture of \$153,170 in cash discovered during a routine consensual search of a vehicle stopped for a traffic violation by the Illinois State Police. Eventually, the State filed an amended forfeiture complaint seeking a court order approving the forfeiture of the currency pursuant to the Cannabis Control Act (720 ILCS 550/12(a)(4), (a)(5))

(West 2010)), the Forfeitures of Property provisions of the Illinois Controlled Substances Act (720 ILCS 570/505 (a)(4), (a)(5) (West 2010)), and the Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 *et seq* (West 2010)). The driver, Akibu L. Rease (claimant), appeals the court's ruling resulting in the forfeiture of the seized currency in favor of the State. We affirm.

¶ 3

BACKGROUND

¶ 4

On October 28, 2011 the State filed an amended complaint seeking a court order allowing the forfeiture of \$153,170 in currency pursuant to the Cannabis Control Act (720 ILCS 550/12(a)(4), (a)(5) (West 2010)), the Forfeitures of Property provisions of the Illinois Controlled Substances Act (720 ILCS 570/505 (a)(4), (a)(5) (West 2010)), and the Drug Asset Forfeiture Procedure Act (Forfeiture Act) (725 ILCS 150/1 *et seq* (West 2010)). On October 31, 2012, the trial court granted the State's complaint for forfeiture following a contested hearing.

¶ 5

Claimant appealed the trial court's refusal to "entertain" his amended motion to suppress which he filed on November 18, 2011 before the forfeiture hearing. In *People v. Akibu Rease*, 2013 IL App (3d) 120984-U, this court reversed the trial court's decision refusing to consider claimant's amended motion to suppress before ruling on the merits of the amended complaint for forfeiture. On remand, claimant filed an Amended Motion to Suppress Evidence on November 18, 2013 and the court conducted a hearing on that pleading on August 7, 2014. During the hearing on this motion to suppress, Trooper Kasprak's testimony established he was on routine patrol on Interstate 80 (I-80) around 1:46 a.m. on August 7, 2011. Trooper Kasprak observed a black Nissan drift "over the center lane marking with both driver's side tires by approximately one foot for approximately two seconds" as the vehicle was traveling westbound on the interstate. Trooper Kasprak initiated a traffic stop of the Nissan and informed claimant that he would be receiving a written warning for improper lane usage. As requested by Trooper

Kasprak, claimant produced his driver's license and the rental agreement for the Nissan and returned to the squad car with the trooper while he issued the written warning.

¶ 6 While the Trooper and claimant were together in the squad car, Trooper Kasprak asked claimant about the reason claimant was driving to Colorado. In response, claimant indicated he was traveling to visit his 65-year-old grandmother residing in a Colorado nursing home. Defendant advised the trooper that after his mother moved to the Virgin Islands, he became the family member responsible for the well-being of his grandmother, even though she was not really a blood relative to him. Claimant explained he knew this person as his grandmother, but she was actually his grandfather's mistress.

¶ 7 Claimant said he intended to stay in the nursing home with his grandmother for a day or so after reaching Denver, but had other friends there because it is where he lived from 1989 until he left to attend college in Chicago at Loyola University. Defendant explained that he rented the car he was driving for the last three weeks of his summer break from teaching chemistry at Loyola University.

¶ 8 Approximately 10 minutes and 51 seconds after the initiation of the traffic stop, the trooper delivered a written warning to claimant for the offense of improper lane usage and returned claimant's license and other paperwork. Claimant thanked the trooper 11 minutes and eleven seconds after the stop began. The trooper asked claimant if the Nissan contained contraband and claimant stated he left "a thousand dollars for gas money" in the Nissan. The trooper requested consent to search the Nissan 12 minutes after the stop began and claimant consented to the trooper's request to search the Nissan.

¶ 9 Trooper Kasprak immediately left the squad car after obtaining consent and opened the passenger side door of the black Nissan. The search depicted on the recording took less than one

minute before the Trooper returned to the Nissan 13 minutes and eight seconds after the stop began and advised claimant he needed to investigate whether claimant had just robbed a bank. He asked claimant how much money was in the backpack he retrieved from the Nissan. Claimant responded “couple of thousand” dollars.

¶ 10 The Trooper testified that when he began to search the Nissan he quickly observed a zippered-closed black backpack on the front passenger floorboard with a large amount of currency inside. According to the trooper, he saw the money was rubber-banded together in bundles “in a shoe box, a linen bag, a grocery bag, and envelopes.”

¶ 11 During his testimony before the court, Trooper Kasprak testified that when he returned to the squad car, he handcuffed claimant and placed him under arrest for money laundering. The trooper stated he was suspicious that claimant was engaged in criminal activity related to the money because he provided a “poor reason” for driving a long distance in a rental car and his explanation that his travels were required to visit a grandmother at the nursing home did not add up.

¶ 12 Upon arrival at police headquarters around 2:10 a.m., Trooper Kasprak searched the Nissan more thoroughly. He located three cell phones, but did not locate drugs or weapons during the search. According to Trooper Kasprak, Officer Brian Zebron arrived at headquarters between 2:30 and 3 a.m. with his canine. Officer Zebron’s canine reacted to the currency discovered inside the Nissan. Trooper Kasprak retained the currency, but released claimant before 8:00 a.m., without formally charging him with money laundering or any criminal offense.

¶ 13 The parties then stipulated that “certain statements were made by [claimant], both in the police vehicle and in the police station, which would be used on the forfeiture proceedings.” After considering the arguments of both parties, the trial court denied claimant’s motion to

suppress. The court rejected the defense theory that the traffic stop was improper based on recent case law, specifically, *People v. Hackett*, 2012 IL 111781, and *People v. Cummings*, 2014 IL 115769.

¶ 14 Following the court's ruling, the parties stipulated that the trial court could take judicial notice of the evidence introduced during the first forfeiture hearing prior to the first appeal. For the convenience of the reader, we recite the evidence presented during that initial forfeiture hearing below.

¶ 15 The evidence presented in the forfeiture hearing established during the traffic stop on the interstate claimant told the trooper he was travelling by rental vehicle in order to visit his grandmother in a nursing home, but was unable to advise Trooper Kasprak, with specificity, the location of the nursing home where his grandmother resided. Further, claimant told the trooper he would be staying with his grandmother for a "day or so."

¶ 16 City of LaSalle police officer, Brian Zebron, testified he was called to Illinois State Police headquarters to have his canine sniff seized currency which had been discovered in a vehicle. The canine positively alerted and responded to the box containing the currency, indicating to Officer Zebron that his dog detected the odor of illegal drugs. Officer Zebron did not conduct a canine sniff of the Nissan.

¶ 17 Illinois State Police investigator, Christopher Novotney, testified he interviewed claimant on August 7, 2011 and described the details of that conversation. The parties stipulated that the details of this conversation duplicated the conversation between Trooper Kasprak and claimant before the written warning was delivered to claimant at the scene of the traffic stop. For this reason, the details of the investigator's conversation with defendant are omitted from this

recitation of the evidence admitted during the forfeiture hearing. Claimant elected not to testify or present evidence during the forfeiture hearing.

¶ 18 When deciding whether forfeiture was in order, the trial court focused on the evidence. The judge stated “a big deal to me is the fact that [claimant] tells the officer he is indigent, yet he is bringing \$156,000 [*sic*] – I don’t consider that indigent – let’s say it was his sole funds – that’s not indigency – to a grandmother at a nursing home.” The court found it suspicious that claimant did not “know the address and the name of the nursing home or something close to that.” The court noted that claimant did not explain how he accumulated \$153,170 in currency as a part-time student teacher earning \$3,000 monthly. The trial court also noted the canine alerted on the currency, which was packaged in a suspicious fashion. In addition, the court observed that claimant made inconsistent statements and was stopped while driving on I-80, where “drug activity interstate-wise occurs.” The court concluded that, although these facts individually, were not enough to establish the State’s burden to establish probable cause, when considering the totality of the circumstances, the evidence established probable cause for the court to conclude the currency was related to drug activity and the State was entitled to retain the property. Claimant appeals.

¶ 19 ANALYSIS

¶ 20 Claimant raises three issues in this appeal. Claimant challenges the trial court’s denial of his motion to suppress. Next, claimant challenges the trial court’s ruling allowing forfeiture. Finally, claimant argues a portion of the Illinois Controlled Substances Act is unconstitutional on its face and as it applies to claimant.

¶ 21

I. Motion to Suppress

¶ 22

At the onset, claimant challenges the trial court decision to deny his motion to suppress. First, claimant contends the traffic stop was not supported by probable cause. Second, claimant asserts the officer unreasonably prolonged the traffic stop by requesting permission to search the vehicle. Based on these arguments, claimant asserts the currency discovered and seized during the illegal traffic stop was inadmissible evidence for purposes of the forfeiture complaint.

¶ 23

When reviewing a trial court's ruling on a motion to suppress, the trial court's findings of fact are reviewed only for clear error, giving weight to any inferences drawn from those facts, and reversal is warranted only when those findings are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18. However, the ultimate decision of whether or not suppression is warranted is a question of law reviewed *de novo*. *Id.*

¶ 24

First, we consider whether the traffic stop was proper. It is well accepted that a brief, investigatory stop is proper if the officer can point to specific and articulable facts which reasonably warrant the intrusion. *People v. Hackett*, 2012 IL 111781, ¶ 20. "The officer's belief 'need not rise to the level of suspicion required for probable cause.'" *Id.* Section 11-709(a) of the Illinois Vehicle Codes states that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." 625 ILCS 5/11-709(a) (West 2012). In this case, the court found the officer had a proper basis to stop claimant and investigate the improper lane usage witnessed by Trooper Kasprak.

¶ 25

The record supports this finding. Trooper Kasprak's undisputed testimony regarding his observations before initiating the traffic stop supported the trial court's finding of fact that the

trooper had a reasonable, articulable suspicion to justify an investigatory stop for a violation of section 11-709(a) of the Code. See *Hackett*, 2012 IL 111781.

¶ 26 Next, we address claimant's contention that Trooper Kasprak unreasonably prolonged the traffic stop by speaking to claimant. The State responds that the entire encounter with defendant before the discovery of the currency during the consensual search took a very short period of time and was not impermissibly prolonged beyond the time necessary for an ordinary brief traffic investigation.

¶ 27 We must emphasize that claimant does not assert his consent to the search was involuntary. Rather, he argues on appeal that his consent to search and the search itself occurred beyond the customary timeframe necessary for an ordinary traffic stop to be concluded. On this basis alone, he submits his consent was invalid and the seized currency should have been suppressed for purposes of the forfeiture proceeding.

¶ 28 A traffic stop concludes once the officer returns the paperwork to the driver. *People v. Kats*, 2012 IL App (3d) 100683, ¶ 20. Once the traffic stop has concluded, the officer's actions cannot be considered when determining whether the traffic stop was unreasonably prolonged. *Id.* at ¶ 22. Here, the DVD recording of the stop reveals the officer delivered the warning ticket to claimant ten minutes after initiating the stop.

¶ 29 A number of cases hold that approximately 10 to 12 minutes is the average amount of time to complete a traffic stop when issuing warning tickets. *People v. Thomas*, 2014 IL App (3d) 120676, ¶ 22. Having carefully viewed the exhibit consisting of the recorded traffic stop, we note that Trooper Kasprak delivered the written warning just ten minutes after initiating the traffic stop. Claimant thanked the Trooper for the warning. Thereafter, the recording reveals that the Trooper engaged claimant in a very brief conversation and requested consent to search

the Nissan after handing the warning ticket to claimant. Moreover, claimant quickly consented to the Trooper's request to search.

¶ 30 Clearly, in this case, the officer issued the warning ticket and ended the traffic stop after ten minutes. After claimant received the written warning, the trooper took a few seconds to ask claimant for permission to visually search the Nissan. The trooper immediately conducted the visual search without the assistance of a canine unit. Thus, the consensual search took place with no unnecessary delay and was of very short duration.

¶ 31 The recent decision from this court in *People v Pulling*, 2015 Ill App (3d) 140516 is distinguishable from the circumstances in this case. In *Pulling*, the officer spoke to the driver who was seated in his squad car, just as claimant was seated in the squad car in this case, while the ticket was issued. However, unlike the case at bar, the officer in *Pulling* left the squad car before writing the traffic citation and took time to interview the passenger in Pulling's vehicle. After discovering the driver's version of the reason for their travels and the passenger's reasons did not match, the officer took the additional time necessary to conduct his own internet search of local funerals to investigate if the occupants of the car were being truthful. Without consent, before the citations were delivered to the driver, and 16 minutes after stopping the vehicle, the officer in *Pulling* also took the time to complete a canine sniff of the vehicle.

¶ 32 In this case, the search was consensual and occurred after the traffic stop ended with the issuance and delivery of the written warning. Further, the consensual search took place after the traffic stop ended and lasted less than one minute before the officer visually located the contraband, a large sum of money. Hence, we conclude the circumstances in *Pulling* are distinguishable from those in the case at bar.

¶ 33 For these reasons, the trial court’s denial of claimant’s motion to suppress the currency is affirmed.

¶ 34 II. Forfeiture Proceedings

¶ 35 Next, claimant argues the trial court improperly shifted the burden to claimant to demonstrate to the court that the source of the seized currency was legitimate and then erroneously determined, in the absence of proof of a legitimate origin, that a nexus existed between the currency and illegal drug activity.

¶ 36 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). Once the State establishes probable cause, the burden shifts to claimant, by statute, to present evidence 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).

¶ 37 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.” *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 505 (2005). Thus, a court’s finding of probable cause requires only some nexus, not a substantial connection, between the currency and drug activity. *People v. \$1,124,905 U.S. Currency and One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 338 (1997). 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.

¶ 38 In any forfeiture case, the trier of fact 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, this court will not reverse a trial court's decision regarding forfeiture unless it is against the manifest weight of the evidence. *Id.* at 508.

¶ 39 In this case, Trooper Kasprak located \$153,170 cash bundled together with rubber bands and placed in white envelopes. The white envelopes with the currency were wrapped in a linen bag that was hidden in a grocery bag, and the grocery bag was housed in a shoe box that defendant carried in a backpack, which claimant identified as his own. Claimant admitted the money belonged to him, but gave inconsistent and wildly inaccurate statements regarding the total amount of U.S. currency contained in the backpack. In addition, claimant provided an illogical explanation of his purpose for carrying such a large sum of money while travelling on a cross country trip in a rental vehicle to visit a sick grandmother.

¶ 40 Further, the court received evidence that the police canine later positively alerted, thereby indicating the currency contained the aroma of illegal drugs. Based on all of the evidence, the trial court found that the State's evidence established the existence of a nexus between the currency and illegal drug activity and provided probable cause to believe the funds were related to criminal drug activity for purposes of forfeiture. This finding is supported by the record and shifted the statutory burden to claimant to demonstrate, by a preponderance of the evidence, the claimant's interest in the property money.

¶ 41 Contrary to claimant's argument, the statute allows the trial court to shift the burden to claimant to establish a legitimate source of the funds after the State's evidence is completed. 725 ILCS 150/9(G) (West 2010). In this case, claimant elected not to testify or present evidence

supporting any inference that there could be a legitimate source for the large amount of currency in his backpack. Consequently, we affirm the trial court's decision so that the money should not be returned to claimant and should be forfeited to the State.

¶ 42 III. Constitutionality of the Illinois Controlled Substances Act

¶ 43 Finally, claimant contends a portion of the Illinois Controlled Substances Act is unconstitutional on its face and as it applies to claimant. Claimant argues section 505(g) creates “a motive and bias” for law enforcement officials to render their testimony in court “biased in favor of the forfeiture.” Section 505(g), in relevant part, provides:

“All monies and the sale proceeds of all other property forfeited and seized under this Act shall be distributed as follows:

(1)(i) 65% shall be distributed to the metropolitan enforcement group, local, municipal, county, or state law enforcement agency or agencies which conducted or participated in the investigation resulting in the forfeiture. The distribution shall bear a reasonable relationship to the degree of direct participation of the law enforcement agency in the effort resulting in the forfeiture, taking into account the total value of the property forfeited and the total law enforcement effort with respect to the violation of the law upon which the forfeiture is based.” 720 ILCS 570/505(g) (West 2010).

¶ 44 Statutes are presumed constitutional and the party challenging a statute has the burden of establishing a clear constitutional violation. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 19. Therefore, a court will affirm the constitutionality of a statute if it is reasonably capable of such a determination and will resolve any doubt as to the statute's construction in favor of its validity. *Id.*

¶ 45 Claimant fails to cite any relevant authority supporting his contention that this statute violates his constitutional rights. The statute places the trial court, not law enforcement, in the role to decide whether forfeiture is appropriate. It is undisputed that a neutral judge, rather than someone else, made the determination regarding forfeiture. Claimant relies on a 1926 case,

which found unconstitutional a statute that authorized a judge's salary to be based on the fees imposed on parties who appeared before him. See *Tumey v. Ohio*, 273 U.S 510 (1926). *Tumey* is easily distinguishable from the case at bar, because in this case, there is no evidence the judge's salary was related to any monies forfeited in the case at bar.

¶ 46 The case law provides that claimant has the burden in this appeal to establish a constitutional flaw in the application of this particular statute. *People v Jones*, 223 Ill. 2nd 569, at 596 (2006). We agree with the State's observation that claimant has failed to carry this burden based on the case law cited in support of his argument on appeal. For this reason, we are unable to agree with defendant's assertion that the Illinois Controlled Substances Act is unconstitutional.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

¶ 49 Affirmed.