2016 IL App (2d) 150813
No. 2-15-0813
Order filed June 9, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-MR-146
	)	
2011 AUDI,	)	Honorable
	)	Paul M. Fullerton,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that the claimant was an innocent owner such that the State was not entitled to forfeiture was not against the manifest weight of the evidence; affirmed.

¶ 2 The State appeals from the denial of its request for the forfeiture of a 2011 Audi, which the State initiated by complaint pursuant to the provisions of the Criminal Code of 1961 (Code) (720 ILCS 5/36-1 *et seq*. (West 2012)). The first-amended complaint alleged that, prior to the seizure, the vehicle was used in the commission of the offense of driving while license revoked (DWLR) or suspended, in that the vehicle was operated by Peter Alvarez at a time when his driver's license or privilege to operate a motor vehicle was suspended for a violation of section

11-501 and 11-501.1 of the Illinois Vehicle Code (625 ILCS 5/11-501, 11-501.1 (West 2012)). The complaint further alleged that the owner or parties of interest in the vehicle were Peter Alvarez and Auto Gallery Chicago. Auto Gallery Chicago, LLC (the dealership) claimed it was an innocent owner. The trial court agreed the dealership was an innocent owner and the court denied forfeiture. On appeal, the State argues (1) the dealership was unable to prove it had a secured lien on the Audi; (2) Alvarez knew that his license was revoked and his knowledge was imputed to the dealership; and, (3) the trial court misapplied equitable principles. We affirm for the following reasons.

¶ 3 I. BACKGROUND

¶ 4 On January 28, 2014, Officer Carl Hawkins of the Elmhurst Police Department was on patrol when he observed a 2011 Audi take a left-hand turn from Robert Palmer Drive onto eastbound Marion, in violation of a sign stating no left turns from 3 p.m. to 6 p.m. on weekdays. Hawkins conducted a traffic stop and determined that the driver was Alvarez. He ran Alvarez's license through LEADS and learned that Alvarez's license was revoked for an alcohol-related offense. The Elmhurst Police Department seized the Audi for its use in the commission of the crime of DWLR. On February 3, 2015, the State initiated the complaint for forfeiture and seizure. At the time of the seizure, it was undisputed that Alvarez was operating the Audi.

¶ 5 The following evidence was presented at the hearing on the complaint. Aaron Dvorkin described the dealership as a business of buying and selling used cars. Dvorkin testified that he and Alvarez had known each other since high school, and he knew that Alvarez had always been a very successful car salesman, so they talked about starting a car business. To launch the business, Dvorkin and his mother each invested their own money and obtained a loan from a bank, using a building they owned as collateral. Once the loan had been secured, Alvarez

began buying used cars from auctions and from dealerships. The cars were paid for from bank loans or financing companies. The dealership would potentially realize a profit when a car is sold and the loan is repaid.

¶ 6 Dvorkin and his mother own the dealership, but they do not work there. Dvorkin's primary occupation is in commercial real estate. Alvarez does not own any dealership inventory and has never invested any of his own money in the dealership. Nor is Alvarez personally responsible for its debt; Dvorkin and his mother are the responsible parties. Dvorkin characterized Alvarez's role as the manager in charge of the day-to-day business operations of the dealership, as that is Alvarez's expertise. He is a salaried employee of the dealership who also receives bonuses and commissions.

¶ 7 Dvorkin testified that he was not aware that Alvarez was driving the Audi and that his license was revoked on the date of his arrest. Alvarez did not tell him about it until sometime after the occurrence.

¶ 8 Alvarez testified that he had been the manager of the dealership for about four years. He is one of three members of the dealership and he considers himself to be an agent too. Alvarez explained that he needed to be an agent or member so that he could act on behalf of the dealership, such as signing dealer plate applications and titles when a customer purchases a car because he is the manager. Alvarez stated that he also needs to represent the dealership in order to obtain business licenses, vehicle insurance, and applications for various building permits. However, he has no money or interest invested in the dealership. Alvarez testified that he is paid a salary and receives commissions and bonuses, and that Dvorkin is the person who is responsible for enlisting the various lenders to finance the vehicles.

¶ 9 In answering the trial court's direct questions, Alvarez clarified that he is only the manager of the dealership and Dvorkin is the owner. Alvarez owns no part of the inventory and owes no debt to any of the lenders. He further explained that the dealership has no money; it has inventory with debt. Alvarez also clarified that the vehicles are titled to the dealership, but they are subject to financing.

¶ 10 The trial court issued an oral ruling, initially finding that the State had proved its *prima facie* case that Alvarez was operating the 2011 Audi and he was driving on a revoked driver's license at the time. See 720 ILCS 5/26-1 (West 2012); 625 ILCS 5/6-303(g) (West 2012). See also *People v. 1991 Chevrolet Camaro, VIN 1GFP23E9ML117842*, 251 Ill. App. 3d 382, 386 (1993) (State must show by preponderance of the evidence that it is entitled to vehicle because it was used in commission of a crime enumerated in the statute). The court noted that the burden then shifted to the dealership to show by a preponderance of the evidence that it was the innocent owner of the vehicle. See 720 ILCS 5/36-2 (West 2012) (owner of such vehicle or any person whose right, title, or interest is of record may show by a preponderance of evidence that he did not know, and did not have reason to know, that the vehicle was to be used in commission of such offense).

¶ 11 To resolve what constituted sufficient ownership interest for an innocent claimant to avoid forfeiture, the trial court first needed to clarify the "make-up" of the company and who owned the Audi. The court stated it was clear that the dealership was the owner on title, and, in essence, it treated Alvarez, Dvorkin, and the dealership as joint owners of the Audi. The court further noted that Alvarez ran the day-to-day business, but the crux of the entire business was to purchase and re-sell vehicles, and Dvorkin was the owner who had all the financial connections and he testified that he had no knowledge that Alvarez was driving on a revoked driver's license.

¶ 12 Given other considerations, such as the law generally disfavoring forfeiture, public safety issues, Alvarez's driving history, the reduction in Alvarez's originally charged offense, the court stated:

> "With all of these factors running through here, it's the equity—or the equitable principles come in to play.
>
> In this case, the Court is going to deny the petition. [The court] looks at it similar to a financial—a lienholder of a vehicle. Because what happened here, this is an expensive vehicle, it's approximately a $50,000 vehicle. This vehicle had a loan against it that had to be paid off. That testimony came from Dvorkin. And I don't think the policy provisions behind the statute are going to be accomplished in merely taking this vehicle."

¶ 13 The State timely appeals.

¶ 14 II. ANALYSIS

¶ 15 A forfeiture proceeding is civil in nature, and, under the statute, the State must show by a preponderance of the evidence that it is entitled to the vehicle because it was used in the commission of a crime enumerated in the forfeiture statute. See *1991 Chevrolet Camaro*, 251 at 386; 720 ILCS 5/36-1, 36-1a, 36-2 (West 2012)). The trial court's findings in a forfeiture proceeding will not be disturbed unless they are against the manifest weight of the evidence. *People v. One 1999 Lexus, VIN JT8BH68X2X0018305*, 367 Ill. App. 3d 687, 689 (2006). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or the finding is unreasonable, arbitrary, or not based on the evidence. *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009).

¶ 16 In Illinois, law enforcement may seize a vehicle used in the commission of, or in the attempt to commit, an offense prohibited by statute. 720 ILCS 5/36-1 (West 2012). Section 6-303 of the Illinois Vehicle Code prohibits an individual from driving when his license is suspended or revoked. 625 ILCS 5/6-303 (West 2012). Under section 303(g), a vehicle may be forfeited "if the person's driving privilege was revoked or suspended as a result of a violation listed in paragraph (1), (2), or (3) of subsection (c) of this Section." 625 ILCS 5/6-303(g) (West 2012). "Subsection (c)" refers to section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501 (West 2012)), which prohibits an individual from driving while under the influence of alcohol.

¶ 17 The State argues that the trial court erred in finding the dealership's claim was "similar to that of a lienholder," in that the dealership was not able to establish under section 36-1a of the Code (720 ILCS 5/36-1a (West 2012)), that it was a secured party without knowledge that the property was used, or to be used in the commission of the crime of DWLR. The State uses section 36-1a to assert that the dealership failed to establish or offer proof of a secured claim in the Audi, or that it had no knowledge of Alvarez's illegal activities, and, as such, they were not "lienholders."

¶ 18 Pursuant to section 36-1a of the Code, a lienholder with an interest in the forfeited property and other secured parties can bypass forfeiture proceedings. It states that the State must release a vehicle to a "lienholder or secured party whose right, title or interest is of record *** if such lienholder or secured party shows to the State's Attorney that his lien or secured interest is *bona fide* and was created without actual knowledge that such *** vehicle *** was used or to be used in the commission of the offense charged." 720 ILCS 5/36-1a (West 2012).

¶ 19 We agree with the dealership that the State's use of section 36-1a is misapplied. As the dealership points out, it never relied on section 36-1a. Rather, it always contended that it was an innocent owner under section 36-2. Section 36-2 provides that the "owner of such vessel, vehicle or aircraft or any person whose right, title, or interest is of record *** may show by a preponderance of the evidence that he did not know, and did not have reason to know, that the vessel, vehicle or aircraft was to be used in the commission of such an offense." 720 ILCS 5/36-2 (West 2012). Unlike the provision for lienholders under section 36-1a, section 36-2 does not explicitly address the issue of "*bona fide*" ownership interests. *1991 Chevrolet Camaro*, 251 Ill. App. 3d at 389.

¶ 20 Our reading of the record shows that the trial court did not find the dealership to be a secured party or lien holder; it simply analogized the facts to that situation. The court stated that the facts looked *similar* to that of a financial lienholder, and the court implicitly found the dealership to be an innocent owner of the Audi. In fact, there is no evidence that the dealership sought return of the Audi under section 36-1a either prior to or during the trial. Accordingly, we must analyze the case under section 36-2.

¶ 21 The State claims that knowledge of Alvarez's driving a corporate-owned vehicle on a revoked license must be imputed to the dealership because he was an owner/member/agent of the dealership. Courts must be vigilant in construing the law to safeguard the rights of innocent persons who have legitimate interests in the seized property. *1991 Chevrolet Camaro*, 251 Ill. App. 3d at 388. The law generally disfavors forfeitures, and statutes authorizing them must be construed strictly, as favorable to the property owner as is consistent with principles of statutory interpretation. *Id*.

¶ 22 Essentially, the trial court treated Alvarez, Dvorkin, and the dealership as joint owners of the Audi. What constitutes a sufficient ownership interest for an innocent claimant to avoid forfeiture is a question for the trial court to resolve based on the particular facts before it. *Id*. at 389. In a bench trial, it is for the trial court to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Id*. (citing *Sianis v. Kettler*, 168 Ill. App. 3d 1071, 1072 (1988)). The trial court is in the best position to evaluate the testimony of the witnesses and it is entitled to draw reasonable inferences from the evidence. *Id*. (citing *People v. One 1990 Mercedes Automobile, VIN WDB 12305312019892*, 166 Ill. App. 3d 467, 470 (1988)). The trial court's determination that the dealership had such an interest was not against the manifest weight of the evidence based on the testimony concerning the corporate structure and business model of the dealership.

¶ 23 The State argues that, because Alvarez was both an agent and a member of the dealership, the knowledge of his criminal activity is necessarily imputed to the dealership. This argument was rejected in *People ex rel. Barra v. Wiebler*, 127 Ill. App. 3d 488 (1984). In that case, the Third District Appellate Court held that the plain language of the statute shows the legislative intent to provide a joint owner with the opportunity to prove that he should not be charged with another joint tenant's guilty knowledge. *Id*. at 491. Here, the trial court's decision necessarily relied upon Dvorkin's testimony that he had no knowledge of Alvarez's license revocation. This supports the claim that the dealership was an innocent owner.

¶ 24 Relying on *One 1999 Lexus*, the State questions Dvorkin's testimony that he did not know or have reason to know about Alvarez's license revocation. As the dealership points out, the facts in the *One 1999 Lexus* decision are quite distinguishable from those in the case at bar. In *One 1999 Lexus*, the State sought forfeiture of a vehicle driven by a defendant whose license

was revoked for a DUI conviction. The defendant was the grandson of the claimant, who owned the car. The claimant argued he had no knowledge that his grandson's license was revoked. *One 1999 Lexus*, 367 Ill. App. 3d at 694.

¶ 25 The State introduced the following evidence at trial: (1) the claimant lived with the defendant and had a close relationship with him; (2) the claimant knew the defendant did not own a car; and (3) the claimant knew the defendant had previous DUI arrests, and knew that one of those arrests led to a conviction and a specific sentence of two years' probation after pleading guilty to one of those arrests. *Id*. We affirmed the decision of the trial court granting the State's petition for forfeiture, concluding that it was inherently doubtful that the claimant would know all of the aforementioned facts, and yet not know about the revocation. *Id*.

¶ 26 In *One 1999 Lexus*, the parties had what the dealership here terms a "familial" relationship; they lived together and the claimant necessarily would have to have known detailed facts about the defendant. Unlike the facts in *One 1999 Lexus*, there is no evidence in this case that Alvarez and Dvorkin ever talked about anything other than business or even talked with each other on a regular basis. Dvorkin testified that Alvarez was "mostly autonomous," running the dealership while Dvorkin ran another business. There was no testimony that Dvorkin and Alvarez knew personal details beyond issues directly related to business operations. Although Dvorkin stated he knew that Alvarez had a prior DUI, it is not clear from Dvorkin's testimony as to whether he knew it resulted in a conviction.

¶ 27 It is also important to note that in *One 1999 Lexus*, we reviewed the evidence presented and held that the trial court's finding whether the claimant knew that the defendant's license was revoked was not against the manifest weight of the evidence. *Id*. In this case, however, the State requests that we determine whether the trial court's implicit finding that Dvorkin had no

such knowledge was against the manifest weight of the evidence, even in light of Dvorkin's testimony. The trial court was free to credit Dvorkin's testimony, and we will not reverse that credibility determination.

¶ 28 In a case such as this, we must be cognizant of the legislative purpose of the forfeiture statute and consider whether the purported innocent owner's interest in the property is more than a naked legal title or simply a sham to avoid the effect of the statute. The evidence showed that the dealership and Dvorkin had a substantial interest in the vehicle, and the dealership would suffer a $50,000 loss if the Audi was forfeited. Based on the facts in this case, there was sufficient evidence to show by a preponderance that the dealership was, in fact, an innocent owner. Accordingly, we cannot say that the trial court's finding was against the manifest weight of the evidence.

¶ 29 Since the trial court properly applied the innocent owner provision of section 36-2, we need not comment on the other equitable argument raised by the parties.

¶ 30 III. CONCLUSION

¶ 31 For the preceding reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 32 Affirmed.