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2019 IL App (3d) 180187-U

Order filed February 15, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
<i>ex rel.</i> JAMES W. GLASGOW, State’s)	of the 12th Judicial Circuit,
Attorney of Will County, Illinois,)	Will County, Illinois,
))
Plaintiff-Appellant,))
))
v.))
)	Appeal No. 3-18-0187
\$2,594 United States Currency,)	Circuit No. 18-MR-40
))
Defendant))
))
(Matthew Radek,)	Honorable
)	Carmen J. Goodman,
Claimant-Appellee).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court’s finding of no probable cause on the State’s petition for a preliminary determination of forfeiture was against the manifest weight of the evidence.

¶ 2 Following a traffic stop for expired registration, the claimant, Matthew Radek, and his vehicle were searched by the police. The search revealed eight grams of cannabis, a box of

sandwich baggies, a cannabis blunt, and \$2,594. The State filed a petition for a preliminary determination of forfeiture as to the seized money. The circuit court found no probable cause, denied the State's petition, and ordered the return of the money to Radek. The State appeals.

¶ 3

FACTS

¶ 4

On January 5, 2018, Radek was operating a motor vehicle that was stopped for expired registration by the Bolingbrook Police Department. When the officers approached the vehicle, they smelled the odor of cannabis from within the vehicle and saw what they believed to be a cannabis blunt in the ashtray. Based on this information, the officers performed a search of the vehicle and Radek's person. Their search revealed two plastic baggies of cannabis on Radek's person, a cannabis blunt in the ashtray, a box of sandwich baggies in the center console, and \$2,594 in the radio compartment. The cannabis weighed eight grams, but the State was uncertain whether this included both the amount in the baggies found on Radek's person and the blunt.

¶ 5

On January 9, 2018, the State filed a petition for a preliminary determination seeking forfeiture of the seized \$2,594 pursuant to the Drug Asset Forfeiture Procedure Act (Forfeiture Act) (725 ILCS 150/3.5 (West 2016)). The next day, the circuit court held a hearing on the petition. The State argued that the proximity of the cannabis and the \$2,594 supported probable cause. The State also argued that the box of additional baggies was consistent with individuals who package cannabis for sale and Radek pleaded guilty to manufacture/delivery of cannabis of over 500 grams in a 2012 DuPage County case. The court rejected the State's arguments, noted that eight grams was less than felony amount and the evidence was not enough, found no probable cause existed, and ordered the \$2,594 to be returned to Radek.

¶ 6

On February 13, 2018, the State filed a motion to reconsider, which circuit court denied.

¶ 7

The State appeals.

¶ 8

ANALYSIS

¶ 9

The Forfeiture Act requires a preliminary determination that probable cause exists that the property may be subject to forfeiture. 725 ILCS 150/3.5 (West 2016). To make a showing of probable cause, “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. \$174,980 United States Currency*, 2013 IL App (1st) 122480, ¶ 22 (quoting *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 505 (2005)). In this context, probable cause only requires a probability or substantial chance of the nexus and not an actual showing. *1945 North 31st Street*, 217 Ill. 2d at 505. To establish probable cause for forfeiture, “there is no need to tie the property to a specific drug transaction.” *People v. \$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 336 (1997). “However, suspicions of general criminal activity are not enough; the government must have probable cause to believe that the property is connected specifically to drug activities.” *Id.* We note that probable cause may be founded upon evidence that would not be admissible at trial. *People v. Green*, 88 Ill. App. 3d 929, 932 (1980).

¶ 10

Since money is inherently legal, it is not contraband *per se*, but it can be “derivative contraband.” *In re Fifty–Three Thousand Two Hundred Sixty Three Dollars*, 159 Ill. App. 3d 114, 118 (1987). “Derivative contraband consists of property which is innocent in itself but which has been used in the perpetration of an illegal act, *e.g.*, cash derived from the sale of illegal drugs.” *People v. U.S. Currency \$3,108*, 219 Ill. App. 3d 441, 445 (1991). The Forfeiture Act creates a presumption that currency was used or intended to be used for illegal drugs or is the proceeds of a drug transaction when the currency was “found in close proximity” to forfeitable

substances. 725 ILCS 150/7(1) (West 2016). Whether money is in “close proximity” to a forfeitable substance is decided based on the totality of the circumstances, which is made on a case-by-case basis founded upon common sense. See *People v. \$111,900, U.S.C.*, 366 Ill. App. 3d 21, 31 (2006). If the State makes a showing of probable cause, the claimant can rebut this presumption by a preponderance of the evidence. 725 ILCS 150/7(1) (West 2016).

¶ 11 “In reaching its ruling in a forfeiture case, the trial court may draw reasonable inferences and reach conclusions to which the evidence lends itself.” *People v. \$5,970 United States Currency*, 279 Ill. App. 3d 583, 588 (1996). A court of review will not reverse a circuit court’s determination of forfeiture unless it is against the manifest weight of the evidence. *Id.* at 588. A decision is against the manifest weight of the evidence only if the opposite conclusion is apparent or when the court’s findings appear to be arbitrary, unreasonable, or not based on the evidence presented. *Fox v. Heimann*, 375 Ill. App. 3d 35, 46 (2007).

¶ 12 On appeal, the State argues that the circuit court erred when it found no probable cause for the forfeiture. The State makes two contentions to support this argument: (1) the close proximity of the \$2,594 and the cannabis created a presumption of forfeiture under the Forfeiture Act and (2) the evidence presented supported the probability or substantial chance of a nexus between the \$2,594 and an illegal drug activity (selling cannabis). We note that the claimant did not file an appellee brief in this case. However, since the record in this case is simple and the claimed error can easily be decided without the aid of an appellee’s brief, we will proceed with our review. See *First National Bank of Ottawa v. Dillinger*, 386 Ill. App. 3d 393, 395 (2008).

¶ 13 The evidence presented by the State demonstrated that Radek was pulled over by the police for expired registration. Upon approaching the vehicle, the officers smelled cannabis and saw what they believed to be a cannabis blunt in the ashtray. The officers searched Radek’s

person and found two baggies of cannabis. The officers also searched his vehicle and found a blunt containing cannabis, a box of sandwich baggies, and \$2,594, all around the center console/radio compartment. The State also detailed a 2012 DuPage County case wherein the claimant pleaded guilty to manufacture/delivery of cannabis of over 500 grams.

¶ 14 Here, based on the totality of the circumstances, the State presented enough evidence to establish a presumption of forfeiture due to the close proximity of the \$2,594 and the cannabis. We reiterate that the Forfeiture Act creates a presumption that currency was used or intended to be used for illegal drugs or is the proceeds of a drug transaction when the currency was “found in close proximity” to forfeitable substances. 725 ILCS 150/7(1) (West 2016). The \$2,594 located in the radio compartment was found near the cannabis blunt in the ashtray, which was a forfeitable substance. Additionally, Radek had eight grams of cannabis, a forfeitable substance, on his person, which was in close proximity to the \$2,594 when he was seated in his vehicle. These facts created a presumption of forfeiture due to their close proximity. *Id.*; see *People v. \$1,002.00 U.S. Currency*, 213 Ill. App. 3d 899, 904 (2006) (when the claimant had \$1,002 in his pocket and a suitcase in the backseat of his car containing a forfeitable substance, this was enough to establish “close proximity”); see also *People v. \$111,900 U.S.C.*, 366 Ill. App. 3d 21, 35 (2006) (even objects in different rooms can be in “close proximity” within the meaning of the Forfeiture Act). Because we find that the State’s evidence created a presumption of forfeiture based on the proximity of the \$2,594 and the cannabis, we need not address its second argument.

¶ 15 For the foregoing reasons, we find that the circuit court’s ruling of no probable cause was arbitrary, unreasonable, and not based on the evidence presented. Accordingly, the court’s judgment was against the manifest weight of the evidence. Because we have decided that the State presented enough evidence to support a finding of probable cause, the claimant must be

afforded an opportunity to rebut that presumption. 725 ILCS 150/7(1) (West 2016); see *1945 North 31st Street*, 217 Ill. 2d at 498 (once that State satisfies its burden to establish probable cause, the burden shifts to the claimant to demonstrate, by a preponderance of the evidence, that the money is not subject to forfeiture.) Thus, we reverse the court's judgment and remand the matter for further forfeiture proceedings.

¶ 16

CONCLUSION

¶ 17

The judgment of the circuit court of Will County is reversed and remanded with directions.

¶ 18

Reversed and remanded with directions.