

THIRD DIVISION  
AUGUST 13, 2014

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
ex rel. ANITA ALVAREZ, State's Attorney	)	of Cook County.
Of Cook County, Illinois,	)	
	)	
Plaintiff-Appellee,	)	No. 12COFO002733
	)	
v.	)	
	)	The Honorable
2005 Dodge Magnum,	)	David A. Skyrd,
VIN 2D4FV48TX5H567856,	)	Judge Presiding.
Claimant Antwan Starnes,	)	
	)	
Defendant-Appellant.	)	

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Hyman and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *Held:* forfeiture order entered by the circuit court affirmed where the record did not support claimant's argument that the court's order was against the manifest weight of the evidence.

¶ 2 Claimant Antwan Starnes appeals a circuit court order finding that a 2005 Dodge Magnum, VIN 2D4FV48TX5H567856 (Dodge Magnum or vehicle) was subject to forfeiture in accordance with forfeiture provisions of the Cannabis Control Act (720 ILCS 550/1 *et seq.* (West

2010)) and the Illinois Drug Asset Forfeiture Procedure Act (Forfeiture Procedure Act) (725 ILCS 150/1 *et seq.* (West 2010)). On appeal, claimant argues that the court's findings are against the manifest weight of the evidence. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3

### BACKGROUND

¶ 4

On September 12, 2012, Melassie Starnes, Antwan Starnes' daughter, was arrested after Chicago Police Officers discovered several bags of suspect cannabis in the Dodge Magnum in which she was sitting. Melassie was taken into police custody and the vehicle was placed in the custody and control of the Illinois State Police.

¶ 5

After the Dodge Magnum was placed in the custody of the Illinois State Police, the State commenced forfeiture proceedings with respect to the vehicle. Specifically, on January 4, 2013, the State filed a complaint for forfeiture in the circuit court, alleging that there was probable cause to believe that the "vehicle was used or was intended to be used to transport, or to facilitate the transportation, sale, receipt, possession, or concealment of cannabis and/or controlled substance in violation of the Cannabis Control Act and/or the Controlled Substance Act and/or Methamphetamine Control and Community Protection Act and/or 720 ILCS 5/29 B-1(h) pertaining to the offense of money laundering." In support of its allegations of probable cause, the State set forth the following facts:

¶ 6

"That on or about 9/14/2012 at 6442 South Langley Ave, Chicago, Cook County, Illinois in Chicago, Cook County, Illinois, law enforcement officers of the Chicago Police Department seized the above captioned vehicle. \* \* \* On or about September 14, 2012, officers of the Chicago Police Department received a call of a person with a gun at 6442 South Langley Ave., Chicago, Cook County,

Illinois along with the description of a male black sitting in the above 2005 Dodge Magnum. When the officers relocated to the aforementioned location, they observed the defendant vehicle with a female black now known as Melassie Starnes sitting inside of the vehicle. As the officers approached they observed Starnes making movements to the console area of the vehicle. The officers asked Starnes to exit the vehicle for the officer's safety and detained Starnes. The officers then observed a strong odor of cannabis emitting from the vehicle[']s console. During a systematic search of the vehicle they recovered a purple [C]rown [R]oyal bag containing five (5) knotted bags all containing green leafy substance, suspect cannabis from the console area. Starnes was placed into custody, advised of her Miranda Rights, and transported to the 3rd District for processing."

¶ 7 Claimant Starnes, in turn, filed a verified claim for the Dodge Magnum. In his claim, Starnes asserted that he was the registered owner of the vehicle and had purchased the vehicle in August 2007. Claimant indicated that he had obtained the vehicle for the purpose of "getting back and forward to work and taking care of family business." Because he was the title owner of the Dodge Magnum, claimant requested that the court order his vehicle "return[ed]" to him.

¶ 8 On July 1, 2013, the circuit court presided over a hearing on the State's complaint for forfeiture, the transcripts of which do not appear in the record on appeal. Following that hearing, the court entered a brief written order, finding that forfeiture of the Dodge Magnum was warranted in accordance with provisions of the Cannabis Control Act and the Forfeiture Procedure Act. The forfeiture order was entered after the court "heard the sworn testimony of

witnesses," evaluated "the credibility of the witnesses in court," and "examined the proofs and exhibits offered and received."

¶ 9 Claimant's timely appeal followed.

¶ 10 ANALYSIS

¶ 11 On appeal, claimant challenges the circuit court's forfeiture order. Although he acknowledges that the record contains no transcript of the circuit court proceedings, he contends that "the record is clear the claimant purchased the vehicle and was the primary owner of the vehicle" and that he "did not have constructive or actual knowledge that the vehicle was being used in any criminal activity, which may have, and in fact did lead to the seizure of forfeiture of the vehicle."

¶ 12 Forfeiture proceedings are civil in nature; they are *in rem* proceedings against items used in the commission of crimes. *People v. 1998 Lexus GS 300, VIN JT8D68S4W0028350*, 402 Ill. App. 3d 462, 465 (2010). In such proceedings, "[t]he State brings the action against the seized property pursuant to the legal fiction that the property itself is guilty of facilitating a crime." *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 497 (2005). A circuit court's findings in a forfeiture proceeding will not be disturbed unless they are the manifest weight of the evidence. *People v. One 1999 Lexus, VIN JT8BH68X2X0018305*, 367 Ill. App. 3d 687, 689 (2006).

¶ 13 In the instant case, the State initiated forfeiture proceedings under the section 12 of the Cannabis Control Act, which provides for the forfeiture of vehicles and other means of conveyance "which are used, or intended for use, to transport or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of" cannabis (720 ILCS 550/12(a)(3) (West 2010)). The forfeiture proceedings that ensued were conducted in conformance with the

Forfeiture Procedure Act, which was enacted in 1990 by the Illinois General Assembly to establish uniform procedures for the seizure and forfeiture of drug related assets that are "forfeitable under the Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act." 725 ILCS 501/3 (West 2010); *People v. \$1,124,905 U.S. Currency and One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 325-26 (1997).

¶ 14 Forfeiture proceedings under the Forfeiture Procedure Act involve a two-step process. 725 ILCS 150/9 (West 2010); *People v. 1998 Chevrolet Corvette, VIN 1G1YY22G2W5108366*, 331 Ill. App. 3d 453, 459-60 (2002). In the first step of the forfeiture proceedings, the State bears the initial burden to "show the existence of probable cause for forfeiture of the property." 725 ILCS 150/9 (G) (West 2010); *People v. \$174,980 United States Currency*, 2013 IL App (1st) 122480, ¶ 22. To satisfy the Forfeiture Procedure Act's probable cause requirement, the State is required to 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." *1945 North 31st Street*, 217 Ill. 2d at 505. If the State meets its threshold requirement and establishes probable cause, the burden then shifts to the claimant to show by a preponderance of the evidence that the property is not subject to forfeiture. 725 ILCS 150/9(G) (West 2010); *\$174,980 United States Currency*, 2013 IL App (1st) 122480, ¶ 24. A claimant can "satisfy this burden by establishing one of the innocent-owner defenses provided in Section 8 of the Forfeiture [Procedure] Act." *1945 North 31st Street*, 217 Ill. 2d at 498; 725 ILCS 150/8 (West 2010). In accordance with section 8, a claimant will be deemed an innocent owner under the Forfeiture Procedure Act if he can

establish that he "is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur." 725 ILCS 150/8(A)(i) (West 2010). More specifically, the "owner of the vehicle or any person whose right, title or interest is of record may show by a preponderance of the evidence that he did not know or have reason to know that the vehicle was to be used in the commission of an offense and upon sufficient showing, may successfully resist a forfeiture." (Emphasis removed.) *People v. 1991 Chevrolet Camaro, VIN 1GFP23E9ML117842*, 251 Ill. App. 2d 382, 388-89 (1993). "Ultimately, however, "[i]f the State does show existence of probable cause and the claimant does not establish by a preponderance of evidence that the claimant has an interest that is exempt under Section 8 of this Act, the court shall order all property forfeited to the State." 725 ILCS 150/9(H) (West 2010).

¶ 15 Here, claimant does not argue that the State failed to meet its initial burden to show the existence of probable cause warranting forfeiture of the vehicle. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued are waived). Instead, claimant argues that the court erred in finding that he failed to meet his burden of proving that he was an "innocent owner" as defined by Section 8 of the Forfeiture Procedure Act. Given the incomplete nature of the record on appeal, however, we are unable to agree that the court's judgment ordering forfeiture of the vehicle is against the manifest weight of the evidence. Notably, neither a transcript of the forfeiture hearing nor a suitable alternative permitted by Illinois Supreme Court Rule 323 (Ill. S. Ct. R. 323(c), (d) (eff. Dec. 15, 2005)), including a bystander's report or an agreed statement of facts, appears in the record. Although claimant asserts in his brief that he purchased the Dodge Magnum and had "no knowledge that any illegal activity had or would take place in his vehicle," on the date the vehicle was seized, we do not know what evidence claimant presented to the

circuit court or what evidence the court relied upon to reject his argument that he was an innocent owner because claimant has failed to provide a suitable record. Indeed, the record does not even contain title paperwork, and is thus insufficient to establish that claimant is the owner, let alone an innocent owner, of the Dodge Magnum. Moreover, there is no evidence as to how claimant's daughter came to be in possession of the Dodge Magnum at the time of her arrest. Based upon the evidence that is present in the record, however, we do know that the circuit court's forfeiture order was based, at least in part, "upon the credibility of the witnesses in court." See *1945 North 31st Street*, 217 Ill. 2d at 507-08 (recognizing that in forfeiture proceedings, the circuit court is the sole trier of fact and that the court's credibility determinations and are afforded deference).

¶ 16 Ultimately, given the incomplete record in this case, we are required to presume that the court's forfeiture order was entered in conformity with the law and had a sufficient factual basis. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) ("An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant"). We therefore reject claimant's argument that the court's erred in finding that he was not an innocent owner and affirm the forfeiture order.

¶ 17 CONCLUSION

¶ 18 The judgment of the circuit court is affirmed.

¶ 19 Affirmed.