2016 IL App (2d) 151092-U
No. 2-15-1092
Order filed February 23, 2017

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-Appellee,	)	
v.	)	No. 15-MR-35
ONE 2006 MERCEDES-BENZ,	)	
Defendant	)	Honorable Brian J. Diamond,
(Glenn Kroehnert, Claimant-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's rejection of innocent owner defense in forfeiture case under the provisions of the criminal code was not against the manifest weight of the evidence.

¶ 2 Claimant, Glenn Kroehnert, appeals the trial court's order forfeiting to the State a 2006 Mercedes-Benz that he co-owned with his grandson, Brett Longton. Claimant contends that the trial court's rejection of his innocent-owner defense was against the manifest weight of the evidence where there was no proof that he knew or had reason to know that Longton would drive the car while his license was revoked. We disagree and affirm.

¶ 3 On January 3, 2015, Warrenville police officer Eric Puchalski stopped a 2006 Mercedes-Benz. A random registration check showed that one of the registered owners had a revoked driver's license. The driver, Longton, showed Puchalski a facially valid driver's license and proof of insurance. Upon learning that Longton's license was revoked, Puchalski arrested Longton and had the vehicle impounded. He also ticketed Longton for having illegally tinted windows. A search of the vehicle located an insurance card showing Longton as the sole insured. Longton told Puchalski that he was a cosigner for the vehicle, which had been purchased approximately a month earlier.

¶ 4 The State initiated forfeiture proceedings against the Mercedes. See 720 ILCS 5/36-1 (West 2014). Claimant filed an answer and an affirmative defense in which he claimed to be an innocent owner.

¶ 5 At the hearing on the petition, the State introduced several documents, including Longton's driver's license abstract and the vehicle's title and registration documents. The State also introduced a copy of Longton's credit card and a receipt from Mercedes-Benz of Naperville showing payment for service with the same credit card.

¶ 6 At the hearing, claimant testified as follows. Longton is his grandson, who had lived with him since 2004. In November 2014, claimant and Longton purchased the Mercedes together. Claimant described himself as a "cosigner," but claimant made all of the payments. Claimant knew that Longton did not have a valid driver's license, but believed that his license was due to be reinstated in about a month. Longton was not to drive the car until his license was reinstated. Claimant also paid the insurance. He could not explain why only Longton's name appeared on the insurance card.

¶ 7 Claimant and Longton worked at the same location, and claimant would drive him to work. Claimant, his wife, and his daughter had driven the vehicle but, to his knowledge, Longton had never driven it. On December 27, 2014, claimant's wife was rushed to the hospital with a possible stroke. She was in the hospital for six or seven days, and claimant was not home much during that time. He believed that Longton was on Christmas vacation during that time and, thus, did not need a ride to work. However, he knew that Longton was on-call during that time and might be called into work on short notice. On January 3, Longton was in fact called into work.

¶ 8 The State argued that Longton was the vehicle's true owner. Although the vehicle was co-owned by claimant and Longton, "the Supreme Court's opinion is very clear, only one person need give consent." The trial court ordered the car forfeited, stating, "The Supreme Court has said the owner—one owner is enough, in terms of knowledge. And obviously, your grandson was an owner. He had knowledge when he took this car out."

¶ 9 Claimant's counsel asked the court to clarify whether it was ruling that a co-owner without knowledge of the other co-owner's conduct could not claim to be an innocent owner. The court responded:

> "[H]e admitted in his own testimony this is somebody he bought a car with who has nine years['] DUI suspension. All indications are that he should know the car was being driven by his grandson."

¶ 10 Claimant moved to reconsider. The trial court denied the motion, stating, "I just think the totality of the circumstances suggests that there was reason for the grandfather to know that the vehicle would be used in this fashion." Claimant timely appeals.

¶ 11 Claimant contends that the trial court's finding that he had reason to know that his grandson was using the car illegally was against the manifest weight of the evidence. He points to

evidence that he was the primary owner of the car, made the payments, paid for the insurance, had strictly forbidden Longton from using the car until his driving privileges were restored, and drove him to work to ensure that he would not need to drive. He further notes that, on the day Longton was arrested, he was attending to his sick wife and believed that Longton was on vacation so that he would have no need to drive.

¶ 12 Initially, we must clarify the basis of the trial court's ruling and, in doing so, clarify the issue on appeal. In granting the State's petition, the court stated that claimant "should know the car was being driven by his grandson." In denying claimant's motion to reconsider, the court reiterated that "the totality of the circumstances suggests that there was reason for the grandfather to know that the vehicle would be used in this fashion."

¶ 13 The State argued in the trial court that, because Longton was a co-owner, his knowledge should be imputed to claimant. The State appears to again inject this argument into the appeal. It cites *People ex rel. Birkett v. 1998 Chevrolet Corvette, VIN 1G1YY22G2WS108366*, 331 Ill. App. 3d 453, 463 (2002), which states that, to be considered an innocent owner, a claimant must prove that "he did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture." However, *1998 Chevrolet Corvette* was decided under the Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 *et seq.* (West 2000)), which currently provides that, "with respect to conveyances," the innocent-owner exception applies only if the claimant "did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture." 725 ILCS 150/8(C) (West 2014). Here, forfeiture was sought pursuant to the general forfeiture provisions of the Criminal Code of 2012 (the Code) (720 ILCS 5/36-1 *et seq.* (West 2014)), which do not impose such a requirement. Thus, in *People v. 1991 Chevrolet Camaro, VIN 1GFP23E9ML117842*, 251 Ill. App. 3d 382, 388 (1993), the claimant, who was listed on the

vehicle's title along with his son, who used the vehicle in connection with a burglary, was able to assert a claim that he was an innocent owner, as "*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." (Emphasis in original).

¶ 14 Accordingly, claimant may invoke the innocent-owner defense, and the fact that the co-owner—his grandson—knew that the car was being used illegally does not defeat his ability to do so. Moreover, the State does not appear to dispute that claimant's ownership interest in the vehicle was *bona fide*. Thus, the only issue on appeal is whether the trial court correctly ruled that claimant had reason to know that Longton would use the vehicle illegally. We now consider that question.

¶ 15 A forfeiture proceeding is civil and, pursuant to the Code, 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 one of the crimes enumerated in the statute. 720 ILCS 5/36-1, 36-1(a), 36-2(a) (West 2014). Because the law generally disfavors forfeitures (*1991 Chevrolet Camaro*, 251 Ill. App. 3d at 388), the Code also provides certain defenses to an innocent party to avoid a forfeiture where the party has a sufficient interest in the vehicle. Section 36-2(a) of the Code provides that the "owner of such vessel or watercraft, 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 or watercraft, vehicle or aircraft was to be used in the commission of such an offense." 720 ILCS 5/36-2(a) (West 2014); see *1991 Chevrolet Camaro*, 251 Ill. App. 3d at 386. The statute's plain language therefore allows a joint owner to prove that he should not be charged with the co-owner's guilty knowledge. *People ex rel. Barra v. Wiebler*, 127 Ill. App. 3d 488, 491 (1984).

¶ 16 At oral argument, claimant argued that the statute requires a higher degree of awareness than the typical "should have known" standard, requiring, at a minimum, knowledge of specific facts that would give rise to a duty to inquire further. No reported cases have construed the "know or reason to know" language in this context. However, the phrase has been construed in other contexts, and we see no reason to ascribe to it a different meaning here.

¶ 17 In *People v. Davis*, 106 Ill. App. 3d 260, 264 (1982), this court held that the phrase "reason to know" in the home-invasion statute was equivalent to "knowledge" as defined in the Criminal Code of 1961. That section, which remains unchanged, provides that one has knowledge of

> "(a) The nature of attendant circumstances of his conduct, *** when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists." Ill. Rev. Stat. 1979, ch. 38, ¶ 4-5 (now 720 ILCS 5/4-5(a) (West 2014)).

¶ 18 In *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432 (1992), the supreme court referred to a Restatement definition to decide when the owner of land has reason to know of a dangerous condition: "the possessor of land has information from which a person of reasonable intelligence, or of the superior intelligence of the actor, would infer that the fact in question exists, or would govern his conduct upon the assumption that it does exist." *Id.* at 448 (citing Restatement (Second) of Torts § 12, at 19 (1965)).

¶ 19 In light of these definitions, we agree with the trial court that the evidence shows that claimant had reason to know that Longton would use the vehicle to commit the offense of driving without a valid license. The law is well settled that "it is the province of the trial court, when sitting without a jury, to resolve disputed questions of fact and to determine the credibility of witnesses and the weight to be given their testimony." *Gibson v. State Farm Mutual Automobile*

Insurance Co., 125 Ill. App. 3d 142, 150 (1984). Additionally, "a reviewing court will not substitute its judgment for that of the trial court on questions involving the credibility of the witnesses or the weight of the evidence." *People v. Jennings*, 37 Ill. App. 3d 982, 985 (1976).

¶ 20 To avoid a forfeiture in this case, claimant needed to show by a preponderance of the evidence that he did not know or have reason to know that Longton would drive the vehicle before the reinstatement of his driver's license. *1991 Chevrolet Camaro,* 251 Ill. App 3rd at 388 (citing Ill. Rev. Stat. 1991, ch. 38, par. 36-2). We find no reason to doubt the sinceriety of an arrangement such as that offered to Longton by claimant. The evidence suggested Longton was on the verge of obtaining his driver's license after a lengthy revocation. Claimant testified that he helped Longton purchase the vehicle in anticipation of his driving privileges being reinstated. Claimant's efforts should be applauded as a laudable incentive. However, unforeseen circumstances intervened, and when the trial court reviewed the evidence, the trial court reasonably determined that claimant knew that Longton might be called into work and that he lacked his usual means of transportation. In light of this determination and the evidence that Longton paid for the servicing on the vehicle and was the only named insured on the vehicle, claimant did not meet his burden of proof.

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

¶ 22 Affirmed.