2013 IL App (3d) 120531-U

Order filed September 3, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

KANKAKEE COUNTY HOUSING AUTHORITY, an Illinois municipal corporation,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-12-0531
	)	Circuit No. 12-LM-153
LENEE THOMAS and UNKNOWN OCCUPANTS,	)	Honorable Ronald J. Gerts, Judge, Presiding.
Defendant-Appellee.	)	

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Schmidt concurred in part and dissented in part.

ORDER

¶ 1 *Held*: In forcible entry and detainer action brought by housing authority alleging that tenant violated lease when her guest committed drug-related activity at her apartment, police officer's testimony regarding the presence of narcotic drugs found at the apartment (including testimony regarding field tests conducted on seized substances) was admissible and competent to establish the presence of narcotics even without the submission of a laboratory report. Case remanded so that the trial court may determine the sufficiency of the evidence presented at trial.

¶ 2 Plaintiff Kankakee County Housing Authority filed a forcible entry and detainer action against defendant Lenee Thomas after the defendant's guest was arrested for allegedly engaging in drug-related criminal activity at the defendant's public housing unit. During a bench trial, the trial court ruled that a police officer's testimony that certain substances found at the defendant's apartment field tested positive for illegal drugs was inadmissible hearsay because the plaintiff did not submit a lab report with a notarized affidavit in compliance with the rules governing the admissibility of such reports contained in section 5/115-15(a) of the Criminal Code of 1963 (the Code) (725 ILCS 5/115-15(a) (West 2010)). The trial court also ruled that the police officer's testimony was "insufficient to prove the presence of a drug violation." Accordingly, the trial court entered judgment in favor of the defendant and against the plaintiff.

¶ 3 The plaintiff filed a motion to reconsider, which the trial court denied. This appeal followed.

¶ 4 FACTS

¶ 5 The defendant is a tenant who resides in an apartment on the plaintiff's property. The February 1, 2010, lease agreement (Lease) between the parties provides, in relevant part:

> "7. OBLIGATION OF TENANT
>
> * * *
>
> (M) To assure that the Tenant, other persons under the Tenant's control, any member of the Tenant's household, or guest, shall not engage in:
>
> * * *

(2) Any drug-related criminal activity on or off the premises; or any activity by a tenant or guest in which the landlord determines that a tenant or guest is illegally using a controlled substance."

The Lease Addendum further provides:

1. In consideration of the execution or renewal of the lease for the dwelling unit identified in the Lease, [the Plaintiff] and you agree as follows:

* * *

b. You, any member of your household, or any guest, visitor or another person under your control or the control of a household member, shall not engage in or facilitate criminal activity, including drug-related criminal activity, in your unit, in common areas, or on the grounds.

* * *

2. VIOLATION OF ANY OF THE ABOVE PROVISIONS SHALL CONSTITUTE A VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF TENANCY."

¶ 6 On February 27, 2012, the plaintiff filed a "Complaint in Forcible Entry and Detainer" (Complaint) against the defendant. The Complaint sought possession of the apartment occupied by the defendant at 1046 North Chicago Street, Kankakee, Illinois (the Apartment). The plaintiff alleged that the defendant breached the Lease as a result of her guest's arrest for engaging in drug-related activity at the apartment.

¶ 7 On April 5, 2012, the trial court conducted a bench trial. Lonnie Paden, the plaintiff's property maintenance manager, testified in support of the plaintiff. Paden testified that the plaintiff owns the apartment, and the defendant resides at the apartment pursuant to a lease between the parties. According to Paden, the defendant and her guests are prohibited from engaging in drug-related criminal activity pursuant to Section 7(M) of the Lease, as well as the Lease Addendum. Paden further testified that, on November 14, 2011, he served the defendant with a 10-day notice of termination of tenancy. The Notice sought possession of the apartment based upon the November 3, 2011, arrest of Kijafi A. Mobley for possession of controlled substances at the defendant's apartment. However, the defendant did not surrender possession of the apartment.

¶ 8 Officer Joseph English also testified on the plaintiff's behalf. Officer English testified that he is a police officer with the Kankakee City Police Department and a member of the Kankakee Area Metropolitan Enforcement Group (KAMEG), a narcotics unit. Officer English stated that, on November 3, 2011, at approximately 9:40 p.m., he led the execution of a search warrant at the defendant's apartment. Kijafi Mobley was the only individual in the apartment at the time. The police officers found Mobley lying in a bed upstairs. The defendant was not present.

¶ 9 Officer English testified that he observed Special Agent Pasel deploy his canine unit and locate three clear plastic bags of suspected crack cocaine on the night stand next to the bed upon which Mobley was lying. The substance weighed 1.1 grams. Officer English testified that the substance was field tested and that "a positive reaction for cocaine was found." The officers also found a black digital scale in the bedroom. Officer English testified that such a scale is used to weigh narcotics for packaging and sale.[1] According to Officer English, the police officers also found a letter reflecting Mobley's address as 1046 N. Chicago Avenue.

¶ 10 Officer English testified that, when he spoke with Mobley after Mobley was detained, Mobley admitted that the substance found in the bedroom was crack cocaine.

¶ 11 Officer English also testified that, while he was in the kitchen of the apartment, a clear plastic bag of suspected cannabis was found in a drawer or on a shelf in the kitchen. The substance weighed approximately 1.3 grams. Officer English testified that the substance was field tested and a "positive ** reaction for the presence of cannabis *** was found." Mobley was arrested for the possession of a controlled substance.

¶ 12 The defendant called several witnesses on her behalf, including Jameena Eggleston (who knew the defendant for 32 years), Jessie Petty (the defendant's sister), and Tyjuana Lathon (the defendant's niece). Each of these witnesses testified that she did not know the defendant to be involved with drugs or to let someone in her life who was involved with drug activity. Petty testified that the defendant and Mobley are friends who used to "go together" years ago, that Mobley would visit the defendant's apartment four or five times per month, and that the

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[1] Officer English stated that, as a member of the KAMEG narcotics unit, he is trained in drug detection and "drug paraphernalia."

defendant asked Mobley to stay with her 16-year-old son while she was out of town. Lathon also testified that the defendant and Mobley were friends.

¶ 13 Juanye Williams, the defendant's son, testified that the defendant does not expose him to drugs and tells him to stay away from drugs. He stated that he was with his father when the police raided the apartment. According to Williams, Mobley is a friend.

¶ 14 The defendant testified that she would not have let Mobley stay at her unit if she knew this would happen. She presented several letters to the court as evidence. One letter was from Mobley apologizing for the incident. Other letters were from neighbors indicating that the defendant has never been involved with drugs.

¶ 15 On cross-examination, the defendant testified that she knew Mobley for a very long time and that she asked him to stay at her apartment with her son while she visited Arizona. She claimed that she had no idea Mobley had been arrested in the past for drugs. She also claimed and that the police had never been at her apartment in the past. Upon questioning by the trial court, the defendant initially stated that she knew about Mobley's criminal drug history before inviting him into her home, but then denied that she knew about his prior felony drug conviction.

¶ 16 Special Agent Michael Herscher, another KAMEG officer who was involved in the execution of the search warrant at the defendant's apartment on November 3, 2011, testified for the plaintiff on rebuttal. Herscher testified that he had previously been to the defendant's apartment to execute a search warrant one year before the November 3, 2011, incident. He did not locate any drugs at that time, and he did not recall if the defendant was home at the time. He testified that KAMEG had been monitoring the defendant's apartment for a couple years due to Mobley's presence there on a regular basis.

¶ 17 On April 24, 2012, the trial court entered judgment in favor of the defendant and against the plaintiff. In its written decision, the trial court rejected the defendant's "innocent tenant" defense, noting that: (1) the fact that the defendant was not personally involved with drugs is not a defense as a matter of law (citing *Camco, Inc. v. Lowery*, 362 Ill. App. 3d 421, 437 (2005)); and (2) the Lease imposed a "positive duty to assure that a guest will not commit drug-related crimes," and the defendant had breached that duty.

¶ 18 Nevertheless, the trial court ruled for the defendant because it found that the plaintiff had failed to present "competent evidence" establishing the presence of drugs at the defendant's apartment. Citing *Camco*, 362 Ill. App. 3d at 434-35, the trial court ruled that a police officer's testimony as to the presence of drugs is "inadmissible hearsay unless certain criteria are met." The court then quoted *Camco*'s lengthy discussion regarding the requirements governing the admissibility of laboratory reports in a criminal prosecution prescribed by section 5/115-15(a) of the Code (725 ILCS 5/115-15(a) (West 2010)). The court noted that "these criteria were not met" and that "[t]he only evidence of the presence of drugs was the oral testimony of a police officer." Relying on *Camco*, the trial court found that this evidence was "insufficient to prove the presence of a drug violation and should not have been admitted." The court went on to note that the plaintiff was "only two pieces of paper away from a verdict in its favor, the lab report and the notarized affidavit of the signer of the report."

¶ 19 The plaintiff filed a motion to reconsider, which the trial court denied. This appeal followed.

¶ 20 ANALYSIS

¶ 21 As an initial matter, we note that the defendant has not filed an appellee's brief. However, because the record is simple and the issues are not complex, we find that the matter may be decided without the aid of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); *People v. Dovgan*, 2011 IL App (3d) 100664, ¶ 10; *People v. $1,002.00 U.S. Currency*, 213 Ill. App. 3d 899, 903 (1991).

¶ 22 A plaintiff seeking relief in a forcible entry and detainer action must file a complaint stating that it is entitled to the possession of the premises at issue and that the defendant unlawfully withholds possession of the premises. 735 ILCS 5/9-106 (West 2010). At trial, the plaintiff must prove the allegations of its complaint by a preponderance of the evidence. 735 ILCS 5/9-109.5 (West 2010).

¶ 23 In this case, the plaintiff filed a complaint seeking possession of the apartment based upon the defendant's alleged violation of the Lease. Specifically, the plaintiff alleged that the defendant violated section 7(M) of the Lease and the Lease Addendum because her guest, Mobley, engaged in drug-related activity at the apartment. As the plaintiff noted, the Lease Addendum expressly provides that a violation of the Lease's provisions barring drug-related activity on the premises constitutes a violation of the Lease and "good cause for the termination of [the Plaintiff's] tenancy."

¶ 24 The trial court rejected the plaintiff's claim because it found that the plaintiff failed to present "competent evidence" establishing the presence of drugs at the defendant's apartment. Citing *Camco*, 362 Ill. App. 3d at 434-35, the trial court found that Officer English's testimony regarding the presence of crack cocaine and heroin was "inadmissible hearsay" because the

plaintiff failed to present a laboratory report meeting the admissibility requirements of section 5/115-15(a)(a) of the Code (725 ILCS 5/115-15(a) (West 2010)). For this reason, the trial court concluded that Officer English's testimony was "insufficient to prove *** a drug violation and should not have been admitted."

¶ 25 We disagree. Contrary to the trial court's suggestion, a police officer's testimony regarding the presence of narcotic drugs, including testimony regarding the results of field tests identifying such drugs, is admissible even absent a lab report. See, *e.g.*, *People v. Harrison*, 26 Ill. 2d 377, 379-80 (1962) (ruling that police officers' testimony regarding positive result of field test was "competent evidence" of the presence of a narcotic in a drug prosecution in which the State did not present a lab report); *People v. Hagberg*, 192 Ill. 2d 29, 32-33 (2000) (assuming without deciding that police officer's testimony regarding field test, which was the only evidence the State offered regarding the presence of a narcotic drug, was admissible). In fact, under certain circumstances, such testimony is sufficient, standing alone, to establish the presence of a narcotic.[2]

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[2] *Hagberg*, 192 Ill. 2d at 33; see also *$1,002.00 U.S. Currency*, 213 Ill. App. 3d at 902-04 (testimony by police officer that he performed a field test on a substance which tested positive for heroin and testimony by another officer that he observed the field test, interpreted the result as a positive indication of heroin, and had experience in interpreting such tests held sufficient to establish the presence of a controlled substance by a preponderance of the evidence in forfeiture action); *People v. Vazquez*, 180 Ill. App. 3d 270, 277 (1989) (police officer's testimony that he conducted a field test which established the presence of cocaine held sufficient to prove the substance was a narcotic and to sustain defendant's conviction for delivery of a controlled

¶ 26 Because the trial court erroneously concluded that Officer English's testimony was not competent to establish the presence of a narcotic drug without the submission of an admissible lab report, it did not consider Officer English's testimony, gauge its credibility, or determine the proper weight to afford it. Such determinations are for the trial court, not a court of review. *Gredell v. Wyeth Laboratories, Inc.*, 367 Ill. App. 3d 287, 292 (2008). Accordingly, we remand this case so the trial court may determine in the first instance whether the testimony presented at trial was sufficient to establish a drug violation. In so doing, the trial court should determine the credibility and reliability of Officer English's testimony that Mobley admitted that the substance found in the bedroom of the apartment was crack cocaine.[3] It should also determine the reliability of Officer English's testimony regarding the positive field test results and weigh that testimony accordingly. As our supreme court has noted, "the situation in which the [field] test is

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substance); *People v. Gatson*, 31 Ill. App. 3d 352, 353-54 (1975) (arresting officer's testimony that he performed a field test that indicated the presence of heroin held sufficient to establish the presence of a narcotic); *People v. Garcia*, 52 Ill. App. 2d 481, 487 (1964) (testimony by two police officers that one officer conducted a field test on a confiscated substance and obtained a positive result, if believed, was sufficient to prove beyond a reasonable doubt that the substance was a narcotic drug).

[3] Although this testimony appears to be hearsay, the defendant has waived any objections to the admissibility of this testimony (including hearsay objections and any objections regarding foundation) by failing to object to the admission of the testimony during the trial. *Ely v. Sheahan*, 361 Ill. App. 3d 605, 617 (2005); *Pharr v. Chicago Transit Authority*, 220 Ill. App. 3d 509, 519 (1991).

conducted might be relevant to the accuracy of the test." *Hagberg*, 192 Ill. 2d at 33. Thus, in determining the reliability and weight of Officer English's testimony regarding the field test, the court may take into consideration the facts that Officer English did not identify: (1) who performed and interpreted the field test; (2) whether that person was trained to perform and interpret the field test results; and (3) what type of field test or tests were performed and how reliable such tests are in the detection of the narcotic substances at issue.

¶ 27 Of course, the dispositive question will be whether all of the evidence presented at trial (including evidence of the field test results, Mobley's alleged admission, and all of the other evidence) was sufficient to establish by a preponderance of the evidence that Mobley engaged in drug-related activity at the defendant's apartment. We remand so that the trial court may make that determination.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, we reverse the judgment of the Kankakee County circuit court and remand for further proceedings.

¶ 30 Reversed; cause remanded.

¶ 31 JUSTICE SCHMIDT, concurring in part and dissenting in part.

¶ 32 I concur in the majority's decision that the trial court erroneously concluded that Officer English's testimony was not competent to establish the presence of narcotic drugs. I part company with the majority when it remands for the trial court to consider Officer English's testimony, "gauge its credibility, or determine the proper weight to afford it." *Supra* ¶ 26. The majority states, "the trial court should determine the credibility and reliability of Officer English's

testimony that Mobley admitted that the substance found in the bedroom of the apartment was crack cocaine." *Supra* ¶ 26.

¶ 33 This is a civil case. The testimony that it was crack cocaine is unrebutted. As the majority notes, Mobley wrote a letter to the judge which the defendant offered into evidence. The letter says in relevant part:

> "I'm writing you because on the day of November 3, 2011 I was arrested at Lenee Thomas apartment for drugs. She ask [*sic*] me to make sure her son went to school and did his homework because she was going out of town. She did not know what was going on because she was gone. I am very, very sorry for my actions. I just hope that Lenee and her family does not have to be punish [*sic*] because of my wrongdoing. I told the police officer when I was arrested that she did not know what I had and that she was gone [*sic*] be mad at me. I am very sorry for my actions your Honor. Please don't punish Lenee for my actions. Sincerly [*sic*] Kijafi Mobley"

¶ 34 This letter, offered by the defendant, substantiates the officer's testimony. Mobley did not deny he had drugs, but apologized and said he hoped that defendant would not be punished because of his actions. Mobley mailed the letter from the Macon County Jail to defendant. It was defendant who offered the letter into the record. The record clearly establishes by a preponderance of evidence that Mobley engaged in drug-related activity at defendant's apartment. Any decision to the contrary is against the manifest weight of the evidence.

¶ 35 I would reverse and then remand for the trial court to enter judgment for the plaintiff.