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2014 IL App (4th) 130861-U

NO. 4-13-0861

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 21, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. 2008 DODGE CHALLENGER VIN NO: 2B3LJ74W98H300940, CLAIMANT CYNTHIA BROWN, Defendant-Appellant.	)	Appeal from Circuit Court of Vermilion County No. 13MR109 Honorable Mark Goodwin, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's finding of forfeiture.

¶ 2 The claimant, Cynthia Brown, appeals the trial court's order finding a 2008 Dodge Challenger (Challenger) subject to forfeiture. She asserts (1) the State failed to prove an essential element of its case and, thus, her motion for a directed verdict should have been granted; and (2) she presented sufficient evidence that she did not know, or have reason to know, her son would use the Challenger to commit an offense and, thus, the court's finding of forfeiture was manifestly erroneous. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 28, 2013, Vermilion County sheriff's deputy Brad Norton conducted a traffic stop of a Challenger for illegal squealing of tires in Danville, Illinois. The driver and sole occupant of the vehicle was Arian (a/k/a Keon) Clark, whose driver's license was revoked for a

previous conviction of driving under the influence of alcohol. Because Clark was driving on a revoked driver's license, Norton placed him under arrest. The Challenger was seized and held for forfeiture pursuant to section 36-1 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/36-1 (West 2012)).

¶ 5 On May 31, 2013, the Vermilion County State's Attorney's office filed a "submission for preliminary review," in which it alleged "there is reasonable cause to believe the [Challenger] is subject to seizure as provided for in Article 36 of the Criminal Code as the car was used to violate the offense of driving while license revoked and the actual owner of the vehicle was the driver." Claimant, Clark's mother, was given notice of the proceedings, as she was the titleholder of the Challenger.

¶ 6 On June 6, 2013, a hearing on preliminary review was held, during which the State presented its written pleadings as proof of probable cause. Claimant argued she, not Clark, was the Challenger's owner and requested the vehicle be released to her. Based on the evidence presented, the court found probable cause to hold the Challenger until formal forfeiture proceedings could be held.

¶ 7 On June 11, 2013, the State filed a complaint for forfeiture. In September 2013, the forfeiture hearing commenced, during which the following evidence was presented.

¶ 8 Deputy Norton testified regarding the location of the subject traffic stop:

> "Q. [STATE]: I want to direct your attention to May 28th of this year, did you stop a vehicle that Keon Clark was driving here in Danville?
>
> A. [NORTON]: Yes, sir.
>
> Q. And was that on West Main Street and Logan Avenue?

A. Yes."

Norton testified he stopped Clark for speeding in the same Challenger in 2010, resulting in Clark's arrest. At the time of the 2010 traffic stop, the Challenger had a temporary license plate on it and was titled to another person—neither Clark nor claimant. After being placed under arrest for the May 2013 traffic stop, Clark requested (1) to wait with the vehicle to ensure it was not damaged during loading onto a tow truck and (2) for the police to do a detailed inventory of the vehicle. Norton testified that the Challenger appeared to have been customized since 2010, in that it now sported new wheels, tires, and custom paint work, *i.e.*, black striping down the rear quarter panels and the word "Tree" added to the vehicle. He further testified claimant was the record title owner of the Challenger.

¶ 9 Billy Hurt, an investigator with the Vermilion County sheriff's department, testified he spoke with Clark on the phone after the May 2013 traffic stop and made arrangements to meet with him at Carnaghi's Towing so Clark could obtain his personal effects from inside the Challenger. According to Hurt, Clark explained the Challenger was stored at his house because claimant did not have space for it in her garage. Hurt later met Clark and claimant at Carnaghi's Towing, where Clark recovered his golf clubs, golf shoes, cologne, and some recently purchased Polo shirts from the Challenger. Hurt testified, as Clark was leaving, Clark told a Carnaghi's Towing employee, " 'please take care of my baby.' " Hurt testified he asked claimant why Clark had gifted her the Challenger. Claimant told Hurt it was " 'just because' " but could not recall any details surrounding the gift.

¶ 10 Special agent Eric Millis, of the Vermilion County Metropolitan Enforcement Group (VMEG), testified that prior to working for VMEG, he was employed by the Harrison Park golf course in Danville for a number of years. During his employment at the golf course, he

became familiar with Clark, who golfed there regularly. Millis recalled Clark would arrive at the golf course in the Challenger, a silver Dodge Magnum, or a black Escalade EXT. Millis never observed Clark behind the wheel of any vehicle. He testified he observed various people driving Clark to the golf course. Millis recalled one occasion where Clark showed him the Challenger and its various features. As part of his employment with VMEG, Millis stated he executed a search warrant at Clark's house "a couple of months ago," during which he took a picture (People's exhibit No. 1) of a golf bag bearing the name "Keon 'Tree' Clark" on it.

¶ 11 Clark's driving abstract (People's exhibit No. 2) was admitted into evidence without objection. It reflected the revocation of Clark's driving privileges, which was in effect at the time of the May 2013 traffic stop as a result of his conviction of driving under the influence of alcohol.

¶ 12 After the State rested, defense counsel moved for a directed verdict, asserting the State failed to show by a preponderance of the evidence that the Challenger was used in the commission of an offense because it failed to present any evidence Clark was driving on a public street—a necessary element of the offense of driving on a revoked license. The trial court denied the motion, stating, "[T]he issue of whether or not the vehicle was traveling on a public roadway, I think, [O]fficer or Deputy Norton indicated the stoppage occurred on Route, or Main Street, Route 150[,] which, is a public street."

¶ 13 Claimant then testified on her own behalf that (1) Clark gave her the Challenger as a gift in the Spring of 2011; (2) it was one of four cars he had given her; (3) it was titled in her name; (4) it was not her primary vehicle; (5) she drove the Challenger only on holidays, special occasions, and occasionally to church; (6) she kept both sets of keys to the Challenger (one on her person and the other in her dresser drawer); (7) she never gave Clark permission to drive the

vehicle at any time because she knew he did not have a license; (8) she gave several of Clark's friends permission to drive Clark around in the Challenger and her other vehicles so she would not have to; (9) she kept gas in the Challenger; (10) she had the name "Tree" painted on the car the previous spring because she was proud of Clark—her only child; (11) the Challenger was kept at Clark's house 75% of the time because she did not have room for it in her garage; (12) she did not have any personal belongings in the Challenger at the time it was seized; and (13) she paid insurance on the Challenger, with Clark's help.

¶ 14 At the close of evidence, the trial court found the Challenger was subject to forfeiture because (1) it was "under the dominion or control of Mr. Clark at the time of his stop"; (2) claimant's assertion she was the owner was not supported by the evidence, despite the fact the Challenger was titled in her name; and (3) even if claimant was the owner, "she had reason to believe that, and to know that [Clark] might in fact get possession from his friends and drive this vehicle" due to Clark's "extensive history of *** having no license and having run ins with the law."

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, claimant contends the trial court erred in finding the Challenger was subject to forfeiture because (1) the State failed to prove that the Challenger was used in the commission of an offense described in section 36-1 of the Criminal Code (720 ILCS 5/36-1 (West 2012)), and, thus, her motion for a directed verdict should have been granted; and (2) the claimant presented sufficient evidence that she did not know, or have reason to know, Clark would use the Challenger to commit an offense and, thus, the court's finding of forfeiture was manifestly erroneous.

¶ 18 A. Section 36-2 Forfeiture Actions

¶ 19 "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 statute." *People v. 1991 Chevrolet Camaro, VIN 1GFP23E9ML117842*, 251 Ill. App. 3d 382, 386, 620 N.E.2d 563, 566 (1993); see also *People v. One 1999 Lexus, VIN JT8BH68X2X0018305*, 367 Ill. App. 3d 687, 689, 855 N.E.2d 194, 197 (2006). " '[T]he law generally disfavors forfeitures, and "statutes authorizing them must be construed strictly in a manner as favorable to the person whose property is seized as is consistent with fair principles of statutory interpretation." ' " *People v. Adams*, 318 Ill. App. 3d 539, 543, 742 N.E.2d 1256, 1259 (2001) (quoting *1991 Chevrolet Camaro*, 251 Ill. App. 3d at 388, 620 N.E.2d at 567, quoting *People v. United States Currency $3,108*, 219 Ill. App. 3d 441, 446, 579 N.E.2d 951, 955 (1991)). If the court determines the State has met its burden of proof, the vehicle is subject to forfeiture unless the "owner of such *** vehicle *** or any person whose right, title, or interest is of record as described in Section 36-1*** show[s] by a preponderance of the evidence that [s]he did not know, and did not have reason to know, that the *** vehicle *** was to be used in the commission of such an offense." 720 ILCS 5/36-2(a) (West 2012).

¶ 20 B. Motion for a Directed Verdict

¶ 21 Claimant contends the trial court erred in denying her motion for a directed verdict because the State failed to prove the Challenger was used in the commission of an offense described in section 36-1 of the Criminal Code (720 ILCS 5/36-1 (West 2012)). The issue of whether the trial court erred in denying claimant's motion for a directed verdict is reviewed *de novo*. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225, 938 N.E.2d 440, 446 (2010). Initially, we note the State cites *People v. Withers*, 87 Ill. 2d 224, 230, 429 N.E.2d

853, 856 (1981), for the proposition a trial court will consider the evidence most strongly in the State's favor when deciding whether to grant a motion for a directed verdict. However, as this court explained in *In re Sanders*, 77 Ill. App. 3d 78, 81, 395 N.E.2d 1228, 1230-31 (1979), this is not the standard that applies in bench trials. Rather, on a motion for a directed verdict in a bench trial, the trial court weighs all of the evidence, including that which favors the moving party. *Id.*, 395 N.E.2d at 1231; see also, *Orbeta v. Gomez*, 315 Ill. App. 3d 687, 689-90, 733 N.E.2d 1287, 1289 (2000); 735 ILCS 5/2-1110 (West 2012).

¶ 22 One of the qualifying offenses enumerated in section 36-1 of the Criminal Code is "an offense described in subsection (g)(1) of Section 6-303 of the Illinois Vehicle Code" (720 ILCS 5/36-1 (West 2012)), which, in turn, provides in part as follows: "The motor vehicle used in a violation of this Section is subject to seizure and forfeiture as provided in Sections 36-1 and 36-2 of the Criminal Code of 2012 if the person's driving privilege was revoked or suspended as a result of: (1) a violation of Section 11-501 of this Code [, *i.e.*, driving while under the influence of alcohol]." 625 ILCS 5/6-303(g)(1) (West 2012) (as amended by Pub. Act 97-984, § 5, eff. Jan. 1, 2013).

¶ 23 Here, claimant asserts the State failed to prove that on May 28, 2013, Clark was driving the Challenger on a "highway"—a necessary element of the offense of driving while license revoked (625 ILCS 5/6-303(a) (West 2012)). Section 6-303(a) of the Illinois Vehicle Code states, "Except as otherwise provided in subsection (a-5), any person who drives or is in actual physical control of a motor vehicle *on any highway* of this State at a time when such person's driver's license *** is revoked or suspended as provided by this Code or the law of another state *** shall be guilty of a Class A misdemeanor." (Emphasis added.) 625 ILCS 5/603(a) (West 2012). A "highway" is defined as "[t]he entire width between the boundary lines

of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel or located on public school property." 625 ILCS 5/1-126 (West 2012).

¶ 24 Claimant argues the State failed to present any evidence Clark was operating the Challenger on a "highway" and, thus, it did not prove its case. She points out the only evidence presented at the forfeiture hearing regarding the location of the traffic stop was Norton's testimony that it occurred "on West Main Street and Logan Avenue" in Danville, and that the State presented no evidence that the roadway Clark was driving on was a "highway." According to claimant, the trial court's act of taking judicial notice *sua sponte*—after the State rested—that "Main Street" was a public street was improper, and she was entitled to a directed verdict.

¶ 25 "A court may take judicial notice of matters of common knowledge, or of facts which, while not generally known, are easily verifiable." *Harris Trust & Savings Bank v. American National Bank & Trust Co. of Chicago*, 230 Ill. App. 3d 591, 597, 594 N.E.2d 1308, 1313 (1992); see also *People v. Clark*, 406 Ill. App. 3d 622, 632, 940 N.E.2d 755, 766 (2010) ("A judicially noticed fact must be one not subject to reasonable dispute, meaning that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned."). On rare occasions, a trial judge may take *sua sponte* judicial notice of facts so long as it is done before the close of evidence so that all parties are given a fair opportunity to rebut the evidence. *People v. Barham*, 337 Ill. App. 3d 1121, 1129, 788 N.E.2d 297, 304 (2003). "A party has the same right to rebut evidence admitted by *sua sponte* judicial notice as it does to rebut evidence introduced by the opposing party." *Id.*

¶ 26 It is true the State failed to present evidence showing Clark was driving on a "highway" on the date in question. In addressing the claimant's motion for directed verdict, the trial court observed that "Main Street, Route 150" is "a public street." According to Deputy Norton's testimony, the traffic stop occurred "on West Main Street and Logan Avenue." While the trial court referenced different street names, we believe its intent was to take judicial notice the traffic stop testified to by Deputy Norton occurred on a "highway," and so we will construe the court's observation in this fashion. Therefore, we find the record contains sufficient evidence to support the trial court's denial of claimant's motion for a directed verdict.

¶ 27 We take this opportunity to comment on a matter of procedure relating to this stage of the trial court proceedings. As noted, in its case the State failed to present evidence establishing an element of a forfeiture action—that the offense occurred on a highway. However, the trial court denied the claimant's motion for a directed verdict after taking what we have interpreted as judicial notice, *sua sponte*, of the missing element. Such an act by a trial court should be rare. However, if the trial court decides to proceed in this manner, it should clearly identify the *sua sponte* judicial notice as such and it should state with precision the fact being judicially recognized. Here, the trial court's action was not identified as taking judicial notice, nor was it clear that the court's intention was to establish, judicially, the omitted evidence—that Clark was driving on a highway. As previously stated, though, we believe the record supports our interpretation of the trial court's action and that the State's omitted evidence was supplied by judicial notice.

¶ 28 C. Forfeiture Finding

¶ 29 Next, claimant asserts the trial court's finding the Challenger was subject to forfeiture was manifestly erroneous. Specifically, she contends, as the record title owner, she

"presented overwhelming evidence that she did not know nor did she have reason to know that her son would commit an offense and drive the car while his license was revoked."

¶ 30 In support of her contention, claimant points to her testimony at the hearing that she (1) knew Clark did not have a valid driver's license; (2) made arrangements for his friends to drive him around in one of her vehicles; (3) possessed both sets of keys to the car; and (4) never gave Clark permission to drive the Challenger. Claimant also points to Deputy Norton's testimony that he had observed Clark driving the vehicle on only one other occasion, *i.e.*, the 2010 traffic stop, and Agent Millis' testimony that he never observed Clark driving, as evidence that her "system" of having Clark's friends drive him around was working.

¶ 31 Despite the fact claimant testified she never gave Clark permission to drive the Challenger and that she kept both sets of keys to the vehicle, Clark evidently came into possession of a set of keys somehow since he was driving the Challenger at the time Deputy Norton stopped him for squealing the tires. Clark previously drove the Challenger without a valid driver's license as evidenced by the 2010 speeding stop. Clark's driving abstract, admitted as People's exhibit No. 2, reflects seven prior convictions for driving without a valid driver's license between June 2001 and April 2010. At the forfeiture hearing, the State asked claimant, "you knew that your son did not have a driver's license because of the prior [driving-under-the-influence conviction], correct?" Claimant responded, "Well, I know that he didn't have a license, I thought it was because he was driving while suspended." Despite Clark's history of driving on a suspended license and claimant's knowledge and belief that Clark had not had a valid driver's license for several years due to driving on a suspended license, claimant allowed Clark to keep the Challenger at his house the majority of the time. Further, the facts that Norton testified he saw Clark driving the Challenger on one other occasion (also when he did not have a valid

driver's license) and that Agent Millis testified he did not personally observe Clark driving a vehicle when he worked at the golf course do not establish claimant reasonably believed Clark would not drive the Challenger.

¶ 32 The trial court determined, based on its assessment of all the evidence before it, claimant had not met her burden of showing, by a preponderance of the evidence, she did not know, or have reason to know, Clark would drive the Challenger. Based on the record before us, the trial court's finding that the Challenger was subject to forfeiture was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.