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2013 IL App (3d) 120984-U

Order filed September 20, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel*. Brian J. Towne, State's Attorney, LaSalle County, Illinois	)	Appeal from the Circuit Court of the 13th Judicial Circuit, LaSalle County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0984
	)	Circuit No. 11-MR-162
AKIBU L. REASE,	)	
	)	Honorable Cynthia Raccuglia,
Claimant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

¶ 1 *Held:* Although the State did not charge claimant with a criminal offense, the Fourth Amendment applies to a civil forfeiture proceeding involving funds seized during a consensual search of the stopped vehicle. The court's ruling on forfeiture is reversed and the matter is remanded to allow the trial court to address the merits of claimant's amended motion to suppress evidence.

¶ 2 After a traffic stop on the interstate, the trooper discovered $153,170 currency in a vehicle

driven by claimant, Akibu L. Rease. The State did not file criminal charges but initiated forfeiture proceedings against claimant. Claimant filed an amended motion to suppress evidence on the grounds the traffic stop was improper, his consent was invalid, and his detention at the police station was unlawful.

¶ 3 Presumably based on her understanding of existing case law, the court refused to consider the merits of claimant's amended motion to suppress. The court determined the amended motion to suppress was inappropriate in this civil forfeiture proceeding, since claimant had not been charged with a criminal offense.

¶ 4 The court ultimately found the State's evidence to be sufficient to establish a nexus between the currency and illegal drug activity and allowed the State's request for the forfeiture of the money. Claimant appeals. We reverse and remand.

¶ 5 FACTS

¶ 6 On August 7, 2011, an Illinois State Police trooper stopped claimant for a traffic violation. After obtaining claimant's consent to search the vehicle, the trooper located a backpack containing $153,170 in currency inside the vehicle. The State did not charge claimant with a criminal offense based on the events of August 7, 2011.

¶ 7 On September 9, 2011, the State filed a civil complaint for forfeiture of the $153,170 in currency, pursuant to the Cannabis Control Act (720 ILCS 550/12(a)(4), (a)(5) (West 2010)), the Controlled Substances Act (720 ILCS 570/505 (a)(4), (a)(5) (West 2010)), and the Drug Asset Forfeiture Procedure Act (Forfeiture Act) (725 ILCS 150/1 *et seq* (West 2010)). On October 6, 2011, claimant filed a consolidated motion to dismiss the complaint, to suppress evidence, and for return of the currency. On October 28, 2011, the State filed an amended complaint for

forfeiture. Thereafter, on November 18, 2011, claimant filed a consolidated amended motion to dismiss, to suppress evidence, and for return of the currency.

¶ 8 On December 20, 2011, after hearing arguments, the trial court denied claimant's amended motion to dismiss. The court refused to consider the merits of claimant's request to suppress the seized currency after concluding such a motion is appropriate in circumstances where a person has to "answer to a crime," thereby triggering the protections of the Fourth Amendment.

¶ 9 On October 31, 2012, the trial court conducted a hearing on the complaint for forfeiture. During the hearing, the State presented evidence in support of the forfeiture, including testimony of the trooper who conducted the traffic stop and discovered the currency, an investigator who interviewed claimant on August 7, 2011, and a trooper who conducted a canine drug sniff of the seized currency. Claimant opted not to testify or present evidence to the court with respect to the forfeiture petition.

¶ 10 Following the hearing, the court considered the negative inferences arising from claimant's failure to testify, the evidence presented, and concluded probable cause existed to establish a nexus between the seized currency and illegal drug activity. The court granted the State's request for forfeiture. Claimant filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 Claimant argues on appeal the trial court erred when it refused to "entertain" claimant's amended motion to suppress the currency. Claimant also contends the evidence presented at the forfeiture hearing failed to demonstrate a nexus between the currency and illegal drug activity. Finally, claimant argues the Illinois Forfeitures of Property Act is unconstitutional on its face and

as it applies to claimant.

¶ 13 We first address claimant's contention that the trial court should have allowed the claimant to proceed on his amended motion to suppress. Claimant asserts case law supports the view that the Fourth Amendment's exclusionary rule is applicable in civil forfeiture proceedings. The State responds claimant would not have prevailed if the court considered the merits of the amended motion to suppress, and thus, this court need not reach the issue of whether the Fourth Amendment applies to civil forfeiture proceedings. The State contends the error, if any, would be harmless since the amended motion to suppress would have been denied based on the assertions presented by claimant in support of his amended motion.

¶ 14 We turn to the case law to determine whether the trial correctly concluded Fourth Amendment protections do not apply to a claimant, in a civil forfeiture proceeding, who is not facing criminal charges resulting from the seizure. In *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*, the U.S. Supreme Court concluded the exclusionary rule is applicable to forfeiture proceedings which are quasi-criminal in nature. 380 U.S. 693 (1965). Recently, the First District followed the reasoning in *One 1958 Plymouth Sedan* and also concluded that the exclusionary rule applied to forfeiture proceedings. *People v. $280,020 in U.S. Currency*, 2013 WL 2635836, ¶ 23.

¶ 15 We recognize *People v. $280,020 in U.S. Currency* had not been decided at the time of the trial court's ruling in this case. However, existing case law, including *One 1958 Plymouth Sedan*, makes it clear the Fourth Amendment applies to a forfeiture proceeding, such as this, where the funds subject to forfeiture have been seized as a result of a traffic stop. We decline to determine whether claimant's amended motion to suppress would have been successful or

unsuccessful if the court had considered the merits of the claimant's amended motion. Rather, we remand the matter for the trial court to conduct a hearing on claimant's amended motion to suppress, determine the credibility of the witnesses, if any, and decide the merits of claimant's amended motion to suppress. Due to the outcome of this issue, it is unnecessary to address the additional issues raised in claimant's appeal.

¶ 16 Consequently, we reverse the trial court's ruling on the State's forfeiture petition and remand the matter for a hearing on claimant's amended motion to suppress. Once the amended motion to suppress is decided on the merits, the trial court should conduct a new hearing on the State's amended forfeiture petition, if necessary.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of LaSalle County is reversed and remanded.

¶ 19 Reversed and remanded.

¶ 20 JUSTICE SCHMIDT, specially concurring.

¶ 21 I concur in the judgment.