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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

RICKEY BARNES,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 12-MR-341
)	
JOSEPH BIRKETT, Du Page County,)	
Illinois, State's Attorney, <i>et al.</i> ,)	Honorable
)	Terrence M. Sheen,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision that plaintiff's assets were subject to forfeiture is not contrary to the manifest weight of the evidence where plaintiff previously pleaded guilty to possession of a controlled substance and it was reasonable to believe, based on the record, that similar substances in plaintiff's possession were also controlled substances.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiff, Rickey J. Barnes, appeals an order of the circuit court of Du Page County ordering the forfeiture of \$296 and a 2008 Chevrolet Avalanche. The trial court determined that the vehicle was used to facilitate the transportation and possession of a controlled substance and

that the money was traceable to the exchange of a controlled substance. For the reasons that follow, we affirm.

¶ 4

II. BACKGROUND

¶ 5 Don Cummings, an officer with the Carol Stream police department, testified that an informant arranged to buy Ambien, Klonopin, and Hydrocodone from Barnes. Barnes was to bring the pills to a hotel room in the Holiday Inn at 150 South Gary Avenue. Surveillance was set up at Barnes's home, outside the hotel, and inside the hotel room. At about 3:28 p.m., Cummings observed a Chevrolet Avalanche with Barnes inside arrive at the hotel parking lot. Barnes was alone. Barnes remained in the vehicle for a short time, talking on a cellular telephone, and then exited the vehicle and entered the Holiday Inn. Cummings went to the hotel room, where he saw Barnes in handcuffs.

¶ 6 Cummings searched Barnes. He discovered four prescription bottles in Barnes right pocket. One contained 28 500-milligram Hydrocodone pills, another contained 25 10-milligram Hydrocodone pills, a third contained 47 1-milligram Klonopin pills, and the final one contained 14-1/2 1-milligram Ambien pills. The trial court sustained an objection to this testimony, as Cummings was relying on a manual that the State had not established was recognized as authoritative. Cummings also searched the Chevrolet Avalanche and discovered nine, 500-milligram Hydrocodone pills, over \$200, and a cellular telephone. The trial court overruled a foundational objection to this testimony as untimely. Cummings later participated in a search of Barnes's residence. During that search, police discovered "large amounts of pills that were similar to the pills" found on Barnes when he was arrested.

¶ 7 In an earlier criminal proceeding, Barnes pleaded guilty to possession of a controlled substance based on these events. The trial court ruled that the Avalanche had been "used in the

transportation to facilitate the sale of drugs.” It explained that “that is where the plea makes a difference.” Based on the fact that Barnes possessed the cash during a drug transaction, the court further found that there was a sufficient nexus between it and the drugs as to warrant the money’s forfeiture. Thus, the court ordered the Avalanche and the cash forfeited by Barnes. Barnes now appeals.

¶ 8

III. ANALYSIS

¶ 9 The vehicle and the cash were forfeited in accordance with the provisions of the Drug Asset Forfeiture Procedure Act (Act) (725 ILCS 150/1 *et seq.* (West 2010)). The Act establishes procedures governing the seizure and forfeiture of assets under 505 of the Illinois Controlled Substances Act (Substances Act) (720 ILCS 570/505 (West 2010)). *People ex rel. Birkett v. 1995 Pontiac Trans Am, VIN 2G2FV22P5S2200525*, 358 Ill. App. 3d 184, 187 (2005). In proceedings pursuant to the Act, the State bears the initial burden of showing probable cause for the forfeiture of the property at issue. *Id.* If the State carries that burden, the burden shifts to the party opposing the forfeiture to show by a preponderance of the evidence that the property is not subject to forfeiture. *Id.* During the probable cause phase of the proceedings, all relevant evidence, including hearsay, may be considered by the trial court. *Id.* We will not disturb the decision of the trial court regarding a forfeiture unless it is contrary to the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *In re D.S.*, 217 Ill. 2d 306, 322 (2005).

¶ 10 Barnes contests the trial court’s decisions as to both the vehicle and the cash. He also advances an evidentiary argument, asserting that the trial court erred in not sustaining his objection to Cummings’ testimony that the pills found in the Avalanche were Hydrocodone. We find none of Barnes’s arguments well taken.

¶ 11

A. THE CHEVROLET AVALANCHE

¶ 12 Barnes first attacks the trial court's ruling concerning the 2008 Chevrolet Avalanche. He contends that none of the pills discovered by the officers provided a sufficient basis for the forfeiture of the Avalanche. He first asserts that any drugs found in his residence had no nexus to the vehicle. We agree with Barnes on this point.

¶ 13 He next contends that there was no competent evidence that the drugs found on his person were a controlled substance. Specifically, he notes that the trial court sustained his objection to Cummings' testimony as to the identity of the pills. Thus, Barnes asserts, "For all the trial court knew[,] these pills could have been aspirin, some other over the counter [sic] medicine[,] or even candy."

¶ 14 The State responds that it only need establish probable cause to believe that the Avalanche facilitated a drug sale. Probable cause, in this context, means "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." *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 505 (2005). Furthermore, "[t]he trial court may rely on circumstantial evidence to assist in establishing probable cause to support the forfeiture of the property." *People ex rel. Birkett v. 1998 Chevrolet Corvette, VIN 1G1YY22G2W5108366*, 331 Ill. App. 3d 453, 460 (West 2002).

¶ 15 Moreover, given Barnes's guilty plea to possession of a controlled substance, the State continues, he is collaterally estopped from contesting this issue. Indeed, collateral estoppel bars a defendant from contesting the factual basis for a guilty plea. *People v. Medrano*, 2014 IL App

(1st) 102440, ¶ 68. Thus, Barnes is precluded from contesting that the pills he possessed were not controlled substances.

¶ 16 Barnes contends that the State has not established *which* pills he was pleading guilty to possessing. We initially reiterate that the State need only establish probable cause here. Even accepting Barnes's argument, given that Barnes had three separate caches of pill and was carrying four separate types of pills in his pocket—and further given that he admitted (by his guilty plea) that at least some were a controlled substance—a reasonable person could believe that all of the pills were controlled substances. This is particularly true in light of the fact that Barnes was bringing the pills to the hotel to sell them in a sale set up by a confidential informant. Quite simply, a reasonable person could believe Barnes was engaged in drug dealing and that, in turn, the cornucopia of pills recovered by the police were controlled substances. Again, the standard here is not proof beyond a reasonable doubt. *1995 Pontiac Trans Am, VIN 2G2FV22P5S2200525*, 358 Ill. App. 3d at 187. Since a reasonable person could infer that the pills inside the Avalanche were a controlled substance, Barnes's claim that the pills on his person could not provide the basis for a forfeiture of the vehicle in accordance with *People v. One 1986 White Mazda Pickup Truck*, 251 Ill. App. 3d 79 (1999), which applies to controlled substances carried on one's person, is beside the point.

¶ 17 In sum, the portion of the trial court's order declaring the Chevrolet Avalanche forfeited is not contrary to the manifest weight of the evidence.

¶ 18 B. FOUNDATIONAL OBJECTION

¶ 19 Barnes contends that the trial court erred in allowing Cummings to testify that the pills in the Avalanche were a controlled substance. Barnes attempted to interpose a foundational objection. The trial court ruled that Barnes's objection to Cummings' testimony was not timely.

As explained above, a reasonable person could believe that these pills were controlled substances irrespective of Cummings testimony. As such, any purported error had no bearing on the outcome of the proceedings and was harmless. *Bachman v. General Motors Corp.*, 332 Ill. App. 3d 760, 785 (2002) (“A reviewing court will grant reversal based on evidentiary rulings only when the error was substantially prejudicial and affected the outcome of the trial.”).

¶ 20

C. THE CASH

¶ 21 Section 7 of the Act (725 ILCS 150/7 (West 2010)) provides as follows:

“The following situations shall give rise to a presumption that the property described therein was furnished or intended to be furnished in exchange for a substance in violation of the Illinois Controlled Substances Act ***, or is the proceeds of such an exchange, and therefore forfeitable ***: []All moneys, coin, or currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of substances.”

Barnes contends that there was no proof that the \$296 recovered from his person was in close proximity to any controlled substance (or anything else mentioned by the statute) because there was no evidence that the pills recovered from his person were controlled substances.

¶ 22 This argument fails for the same reason Barnes’s former ones did. As explained in our discussion of the first issue raised by Barnes, a reasonable person could believe that the pills recovered from his person were contraband based on his admission (*i.e.*, guilty plea) and the attendant circumstances. The standard is probable cause, not metaphysical certitude. *1995 Pontiac Trans Am, VIN 2G2FV22P5S2200525*, 358 Ill. App. 3d at 187. In short, a reasonable person could believe that the cash at issue was found in close proximity to a controlled substance. As such, the State carried its burden of showing probable cause that it was subject to

forfeiture. *Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d at 505.

¶ 23

IV. CONCLUSION

¶ 24 In light of the foregoing, the order of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.