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2018 IL App (3d) 170320-U

Order filed May 8, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois.
Plaintiff-Appellant,)	
)	
v.)	
)	
1989 FORD MUSTANG, VIN:)	Appeal No. 3-17-0320
1FABP45E8KF254013,)	Circuit No. 16-MR-850
)	
Defendant,)	
)	
(Julie Mance,)	
)	
Claimant-Appellee).)	Honorable
)	Carmen Julia Lynn Goodman,
)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The denial of the State's request for the forfeiture of a vehicle used in a drug transaction was reversed because the claimant did not prove all elements necessary for an innocent-owner defense under the Drug Asset Forfeiture Procedure Act, 725 ILCS 150/8 (West 2016).

¶ 2 The State appeals from the denial of its request for the forfeiture of a 1989 Ford Mustang pursuant to the forfeiture provision of the Illinois Controlled Substances Act, 720 ILCS 570/505(a)(3) (West 2016).

¶ 3 FACTS

¶ 4 On March 21, 2016, the State filed a complaint for forfeiture alleging that on or about December 9, 2016, officers of the Will County Sheriff's Department Gang Suppression Unit (GSU) seized a 1989 Ford Mustang, VIN: 1FABP45E8KF254013. The complaint sought forfeiture of the Mustang for an alleged violation of section 401 of the Controlled Substances Act, 720 ILCS 570/401 (West 2016)), in that Luke Mance used the Mustang to transport, possess, and deliver lysergic acid diethylamide (LSD).

¶ 5 On the same day, the claimant, Julie Mance, filed a verified claim for the return of the Ford Mustang. Julie Mance claimed that she purchased the Mustang on August 12, 2015, for \$6,500. Julie Mance claimed that on the next day, August 13, 2015, Luke Mance executed a promissory note to her stating that he owed her the full sum of \$6,500, and he would make payments of \$50 per month to her until the car loan was paid in full. Julie Mance also alleged that she had lent additional money to Luke Mance for the purpose of maintaining the Mustang. Luke Mance was the registered owner of the Mustang.

¶ 6 At the hearing, Deputy Jason Schultz, a Will County police officer, testified that he sought a search warrant for the person of and residence of Luke Mance based upon two controlled buys by a confidential source. Luke Mance met the confidential source for both of the controlled buys in the Mustang and sold a substance to the controlled source that field tested positive for LSD. A search warrant was granted and officers conducted a traffic stop on Luke Mance to execute the warrant on December 9, 2015. After he was informed that Luke Mance

was in custody, Schultz executed the search warrant on the home. Schultz testified that Luke Mance waived his Miranda rights and told him that he would drive the Mustang to the Frankfort area to retrieve vials of LSD. Luke Mance then told Schultz that he would put droplets of LSD on candy, wrap it in foil packets, and sell the foil packets. Luke Mance would use his Mustang to make the sales. After Luke Mance refused to tell who he got the LSD from, the police seized the Mustang for forfeiture.

¶ 7 Schultz testified that Julie Mance was present during the execution of the search warrant at the home. No evidence of drugs or money were found in her possession, and she was never charged with any criminal offense.

¶ 8 Deputy Michael Earnest, with the Will County Sheriff's Police, testified that he conducted the traffic stop of the Ford Mustang on December 9, 2015, on the basis of the search warrant for Luke Mance. Earnest approached the vehicle and asked Luke Mance to step out of the vehicle, which he did. Earnest observed a partially opened black CD case on the center console with something silver inside it that reflected his flashlight. Earnest did a cursory search of the vehicle to make sure that there were no weapons and removed the silver object. The silver object contained candies. The Mustang was then driven by a police officer back to the Mance residence. Earnest testified that was done because it could not be left on the side of the highway.

¶ 9 After the State rested, Julie Mance's attorney moved for a finding in her favor, pointing to the bill of sale and the promissory note, both dated months prior to the arrest, arguing that this was a loan situation. The trial court noted that the complaint for forfeiture was filed on March 21, 2016, but stated that the vehicle was seized on or about December 9, 2016. All of the evidence and testimony was regarding 2015, while the forfeiture complaint was concerned with 2016. The State sought to amend the complaint to conform to the testimony, but the trial judge

denied the motion because the State had already rested. Julie Mance’s attorney then notified the court that it was not moving for a directed finding and was resting on the evidence. The trial judge found that Julie Mance had an interest in the Mustang, was an owner of the Mustang, and was unaware of her son’s activities. The trial judge also found that it was unclear what, if any, drugs were found in the car. The judge returned the Mustang to Julie Mance. The State appealed.

¶ 10 In separate proceedings, Luke Mance pled guilty to possession of LSD with intent to deliver, and he received TASC probation.

¶ 11 ANALYSIS

¶ 12 The State argues that the trial judge’s denial of the complaint for forfeiture was against the manifest weight of the evidence. Julie Mance argues that the State did not meet its burden of proof for forfeiture, failed to establish a nexus between the Mustang and illegal activity, and conducted an illegal search of the Mustang. Also Julie Mance argues that she established that she was an interest-holder in the Mustang.

¶ 13 A forfeiture action is a civil *in rem* proceeding that is brought against items that were used in the commission of a crime. *People v. One 2014 GMC Sierra*, 2018 IL App (3d) 170029, ¶ 28. Section 505(a) of the Controlled Substances Act provides for the seizure and forfeiture of any vehicle “used, or intended for use, to transport, or in any manner to facilitate” the transportation, sale, receipt, possession, or concealment of a controlled substance. 720 ILCS 570/505(a)(3) (West 2016).

¶ 14 The procedure for seizing and forfeiting property pursuant to the Controlled Substances Act is set forth in the Drug Asset Forfeiture Procedure Act (Drug Asset Forfeiture Act). 725 ILCS 150/1 *et al.* (West 2016). In a proceeding under the Drug Asset Forfeiture Act, the State has the initial burden to show that probable cause exists for forfeiture of the property. 725 ILCS

150/9(G) (West 2016); *People v. One 2014 GMC Sierra*, 2018 IL App (3d) 170029, ¶ 29. If the State satisfies its burden of establishing probable cause, the burden shifts to the claimant to show by a preponderance of the evidence that the property is not subject to forfeiture or that one of the exemptions applies. 725 ILCS 150/9(G) (West 2016); *One 2014 GMC Sierra*, 2018 IL App (3d) 170029, ¶ 29. Only a claimant under the Drug Asset Forfeiture Act, defined as an owner of or interest holder in the property sought to be forfeited, may assert a claim against the property. 725 ILCS 150/9(C) (West 2016). If the claimant fails to show by a preponderance of the evidence that the property is not subject to forfeiture, the trial court shall grant the complaint for forfeiture and order the property forfeited to the State. 725 ILCS 150/9(H) (West 2016); *People v. Parcel of Property Commonly Known as 1945 N. 31st St., Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 498 (2005). A trial court's findings in a forfeiture proceeding will not be disturbed unless they are contrary to the manifest weight of the evidence. *People ex rel. Spencer v. One 1978 Pontiac Auto., VIN 2L69Y8P243561*, 242 Ill. App. 3d 411, 412 (1993).

¶ 15 First, Julie Mance contends that the Mustang was not subject to forfeiture because the State failed to establish a nexus between the Mustang and the LSD. However, there was un rebutted testimony that Luke Mance drove the Mustang to complete both of the controlled buys. Luke Mance also told police that he would use the Mustang to pick up and to sell the LSD. Thus, the Mustang was used to facilitate the receipt or possession of LSD, and it was subject to forfeiture, unless an exemption applied. See 720 ILCS 570/505(a)(3) (West 2016); *One 2014 GMC Sierra*, 2018 IL App (3d) 170029, ¶ 33 (taking a vehicle to purchase heroin and using heroin inside the vehicle was evidence that the vehicle facilitated, or made easier, the receipt or possession of heroin, making it subject to forfeiture).

¶ 16 Next, Julie Mance contends that she was an owner of or an interest holder in the Mustang so that it was exempt from forfeiture under the innocent-owner exemption, 725 ILCS 150/8 (West 2016). The State argues that the innocent-owner exemption does not apply because Julie Mance held the property jointly with, or for the benefit, of Luke Mance, whose conduct gave rise to the forfeiture.

¶ 17 A personal property interest is exempt from forfeiture under section 8 of the Drug Asset Forfeiture Act if the owner or interest holder establishes by a preponderance of evidence that: (1) he was not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known that the conduct was likely to occur; (2) he did not acquire the property from the proceeds giving rise to the forfeiture; (3) he did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture; (4) he did not hold the property for the benefit of, or as nominee for, any person whose conduct gave rise to its forfeiture, and (5) the interest was acquired before the conduct giving rise to the forfeiture. 725 ILCS 150/8 (West 2016); *People ex rel. Birkett v. 1998 Chevrolet Corvette, Vin 1G1YY22G2W5108366*, 331 Ill. App. 3d 453, 463 (2002). Unlike the general forfeiture provisions found in the criminal code, under the Drug Asset Forfeiture Act an innocent owner cannot defeat the forfeiture of a conveyance if he owned the conveyance jointly with a person whose conduct gave rise to the forfeiture. *People v. 1991 Dodge Ram Charger*, 250 Ill. App. 3d 810, 815 (1993). Said another way, the provisions of the innocent-owner defenses in section 8 of the Drug Asset Forfeiture Act are conjunctive, so the claimant needs to satisfy all of the applicable provisions in order to defeat forfeiture, while under general forfeiture provisions, a claimant need only prove that he did not know of, or consent to, the act that triggered the forfeiture in order to assert an innocent-owner exemption. *People v. Parcel of Property*

Commonly known as 1945 North 31st Street, Decatur, Macon County, Illinois, 217 Ill. 2d 481, 500 (2005).

¶ 18 The trial court found that Julie Mance was an owner of, or an interest holder in, the Mustang, and acquired that interest before Luke Mance's illegal activities. In addition, there was no evidence that she had any knowledge of her son's drug activities. However, Julie Mance alleged that she was a co-owner or an interest holder in the vehicle owned by Luke Mance. The evidence showed that Julie Mance purchased the vehicle, but it was registered in Luke Mance's name, along with the promissory note and the allegations that Luke Mance was paying his mother back for the vehicle, showed that the vehicle was held jointly by the Mances, or at least Julie Mance was holding it for the benefit of Luke Mance. Since Luke Mance was the person whose conduct gave rise to the forfeiture, Julie Mance cannot prove all of the elements necessary to claim the innocent-owner exemption. But see *1991 Dodge Ram Charger*, 250 Ill. App. 3d at 815-16 (father's interest in truck jointly owned with son was not subject to forfeiture because son did not commit the conduct giving rise to the forfeiture). We conclude that the State is entitled to the forfeiture of the Ford Mustang.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Will County is reversed.

¶ 21 Reversed.