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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|----------------------------------|---|-------------------------------|
| RICKEY J. BARNES, |) | Appeal from the Circuit Court |
| |) | of Du Page County. |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | No. 12-MR-340 |
| |) | |
| SGT. JOHN GLOS, PETER SPIZZIRRI, |) | |
| RUSSEL FRY, ACTING CHIEF ORR, |) | |
| OFFICER TAX, OFFICER CASTRO, |) | Honorable |
| |) | Terrence M. Sheen, |
| Defendants-Appellees. |) | Judge, Presiding. |

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The State adequately pleaded and proved assets were subject to forfeiture, and hearsay was admissible during probable cause phase of an *in rem* forfeiture proceeding.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiff, Rickey J. Barnes, appeals an order of the circuit court of Du Page County finding that two groups of currency in the amounts of \$771 and \$122,647.71 were subject to forfeiture. Barnes argues that the trial court's decision is contrary to the manifest weight of the evidence and that the trial court erred in admitting certain hearsay statements. In the course of

making his first argument, Barnes also contends that the State's complaint did not adequately apprise him of the nature of the action. For the reasons that follow, we affirm.

¶ 4

II. BACKGROUND

¶ 5 The facts of this case are relatively straight forward. The following summary is taken from the testimony of three of the officers involved in this case. On October 19, 2008, two Carol Stream police officers stopped Barnes after observing him commit several traffic violations. During the stop, they observed a prescription bottle containing about 75 pills in the console of Barnes' car. Barnes agreed to take the police to his residence and show them prescriptions for the pills.

¶ 6 Barnes signed a consent form allowing a search of his residence. After being read his *Miranda* rights, Barnes told one of the officers that there were two rocks of crack cocaine on top of his dresser "that he used for partying with women." The search uncovered "a gun, illegal narcotics, some prescription pills and money."

¶ 7 Barnes was again interviewed after the search. Barnes stated that he began using and selling crack in 1999. He made about \$1,500 per week doing so. He also admitted that he sold prescription drugs, including those observed in his vehicle. He would get \$14 for a 10 milligram Vicodin pill. Barnes was not currently working, but he did receive disability and a housing subsidy, which together totaled about \$1,500 per month. He recently purchased a Chevrolet Avalanche for approximately \$50,000. Barnes admitted that money found in his domicile totaling \$771 was the proceeds of drug sales. He also admitted that he deposited the proceeds of drug sales into several bank accounts. He maintained an account on which his mother was also named as a holder. However, he stated that he does not support her financially, and she was not

aware that she was on the account. An officer telephoned Barnes' mother. She said that she does not have an account with Barnes. According to Barnes, she has Alzheimer's disease.

¶ 8 The trial court, crediting the testimony of the officers, ruled that the State met its burden of showing probable cause that the funds at issue were subject to forfeiture. It further ruled that Barnes had not met his burden of producing evidence to show that there was an "innocent explanation" of how the money was acquired. The court noted that Barnes' proffered evidence did not support his position. Specifically, the court found that Barnes' income was insufficient for him to have deposited \$122,000 into a bank account, absent additional income from drug transactions. It also relied on Barnes' admissions to the police that he was "selling drugs." Ultimately, it concluded that \$771 recovered from Barnes' domicile and \$122,647.71 recovered from a bank account in the name of Barnes and his mother was subject to forfeiture.

¶ 9

II. ANALYSIS

¶ 10 Barnes raises two main issues on appeal. First, he contends that the trial court's decision is contrary to the manifest weight of the evidence, though his argument is more of an attack upon the State's pleadings. Second, he asserts that the trial court erred in admitting certain hearsay statements. We find neither contention persuasive.

¶ 11

A. Sufficiency of the Evidence

¶ 12 Barnes couches his first argument as an assertion that the trial court's decision is against the manifest weight of the evidence. He argues that no evidence was presented on the theory of recovery pleaded by the State. A complaint must provide notice of "the nature of the drug connection" of an asset alleged to be subject to forfeiture. *People v. \$1,124,905 U.S. Currency and One 1988 Chevrolet Astro Van*, 117 Ill. 2d 314, 339 (1997).

¶ 13 Barnes asserts that the State pleaded the following as a basis for recovery:

“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, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or is the proceeds of such an exchange, and therefore forfeitable under this Act, such presumptions being rebuttable by a preponderance of the evidence:

(1) 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 points out that there is no evidence that the \$122,647.71 found in the bank account was “in close proximity” to any “forfeitable substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of substances.” Barnes claims this is a factual allegation; however, we note that it is actually a passage from section 7 of the Drug Asset Forfeiture Procedure Act (Act) (725 ILCS 150/7 (West 2008)). Nevertheless, Barnes is correct that these funds were not found in close proximity to anything set forth in the statute.

¶ 14 However, Barnes ignores additional matters pleaded by the State. According to the State, the passage from the complaint upon which Barnes focuses applies to the \$771 recovered from Barnes’ domicile. As for the money in the bank account, the State points out that it pleaded:

“The following are subject to forfeiture:

(5) everything of value furnished, or intended to be furnished, in exchange for a substance in violation of this Act, all proceeds traceable to such an exchange, and all

moneys, negotiable instruments, and securities used, or intended to be used, to commit or in any manner to facilitate any violation of this Act.”

There was ample evidence that the \$122,647.71 found in the bank account was the proceeds of drug sales. Barnes pleaded guilty to the underlying drug offense. He admitted to one of the officers that he had been selling drugs since 1999. He also admitted depositing his drug proceeds into the bank account.

¶ 15 We further note that the portion of the complaint Barnes complains of is actually a recitation of a statute (as is the section set forth in the previous paragraph). In addition to these passages, the State also pleaded: “That the United States Currency seized was intended to be furnished, in exchange for a substance in violation of the Controlled Substances Act, was a proceed traceable to such an exchange, and was used, or intended to be used, to commit or in any manner facilitate any felony violation of this Act.”

¶ 16 In sum, we find that the State adequately pleaded the basis upon which the trial court found the money in the bank account subject to forfeiture.

¶ 17 B. HEARSAY

¶ 18 Barnes also objects to the trial court allowing an officer to testify to a hearsay statement made by Barnes’ mother regarding the bank account from which the \$122,647.71 was seized. Of course, an out-of-court statement offered to prove the matter asserted is hearsay. See Ill. R. Evid. 801(c) (eff. January 1, 2011). Evidentiary rulings are reviewed using the abuse-of-discretion standard. *In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 20. An abuse of discretion occurs only where no reasonable person could agree with the trial court. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003).

¶ 19 Specifically, Barnes complains of the following testimony:

“Q. How was that—how did you—how did you make the call?

A. I obtained her telephone number from Mr. Barnes and called her. I believe it was January of 2009 when I made the phone call.

Q. And how did you know you were speaking with Esther Barnes?

A. I asked. I had the—I had received the number from Rickey Barnes, and I had asked if I was speaking with Esther Barnes. And she said yes, you are.

Q. And did she express an understanding of what you were talking about generally?

A. Yes.

Q. She knew Rickey Barnes?

A. Yes.

Q. Indicated that was her son; is that correct?

A. That’s correct.

Q. Did you have occasion to talk to her about bank accounts?

A. I did.

Q. What did she say about any bank accounts that she had?

A. I had asked her if she had any bank accounts specifically with her son, a Charter One Bank account. And she said she didn’t have any bank accounts, period. And that if she was on a bank account with her son, he added her name without her knowledge. She advised that she doesn’t do any banking. She—I believe she stated she pays her bills with cash. She did not have any ATM card or banking card of any sort or a checkbook for any bank account.

Q. Did she—

[By Barnes' attorney:] Objection as to hearsay Judge.

THE COURT: Little late with the objection. Overruled."

Barnes contends that "it is elementary and needs no authority that hearsay evidence is not admissible and cannot be the basis of sustaining the forfeiture of his \$122,647.71."

¶ 20 The State counters that hearsay was admissible in the proceeding before the trial court. In a proceeding such as this one, the State first bears the burden of showing probable cause to believe there is a nexus between the property at issue and illegal drug activity. *People v. \$174,980 United States Currency*, 2013 IL App (1st) 122480, ¶ 22. The burden then shifts to the party opposing the forfeiture to prove by a preponderance of the evidence that his or her interest in the property is not subject to forfeiture. *Id.* ¶ 24. Section 9(B) of the Act states, in pertinent part, as follows: "During the probable cause portion of the judicial *in rem* proceeding wherein the State presents its case-in-chief, the court must receive and consider, among other things, all relevant hearsay evidence and information." 725 ILCS 150/9(B) (West 2008); see also *\$174,980 United States Currency*, 2013 IL App (1st) 122480, ¶ 36. As the hearsay was admitted during the probable cause phase of an *in rem* proceeding, the statute applies. Barnes' contention that the State did not support its assertion with authority notwithstanding, the State set forth the text of this statute in its brief. Finally, we note that the hearsay at issue here is largely cumulative to Barnes' admission to one of the officers that his mother did not know about the account.

¶ 21 In short, in light of Section 9(B) of the Act, Barnes argument is not well founded.

¶ 22 IV. CONCLUSION

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

¶ 24 Affirmed.