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IN THE
COURT OF APPEALS OF INDIANA

ANDRE DAVIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0604-CV-207
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gerald Zore, Judge
Cause No. 49D07-0407-MI-1272

November 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Andre Davis appeals the trial court's judgment that was entered against him on the State's complaint for forfeiture. Specifically, Davis argues that the trial court erred in admitting $5811 into evidence as well as cocaine that was seized during a search of his vehicle because his rights under the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution were violated. Davis also argues that the evidence was insufficient to support the order of forfeiture. Concluding that the money and cocaine seized during the search were properly admitted at trial and finding that the evidence was sufficient to support the forfeiture, we affirm the judgment of the trial court.

FACTS

On February 3, 2004, Officer Jeffrey McPherson, a narcotics investigator with the Metropolitan Drug Task Force (Task Force) of the Indianapolis Police Department (IPD), executed a search warrant at 741 North Bosart. Officer McPherson entered the residence and saw Davis and two other men sitting at a table in the dining room area playing cards. Officer McPherson detected the odor of burnt marijuana and "coke or cooking cocaine." Tr. p. 15-16. He entered the kitchen and discovered sixty-six grams of what appeared to be crack cocaine. The suspected cocaine was in a pot on the stove that was being cooled with ice cubes. Based upon his experience as a police officer and his involvement in thousands of drug investigations, Officer McPherson was confident that the substance was cocaine. All three men were arrested and charged with possession of cocaine and marijuana. When the men and the residence were searched, Officer McPherson found approximately $14,000 in

the residence and additional cocaine on one of the other men.

When Davis was in custody awaiting transport to the jail, Sergeant Eric Ledoux of the Task Force removed some keys from Davis's pocket. Sergeant Ledoux also discovered $5811 in Davis's pockets. After issuing the Miranda warnings to Davis, Sergeant Ledoux inquired about the money. Davis responded that he received the money from selling a house. Although Davis told Sergeant Ledoux that he sold houses from time to time, Davis did not have a real estate license and could not remember which house he had sold. Sergeant Ledoux took the keys from Davis's pocket, went outside, and pressed the button on the key fob. As a result, the lights and alarm sounded on a vehicle from Budget Car Rental that was parked on the street. The vehicle also became unlocked at that point, and it was subsequently determined that the vehicle had been rented by Davis's girlfriend's mother.

Officer McPherson testified that the vehicle was impounded in accordance with IPD policy. That policy provides that when an individual in control of a vehicle that belongs to a third party is going to be transported to jail, the vehicle may be seized. During an inventory of the vehicle, a green bag that appeared to contain cocaine was discovered in the trunk. Officer McPherson testified that the green bag contained packages of a white powdery substance in clear plastic baggies, "which is the standard packaging material for somebody who's going to deal cocaine." Appellant's App. p. 44. He stated that the packages found in the vehicle were consistent with what, in his experience, was cocaine packaged for sale. The white powder weighed approximately 650 grams.

On July 12, 2004, the State filed a complaint for forfeiture against Davis seeking

judgment in the amount of $5811, which represented the amount of currency that was seized from him during the search at the residence. Prior to trial, Davis filed a motion to suppress, claiming that all of the evidence seized—including the money and cocaine in the vehicle—were products of a warrantless and unlawful stop, search, and interrogation. The trial court denied Davis's motion, and following a bench trial on January 27, 2006, judgment was entered in favor of the State on its complaint for forfeiture. Davis now appeals.

DISCUSSION AND DECISION

I. Admission of Evidence

Davis first contends that the trial court erred in admitting into evidence the money and cocaine that were seized following his arrest.[1] Specifically, Davis argues that the evidence should have been suppressed because the conduct of the police was merely pretextual and the "vehicle was legally parked on a public street, was properly registered, had no equipment violations, was not obstructing traffic and no one requested that this vehicle be towed." Appellant's Br. p. 5.

Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pretrial motion to suppress or by trial objection. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002). We do not reweigh the evidence or judge the credibility of witnesses, and we consider conflicting evidence most favorable to the trial court's ruling. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App.

[1] Davis is actually asserting that the trial court erred in denying his motion to suppress. However, because Davis proceeded to trial and objected to the admission of the evidence, the question of whether the trial court erred in denying his motion to suppress is no longer viable. Cochran v. State, 843 N.E.2d 420, 424 (Ind. Ct. App. 2006), trans. denied.

2005), trans. denied. However, we must also consider the uncontested evidence favorable to the defendant. Conwell v. State, 714 N.E.2d 764, 766 (Ind. Ct. App. 1999).

The Fourth Amendment protects individuals from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. Krise v. State, 746 N.E.2d 957, 961 (Ind. 2001). The exclusionary rule applies to civil forfeiture proceedings, as those proceedings are "quasi-criminal" in nature. One Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 700 (1965). In general, the Fourth Amendment prohibits warrantless searches and seizures. Moultry v. State, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004). When a search is conducted without a warrant, the State has the burden of proving that the search was allowed under an exception to the warrant requirement. Cheatham v. State, 819 N.E.2d 71, 74 (Ind. Ct. App. 2004).

One well-established exception to the warrant requirement is a search incident to arrest, which provides that a police officer may conduct a search "of the arrestee's person and the area within his or her control." Stevens v. State, 701 N.E.2d 277, 280 (Ind. Ct. App. 1998). For a search incident to arrest to be valid, the arrest itself must be lawful. Culpepper v. State, 662 N.E.2d 670, 675 (Ind. Ct. App. 1996).

In this case, the police officers found Davis at a residence during the execution of a search warrant. Appellant's App. p. 30-31. When Officer McPherson entered the residence, he noticed the smell of marijuana and cooked cocaine. Id. at 32. Two marijuana cigarettes were on the table, and Officer McPherson found what appeared to be sixty-six grams of cocaine in the kitchen. Id. at 33. Officer McPherson was confident, based on his training

and experience, that the substance was crack cocaine. Id. at 49.

While the drugs inside the residence may not have been in Davis's exclusive control, our Supreme Court has determined that "[w]here a person's control over the premises where contraband is found is non-exclusive, intent to maintain dominion and control may be inferred from additional circumstances that indicate that the person knew of the presence of the contraband." Hardister v. State, 849 N.E.2d 563, 574 (Ind. 2006). Such circumstances may include (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs or weapons; (5) drugs or weapons in plain view; and (6) location of the drugs or weapons in close proximity to items owned by the defendant. Id.

As indicated above, the kitchen was a setting for drug manufacturing, inasmuch as it appeared that someone was producing crack cocaine on the stove. Two marijuana "joints" were in plain view on the table, and Davis was sitting at the table near the drugs. In light of these circumstances, the police officers had probable cause to arrest Davis, and they properly conducted a search of his person incident to the arrest. Id. at 77. Thus, Davis cannot complain that the money seized from his person was improperly admitted into evidence.

Davis also argues that the evidence should have been excluded because the impoundment and inventory search of the vehicle were unlawful. The "inventory exception" to the warrant requirement permits the police to conduct a warrantless search of a lawfully impounded vehicle if the search is designed to produce an inventory of the vehicle's contents. Abran v. State, 825 N.E.2d 384, 390 (Ind. Ct. App. 2005), trans. denied. To determine the

propriety of an inventory search, the threshold question is whether the impoundment itself was proper. Id. If the court determines that the impoundment is lawful, the court must then consider whether the "search itself [is] conducted pursuant to standard police procedure." Id. at 390-91.

Additionally, our Supreme Court has determined that an inventory search passes constitutional muster when it is reasonable under all the facts and circumstances of the case. Fair v. State, 627 N.E.2d 427, 431 (Ind.1993). We evaluate both the propriety of the impoundment and the scope of the inventory for reasonableness. Id. To insure that the search is not a pretext "for general rummaging in order to discover incriminating evidence," the State must establish that the search was conducted pursuant to standard police procedures. Id. at 435 (quoting Florida v. Wells, 495 U.S. 1, 4 (1990)). Also, Indiana Code section 9-22-1-5 provides that "[w]hen an officer discovers a vehicle in the possession of a person other than the person who owns the vehicle and the person cannot establish the right to possession of the vehicle, the vehicle shall be taken to and stored in a suitable place."

In this case, it was established that Davis was under arrest before the police searched the vehicle. Thus, the vehicle was properly impounded. See Vehorn v. State, 717 N.E.2d 869, 875 (Ind. 1999) (holding that the police may properly impound a vehicle when the driver has been arrested). With respect to the subsequent inventory search, the evidence showed that IPD has a specific policy regarding impoundments and inventory searches. Appellant's App. p. 55. Although Officer McPherson testified that he searched Davis's vehicle in accordance with that policy, Davis directs us to Bartruff v. State, 706 N.E.2d 225

(Ind. Ct. App. 1999), in support of his argument that the inventory search amounted to a mere pretext. The vehicle in Bartruff was impounded under a policy of the Indiana State Police that called for an inventory of an impounded vehicle "[e]xcept when the owner of the vehicle is present and is in the position or capable of taking custody of the property within the vehicle." Id. at 229. We observed that the search was not incident to a lawful arrest and that the defendant was in the position of taking custody of the property that was in the vehicle. Hence, we reversed the trial court's denial of the defendant's motion to suppress because "an inventory search was neither necessary nor consistent with established departmental procedures." Id. In contrast, here we have established that the search of the vehicle that Davis was driving was incident to a lawful arrest and that Davis could not take custody of his property because the police were going to transport him to jail. When considering these circumstances, we conclude that it was reasonable for the police to impound the vehicle and search it pursuant to the inventory exception to the warrant requirement. As a result, Davis's challenge to the search under the Fourth Amendment fails.

Finally, we recognize a valid inventory search as an exception to the Article I, Section 11 warrant requirement. Taylor v. State, 842 N.E.2d 327, 334 (Ind. 2006). In accordance with this exception, the State must show that the search was reasonable in light of the totality of circumstances. Trowbridge v. State, 717 N.E.2d 138, 144 (Ind. 1999). In this case, the factors leading to our conclusion that impounding and inventorying Davis's vehicle was permissible under the Fourth Amendment likewise support the conclusion that the search did not violate the Indiana Constitution. Put another way, considering all of the facts known to

the police officers at the moment of impoundment, it was reasonable for them to impound and inventory the vehicle. Thus, Davis's claim fails.

II. Sufficiency of the Evidence

Davis contends that the evidence was insufficient to support the judgment of forfeiture. Specifically, Davis argues that the State failed to show that the $5811 seized from his person constituted "proceeds of criminal activity." Appellant's Br. p. 9.

In forfeiture proceedings, the State must show by a preponderance of the evidence that the items at issue were within the definition of "property" that is subject to seizure. Indiana Code § 34-24-1 et seq. When reviewing sufficiency of the evidence claims, we will not reweigh the evidence or judge the credibility of witnesses. Allen v. State, 743 N.E.2d 1222, 1227 (Ind. Ct. App. 2001). Rather, we only look to the evidence most favorable to the judgment and all reasonable inferences to be drawn therefrom. When there is substantial evidence of probative value to support the trial court's ruling, it will not be disturbed. Jennings v. State, 553 N.E.2d 191, 192 (Ind. Ct. App. 1990). We will reverse the trial court only when we are left with a definite and firm conviction that a mistake has been made. Id. We also note that a conviction on the underlying criminal offense is not a prerequisite for forfeiture. The State need only show that facts supporting forfeiture exist by a preponderance of the evidence. Katner v. State, 655 N.E.2d 345, 348 (Ind. 1995).

In this case, the sole argument that Davis makes attacking the forfeiture judgment is that the State failed to show that the substance seized from the vehicle was cocaine. In essence, Davis argues that because the identity of the substance was not established, the State

failed to connect the money that was seized to Davis to criminal activity that would justify the forfeiture. Therefore, Davis argues that the judgment must be set aside.

Indiana Code section 34-24-1-1(c) provides that money:

> found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money . . . is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:
>
> (1) dealing in cocaine or narcotic drug

In construing this statute, this court has determined that under circumstances such as these, there is a rebuttable presumption that the money may be forfeited. Caudill v. State, 613 N.E.2d 433, 436 (Ind. Ct. App. 1993).[2] Additionally, in United States v. $124,700 in U.S. Currency, 458 F.3d 822 (8th Cir. 2006), it was determined that "[p]ossession of a large sum of cash is 'strong evidence' of a connection to drug activity" that warrants forfeiture. Id. at 826. We agree with that proposition.[3]

While Davis argues that the testimony regarding the identity of the substance found in the trunk of his car was insufficient to establish that it was cocaine, we note that in Davis v. State, 791 N.E.2d 266, 268 (Ind. Ct. App. 2003), a police sergeant testified at trial regarding the defendant's intent to deal drugs based on the amount of drugs in the defendant's possession. The evidence showed that the police officer who testified had spent six and one-half years investigating narcotics crimes, had been involved in 600 to 700 investigations, and

[2] Caudill interpreted the former version of this statute, Indiana Code section 34-4-30.1-1(c).

[3] While we are not bound by a federal court's analysis of the federal forfeiture statue, such analysis is "helpful in construing our own forfeiture statute." Katner, 655 N.E.2d at 348.

had received special training. Hence, we determined that the police officer "was sufficiently qualified to testify as a skilled witness." Id.

Similarly, the evidence here showed that Officer McPherson had spent nearly ten years in the field of narcotic investigations and that he had conducted "thousands" of drug investigations. Tr. p. 10, 13. Hence, Officer McPherson's testimony was properly admitted to establish—by a preponderance of the evidence—that the substance seized from the vehicle was cocaine.[4] Moreover, Officer McPherson testified that the drugs were packaged in a manner indicative of cocaine dealing. Appellant's App. p. 44. As a result, we find that the evidence was sufficient to support the forfeiture.

The judgment of the trial court is affirmed.[5]

VAIDIK, J., and CRONE, J., concur.

[4] As an aside, we note that Officer McPherson did not offer his testimony to establish that Davis was guilty of possession of or dealing in cocaine. Rather, he offered an opinion in this civil forfeiture action to demonstrate that cocaine was present in Davis's vehicle. Again, a conviction on an underlying criminal offense is not required in order for the State to obtain a judgment in a forfeiture action. Katner, 655 N.E.2d at 345.

[5] While the State premised its forfeiture action upon the cocaine that was seized from the vehicle, the evidence may very well have been sufficient to support a judgment of forfeiture had the State based its action upon the sixty-six grams of crack cocaine that the police seized from the residence.