



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00779-CV

The **STATE** of Texas,
Appellant

v.

ONE (1) 2015 JEEP VIN 1C4NJCBA1FD436982,
Appellee

From the 57th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-CI-11201
Honorable Mary Lou Alvarez, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Rebeca C. Martinez, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: December 16, 2020

REVERSED AND RENDERED

The State of Texas sought forfeiture of a vehicle Kelly Cotner used while committing the offense of felony driving while intoxicated. After a bench trial, the trial court denied the State's forfeiture request, concluding that Cotner's cousin, Stephanie Bacon, established that she was the vehicle's innocent owner. On appeal, the State argues the trial court erred because Bacon failed to establish various elements of the innocent-owner defense. In its first issue, the State argues Bacon did not establish that she acquired the vehicle with the proper timing to assert the innocent-owner defense. In its second issue, the State argues Bacon did not establish that she was "without

reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.” In its third issue, the State argues Bacon did not establish that she was an owner or interest holder for value. We sustain the State’s second issue, reverse the trial court’s judgment, and render judgment granting the forfeiture.

BACKGROUND

On May 21, 2017, Cotner was arrested for driving while intoxicated. When she committed the offense, Cotner was driving a 2015 Jeep, vehicle identification number 1C4NJCBA1FD436982, (“the vehicle”). Immediately after Cotner’s arrest, the arresting officer arranged to have the vehicle towed to an impound lot. On June 19, 2017, the State initiated this forfeiture proceeding by filing a notice of seizure and intended forfeiture alleging the vehicle was contraband subject to forfeiture. Bacon filed an answer, generally denying the allegations in the State’s forfeiture notice and asserting the innocent-owner defense.

At trial, the arresting officer testified about the circumstances surrounding Cotner’s felony driving while intoxicated arrest on May 21, 2017, and the impounding of the vehicle. Additionally, the State offered, and the trial court admitted, Bacon’s interrogatory answers. In her interrogatory answers, Bacon stated that Cotner had transferred the vehicle’s title to her on June 2, 2017, less than two weeks after Cotner’s arrest. Bacon did not testify at trial. However, Bacon’s counsel did stipulate that Cotner had three or more previous convictions for driving while intoxicated.

The trial court denied the State’s forfeiture action and filed written findings of fact and conclusions of law. In its conclusions of law, the trial court concluded that Bacon was the innocent owner of the vehicle. The State appealed.

STANDARD OF REVIEW AND APPLICABLE LAW

“If a case proceeds to a bench trial and the trial court enters findings of fact and conclusions of law, appellate courts defer to the trial court’s findings of fact—so long as they are supported by

the record—and reviews conclusions of law de novo.” *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683 (Tex. 2020). We review a trial court’s legal conclusions drawn from the facts to determine their correctness. *BMC Software Belgium, N.V. v Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). If we determine that a conclusion of law is erroneous, but the trial court nevertheless rendered the proper judgment, the erroneous conclusion of law does not require reversal. *Id.*

Under Texas law, property that is “contraband” is subject to seizure and forfeiture by the State. TEX. CODE CRIM. PROC. art. 59.02(a); *State v. One (1) 2004 Lincoln Navigator VIN #5LMFU27RX4LJ28242*, 494 S.W.3d 690, 693 (Tex. 2016). To exercise its forfeiture power, the State must file a notice of seizure and intended forfeiture in accordance with the Texas Code of Criminal Procedure. TEX. CODE CRIM. PROC. arts. 59.04(b), 59.02(a). Although authorized by the Texas Code of Criminal Procedure, forfeiture actions are “distinctly civil in nature.” *One (1) 2004 Lincoln Navigator*, 494 S.W.3d at 693.

To prevail in a forfeiture proceeding, the State must prove by a preponderance of the evidence that the property seized is “contraband” and thus subject to forfeiture. TEX. CODE CRIM. PROC. art. 59.05(b). A party claiming to have an interest in the seized property, a claimant, may respond to the State’s forfeiture action by asserting the innocent-owner defense. *\$18,800 in U.S. Currency v. State*, 961 S.W.2d 257, 260 (Tex. App.—Houston [1st Dist.] 1997, no writ); TEX. CODE CRIM. PROC. art. 59.02(c). A claimant has the burden to establish the innocent-owner defense by a preponderance of the evidence. *\$18,800 in U.S. Currency*, 961 S.W.2d at 260; TEX. CODE CRIM. PROC. art. 59.02(c).

The elements of the innocent-owner defense depend on when a claimant acquired an interest in the property. A claimant who acquired an interest in the property before or during the act giving rise to the forfeiture must prove by a preponderance of the evidence that she: (1) acquired and perfected her interest before or during the act giving rise to the forfeiture; and (2) did

not know or should not have reasonably known that the act giving rise to the forfeiture was likely to occur at or before the time of acquiring and perfecting the interest. TEX. CODE CRIM. PROC. art. 59.02(c)(1); *2003 Ford Pickup VIN 1FTRW0737KCS6182 v. State*, No. 04-06-00036-CV, 2007 WL 390348, at *2 (Tex. App.—San Antonio Feb. 7, 2007, no pet.). A claimant who acquired an interest in the property after the act giving rise to the forfeiture but before the property’s seizure must prove by a preponderance of the evidence that: (1) at the time that she acquired her interest in the property, she was an owner or interest holder for value; and (2) she was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband. TEX. CODE CRIM. PROC. art. 59.02(c)(2); *2003 Ford Pickup*, 2007 WL 390348, at *2.

DISCUSSION

Here, the trial court’s conclusions of law state: “Bacon is the innocent owner of the vehicle” and because Bacon is the innocent owner “the vehicle should be returned to her.” In its second issue, the State argues these conclusions are erroneous because the facts did not show Bacon was “without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.” *See* TEX. CODE CRIM. PROC. art. 59.02(c)(2).

It was undisputed that Bacon acquired her interest in the vehicle on June 2, 2017, which was after the act giving rise to the forfeiture—Cotner’s May 21, 2017 driving while intoxicated offense. Therefore, to establish the innocent-owner defense, Bacon was required to establish, among other things, that she was “without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.” *See id.* art. 59.02(c)(2)(B).

“Contraband” is defined as “property of any nature . . . used in the commission of . . . any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state

jail felony, if the defendant has been previously convicted three times of an offense under that chapter.” *Id.* art. 59.01(2)(A)(v). Chapter 49 of the Texas Penal Code establishes intoxication and alcoholic beverage offenses. *See* TEX. PENAL CODE §§ 49.01-.12. A person commits the offense of driving while intoxicated if the person is intoxicated while operating a motor vehicle in a public place. *Id.* § 49.04(a). An offense under section 49.04 is a third-degree felony if the person has previously been convicted two times of any other offense relating to the operating of a motor vehicle while intoxicated. *Id.* 49.09(b)(2). In the present case, the vehicle was “contraband” because the evidence showed that Cotner used the vehicle to commit a third-degree felony driving while intoxicated offense and she had three previous driving while intoxicated convictions. *See* TEX. CODE CRIM. PROC. art. 59.01(2)(A)(v).

At trial, Bacon argued that she was the vehicle’s holder in value after the act giving rise to the forfeiture and that she did not have reason to know the vehicle was contraband. Thus, at trial, Bacon asserted the innocent-owner defense under article 59.02(c)(2) of the Texas Code of Criminal Procedure.¹ To establish her defense, Bacon relied on the arresting officer’s testimony and her own interrogatory answers, which the trial court admitted into evidence during the State’s case-in-chief. Bacon’s interrogatory answers state that (1) Bacon knew that Cotner was arrested for driving while intoxicated and that Cotner’s 2015 Jeep was impounded, (2) Bacon came from Dallas to help Cotner recover the vehicle, (3) Bacon was concerned about returning the vehicle to Cotner because of safety and liability concerns, and (4) when Cotner transferred Bacon title to the vehicle, Bacon “did not have any knowledge that the vehicle was being seized for forfeiture.” Although Bacon’s interrogatory answers indicate that Bacon did not know of the vehicle’s seizure

¹In her appellate briefing, Bacon argues: “The trial evidence and the trial court’s findings of fact are more than sufficient to establish that Bacon was unaware of Cotner’s offense when [Bacon] received title to the 2015 Jeep on June 2, 2017.” However, Bacon’s awareness of Cotner’s driving while intoxicated offense would be relevant only if Bacon had asserted an innocent-owner defense under article 59.02(c)(1).

for forfeiture, they do not indicate that Bacon lacked reasonable cause to believe the vehicle was contraband and that she did not purposefully avoid learning that the vehicle was contraband. Bacon's statement that she had no knowledge that the vehicle was being seized for forfeiture is not probative of the element required to establish her defense under article 59.02(c)(2)(B)—a reasonable lack of knowledge that the vehicle was contraband.

None of the trial court's findings of fact state that Bacon had no reasonable cause to believe the vehicle was contraband and that Bacon did not purposefully avoid learning that the vehicle was contraband. Furthermore, the trial evidence is devoid of any facts showing that Bacon had no reasonable cause to believe the vehicle was contraband and that Bacon did not purposefully avoid learning that the vehicle was contraband. In the absence of such facts, Bacon failed to establish the innocent-owner defense as a matter of law, and it was error for the trial court to conclude otherwise. *See 2003 Ford Pickup*, 2007 WL 390348, at *3 (rejecting claimant's innocent-owner argument when the claimant failed to prove that she did not know the property was contraband); *\$18,800 in U.S. Currency*, 961 S.W.2d at 262 (concluding claimant failed to establish her innocent-owner defense as a matter of law when nothing in the record affirmatively showed the claimant's reasonable lack of knowledge). We sustain the State's second issue.

The trial court's judgment cannot be upheld under any other legal theory. The State met its burden to establish by a preponderance of the evidence that the vehicle was contraband, and therefore, subject to forfeiture. Generally, once the State proves that the vehicle is contraband that is subject to forfeiture, forfeiture of the asset is mandatory. TEX. CODE CRIM. PROC. art. 59.05(e) ("If the court finds that all or any part of the property is subject to forfeiture, the judge shall forfeit the property to the [S]tate. . . ."); *Hopkins v. State*, No. 2-02-130-CV, 2003 WL 329588, at *1 (Tex. App.—Fort Worth Feb. 13, 2003, no pet.) (recognizing that the language of article 59.05(e) is mandatory).

We do not address the State's first and third issues because they are unnecessary to the final disposition of this appeal. *See* TEX. R. APP. P. 47.1 (requiring appellate court opinions to be as brief as possible while addressing every issue necessary to the final disposition of the appeal).

CONCLUSION

We reverse the trial court's judgment and render judgment granting the State's forfeiture action.

Irene Rios, Justice