

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00171-CV

**\$102,450.00 IN U.S. CURRENCY, LOTS 1 THROUGH 6, SECTION 1
BLOCK 3, LOTS 17 THROUGH 22, SECTION 1 BLOCK 3 RESIDENCES
AND OUTBUILDINGS (JAMES W. VANG), Appellant**

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 411th District Court
Polk County, Texas
Trial Cause No. 028474**

MEMORANDUM OPINION

This is an appeal from a civil forfeiture proceeding brought by the State under Chapter 59 of the Texas Code of Criminal Procedure against certain property belonging to appellant James W. Vang. *See* Tex. Code Crim. Proc. Ann. arts. 59.01-.14 (West 2006 & Supp. 2016). The trial court found that the U.S. currency and real property were contraband and ordered that they be forfeited to the State. We affirm the trial court's judgment.

BACKGROUND

The State filed a Notice of Seizure and Intended Forfeiture, in which it alleged that “said property is contraband as defined by Article 59.01 of the Code of Criminal Procedure, and is subject to forfeiture by virtue of it being used in the commission of a felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), the proceeds gained from the commission of a felony listed under Article 59.01(2)(A)-(B), and/or acquired with proceeds gained from the commission of a felony listed under Article 59.01(2)(A)-(B)[.]” *See* Tex. Code Crim. Proc. Ann. arts. 59.01(2)(B)(i), (C), 59.02(a) (West Supp. 2016). Attached to the State’s Notice is the affidavit of Anthony Lowrie, a Detective with the Polk County Sheriff’s Office who acted as the seizing officer in Vang’s case.

The trial court conducted a bench trial on the State’s Notice of Seizure and Intended Forfeiture. Lowrie testified that on March 3, 2014, he and two other detectives, Captain Childers and Detective Schanmier, were searching for a burglary suspect in Wild Country subdivision. This search led to Vang’s residence at 1019 Hillbilly Heaven. Lowrie explained that during the search, another individual had told them that the suspect frequently visits Vang’s residence, gave them directions, and told them that Vang ran a marijuana operation. Lowrie testified that when he arrived at Vang’s residence, he observed that there was a fence around the property,

the gate was shut but not locked, there was a walk through the gate, and there was an open door on the front of the residence. Lowrie explained that the open door concerned him because “Wild Country, Hillbilly Heaven, is one of our key areas for burglaries and thefts and things of that nature.” Lowrie also explained that he believed that Vang was not at home because the informant had told Lowrie that if Vang’s primary vehicle, a Dodge truck, was not at the residence, then Vang was not at home. According to Lowrie, he and the other detectives crossed the gate and approached the residence because it appeared that the open door led into the interior residence.

According to Lowrie, Childers and Schanmier approached the open front door, which led into a pool area, and when they knocked on another door that led into the living room, they heard dogs. Lowrie testified that when he went to the rear of the residence to watch the back door, he smelled a strong odor of green marijuana. At that point, Lowrie explained that he contacted the district attorney and obtained a search warrant for the property located at 1019 Hillbilly Heaven, which included a main residence, a green house, a large metal building that appeared to be a garage or shed, a trailer home, and another small shed with a lean-to. During the search of the main residence, they recovered paperwork that indicated that Vang resided at the residence, and they found that one room had previously been used as a grow room.

Lowrie testified that they also found marijuana in baggies, packaging for marijuana, scales, paraphernalia, weapons, and a large quantity of cash.

Concerning the cash, Lowrie testified that they found \$12,350 in U.S. currency in a large safe in the kitchen area and \$90,100 in U.S. currency in a small safe in one of the bedrooms, totaling \$102,450. According to Lowrie, the small safe was inside the return air vent and contained four bundles of U.S. currency, three of which were wrapped with cellophane and one inside a Ziploc baggie. Lowrie testified that based on his training and experience, wrapping cash in cellophane indicates that someone is trying to conceal odor or trying to protect the cash from getting wet when being hidden in some type of liquid. Lowrie noted that they did not find any paperwork in the main residence indicating Vang's proof of income. The State introduced business records from the Texas Workforce Commission, indicating that it did not have any records showing reportable wages for Vang. The State also introduced a warranty deed showing that Vang is the owner of the property.

Lowrie further testified that during the search of the trailer home, which was located within one hundred feet of the main residence, they found a small amount of marijuana, a ledger indicating harvest times, and grow rooms. Lowrie explained that when they searched the shed, which was linked to the main residence via the utilities,

they discovered two large grow rooms that contained approximately one hundred and seventy marijuana plants. According to Lowrie, the Department of Public Safety crime lab confirmed that the plants were marijuana. Based on the evidence found pursuant to the search warrant and on the totality of the circumstances, Lowrie concluded that the criminal offense of growing marijuana for distribution had occurred. Lowrie testified that Vang was charged with felony possession of marijuana, which is a violation of Chapter 481 of the Texas Health and Safety Code. *See* Tex. Health & Safety Code Ann. § 481.121 (West 2010). The record shows that the trial court took judicial notice of the criminal case against Vang, which includes the order of deferred adjudication indicating that Vang pleaded guilty to felony possession of marijuana. The trial court found that the \$102,450 in U.S. currency and Lots 1 through 6, Section 1 Block 3, Lots 17 through 22, Section 1 Block 3 residences and outbuildings are contraband and ordered that they be forfeited to the State.

ANALYSIS

In issue one, Vang argues that the officers' search of his property violated his constitutional right to be free from unreasonable searches and seizures. *See* U.S. Const. amend. IV; Tex. Const. art. I, § 9. According to Vang, evidence obtained from a search that violates the Fourth Amendment is normally excluded in a criminal

case, and the illegally seized evidence should have been excluded in this civil forfeiture proceeding because the police conducted a warrantless search of his private property. Vang argues that once a defendant has established that a warrantless search and seizure occurred, the State has the burden to prove the reasonableness of the search and seizure.

Vang argues that the Texas Supreme Court's decision in *State v. One (1) 2004 Lincoln Navigator*, 494 S.W.3d 690, 701 (Tex. 2016), in which the Court held that "Chapter 59 neither provides for exclusion of illegally obtained evidence nor requires the state to prove lawful seizure as a prerequisite to commencing a forfeiture proceeding[,]” compels a different conclusion in his case because the officers' conduct was illegal and involved non-isolated or recurring instances of police misconduct. *Lincoln Navigator*, 494 S.W.3d at 701. According to Vang, the holding in *Lincoln Navigator* does not apply if bad faith on the part of police exists. We disagree.

In *Lincoln Navigator*, the Court held that Chapter 59 of the Texas Code of Criminal Procedure does not require the State to show lawful procedure as a prerequisite to commencing a Chapter 59 proceeding for civil forfeiture of the property seized. *Id.* at 702. The Court explained that trial courts considering civil-forfeiture proceedings do not need to conduct a Fourth Amendment reasonableness

inquiry because Chapter 59 contains neither an exclusionary rule nor a procedural prerequisite requiring the state to show a legal search. *Id.* at 702. The Court also held that the exclusionary rule in the Code of Criminal Procedure only applies in criminal proceedings. *Id.* at 701; *see* Tex. Code Crim. Proc. Ann. art. 38.23 (West 2005). In *Lincoln Navigator*, the Court concluded that the legality of the search is not an issue in a civil forfeiture proceeding because it does not preclude forfeiture. *See Lincoln Navigator*, 494 S.W.3d at 701. Thus, we reject Vang’s argument that the Court’s decision in *Lincoln Navigator* does not apply in his case. *See id.* at 695-96, 702. We overrule issue one.

In issue two, Vang argues that the trial court abused its discretion in permitting forfeiture of his property without requiring the State to prove that the value of the forfeited property was not disproportionate to the highest fair market value of the contraband received. *See* Tex. Code Crim. Proc. Ann. art. 59.024 (West Supp. 2016). Article 59.024, which prohibits multiple recovery, provides that:

If property or proceeds are awarded or forfeited to the state under this chapter for an underlying offense, a court may not award or forfeit additional property or proceeds that would exceed the highest fair market value of the contraband subject to forfeiture for that offense.”

Id. Our review of the record shows that the trial court’s order of forfeiture did not include a multiple recovery. The trial court only ordered the property and proceeds that it found to be contraband to be forfeited to the State. No “additional property or

proceeds” aside from the contraband seized for Vang’s underlying offense was forfeited. No calculations of fair market value as provided by article 59.024 were required. *See id.* We conclude that the trial court did not abuse its discretion by failing to consider the requirements of article 59.024. *See id.* We overrule issue two. Having overruled both of Vang’s issues, we affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on April 11, 2017
Opinion Delivered June 22, 2017

Before McKeithen, C.J., Kreger and Horton, JJ.