

ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

STATE OF OKLAHOMA, *ex rel.*)
DAVID PRATER, DISTRICT)
ATTORNEY FOR THE SEVENTH)
PROSECUTORIAL DISTRICT,)

Plaintiff/Appellee,)

vs.)

ONE HUNDRED SIXTY-NINE)
THOUSAND, SIXTY DOLLARS)
AND NO/100 (\$169,060.00),)

Defendant,)

CHRISTIAN E. JONES,)

Claimant/Appellant.)

No. 104,716

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE BRYAN C. DIXON, JUDGE

AFFIRMED

David A. Cincotta,
Beverly Palmer,
Oklahoma City, Oklahoma,

For Plaintiff/Appellee,

Jay K. Ramey,
Tulsa, Oklahoma,

For Claimant/Appellant.

Opinion by Kenneth L. Buettner, Presiding Judge:

¶1 Claimant/Appellant Christian E. Jones appeals from the trial court's Journal Entry of Judgment which denied Jones's Motion in Limine/Motion to Suppress Evidence, found that Jones did not have standing to contest forfeiture, or in the alternative, that Plaintiff/Appellee State of Oklahoma (State) had proven the grounds for forfeiture, and ordered the Defendant \$169,060 (cash) forfeited. Jones claims that he was arrested without probable cause, and that therefore the evidence obtained during the search, including Jones's signed disclaimer of ownership of the cash, should have been suppressed as fruits of an illegal arrest. Jones consented to the search of the car during a valid traffic stop, during which time he verbally disclaimed ownership of the cash, and he has failed to proffer evidence of ownership of the cash. We affirm.

¶2 After witnessing Jones make an improper lane change, Officer Kyte stopped Jones on I-44 in Oklahoma City November 10, 2005. Jones consented to a search of the rented car he was driving and the search revealed the cash in the trunk of the car. The State filed its Notice of Seizure and Intended Forfeiture November 14, 2005.

The notice alleged the cash was forfeitable because it was in close proximity to controlled dangerous substances (63 O.S.2001 §5-503(A)(7)); it was furnished or intended to be furnished in exchange for controlled dangerous substances (63 O.S.2001 §5-503(A)(6)); it was intended to be used to facilitate a violation of the Uniform Controlled Dangerous Substances Act (63 O.S.2001 §5-503(A)(6)); or it was acquired during a violation of the Act and there was no likely source for the cash other than the violation of the Act (63 O.S.2001 §5-503(B)).

¶3 The trial court docket sheet indicates the trial court entered default judgment in favor of the State January 11, 2006. Jones filed a Motion to Vacate Default Judgment January 17, 2006, which was granted February 24, 2006. Jones filed his Answer the same day. The State filed its Amended Motion Challenging Lack of Standing March 10, 2006. The State asserted that Jones had disclaimed ownership of the cash both verbally and in writing, and as a result, Jones could not prove he was the owner of the cash and therefore had no standing to contest the forfeiture. The State attached the affidavit of the officer who interviewed Jones and to whom Jones denied ownership of the cash. The State also attached the signed Disclaimer of Ownership of Currency signed by Jones November 10, 2005. The Disclaimer included language that Jones had “been advised and under(stood) that by signing this disclaimer . . . I do not have a right to file an answer or claim for the return of the

currency since it does not belong to me.” The State noted authority that to have standing to challenge a forfeiture, a claimant must show an ownership interest in the seized material. The State moved the trial court to strike Jones’s Answer.

¶4 In response, Jones asserted his intent to appear at trial to assert his ownership of the cash, and he claimed it was premature to decide the issue of standing because discovery was ongoing. Jones argued that the State’s evidence in support of its standing argument should be suppressed based on Jones’s claims that the initial traffic stop, the search of the car, and his arrest and transport to the police station were illegal. Jones additionally sought suppression of the evidence based on his claims that the police failed to advise him of his right to contact a Canadian Consular Officer before questioning, and that he answered some questions and signed the Disclaimer of Ownership before the detective gave the *Miranda* warnings.

¶5 The State responded that there was no basis to suppress the disclaimers. The State asserted the traffic stop was legal, Jones admitted making an improper lane change, Jones consented to the search, and Jones was never placed under arrest. The State further asserted that Jones denied having any money hidden in the car and asserted at the time of the search that if police found any money, it was not his. Finally, the State asserted that because Jones was never placed under arrest, the Vienna Convention-protected right to contact the Canadian Consul was not triggered.

¶6 The trial court entered its minute order July 7, 2006, in which it found Jones did not have a “facially colorable ownership interest in the” cash and lacked standing to challenge the forfeiture. The court ordered Jones’s Answer stricken and dismissed his claim with prejudice. Following Jones’s Motion to Reconsider and the State’s Response, the trial court entered its Order Striking (Jones’s) Answer with Prejudice August 2, 2006.

¶7 Nevertheless, the trial court entered an Order Granting Motion to Reconsider October 12, 2006. The trial court announced its intention to hear and rule on Jones’s Motion in Limine/Motion to Suppress before ruling on standing. Hearing was held October 27, November 1, and November 27, 2006, and the trial court issued its Order Denying (Jones’s) Motion in Limine and Motion to Suppress January 23, 2007. The trial court entered its Journal Entry of Judgment May 14, 2007. The judgment noted the forfeiture was tried May 14, 2007, at which time Jones repeated his objection to the evidence of the facts and merits of the forfeiture case, but Jones stipulated the evidence at trial would be the same as that presented at the hearing on Jones’s Motion in Limine/Motion to Suppress. The trial court overruled Jones’s objection and found that Jones did not have standing in this case and ordered his Answer stricken from the

record.¹ The court alternatively found that the State had met its burden of proof and the court therefore ordered that the cash was forfeited to the State.

¶8 Jones does not challenge the forfeitability of the cash. He asserts only that the trial court erred in denying his request to suppress the disclaimer evidence and in finding that Jones has no standing to challenge forfeiture here. Jones asserts four claims on appeal, but essentially he asserts the evidence related to standing should have been suppressed on two bases. First, Jones claims that while the initial stop was lawful, the detention became illegal when the officer conducted prolonged questioning about matters unrelated to the initial stop without a reasonable, articulable suspicion that a crime was being committed. Second, Jones argues that because he was detained illegally, any evidence or statements obtained during and after the detention should have been suppressed. Third, Jones claims that he was forcibly removed from the scene of the traffic stop to a police station, which he asserts constituted an unlawful arrest without probable cause. Finally, Jones argues

¹ It is unclear whether the State gave Jones notice of the forfeiture, other than by publication. Jones arguably was entitled to notice as a party in interest. 63 O.S.2001 §2-506(B). As a person entitled to notice, Jones was also entitled to file an Answer and contest forfeiture. The oral and written disclaimers are certainly evidence going to Jones's lack of standing, but, by themselves, do not prohibit Jones's receiving notice and appearing to assert an interest in the cash. We therefore conclude the trial court erred in striking Jones's Answer. However, such error was harmless here because Jones was given an opportunity to be heard during the three day hearing on his Motion in Limine/Motion to Suppress, and Jones stipulated that no other evidence would be presented at trial. Jones failed to present any evidence of ownership of the cash.

that any evidence or statements obtained after the illegal arrest should have been suppressed.

¶9 We review the evidence presented in the hearing on Jones’s Motion in Limine/Motion to Suppress. Officer Kyte testified first. Kyte testified he was employed by the Oklahoma City Police Department and was assigned to the Central Oklahoma Metro Interdiction Team (COMIT).² As part of his training, Kyte had learned to identify indicators of criminal behavior such as nervousness, lack of eye contact, sweating on a cool day, or direction of travel. Kyte also was aware that marijuana from British Columbia was “the new hot button item for marijuana usage and to obtain in the United States right now.”

¶10 On November 10, 2005, Kyte was patrolling on I-35, traveling southbound towards the junction with I-44 westbound. Kyte noticed the car driven by Jones make an illegal lane change at the last minute before the junction to get onto I-44 westbound. Kyte identified the municipal ordinance and state statute defining an improper lane change. Kyte testified Jones changed lanes improperly by failing to signal for 100 feet before changing lanes, by crossing a solid white line, and by coming into the westbound lane following too closely behind a car in that lane. Kyte

² Kyte described COMIT as a taskforce of members of the OCPD and the Oklahoma County Sheriff’s Department who work with the D.A. and who patrol the interstate highways in and around Oklahoma City.

testified he pulled behind the vehicle and noticed it was a 2005 Lincoln LS with a Washington license plate. Kyte stopped the vehicle and made contact with Jones. When asked for license, insurance, and registration, Jones presented a Canadian driver's license and a car rental agreement which showed that the car was rented at the Tacoma, Washington airport and was due to have been returned there 11 days earlier. Kyte testified that Jones explained that he had contacted the rental company and extended the rental, but that it was due to be returned on the date of the traffic stop in Oklahoma. Kyte testified that the overdue rental made him suspicious and he asked Jones to step to the rear of the vehicle. Kyte informed Jones of the reason for the stop either while Jones remained in the car or after they had walked to the back of the car, and Jones acknowledged the violation and explained it occurred because he was looking at a map.

¶11 Kyte then asked Jones about why the rental agreement was so far out of date and where Jones was traveling. Jones responded that he was traveling to San Diego to visit a friend and to look at a business opportunity. Kyte wondered why Jones would drive through Oklahoma en route from Seattle to San Diego. Kyte asked Jones where he was coming from and Jones answered Dayton, Ohio. Kyte asked why Jones rented a car in Seattle if he lived in Canada. Kyte testified that Jones's demeanor immediately changed, he began shuffling his feet and looking away from Kyte.

Jones stated he had a fear of flying, so he picked a flight with a short route, from Vancouver to Seattle and then rented a car there. Jones's answer further aroused Kyte's suspicions because the answer did not make sense. Kyte decided to ask a few more questions to confirm or dispel his suspicions. He asked Jones what his current employment was, and Jones changed his answer three times. Jones settled on sales, and Kyte asked him a few questions about that. Kyte determined Jones was trying to think of answers for the questions, which made Kyte more suspicious. Kyte testified the questioning lasted only one to two minutes. Kyte determined Jones was unemployed, and he asked him if he had traveled anywhere else in the U.S. during that visit. Jones listed New York City, Chicago, Newark, Dayton, and maybe one other city. Kyte explained "(a)t that point I was satisfied in my mind that this was definitely not usual mode of traffic (*sic*), not someone that was on legitimate business, that this was somebody involved in some kind of criminal activity."

¶12 Kyte returned the documents to Jones and said "(s)ir, my business with you is finished." Jones started to return to his car, "at which time (Kyte) made a voluntary contact with him and asked his permission to ask him some questions." Jones agreed. Kyte testified he explained to Jones why his travel seemed suspicious, and Jones agreed that it did seem suspicious. Kyte then asked Jones if there was anything illegal in the car and Jones answered no. Kyte asked if there were any large amounts

of cash in the car and Jones answered no. Kyte clarified that he meant anything over \$10,000. Jones answered the only money he had was \$2,000 in his pocket. Jones showed Kyte a rubber-banded bundle of \$100 bills in his pocket. Kyte then asked for Jones's consent to search the vehicle. Jones stated "(y)eah, I guess . . . Yes, go ahead." Kyte stated he did not have his weapon drawn and he did not threaten Jones in any way and he believed Jones's consent was voluntary.

¶13 Kyte then called for assistance to search the car. Two officers arrived. One helped with the search, and one stood to the side with Jones, who was not handcuffed. Kyte opened the trunk and stuck his hand into a pocket on the luggage in the trunk. He immediately discerned a large bundle of money in the pocket. Kyte pulled the bundle out to confirm. Kyte then walked over to Jones and asked if he was sure there was not a large amount of money in the car. Jones replied there was no money in the car and if Kyte found any, it was not Jones's. Kyte gave Jones the opportunity to admit ownership of the money, but Jones continued to say it was not his and he had nothing to do with it. Kyte then told Jones he believed the cash was illegal and that Jones would be placed under investigative detention and transported to the COMIT office for further investigation. Kyte explained the factors at that point which caused him to believe the cash was illicit: "(a) legitimate business traveler does not travel with, . . . \$169,000 rubber-banded, . . . bundled over in multiple increments, so you've

got big bundles of hundreds, twenties, you know, the majority of it in twenties.” Kyte explained that twenty dollar bills are the most common bill used to purchase narcotics. Another factor was Jones’s denial of the money’s presence despite the fact the money was in his luggage with his clothing.

¶14 Kyte placed Jones in the patrol car, but he was not handcuffed. At the COMIT office, investigator Tina Aragon interviewed Jones while Kyte conducted a second search of the car. Kyte found that the cash was in both a sack and in the luggage in the trunk. Kyte also found receipts for hotel stays in British Columbia, Seattle, and San Diego, as well as “travel documents that were indicative of multiple or lengthy flights by Mr. Jones for air travel, . . .” Kyte also testified that a certified drug dog alerted on the cash at the COMIT office. Kyte testified the cash was collected, processed, and seized. He issued a citation to Jones for an improper lane change, and Jones was released to go. Jones had since paid the citation. Kyte testified that based on his training and experience, his opinion was that the cash was illegitimate proceeds derived from or for the sale of narcotics.

¶15 We do not detail the remaining evidence presented at the hearing on Jones’s Motion in Limine/Motion to Suppress. The evidence shows Officer Kyte stopped Jones for a proper reason and asked reasonable questions based on the suspicions created by Jones’s overdue rental car. After the traffic stop ended, Jones agreed to

remain and answer additional questions and during that time he consented to a search of the car. Jones disclaimed ownership of the cash. Jones has failed to come forward to present evidence of ownership of the cash. Jones argued at the hearing that his verbal disclaimer and even the cash should be suppressed because it came during an illegal traffic stop.

¶16 However, Jones does not challenge Officer Kyte’s reason for making the initial traffic stop. Officer Kyte articulated the facts leading him to question Jones about his travel plans—particularly the expired car rental agreement. The questions asked by Officer Kyte in this case were reasonable because Jones was driving in an expired rental car far from his stated beginning point and destination, and Jones became nervous and appeared to be lying in answering Kyte’s questions. An officer may ask a driver about travel plans. The reasonableness of a traffic stop is governed under the principles announced in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). As explained by the Tenth Circuit Court of Appeals in analyzing *Terry*, the short investigative stop here was reasonable:

the reasonableness of a search or seizure depends on “whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” Thus, we assess the reasonableness of a traffic stop based on an observed violation by considering the scope of the officer's actions and balancing the motorist's legitimate

expectation of privacy against the government's law-enforcement-related interests.

For example, when stopped for a traffic violation, a motorist expects “to spend a short period of time answering questions and waiting while the officer checks his license and registration.” At the same time, the government has a strong interest in ensuring that motorists comply with traffic laws. Thus, it is beyond dispute that an officer may ask questions relating to the reason for the stop. Ordinarily, this also includes questions relating to the motorist's travel plans. Travel plans typically are related to the purpose of a traffic stop because the motorist is traveling at the time of the stop. For example, a motorist's travel history and travel plans may help explain, or put into context, why the motorist was weaving (if tired) or speeding (if there was an urgency to the travel).

It is also well established that an officer may ask about the driver's authority to operate the vehicle. Thus, we have repeatedly stated that during a routine traffic stop the officer may ask to see a driver's license and registration and check that they are valid.

* * *

The government's general interest in criminal investigation, without more, is generally insufficient to outweigh the individual interest in ending the detention. Thus, once the motorist has “produced a valid license and proof that he is entitled to operate the car, he must be allowed to proceed on his way, without being subject to further delay by police for additional questioning.” Further delay is justified only if the officer has reasonable suspicion of illegal activity or if the encounter has become consensual.

U.S. v. Holt, 264 F.3d 1215, 1220-1221 (10th Cir. 2001) (citations omitted).³

³ The facts of this case are similar to other cases where further questioning has been found reasonable:

(continued...)

¶17 After asking Jones about his travel plans and noticing Jones seemed nervous and appeared to be making up his answers, Officer Kyte became suspicious and asked a few more questions relating to his concern that a crime was being committed. Officer Kyte then returned Jones's license and told him his business with him was finished. At that point, Jones was free to go and the further contact between Jones and Kyte was based on Jones's voluntary consent. Once the officer has returned the driver's license and informed him the stop is completed, any further consensual contact between the driver and the officer does not implicate the Fourth Amendment.

A law enforcement officer conducting a routine traffic stop may request a driver's license and vehicle registration, run a computer check, and issue a citation. When the driver has produced a valid license and proof of entitlement to operate the car, the driver must be allowed to proceed without further delay for additional questioning. Further questioning is permissible, however, if (1) "during the course of the traffic stop the officer acquires an objectively reasonable and articulable suspicion that the driver is engaged in illegal activity"; or (2) "the driver voluntarily consents to the officer's additional questioning." Under the first set of circumstances, "a Fourth Amendment seizure has taken place, but it is reasonable and consequently

³ (...continued)

A variety of factors may contribute to the formation of an objectively reasonable suspicion of illegal activity. Among those factors that have justified further questioning are having no proof of ownership of the vehicle, having no proof of authority to operate the vehicle, and inconsistent statements about destination. . . . In particular, the inability to offer proof of ownership or authorization to operate the vehicle has figured prominently in many of our cases upholding further questioning.

U.S. v. Hunnicutt, 135 F.3d 1345, 1349 (10th Cir.1998) (citations omitted).

constitutional.” Under the second set of circumstances, “there is no seizure, and hence the Fourth Amendment's strictures are not implicated.”

U.S. v. Elliott, 107 F.3d 810, 813 (10th Cir.1997) (citations omitted). In this case, the evidence does not show the initial detention was unreasonably long based on the suspicions aroused by Jones’s rental documents, answers to questions about his travel plans, and appearance of nervousness. After Jones was free to go, he consented to talk further with Officer Kyte. It was during this voluntary questioning that Jones consented to the search of the car which led to the discovery of forfeitable cash.

¶18 Because the cash was discovered during a search to which Jones gave consent, we find no basis for suppression of the cash and no basis for suppression of the verbal disclaimer. The record shows no other evidence of ownership of the cash. Where the claimant does not come forward at trial with evidence of ownership, the claimant lacks standing to contest the grounds for forfeiture. We agree with the trial court here that Jones lacked standing for this reason. We also find, however, that the State showed, by a preponderance of the evidence, that the cash in this case was forfeitable.

The State's claim to seized money rests on the statutory presumption that subjects to forfeiture “[a]ll moneys, coin and currency found in close proximity to any amount of forfeitable substances.” The proof to be offered must be by a preponderance of the evidence. Once this onus is met the burden shifts to the claimant to rebut the statutory presumption.

The State's evidentiary material - the police officer's affidavit and the police department's laboratory analysis of the seized substances - establishes prima facie the requisite statutory connection that provides support for forfeiture.

State v. One Thousand Two Hundred Sixty-Seven Dollars, 2006 OK 15, ¶¶26-27, 131 P.3d 116 (citations omitted).⁴

¶19 Because we find the initial stop was reasonable and Jones voluntarily consented to further questioning and to the search which produced the cash, we need not reach Jones's additional claims of error. Whether Jones was lawfully under arrest at the time he was taken to the COMIT office or when he signed the disclaimer is not relevant to the fact that the forfeitable cash was discovered during a consensual search and Jones has failed to present any evidence that he owns the cash. Any error in admitting evidence obtained after the cash was discovered was harmless in this civil forfeiture case.

AFFIRMED.

MITCHELL, V.C.J., and BELL, J., concur.

⁴ Rodney Naico, an Oklahoma County Sheriff's Deputy assigned to the COMIT unit testified in this case that a certified drug detection dog alerted on the cash in this case after it was at the COMIT office.