

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

SEP 27 2016

MICHAEL S. RICHIE
CLERK

Case No. 115,084

STATE OF OKLAHOMA, ex rel.)
DEPARTMENT OF PUBLIC SAFETY,)
)
Petitioner/Appellee,)
)
vs.)
)
TWO THOUSAND SEVEN HUNDRED)
EIGHTY-FIVE DOLLARS (\$2,785.00))
IN U.S. CURRENCY,)
)
Respondent,)
)
MARK SKLYARNEKO,)
)
Appellant.)

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE DANA LYNN KUEHN, TRIAL JUDGE

AFFIRMED

Brooke A. Churchman
OKLAHOMA DEPARTMENT OF
PUBLIC SAFETY
Oklahoma City, Oklahoma

For Petitioner/Appellee

Karla Tankut
EDGE LAW FIRM
Tulsa, Oklahoma

For Appellant

OPINION BY KEITH RAPP, JUDGE:

In this seizure and forfeiture action, Mark Sklyarneko (Sklyarneko), as claimant of the Respondent, \$2,785.00, appeals the Order granting the petitioner's, State of Oklahoma ex rel. Oklahoma Department of Public Safety (DPS), motion for summary judgment and denying the Respondent's motion for summary judgment.¹ This appeal proceeds under the provisions of Okla.Sup.Ct.R. 1.36, 12 O.S. Supp. 2015, Ch. 15, app. 1.

BACKGROUND

The parties submitted this case on a stipulated set of facts and briefs.² The parties agreed that the question before the trial court was the interpretation of the statutory phrase "found in close proximity to any amount of forfeitable substances." 63 O.S. Supp. 2015, § 2-503(A)(7).

¹ Order, Record, Tab 23.

² Parties' Agreed Stipulated Facts, Record, Tab 12. Sklyarneko did not offer any evidence on the question of whether the money forfeited had a legal source or that there was no nexus to a violation of the Oklahoma Uniform Controlled Dangerous Substances Act. *See* Stipulated Response to Court's Inquiries informing trial court that no further evidence will be submitted, Record, Tab 22. Thus, under the Record before the trial court, the arrest and search are both unchallenged and lawful and Sklyarneko has waived any challenge to the statute, such as vagueness. *See State ex rel. Edmondson v. Colclazier*, 2002 OK JUD 1, ¶ 14, 106 P.3d 138, 142 ("A vagueness challenge to a state law under the due process clause is overcome by a showing that a reasonable person would know that his or her conduct is at risk.")

The DPS summary judgment motion lists many additional "facts" providing information about the circumstances of the stop and arrest and search. Sklyarneko's response and his motion for summary judgment did not refute these "facts." Nevertheless, the trial court's Order shows that the trial court based its judgment on the stipulated facts and applicable case law relative to the specific issues submitted by the parties.

The agreed facts show that Sklyarneko was stopped for speeding by a highway patrol trooper. The trooper found a small bag of marijuana in Sklyarneko's left pocket, rolling papers in the right pocket, and a hand rolled cigarette in the ashtray suspected to be marijuana. The trooper arrested Sklyarneko for possession of marijuana. The trooper confiscated \$2,785.00, located in a shaving bag in the backseat. The shaving bag did not contain any marijuana or drug paraphernalia.

The trial court reviewed the burden of proof requirements of the statute and the rebuttable presumption flowing from the "close proximity" finding. The trial court concluded that the State proved "close proximity" and thus the presumption arises that the money is associated with the distribution or manufacture of the drug. In light of the fact that no evidence was offered to rebut the presumption, the trial court concluded that the money is subject to forfeiture and entered an order accordingly.

This appeal followed.

STANDARD OF REVIEW

By stipulation, there are no disputed facts. The trial court's ruling was on a question of law. The appellate court has the plenary, independent, and nondeferential authority to reexamine a trial court's legal rulings. *Neil Acquisition, L.L.C. v. Wingrod Investment Corp.*, 1996 OK 125, 932 P.2d 1100 n.1.

ANALYSIS AND REVIEW

Here, the sole question is whether the physical location of the money in the shaving bag in the back seat is a location in “close proximity” to the marijuana. Thus, it is the “close proximity” to the marijuana and not whether the marijuana was possessed in conjunction with manufacturing, importation or distribution of the substance because the latter is a given under the evidence as stipulated or foregone.

Words in statutes are given their ordinary meaning absent a specific definition. 25 O.S.2011, § 1. “Proximity” is defined as “the quality or state of being near or very near.” Webster’s Third New International Dictionary, p. 1828 (Merriam Webster, Inc. 1986).³

This Court finds that the trial court’s “close proximity” conclusion under the facts is not error. The Court in *State v. Eighteen Thousand Six Hundred Sixty-Three Dollars and Twenty-Five Cents (\$18,663.25) Cash*, 2000 OK CIV APP 102, ¶ 8, 11 P.3d 1253, 1255, concluded, “In reviewing the trial court’s order of forfeiture on this ground, we find that the trial court could reasonably conclude that the money in the console compartment between the pickup seats was ‘in close proximity’ to the duffle bag containing the one-tenth of a gram of marijuana that was behind the seat.”

³ The addition of “close” would not appear to add anything to the meaning.

Other jurisdictions allow forfeiture in cases where the cash or property to be forfeited is near the illegal drugs. The Arkansas Supreme Court explained that “close proximity” means “very near” and is to be determined on a case-by-case basis. *Limon v. State*, 685 S.W.2d 515, 516 (Ark. 1985). In *Jones v. State ex rel. Mississippi Dep’t of Public Safety*, 607 So. 2d 23 (Miss. 1991), \$149,700, was found in a suitcase in the claimant’s vehicle following a traffic stop. The arresting officer testified that he found a marijuana cigarette “just sitting” on the right front seat, that there was marijuana residue “on the carpet, all over in the trunk under the hatchback,” and on the piece of luggage in which the cash was found; and the claimant had neither denied that the money was in close proximity to a controlled substance nor explained why it was in close proximity. *Jones v. State ex rel. Mississippi Dep’t of Public Safety*, 607 So. 2d 23, 25 (Miss. 1991).⁴

⁴ A trial court’s determination that the money found in one vehicle was “in close proximity” to the marijuana found in a second vehicle was affirmed in *\$15,956 in U.S. Currency v. State*, 233 S.W.3d 598 (Ark. 2006). The Court sustained the forfeiture of money in a safe in a bedroom where drugs were found in *People v. Strong*, 502 N.E.2d 744 (Ill. App. Ct. 1986). The Court upheld forfeiture of \$4,010 that was found in a briefcase on the back seat of the extended cab of a pickup truck, and approximately 59 grams of cocaine, as well as controlled substances in pill form, were found in a bait box in the back of the truck in *State v. Tucker*, 242 Ga. Ct. App. 3, 528 S.E.2d 523 (2000). Money in claimant’s pocket was in “close proximity” to marijuana plants growing in claimant’s field and to items of personal property associated with the illegal drugs. *State v. West*, 775 S.E.2d 153 (Ga. Ct. App. 2015) (seized vehicle was parked outside front door of residence where drugs were found). In *People ex rel. Daley v. Nine Thousand Four Hundred and Three Dollars, \$9,403 in U.S.C.*, 476 N.E.2d 80 (Ill. App. Ct. 1985), the court held that the fact that money sought to be forfeited that was found in a separate room from the forfeitable substance did not preclude a finding of proximity since the funds were found in a room directly adjacent to that where the heroin was found and in the same room as the scale and other drug paraphernalia.

SUMMARY AND CONCLUSION

The parties' stipulated facts show that Sklyarneko was stopped for speeding by a highway patrol trooper. The trooper found a small bag of marijuana in Sklyarneko's left pocket, rolling papers in the right pocket, and a hand rolled cigarette in the ashtray suspected to be marijuana. The trooper arrested Sklyarneko for possession of marijuana. The trooper confiscated \$2,785.00, located in a shaving bag in the backseat. The shaving bag did not contain any marijuana or drug paraphernalia. The case was submitted to the trial court on these facts to determine only whether the money was in "close proximity" to the marijuana.

"Close proximity" means "near to" so the trial court's ruling that the money was in "close proximity" was not error as a matter of law or fact. The judgment of forfeiture is affirmed.

AFFIRMED.

THORNBRUGH, P.J., and BARNES, J., concur.

September 27, 2016