No. 126927

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS ex rel. ANITA ALVAREZ,	)	Appeal from the Appellate Court of Illinois, First District, No. 1-19-0922
Plaintiff-Appellee,	)	
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois, No. 15 COFO 3667
$59,914.00 UNITED STATES CURRENCY, et al.,	)	
Defendants-Appellants.	)	The Honorable Nichole C. Patton, Judge Presiding.

BRIEF AND SUPPLEMENTAL APPENDIX
OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

The Circuit Court of Cook County entered an *in rem* judgment of forfeiture against United States currency totaling $223,743. *See* 725 ILCS 150/9. More than two years later, Appellant Ameen Salaam filed a petition for relief from judgment under 735 ILCS 5/2-1401, alleging that the judgment was void because the State failed to provide him with notice of the impending forfeiture. The circuit court denied the petition, and the appellate court affirmed its judgment. A question is raised on the pleadings: whether Salaam's petition adequately alleged an entitlement to relief from judgment.

ISSUES PRESENTED FOR REVIEW

1. Whether Salaam's petition for relief from judgment, filed more than two years after entry of judgment, is untimely.

2. Whether the circuit court correctly declined to vacate the judgment of forfeiture because (1) Salaam failed to exercise due diligence either to file a claim to the currency or to file a § 2-1401 petition; and (2) Salaam has no meritorious claim based on lack of notice.

3. Whether, if notice were inadequate, the correct remedy is to remand this case to the circuit court for Salaam to rebut the legal presumption that the currency is subject to forfeiture.

JURISDICTION

Appellate jurisdiction lies under Supreme Court Rule 315. On March 24, 2021, this Court granted Salaam's petition for leave to appeal (PLA).

RELEVANT STATUTES

Pertinent provisions of the Drug Asset Forfeiture Procedure Act, 725 ILCS 150/1, *et seq.*, are reproduced in the supplemental appendix to this brief.

STATEMENT OF FACTS

A. The Property Seizure and Forfeiture Proceeding

On September 15, 2015, Chicago police officers pulled over a white utility van driven by Allen Tyler and arrested him. C23, C32.[1] Officers detected an odor of cannabis emanating from a large soft-sided bag, which was pulled closed but unzipped, on the passenger seat. C23, C33. Inside the bag, officers found plastic bags containing 120 grams of cannabis and 84 grams of cocaine, as well as five bundles of United States currency in the amounts of $59,914.00; $53,140.00; $67,109.00; $7,000.00; and $36,580.00. C33. A trained police dog detected a residual odor of narcotics on a portion of the currency. *Id*. Police seized the van, bag, drugs, and currency.

According to police reports, at the time of the arrest, Muhammad Khalid approached police, informed them that he was Tyler's employer, and asked why Tyler was being arrested. C26. Tyler provided a home address of 9135 South Blackstone Avenue in Chicago. C22. Records of the Secretary of

[1] "C_," "Supp. C_," "R_," and "SA_" denote the common law record, supplemental common law record, report of proceedings, and supplemental appendix to this brief, respectively. Appellant has chosen to rest on his PLA rather than file an opening brief. *See* Ill. S. Ct. R. 341(k). "Pet." and "A_" refer to the PLA and its appendix.

State reflect that the van was registered to "Ameen Salaam dba Infinite Heating, Cooling [and Refrigeration]" at 1920 North Springfield Avenue in Chicago. C44.

On October 16, 2015, the State mailed a notice of a pending forfeiture concerning the van to Tyler at 1920 North Springfield Avenue. Supp. C4. Because the van was valued at $750, *see id.*, the forfeiture was handled administratively through the State's Attorney's office, *see* 725 ILCS 150/6 (providing for non-judicial forfeiture of property valued at less than $150,000).

On November 12, 2015, the State filed a complaint for forfeiture against the $223,743 United States currency in circuit court. C32-35. Under 725 ILCS 150/7, any currency "found in close proximity to forfeitable substances" is presumed forfeitable as monies intended for the purchase of controlled substances or proceeds of the sale of controlled substances. C33-34. The State attempted to serve notice of the complaint on Tyler at 9135 South Blackstone Avenue via certified mail. C55. The mail was returned as undeliverable. *Id.* The State then published notice of the impending forfeiture in the Chicago Daily Law Bulletin, directed to "Allen Tyler and any other unknown owners." C55, C94.

No party filed a claim to the currency. The circuit court entered a judgment of forfeiture on January 20, 2016. C12.

B. The State and Federal Prosecutions

Meanwhile, in connection with the September 2015 arrest and seizure, Tyler was charged with the manufacture and delivery of a controlled substance in circuit court. C53.

Tyler was released on bond and, on June 1, 2016, federal agents arrested him and Salaam for selling cocaine to an informant. C67-71. The men were charged jointly in federal court with possessing more than five kilograms of cocaine with intent to distribute. C54, C61-72.

In June 2017, Tyler and Salaam pleaded guilty to distributing cocaine. C81, C89. Salaam was sentenced to 60 months in the penitentiary, and Tyler was sentenced to 50 months. C82, C92. Shortly after judgment was entered in Tyler's federal prosecution, C82, on January 30, 2018, the State dismissed Tyler's pending state charges, C55.

C. The Petition for Relief from Judgment

On November 2, 2018, Salaam filed a "motion to vacate" the judgment of forfeiture as "void" and to dismiss the State's complaint for forfeiture. C13-20. The motion alleged that Salaam, as registered owner of the van, was entitled to notice of the impending forfeiture of the currency recovered from the bag on its passenger seat. C14, C44. The State asserted, in response, that Salaam's motion was untimely under 735 ILCS 5/2-1401(c) and that his claim lacked merit. C52-57 (motion to strike petition for lack of jurisdiction), C107-23 (response to § 2-1401 petition). The State noted that Salaam,

through counsel, had inquired about the forfeited funds in June or July of 2018, C55, yet Salaam had not filed his petition until November 2018.

The circuit court did not address the timeliness of the petition but denied it as meritless. SA15. The court held that the forfeiture judgment "was entered with proper subject matter jurisdiction and *in rem* jurisdiction over the drugs and money." *Id.* The court concluded that Salaam was not entitled to receive notice under the Act. *Id.*, R25. The court noted that "the drugs and the monies were found in the proximity of . . . Tyler" and Tyler was "given notice." R25.

The court also noted that if the money belonged to Salaam rather than Tyler, Salaam had actual notice that Tyler had been arrested in Salaam's van yet made no effort to track down more than $200,000 in United States currency. R26-27. It was "perplexing" that "this arrest was in September of 2015" and "here we are in 2019 and Mr. Salaam is now just inquiring about where his money is." *Id.*

D. The Appeal

The appellate court affirmed the circuit court's judgment denying Salaam's § 2-1401 petition. *See People ex rel. Alvarez v. $59,914 U.S. Currency*, 2020 IL App (1st) 190922-U, A9 ¶ 25. It agreed that the State properly determined that the currency belonged to Tyler and provided notice to him. The court noted that "the police recovered the illegal narcotics and $223,743 from a bag 'pulled closed' on the passenger seat of the vehicle within

reach and in close proximity to Tyler, who exercised exclusive dominion and control over the bag." A6 ¶ 17. It noted that "Salaam was not in the vehicle," and the bag "was not hidden or locked in any compartment of the 'work van.'" *Id.* "Under the facts of this case, the State complied with the Act's notice requirement when it served notice upon Tyler as 'owner or interest holder' of the $223,743." A7 ¶ 18 (quoting 725 ILCS 150/4). The court further observed that Salaam, even if he were entitled to notice, "otherwise had actual notice of the forfeiture proceedings" through his knowledge of the seizure and association with Tyler. A7 ¶¶ 19-20.

A dissenting justice would have granted Salaam's petition and dismissed the forfeiture complaint. A9-15 ¶¶ 27-47 (Hyman, J., dissenting). The dissent reasoned that Salaam "might have a legally recognized interest as the owner of the van in which the bag of money was found" and was therefore entitled to notice, A13 ¶ 38, and that the failure to send mailed notice to Salaam "voids the State's forfeiture judgment," A15 ¶ 46.

STANDARD OF REVIEW

This Court reviews *de novo* whether the trial court properly denied Salaam's § 2-1401 petition based on the pleadings. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

ARGUMENT

I. Salaam's Petition for Relief from Judgment, Filed More than Two Years After Entry of the Judgment of Forfeiture, Is Untimely.

This Court should affirm the appellate court's judgment because Salaam's petition for relief from judgment is untimely. The lower courts did not address the issue, but this Court "may affirm on any basis supported by the record," *People v. Durr*, 215 Ill. 2d 283, 296 (2005), and the State preserved an objection that the petition was untimely filed in the circuit court, C56; *see People v. Pinkonsly*, 207 Ill. 2d 555, 562 (2003) (party opposing § 2-1401 petition must "raise the limitations period as a defense").

Salaam captioned his filing a motion to vacate, and "when a motion to vacate a judgment is brought more than 30 days after the entry of the original judgment, the motion must be construed as a petition for relief from a final judgment under section 2-1401." *N. Ill. Gas Co. v. Midwest Mole, Inc.*, 199 Ill. App. 3d 109, 115 (2d Dist. 1990) (citing *Schuman v. Dep't of Revenue*, 38 Ill. 2d 571, 573 (1967)). That is so even where a motion seeks to vacate a judgment as "void." *Sarkissian v. Chi. Bd. of Educ.*, 201 Ill. 2d 95, 105 (2002) ("petitions seeking relief from void judgments are section 2-1401 petitions"); *In re Custody of Ayala*, 344 Ill. App. 3d 574, 582 (1st Dist. 2003) ("A court's determination of a motion to vacate on voidness grounds, regardless of whether that motion is titled a section 2-1401 petition, is considered, in substance, a determination of a section 2-1401 petition.").

Generally, a party must file a petition for relief from judgment "not later than 2 years after the entry of . . . the judgment" being challenged. 735 ILCS 5/2-1401(c); *People v. Caballero*, 179 Ill. 2d 205, 210 (1997) ("where a section 2-1401 petition is filed beyond two years after the judgment was entered, it cannot be considered"). This "reasonable limitation period [is] designed to preserve the public's interest in the finality of judgments." *People v. Madej*, 193 Ill. 2d 395, 404 (2000).

Salaam filed his § 2-1401 petition well beyond the two-year time limit. And he may not invoke the principle that a "void" judgment "'may be attacked either directly or indirectly at any time.'" *People v. Castleberry*, 2015 IL 116916, ¶ 11 (quoting *People v. Davis*, 156 Ill. 2d 149, 155 (1993)); *see also Sarkissian*, 201 Ill. 2d at 104 (§ 2-1401 "[p]etitions brought on voidness grounds need not be brought within the two-year time limitation"). "[A] voidness challenge to a final judgment under section 2-1401 that is exempt from the ordinary procedural bars is available only for specific types of claims": those "alleg[ing] that the judgment is void because the court that entered the final judgment lacked personal or subject matter jurisdiction." *People v. Thompson*, 2015 IL 118151, ¶ 31.

Absent a jurisdictional defect, the exception to the limitations period for challenges to void judgments is inapplicable. This Court has observed that "[v]oid judgments . . . occupy a unique place in our legal system: to say that a judgment is void or, in other words, that it was entered without

jurisdiction, is to say that the judgment may be challenged in perpetuity." *Castleberry*, 2015 IL 116916, ¶ 15. An expansive definition of voidness "'would permit an unwarranted and dangerous expansion of the situations where a final judgment may be set aside on a collateral attack,'" *id.* (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 341 (2002)), and "only the most fundamental defects warrant declaring a judgment void," *People v. Price*, 2016 IL 118613, ¶ 30. Accordingly, a judgment is not "void" if it was "'entered erroneously by a court having jurisdiction," *Castleberry*, 2015 IL 116916, ¶ 11 (quoting *Davis*, 156 Ill. 2d at 155), and claims alleging that a judgment is merely "voidable" are subject to the two-year time limit.

The forfeiture judgment was not void. First, the circuit court clearly had subject matter jurisdiction. SA15. "Subject matter jurisdiction refers to a court's power to hear and determine cases of the general class to which the proceeding in question belongs," *Castleberry*, 2015 IL 116916, ¶ 12 (internal quotations omitted), and the Illinois Constitution "grant[s] jurisdiction over 'all justiciable matters,'" *id.* ¶ 18 (quoting Ill. Const. 1970 art. VI, § 9). Although Salaam asserts that the State failed to provide proper notice to him under the forfeiture statute, "the failure to comply with a statutory requirement or prerequisite does not negate the circuit court's subject matter jurisdiction." *Id.* ¶ 15.

Second, the circuit court correctly held that it possessed "*in rem* jurisdiction over the drugs and money." SA15. Because this action was filed against currency *in rem*, Salaam cannot cite a defect in personal jurisdiction over him as a basis for deeming the judgment void. On the contrary, "[i]t is black letter law that the alternative to personal jurisdiction is *in rem* jurisdiction." *Smith v. Hammel*, 2014 IL App (5th) 130227, ¶ 14; *see People v. Four Thousand and Eight Hundred Fifty Dollars ($4,850) U.S. Currency*, 2011 IL App (4th) 100528, ¶ 14 (rejecting State's argument that court lacked personal jurisdiction over property claimant because "*in rem* jurisdiction is an alternative to personal jurisdiction"). Generally, "[p]ersonal jurisdiction refers to the court's power to bring a person into its adjudicative process," *Castleberry*, 2015 IL 116916, ¶ 12 (internal quotations omitted), but a court may take an action against property that affects the interests of third parties without acquiring personal jurisdiction over them, *In re Comm'r of Banks & Real Estate*, 327 Ill. App. 3d 441, 463 (1st Dist. 2001) ("Personal jurisdiction over a party is not required where the court is given jurisdiction over the property against which a judgment is sought to be enforced.").

And a "'proceeding in rem is one which is taken directly against property,'" *ABN AMRO Mortg. Grp., Inc. v. McGahan*, 237 Ill. 2d 526, 532 (2010) (quoting *Austin v. Royal League*, 316 Ill. 188, 193 (1925)), meaning that the property constitutes "'the defendant, susceptible of being tried and condemned, while the owner merely gets notice, along with the rest of the

world, and may appear for his property or not,'" *id.* at 533 (quoting R. Waples, *Treatise on Proceedings In Rem* § 1, at 2 (1882)). While the forfeiture statute and due process require notice to property owners, and an owner can challenge a forfeiture based on the failure to provide that notice, *see infra* pp. 18-26, such statutory notice is not required for the court to exercise *in rem* jurisdiction. Accordingly, the dissenting justice below was wrong to think that "[t]he State's failure to give [Salaam] actual notice deprived the trial court of jurisdiction over an interest holder, rendering the judgment void," and the case cited for that principle, which dealt with personal jurisdiction in a case involving private parties, was inapposite. A13 ¶ 39 (Hyman, J., dissenting) (citing *White v. Ratcliffe*, 285 Ill. App. 3d 758, 763-64 (2d Dist. 1996)).

To be sure, before *Castleberry*, courts used language referring to jurisdiction and voidness in discussing judgments of forfeiture entered without proper notice. *See People ex rel. Devine v. $30,700.00 U.S. Currency*, 199 Ill. 2d 142, 148 (2002) (noting "[t]he parties agree that absent proper notice of the forfeiture proceedings, the circuit court lacked jurisdiction and the power to order forfeiture of the currency"); *People v. Smith*, 275 Ill. App. 3d 844, 846 (2d Dist. 1995) (holding that "the purported 'forfeiture' was void for lack of due process notice to defendant"). However, *Castleberry* clearly delineated the narrow categories of "void" judgments and even abolished the "void sentence rule" long employed to review judgments imposing unlawful

sentences as inconsistent with a jurisdictional view of voidness. 2015 IL 116916, ¶¶ 11-19; *see generally People v. Williams*, 2017 IL App (1st) 123357-B, ¶ 21 (noting that *Castleberry* "sharply called . . . into question" cases referring to non-compliance with statutory prerequisites as jurisdictional defects). Under *Castleberry*'s logic, then, lack of notice to an interested party may be error that renders a forfeiture judgment "voidable," but it does not render the judgment void.

And because a judgment of forfeiture entered without proper notice to an interested third party is not "void," a § 2-1401 petition raising such a claim is subject to the two-year limitations period. *Price*, 2016 IL 118613, ¶ 35 (affirming dismissal of § 2-1401 petition challenging voidable judgment because such a petition cannot "escape the two-year statutory time bar"). Salaam did not file his petition within the two-year period set by statute, and his petition was properly denied. *Caballero*, 179 Ill. 2d at 210.

II. The Circuit Court Correctly Declined to Vacate the Forfeiture Judgment Because Salaam Failed to Exercise Diligence and Has No Meritorious Claim for Relief.

Untimeliness aside, the circuit court correctly denied Salaam's § 2-1401 petition for lack of merit. "Under section 2-1401, the petitioner bears the burden of establishing his or her right to relief." *U.S. Bank, Nat'l Ass'n as Tr. for Credit Suisse First Bos. v. Laskowski*, 2019 IL App (1st) 181627, ¶ 15. A § 2-1401 petitioner must both show "due diligence" and set forth "a meritorious defense or claim." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221

(1986). A petition challenging a "void" judgment is not subject to these requirements. *See Sarkissian*, 201 Ill. 2d at 104; *see also Rockford Fin. Sys., Inc. v. Borgetti*, 403 Ill. App. 3d 321, 326-27 (2d Dist. 2010) (explaining that these requirements do not apply because "voidness, based on a question of law regarding jurisdiction, has nothing to do with equitable principles"). However, the judgment here was not void, *see supra* pp. 9-12, and Salaam therefore needed to satisfy the usual criteria for relief from judgment. *In re Estate of Walker*, 2014 IL App (1st) 132565, ¶ 27 (where claim that judgment was "void" lacked merit, petitioner needed to show meritorious claim and diligence).

The circuit court correctly denied the petition because Salaam (1) failed to act diligently; and (2) has no meritorious claim that the State failed to provide adequate notice.

Because the circuit court denied the petition on the pleadings, a *de novo* standard of review applies. *Vincent*, 226 Ill. 2d at 18. Salaam asserts that the circuit court "made factual findings which were unsupported by the record," Pet. 15, but the circuit court did not make findings. In any event, if Salaam were correct that this Court is reviewing a fact-dependent decision on a § 2-1401 petition, a more deferential, abuse-of-discretion standard of review would apply. *Warren Cty. Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶¶ 50-53. Salaam cannot prevail under a *de novo* standard, much less demonstrate that the circuit court abused its discretion.

A. Salaam failed to act diligently either to assert a claim to the currency or to file a § 2-1401 petition.

Salaam's lack of diligence precludes relief. A § 2-1401 petitioner "must affirmatively set forth specific factual allegations supporting . . . due diligence in presenting [the] defense or claim to the circuit court in the original action" as well as "due diligence in filing the section 2-1401 petition for relief." *Airoom,* 114 Ill. 2d at 220-21. "[D]ue diligence is judged by the reasonableness of the petitioner's conduct under all of the circumstances." *Paul v. Gerald Adelman & Assoc., Ltd.*, 223 Ill. 2d 85, 99-100 (2006).

Salaam has never even argued that he was diligent. Instead, his case rests on the mistaken assumption that the State's failure to mail notice to his address entitles him to relief. But a § 2-1401 petitioner generally must show diligence to prevail, and, specifically, a party who possesses actual notice of a forfeiture must diligently assert his claim. *See People ex rel. Kelly v. Sixteen Thousand Five Hundred Dollars ($16,500) U.S. Currency*, 2014 IL App (5th) 130075, ¶¶ 27-31 (claimants who failed to exercise diligence following actual notice of forfeiture could not vacate declaration of forfeiture based on State's failure to provide statutorily required notice).

Salaam failed to allege facts that would "support the grant of relief under section 2-1401" on the element of diligence. *Airoom*, 114 Ill. 2d at 223. More than that, the record clearly demonstrates that Salaam did not act diligently to investigate or to act on information that was known to him.

At the threshold, Salaam could have filed a timely claim to the currency before the forfeiture judgment was even entered. Thus, he has failed to show that "he acted reasonably, and not negligently, when he failed to initially resist the judgment." *Id.* at 222. A reasonably diligent person owning $223,743 in currency would keep tabs on its whereabouts; accordingly, if the money was Salaam's, he should have known that Tyler possessed it. In addition, Salaam should have immediately received notice that Tyler was arrested in September 2015 and that Salaam's van (and its contents) had been seized by the police as part of a drug prosecution, given that Tyler's employer, Khalid, witnessed the arrest. C26. Moreover, in October 2015, the State provided mailed notice to Salaam's address that it was seeking to forfeit the van. Supp. C4. Salaam also should have known that the *contents* of that van were potentially subject to forfeiture. For these reasons, had Salaam diligently inquired about the cash, he could have filed a claim before January 2016.

But even if Salaam lacked actual notice of the forfeiture proceeding in time to assert his claim (and could not have diligently learned of it), that immediate lack of notice would excuse only his failure to file a timely claim before entry of judgment. It would not excuse his failure to file a § 2-1401 petition seeking to vacate the judgment for more than 30 months, a delay that was plainly unreasonable. After the van and currency were seized, Salaam continued to closely associate with Tyler, and both men were arrested

for distributing cocaine together within six months of the entry of judgment. C54, C67-71. "[I]t stands to reason that Tyler, if not Khalid, would have notified Salaam that $223,743 had been seized from his 'work van'" and was at risk of being forfeited during those months. A7 ¶ 20. And Salaam continued to have a duty to track down money that allegedly belonged to him and that he knew was in the custody of law enforcement.

To the extent Salaam suggests that he could not, even knowing about the seizure, discover the forfeiture proceeding, his claim must fail. First, he obtained notice that caused him to file a § 2-1401 petition, belying any claim that doing so was impossible. And Salaam's question as to "[h]ow would the case ever be found?" on a court docket misses the mark. Pet. 14 n.5. Salaam did not need to "scour the circuit court's records to see if a case was filed," Pet. 14; he needed only to contact the police who seized his property or the prosecutor on Tyler's case. Salaam should have been aware of the date and location of Tyler's arrest and the seizure of his van based on information received from Khalid, Tyler, or the State's notice that it was seeking to forfeit his van.

Indeed, the record demonstrates that Salaam asked the State's Attorney's office about the currency in the summer of 2018 and learned about the forfeiture months before he filed his § 2-1401 petition in November 2018. C55. That delay alone dooms his petition. *See Cavalry Portfolio Servs. v. Rocha*, 2012 IL App (1st) 111690, ¶ 17 ("Section 2-1401 of the Code requires

the petitioner to show due diligence in presenting his meritorious defense to the trial court in the original action and due diligence in filing a section 2-1401 petition for relief"; latter requirement was met where party filed petition within *three days* of learning of judgment).

Instead of proceeding promptly, Salaam waited to assert an ownership interest until he could no longer be prosecuted for possessing the controlled substances in the bag. That period expired on September 15, 2018, about six weeks before Salaam filed his § 2-1401 petition. *See* A7 ¶ 20 n.6 (citing 720 ILCS 5/3-5(b) (2014)). Parties who traffic in controlled substances should not be permitted to wait until their misconduct is no longer subject to prosecution before seeking to recover ill-gotten gains via belated claims. Rather, they must exercise reasonable diligence to obtain equitable relief from courts. *See Airoom*, 114 Ill. 2d at 225 ("One of the guiding principles[ ] . . . in the administration of section 2-1401 relief is that the petition invokes the equitable powers of the circuit court[.]").

In short, Salaam failed to exercise diligence at any point: to ascertain the whereabouts of the cash seized from Tyler, investigate whether it was the subject of forfeiture proceedings, file a claim to the currency, or file a § 2-1401 petition after the State's Attorney informed him of the forfeiture judgment. Therefore, the circuit court correctly denied his petition, and this Court should affirm its judgment.

B. There is no merit to Salaam's claim because the State provided the requisite notice to the presumed owner of the currency.

This Court should also affirm because Salaam has no meritorious claim that the forfeiture judgment should be vacated for lack of notice. *See Gerald Adelman & Assoc.*, 223 Ill. 2d at 107 (court evaluating "merit" of § 2-1401 petition must determine whether petitioner set forth valid claim that judgment should be vacated). As the circuit and appellate courts held, the State provided the notice required by both the forfeiture statute and due process.

1. The State complied with the statute.

In construing the State's notice obligations under the Drug Asset Forfeiture Procedure Act, this Court should "give effect to legislative intent, which begins with the plain language of the statute." *$30,700.00 U.S. Currency*, 199 Ill. 2d at 150. "The Act is a remedial civil sanction enacted for the express purpose of deterring the rising incidence of the abuse and trafficking of [controlled] substances," which it accomplishes by incentivizing "owners to take care in managing their property" and "not permit that property to be used for illegal purposes." *Id.* at 149 (internal quotations omitted). The forfeiture provisions should "be liberally construed so as to effect their remedial purpose," 725 ILCS 150/13, and the notice requirement should not present "an obstacle to the enforcement of the Act," *$30,700.00 U.S. Currency*, 199 Ill. 2d at 154.

The Act provides that a "complaint for forfeiture or a notice of pending forfeiture shall be served upon the property owner or interest holder," 725 ILCS 150/4, including "the person from whom the property was seized and all persons known or reasonably believed by the State to claim an interest in the property," 725 ILCS 150/9(A-10).[2] Here, the State determined that Tyler was the "property owner or interest holder" of the bag located on the passenger seat, as well as the drugs and currency it contained. By providing notice to Tyler, the State complied with the statute.

Contrary to Salaam's assertion, the State has never maintained that "the mere fact of a seizure is all the notice required," nor did the courts below conclude that "the State has no notice obligation." Pet. 13. The State had an obligation to provide notice to the property owner: Tyler. Nor did the appellate court hold that Tyler, the relevant party, was not entitled to notice of the forfeiture proceeding because he was aware of the seizure. *See id.* (claiming that appellate court "introduced . . . the idea that knowledge property was seized fulfills the actual notice obligations due process and the forfeiture statute require" such that "the mere fact of a seizure is all the

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[2] Salaam quotes the federal rule, which is phrased differently and provides that "[t]he government must send notice . . . to any person who reasonably appears to be a potential claimant on the facts known to the government." Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, Federal Rules of Civil Procedure (quoted at Pet. 12). However, the state statute governs here. *See* 725 ILCS 150/2 ("the forfeiture provisions of this Act [should] be construed in light of the federal forfeiture provisions" unless "the provisions of this Act expressly differ therefrom").

notice required"). Rather, the State provided the requisite notice to Tyler by mailing notice of the complaint to the address he provided and by publishing notice, C55, C94, and the appellate court mentioned the seizure only in noting Salaam's actual notice of the proceeding, *see* A7 ¶¶ 19-20.

The statute does not require, as Salaam contends, that the State provide notice to any party who could conceivably have an interest in the property to be forfeited. Pet. 11 ("[n]otice is required to whomever can make a credible assertion of an interest and provide some explanation for it"). Indeed, in making this assertion, Salaam conflates his standing to file a claim with an entitlement to notice. The statute allows that "[a] person not named in the forfeiture complaint who claims to have an interest in the property may petition to intervene as a claimant under [735 ILCS 5/2-408]," 725 ILCS 150/9(C), and the State does not dispute that Salaam has standing to assert a claim, *see People v. $280,020 U.S. Currency*, 2013 IL App (1st) 111820, ¶ 19 ("where a claimant asserts a possessory interest and provides some explanation of it . . . , he will have standing") (internal quotations omitted). But the General Assembly clearly contemplated the existence of parties with an ownership interest who are *not* entitled to notice.

By its terms, the statute does not require the State to identify every conceivable potential claimant, but rather to ascertain "the property owner or interest holder." 725 ILCS 150/4. The State identified Tyler as the owner because the bag was in his possession at the time of his arrest. The Act, to

that extent, "award[s] the State the discretion to decide who to notify." Pet. 10. It is express that "the complaint [must] be served upon . . . all persons known or reasonably believed *by the State* to claim an interest in the property." 725 ILCS 150/9(A-10) (emphasis added).

Salaam claims that interpreting the statute to confer discretion "provides an incentive to the government to be as narrow as possible," Pet. 10, but the statute requires the State to act reasonably. *See* 725 ILCS 150/9(A-10) (State must serve "all persons known or *reasonably* believed . . . to claim an interest in the property" (emphasis added)). The State could not avoid its notice obligation by serving a forfeiture complaint on a person with no reasonable connection to the property. Nor could the State avoid providing notice to someone that the State had identified an owner. Had the State charged Salaam with possessing the controlled substances, establishing him as a potential owner of the bag, it would have been required to provide him with notice of the forfeiture. But the State charged only Tyler.

And the State could reasonably deem the currency to be Tyler's, and only Tyler's, given that it was in an unzipped bag on the passenger seat next to him and Tyler was alone in the van. Salaam maintains that "Tyler would never have been convicted" of possession because "[t]here was no evidence that he had knowledge of the narcotics." Pet. 16. But the State did not need to prove Tyler's guilt of any crime in this forfeiture proceeding, *see* 725 ILCS

150/9(G) (State's burden is preponderance of the evidence), nor did the State need to prove (to any standard) that the currency was owned by Tyler.

Salaam argues that it was unreasonable for the State to ignore his interest in the bag as owner of the van, but his claim fails. At the outset, the State does not ask for, and the appellate court did not adopt, "a presumption that a driver who is arrested in control of another's vehicle constructively possesses [any] property found within the vehicle and, thus, is the only one who must have notice." Pet. 2. Rather, under the circumstances here, the State could reasonably infer that the property belonged to the driver rather than the business that owned the van. As the appellate court observed, "the police recovered the illegal narcotics and $223,743 from a bag 'pulled closed' on the passenger seat of a vehicle within reach and in close proximity to Tyler." A6 ¶ 17.

Were circumstances otherwise — were the property in the glove box, for example, or were Salaam present in the van — the State might reasonably conclude otherwise. The appellate court emphasized the absence of facts that might link the bag to Salaam, including that "Salaam was not in the vehicle and did not exercise immediate dominion or control over the bag," that the bag "was not hidden or locked in any compartment of the 'work van,'" and that "nothing in the record establishes that Salaam's or his company's name was on the bag." A6 ¶ 17.

Salaam seeks a presumption that the owner of a vehicle *always* has an ownership interest in any property recovered from a vehicle — even a vehicle operated by a business employee. But given the range of circumstances in which property may be transported, such a presumption is unwarranted. A vehicle is not generally used for storage, nor is it akin to a house in which a property is held long term, and it should not be subject to the same presumption. *See People v. Four Thousand Eight Hundred Fifty Dollars ($4,850) U.S. Currency*, 2011 IL App (4th) 100528, ¶ 17 ("personal property located inside a person's residence is considered to be in the constructive possession of that person"). Instead, a vehicle is typically used to transport cargo or people carrying personal property. Given the variety of potential circumstances, this Court should apply a reasonableness principle under which the State identifies the apparent owner case-by-case in circumstances where property subject to forfeiture is recovered from a vehicle.

Because, under the circumstances here, the State reasonably deemed Tyler to be the owner of the bag and the currency, it complied with the statute by providing notice of the forfeiture proceeding to Tyler.

2. The State's notice satisfied due process.

Beyond the requirements of the Act, principles of due process did not require the State to take additional steps to notify Salaam of the forfeiture proceeding.

"[T]he due process clauses of both the United States and Illinois Constitutions dictate that where the government attempts to deprive a person of property, it must first provide that person with notice and an opportunity to be heard." *Rodriguez v. Brady*, 2017 IL App (3d) 160439, ¶ 24. Due process demands "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Centr. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Salaam's assertion that "[d]ue process requires *actual* notice," Pet. 11 (emphasis added), is contrary to precedent, which holds that due process is satisfied if the State takes adequate steps to provide notice. *Jones v. Flowers*, 547 U.S. 220, 226 (2006) ("Due process does not require that a property owner receive actual notice before the government may take his property."); *$30,700.00 U.S. Currency*, 199 Ill. 2d at 156 ("due process does not require that 'the State *must provide* actual notice, but that it *must attempt to provide* actual notice'") (quoting *Dusenbery v. United States*, 534 U.S. 161, 170 (2002) (emphases in original)); *United States v. One Star Class Sloop Sailboat*, 458 F.3d 16, 23 (1st Cir. 2006) ("This is not to say that actual notice is required in every case and under every set of circumstances. It is not.").

"[A]ssessing the adequacy of a particular form of notice requires balancing the 'interest of the State' against 'the individual interest sought to be protected by the Fourteenth Amendment.'" *Jones*, 547 U.S. at 229

(quoting *Mullane*, 339 U.S. at 314). Thus, "in examining the sufficiency of notice with regard to due process[,] a court may consider the character of the proceedings and the practicalities and peculiarities of the case," including the unique circumstances of a drug asset forfeiture case, where asserting ownership carries a risk of prosecution. *$30,700.00 U.S. Currency*, 199 Ill. 2d at 156. As Salaam acknowledges, "[s]omeone who knew of the illegal drugs" in the bag "would be unlikely to approach [the police] and offer their identity," Pet. 19, at least until the statute of limitations has run on potential charges. Thus, the State typically must make a reasonable guess at the ownership of controlled substances or associated currency, as the real owner is unlikely to claim them, and then take reasonable steps to provide notice to the identified owner.

Here, the State attempted to serve the identified property owner and target of prosecution, Tyler, at the address he provided when arrested. When that failed, the State published notice. Such steps sufficed to comply with due process. *See $30,700.00 U.S. Currency*, 199 Ill. 2d at 162 (noting that publication of notice reduces risk that interested party will be deprived of notice due to errors in mailing).

Moreover, a due process claim is defeated by actual notice. *One Star Class Sloop Sailboat*, 458 F.3d at 22 ("A putative claimant's actual knowledge of a forfeiture proceeding can defeat a subsequent due process challenge, even if the government botches its obligation to furnish him with notice."). The

dissenting justice below mistakenly equated "actual notice" with mailed notice under the statute, A13 ¶ 42 (Hyman, J., dissenting) ("Actual notice means notice as statutorily required."); it instead refers to a party's awareness of circumstances, independent of formal notice in compliance with the statute. As discussed, Salaam should be deemed to have had actual notice, *see supra* pp. 15-16, and therefore due process was necessarily satisfied.

III. The Proper Remedy for Insufficient Notice Is a Remand for a Hearing at Which Salaam May Rebut the Presumption that the Currency Is Subject to Forfeiture.

Salaam asserts that if the State failed to provide adequate notice, he is entitled to recoup $223,743 in currency that the law presumes was related to drug trafficking. Salaam has cited no authority entitling him to this windfall.

The outcome of this *in rem* forfeiture action turns not on notice, but on whether the State has proven "its right to the property," *People v. 1995 Ford Van*, 348 Ill. App. 3d 303, 306 (2d Dist. 2004), which it has certainly done here. Under 725 ILCS 150/7, "[a]ll moneys, coin, or currency found in close proximity to any substances manufactured, distributed, dispensed, or possessed in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act" are presumed to be purchase money or the proceeds of drug sales.

This presumption is "rebuttable by a preponderance of the evidence." 725 ILCS 150/7. But no party, Salaam included, has offered any evidence establishing that the currency was *not* related to the distribution of drugs. To the contrary, evidence developed since the forfeiture judgment was entered further supports an inference that the currency was subject to forfeiture: Salaam pleaded guilty to distributing cocaine with Tyler in June 2016, undermining any innocent explanation for the large quantity of cash found with Tyler in September 2015 alongside bags of cannabis and cocaine. On this record, then, the currency was properly forfeited to the State.

If this Court were to find that Salaam were entitled to notice that he did not receive, the correct remedy would be a remand for Salaam to rebut the presumption that forfeiture was proper. *See People v. Braden*, 243 Ill. App. 3d 671, 676-78, 682 (2d Dist. 1993) (finding forfeiture determination invalid for lack of proper notice and remanding for further proceedings to determine whether property was in fact subject to forfeiture).

In the circuit court, Salaam argued that he was entitled to dismissal of the forfeiture action because "a notice of forfeiture must be attempted within 28 days from the date the forfeiture complaint has been filed"; the State failed to comply with this requirement; and the time limit is "mandatory rather than directory," such that the State's failure to comply with it requires "dismissal of a forfeiture action with prejudice." C19 (citing *$4,850 U.S. Currency*, 2011 IL App (4th) 100528, ¶¶ 22-35). This Court should reject such

a theory, given that the State provided timely notice to the presumed owner of the forfeited property. In the cited case, the State failed to comply with the deadline for commencing a forfeiture action. The appellate court concluded that this failure required dismissal, reasoning that the statutory deadline was mandatory because it protected "the property owner's right to reasonably prompt postdeprivation procedures," and that right "'would generally be injured under a directory reading.'" 2011 IL App (4th), ¶¶ 26, 35 (quoting *People v. Delvillar*, 235 Ill. 2d 507, 517 (2009)). That right was not injured here, where the State provided timely notice to Tyler, the person identified as the owner of the currency.

Thus, even if the State's failure to provide mailed notice to Salaam was error, Salaam would be entitled, at most, to vacatur of the forfeiture judgment, and to further proceedings on the State's forfeiture complaint. Accordingly, if this Court reverses the judgment, it should remand the case to the circuit court for Salaam to rebut the presumption that the currency was properly forfeited.

CONCLUSION

This Court should affirm the appellate court's judgment. Alternatively, if this Court were to find the State's notice insufficient, it should reverse the judgment and remand to the Circuit Court of Cook County for an evidentiary hearing on Salaam's claim that the United States currency is not subject to forfeiture.

July 19, 2021

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 29 pages.

/s Erin M. O'Connell
ERIN M. O'CONNELL
Assistant Attorney General

SUPPLEMENTAL APPENDIX

Table of Contents of Supplemental Appendix

Drug Asset Forfeiture Procedure Act Provisions

725 ILCS 150/2 (Legislative declaration).

The General Assembly finds that the civil forfeiture of property which is used or intended to be used in, is attributable to or facilitates the manufacture, sale, transportation, distribution, possession or use of substances in certain violations of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act will have a significant beneficial effect in deterring the rising incidence of the abuse and trafficking of such substances within this State. While forfeiture may secure for State and local units of government some resources for deterring drug abuse and drug trafficking, forfeiture is not intended to be an alternative means of funding the administration of criminal justice. The General Assembly further finds that the federal narcotics civil forfeiture statute upon which this Act is based has been very successful in deterring the use and distribution of controlled substances within this State and throughout the country. It is therefore the intent of the General Assembly that the forfeiture provisions of this Act be construed in light of the federal forfeiture provisions contained in 21 U.S.C. 881 as interpreted by the federal courts, except to the extent that the provisions of this Act expressly differ therefrom.

725 ILCS 150/3.1 (Seizure).

* * *

(c) Personal property subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act may be seized by the Director of State Police or any peace officer without process:

* * *

(4) if there is probable cause to believe that the property is subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act, and the property is seized under circumstances in which a warrantless seizure or arrest would be reasonable.

* * *

(d) If a conveyance is seized under this Act, an investigation shall be made by the law enforcement agency as to any person whose right, title, interest, or lien is of record in the office of the agency or official in which title to or interest in the conveyance is required by law to be recorded.

(e) After seizure under this Section, notice shall be given to all known interest holders that forfeiture proceedings, including a preliminary review, may be instituted and the proceedings may be instituted under this Act. Upon a showing of good cause related to an ongoing investigation, the notice required for a preliminary review under this Section may be postponed.

725 ILCS 150/4 (Notice to owner or interest holder).

The first attempted service of notice shall be commenced within 28 days of the filing of the verified claim or the receipt of the notice from the seizing agency by Illinois State Police Notice/Inventory of Seized Property (Form 4-64), whichever occurs sooner. A complaint for forfeiture or a notice of pending forfeiture shall be served upon the property owner or interest holder in the following manner:

(1) If the owner's or interest holder's name and current address are known, then by either:

(A) personal service; or

(B) mailing a copy of the notice by certified mail, return receipt requested, and first class mail to that address.

(i) If notice is sent by certified mail and no signed return receipt is received by the State's Attorney within 28 days of mailing, and no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by said parties, then the State's Attorney shall, within a reasonable period of time, mail a second copy of the notice by certified mail, return receipt requested, and first class mail to that address.

(ii) If no signed return receipt is received by the State's Attorney within 28 days of the second attempt at service by certified mail, and no communication from the owner or interest holder is received by the State's Attorney documenting actual notice by said parties, then the State's Attorney shall have 60 days to attempt to serve the notice by personal service, which also includes substitute service by leaving a copy at the usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards. If, after 3 attempts at service in this manner, no service of the notice is accomplished, then the notice shall be posted in a conspicuous manner at this address and service shall be made by posting.

The attempts at service and the posting, if required, shall be documented by the person attempting service and said

documentation shall be made part of a return of service returned to the State's Attorney.

The State's Attorney may utilize any Sheriff or Deputy Sheriff, any peace officer, a private process server or investigator, or any employee, agent, or investigator of the State's Attorney's Office to attempt service without seeking leave of court.
After the procedures set forth are followed, service shall be effective on an owner or interest holder on the date of receipt by the State's Attorney of a return receipt, or on the date of receipt of a communication from an owner or interest holder documenting actual notice, whichever is first in time, or on the date of the last act performed by the State's Attorney in attempting personal service under subparagraph (ii) above. If notice is to be shown by actual notice from communication with a claimant, then the State's Attorney shall file an affidavit providing details of the communication, which may be accepted as sufficient proof of service by the court.

After a claimant files a verified claim with the State's Attorney and provides an address at which the claimant will accept service, the complaint shall be served and notice shall be perfected upon mailing of the complaint to the claimant at the address the claimant provided via certified mail, return receipt requested, and first class mail. No return receipt need be received, or any other attempts at service need be made to comply with service and notice requirements under this Act. This certified mailing, return receipt requested, shall be proof of service of the complaint on the claimant.

For purposes of notice under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, then the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address; or if the property seized is a conveyance, to the address reflected in the office of the agency or official in which title to or interest in the conveyance is required by law to be recorded.

(2) If the owner's or interest holder's address is not known, and is not on record, then notice shall be served by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(3) After a claimant files a verified claim with the State's Attorney and provides an address at which the claimant will accept service, the complaint shall be served and notice shall be perfected upon mailing of the complaint to the claimant at the address the claimant provided via certified mail, return receipt requested, and first class mail. No return receipt need be received or any other attempts at service need be made to comply with service and notice requirements under this Act. This certified mailing, return receipt requested, shall be proof of service of the complaint on the claimant.

(4) Notice to any business entity, corporation, limited liability company, limited liability partnership, or partnership shall be completed by a single mailing of a copy of the notice by certified mail, return receipt requested, and first class mail to that address. This notice is complete regardless of the return of a signed return receipt.

* * *

725 ILCS 150/7 (Presumptions and inferences).

(1) The following situation shall give rise to a presumption that the property described therein was furnished or intended to be furnished in exchange for a substance in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or is the proceeds of such an exchange, and therefore forfeitable under this Act, such presumptions being rebuttable by a preponderance of the evidence:

All moneys, coin, or currency found in close proximity to any substances manufactured, distributed, dispensed, or possessed in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of substances.

* * *

725 ILCS 150/9 (Judicial in rem procedures).

If property seized under the provisions of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act is non-real property that exceeds $150,000 in value excluding the value of any conveyance, or is real property, or a claimant has filed a claim under subsection (C) of Section 6 of this Act, the following judicial in rem procedures shall apply:

(A) If, after a review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, the State's Attorney shall institute judicial forfeiture proceedings by filing a verified complaint for forfeiture in the circuit court within whose jurisdiction the seizure occurred . . . . The complaint for forfeiture shall be filed as soon as practicable, but not later than . . . 28 days after the State's Attorney receives notice from the seizing agency as provided under Section 5 of this Act, whichever occurs later. When authorized by law, a forfeiture must be ordered by a court on an action in rem brought by a State's Attorney under a verified complaint for forfeiture.

(A-5) If the State's Attorney finds that the alleged violation of law giving rise to the seizure was incurred without willful negligence or without any intention on the part of the owner of the property to violate the law or finds the existence of mitigating circumstances to justify remission of the forfeiture, the State's Attorney may cause the law enforcement agency having custody of the property to return the property to the owner within a reasonable time not to exceed 7 days. The State's Attorney shall exercise his or her discretion prior to or promptly after the preliminary review under Section 3.5 of this Act. Judicial in rem forfeiture proceedings under this Act shall be subject to the Code of Civil Procedure and the rules of evidence relating to civil actions.

(A-10) A complaint of forfeiture shall include:

(1) a description of the property seized;

(2) the date and place of seizure of the property;

(3) the name and address of the law enforcement agency making the seizure; and

(4) the specific statutory and factual grounds for the seizure.

The complaint shall be served upon the person from whom the property was seized and all persons known or reasonably believed by the State to claim an interest in the property, as provided in Section 4 of this Act. The complaint shall be accompanied by the following written notice:

"This is a civil court proceeding subject to the Code of Civil Procedure. You received this Complaint of Forfeiture because the State's Attorney's office has brought a legal action seeking forfeiture of your seized property. This complaint starts the court process where the state seeks to prove that your property should be forfeited and not returned to you. This process is also your opportunity to try to prove to a judge that you should get your property back. The complaint lists the date, time, and location of your first court date. You must appear in court on that day, or you may lose the case automatically. You must also file an appearance and answer. If you are unable to pay the appearance fee, you may qualify to have the fee waived. If there is a criminal case related to the seizure of your property, your case may be set for trial after the criminal case has been resolved. Before trial, the judge may allow discovery, where the State can ask you to respond in writing to questions and give them certain documents, and you can make similar requests of the State. The trial is your opportunity to explain what happened when your property was seized and why you should get the property back."

(B) The laws of evidence relating to civil actions shall apply to all other proceedings under this Act except that the parties shall be allowed to use, and the court must receive and consider, all relevant hearsay evidence that relates to evidentiary foundation, chain of custody, business records, recordings, laboratory analysis, laboratory reports, and the use of technology in the investigation that resulted in the seizure of the property that is subject to the forfeiture action.

(C) Only an owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. For purposes of this Section, the owner or interest holder shall be referred to as claimant. A person not named in the forfeiture complaint who claims to have an interest in the

property may petition to intervene as a claimant under Section 2-408 of the Code of Civil Procedure.

(D) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

(i) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(ii) the address at which the claimant will accept mail;

(iii) the nature and extent of the claimant's interest in the property;

(iv) the date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;

(v) the names and addresses of all other persons known to have an interest in the property;

(vi) the specific provisions of Section 8 of this Act relied on in asserting it is exempt from forfeiture, if applicable;

(vii) all essential facts supporting each assertion;

(viii) the precise relief sought; and

(ix) in a forfeiture action involving currency or its equivalent, a claimant shall provide the State with notice of the claimant's intent to allege that the currency or its equivalent is not related to the alleged factual basis for the forfeiture, and why.

(E) The answer must be filed with the court within 45 days after service of the civil in rem complaint.

(F) The trial shall be held within 60 days after filing of the answer unless continued for good cause.

(G) The State, in its case in chief, shall show by a preponderance of the evidence that the property is subject to forfeiture; and at least one of the following:

(i) In the case of personal property, including conveyances:

(a) that the claimant was legally accountable for the conduct giving rise to the forfeiture;

(b) that the claimant knew or reasonably should have known of the conduct giving rise to the forfeiture;

(c) that the claimant knew or reasonably should have known that the conduct giving rise to the forfeiture was likely to occur;

(d) that the claimant held the property for the benefit of, or as nominee for, any person whose conduct gave rise to its forfeiture;

(e) that if the claimant acquired the interest through any person engaging in any of the conduct described above or conduct giving rise to the forfeiture:

(1) the claimant did not acquire it as a bona fide purchaser for value, or

(2) the claimant acquired the interest under such circumstances that the claimant reasonably should have known the property was derived from, or used in, the conduct giving rise to the forfeiture;

(f) that the claimant is not the true owner of the property;

(g) that the claimant acquired the interest:

(1) before the commencement of the conduct giving rise to the forfeiture and the person whose conduct gave rise to the forfeiture did not have authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(2) after the commencement of the conduct giving rise to the forfeiture and the owner or interest holder acquired the interest as a

mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct that gave rise to the forfeiture, and without the knowledge of the seizure of the property for forfeiture.

* * *

(G-5) If the property that is the subject of the forfeiture proceeding is currency or its equivalent, the State, in its case in chief, shall show by a preponderance of the evidence that the property is subject to forfeiture. If the State makes that showing, the claimant shall have the burden of production to set forth evidence that the currency or its equivalent is not related to the alleged factual basis of the forfeiture. After the production of evidence, the State shall maintain the burden of proof to overcome this assertion.

(G-10) Notwithstanding any other provision of this Section, the State's burden of proof at the trial of the forfeiture action shall be by clear and convincing evidence if:

(1) a finding of not guilty is entered as to all counts and all defendants in a criminal proceeding relating to the conduct giving rise to the forfeiture action; or

(2) the State receives an adverse finding at a preliminary hearing and fails to secure an indictment in a criminal proceeding related to the factual allegations of the forfeiture action.

(H) If the State does not meet its burden of proof, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property as to which the State does meet its burden of proof forfeited to the State. If the State does meet its burden of proof, the court shall order all property forfeited to the State.

(I) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Act regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(J) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this Act; however, for good cause shown, on a motion by the State's Attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act. Such a stay shall not be available pending an appeal. Property subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of such property unless such return or release is consented to by the State's Attorney.

(K) Title to all property declared forfeited under this Act vests in the State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Except as otherwise provided in this Act, any such property or proceeds subsequently transferred to any person remain subject to forfeiture unless a person to whom the property was transferred makes an appropriate claim under this Act and has the claim adjudicated in the judicial in rem proceeding.

(L) A civil action under this Act must be commenced within 5 years after the last conduct giving rise to forfeiture became known or should have become known or 5 years after the forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(M) No property shall be forfeited under this Act from a person who, without actual or constructive notice that the property was the subject of forfeiture proceedings, obtained possession of the property as a bona fide purchaser for value. A person who purports to transfer property after receiving actual or constructive notice that the property is subject to seizure or forfeiture is guilty of contempt of court and shall be liable to the State for a penalty in the amount of the fair market value of the property.

(N) If property is ordered forfeited under this Act from a claimant who held title to the property in joint tenancy or tenancy in common with another claimant, the court shall determine the amount of each owner's interest in the property according to principles of property law.

725 ILCS 150/13 (Construction).

It shall be the intent of the General Assembly that the forfeiture provisions of this Act be liberally construed so as to effect their remedial purpose. The forfeiture of property and other remedies hereunder shall be considered to be in addition, and not exclusive of any sentence or other remedy provided by law.

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

People of the State of Illinois
v.
$59,914.00 USC.

No. 15COFO-3667

ORDER

This cause coming to be heard on the claimant Ameen Salaam's motion to vacate void forfeiture order and dismiss complaint for forfeiture; Due notice being given, the parties being present and and arguements being heard by the court, IT IS HEREBY ORDERED THAT:

(1) Ameen Salaam was not entitled to notice under the Illinois Drug Asset Procedure Act and was not an owner or interest holder under the statute.

(2) That original forfeiture action was entered with proper subject matter and in rem jurisdiction over the drugs and money

(3) That claimant Ameen Salaam's motion to vacate void forfeture Order and dismiss complaint for forfeiture ~~and dismiss~~ Compla is denied

(4) The 9/15/15 order of forfeiture stands and this matter is off call.

Judge Nichole C. Patton

APR 03 2019

ENTERED: Circuit Court - 2211

Attorney No.: 10295
Name: M. Eg
Atty. for: People
Address: 50 W. Washington
City/State/Zip: Chgo, IL
Telephone: 312-603-6462

Dated: ____, ____

Judge 2211
Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SA15

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 19, 2021, the foregoing **Brief and Supplemental Appendix of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which served notice on the following party:

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