No. 126927

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	**) Appeal from the Appellate Court**
	) Of Illinois, First District
Plaintiff-Appellee,	**) No. 1-19-0922**
	)
v.	**) There on Appeal from the Circuit**
	) Court of Cook County, Illinois,
$59,914.00, et. al.	**) No. 15 COFO 3667**
	)
Defendant-Appellant.	**) Judge Patton, Presiding**
	)

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT[1]

The police towed a van and inventoried its contents during an arrest. They obtained records from the Secretary of State showing the van was owned by and registered to "Ameen Salaam DBA Infinite Heating and Cooling." (C44). Despite having this information, no notice was provided to Salaam or Infinite Heating and Cooling when the State sought to forfeit the van's contents (or the van itself), or when the circuit court entered the forfeiture judgment.

After Salaam learned there was a forfeiture judgment, he filed his Motion to Vacate a void judgment. (C13-20). The appellate court excused the lack of notice because the State did not believe the business owner was involved in the narcotics offense.

In its brief, the State seizes upon the same flawed concept of constructive notice as the appellate court–the idea that knowledge property was taken during an arrest fulfills the actual notice obligations due process and the forfeiture statute both require. This contention was without support when the appellate court reached it: "The majority cites no case holding that knowledge of the seizure constitutes knowledge of the forfeiture proceeding or satisfies the statutory notice requirement," *People v. 59,914 United States* Currency, 2020

[1] The State did not file a brief in the appellate court. Arguably, the State has thus waived its right to raise any issues before this Court. *People v. Spears*, 112 Ill. 2d 396, 403 (1986) ("[A]n argument or issue not advanced in the State's brief in the appellate court is waived, and the State is, with the exception of jurisdictional matters, therefore precluded from later raising that ground for our consideration.").

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Ill App (1st) 19-0922U, ¶44 (*Hyman, J. dissenting)*, and is still without support after the State has briefed it.

Due process requires more before the State can seize property. At a minimum, there must be an affirmative effort to notify "interested parties." "Procedural due process is founded upon the notion that prior to a deprivation of life, liberty or property, a party is entitled to 'notice and opportunity for [a] hearing appropriate to the nature of the case.'" *Jones v. Flowers,* 547 U.S. 220, 223 (2006) (*quoting Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950)); *Passalino v. City of Zion*, 237 Ill. 2d 118, 124 (2010).

The State is engaged in the same analysis flipping as the appellate court; they are viewing this as a situation where it was incumbent upon the interested party to ensure his own due process. They are putting upon him the need to be proactive rather than reactive. But due process does not work like that. When the government wants to take away property, it is incumbent upon the government to provide notice; an interested party is not required to figure out what the government wants to take. And that, perhaps, is the most fundamental flaw here. The State does not argue that Salaam was not an interested party; they just say he should have been more interested.

The State believes it only has an obligation to provide notice to whomever the State believed was the wrongdoer, regardless of any other indicia of ownership or interest. That is a gross departure from existing law, and an utter denial of due process to possessors, owners, and interest holders.

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The idea that the average citizen knows judicial forfeiture proceedings exist, let alone were filed, and thus would act, is silly. Even if the citizen decided to monitor the circuit court's records to see if a case was filed, there is no guarantee they would even be able to find the forfeiture. By analogy, if someone had $100 in five $20 bills, and the police seized the money, the resulting forfeiture action could be filed against $20 et al. or $100. How could they even know the name of the case to look for?

Here, as the State and appellate court would have it, anytime there was an arrest and property was inventoried by the police, the accused and his perhaps criminal co-conspirators, or his innocent family members and friends, would have to go on a treasure hunt. According to both, whenever the police take property during an arrest, anyone and everyone should presume there is going to be a follow-up forfeiture action. And again, according to the State and the appellate court, those individuals should take one or more of the following actions: locate the arresting officer(s) and inquire of them, locate the line prosecutor and inquire of them, or scour the courthouse records hoping that an action has been titled in a way it can be located. (Appellee's Brief, pg. 16). To quote Justice Hyman: "Nonsense." *59,914 United States* Currency, 2020 Ill App (1st) 19-0922U at ¶44 (*Hyman, J. dissenting).*

I. This Forfeiture Judgment Was Entered Without Due Process–A Constitutional Prerequisite–And Thus Was Void, And Salaam's Petition For Relief From Judgment Is Timely.

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The State first argues this Court should affirm because, "Salaam's petition for relief from judgement is untimely." (Appellee's Brief, pg. 7). To get there, the State perverts this Court's holding that abolished the void sentence rule and relies upon cases that are irrelevant. It asks this Court to ignore fundamental due process–namely notice–while imposing a bright line bar. Under the State's theory, no notice would be required for *in rem* proceedings, or, at a minimum, if there was no notice, it would be a forgivable failure.

A. The Failure To Give Notice Rendered The Forfeiture Judgment Void For Lack Of Jurisdiction.

Here, the State does not dispute Salaam was an interested party who did not receive notice and acknowledges that petitions brought on voidness grounds need not be brought within the two-year limitation imposed by section 2-1401. 735 ILCS 5/2-1401; (Appellee's Brief, pg. 8) ("Petitions brought on voidness grounds need not be brought within the two-year time limitation."). But then, the State ignores the failure to notify Salaam means the judgment is void, and Salaam's petition for post-judgment relief under section 2-1401 was timely, notwithstanding the two-year limitations period. *See Sarkissian v. Chi. Bd. of Educ.*, 201 Ill. 2d 95, 105 (2002) ("The Board alleged that the default judgment was void because the trial court lacked personal jurisdiction… and [the petition] could validly be brought outside the two-year limitation period.").

The State's failure to provide the minimal notice required by the statute to satisfy due process deprives the court of personal jurisdiction, making the judgement of the court void. *See People v. Braden*, 243 Ill. App. 3d 671, 677

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(1993) ("In an *in rem* forfeiture proceeding, a fundamental due process requirement is that notice be given…"); *In re County Collector*, 397 Ill. App. 3d 535, 548 (2009) ("[T]otal lack of notice means that the circuit court never acquired personal jurisdiction over Devon, even though this action could be described as *in rem* or *quasi-in rem."*); *In re Commissioner of Banks and Real Estate*, 327 Ill. App. 3d 441, 466 (2001) ("[A]lthough the trial court had subject matter jurisdiction and *in rem* or *quasi in rem* jurisdiction over the *res,* appellants nonetheless are entitled to due process guarantees of adequate notice and an opportunity to be heard.").

The State agrees that courts have long recognized that without proper notice the circuit court lacks jurisdiction. (Appellee's Brief, pg. 11) ("[C]ourts 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')"). Inexplicably ignoring the settled precedent, the State then argues that "[u]nder *Castleberry's* logic," a failure to give proper notice renders a forfeiture judgement "voidable," but not "void." (Appellee's Brief, pg. 12); *People v. Castleberry*, 2015 IL 116916. The State misreads *Castleberry*.

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There, the principal issue was whether the void sentence rule should be abandoned. *Id.* at ¶1. Focusing on the circuit court's subject matter jurisdiction, this Court found the rule unsound. *Id.* at ¶¶19-20. *Castleberry* did not discuss lack of notice (after all, Castleberry was present), and its reasoning does not apply when lack of notice is the concern.

This Court confirmed the proper application of *Castleberry* in *People v. Price*, 2016 IL 118613, which the State also misrepresents in its brief. (See Appellee's Brief, pg. 12) ("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."). In *Price*, a criminal defendant attempted to utilize the void sentence rule to challenge his conviction. Finding the defendant could not rely on the rule after *Castleberry* had eliminated it, the Court explained:

> This Court has recognized only three circumstances in which a judgment will be deemed void: (1) where the judgment was entered by a court that lacked personal or subject-matter jurisdiction, (2) where the judgment was based on a statute that is facially unconstitutional and void *ab initio*, and (3) where a judgment of sentence did not conform to a statutory requirement (the void sentence rule). [*People v.*] *Thompson*, 2015 IL 118151, ¶¶ 31-33, 398 Ill. Dec. 74, 43 N.E.3d 984. Castleberry eliminated the third type of void judgment, thus narrowing the universe of judgments subject to attack in perpetuity. *Id.* at ¶31.

Neither *Price* nor *Castleberry* impacted the first circumstance, "where the judgement was entered by a court that lacked personal or subject-matter jurisdiction." *Id.* The rule that a judgment will be deemed void where a court lacks jurisdiction remains intact and applies in this case.

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The State cites two other inapplicable cases, both involving post-conviction claims. *People v. Caballero* concerned a criminal defendant seeking post-conviction relief. 179 Ill. 2d 205 (1997). The Court ruled that section 2-1401 was not available as a remedy 13 years after the judgement was entered. *Caballero*, 179 Ill.2d at 211. Similarly, in *People v. Thompson*, the defendant did not claim a lack of personal jurisdiction. 2015 IL 118151, ¶33. Neither involved a lack of notice, and neither disturbed established precedent that judgments are void when a court lacks personal jurisdiction.

The problem with the State's argument is that Salaam could not have filed his claim within two years *because* of the lack of notice. In the People's Response to Salaam's Motion to Vacate, the State conceded, "In the middle of 2018, circa June, July 2018, Ameen Salaam's attorney, Greenberg, contacted the State's Attorney Office [forfeiture unit] inquiring about the above-captioned monies seized from Tyler. This was more than two years after the January 20, 2016 forfeiture date." (C110, ¶34). The State has never claimed Salaam know of the judgment before two years went by, only that he knew of the arrest. It is uncontroverted that Salaam did not learn of the forfeiture until after the two-year deadline had already passed, making it impossible for him to have filed earlier. The State cannot now shift the burden to him and bar him from bringing forward his claim based on a delay that the State, itself, caused.

The want of notice here may be representative of a systemic problem in Cook County, which appears to be designed to skirt the minimum

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requirements of notice. When a forfeiture is to be pursued, the State's Attorney's office sends notice to whatever address is listed for the defendant on the police report. Of course, this is often not the defendant's address at the time of forfeiture because they have been incarcerated, lost their residence, chosen to move, or been placed on house arrest elsewhere. Further, the forfeiture is litigated by a separate unit from criminal prosecutors within the State's Attorney's office, causing a lack of awareness over shared issues. The separate forfeiture division does not notify the criminal prosecutors when a forfeiture action is filed or provide a copy of any of the documents. This process defies common sense: The simplest way to notify a defendant who is also a potential claimant of the forfeiture, and to ensure they received notice, would be to tender that notice in the course of the criminal proceedings. But the State here chooses a more complicated path, and it is the interest-holders who are lost in the weeds.

B. The State's Argument That *In Rem* Jurisdiction Excuses A Lack Of Notice Has Already Been Rejected By The U.S. Supreme Court.

Digging in, the State claims that, "*in rem* jurisdiction is an alternative to personal jurisdiction," (Appellee's Brief, pg. 10), and thus notice is unimportant. Under this view, no notice would be required to anyone with a pulse, including the arrestee. According to the State, only the "*res*," an inanimate object, need be notified.

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For support, the State misconstrues *People v. Four Thousand and Eight Hundred Fifty Dollars ($4,850) U.S. Currency*, 2011 IL App (4th) 100528. There, the State argued that the trial court lacked personal and subject matter jurisdiction. Notice had been sent to the presumptive owner that forfeiture proceedings were pending. *Id.* at ¶3. The owner submitted himself to the jurisdiction of the trial court by appearing generally. *Id.* at ¶14. The owner had received actual notice, was afforded due process, exercised due process, and challenged the State's claim against his property. The case is the polar opposite to the case at bar, where there was no notice, no due process, and a void judgment.

Continuing, the State argues that "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 judgement void." (Appellee's Brief, pg. 10).[2] Citing *Smith v. Hammel*, 2014 IL App (5th) 1302227, it claims that it is, "black letter law that the alternative to personal jurisdiction is *in rem* jurisdiction." *Id.* The State fails to mention that in *Smith*, the interested party–Smith–received notice by regular and certified mail, similar to the notice required for this forfeiture. 725 ILCS 150/4; *Smith*, 2014 IL App 1302227 at ¶5. The court merely held that personal service by summons was not required as long as there was some form of actual notice, not that no notice was acceptable. *Id.* at

[2] This argument was not made in the trial court and thus was waived. *In re Marriage of Juiris*, 2018 IL App (1st) 170545.

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¶13; s*ee also Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶3 ("[In an *in rem* proceeding,] when proper service is lacking and the court does not acquire personal jurisdiction, the judgment entered is considered void *ab initio*.").

Essentially, the State asks this Court to set aside a principle of fundamental due process–notice–whenever a court has *in rem* jurisdiction. A similar argument was already rejected by the Supreme Court in *Robinson v. Hanrahan*, 409 U.S. 38, 93 S. Ct. 30, 34 L.Ed.2d 47 (1972). There, the Court considered an Illinois forfeiture proceeding where the State had mailed notice to a vehicle owner at his home, although he was in jail on the underlying offense, and thus could not receive the notice. An *ex parte* judgment ordered the forfeiture of the vehicle.

This Court upheld that forfeiture, finding that in light of the *in rem* nature of the proceedings substitute service to Robinson's home satisfied due process. Reversing, the Supreme Court explained that:

> [*I*]*n rem* or more indefinitely *quasi in rem*, or more vaguely still, in the nature of a proceeding *in rem*…An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is 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. *Hanrahan*, 409 U.S. at 39 (*citing Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 312, 314 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

The State knew that Robinson was not at the address where the notice was mailed because he was in the Cook County jail. "Under these circumstances, it cannot be said that the State made any effort to provide

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notice which was 'reasonably calculated' to apprise appellant of the pendency of the forfeiture proceedings." *Id.* at 40; *see also United States v. One Star Class Sloop Sailboat,* 458 F.3d 16 (1st Cir. 2006) (Circuit court erred in denying claimant's motion to vacate without any inquiry into whether the government provided him adequate notice of the civil forfeiture proceeding.); *Tacoma Police Department v. $51,657.39*, 16 Wash. App. 2d. 609 (2021) (State violated interested parties due process rights by providing insufficient notice of seizure and intended forfeiture and, therefore, the default order confirming forfeiture must be vacated.); *State of Louisiana v. $1,330*, 215 So. 3d 211 (La. 2017) (Claimant was deprived of due process where State knew he was incarcerated and knew or should have known he was not residing the residence where they sent notice.); *United States v. $41,320*, 9 F. Supp. 3d 582 (D. Md. 2014) (Because the order forfeiting the property was entered without constitutionally adequate notice, the court granted claimant's motion to vacate the order of forfeiture.)*;* and *State of North Dakota v. 2002 Dodge Intrepid*, 841 N.W. 2d 239 (N.D. 2013) (Claimant had a due process right to receive the notice to appear for the forfeiture hearing.).

The "interested party" in the *in-rem* action receives notice, just the form of notice may vary. None of the *in-rem* cases excuse the complete lack of any notice. Rather, they allow for a simpler, less cumbersome form of notice–a mailing. But even that level of relaxed notice was not attempted. To be clear, the statute here allowed notice via personal service, or certified mail, return

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receipt requested. 725 ILCS 150/4. Neither was attempted. Notably, there is no case, here or elsewhere, that has held no notice (or attempt at notice) satisfies due process. None. No notice is not a substitute for notice.

C. The State's Attempt To Shift The Burden Of Discovering A Forfeiture Judgment Onto The Affected Individuals Ignores That It Is The State's Obligation To Provide Notice–No One Else's.

The State did not comply with the notice requirements of the statute. 725 ILCS 150/4. There was zero notice provided, or attempted to be provided, to Salaam of the money forfeiture. Plainly, the State failed to provide notice which was "reasonably calculated" to apprise an interested party, Salaam, of the pendency of the forfeiture proceedings.

It is really quite simple. The Due Process Clause of the Fourteenth Amendment prohibits the deprivation of personal property without "notice, an opportunity to respond, and a meaningful opportunity to be heard." *Brown v. Knapp*, 156 F. Supp. 2d 732 (N.D.E.D. 2001) (*citing People v. Braden,* 243 Ill. App. 3d 671 (2nd Dist.1993)). The due process clause of the United States and Illinois Constitutions each require notice:

> [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. *E.g.*, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is 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."); *Stratton v. Wenona Community Unit District No. 1*,

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> 133 Ill. 2d 413, 432, 141 Ill. Dec. 453, 551 N.E.2d 640 (1990) ("Due process entails an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights."). Thus, compliance with the Act's notice requirements is irrelevant if the notice is constitutionally deficient. See *People ex rel. Devine v. $30,700.00 United States Currency*, 199 Ill. 2d 142, 148, 155, 262 Ill. Dec. 781, 766 N.E.2d 1084 (2002) …In order to pass constitutional muster, the notice provided to an owner of assets subject to civil forfeiture must be "reasonably calculated, under all the circumstances, to apprise interested parties" of the pending forfeiture. *Mullane*, 339 U.S. at 314, 70 S. Ct. 652.

Rodriguez v. Brady, 2017 IL App (3d) 160439, ¶¶ 24-25.

The State contends that "[g]iven 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." (Appellee's Brief, pg. 23). Indeed, this is the State's obligation. *Dusenbery v. United States*, 534 U.S. 161 (2002) ("[T]he Due Process Clause does not require such heroic efforts by the Government; it requires only that the Government's effort be 'reasonably calculated' to apprise a party of the pendency of the action."). In each case, the State must identify and serve notice upon all persons who may have an interest in the vehicle and its contents. Here, the State did not. It was patently unreasonable to neglect to send notice to the registered owner of the vehicle–a person whom basic common sense would identify as a potential interest-holder of the vehicle's contents. The State is merely trying to hide its blatant omission under the guise of "reasonableness," an invertebrate tactic that has no substance.

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Salaam did not receive a copy of a notice of pending forfeiture or a copy of the complaint for forfeiture, by any means. That is unreasonable. To the extent the State suggests otherwise, claiming that he had notice because he may have been aware of the arrest and would wonder where his money (or bag) was or because a notice of forfeiture of the van was sent to the van's registered address, the arguments ought to fall on deaf ears.

First, simply because someone was arrested, a citizen should not presume there was a forfeiture proceeding filed. Notably, the property was inventoried as the arrestee's personal property. (C23). No documents were ever tendered during the course of the discovery in the underlying criminal case explaining that a forfeiture action had been filed. Rather, all that was tendered were the documents showing that the money had been inventoried by the police. When the case against Tyler was dismissed, he filed a motion, in accordance with 720 ILCS 5/108-1, seeking the return of his property. The State's Attorney assigned to the criminal case requested time to contact the forfeiture unit of the State's Attorney's office to determine if a forfeiture action had been filed. (C110). In other words, years into Tyler's prosecution, the prosecuting Assistant State's Attorney was unaware that her own office had filed a forfeiture action.

Second, there is no reason to believe the notice, regarding the van, with the wrong recipient's name, was ever delivered by the Postal Service. The State does not claim, nor do they have any proof, that the notice was ever mailed,

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received, or returned. (C16, ¶10). Equally, even if it had been received, there is no reason to believe Salaam would have opened another person's mail. Indeed, this argument requires Salaam to commit a felony. *See* 18 U.S.C.S. 1702 ("Obstruction of Correspondence"). The absurdity is self-evident: The State's notice is dependent on the petitioner committing a felony to receive it.

Notice is not optional. It is not a technicality. It is not a mere formality. Notice is a constitutional requirement that ensures individuals the opportunity to be heard before their property can be taken from them. The State did not send any form of notice to Salaam; he never got his opportunity to be heard. The judgment is void, unconstitutional, and unsustainable.

II. Because The Judgment Was Void, There Need Not Be A Finding That Salaam Exercised Diligence And A Meritorious Defense.

The State's second argument is predicated on the correctness of its first: because the judgment is not void, Salaam must establish a meritorious defense or satisfy due diligence in the bringing of his petition. It then attacks his diligence.

This Court has held that a section 2–1401 petitioner seeking to void a judgment–on a purely legal issue–does not need to establish a meritorious defense or satisfy due diligence requirements. *Sarkissian*, 201 Ill. 2d at 104; *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 379 (2005) (*citing Sarkissian* for same point); *see also*, more recently, *Warren Cty. Soil & Water Conservation Dist. v. Walters,* 2015 IL 117783, ¶48. As this Court has

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explained, "the allegation [in a section 2–1401 petition] that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence." *Sarkissian*, 201 Ill.2d at 104 (*citing People v. Harvey*, 196 Ill. 2d 444, 452 (2001) (*McMorrow, J., specially concurring*, joined by *Freeman, J.*))."

The State concedes that if this attack is one regarding a void judgment, then diligence does not matter, which makes sense–if Salam did not know, how could he act? Accordingly, the balance of the State's argument, which is predicated on the facts and attacks Salaam's diligence, is either irrelevant or was addressed above in the Reply to Issue I. The State's failure to give notice deprived Salaam of due process, rendering the judgment void and the requirement of diligence null.

III. Because Notice Of Forfeiture To Salaam Was Not Attempted Within 28 Days From The Date Of The Filing, The Action Must Be Dismissed With Prejudice.

Finally, the State argues that even if it failed to provide adequate notice, the proper remedy is to remand the case to the circuit court. This argument ignores the statue requiring that notice be given within 28 days from the filing of the forfeiture complaint. 725 ILCS 150/4 ("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…"). It is a jurisdictional prerequisite.

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This rule promotes fairness in forfeiture proceedings: "[T]he owner of the property is entitled to expect reasonably prompt postdeprivation procedures: the opportunity for a hearing at a meaningful time…preceded by meaningful notice." *People v. Four Thousand Eight Hundred Fifty Dollars ($4,850) United States Currency*, 2011 IL App (4th) 100528. Permitting the State to go back years later and rehear a case would essentially be eliminating the statutory requirement that notice be given within 28 days. It would effectively suggest that no notice should ever be provided because the consequence if the State is caught (and the judgment is declared void) is that they get a redo. It would incentivize the State to not provide notice.

In conceding that this Court may find Salaam was entitled to notice he did not receive, the State contends that this Court should not grant a dismissal because the State provided timely notice to Tyler. (Appellee's Brief 27-8). The State ignores that notice was owed to Salaam and yet was never sent, not within 28 days of the filing, not within two years, not at all.

In *People v. Braden*, cited by the State, the defendant did not receive notice prior to the entry of the judgment and thus an order was entered at an *ex parte* proceeding. 243 Ill. App. 3d 671 (1993). But the defendant was then sent notice of the entry of the judgment, entered on July 30, 1991 and stayed for 30 days, because he was able to file a motion to vacate on August 26, 1991, within the 30-day stay period. That case is distinguishable from Salaam's case, where he received no notice of the filing nor of the judgment.

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The case at bar is analogous to a case in which a summons is issued late, and the case is dismissed. Like the deadline for notice of a forfeiture filing, the 35-day period for issuance of a summons is mandatory. *Am. Nat. Bank & Tr. Co. v. City of Chicago*, 132 Ill. App. 3d 570, 572 (1985). The strict deadline is intended to ensure "the plaintiff cannot unduly delay review… and the plaintiff must show a good faith effort to have the clerk issue the summons within the 35 days." *Id.* (*citing Moretti v. The Department of Labor*, 119 Ill. App. 3d 740 (1983)).

In *Am. Nat. Bank & Trust Co.,* the court found that the plaintiff, the Bank, had failed to act with diligence to procure issuance of the summonses. Just as the State has done here, the Bank tried to shift the burden to the defendant, City of Chicago, arguing that their failure to object to the lack of summonses excused the Bank's late issuance. The court unequivocally rejected this argument: "[T]he burden was squarely upon the Bank to name and serve all persons who were parties of record." *Id.* The court concluded that because the Bank had not been diligent in obtaining the summonses, the circuit court erred in denying the City's motion to dismiss and reversed the judgment. *Id.* The court did not merely permit the Bank to go back and file again with the proper summonses; the only appropriate remedy was dismissal.

The same concerns arise in the present case. After all, a summons is really just a different method of providing notice. The issue centers around the degree of difficulty and the amount of effort required to provide adequate

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notice. Where the plaintiff is easily able to see the parties of record, a summons must be sent to them, and the failure to do so will not be excused by any hesitancy of the defendant. Likewise, where the State has the name and address of the owner of a seized vehicle and could have easily addressed notice to him, the failure to do so cannot be excused.

Here, no notice was sent to Salaam, and the period for notice has long expired. Because the prosecuting authority will not be able to comply with the statutory deadline–a mandatory deadline pursuant to *People v. Four Thousand Eight Hundred Fifty Dollars ($4,850) United States Currency*, 2011 IL App (4th) 100528–the remedy is dismissal of the forfeiture action with prejudice.

CONCLUSION

Ameen Salaam respectfully requests that this Court reverse the order of the First District Appellate Court, and for such further relief as is just.

Respectfully submitted,

By: /s/ Steven A. Greenberg
Steven A. Greenberg

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CERTIFICATE OF COMPLIANCE

I certify that this Reply brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 314(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 19 pages.

Respectfully Submitted,

/s/ Steven Greenberg
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No.

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	**) On Petition for Leave to Appeal**
	) from the Appellate Court of
Plaintiff-Appellee,	**) Illinois, First District**
	) No. 1-19-0922
v.	**)**
$59,914.00, et. al.	**) No. 15 COFO 3667**
	)
Defendant-Appellant.	**) Judge Patton, Presiding**
	)

NOTICE OF FILING

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You are hereby notified that on August 30, 2021, we filed by electronic means a copy of the Reply Brief in the above-entitled cause to the Clerk of the Illinois Supreme Court, and sent 3 copies, and one electronic copy to the above parties.

By: /s/ Steve Greenberg

I, Steve Greenberg, certify that on August 30, 2021, I served this Reply Brief and Notice to the parties via Odyssey e-file and electronic mail. Under the penalties provided by law pursuant to Section 1-109 of the Rules of Civil Procedure, the undersigned certifies the statements set forth here to be true and accurate.

By: /s/ Steve Greenberg

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