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IN THE  
COURT OF APPEALS OF INDIANA

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State of Indiana,  
*Appellant-Plaintiff,*

v.

\$2,435 in United States Currency  
and Alucious Kizer,  
*Appellee-Defendant.*

September 19, 2022

Court of Appeals Case No.  
22A-CR-578

Appeal from the Allen Circuit  
Court

The Honorable Wendy W. Davis,  
Judge

Trial Court Cause No.  
02C01-2109-MI-825

**Mathias, Judge.**

- [1] The State appeals the Allen Circuit Court’s order setting a jury trial on the State’s *in rem* forfeiture complaint against \$2,435 in cash seized from Alucious Kizer during an arrest. The State raises a single issue for our review, namely, whether the trial court erred when it concluded that [Article 1, Section 20 of the](#)

[Indiana Constitution](#) requires a jury trial in civil forfeiture proceedings. We reverse and remand for further proceedings.

## Facts and Procedural History

- [2] On September 20, 2021, Fort Wayne Police Department Officer C. McBride initiated a traffic stop of a vehicle operated by Kizer. However, Kizer fled from the vehicle. In the course of fleeing, Kizer is alleged to have attempted to dispose of more than 74 grams of methamphetamine, 67 grams of fentanyl, 12 grams of powder cocaine, 10 grams of crack cocaine, and 10 grams of a synthetic cannabinoid. Upon apprehending Kizer, officers seized \$1,410 from his person and another \$1,025 from his car.
- [3] The State filed a complaint in the Allen Circuit Court for the forfeiture of the \$2,435 seized from Kizer and his vehicle. In his answer, Kizer denied the State's allegations and requested a jury trial on the forfeiture complaint. The State moved to strike Kizer's demand for a jury trial, which motion the trial court initially granted. However, in January 2022, the court reconsidered its order, vacated it, and, citing [Article 1, Section 20 of the Indiana Constitution](#), set the matter for a jury trial. The trial court then stayed the proceedings and certified its January order for interlocutory appeal, which we accepted.

## Discussion and Decision

- [4] The State appeals the trial court's order setting the State's *in rem* forfeiture complaint for a jury trial. [Article 1, Section 20 of the Indiana Constitution](#) provides that, "[i]n all civil cases, the right of trial by jury shall remain

inviolable.” “Whether certain claims are entitled to a trial by jury presents a pure question of law” that we will review de novo. *Lucas v. U.S. Bank, N.A.*, 953 N.E.2d 457, 460 (Ind. 2011).

[5] We initially note that Kizer has not filed an appellee’s brief. In such appeals, we will not “develop an argument” for the appellee but instead will “reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error.” *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). Prima facie error in this context means “at first sight, on first appearance, or on the face of it.” *Id.* (quoting *Front Row Motors*, 5 N.E.3d at 758).

[6] The trial court erred when it concluded that [Article 1, Section 20 of the Indiana Constitution](#) requires a jury trial on the State’s *in rem* forfeiture complaint. Our Supreme Court has been clear on the scope of [Article 1, Section 20](#): “This constitutional provision preserves the right to a jury trial only as it existed at common law, and a party is not entitled to a jury trial on equitable claims.” *Lucas*, 953 N.E.2d at 460; *see also Ind. Trial Rule 38(A)* (“Issues of law and issues of fact in causes that prior to the eighteenth day of June, 1852, were of exclusive equitable jurisdiction shall be tried by the court . . .”).

[7] The Indiana Supreme Court has long held that a complaint by the State for the forfeiture of illegal property is “not a civil case under the common law when the Constitution was adopted . . . and so it has been uniformly held in this state

that . . . [the] parties are not entitled to trial by jury as a constitutional right.” *Campbell v. State*, 171 Ind. 702, 87 N.E. 212, 214-15 (1909). We have similarly recognized that, “[b]y denying individuals the ability to profit from ill-gotten gain, an action for forfeiture resembles an equitable action for disgorgement or restitution.” *Caudill v. State*, 613 N.E.2d 433, 437 (Ind. Ct. App. 1993), *clarified on other grounds*, *Katner v. State*, 655 N.E.2d 345, 349 (Ind. 1995).

[8] It is well-settled that the State’s civil forfeiture complaints are outside of [Article 1, Section 20](#), and are instead equitable claims to be tried by the court. We therefore reverse the trial court’s order setting the State’s complaint here for a jury trial and remand for further proceedings consistent with this decision.

[9] Reversed and remanded for further proceedings.

Robb, J., and Crone, J., concur.