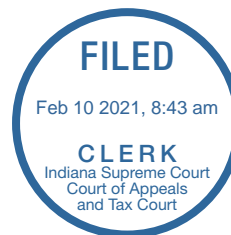


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Jack Ferman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 10, 2021

Court of Appeals Case No.
20A-MI-1429

Appeal from the Fayette Superior
Court

The Honorable Paul L. Freed,
Judge

Trial Court Cause No.
21D012002MI82

Altice, Judge.

Case Summary

- [1] Jack Ferman appeals following the trial court’s denial of his motion to dismiss the State’s civil forfeiture action. Ferman asserts that dismissal was required because the statutory requirements for the continued seizure of his property were not met. Specifically, he argues that (1) the trial court incorrectly interpreted the State’s civil forfeiture law, and (2) the State failed to timely file a probable cause affidavit.
- [2] We affirm.

Facts & Procedural History

- [3] On January 30, 2020, detectives with the Connersville Police Department (CPD) met with a confidential informant (CI) as part of an investigation targeting Ferman for human trafficking, promoting prostitution, and dealing narcotics. The CI informed the detectives that Ferman would provide her with drugs, including heroin and methamphetamine, in exchange for sexual favors. On January 31, 2020, a second CI reported to detectives that Ferman provided her with heroin in exchange for oral sex; a third CI reported that Ferman would “frequently request sexual favors” in exchange for drugs, clothing, and money. *Appellant’s Appendix Vol. II* at 21.

- [4] On February 1, 2020, CPD obtained a search warrant for Ferman’s home. During execution of the warrant that day, officers seized \$2484 in U.S. currency as well as a variety of electronic devices.¹
- [5] On February 10, 2020, the State filed, among other things, a complaint for forfeiture of the \$2484 seized by CPD during the search of Ferman’s home. The State filed an amended request for an order finding probable cause on February 13, 2020. On February 17, 2020, the trial court signed an order finding probable cause to seize the money. On February 26, 2020, Ferman filed his answer to the State’s complaint as well as a motion to dismiss the forfeiture action.
- [6] The trial court held a hearing on Ferman’s motion to dismiss on June 15, 2020. During the hearing, the State explained that in addition to the complaint filed on February 10, it had intended to file a motion entitled “Request for Finding of Probable Cause” but due to counsel’s error, it instead filed only a proposed order. The State noted that despite this error, it had included the probable cause affidavit as an attachment to the proposed order it filed with the court on February 10. After the error with the lead document was discovered, the State filed the amended request for a finding of probable cause for seizure on February 13, to which the State again attached the affidavit of probable cause. Ferman noted that the chronological case summary (CCS) did not indicate that

¹ On February 3, 2020, the State charged Ferman with promotion of human trafficking of a minor, promoting prostitution, stalking, and intimidation under Cause No. 21C01-2002-F4-77.

the probable cause affidavit was attached to the State’s initial filing and he asserted that he was not able to access any such filing through the electronic filing system. He argued that it was not until the State filed its amended request on February 13 that the probable cause affidavit was properly filed. The court interjected, noting that “the full unabridged police report that I’m looking at here that was filed the 10th.” *Transcript Vol. 1* at 9.

[7] The trial court took a brief recess to confer with the clerk about operation of the electronic filing system.² The court then explained on the record that because the lead document of the State’s February 10 filing was erroneously the proposed order, such filing was so categorized in the electronic filing system. As the system operates, proposed orders and any attachments thereto are accessible to the court only. The trial court, referring to the probable cause affidavit, affirmed that it “did see it” on February 10 even though defense counsel could not. *Id.* at 12. The trial court then found that the State timely filed the probable cause affidavit on February 10, 2020.

[8] At the conclusion of the hearing, the trial court denied Ferman’s motion to dismiss. Upon Ferman’s request, the trial court certified its order for interlocutory appeal. On August 20, 2020, this court accepted jurisdiction over this discretionary interlocutory appeal. Additional facts will be provided below as necessary.

² The court and counsel for both sides were present for the off-the-record discussion with the clerk.

Discussion & Decision

[9] Pursuant to Ind. Code § 34-24-1-2(a)(1), property may be seized by law enforcement officers under certain circumstances, including incident to a lawful arrest, search, or administrative inspection. As our Supreme Court has before explained, civil forfeiture “is a device, a legal fiction, authorizing legal action against inanimate objects for participation in alleged criminal activity, regardless of whether the property owner is proven guilty of a crime—or even charged with a crime.” *Horner v. Curry*, 125 N.E.3d 584, 597 (Ind. 2019) (quoting *Serrano v. State*, 946 N.E.2d 1139, 1140 (Ind. 2011)). An action for civil forfeiture is a “relatively quick procedure and broad in scope” and it can also be “highly profitable” for the State. *Caudill v. State*, 613 N.E.2d 433, 436 (Ind. Ct. App. 1993). The flipside is “the harsh consequences for the defendant, who can have his property taken from him in a quasi-criminal setting without the usual panoply of constitutional rules of criminal procedure afforded to criminal defendants.” *Id.* at 437.

[10] In August 2017, the Federal District Court for the Southern District of Indiana held that the statutory provisions of Indiana’s civil forfeiture law as then set out in Ind. Code 34-24 *et. seq.*, particularly regarding the seizure of vehicles, violated the Due Process Clause of the Fifth and Fourteenth Amendments. *Washington v. Marion Cnty. Prosecutor*, 264 F.Supp.3d 957, 979 (S.D. Ind. 2017). The District Court noted that under the statutory scheme as it existed, a person’s property could be seized and held for months and “the only process that an individual receives prior to a forfeiture hearing is a law enforcement

officer's determination that probable cause exists for an arrest." *Id.* at 977.

Because "there is no review by a neutral factfinder regarding the propriety of the initial seizure, and there is no judicial determination of probable cause for the seizure" the Court concluded that the statutory scheme created a high risk of erroneous deprivation of property and that "additional procedural safeguards would indeed be valuable." *Id.* at 977, 978.

[11] In response to the *Washington* decision, the General Assembly amended the civil forfeiture procedure to add the requirement that an affidavit be filed and a determination of probable cause for seizure be made after property is seized. Effective July 1, 2018, Indiana's civil forfeiture law provides:

If property is seized under subsection (a)(1), the prosecuting attorney shall file an affidavit of probable cause with a circuit or superior court in the county in which the seizure occurred not later than seven (7) days after the date of the seizure. If the court does not find probable cause to believe the property is subject to seizure under this chapter, it shall order the property returned to the owner of record.

I.C. § 34-24-1-2(b). Ferman contends that the requirements of I.C. § 34-24-1-2(b) were not met. Specifically, Ferman argues that the trial court's finding of probable cause for the seizure is subject to the same seven-day time limit for filing of a probable cause affidavit. Ferman also argues that the State failed to file an affidavit of probable cause within the prescribed timeframe.

[12] We typically review the trial court's ruling on a motion to dismiss for an abuse of discretion. *State v. Thakar*, 82 N.E.3d 257, 259 (Ind. 2017). However,

matters of statutory interpretation are reviewed *de novo* because they present pure questions of law. *Montgomery v. State*, 14 N.E.3d 76, 78 (Ind. Ct. App. 2014).

1. Statutory Interpretation

- [13] Ferman argues that I.C. § 34-24-1-2(b) requires that the trial court make its probable cause determination for seizure within the seven-day time limit set out therein. Because the trial court did not make such determination until February 17, 2020, Ferman contends that the State’s forfeiture action must be dismissed.
- [14] To address this argument, we must interpret the statute. In doing so, our objective is to give effect to the intent of the legislature. *Rowe v. State*, 813 N.E.2d 1232, 1234 (Ind. Ct. App. 2004), *trans. denied*. The statute itself is the best evidence of that intent. *Nicoson v. State*, 938 N.E.2d 660, 663 (Ind. 2010). In interpreting a statute, “[w]e must give words their common and ordinary meaning, while examining the statute as a whole.” *Rowe*, 813 N.E.2d at 1234. “We presume the legislature intended the language to be applied in a logical manner consistent with the statute’s underlying policy and goals.” *Id.* (quoting *Anglin v. State*, 787 N.E.2d 1012, 1016 (Ind. Ct. App. 2003), *trans. denied* (2004)). “Where the language of the statute is clear and unambiguous, there is nothing to construe.” *Nash v. State*, 881 N.E.2d 1060, 1063 (Ind. Ct. App. 2008), *trans. denied*.
- [15] Here, there is nothing to construe. I.C. § 34-24-1-2(b) requires the prosecuting attorney to “file an affidavit of probable cause with a circuit or superior court in

the county in which the seizure occurred not later than seven (7) days after the date of the seizure.” The trial court must then make a determination as to probable cause for the seizure and “[i]f the court does not find probable cause . . . , it shall order the property returned to the owner of record.” *Id.* While the statute expressly provides that the State must file a probable cause affidavit “not later than seven (7) days after the date of the seizure,” there is no time limit in the sentence setting forth the trial court’s obligation to make a probable cause determination. In other words, the clear language of the statute does not require the trial court to make a finding regarding probable cause within the same time period afforded the State to file the probable cause affidavit.³

2. *Timeliness*

[16] Ferman also argues that the State failed to timely file its affidavit of probable cause. The money was seized on Saturday, February 1, 2020, and the parties do not dispute that the probable cause affidavit had to be filed no later than Monday, February 10, 2020.⁴ As set out above, the State filed its complaint for forfeiture of the \$2484 on February 10, along with several other filings. Ferman argues that the affidavit was not filed at that time. The State maintains that the

³ Ferman directs us to legislative committee discussions as evidence that our interpretation of the statute does not comport with the legislature’s intent. We need not resort to such discussions, however, as the language of the statute is clear and unambiguous. If the legislature did intend to impose a time limit on the trial court’s probable cause determination for purposes of seizure, the legislature can amend the statute to so provide.

⁴ Because the seventh day fell on Saturday, February 8, the probable cause affidavit was to be filed no later than Monday, February 10, 2020. *See* Ind. Trial P. Rule 6(A).

probable cause affidavit was timely filed despite being erroneously attached to a proposed order rather than a motion requesting a finding of probable cause.

[17] As detailed above, the trial court affirmed that the affidavit of probable cause was in fact filed on February 10 and was before the court on that date. The court conferred with the clerk about the operation of the electronic filing system to explain the omission of the filing on the CCS and Ferman's inability to access the affidavit on that date. The court explained that such was because of the State's error in filing the lead document as a proposed order rather than a motion requesting the probable cause affidavit. Based on the facts before it, the trial court concluded that the State complied with the requirements of I.C. § 34-24-1-2(b) in that the State filed a probable cause affidavit in support of forfeiture of the money within the statutorily-required time. Having reviewed the record, we agree with the trial court's conclusion. *Cf. State v. Ryder*, 148 N.E.3d 306, 312 (Ind. 2020) (reaffirming that under the substantial compliance doctrine, "providing a copy of an affidavit to the warrant-issuing judge satisfies" the statutory filing requirement for warrant applications).

[18] Judgment affirmed.

Mathias, J. and Weissmann, J., concur.