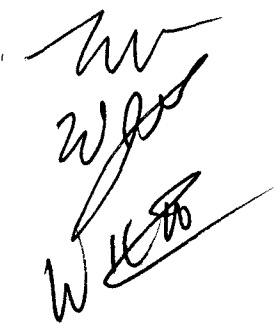


STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2021 CA 0437



GLENN ANDRETTI LEWIS

VERSUS

STATE OF LOUISIANA

Judgment Rendered: DEC 22 2021

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On Appeal from the
18th Judicial District Court
Parish of Iberville, State of Louisiana
Trial Court No. 80127

The Honorable Alvin Batiste, Jr., Judge Presiding

* * * * *

R. Neal Wilkinson
Baton Rouge, Louisiana

Attorney for Plaintiff-Appellant,
Glenn Andretti Lewis

Michael P. Frugé
Assistant District Attorney
Port Allen, Louisiana

Attorney for Defendant-Appellee,
State of Louisiana

* * * * *

BEFORE: LANIER, WOLFE, AND BURRIS,¹ JJ.

¹ The Honorable William J. Burris, retired, is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

WOLFE, J.

In this matter, Glenn Andretti Lewis appeals from a judgment of forfeiture in favor of the State of Louisiana concerning \$40,500.00 cash seized from him during a stop for a traffic violation. For the following reasons, we affirm the judgment of the trial court.

BACKGROUND

Just after midnight on July 14, 2020, Officer Mark Cooper of the Iberville Parish Sheriff's Office observed a westbound vehicle on Interstate 10 cross over the center lane of travel several times within a short distance. Officer Cooper activated his emergency lights and pulled the vehicle over. The driver of the rented vehicle with a Texas license plate was Glenn Andretti Lewis. Mr. Lewis indicated he was swerving because he was picking up his cell phone. Officer Cooper observed that Mr. Lewis appeared to be nervous as evidenced by his deep breathing, shaking lips, and trembling hands, so Officer Cooper had Mr. Lewis step out and walk to the rear of the vehicle.

Officer Cooper questioned Mr. Lewis about his travel plans and Mr. Lewis responded that he was returning to his home in Beaumont, Texas, after visiting his cousin in Mobile, Alabama, for a few days. While checking Mr. Lewis's information through dispatch, and on his patrol vehicle's computer, Officer Cooper discovered that Mr. Lewis had been arrested several times for different types of narcotics offenses. Officer Cooper asked Mr. Lewis about how much U.S. currency he had with him and Mr. Lewis answered that he had a few thousand dollars. Mr. Lewis began mumbling and he spoke in a nervous tone, stating that he had been gambling and he won the money at a casino. Officer Cooper asked for consent to search the vehicle, but Mr. Lewis did not directly respond. Officer Cooper then conducted a pat down of Mr. Lewis's outer clothing and allowed his dog, a certified K9 Basco, to conduct a free air sniff around the vehicle. K9 Basco alerted to an illegal narcotic

odor coming from inside the vehicle. Officer Cooper and K9 Basco are certified by the national Narcotic Detector Dog Association, and K9 Basco has been instrumental in numerous seizures of illegal contraband for several years.

Officer Cooper then conducted a search of the vehicle, where he found a black book bag in the back seat. Inside the book bag, Officer Cooper located nineteen bundles of cash in mixed denominations, totaling \$40,500.00, rather than the few thousand dollars as specified by Mr. Lewis. Through further investigation, Officer Cooper learned that Mr. Lewis's cousin was a known drug violator. Mr. Lewis did not have any receipts to verify that the cash was from casino winnings. Mr. Lewis stated that he had left the receipts at his cousin's house in Mobile. However, upon subsequent searching, Officer Cooper found a room receipt for a Holiday Inn in Mobile, with Mr. Lewis's cousin's name listed as the purchaser.

Since Mr. Lewis had not provided a satisfactory explanation regarding the origin and amount of money in his possession and K9 Basco had positively alerted to a narcotic odor, Officer Cooper seized and secured the cash in his patrol vehicle. Additionally, Officer Cooper prepared and personally served Mr. Lewis with a "NOTICE OF PENDING FORFEITURE" of the nineteen bundles of cash. The notice is dated July 14, 2020. Although Mr. Lewis refused to sign a disclaimer disavowing ownership of the currency, he did sign the notice of pending forfeiture as the "Individual Receiving" and the "Person Accepting Service" of the notice on that same date. Officer Cooper then allowed Mr. Lewis to leave in the rented vehicle.

While at the Iberville Parish Sheriff's Office, K9 Basco gave a positive alert to the presence of an illegal narcotic odor coming from the seized currency. The \$40,500.00 in cash was deposited in the Eighteenth Judicial District Court ("18th JDC") Asset Forfeiture account. The next day, July 15, 2020, Officer Cooper made

an application for and affidavit in support of a seizure warrant, which was executed by an 18th JDC trial court judge that same day.

On August 17, 2020, Mr. Lewis, through his attorney, filed a “Petition to Set Aside Forfeiture” in the 18th JDC. Mr. Lewis alleged that on July 14, 2020, Officer Cooper stopped him without cause as he was returning home from a gambling trip to the casinos in Biloxi, Mississippi. Mr. Lewis further alleged that Officer Cooper found no contraband, but proceeded to seize his cash winnings from the Biloxi casinos. Additionally, Mr. Lewis contended that the seizure was not justified as there had been no crime committed. Mr. Lewis averred that he had personally served his affidavit objecting to the seizure by hand delivery to the district attorney and the Iberville Parish Sheriff on August 1, 2020. A copy of the affidavit/claim, without service information, was attached to Mr. Lewis’s petition.

In response, the State, through an assistant district attorney for Iberville Parish, filed an Application for Order of Forfeiture or, in the alternative, an Exception of Prescription on September 23, 2020. The State attached exhibits showing that more than thirty days had elapsed since Mr. Lewis was personally served with notice of the pending forfeiture, and that Mr. Lewis had not made a timely or valid claim for the seized currency. The State averred that Mr. Lewis’s hand-delivered affidavit/claim/petition did not meet the mandatory requirement that it be sent by certified mail within thirty days of the notice of pending forfeiture, pursuant to La. R.S. 40:2610(A). The State further maintained that Mr. Lewis’s claim did not comply with the requirements outlined in La. R.S. 40:2610(B), in that he failed to enumerate the date, identity of the transferor, and the circumstances of his acquisition of the seized cash. Mr. Lewis filed an objection with a supporting memorandum on January 22, 2021, including an attachment showing that Mr. Lewis’s claim was sent to the district attorney by certified mail and received on September 29, 2020.

After a hearing wherein the entire suit record was admitted into evidence, the trial court signed a Judgment of Forfeiture in favor of the State, and issued written reasons for judgment on February 9, 2021. The trial court essentially found that Mr. Lewis had admitted that he did not follow the proper mandatory procedure requiring delivery of his claim objecting to the forfeiture by certified mail within thirty days of the date he was given notice of the pending forfeiture. The trial court stated in its reasons that the lack of proper procedure was a defect that could not be cured, and that Mr. Lewis's claim was thus prescribed. The judgment did not reflect the untimeliness of the claim, but instead found the law and evidence in favor of the State. Mr. Lewis appeals, assigning one error that the trial court failed to consider whether the seizure was reasonable and with probable cause, thereby violating his constitutional right to due process.

DISCUSSION

Forfeiture proceedings under the Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989 ("the Act"), La. R.S. 40:2601 *et seq.*, are civil proceedings, generally governed by the Louisiana Code of Civil Procedure. La. R.S. 40:2611(K). We review factual determinations in civil cases under the manifest error standard of review. **State v. \$144,320.00**, 2012-0466 (La. 12/4/12), 105 So.3d 694, 701. When considering whether probable cause for forfeiture exists, even though the issue of probable cause is ultimately a legal question, appellate courts apply the manifest error standard of review to the trial court's factual determinations. **Id.**

The Act allows law enforcement officials to seize illegal drugs and property constituting the proceeds of any drug-related conduct punishable by confinement for more than one year. **State v. Property Seized from Eaglin**, 2012-0219 (La. App. 1st Cir. 9/21/12), 2012 WL 4335450, *2 (unpublished), writ denied, 2012-2305 (La. 12/14/12), 104 So.3d 444. The mandatory, plain-language requirements for the

filing of a timely, valid claim by an owner of or interest holder in property seized for forfeiture are clear and, if not met, carry significant consequences. **State v. 2003 Infiniti G35 VIN No. JNKCV51E93MO24167**, 2009-1193 (La. 1/20/10), 27 So.3d 824, 834. Louisiana Revised Statute 40:2610² clearly establishes a thirty-day filing deadline that cannot be extended under any circumstances, prescribes the necessary form of the claim, and sets forth the required content of the averments with unambiguous specificity. The failure to fulfill any of these requirements – whether it be missing the deadline, filing a claim not in affidavit form, or not setting forth the necessary averments – precludes the owner or interest holder from further participation in the forfeiture proceeding. **Id.** If no claims are timely filed, the district attorney may apply for an order of forfeiture and allocation of forfeited property pursuant to the Act. Upon the trial court’s determination that the State’s application established the court’s jurisdiction, the giving of proper notice, and facts

² Louisiana Revised Statute 40:2610 provides:

- A. Only an owner of or interest holder in property seized for forfeiture may file a claim, and shall do so in the manner provided in this Section. The claim shall be mailed to the seizing agency and to the district attorney by certified mail, return receipt requested, within thirty days after Notice of Pending Forfeiture. No extension of time for the filing shall be granted.
- B. The claim shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury or false swearing and shall set forth all of the following:
 - (1) The caption of the proceedings as set forth on the Notice of Pending Forfeiture or petition and the name of the claimant.
 - (2) The address where the claimant will accept mail.
 - (3) The nature and extent of the claimant’s interest in the property.
 - (4) The date, identity of the transferor, and the circumstances of the claimant’s acquisition of the interest in the property.
 - (5) The specific provision of this Chapter relied on in asserting that the property is not subject to forfeiture.
 - (6) All essential facts supporting each assertion.
 - (7) The specific relief sought.

sufficient to show probable cause for the forfeiture, the trial court shall order the property forfeited. See State v. 2003 Infiniti G35, 27 So.3d at 834. The burden of proof for forfeiture when no claim is timely filed is probable cause. **State v. Property Seized from Terrance Martin**, 2009-1417 (La. App. 1st Cir. 3/30/10), 37 So.3d 1021, 1027. Whether probable cause exists in a given forfeiture case is determined by examining the totality of facts and circumstances for reasonable grounds to believe the property in question is connected to illegal drug trafficking. **State v. \$144,320.00**, 105 So.3d at 703-704.

There is no prerequisite that a crime be proved before property is subject to seizure. Moreover, in a civil forfeiture action, the State need not bring criminal charges, either before or after the forfeiture. The State can seize the assets without ever bringing a criminal charge against anyone. The State must only prove that there was probable cause to believe that the property was used in connection with a crime. **State v. Edwards**, 2000-1246 (La. 6/1/01), 787 So.2d 981, 990. Thus, in this case the State had the initial burden of proving probable cause to connect the seized cash to some form of criminal wrongdoing. Probable cause is a reasonable ground for belief of guilt, supported by less than *prima facie* proof but more than mere suspicion. **Property Seized from Terrance Martin**, 37 So.3d at 1028. Probable cause may be established by demonstrating the probability that the money was in fact drug related, and it can be established by circumstantial or hearsay evidence. **Id.**

In this case, Officer Cooper stated in his affidavit that he stopped Mr. Lewis for improper lane use. While speaking with Mr. Lewis, Officer Cooper observed that Mr. Lewis appeared nervous, and he provided inconsistent statements concerning where he had been and how much money he had. When Mr. Lewis was nonresponsive to Officer Cooper's request to search the vehicle, Officer Cooper walked K9 Basco around the vehicle and the dog alerted for the presence of illegal

narcotics. A subsequent search of the vehicle revealed a large sum of currency in mixed denominations in nineteen bundles inside a book bag in the back seat of the vehicle. Later, while in a secure location at the Iberville Parish Sheriff's Office, K9 Basco gave a positive alert to the presence of an illegal narcotic odor coming from the currency. Based upon Officer Cooper's sworn affidavit, a seizure warrant was issued for the currency. Viewing these facts together, we conclude that the State demonstrated credible evidence that the money was probably drug related. Also, jurisprudence has found that an alert by a trained drug dog establishes probable cause to search for evidence of drug contraband. See State v. \$144,320.00, 105 So.3d at 705. Therefore, the State satisfied its burden of establishing probable cause for the forfeiture of the funds. See Property Seized from Terrance Martin, 37 So.3d at 1028.

Our review of the record reveals that Mr. Lewis was provided notice of the pending forfeiture by personal service on July 14, 2020. That fact is undisputed. No valid claim was filed within the thirty-day time limit provided by La. R.S. 40:2610(A). Mr. Lewis admits in his pleadings that he did not follow the mandatory procedure required for delivery of his claim by certified mail until September 29, 2020. Louisiana jurisprudence is clear that the lack of proper and timely service that is objected to by the State is a procedural defect that cannot be cured. **State v. Johnson**, 2006-647 (La. App. 5th Cir. 1/30/07), 951 So.2d 1239, 1241-1242. Therefore, we find no error in the trial court's judgment granting the forfeiture as Mr. Lewis's claim was untimely and invalid under La. R.S. 40:2610. Furthermore, because the State met its burden of proof for forfeiture, the judgment was legally correct.

CONCLUSION

For the assigned reasons, the February 9, 2021 judgment granting forfeiture of \$40,500.00 cash in favor of the State of Louisiana is affirmed. Costs of this appeal are assessed against Glenn Andretti Lewis.

AFFIRMED.