

EXHIBIT C3

ELECTRONICALLY FILED
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2019-Jun-19 09:30:51
26CV-19-790
C18ED03 : 5 Pages

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS CIVIL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS. NO. CIV. 2019-_____

1969 FORD BRONCO TRUCK,
VIN U14GLE71421,
(Gene A. Tackett - owner)

and

Forrest River Puma Camper,
VIN 4X4TPUU296P008345,
(Patricia Tackett - owner)

and

Unknown year Ford F150 Truck,
VIN and year removed,
(Owner unknown)

and

1993 Aluminum Weld Motorboat,
Arkansas Registration AR186ALE; BNH JBC17030E93,
(Tenyia Tackett - owner)

and

1994 Mirage Tender LLC Boat,
Arkansas Registration AR842DSD, BHN ARZ55766H818,
(Paul R. Cutler and Richard Tackett - owners)

DEFENDANTS

IN REM COMPLAINT

Comes now the State of Arkansas, by and through Michelle C. Lawrence,
Prosecuting Attorney for the 18th Judicial District East, and for the In Rem Complaint,
states and alleges:

1. This is an in rem civil action for the forfeiture of a 1969 Ford Bronco truck, a Forrest River Puma camper, a Ford F150 truck, a 1993 Aluminum Weld Motorboat, and a 1994 Mirage Tender LLC boat, pursuant to A.C.A. §5-64-505.
2. This Court properly has jurisdiction of the persons and subject matter of this action, pursuant to A.C.A. §5-64-505.
3. On or about May 28, 2019, agents of the 18th Judicial District East Drug Task Force arrested Richard Glenn Tackett on charges of Delivery of Meth/Cocaine,

WHEREFORE, Plaintiff prays that the Court find by a preponderance of the evidence that grounds exist for the forfeiture of the above described property; that an Order be entered forfeiting the property as provided in A.C.A. §5-64-505, et seq.; and for any and all other relief the Court may deem proper.

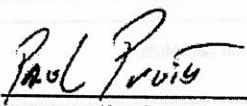
Respectfully submitted,

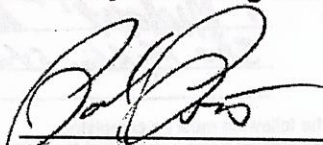
STATE OF ARKANSAS

By: 

TRENT DANIELS
Deputy Prosecuting Attorney
DTF Legal Commander

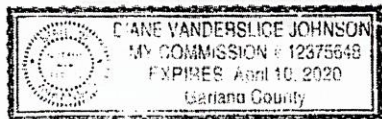
VERIFICATION

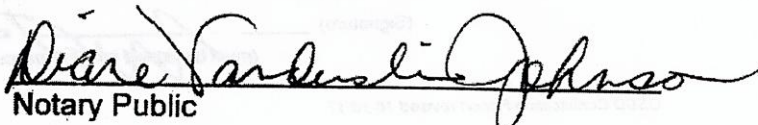
That I,  of the 18th Judicial District East Drug Task Force, upon oath deposes and states that the above and foregoing In Rem Complaint is true and accurate to the best of my knowledge and belief.


Agent

STATE OF ARKANSAS)
COUNTY OF GARLAND)

SUBSCRIBED AND SWORN to before me, a Notary Public, duly commissioned and acting, this 18th day of June, 2019.




Notary Public

CONFISCATION REPORT

Please ensure all entries are legible. Reports will be returned without tracking numbers if all entries are not legible.

County of Seizure Garland
Date 02/15/2019 5/28/2019 D.J.
Time 1215 PM
SEIZING LAW ENFORCEMENT AGENCY: 18th East Drug Task Force
SEIZING OFFICER: INV. White
NAME AND ADDRESS OF PERSON(S) FROM WHOM THE PROPERTY WAS SEIZED: Richard Tackett
304 Highline Street
Hot Springs Ar. 71901

REASON OR BASIS FOR SEIZURE: (check all applicable)

- ☒ VEHICLE (or other conveyances) used or intended for use to transport drugs for sale.
☐ MONEY furnished or intended to be furnished in exchange for controlled substance or counterfeit controlled substance or profits and proceeds traceable to such exchange.
☐ FIREARMS found in close proximity to controlled substances or counterfeit controlled substances.
If the firearms are not in close proximity to controlled substance, explain the basis for seizure:

☐ OTHER PROPERTY seized and basis for seizure:

DESCRIPTION AND ESTIMATED VALUE OF PROPERTY SEIZED:

Vehicles or Equipment seized must contain serial and model numbers (if applicable) and must show VIN# and MILEAGE

1969 Ford Bronco (Tan) (VIN# U14GLE71421) Miles: 163099 \$2,000.00
Unknown year Black Ext Cab Ford F-150 Miles: 220160 VIN: Unknown LPN: None \$2500.00 VIN Removed
Forrest River Puma Camper (VIN# 4X4TPU0296P006345): \$2,000.00

PROPERTY SEIZED WILL BE HELD AT THE FOLLOWING LOCATION(S):

Prosecuting Attorney's Office

501 Ouachita AVE

Hot Springs Ar. 71901

The undersigned officer states that he/she is the "seizing officer" and that this report is true and complete.

(Seizing Officer) Eric White

The undersigned hereby states that he/she is the person(s) from whom the above property was seized, and that his/her correct mailing address is given below:

(Signature) Richard Tackett

(Address) 320 Highline Street
Hot Springs AR 71901

In the event that a party refuses to sign, the following must be completed:

The undersigned additional law enforcement officer hereby states that the party from whom the property was seized refused to sign this report, and I hereby place my signature attesting to such refusal.

(Secondary Officer) _____

The undersigned officer hereby certifies he has sent a copy of this report to the Prosecuting Attorney and has obtained and is maintaining a copy of this report that has been acknowledged as being received by: Trent Daniels

He further certifies he has sent a copy of the foregoing to the Arkansas Drug Director on this 30 day of May, 2019.

(Seizing Officer) E. White

The Prosecuting Attorney's Office acknowledges receipt of a copy of the foregoing on this 28 day of May, 2019.

(Signature) [Signature]

(must be signed by the Prosecuting Attorney or a Deputy Prosecuting Attorney)

**THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS
CIVIL DIVISION**

STATE OF ARKANSAS

PLAINTIFF

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VIN and year removed,
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(Tenyia Tackett - owner)**

and

**1994 Mirage Tender LLC Boat,
Arkansas Registration AR842DSD, BHN ARZ55766H818,
(Paul R. Cutler and Richard Tackett - owners)**

DEFENDANTS

SUMMONS

THE STATE OF ARKANSAS TO DEFENDANT:

Patricia Tackett
320 Highline Drive
Hot Springs, Arkansas 71913

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) — or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas — you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address is: Trent Daniels, Deputy Prosecuting Attorney, 501 Ouachita Avenue, Hot Springs, Arkansas, 71901.

Smith Exhibit B

No. 2 This summons is for Patricia Tackett (name of Defendant).

PROOF OF SERVICE

- ☐ I personally delivered the summons and complaint to the individual at _____ [place] on _____ [date]; or
- ☐ I left the summons and complaint in the proximity of the individual by _____ after he/she refused to receive it when I offered it to him/her; or
- ☐ I left the summons and complaint at the individual's dwelling house or usual place of abode at _____ [address] with _____ [name], a person at least 14 years of age who resides there, on _____ [date]; or
- ☐ I delivered the summons and complaint to _____ [name of individual], an agent authorized by appointment or by law to receive service of summons on behalf of _____ [name of defendant] on _____ [date]; or
- ☐ I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I served the summons and complaint on the defendant by certified mail, return receipt requested, restricted delivery, as shown by the attached signed return receipt.
- ☐ I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I mailed a copy of the summons and complaint by first-class mail to the defendant together with two copies of a notice and acknowledgment and received the attached notice and acknowledgment form within twenty days after the date of mailing.
- ☐ Other [specify]: _____
- ☐ I was unable to execute service because: _____

My fee is \$ ____.



Arkansas Judiciary

Case Title: STATE OF ARKANSAS V RICHARD GLENN
TACKETT ETAL
Case Number: 26CV-19-790
Type: SUMMONS - FILER PREPARED

So Ordered

Tammie Tucker



TAMMIE TUCKER

Electronically signed by TLTUCKER on 2019-06-19 10:43:03 page 5 of 5

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS

CIVIL DIVISION

CASE NUMBER CV- 19-790

PLAINTIFF: State of Arkansas

DEFENDANT: Patricia Tackett

answer to the complaint

TYPE OF PLEADING



User Name: Sylvester Smith

Date and Time: Thursday, November 19, 2020 9:41:00 AM CST

Job Number: 130431092

Document (1)

1. A.C.A. § 5-64-505

Client/Matter: -None-

Search Terms: 5-64-505

Search Type: Natural Language

Narrowed by:

Content Type
Statutes and Legislation

Narrowed by
Jurisdiction: Arkansas

Smith Exhibit D-See Pg 7

A.C.A. § 5-64-505

(5) Any book, record, or research product or material, including a formula, microfilm, tape, or data that is used, or intended for use, in violation of this chapter;

(6)

(A) Anything of value, including firearms, furnished or intended to be furnished in exchange for a controlled substance or counterfeit substance in violation of this chapter, any proceeds or profits traceable to the exchange, and any money, negotiable instrument, or security used, or intended to be used, to facilitate any violation of this chapter.

(B) However, no property shall be forfeited under this subdivision (a)(6) to the extent of the interest of an owner by reason of any act or omission established by him or her, by a preponderance of the evidence, to have been committed or omitted without his or her knowledge or consent;

(7) Rebuttable Presumptions.

(A) Any money, coin, currency, or firearms found in close proximity to a forfeitable controlled substance, a counterfeit substance, forfeitable drug manufacturing or distributing paraphernalia, or a forfeitable record of an importation, manufacture, or distribution of a controlled substance or counterfeit substance is presumed to be forfeitable under this subdivision (a)(7).

(B) The burden of proof is upon a claimant of the property to rebut this presumption by a preponderance of the evidence; and

(8) Real property may be forfeited under this chapter if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this chapter, however:

(A) No real property is subject to forfeiture under this chapter by reason of any act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;

(B) Real property is not subject to forfeiture for a violation of § 5-64-419, if the offense is a Class C felony or less, or § 5-64-441;

(C) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the unlawful act or omission;

(D) Upon conviction, when the circuit court having jurisdiction over the real property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order consistent with subsection (h) of this section;

(E) When any court orders a forfeiture of real property under this chapter, the order shall be filed of record on the day issued and shall have prospective effect only;

(F) A forfeiture of real property ordered under a provision of this chapter does not affect the title of a bona fide purchaser who purchased the real property prior to the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser; and

(G) Any lis pendens filed in connection with any action pending under a provision of this chapter that might result in the forfeiture of real property is operative only from the time filed and has no retroactive effect.

(b) Seizure and Summary Forfeiture of Contraband. The following items are deemed contraband and may be seized and summarily forfeited to the state:

(1) A controlled substance listed in Schedule I that is possessed, transferred, sold, or offered for sale in violation of this chapter and a controlled substance listed in Schedule I that is seized or comes into the possession of the state and the owner of the controlled substance is unknown;

(2)

A.C.A. § 5-64-505

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in any appropriate location within the jurisdiction of the court.

(3)

(A) In any case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this chapter.

(f) Inventory of Property Seized — Referral to Prosecuting Attorney.

(1) Any property seized by a state or local law enforcement officer who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to the provisions of this section.

(2)

(A) When property is seized for forfeiture by a law enforcement agency, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B)

(i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.

(C) The original confiscation report shall be:

(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and

(ii) Maintained in a separate file.

(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.

(3) The confiscation report shall contain the following information:

(A) A detailed description of the property seized including any serial or model numbers and odometer or hour reading of vehicles or equipment;

(B) The date of seizure;

(C) The name and address from whom the property was seized;

(D) The reason for the seizure;

(E) Where the property will be held;

(F) The seizing law enforcement officer's name; and

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(A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed in such a way as to avoid the distribution requirements set forth in subdivision (i)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the Arkansas Drug Director within five (5) calendar days after filing the complaint.

(2)

(A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3)

(A) The prosecuting attorney may file the complaint after the expiration of the time set forth in subdivision (g)(2) of this section only if the complaint is accompanied by a statement of good cause for the late filing.

(B) However, in no event shall the complaint be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.

(C) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder. In addition, items seized but not subject to forfeiture under this section or subject to disposition pursuant to law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder. If the owner or interest holder cannot be determined, the court may order disposition of the property in accordance with subsection (h) of this section.

(4) Within the time set forth in the Arkansas Rules of Civil Procedure, the owner or interest holder of the seized property shall file with the circuit clerk a **VERIFIED** answer to the complaint that shall include:

(A) A statement describing the seized property and the owner's or interest holder's interest in the seized property, with supporting documents to establish the owner's or interest holder's interest;

(B) A certification by the owner or interest holder stating that he or she has read the verified answer and that it is not filed for any improper purpose;

(C) A statement setting forth any defense to forfeiture; and

(D) The address at which the owner or interest holder will accept mail.

(5)

(A) If the owner or interest holder fails to file an answer as required by subdivision (g)(4) of this section, the prosecuting attorney may move for default judgment pursuant to the Arkansas Rules of Civil Procedure.

(B)

(i) If a timely answer has been filed, the prosecuting attorney has the burden of proving by a preponderance of the evidence that the seized property should be forfeited.

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(b) After the order, the prosecuting attorney, county sheriff, chief of police, Division of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas Department of Transportation shall:

- (1) Maintain an inventory of the forfeited property or money;
- (2) Be accountable for the forfeited property or money; and
- (3) Be subject to the provisions of subdivision (f)(5) of this section with respect to the forfeited property or money;

(iv)

(a) Any aircraft is forfeited to the office of the Arkansas Drug Director and may only be used for drug eradication or drug interdiction efforts, within the discretion of the Arkansas Drug Director.

(b) However, if the Arkansas Alcohol and Drug Abuse Coordinating Council determines that the aircraft should be sold, the sale shall be conducted pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds of the sale shall be deposited into the Special State Assets Forfeiture Fund;

(v) Any firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) Any controlled substance, plant, drug paraphernalia, or counterfeit substance shall be destroyed pursuant to a court order;

(B)

(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (h)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney pursuant to the provisions of § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property pursuant to this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days of the entry of the order, the circuit clerk shall forward to the Arkansas Drug Director copies of the confiscation report, the circuit court's order, and any other documentation detailing the disposition of the seized property.

(i) Disposition of Moneys Received. Subject to the provisions of subdivision (f)(5) of this section, the proceeds of sales conducted pursuant to subdivision (h)(1)(B) of this section and any moneys forfeited or obtained by judgment or settlement pursuant to this chapter shall be deposited and distributed in the manner set forth in this subsection. Moneys received from a federal forfeiture shall be deposited and distributed pursuant to subdivision (i)(4) of this section.

(1) Asset Forfeiture Fund.

(A) The proceeds of any sale and any moneys forfeited or obtained by judgment or settlement under this chapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited into the asset forfeiture fund exceeds twenty thousand dollars (\$20,000) per county, the prosecuting attorney shall, within fourteen (14) days of that time, notify the circuit judges in the judicial district and the Arkansas Drug Director;

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(vi) The drug control fund is subject to audit by Arkansas Legislative Audit.

(B) The law enforcement agencies and prosecuting attorneys shall submit to the Arkansas Drug Director on or before January 1 and July 1 of each year a report detailing any moneys received and expenditure made from the drug control fund during the preceding six-month period.

(3) Special State Assets Forfeiture Fund.

(A) There is created and established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Special State Assets Forfeiture Fund".

(B)

(i) The Special State Assets Forfeiture Fund shall consist of revenues obtained under subdivision (i)(1)(B)(iv) of this section and any other revenue as may be provided by law.

(ii) Moneys from the Special State Assets Forfeiture Fund may not supplant other local, state, or federal funds.

(C) The Special State Assets Forfeiture Fund is not subject to the provisions of the Revenue Stabilization Law, § 19-5-101 et seq., or the Special Revenue Fund Account of the State Apportionment Fund, § 19-5-203(b)(2)(A).

(D)

(i) The Arkansas Drug Director shall establish through rules a procedure for proper investment, use, and disposition of state moneys deposited into the Special State Assets Forfeiture Fund in accordance with the intent and purposes of this chapter.

(ii) State moneys in the Special State Assets Forfeiture Fund shall be distributed by the Arkansas Alcohol and Drug Abuse Coordinating Council and shall be distributed for drug interdiction, eradication, education, rehabilitation, the State Crime Laboratory, and drug courts.

(4) Federal Forfeitures.

(A)

(i)

(a) Any moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture shall be deposited and maintained in a separate account.

(b) However, any balance over two hundred fifty thousand dollars (\$250,000) shall be distributed as set forth in subdivision (i)(4)(B) of this section.

(ii) No other moneys may be maintained in the account except for any interest income generated by the account.

(iii) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(iv) The account is subject to audit by Arkansas Legislative Audit.

(B)

(i) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Division of Arkansas State Police to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained separately and distributed consistent with governing federal law and upon the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council.

(ii) Of the moneys contained in the Special State Assets Forfeiture Fund at the beginning of each fiscal year, no more than:

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(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under subdivision (a)(4), subdivision (a)(6), or subdivision (a)(8) of this section.

(k) The circuit court shall order the forfeiture of any other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under subsection (a) of this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:

- (1)** Cannot be located;
- (2)** Was transferred or conveyed to, sold to, or deposited with a third party;
- (3)** Is beyond the jurisdiction of the circuit court;
- (4)** Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;
- (5)** Was commingled with other property that cannot be divided without difficulty; or
- (6)** Is subject to any interest exempted from forfeiture under this subchapter.

(l)

(1)

(A) On the fifth day of each month the Treasurer of State shall transfer to the Department of Community Correction Fund Account twenty percent (20%) of any moneys deposited into the Special State Assets Forfeiture Fund during the previous month.

(B) However, in no event shall more than eight hundred thousand dollars (\$800,000) be transferred during any one (1) fiscal year.

(2) Any moneys transferred to the Department of Community Correction Fund Account from the Special State Assets Forfeiture Fund in accordance with this subsection shall:

(A) Be used for the personal services and operating expenses of the drug courts and for no other purpose; and

(B) Not be transferred from the Department of Community Correction Fund Account.

(m)

(1) There shall be no civil judgment under this subchapter and no property shall be forfeited unless the person from whom the property is seized is convicted of a felony offense that related to the property being seized and that permits the forfeiture of the property.

(2) The court may waive the conviction requirement under this subsection if the prosecuting attorney shows by clear and convincing evidence that, before a conviction, the person from whom the property was seized:

(A) Died;

(B) Was deported by the United States Government;

(C) Was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement agency or prosecution;

(D) Fled the jurisdiction or failed to appear on the underlying criminal charge;

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forfeited property for official use, provided that the final order disposing of such property defines the legal entity that is responsible for such property. Section 5-64-505(i)(1)(D) governs those situations in which a seizure results in the forfeiture of money and or property in excess of two hundred fifty thousand dollars (\$250,000). It is the specific intent of the General Assembly that forfeiture proceedings not be structured in such a way as to defeat the General Assembly's intent that money or property in excess of two hundred fifty thousand dollars (\$250,000) be transferred to the Special State Assets Forfeiture Fund. It is determined that such fund can best be used to combat drug trafficking statewide."

Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments.

The 2001 amendment by No. 1495 added (l).

The 2001 amendment by No. 1690 redesignated former (g)(1) as present (g)(1)(A)-(B) and made related changes; added (g)(1)(C) and (i)(1)(C); substituted "be distributed for ... drug courts" for "only be distributed for law enforcement and prosecutorial purposes related to drug interdiction and eradication efforts" in (i)(3)(D); and made minor stylistic changes throughout.

The 2003 amendment added (f)(6).

The 2009 amendment substituted "owner's or interest holder's" for "petitioner's" twice in (g)(4)(A), and substituted "verified answer" for "document" in (g)(4)(B).

The 2011 amendment substituted "subdivisions (a)(1) or (a)(2)" for "subdivision (a)(1) or (2)" in (a)(4) and (a)(4)(B)(ii); substituted "§§ 5-64-419 and 5-64-441" for "§ 5-64-401(c)" in (a)(4)(C); and substituted "§ 5-64-419, if the offense is a Class C felony or less, or § 5-64-441" for "§ 5-64-401(c)" in (a)(8)(B).

The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (h)(1)(A)(iii)(a).

The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (f)(6) and (i)(3)(D)(i).

The 2019 amendment by No. 476 added (m).

Case Notes

Constitutionality.
 Construction.
 Purpose.
 Any Other Property.
 Burden of Proof.
 Close Proximity.
 Conveyances.
 Criminal Proceeding.
 Evidence.
 Forfeiture Proceeding.
 Knowledge or Consent.
 Presumption.

A.C.A. § 5-64-505

Under subsection (o) (now (k)), the state may proceed to seek forfeiture of "any other assets," even though they are not connected to the underlying crime, when forfeitable assets used in the underlying crime are unreachable under the provisions of subdivision (a)(4)(iv) (now (a)(4)(D)). State v. Gray, 322 Ark. 301, 908 S.W.2d 642 (1995).

Burden of Proof.

After the State met its burden to prove that the operator of a motor vehicle possessed and sold illegal drugs while using the vehicle, the owner of the vehicle, in order to obtain its return, was required to show both that the forfeitable acts occurred without her knowledge or consent and, as it was determined that the operator had the owner's permission to use the vehicle, that the forfeitable acts occurred without the knowledge or consent of the operator. State v. One 1993 Toyota Camry, 333 Ark. 503, 969 S.W.2d 663 (1998).

In a case concerning the forfeiture of two vehicles, the State did not have to offer proof that oxycodone and methadone were controlled substances since the court could take judicial notice of state-agency regulations classifying controlled substances into particular schedules. King v. State, 2014 Ark. App. 554, 447 S.W.3d 126 (2014).

Appellant's argument that the State, in seeking forfeiture, failed to make a causal connection between money hidden in the rental vehicle and drug trafficking sales was rejected where the entirety of the argument came from the testimony of appellant and his fiancée, and it appeared that the circuit court found the State's witnesses more credible. Appellant had been convicted of misdemeanor marijuana possession in connection with the incident. U.S. Currency v. State, 2017 Ark. App. 379, 526 S.W.3d 34 (2017).

Close Proximity.

"In close proximity" as used in subdivision (a)(6) (now (a)(7)) concerning rebuttable presumptions means "very near" and will be determined on a case-by-case basis and not by reference to any rigid rule. Limon v. State, 285 Ark. 166, 685 S.W.2d 515 (1985).

Preponderance of the evidence in a forfeiture proceeding placed money in close proximity to controlled substances or drug paraphernalia. Limon v. State, 285 Ark. 166, 685 S.W.2d 515 (1985); Kaiser v. State, 24 Ark. App. 19, 746 S.W.2d 559 (1988), rev'd on other grounds, Kaiser v. State, 296 Ark. 125, 752 S.W.2d 271 (1988).

Forfeiture of a large amount of cash found in a vehicle was proper as the rebuttable presumption in subdivision (a)(6) (now (a)(7)) of this section applied, even though only residue of a controlled substances was found; moreover, the cash was in close proximity to drugs found in a second vehicle that was traveling in tandem. \$15,956 in United States Currency v. State, 366 Ark. 70, 233 S.W.3d 598 (2006).

Forfeiture of firearms that were seized during a search of defendant's house with respect to the manufacture of methamphetamine was proper under this section, as the evidence supported the conclusion that all of the firearms were "in close proximity" to the drug paraphernalia. In re Gaucha-IGA 12 Gauge, 2011 Ark. App. 591 (2011).

Circuit court applied the presumption that if property was found in close proximity to a forfeitable controlled substance, then it was presumed to be forfeitable, and the burden of proof rested with the claimant of the property to rebut this presumption. The money found in the safe was located within four feet of the forfeitable property, controlled substances and drug paraphernalia, and appellant did not introduce anything to support his claim that the money was from the sale of legal items; the circuit court's findings were not clearly erroneous and the order of forfeiture was affirmed. Salim v. State, 2016 Ark. App. 556, 506 S.W.3d 863 (2016).

Conveyances.

Where there was no proof that the mobile home had ever been used as a conveyance of a controlled substance, the mobile home was not a vehicle within the meaning of subdivision (a)(4) of this section. Gallia v. State, 287 Ark. 176, 697 S.W.2d 108 (1985).

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and (2) the son of the owners had their permission to use the car. In re One 1994 Chevrolet Camaro, 343 Ark. 751, 37 S.W.3d 613 (2001).

In a forfeiture proceeding involving a truck parked outside a residence containing methamphetamine laboratories, a piece of drug paraphernalia found in the truck describing the drug dealer's accounting method was insufficient to show that the truck has been used to transport drugs. 1993 Ford Pick-Up v. State, 88 Ark. App. 172, 196 S.W.3d 493 (2004).

Forfeiture Proceeding.

A forfeiture is an in rem civil proceeding, independent of the criminal charge and to be decided by a preponderance of the evidence. Reddin v. State, 15 Ark. App. 399, 695 S.W.2d 394 (1985).

Where no motion was filed by an opposing party pursuant to Ark. R. Civ. P. 55 to set aside two default judgments, the trial court lacked the authority to set aside the default judgment and entered an order forfeiting the property to the county general fund. State v. \$258,035.00 United States Currency, 352 Ark. 117, 98 S.W.3d 818 (2003).

Trial court erred by sua sponte granting a default judgment against an owner and in favor of the State in a civil-forfeiture case because the State had not applied for a default judgment; the trial court sua sponte moved the forfeiture case toward a default judgment and did so in the absence of a request by the prosecutor, and there was no service of a written notice at least three days prior to any hearing that would consider a default judgment. Byrd v. State, 2016 Ark. App. 489, 505 S.W.3d 699 (2016).

Knowledge or Consent.

Exception to forfeiture based on a lack of knowledge or consent was not addressed on appeal as it was raised for the first time in a reply brief; even if it had been addressed, it was unavailing because one owner's actions were enough to divest the other owner of her interest under the forfeiture statute. King v. State, 2014 Ark. App. 554, 447 S.W.3d 126 (2014).

Presumption.

Drug-dog alert on a non-controlled-substance item does not constitute "a forfeitable controlled substance" sufficient to employ the rebuttable presumption in a forfeiture case. Therefore, money found in a passenger's gym bag during a vehicle stop was not subject to forfeiture where no drugs or drug paraphernalia were found, and a drug dog alerted to the money. United States Currency in the Amount of \$70,000 v. State, 2014 Ark. App. 127 (2014).

Property Rights.

Private property enjoys no constitutional privilege under Ark. Const., Art. 2, § 22 when it is knowingly used to traffic in drugs. One 1982 Datsun 280ZX v. Bentley ex rel. North Little Rock Police Dep't, 285 Ark. 121, 685 S.W.2d 498 (1985).

The \$2000 defendant paid an agent for drugs, which had been retained as evidence, was subject to seizure and forfeiture under this section, but because no forfeiture action was initiated, the defendant was entitled to return of the money. Drug Task Force v. Hoffman, 353 Ark. 182, 114 S.W.3d 213 (2003).

Requirements.

In a forfeiture proceeding, a claimant failed to present documentation that established her ownership of a scanner and a digital camera in compliance with this section. However, the state failed to show that a computer was properly forfeited as the only evidence it offered that it was used to buy a controlled substance was inadmissible hearsay. Gregory v. State, 2011 Ark. App. 131, 381 S.W.3d 168 (2011).

Trial court erred in granting state's motion to strike appellant's motion to dismiss a forfeiture action because the forfeiture action was properly commenced on October 13, 2004, and the record indicated that the confiscation report was received on April 1, 2003, clearly beyond the 60 days required by this section. Mitchell v. State, 94 Ark. App. 304, 229 S.W.3d 583 (2006).

Verification.

Pursuant to Ark. R. Civ. P. 11(a) and subdivision (g)(4) of this section, a party in a civil forfeiture action is required to give a personal verification; therefore, a default judgment was properly entered for the state in a case where an owner's answer was merely signed by his attorney. Solis v. State, 371 Ark. 590, 269 S.W.3d 352 (2007).

Ark. R. Civ. P. 4(b) lays out with great specificity the requirements for a proper summons, but nowhere does the rule require or even suggest that the summons must describe all of the requirements for a valid answer. Therefore, in a civil forfeiture action, a summons was not invalid because it failed to state the verification requirements for an answer under subdivision (g)(4) of this section. Solis v. State, 371 Ark. 590, 269 S.W.3d 352 (2007).

A state was entitled to a default judgment in its forfeiture proceedings against \$1,814 seized from an arrestee in connection with his arrest on two counts of delivery of a controlled substance because the arrestee's answer was not verified by his signature as required by subdivision (g)(4) of this section, and the arrestee's arguments were the same as those rejected by the court in earlier forfeiture proceedings against the arrestee's truck. Solis v. State, 373 Ark. 255, 283 S.W.3d 190 (2008).

Cited:

Goodwin v. State, 263 Ark. 856, 568 S.W.2d 3 (1978); Little Rock Police Dep't ex rel. Munson v. One 1977 Lincoln Continental Mark V, 265 Ark. 512, 580 S.W.2d 451 (1979); Murray v. State, 275 Ark. 46, 628 S.W.2d 549 (1982); Brown v. State, 38 Ark. App. 18, 827 S.W.2d 174 (1992); Harris v. State, 41 Ark. App. 207, 850 S.W.2d 41 (1993); Corbit v. State, 334 Ark. 592, 976 S.W.2d 927 (1998).

Research References & Practice Aids

ALR.

Burden of proof and presumptions in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law. 104 A.L.R.5th 229.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Proximity of asset to drugs, paraphernalia, or records. 115 A.L.R.5th 403.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Odor of drugs. 116 A.L.R.5th 325.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Explanation or lack thereof. 4 A.L.R.6th 113.