

**SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.**

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October 21, 2026

In the Court of Appeals of Georgia

A26A1310. FLOWERS v. THE STATE.

DAVIS, Judge.

In this civil forfeiture action, Jimaine Flowers appeals from an order of the Superior Court of Gwinnett County ordering the forfeiture of \$20,373 in US currency in relation to a drug investigation.¹ Flowers argues that (1) the trial court's order granting the forfeiture amounts to an excessive fine; (2) the evidence was insufficient to sustain the forfeiture; (3) the trial court erred in finding he filed fraudulent documents; (4) the trial court erred in using inadmissible evidence to order the

¹ Throughout their briefs, both parties reference the amount at issue as \$20,373 in US currency. The Notice of Seizure also indicates the amount is \$20,373. But at the final forfeiture hearing, the parties indicated the amount seized was \$20,353. Nevertheless, we will follow the lead of the parties and refer to the amount of money seized as \$20,373. We also note that the seized property included a Glock 43X 9mm firearm, but Flowers does not contest the forfeiture of the firearm.

forfeiture; (5) there was no probable cause to seize the cash; (6) the trial court erred in applying OCGA § 16-13-49; and (7) the trial court erred in denying his motion to dismiss the forfeiture complaint. For the following reasons, we affirm.

In rendering judgment on a complaint for forfeiture, the trial court is required to make mixed findings of fact and law, which this Court must accept unless they are clearly erroneous. And we defer to the trial court's judgment as to witness credibility and will affirm the trial court's findings if there is any evidence supporting them.

State v. Brophy, 368 Ga. App. 136, 136 (889 SE2d 337) (2023).

The record shows that on June 21, 2024, officers with the Gwinnett County Police Department conducted undercover surveillance of Room 216 at the Super 8 Motel on Willow Oak Parkway in Gwinnett County. Officers witnessed what they described as “activity that was indicative of illegal drug sales” and suspected “hand to hand illegal drug activity.” Traffic stops were conducted on several individuals they saw leaving the room, but no illegal substances were recovered, and no arrests were made. Officers were able to take a photograph of a person coming and going from the room who was later identified as Flowers. They discovered Flowers was on probation with a Fourth Amendment waiver as a condition of his probation and that he had an active arrest warrant for a probation violation. On June 25, 2024, officers conducted

surveillance on the same motel room and witnessed Flowers leave the room and drive away. Officers conducted a traffic stop on the vehicle and arrested Flowers because of the active warrant. Flowers was searched incident to his arrest, and officers found \$20,373 in cash and the Super 8 Motel room key for the room under surveillance.

Officers entered the room to execute the Fourth Amendment waiver search and saw in plain view a substance they suspected to be crack cocaine. At that point, officers applied for and were granted a search warrant for the room. The search warrant was executed and officers collected the following evidence:

1. A Glock 43X firearm;
2. A black digital scale with white powdery substance on it;
3. 250.7 grams of a white crystal-like substance that was suspected to be methamphetamine;
4. 172.5 grams of a white clumped substance that was suspected to be crack cocaine;
5. 10 grams of MDMA;
6. 75.3 grams of blue M 30 pills;
7. 29.1 grams of suspected cocaine gummies;
8. 121 grams of a green leafy material that was suspected to be marijuana;
9. 5.1 grams of a black and brown substance that was suspected to be fentanyl;
10. 85 pills of Xanax;
11. 22 pills of amphetamine and dextroamphetamine;
12. 58 pills of oxycodone and acetaminophen.

Officers also found an Enterprise Rental Agreement and a traffic citation, both with Flowers' name on them. Flowers was served with the notice of seizure of the firearm and the \$20,373 on June 25, 2024.

On September 11, 2024, Flowers was indicted for trafficking in illegal drugs and other crimes. Flowers moved to suppress evidence in his criminal case, and following a hearing, the trial court granted that motion. Subsequently, the State moved to nolle pros the criminal case against Flowers.

On July 16, 2024, Flowers mailed notice to the District Attorney's Office that he objected to the seizure of the cash. On July 23, 2024, the District Attorney's Office posted notice of the seizure at the courthouse pursuant to OCGA § 9-16-11. And on October 17, 2024, the State filed a complaint pursuant to OCGA § 16-13-49 and OCGA § 9-16-12 seeking to obtain forfeiture of the \$20,373 cash and the firearm. Flowers was served with the complaint on December 12, 2024. On December 19, 2024, Flowers filed an answer and counterclaim, and on January 7, 2025, he filed a motion to dismiss the complaint. On January 24, 2025, the State filed a motion for more definite statement pursuant to OCGA § 9-16-12(c)(2). Following a hearing on

April 1, 2025,² the trial court denied Flowers' motion to dismiss and granted the State's motion for a more definite statement. On April 16, 2025, Flowers filed an amended answer. Thereafter, the trial court scheduled a hearing for May 7, 2025. The State moved for a continuance on May 5, 2025 which was granted by the trial court on May 12, 2025.³ The final forfeiture hearing was held on June 24, 2025.

In support of his amended answer, Flowers attached documents purporting to be records from a Wells Fargo Business Checking Account for NoWorries Trucking, LLC and a business license for NoWorries Trucking, LLC to support his claim that the cash found on his person was legitimate business income. At the final forfeiture hearing, the State tendered certified records from Wells Fargo showing an account with the same account number as the one on the records Flowers provided with his amended answer but showing a different owner for the account. Recordings of phone calls Flowers made from jail asking for help falsifying bank records to show income for

² The transcript from this hearing is not in the record before us.

³ The trial court's order continuing the hearing indicates that Flowers, who was incarcerated in the Gwinnett County Jail at the time of the motion to continue, expected to be released on May 18, 2025, acknowledged that he would have an easier time preparing for the hearing once he was released, and consented to the State's motion to continue the hearing.

the asset forfeiture hearing were also admitted. Following the hearing, the trial court entered an order finding the currency and the firearm were subject to forfeiture. This appeal followed.

1. Flowers first argues the trial court's order granting the forfeiture of the \$20,373 amounts to an excessive fine. We disagree.

Georgia's appellate courts have long recognized that the Excessive Fines Clause of the Eighth Amendment to the US Constitution applies to in rem forfeitures. *Howell v. State*, 283 Ga. 24, 25(1) (656 SE2d 511) (2008).

We frame our excessiveness inquiry in terms of the following considerations: (1) the harshness, or gross disproportionality, of the forfeiture in comparison to the gravity of the offense, giving due regard to (a) the offense committed and its relation to other criminal activity, (b) whether the claimant falls within the class of persons for whom the statute was designed, (c) the punishments available, and (d) the harm caused by the claimant's conduct; (2) the nexus between the property and the criminal offenses, including the deliberate nature of the use and temporal and spatial extent of the use; and (3) the culpability of each claimant.

Id. at 26.

"The first factor requires a consideration of the inherent gravity of the offense compared with the harshness of the penalty." *Howell*, 283 Ga. at 25(1). Flowers argues that the trial court's order granting forfeiture is harsh and grossly disproportionate

compared to the gravity of the offense. He appears to argue that because his criminal charges were nolle prossed prior to the final forfeiture hearing, he has been exonerated of the criminal offenses which led to the seizure of the \$20,373, thus negating any relationship between the criminal charges and the seized currency.

But Flowers misconstrues the function of the nolle pros. “The mere entry of nolle prosequi does not indicate an absence of the commission of a criminal act or forever clear one of the charges brought against him.” *Drake v. State*, 170 Ga. App. 846, 846(1) (318 SE2d 721) (1984) (quotation marks omitted). And a civil in rem forfeiture action does not succeed or fail based on the outcome of any underlying criminal case. Further, in a forfeiture proceeding, “[t]he State need prove its case only by a preponderance of the evidence,” *Davis v. State*, 256 Ga. App. 299, 304(2) (568 SE2d 161) (2002), rather than the higher standard of proof beyond a reasonable doubt required for criminal charges. And we “will affirm the trial court’s findings if there is any evidence supporting them.” *Brophy*, 368 Ga. App. at 136.

In *Brophy*, the underlying criminal activity was possession of less than two grams of methamphetamine, for which the claimant was sentenced to three years probation and a \$750 fine, and the property at issue in the forfeiture complaint was a

vehicle for which the claimant had paid \$36,000. 368 Ga. App. at 138. We affirmed the trial court's order that forfeiture of the vehicle in those circumstances was excessive. *Id.* at 142(2). Here, however, Flowers was charged in a twelve count indictment with two counts of trafficking in illegal drugs (OCGA § 16-13-31(b)); two counts of trafficking in cocaine (OCGA § 16-13-31(a)); trafficking methamphetamine or amphetamine (OCGA § 16-13-31(e)); possession of a Schedule I controlled substance with intent to distribute (OCGA § 16-13-30(b)); possession of a Schedule IV controlled substance with intent to distribute (OCGA § 16-13-30(b)); possession of a controlled substance with intent to distribute (OCGA § 16-13-30(b)); possession of marijuana with intent to distribute (OCGA § 16-13-30(j)); possession of a firearm during the commission of a felony (OCGA § 16-11-106); and possession of a firearm by a convicted felon (OCGA § 16-11-131(b)). Plainly, Flowers' underlying criminal conduct is in stark contrast to *Brophy*, where the complainant was charged with mere possession of less than two grams of methamphetamine.

Flowers further argues that he does not fall within the class of person for whom the statute was designed as a deterrent because he has not been convicted of drug related activity in 14 years. But some of the goals of Georgia's Uniform Civil

Forfeiture Procedure Act, OCGA § 9-16-1, et seq.,⁴ are to “[render] illegal behavior unprofitable, [ensure] that persons do not profit from their illegal acts, and [remove] from circulation forbidden merchandise and firearms unlawfully used or intended for illegal use.” *Murphy v. State*, 267 Ga. 120, 121 (475 SE2d 907) (1996). A recent criminal conviction for drug related activity is not what defines the class of persons for whom the statute was designed as a deterrent. See *Davis*, 256 Ga. App. at 304(2) (forfeiture upheld where evidence supported the inference that claimant was regularly engaged in the drug trade).

Flowers further argues there was no harm caused by his conduct because there were only “allegations” of narcotic trafficking – again, apparently relying on the nolle pros of the criminal case. But the trial court found that there was a clear and present harm caused by the illegal sale and distribution of illegal narcotics. And the trial court’s findings were supported by testimony that officers observed Flowers engaged in “activity that was indicative of illegal drug sales” and suspected “hand to hand illegal drug activity.” Thus, we conclude that the trial court did not err in finding

⁴ The law pertaining to forfeitures was previously codified in OCGA § 16-13-49 (2004); the current codification became effective July 1, 2015. Laws 2015, Act 98, § 1-1 eff. July 1, 2015. The law is identical in all material aspects.

under the first factor that the forfeiture was not disproportionate to the criminal offenses.

The second factor evaluates “the nexus between the property and the criminal offenses, including the deliberate nature of the use and the temporal and spatial extent of the use.” *Howell*, 283 Ga. at 26. Here, the trial court found that there was a sufficient nexus between the currency seized from Flowers’ person and illegal drug activity. Flowers argues that there was no sufficient nexus because there were no narcotics found on his person and because he was arrested away from the motel room where the illegal drugs, scale, and the firearm were located. Flowers also argues that, although officers suspected hand to hand drug transactions occurred out of Room 216, their suspicions did not result in the discovery of any drugs on the individuals leaving the room. But the testimony that officers witnessed evidence of illegal drug activity taking place in Room 216 and the seizure of the key to Room 216 from Flowers’ person support the trial court’s findings that the currency was connected to drug activity. Additionally, there was evidence that Flowers falsified the bank records he submitted to support his assertions that the cash was lawfully obtained. Accordingly, there was evidence to support the trial court’s finding that there was a sufficient nexus

between the currency seized and the illegal drug activity. See *Howell*, 283 Ga. at 27(1) (nexus was particularly close where the crime occurred only on the subject property and the use of the property was a necessary component of the crime); compare *Brophy*, 368 at 141-42(2) (nexus was of a lesser degree, not requiring forfeiture, where possession of methamphetamine occurred close to the vehicle that was seized, but the vehicle was not necessary for the criminal conduct).

The final factor to consider in determining whether the forfeiture amounts to an excessive fine is Flowers' culpability for the crime itself. *Howell*, 283 Ga. at 27(1). Despite the nolle pros of the criminal charges, the testimony of the officers that Flowers was engaged in hand to hand drug sales out of Room 216 is sufficient to support the trial court's finding that, based on the preponderance of the evidence, the currency was a product of or related to the sale of illegal narcotics. See *Davis*, 256 Ga. App. at 304(2) (the State need prove its case only by a preponderance of the evidence).

In its order granting the forfeiture, the trial court expressly considered each of the *Howell* factors in reaching its conclusion that the forfeiture amount was not harsh or grossly disproportionate to the offenses of illegal narcotics distribution. The

evidence in the record before us is sufficient to uphold the trial court's findings. See OCGA § 16-13-49(b)(2)&(3). See also, *Davis*, 256 Ga. App. at 304(2) (property was properly forfeited where evidence supported the trial court's determination that it was used, intended for use, or proceeds derived or realized from a violation of the Georgia Controlled Substances Act).

2. In three related enumerations of error,⁵ Flowers argues the evidence was insufficient for the trial court to find that the \$20,373 was related to a violation of the Georgia Controlled Substances Act, there was no probable cause to seize the currency, and the trial court erred in applying OCGA § 16-13-49(b)(2)&(3). These arguments fail for many of the same reasons detailed in Division 1.

OCGA § 16-13-49(b) describes types of property which are considered contraband and thus no person has a property right in them.

(2) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of [the Georgia Controlled Substances Act] and any proceeds;

(3) Any property located in this state which was, directly or indirectly, intended for use in any manner to facilitate a violation of [the Georgia Controlled Substances Act] or the laws of the United States related to

⁵ We address these enumerations of error in a different order than presented in Flowers' brief.

controlled substances that is punishable by imprisonment for more than one year and any proceeds[.]

OCGA § 16-13-49(b).

Flowers argues that because he was arrested away from the motel room and no contraband was found on his person or in his vehicle, the trial court erred in finding that the \$20,373 was directly or indirectly used to violate the Georgia Controlled Substances Act. But there was ample evidence to support the trial court's finding by a preponderance of the evidence that the currency seized from Flowers was intended to facilitate a violation of the Georgia Controlled Substances Act or was derived or realized therefrom. See OCGA § 16-13-49(b)(2)&(3). See also *Davis*, 256 Ga. App. at 304(2) (property was properly forfeited where claimant's explanations for possession of the large amount of cash were unreasonable). As described above, on June 21, 2024, officers observed suspected drug activity occurring out of Room 216 at the Super 8 Motel. On June 25, 2024, officers watched Flowers leave Room 216 of the Super 8 Motel and get into a vehicle. Shortly thereafter, Flowers was pulled over and arrested on an outstanding probation violation warrant, and the key to Room 216 was found on his person along with the \$20,373 in cash. Because Flowers was lawfully arrested based on an active arrest warrant for violating the terms of his probation probable

cause was not necessary for officers to seize the currency on his person. “When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within the person’s immediate presence.” OCGA § 17-5-1(a). See also *Batson v. State*, 165 Ga. App. 299 (300 SE2d 551) (1983) (search and seizure were appropriate where officers arrested defendant who had an active arrest warrant).

Flowers further argues that because his criminal case was nolle prossed, the charges brought against him were no more than “allegations, speculations, and possibilities.” But as we have stated above, the law is clear that a civil in rem forfeiture action does not succeed or fail based on the whether the underlying criminal conduct was successfully prosecuted. “Property may be forfeited if it is, directly or indirectly, used or intended for use in any manner to facilitate a violation of the Georgia Controlled Substances Act or any proceeds derived or realized therefrom.” *Davis*, 256 Ga. App. at 304(2). And, “[t]he State need prove its case only by a preponderance of the evidence,” *id.*, rather than the higher beyond a reasonable doubt standard required for a criminal conviction.

There is also evidence in the record that Flowers falsified bank records and other documents to support his assertions that the currency was lawfully obtained.

Accordingly, the evidence was sufficient to support the trial court's findings by a preponderance of the evidence that the currency was related to a violation of the Georgia Controlled Substances Act. For these reasons, all three of these enumerations of error fail.

3. In his next enumeration of error, Flowers argues the trial court erred in finding that he filed fraudulent bank and business documents in support of his amended answer. We disagree.

As described above, we “will affirm the trial court’s findings if there is any evidence supporting them.” *Brophy*, 368 Ga. App. at 136. The evidence at the hearing included recordings of phone calls from the Gwinnett County Jail in which Flowers discussed falsifying documents to support his assertions that the seized currency was lawfully obtained as well as certified records from Wells Fargo for an account that did not belong to Flowers but showed the same account number as the records Flowers submitted. Flowers offered no explanation to rebut this evidence. Accordingly, the evidence supports the trial court’s findings that the documents filed by Flowers in his amended answer were fraudulent.

4. Flowers argues the trial court erred by using the same evidence in the criminal case against him to order the forfeiture. Flowers argues that because his motion to suppress was granted in the criminal case, the evidence cannot be used to support the forfeiture. We agree that the evidence that was suppressed in the criminal case cannot be used to support the forfeiture. But nonetheless there is sufficient other evidence in the record to support the trial court's order of forfeiture.

“Because forfeiture proceedings are quasi-criminal in nature, the exclusionary rule has been held to apply.” *Pitts v. State*, 207 Ga. App. 606, 607(1) (428 SE2d 650) (1993). “[I]f the search was illegal, it would render the evidence produced by the search tainted and inadmissible.” *Id.* However, if independent evidence exists connecting the forfeited property to illegal activities, the forfeiture action is not barred. *Id.* Again, “we will not disturb a trial court's findings if any evidence exists to support them. This is true even where ... such findings are based upon circumstantial evidence and the reasonable inferences which flow therefrom.” *Mordica v. State*, 319 Ga. App. 149, 151(1) (736 SE2d 153) (2012).

Here, despite the suppression of the evidence seized from the motel room, there was still independent evidence on which the trial court based its findings that the

currency seized from Flowers' person was a product of criminal conduct such that it supported forfeiture. The State introduced evidence that Flowers had falsified bank records and submitted those records to the trial court to support his assertions that the cash was lawfully obtained. The testimony of officers who witnessed Flowers conducting what appeared to be hand-to-hand drug transactions also supported the trial court's findings. Further, there was testimony that a few months prior to Flowers' arrest, officers observed him engaging in suspected cocaine trafficking in the same location. Although this evidence is circumstantial, "the State need prove its case only by a preponderance of the evidence." *Davis*, 256 Ga. App. at 304(2). Accordingly, the evidence in the record was sufficient to support the trial court's conclusion that the money seized from Flowers was either the proceeds of or used to further illegal drug activity.

5. Finally, Flowers argues the trial court erred in denying his motion to dismiss the forfeiture complaint as untimely filed and because a hearing was not held within 60 days of filing the complaint. We agree that the forfeiture complaint was untimely, but the hearing was held within the time frame required. Thus, the trial court was not required to dismiss the complaint.

The Georgia Uniform Civil Forfeiture Procedure Act, OCGA § 9-16-1, et seq., details the steps required for the State to secure civil forfeiture of property. “When property that is intended to be forfeited is taken by any law enforcement officer of this state, ... within 60 days from the date of seizure, the state attorney shall: (1) initiate a quasi-judicial forfeiture as provided for in OCGA § 9-16-11; or (2) file a complaint for forfeiture as provided for in OCGA § 9-16-12 or § 9-16-13.” OCGA § 9-16-7(a)-(b)(quotation modified). For property valued at \$25,000 or less, OCGA § 9-16-11(a) describes the procedure required of the state attorney for posting notice of the seizure. OCGA § 9-16-11(c)(1) instructs an owner or interest holder that to assert a claim to the seized property, “within 30 days after being served or within 30 days after the second publication of the notice of seizure, whichever occurs last,” he must send a claim to the state attorney by certified mail or statutory overnight delivery, return receipt requested. If any claim is served, the state attorney shall file a complaint for forfeiture as provided in OCGA § 9-16-12 or § 9-16-13 within 30 days of the actual receipt of the claim. OCGA § 9-16-11(c)(3).

Here, although the State initiated the quasi-judicial forfeiture within the time period required by OCGA § 9-16-7(b), the State failed to comply with the timeliness

requirements of OCGA § 9-16-11(c)(3). Pursuant to OCGA § 9-16-11, the State posted the notice of seizure on July 23, 2024. But on July 16, 2024, the State received notice from Flowers that he objected to the seizure of the \$20,373. And OCGA § 9-16-11(c)(3) requires the State to file a complaint for forfeiture as provided in OCGA § 9-16-12 or § 9-16-13 within 30 days of the actual receipt of a claim to the property at issue. In this case, the deadline for the State to file the forfeiture complaint would have been August 16, 2024, but the State did not file the complaint until October 17, 2024. Thus, the State failed to comply with OCGA § 9-16-11(c)(3). See *State v. Profitt*, 213 Ga. App. 270, 270 (444 SE2d 356) (1994) (decided under former OCGA § 16-13-49) (“[I]f a claim to the seized property is filed within 30 days of the notice, the State must file a civil complaint within 30 days of actual receipt of the claim.”). If the state fails to comply with OCGA § 9-16-7(b), subsection (c) provides that “the property shall be released on the request of an owner or interest holder, pending a complaint for forfeiture.” OCGA § 9-16-7(c) See *Smith v. State*, 301 Ga. App. 870, 871 (690 SE2d 208) (decided under former OCGA § 16-13-49) (“[T]he sole remedy for untimely filing by the State is the return of the contraband pending further forfeiture proceedings. ... “[N]o useful purpose would be served by returning the property to

the claimant at the hearing since a final decision would be made on the merits at the conclusion of the hearing.”).

Flowers further argues the State failed to hold the hearing within the time frame required by OCGA § 9-16-12(f). The procedure for in rem actions provides that “[i]f an answer is filed, a bench trial shall be held within 60 days after the last claimant was served with the complaint; provided, however, that such trial may be continued by the court for good cause shown.” OCGA § 9-16-12(f).

Flowers filed his answer on December 19, 2024. On January 9, 2025, the State filed a motion for a more definite statement under OCGA § 9-16-12(c)(2), which tolled the time requirements provided in OCGA § 9-16-12(f) until after a sufficient answer has been filed. See OCGA § 9-16-12(c)(2) (“If a motion for a more definite statement is filed, the time requirements for a trial set forth in subsection (f) of this Code section shall not commence until a sufficient answer has been filed.”). On April 16, 2025, Flowers filed his amended answer. On May 5, 2025, nineteen days after Flowers filed his answer, the State requested a continuance and Flowers consented. The trial court found there was good cause and granted the motion to continue. Thereafter, the final forfeiture hearing was held within the 60-day time frame, on June

24, 2025, fifty days after the State moved for the continuance. See *Rice v. State*, 246 Ga. App. 414, 416(2) (541 SE2d 58) (2000) (“The 60-day period is a statutorily prescribed time limit within which the State must either conduct a hearing or seek a continuance.”).

[A]lthough the State failed to timely initiate forfeiture proceedings and failed to return the property in response to [Flowers’] request, the property was always subject to further forfeiture proceedings. Those proceedings have now taken place, and [Flowers] has failed to show any harm resulting from the State’s failure to timely initiate the proceedings. To reverse, the appellant must show error and harm.

Johnson v. State, 266 Ga. App. 171, 172 (596 SE2d 693) (2004). Accordingly, we affirm the trial court’s final judgment of forfeiture.

Judgment affirmed. Doyle, P. J., and Whitaker, J., concur.