

IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-0440

IN THE MATTER OF PROPERTY SEIZED FROM JEAN CARLOS
HERRERA AND FERNANDO RODRIGUEZ,

JEAN CARLOS HERRERA and
FERNANDO RODRIGUEZ,
Claimants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POTTAWATTAMIE COUNTY
THE HONORABLE GREGORY W. STEENSLAND, JUDGE

APPELLEE'S BRIEF

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FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether Herrera's Answer to the Forfeiture Complaint Complied with the Requirements of Iowa Code Section 809A.13(4) and Whether the District Court Properly Granted the State's Motion to Dismiss.

Rakas v. Illinois, 439 U.S. 128 (1978)
U.S. v. \$154, 853.00 in U.S. Currency, 744 F.3d 559
(8th Cir. 2014)
United State v. Timley, 507 F.3d 1125 (8th Cir. 2007)
United States v. \$148,840.00 in U.S. Currency, 521 F.3d 1268
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*United States v. Fifteen Thousand Five Hundred Dollars in
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(La. Ct. App. 2002)
State v. Burnell, 2004 WL 434188
(Iowa Ct. App. Mar. 10, 2004)
State v. Lowe, 812 N.W.2d 554 (Iowa 2012)
Iowa R. Civ. P. 1.405

II. Whether the District Court Properly Entered an Order for Forfeiture.

In re Young, 780 N.W.2d 726 (Iowa 2010)
Iowa Code § 809A.13(4) (2015)

Iowa Code § 809A.16(3) (2015)

III. Whether the District Court Erred in Denying Attorney Fees for Representation of Rodriguez.

In re Mirzai, 2011 WL 6672598 (Iowa Ct. App. Dec. 21, 2011)

In re Young, 780 N.W.2d 726 (Iowa 2010)

State v. Allen, 708 N.W.2d 361 (Iowa 2006)

Iowa Code § 809A.12 (2015)

Iowa Code § 809A.23 (2015)

Iowa Code § 809A.5 (2015)

ROUTING STATEMENT

Because this case involves the application of existing legal principles, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is a combined appeal by Jean Carlos Herrera and Fernando Rodriguez from the district court's order forfeiting seized property and denying a request to award attorney fees for the representation of Appellant-Claimant Fernando Rodriguez. Order of Forfeiture; Order re Attorney Fees; Notices of Appeal; App. 144-148; 191-193.

Course of Proceedings

On October 1, 2015, the Pottawattamie County Attorney filed an in rem forfeiture complaint seeking to forfeit a 1999 Ford Expedition,

a soft-serve ice cream machine, a vacuum pump, and \$44,990 in United States Currency. Forfeiture Complaint; App. 4-19. The person alleged to have been in possession or control of the property was Jean Carlos Herrera; Fernando D. Rodriguez was named as a person with a potential security interest in the property. *Id.*

On November 5, 2015, Jean Carlos Herrera and Fernando Rodriguez filed a joint answer to the complaint. Mr. Herrera stated that he was in lawful possession of the property to be forfeited; Mr. Rodriguez stated that he was the owner of the Ford Expedition and was an interest holder in the property seized from that vehicle, including the United States currency. Mr. Herrera and Mr. Rodriguez also alleged that the stop of the vehicle was unlawful. The men requested the return of the vehicle and its contents. Answer; App. 20-22.

On November 19, 2015, Herrera filed a motion to suppress alleging that the stop of the vehicle and the subsequent detention and search were unlawful and seeking to suppress all information gathered during the stop and detention and seeking the return of the property seized. Herrera Motion to Suppress and Return; App. 23-24. Herrera filed a supplemental motion to suppress on December 9,

2015 challenging the validity of a search warrant that was issued September 21, 2015 for the search of the Ford Expedition.

Supplemental Motion to Suppress; App. 25-27.

Hearing on Herrera's motions to suppress was held on December 10, 2015, before the Honorable Mark J. Eveloff. Order (2/9/16); App. 144-148. The State made an oral motion to dismiss the claimant's answer on the ground that it failed to comply with Iowa Code section 809A.13(4), subsections (c) and (d). The court took that matter under advisement and proceeded to hear evidence on the motion to suppress. Order (2/9/16); Tr. (12/10/15) p. 4, line 3 – p. 6, line 21; p. 12, lines 4-11; App. 144-148.

On February 9, 2016, the district court entered an order finding that claimant Herrera's answer did not comply with Iowa Code section 809A.13(4)(c) and (d) and, therefore, failed to establish that he had standing in the forfeiture proceeding. The court then forfeited the property listed in the forfeiture complaint and also denied Herrera's motion to suppress. Order (2/9/16); App. 144-148.

The district court noted that the motion to suppress in this matter had been filed only in the name of Mr. Herrera, and also found that Mr. Rodriguez did not have standing to challenge the stop and

search of the vehicle as he was not present at the time of the stop and searches. The court noted that Rodriguez had filed a claim for return of the seized vehicle and further noted that his claim was not before the court and referred that claim to the court administrator to be set for hearing. *Id.*

Subsequently, on February 18, 2016, Rodriguez filed a motion to suppress. Rodriguez Motion to Suppress; App. 152-153. The State did not object to Mr. Rodriguez's claim for return of the 1999 Ford Expedition. Accordingly, the district court granted the claim for return. In light of that ruling, the court found that Mr. Rodriguez's motion to suppress was moot and cancelled the previously-scheduled hearing on that motion. Order (2/23/16); App. 154-155.

Facts

On September 12, 2015, Sergeant Kevin Killpack was driving east on Interstate 80 in Pottawattamie County when he saw Jean Carlos Herrera driving a Ford Expedition west on the interstate. Sgt. Killpack turned around, caught up with Herrera, and clocked him driving seventy-four miles per hour in a seventy-mile-per-hour zone. Tr. p. 12, line 21 – p. 13, line 6; p. 16, line 18 – p. 17, line 23; p. 72, lines 15-21. The officer pulled over Herrera. Tr. p. 18, lines 9-14.

Sgt. Killpack parked behind the Expedition, then approached on the passenger side. He noted that there were two men in the vehicle: the driver Jean Carlos Herrera and the passenger Bryan Walter Riccaldo. Forfeiture Complaint; App. 4-19.

As he walked up to the Expedition, Sgt. Killpack stopped at the rear-wheel well on the driver's side and looked underneath. He observed a false box attached to the undercarriage of the vehicle. It was an after-market box made of sheet metal and appeared to be newly-fabricated. Tr. p. 18, line 15 – p. 21, line 9.

Herrera told the officer that he and his passenger were business partners in a screen printing business and had been in business for two years. However, Herrera did not know the name of the business. Tr. p. 29, lines 10-19.

Herrera stated that they were traveling from New York to Los Angeles for a trade show to promote their business. He said the show would start in two weeks. Tr. p. 23, line 23 – p. 24, line 10; p. 26, line 16 – p. 27, line 6. Herrera gave the officer the name of the trade show and the location. The officer Googled that information and found nothing indicating there was a trade show scheduled for that date and location. The officer reported what he found and Herrera got on his

phone and began Googling, looking for another trade show. He found one being held one month later with a different name and no location given and claimed that was where they were going. Tr. p. 27, line 25 – p. 28, line 22. Herrera told the officer they were transporting a commercial ice cream machine and they planned to have a “pretty girl in a bikini” serve ice cream to draw people into their convention booth. Tr. p. 28, line 23 – p. 29, line 9.

Sgt. Killpack then spoke to the passenger, Bryan Riccaldo. Riccaldo told him that he and Herrera were traveling from New York to Los Angeles to visit family and they were also being paid to deliver an ice cream machine to a man named “Bogar.” The officer asked if he planned to go to a trade show and Riccaldo told him no. Tr. p. 30, lines 5-23.

Herrera was not the registered owner of the vehicle he was driving. When Sgt. Killpack asked about the owner, Herrera said the owner was a friend of the family, but he was only able to provide the owner’s first name, he did not know his last name. Tr. p. 23, lines 4-22.

Sgt. Killpack issued Herrera a written warning for the speeding violation, returned all his documents, and indicated that Herrera was

free to leave. The officer then asked for permission to search the vehicle; Herrera refused permission. Tr. p. 38, line 16 – p. 40, line 11. The officer, who had his canine with him in the patrol car, then had his dog do a sniff of the vehicle. The dog alerted on the vehicle. Tr. p. 40, line 12 – p. 42, line 2. After a backup officer arrived, the vehicle was searched. There was an ice cream machine in the vehicle, but the electrical cord had been cut off. There was also a battery for a cordless drill and a cord that plugged into the battery and could be used to operate the ice cream machine. When the officer attached it to the ice cream machine, the top of the machine retracted so that the officer could see that the internal parts of the machine had been gutted, so that it functioned as a vessel. Tr. p. 44, line 21 – p. 46, line 24.

There was a “boost phone” in the vehicle – a phone with only one number programmed into it and commonly used by drug and money smugglers. Tr. p. 47, lines 1-9. There was also a vacuum pump and a pelican case containing marijuana paraphernalia and a trace of what appeared to be marijuana. There was \$2,000 in cash in the center console. Herrera claimed that cash. Tr. p. 47, lines 10-21. Riccaldo had \$800 in cash in his pocket. Tr. p. 48, lines 9-14.

Officers searched the false compartment on the bottom of the vehicle and it was empty. Tr. p. 49, line 10 – p. 50, line 6.

Officers returned the cash claimed by Herrera and Riccaldo and seized the other items. Tr. p. 51, line 23 – p. 52, line 11.

About one week later, Sgt. Killpack applied for and was granted a search warrant to search the vehicle again. Officers found a secret compartment underneath the center console. There was \$44,900 in cash inside. Tr. p. 52, line 12 – p. 53, line 6; p. 57, line 12 – p. 59, line 11.

The State filed a complaint seeking forfeiture of the items seized at the scene of the stop and during execution of the search warrant. In Rem Forfeiture Complaint; App. 4-19.

Additional facts will be discussed where relevant to the State's argument, below.

ARGUMENT

I. Herrera's Answer to the Forfeiture Complaint Did Not Comply with the Requirements of Iowa Code Section 809A.13(4) and, Therefore, the District Court Properly Granted the State's Motion to Dismiss.

Preservation of Error

The State does not contest error preservation on the issue of whether the district court erred in granting the State's motion to dismiss.

Scope of Review

The court's review of forfeiture proceedings is for correction of errors at law. *In re Young*, 780 N.W.2d 726, 727 (Iowa 2010). To the extent that the petitioner raises constitutional issues, this court's review is *de novo*. *Id.*

Merits

Herrera challenges the district court's ruling that his answer to the State's in rem forfeiture petition failed to comply with the requirements of Iowa Code section 809A.13(4) and forfeiting the property at issue. His claim should be rejected. His answer failed to provide the information required by section 809A.13(4) and his failure to comply cannot be excused by his assertion that providing that information would require him to give up his rights under the

Fourth and Fifth Amendments to the United States Constitution or the analogous provisions of the Iowa Constitution.

Iowa Code section 809A.13(4) sets out the requirements for an answer to a forfeiture complaint. That subsection provides as follows.

4. The answer shall be signed by the owner or interest holder under penalty of perjury and shall be in accordance with rule of civil procedure 1.405 and shall also set forth all of the following:

a. The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint and the name of the claimant.

b. The address where the claimant will accept mail.

c. The nature and extent of the claimant's interest in the property.

d. The date, the identity of the transferor, and the circumstances of the claimant's acquisition of the interest in the property.

e. The specific provision of this chapter relied on in asserting that it is not subject to forfeiture.

f. All essential facts supporting each assertion.

g. The specific relief sought.

Iowa Code section 809A.13(4) (2015). The district court found that Herrera's answer failed to comply with subsections (c) and (d) of that section and granted the State's motion to dismiss. The court's ruling

was proper as Herrera's answer was not sufficient to establish that he had standing to challenge the forfeiture.

Standing in forfeiture cases has “both constitutional and statutory aspects.” *United State v. Timley*, 507 F.3d 1125, 1129 (8th Cir. 2007) (quoting *United States v. One–Sixth Share of James J. Bulger in All Present & Future Proceeds of Mass Millions Lottery Ticket No. M246233*, 326 F.3d 36, 40 (1st Cir. 2003)). As to constitutional standing, “[i]t is well established that a party seeking to challenge a forfeiture of property must first demonstrate an ownership or possessory interest in the seized property in order to have standing to contest the forfeiture.” *Id.* at 1129. To have statutory standing under the Iowa in rem forfeiture statute, one must be a “claimant.” *Matter of Aronson*, 440 N.W.2d 394, 397 (Iowa 1989) (citing *United States v. Fifteen Thousand Five Hundred Dollars in U.S. Currency*, 558 F.2d 1359, 1360 (9th Cir.1977)).

In his answer, Herrera asserted that he was in lawful possession of the 1999 Ford Expedition, soft-serve ice cream machine, pelican case, cordless drill and battery, vacuum pump, and United States currency listed in the forfeiture complaint and asserted that he had “a legal ownership and possessory interest in those items.” He asked

that the items be returned to him. However, he failed to provide in his answer the information required by subsections (c) and (d).

Instead, Herrera asserted that the stop and search of the vehicle was unlawful under the Fourth Amendment to the United States Constitution and the corresponding provision of the Iowa Constitution. He then stated that

further statements concerning the vehicle and its contents would constitute derivative evidence also subject to the exclusionary rule. Consequently, until there is a determination on the motion to suppress, we object to providing further information for the reason that such information would be the product of the original search and seizure that we believe violated by constitutional rights.

Answer to In Rem Forfeiture Complaint; App. 21.

Herrera's claim did not comply with the requirements of Iowa Code section 809A.13(4)(c) and (d). Therefore, the district court properly dismissed Herrera's claim.

Herrera acknowledges that he did not provide all of the information required by section 809A.13(4), but contends that his answer was sufficient because he cannot be required to provide additional information regarding the nature and extent of his interest in the property without violating his rights under the Fourth and Fifth Amendments. The Iowa Supreme Court has rejected the argument

that a claimant asserting a fifth amendment objection is excused from providing the information required by the forfeiture statute to establish standing. *In Matter of Aronson*, the Court found that the plaintiffs were not “claimants” because they alleged no specific property interest in the forfeited items. They asserted that claiming ownership of the forfeited items might incriminate them in pending criminal investigations and contended that forcing them to choose between their privilege and their lawsuit made assertion of the privilege “costly.” The Court rejected that argument and held that the claimants had no standing to contest the forfeiture. *Matter of Aronson*, 440 N.W.2d 394, 397–98 (Iowa 1989) (citing *Fifteen Thousand Five Hundred Dollars*, 558 F.2d at 1360–61); accord, *In re Property Seized from Behmer*, 2006 WL 1279318 (Iowa Ct. App. May 10, 2006). The Iowa Court further held that, because the claimant lacked standing, their claims that the seizure was the result of an illegal search and an illegal wiretap were moot. *Id.* at 397-398.

The Eighth Circuit, too, has rejected a claim virtually identical to that raised by Herrera. In *U.S. v. \$154, 853.00 in U.S. Currency*, the government filed an in rem forfeiture complaint. The claimant, Marcus, filed an answer in which he stated: “Claimant has an

ownership and possessory interest in the seized U.S. Currency.” He asserted that part of the money seized from him was earned through his employment and the balance “was given to Claimant by another person with Claimant as bailee.” Marcus did not, however, identify the bailor or specifically state his own interest in the property, as required by the federal forfeiture statute. Similar to the statement made by Herrera in this case, Marcus’ answer stated only that he had “an ownership and possessory interest in the seized U.S. currency.” And, again like Herrera, Marcus objected to being required to provide any additional information, relying on his privileges under the Fourth Amendment and Fifth Amendments. *U.S. v. \$154, 853.00 in U.S. Currency*, 744 F.3d 559, 561-563 (8th Cir. 2014). The Eighth Circuit rejected Marcus’ argument, holding that his assertion of privilege under the Fourth and Fifth Amendments to refuse to answer questions designed to determine whether he had standing to raise a claim did not preclude the district court from striking his claims. *Id.* at 564 (citing *United States v. \$148,840.00 in U.S. Currency*, 521 F.3d 1268, 1273–74 (10th Cir. 2008) (“A claimant’s decision to invoke the Fifth Amendment’s protection against self-incrimination ... does not decrease his burden of establishing standing [.]”)).

Other courts considering the issue have likewise found no constitutional impediment to requiring a claimant in a forfeiture proceeding to identify the source and nature of his or her claimed property interest. In *Loveless v. State*, 786 S.E.2d 899, 901-902 (Ga. Ct. App. 2016), the Georgia Court of Appeals affirmed a default judgment of forfeiture. Under OCGA § 16-13-49 (o) (3) (D) (2014), the answer filed by an owner of property which asserts a claim against the property “must set forth: ... [t]he date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property. ...” Loveless did not include in his answer the date of the transfer of the cash, the identity of the transferor, or the circumstances of his acquiring the cash. The Court thus found that he had failed to satisfy the specific statutory pleading requirements regarding factual information that must be included in claims or answers filed by those claiming interests in seized property and that the district court did not err by striking Loveless' Answer as legally insufficient and by entering a default judgment of forfeiture. The court rejected the claimant's argument that the privilege set out in the Fifth Amendment and by Georgia statute overrode the requirement that an answer in a civil forfeiture proceeding must include the

information required in OCGA § 16–13–49 (o) (3)). *See also, People v. \$174, 980 U.S. Currency*, 996 N.E.2d 1102 (Ill. Ct. App. 2013) (claimant filed an answer to the State's in rem forfeiture complaint in the form of a signed, verified claim in which claimant asserted that he was the owner of the currency and sought its return. However, invoking the Fifth Amendment to the United States Constitution, claimant asserted a right to refuse to provide any information with respect to the date upon which he acquired the currency, the circumstances under which the currency was acquired, or the identity of the transferor of the currency. The court held that summary judgment for the State was proper.); *State v. \$8, 000.00 U.S. Currency*, 827 So.2d 634, 639 (La. Ct. App. 2002) (Motion to Release Seized Property failed to comply with La.R.S. 40:2610(B). Neither the motion, nor any other pleadings filed on behalf of Mr. Banyard, set forth “the nature and extent of the claimants’ interest in the property” as required under La.R.S. 40:2610(B)(3), or provided the “date, identity of the transferor, and the circumstances of the claimant's acquisition of the interest in the property” as required under La.R.S. 40:2610(B)(4). Additionally, the motion and other pleading filed on behalf of Mr. Banyard did not contain any “essential

facts supporting his assertion of ownership in the seized property” as required by statute. The Court rejected Banyard’s argument that under the Fifth Amendment of the United States Constitution and Article 1, Section 16 of the Louisiana Constitution, he did not have to provide the information required by statute because such information could have led to self-incrimination.).

As for Herrera’s claim that he could not comply with the requirements of section 809A.13(4)(c) and (d) because of Fourth Amendment concerns, his claim is unpersuasive. The issue before the district court was whether Herrera had standing. Herrera’s claim that the evidence on which the State would presumably rely in establishing grounds for forfeiture would be inadmissible because it was seized in violation of the Fourth Amendment did not affect his ability to establish standing. Any challenge to the legality of the search and seizure would be moot until and unless Herrera established standing. *Aronson*, 440 N.W.2d at 397-398. The issue of the legality of the search and seizure would be considered only after Herrera established his standing to claim the property seized.

Further, to the extent that Herrera may be arguing that the State would be precluded from forfeiting the property if it was

obtained in violation of the Fourth Amendment, his claim fails. The Iowa Supreme Court has expressly rejected that claim, stating “We hold the fact that property otherwise forfeitable has been seized in violation of the fourth amendment to the federal constitution is not a bar to forfeiture.” *In the Matter of Property Seized from Flowers*, 474 N.W.2d 546, 548 (Iowa 1991).

Any Fourth Amendment violation would become relevant only when the district court considered the merits of the State’s forfeiture petition: in establishing the right to forfeiture, the State would not be permitted to rely on evidence obtained in violation of the Fourth Amendment, nor derived from a violation thereof. *Id.* However, because Herrera did not establish standing, he would not be able to challenge any forfeiture decision made by the district court.

Herrera relies upon *In re Flowers*, 474 N.W.2d 546 (Iowa 1991) in support of his claim that the statements required under Iowa Code section 809A.13(4), subsection (d), are fruit of the poisonous tree and that a claimant should be able to challenge the illegality without providing the information required by section 809A.13(4). *Flowers* does not support his argument.

The issue in *Flowers* was not whether, to establish standing, a claimant in a forfeiture proceeding could be required to provide information that he believes was obtained in violation of his rights under the Fourth and Fifth Amendments. Rather, the issue was whether illegally obtained evidence could be relied upon by the State in establishing the merits of its forfeiture claim. The Court held that it could not. However, the Court made clear that the fact that property otherwise forfeitable has been seized in violation of the Fourth Amendment is not a bar to forfeiture. *In the Matter of Property Seized from Flowers*, 474 N.w.2d 546, 548 (Iowa 1991).

Herrera suggests that requiring him to establish standing before challenging the legality of the search and detention is unfair. The State would point out that this requirement is not unique to Iowa's forfeiture proceedings or unfair in any manner. Criminal defendants, too, are required to establish a reasonable expectation of privacy in the particular area searched or the particular objects seized. *State v. Lowe*, 812 N.W.2d 554, 566–67 (Iowa 2012); *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978). Thus, in order to challenge a search or seizure, even a criminal defendant may be required to provide evidence that might well be incriminating. *See, e.g. State v. Burnell*,

2004 WL 434188, *1-2 (Iowa Ct. App. Mar. 10, 2004) (A defendant in a drug case could not challenge the legality of a search and seizure of evidence found in residence. Defendant claimed that he was a guest at residence but did not claim that he was an overnight guest and failed to offer any evidence with respect to why he was at residence or how he was associated with owner of residence and therefore failed to demonstrate that he had a reasonable expectation of privacy in the premises.).

The district court did not err in finding that Herrera's answer to the State's in rem forfeiture complaint failed to comply with Iowa Code section 809A.13(4), that he therefore failed to establish standing to challenge the forfeiture, and in granting forfeiture. The court's ruling should be upheld on appeal.

II. The District Court Properly Entered an Order for Forfeiture.

Preservation of Error

The State does not contest error preservation on the issue of whether the district court erred in granting the State's motion to dismiss.

Scope of Review

The court's review of forfeiture proceedings is for correction of errors at law. *In re Young*, 780 N.W.2d at 727. To the extent that the petitioner raises constitutional issues, this court's review is de novo. *Id.*

Merits

In Division II of his appellate brief, Herrera largely reiterates the arguments made in Division I of his brief. The State has adequately addressed those claims above and does not discuss them further in its response to Division II. Herrera raises one new claim; he contends that the prosecutor and district court did not follow the proper procedure for entering a forfeiture order. That claim should be rejected as the procedures used comply with the procedures set out in Iowa Code chapter 809A.

As noted in Division I, above, the district court ruled that Herrera's answer to the State's forfeiture complaint did not comply with the requirements of Iowa Code section 809A.13(4). The court concluded that

the claimant is not entitled to a forfeiture hearing and evidentiary questions are rendered moot. Therefore, in accordance with Iowa Code §§ 809A.16(3), the property claimed

to be owned by Claimant is hereby forfeited to the State and the Motion to Suppress is denied.

Order (2/9/16); App. 147.

Herrera contends that this order fails to satisfy the procedural requirements of chapter 809A. He argues that under section 809A.16, the prosecuting attorney was required to apply for an order of forfeiture and an allocation of forfeited property. He also argues that the district court was required to make a written determination that the state's written application established that court's jurisdiction, the giving of proper notice, and facts sufficient to show probable cause for forfeiture. His argument should be rejected. Those procedural requirements apply only where no answer is filed. In that event, those procedural requirements ensure that property is not forfeited without notice and that there is no forfeiture or property that is not subject to forfeiture.

Under the plain language of section 809A.16(3), no such procedures are required where, as here, the claimant in fact filed an answer, and the forfeiture order was based upon Herrera's failure to establish that he had an interest in the property to be forfeited, and thereby failed to establish standing. *See*, Iowa Code section 809A.16(3) (2015).

Alternatively, should this Court find that the procedures set out in section 809A.16(3) apply when an answer is filed but does not comply with the requirements of section 809A.13(4), and that the prosecutor or district court failed to follow those procedures, then the proper remedy is to affirm the district court's ruling that the property listed in the complaint should be forfeited. The case should then be remanded to the district court to permit the prosecutor to apply for an order of forfeiture and to permit the district court to issue a forfeiture order that complies with the requirements of section 89A.16(3).

III. The District Court Did Not Err in Denying Stowers' Claim for Fees for His Representation of Rodriguez.

Scope and Standard of Review

The Court reviews forfeiture proceedings for correction of legal error. *In re Mirzai*, 2011 WL 6672598, *3 (Iowa Ct. App. Dec. 21, 2011); *In re Young*, 780 N.W.2d 726, 727 (Iowa 2010). The Court likewise applies at-law review to questions of statutory interpretation. *State v. Allen*, 708 N.W.2d 361, 365 (Iowa 2006). Although our Court strictly construes statutes allowing forfeitures, under Iowa Code section 809A.23, “[t]he provisions of this chapter shall be liberally construed to effectuate its remedial purposes.” Ultimately,

the Court's goal is to promote and give effect to the legislature's intent. *Mirzai*, 2011 WL 6672598, *3.

Preservation of Error

The State does not challenge error preservation.

Merits

In Division III of the Appellants' combined brief, Appellant-Claimant Fernando Rodriguez challenges the district court's denial of his claim for attorney fees for representation of Rodriguez in the forfeiture proceeding. Rodriguez contends that he was a "prevailing party" and that he was entitled to an award of attorney fees under Iowa Code section 809A.12. The district court did not err in its determination that Rodriguez was not a prevailing party and was not entitled to an award of attorney fees.

Rodriguez contends that he was entitled to attorney fees under Iowa Code section 809A.12(7) as he was a prevailing party in the forfeiture proceeding. That section provides as follows.

7. In any proceeding under this chapter, if a claim is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant. However, once the claimant comes forward with some evidence supporting the existence of the exemption, the state must provide some evidence to negate the assertion of the exemption. The state's evidence must be substantial, though not necessarily rising to the level of a preponderance of the evidence, and more

than a simple assertion of the claimant's interest in the property. ***The agency or political subdivision bringing the forfeiture action shall pay the reasonable attorney fees and costs, as determined by the court, incurred by a claimant who prevails on a claim for exemption¹ in a proceeding under this chapter.***

¹ Iowa Code section 809A.5 defines property that is exempt from forfeiture. That section provides as follows.

1. All property, including all interests in property, described in section 809A.4 is subject to forfeiture, except that property is exempt from forfeiture if either of the following occurs:
 - a. The owner or interest holder acquired the property before or during the conduct giving rise to its forfeiture, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur, or acted reasonably to prevent the conduct giving rise to forfeiture.
 - b. The owner or interest holder acquired the property, including acquisition of proceeds of conduct giving rise to forfeiture, after the conduct giving rise to its forfeiture and acquired the property in good faith, for value and did not knowingly take part in an illegal transaction.
2. Notwithstanding subsection 1, property is not exempt from forfeiture, even though the owner or interest holder lacked knowledge or reason to know that the conduct giving rise to its forfeiture had occurred or was likely to occur, if any of the following exists:
 - a. The person whose conduct gave rise to its forfeiture had the authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct.
 - b. The owner or interest holder is criminally responsible for the conduct giving rise to its forfeiture, whether or not the owner or interest holder is prosecuted or convicted.

Iowa Code section 809A.12(7) (2015) (emphasis added).

Rodriguez did not “prevail[] on a claim for exemption.”

Rodriguez did not file a motion to dismiss and the State did not concede that the vehicle was property exempt from forfeiture. The State merely made a discretionary decision that, given the low value of the vehicle, it did not wish to expend the resources to pursue the forfeiture. *See*, Tr. (3/24/16) p. 10, line 6 – p. 14, line 15.

Neither did the district court rule that Rodriguez had succeeded in establishing that his vehicle was exempt from forfeiture. The substantive portion of the district court’s ruling provides: “The court finds there is no objection by the state to claimant Fernando Rodriguez's claim for return of property, specifically his 1999 Ford Expedition. The court finds said claim should therefore be granted and his motion to expand and motion to suppress are therefore moot.” Order (2/23/16); App. 154.

c. The owner or interest holder acquired the property with notice of its actual or constructive seizure for forfeiture under section 809A.6, or with reason to believe that it was subject to forfeiture.

Iowa Code § 809A.5 (2015).

Rodriguez is not entitled to an award of attorney fees as the return of his vehicle was the result of a decision by the State to abandon the forfeiture action it had initiated. There was no determination by the district court that the asset was exempt from forfeiture.

Alternatively, should the Court find the district court erred in denying attorney fees, the appropriate outcome would be to remand for a determination of reasonable attorney fees related to the representation of Rodriguez. *See, In re Mirzai*, 2011 WL 6672598, at *6 (remanding for a determination of the reasonable attorney fees related to representation of one of multiple forfeiture claimants where counsel represented more than one of the claimants).

CONCLUSION

The Court should affirm the district court's order of forfeiture and its order denying attorney fees for the representation of Claimant Fernando Rodriguez.

REQUEST FOR NONORAL SUBMISSION

Oral argument is unlikely to assist the Court in deciding the issue raised on appeal. Therefore, the State waives oral argument. However, in the event that appellant is granted oral argument, counsel for appellee desires to be heard in oral argument, as well.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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 - This brief contains **5,481** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
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