ELECTRONICALLY FILED DEC 13, 2017 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 17–1237

IN THE MATTER OF PROPERTY SEIZED
FOR FORFEITURE FROM
BO LI, NA TIAN, & WEI TIAN.

BO LI, NA TIAN, & WEI TIAN,
Claimants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DUBUQUE COUNTY
THE HON. MICHAEL J. SHUBATT, JUDGE

APPELLANT'S BRIEF

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I. Is Practicing Massage Therapy Without a License a Serious Misdemeanor?

Authorities

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State v. Alvarado, 875 N.W.2d 713 (Iowa 2016)
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Iowa Code § 147.2(1)
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Iowa Code § 152C.5 (1999)
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II. Did District Court Err in Concluding That the Evidence Was Insufficient to Show That the Seized Money Was Forfeitable Proceeds of Prostitution?

Authorities

In re Prop. Seized from Chiodo, 555 N.W.2d 412 (Iowa 1996)
In re Prop. Seized from DeCamp, 511 N.W.2d 616 (Iowa 1994)
In re Prop. Seized from Rios, 478 N.W.2d 870
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In re Prop. Seized from Thao, No. 14–1936, 2016 WL 1130280
(Iowa Ct. App. Mar. 23, 2016)
Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
Iowa Code § 809A.12
Iowa R. Evid. 5.801(c)

ROUTING STATEMENT

This statutory construction issue has not yet been resolved by any Iowa appellate court. As such, this case is a suitable candidate for supreme court retention. *See* Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

Nature of the Case:

This is an appeal from an order denying the State's in rem forfeiture complaint and dismissing the forfeiture action. Property was seized from claimants who are connected to Therapeutic Spa. Claimants insist that the money is proceeds from massages given by Na Tian and Wei Tian, who are not licensed massage therapists—but the State's investigation of Therapeutic Spa uncovered evidence that the purported masseuses were actually engaging in prostitution. The State also alleged that practicing massage therapy without a license is a serious misdemeanor under sections 147.2 and 147.86.

The district court was not convinced by the State's evidence regarding prostitution. It also held that section 152C.4 supplanted the default serious misdemeanor classification by creating a civil penalty for practicing massage therapy without a license. *See* Ruling (7/28/17); App. 195. Based on that, it dismissed the forfeiture action. The State appealed, and that ruling was stayed. *See* Order (9/1/17); App. 204.

The State argues this forfeiture action was dismissed in error. The State presented clear evidence that Therapeutic Spa was a front for prostitution services, which continued to be provided long after the claimants purchased Therapeutic Spa from its previous owners. More importantly, the district court was incorrect when it construed the relevant statutes: practicing massage therapy without a license is a serious misdemeanor, and these funds are still subject to forfeiture even if the claimants' testimony is taken at face value.

Course of Proceedings & Statement of Facts:

On February 14, 2017, investigators executed a search warrant and seized $16,278 from Bo Li; they seized $858 from his girlfriend, Wei Tian; and they seized $4,341 from her sister, Na Tian.

Bo testified that he purchased Therapeutic Spa from its previous owners on September 6th, 2016. *See* Transcript (5/9/17) p.5,ln.22–p.7,ln.12. Bo stated the seized money was proceeds from Therapeutic Spa, but he denied that prostitution occurred while he owned the business. *See* Transcipt p.11,ln.12–23; p.17,ln.16–p.21,ln.13.

Bo said he gave some of the massages, but he said "the need for a male masseuse is very rare"—and then he clarified that Na Tian and Wei Tian were the only ones who really gave massages. *See* Transcript

p.7,ln.25–p.8,ln.20. Bo recognized unlicensed massage therapy "does kind of draw certain, you know, sexual innuendos." *See* Transcript p.8,ln.21–p.9,ln.15. Therapeutic Spa had an active bank account with Premier Bank, but the vast majority of their business funds were kept in cash in their shared residence. *See* Transcript p.11,ln.12–p.14,ln.14.

Wei Tian and Na Tian admitting to giving those massages at Therapeutic Spa without being licensed massage therapists. *See* Transcript p.36,ln.20–p.38,ln.25; Transcript p.40,ln.14–p.42,ln.14.

Dubuque Drug Task Force supervisor Dave Haupert stated that law enforcement began investigating Therapeutic Spa in July 2016, based on "information and complaints from neighboring businesses that they were hearing noises from the business which appeared to them to be sexual-type noises." *See* Transcript p.45,ln.7–18. Their investigation over the internet turned up advertisements that offered massages at Therapeutic Spa—and those advertisements were placed on Craigslist, Backpage, and Rubmaps, which are commonly used by "sexual businesses or individuals who are soliciting sex." Transcript p.45,ln.25–p.46,ln.13. Investigator Haupert said Therapeutic Spa was listed on Rubmaps "[a]s of about a month or two ago." *See* Transcript p.47,ln.1–p.49,ln.22.

Investigators who conducted surveillance at Therapeutic Spa never saw *any* female customers—"[w]e only observed males coming and going." *See* Transcript p.59,ln.24–p.60,ln.6; *see also* Transcript p.74,ln.2–p.75,ln.1. Those investigators had also observed someone "coming out of the Therapeutic Spa placing a garbage bag in the trunk of the car," so they conducted a seizure and analysis of the contents of that trash bag after it was placed in the garbage at Bo's residence. *See* Transcript p.51,ln.2–18. There was no DNA analysis ordered because investigators "had no idea who all the parties were"—but the forensic analysis showed two items in the bag tested positive for seminal fluid. *See* Transcript p.51,ln.19–p.54,ln.3; State's Ex. 8; App. 32.

When the warrant was executed and the money was seized, all three claimants admitted they were not licensed to practice massage therapy in the State of Iowa. *See* Transcript p.54,ln.13–p.55,ln.23. Investigators also found "very minimal documentation of scheduled appointments," along with a "credit card machine." *See* Transcript p.55,ln.24–p.56,ln.7. The claimants were keeping more than $16,000 in "plain white business envelopes in various amounts," of around $1,000 to $2,000. *See* Transcript p.56,ln.17–p.57,ln.2. This money and the way it was kept was noteworthy to Investigator Haubert:

> In my experience, it's very odd for individuals to keep that amount of cash while running a business. It is an indicator that there is potential money laundering going on or it is an attempt to hide the assets of that business. I found it striking that on some of those envelopes the dates were October 2016, which, to me, shows that that money has been attempted to be concealed rather than placed in a bank account.
>
> In my experience, when individuals continuously deposit large amounts of money, it is an indicator of potential illegal activity, because generally, in today's day and age, businesses will not only use cash but will use credit cards and electronics. And with valid accounts, it's common to bring money in in large amounts, but not in $20 bills or various denominations. So in my experience in prostitution cases and in drug cases that I've worked, money — cash money will be kept on hand so as not to raise red flags with banks because there's no paper trail then and there's no lower or upper limits of how much you're depositing.

See Transcript p.57,ln.3–p.58,ln.2; *cf*. Transcript p.73,ln.2–16.

There were also "numerous prepaid Amazon cards and prepaid MasterCard cards," which was similarly indicative of illegal activity—it indicated an intent to launder money and conceal its origins:

> To have a larger quantity of these cards is something I have not commonly seen, but a common reason for this is to launder money for cash or illegal businesses who bring in money. As I previously said, rather than depositing into accounts, which may throw off red flags with the bank, they can go buy prepaid cards, ... You can also provide the card number and the key code on the back to anybody you want worldwide and they can use that card. You're not dealing with wiring money, transferring money, depositing money, which are all — could be red flags in investigations similar to this.

> . . . [R]eceipts were found for several of these cards in the denominations of 69, 72, $85, in those ranges, multiple cards bought on the same day at Wal-Mart. . . . [I]t raised a red flag with us that this amount of cards is being purchased, particularly together.

See Transcript p.59,ln.17–p.60,ln.23; *cf*. Transcript p.71,ln.4–18.

In April 2017, an undercover officer conducted a successful sting operation, resulting in the arrest of a woman who solicited that officer for sex in a hotel room at the Hilton Garden Inn in Dubuque. *See* Transcript p.62,ln.13–p.64,ln.3. Officers searched that hotel room and found a business card for Therapeutic Spa in the woman's purse. *See* Transcript p.63,ln.12–p.65,ln.7; State's Ex. 19; App. 36. While seemingly innocuous, this was significant when viewed in context:

> At that time, knowing what we know and through training and experience in massage parlor, erotic massage parlor investigations, the women come and go routinely. They may be here for a month or two months, and then they'll be gone and somebody else new will come in. So one of my first thoughts was this may be or may have been one of the females who has worked in the spas in our area previously who we had never identified.

See Transcript p.65,ln.8–22. Additionally, a printed advertisement for Therapeutic Spa was found when investigators searched two other massage parlors in Dubuque where prostitution was discovered. *See* Transcript p.65,ln.23–p.67,ln.11; State's Ex. 20; App. 37.

Additional facts will be discussed when relevant.

ARGUMENT

I. The District Court Erred in Finding That the Offense of Practicing Massage Therapy Without a License Is Not a Serious Misdemeanor.

Preservation of Error

The State made this argument below. *See* Brief (5/24/17) at 2–3; App. 178–79. The district court's ruling considered this argument and rejected it. *See* Ruling (7/28/17) at 2–4; App. 196–98. Thus, error was preserved. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

Generally, "matters of statutory construction" are reviewed for errors at law. *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995).

Merits

Iowa Code chapter 147 sets out generally applicable provisions dealing with licensing requirements and procedures. Section 147.2(1) states "massage therapy" may not be practiced "unless the person has obtained a license for that purpose from the board for the profession." *See* Iowa Code § 147.2(1). Later in the chapter, section 147.86 states:

> Any person violating any provision of this subtitle, except insofar as the provisions apply or relate to or affect the practice of pharmacy, or where a specific penalty is otherwise provided, shall be guilty of a serious misdemeanor.

See Iowa Code § 147.86. The district court found a "specific penalty" that supplanted section 147.86 in section 152C.4, which states:

> The board, or its authorized agents, may inspect any facility that advertises or offers the services of massage therapy. The board may, by order, impose a civil penalty upon a person who practices as a massage therapist without a license issued under this chapter or a person or business that employs an individual who is not licensed under this chapter. The penalty shall not exceed one thousand dollars for each offense. Each day of a continued violation after an order or citation by the board constitutes a separate offense, with the maximum penalty not to exceed ten thousand dollars. . . .

Iowa Code § 152C.4(1); *see also* Ruling (7/28/17) at 2–4; App. 196–98.

That section does provide for a civil penalty, but it does not render section 147.86 inapplicable here. An indefinite civil penalty that the board of massage therapy may impose under this section is not a "specific penalty otherwise provided" that supplants section 147.86 for *all* of chapter 152C—and it does not affect section 152C.5.

The district court noted that the same legislative enactment that listed massage therapy as a profession requiring a license to practice under section 147.2 also revised section 152C.4 to provide guidelines pertaining to that indefinite civil penalty. *See* 2000 Iowa Acts ch. 1185, §§ 1, 4; *cf*. Ruling (7/28/17) at 3; App. 197. Considered in a vacuum, that seems to indicate a legislative intent to supplant section 147.86.

However, that legislative enactment *also* revised section 152C.5. *See* 2000 Iowa Acts ch. 1185, § 5. Previously, that section prohibited the use of words/titles that falsely implied that a person was licensed to practice massage therapy—and it provided a similar civil penalty. *See* Iowa Code § 152C.5 (1999). This legislative enactment amended section 152C.5 by replacing it with clear, unequivocal language that describes a crime, *without* providing any specific penalty.

> The practice of massage therapy as defined in section 152C.1 is *strictly prohibited* by unlicensed individuals. It is *unlawful* for a person to engage in or offer to engage in the practice of massage therapy, or use in connection with the person's name, the initials "L.M.T." or the words "licensed massage therapist", "massage therapist", "masseur", "masseuse", or any other word or title that implies or represents that the person practices massage therapy, unless the person possesses a license issued under the provisions of section 152C.3.

See 2000 Iowa Acts ch. 1185, § 5 (emphasis added); *accord* Iowa Code § 152C.5 (2017). By placing language prohibiting unlicensed practice of massage therapy in two separate sections—one with a discretionary civil penalty, and one without—the legislature signaled a clear intent to allow *both* designated institutional actors to take part in enforcing this basic licensure requirement: the board of massage therapy may issue civil penalties, county attorneys may bring criminal prosecutions, or *both* may occur if deemed appropriate by the specified actors.

This result comports with principles of statutory construction—if the legislature provides two different penalties for the same conduct in multiple sections, Iowa courts will recognize an intent to authorize multiple punishment under the principle that "[t]he entire statute is intended to be effective." *See* Iowa Code § 4.4(2); *State v. Halliburton*, 539 N.W.2d 339, 344 (Iowa 1995) ("We must now consider whether the legislature intended multiple punishments for both crimes: we conclude it did. . . . Only by imposing cumulative punishments can we give effect to the possession alternative of section 724.26."); *see also State v. Lewis*, 514 N.W.2d 63, 69 (Iowa 1994). Reading section 152C.4 to preclude application of section 147.86 would reduce section 152C.5 to mere surplusage, which is a disfavored result. *See Thomas v. Gavin*, 838 N.W.2d 518, 524 (Iowa 2013) ("Normally we do not interpret statutes so they contain surplusage."); *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 520 (Iowa 2012) (quoting *Thoms v. Iowa Pub. Emp. Ret. Sys.*, 715 N.W.2d 7, 15 (Iowa 2006)) (stating Iowa courts "will not read a statute so that any provision will be rendered superfluous"). Therefore, although section 152C.4 does provide a civil penalty, the rule against surplusage demands that section 147.86 apply to classify any violation of section 152C.5 as a serious misdemeanor.

Moreover, this result is correct when "statutes that were violated serve differing purposes." *State v. Reed*, 618 N.W.2d 327, 336 (Iowa 2000) (citing *Halliburton*, 539 N.W.2d at 344). Section 152C.4 only authorizes a civil penalty, but "[e]ach day of a continued violation after an order or citation by the board constitutes a separate offense, with the maximum penalty not to exceed ten thousand dollars," based partially on "[t]he economic benefits gained by the violator as a result of noncompliance." *See* Iowa Code § 152C.4(1)(d). This provision "focuses on reducing the economic power of those who engage in ongoing illegal business for profit" by disincentivizing *all* parties—including the employers of any unlicensed massage therapists—from continuing to operate in defiance of an order from the board. *See Reed*, 618 N.W.2d at 336; Iowa Code § 152C.4 (providing that civil penalty may be imposed upon "a person who practices as a massage therapist without a license issued under this chapter or a person or business that employs an individual who is not licensed under this chapter"). In contrast, section 152C.5 labels unlicensed practice "unlawful" and "strictly prohibited." *See* Iowa Code § 152C.5. But those harsh words are coupled with a singular focus on the practitioners as "individuals," and it makes no mention of their employers—which strongly suggests

an intent to limit the scope of any actual *prosecution* to practitioners while extending financial liability for civil penalties to any supervisors or businesses who employ them. *Compare* § 152C.4(1), *with* § 152C.5. The legislature placed these two provisions in separate sections, and both sections describe the penalized conduct in different terms with different limits on imputed liability; these are clear indications that the legislature intended to authorize civil penalties under section 152C.4 *and* criminal prosecutions under section 152C.5, via section 147.86.[1]

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[1] The district court's ruling did not mention section 152C.5. However, the State made this same argument in its trial brief.

> Section 147.86 is also mandatory, as it states that the violation shall be a serious misdemeanor. By contrast, section 152C.4 is discretionary, as the board of massage therapy "may" impose a civil penalty. Section 152C.5 states that the practice of massage therapy is "strictly prohibited by unlicensed individuals." It is thus reasonable to conclude that the legislature intended unlicensed individuals be prosecuted criminally, in addition to being fined civilly.

See Brief (5/24/17) at 3; App. 179, 185, 191.

The district court acknowledged the State's argument that this was a situation where "the same action can subject a person to criminal and civil punishment." *See* Ruling (7/28/17) at 3; App. 197. Any potential error preservation concerns are alleviated by the fact that the court digested and addressed the argument in the State's brief, even if it did not cite section 152C.5 in its ruling. *See Lamasters*, 821 N.W.2d at 864 (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002)) ("If the court's ruling indicates that the court *considered* the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved.").

The district court found that section 152C.4 was "plain and unambiguous," which would halt the analysis before reaching any question of legislative intent or statutory construction. *See* Ruling (7/28/17) at 3. But the district court failed to realize there were *two* parallel sets of plain and unambiguous language in play. It is true that section 152C.4 unambiguously authorizes imposition of a civil penalty. But section 152C.5 provides additional unambiguous language that defines certain conduct as "unlawful" and "strictly prohibited"—and it extends to some conduct that section 152C.4 does not reach (such as the use of words/initials to falsely suggest licensure) while declining to impute liability to employers. By omitting any specific penalty for violating this provision, it triggers similarly unambiguous language in section 147.86, designating that violation as a serious misdemeanor. There is no "plain language" argument that bolsters the court's logic—the plain language of these statutes authorizes both civil penalties *and* serious misdemeanor prosecutions, as the State argued below.

Note that section 152C.5 states "[i]t is unlawful for a person to engage in *or offer to engage* in the practice of massage therapy . . . unless the person possesses a license." *See* Iowa Code § 152C.5 (emphasis added). Nothing in section 152C.4 sets out any penalty for

offering to engage in the practice of massage therapy. *See* Iowa Code § 152C.4; *see also* Iowa Admin. Code r. 645-134.5 (implementing section 152C.4 and stating that "[c]ivil penalties may be imposed upon a person or business that employs an individual who is not licensed as a massage therapist" and "[c]ivil penalties may be imposed upon a person who is practicing as a massage therapist without a license"). Even if the district court were otherwise correct, *offering* to provide massage therapy without a license would still be an offense criminalized by section 152C.5, unaddressed by any provision setting out a specific penalty, and therefore subject to the generally applicable penalty designation set out in section 147.86.

Most of the district court's observations about legislative history are entirely beside the point. The district court is correct that, until the 2000 amendment, section 147.2 did not list massage therapy as a profession where licenses were required under chapter 147. *See* Ruling (7/28/17) at 3; App. 197; Iowa Code § 147.2 (1999). But that does not matter; section 147.86 still applied to the entire subtitle of "health-related professions," from chapter 147 through chapter 158. *See* Iowa Code § 147.86 (1997). Indeed, there would have been no reason to specifically exclude chapter 152C until 1998 if that exclusion

would have no effect—the legislature clearly believed all provisions of chapter 152C would have become subject to section 147.86 by default *without* such an exclusion, which means the 1998 amendment was intended to produce that result. *See* Iowa Code § 4.4(2). And the fact that "the legislature has not provided for a specific criminal penalty under Chapter 152C as it has done under Chapter 152D" is irrelevant. *See* Ruling (7/28/17) at 4; App. 198. The legislature deliberately set the penalty for violating section 152C.5 by extending section 147.86 to apply to chapter 152C in 1998, and by removing every single reference to civil penalties from section 152C.5 in 2000—and no provision in chapter 152D undermines that clear evidence of the legislature's intent regarding its amendments to *these* provisions. *See* 2000 Iowa Acts ch. 1185 §§ 4–5; 1998 Iowa Acts ch. 1053 § 22.

The district court believed the legislature removed language excluding chapters 152C and 152D from the scope of section 147.86 because "the exceptions were unnecessary verbiage given that both . . . were chapters in which 'a specific penalty (was) otherwise provided.'" *See* Ruling (7/28/17) at 3–4; App. 197–98. That was certainly true when that amendment to section 147.86 was enacted, in 1998—at that time, both section 152C.4 and section 152C.5 authorized civil penalties. *See*

Iowa Code §§ 152C.4, 152C.5 (1997). Nevertheless, when chapter 152C was amended in 2000, the legislature presumably understood that section 147.86 would apply to provisions in chapter 152C *if and only if* they were amended to describe violations *without* specifying penalties. *See State v. Adams*, 810 N.W.2d 365, 370 (Iowa 2012) ("In construing statutes, we assume the legislature is familiar with the existing state of the law when it enacts new legislation."). So when the legislature amended section 152C.4 to provide more guidance on civil penalties and simultaneously amended section 152C.5 to *remove* all references to civil penalties while designating unlicensed practice as "unlawful" and "strictly prohibited," there could be no doubt: the legislature knew those amendments would align section 152C.5 with section 147.86, and it specifically intended to authorize county attorneys to prosecute unlicensed practice of massage therapy as a serious misdemeanor.

In sum, although section 152C.4 creates a civil penalty for practicing massage therapy without a license or employing someone who does, that is not dispositive. Section 152C.5 states that practicing massage therapy without a license is "unlawful" and it *does not* provide a specific penalty—which means section 147.86 applies to designate a violation of section 152C.5 as a serious misdemeanor. The claimants

were subject to civil penalties under section 152C.4 *and* prosecution for serious misdemeanors under section 152C.5 for essentially the same course of conduct, as the legislature intended—that overlap lets the board of massage therapy and county attorneys act independently of one another, and it creates the opportunity for discretionary choice between alternative enforcement options serving different objectives. *Cf. State v. Alvarado*, 875 N.W.2d 713, 718 (Iowa 2016) (quoting *State v. Perry*, 440 N.W.2d 389, 391–92 (Iowa 1989)) ("When a single act violates more than one criminal statute, the prosecutor may exercise discretion in selecting which charge to file. This is permissible even though the two offenses call for different punishments. It is common for the same conduct to be subject to different criminal statutes."). Therefore, even if the claimants' explanations are taken at face value, this money is still proceeds of a serious misdemeanor, and it is still subject to forfeiture. *See* Iowa Code §§ 809A.3(1)(a), 809A.4(4).

II. The District Court Erred in Determining That the State Failed to Prove, by a Preponderance of the Evidence, That These Funds Were Proceeds of Prostitution.

Preservation of Error

The State argued its case below, and it presented testimony and evidence in support of its theory. *See* Brief (5/24/17) at 4–5; App.

180–81. The district court's ruling considered the State's arguments and rejected them. *See* Ruling (7/28/17) at 4–5; App. 198–99. That ruling preserved error. *See Lamasters*, 821 N.W.2d at 864.

Standard 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 (citing *In re Prop. Seized from DeCamp*, 511 N.W.2d 616, 619 (Iowa 1994)).

Merits

When this forfeiture action commenced (prior to amendments to Iowa Code section 809A.12), the law required the State "to prove by a preponderance of the evidence the property was forfeitable." *In re Prop. Seized from Rios*, 478 N.W.2d 870, 872 (Iowa Ct. App. 1991). "The evidence is examined in the light most favorable to the district court's judgment, and its findings are construed liberally to support the judgment; however, the findings are only binding if we determine they are supported by substantial evidence." *See In re Prop. Seized from Thao*, No. 14–1936, 2016 WL 1130280, at *4 (Iowa Ct. App. Mar. 23, 2016) (citing *In re Prop. Seized from Chiodo*, 555 N.W.2d 412, 414 (Iowa 1996)). The State realizes this is a heavy burden, but the circumstantial evidence of prostitution is simply overwhelming.

The district court noted "[t]he investigation and surveillance of Therapeutic Spa began months before [the claimants] took over the business," and the internet advertisements and reviews on Rubmaps "predate [their] ownership interest." *See* Ruling (7/28/17) at 4; App. 198. But when Bo purchased the business, he kept the prior name: "Therapeutic Spa." *See* Transcript p.6,ln.15–p.7,ln.12. That name made it difficult for them to take credit cards, and Bo knew it was because the business was already associated with "sexual things" in online advertisements and in crowdsourced reviews of prostitutes on a website called Rubmaps. *See* Transcript p.21,ln.25–p.22,ln.24; *see also* Transcript p.33,ln.9–p.34,ln.6; p.39,ln.1–10. Bo also knew that customers were asking Wei and Na to accept money in exchange for sexual acts during massages. *See* Transcript p.20,ln.5–p.21,ln.13. Regardless of how much Bo initially liked the name, there was no logical reason not to change it immediately upon discovering that it was limiting their options and bringing in customers who solicited his masseuses for sex—unless, of course, he *wanted* those customers to continue relying upon the pre-existing advertisements and reviews. Apparently, claiming to have written a letter to Rubmaps was enough to get a credit card machine; there is no proof it was ever sent, or even

that it was written before this forfeiture action was commenced (and Bo stated it was intended to be "the proof that we're not the kind of sexual service business," which undermines his claim that it had been written before this litigation). *See* Transcript p.21,ln.14–p.25,ln.24; Transcript p.33,ln.9–p.34,ln.9; Clm's Ex. D; App. 68.

The claimants offered records to show when Wei and Na were giving massages—those schedules referred to them as Jess and Alice. *See* Clm's Ex. E1–E7; App. 69; Transcript p.32,ln.13–p.33,ln.8. Claimants believed these records were exculpatory, but "[t]he dollar amounts written match the fees advertised for the charging of the massages." *See* Transcript p.76,ln.23–p.77,ln.10; *compare* Clm's Ex. E1–E7; App. 69, *with* State's Ex. 6–7, 20; App. 30–31, 37. This was more evidence that, even if most of those advertisements predated the claimants' ownership/involvement, the claimants were continuing to operate Therapeutic Spa as a thinly veiled sex-for-pay operation.

The name "Alice" on the claimants' schedules has significance. One reviewer on Rubmaps left a review of a massage from a person named Amy from *before* the claimants purchased Therapeutic Spa, and then left a review of a massage from a person named Alice *after* that date. *See* State's Ex. 1; App. 26. Two subsequent reviews were

left there by premium Rubmaps members—which indicates those members did not see anything in the review about "Alice" that had dissuaded them from visiting Therapeutic Spa.[2] *See* State's Ex. 1; App. 26. Rubmaps members pay for the privilege of accessing those reviews and ratings; becoming a premium Rubmaps member costs $14.95 per month, or $99 for a twelve-month subscription. *See* State's Ex. 3–4; App. 27–28. Those reviews serve an obvious function: they tell Rubmaps members which parlors/masseuses will perform sex acts, and they rate the quality of those sexual services (while reviews of non-sexual massages would be available elsewhere, free of charge). Presumably, Rubmaps members would utilize their membership perks by reading those reviews and by declining to visit any massage parlor that was receiving reviews/ratings that cautioned that sexual contact with masseuses was prohibited. In this case, nothing in that review of the massage that a Rubmaps user received from "Alice" indicated that he was disappointed—because Rubmaps premium users continued to patronize Therapeutic Spa and leave *their own* reviews. *See* State's Ex. 1; App. 26. The obvious inference is overwhelmingly strong.

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[2] This inferential logic does not rely on hearsay—the fact that these statements *were made* by these people in this particular sequence does not use any statement to prove the truth of any matter asserted. *See* Iowa R. Evid. 5.801(c).

Surveillance was conducted *daily*, for "[a]nywhere from a couple hours to a full day," for somewhere between two to six weeks. *See* Transcript p.80,ln.9–19. During that time, Therapeutic Spa had *zero* female customers—but they were still busy. *See* Transcript p.80,ln.20–25. The claimants presented evidence of female names on pre-massage questionnaires, which were all dated from September, October, and November 2016. *See* Clm's Ex. A; App. 38. But none of those female customers stuck around as repeat customers; none of them were seen during surveillance in January and February 2017. *See* Transcipt p.80,ln.9–25. The male customers, on the other hand, formed a consistent clientele of "15 to 25" men who provided enough revenue for the claimants to keep the business open, pay their own living expenses, and stockpile approximately $20,000 on top of that over the course of six months. *See* Transcript p.55,ln.24–p.57,ln.2.

Investigator Haubert noted the significance of stockpiled cash in investigations related to black markets. *See* Transcript p.57,ln.3–p.58,ln.2. The district court found that was the "most compelling" evidence presented, and it noted the claimants "had a bank account into which the funds could have been deposited." *See* Ruling (7/28/17) at 5; App. 199; Transcript p.58,ln.3–6. But the district court relied on

its recollection that the claimants "testified that they have tried to obtain a credit card machine, but have yet to be approved, which means that they are forced to deal in cash." *See* Ruling (7/28/17) at 5; App. 199. This was factually incorrect—Bo stated that he successfully received a credit card machine. *See* Trancript p.22,ln.3–24. Then, when investigators executed the search warrant, they found and seized a credit card machine inside the claimants' residence. *See* Transcript p.55,ln.24–p.56,ln.7; Transcript p.76,ln.23–p.77,ln.10. Additionally, even if the absence of such a machine forced Therapeutic Spa to deal entirely in cash, that *still* would not help explain why the claimants did not regularly deposit the revenue from Therapeutic Spa in the business bank account by making cash deposits—Premier Bank was "really close to the store, so it makes it easy to do deposits and stuff." *See* Transcript p.13,ln.15–p.14,ln.14. There was less than $500 in that business account, and approximately $20,000 in cash found in the claimants' possession—which, together with the "dozens" of prepaid credit cards, raises an extremely strong inference of money laundering. *See* Transcript p.55,ln.24–p.59,ln.23; Transcript p.71,ln.4–14.

Bo, Wei, and Na claimed they regularly disposed of toilet paper and other waste by taking it home to their residence. *See* Transcript

p.34,ln.10–p.36,ln.13. But surveillance told a different story—this was *not* a routine practice. On the contrary, this was a departure from normal behavior that prompted officers to take note, follow them, and seize the trash. *See* Transcript p.81,ln.1–83,ln.10. This behavior was probative of their consciousness of guilt and awareness of a need to dispose of accumulated evidence of prostitution at a different location that would not be immediately connected to Therapeutic Spa. If the seminal fluid was from Bo, there would be no need for clandestine disposal—so these facts showing that this was abnormal behavior for the claimants tends to *disprove* Wei's testimony about an innocuous origin. *See* Transcript p.51,ln.2–p.54,ln.3; State's Ex. 8; App. 32.

On the statutory construction question, the district court stated a preference for the "simplest" explanation. *See* Ruling (7/28/17) at 4; App. 198. But on this issue, the district court misapprehended facts and employed tortured logic to ignore the only plausible explanation: Therapeutic Spa was operating as a massage parlor in name only, and those funds seized from the claimants were proceeds of prostitution. Because a preponderance of the evidence supported that conclusion, the district court erred in dismissing this forfeiture action.

CONCLUSION

The State respectfully requests that this Court vacate the order dismissing this forfeiture action and remand for further proceedings.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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Dated: December 13, 2017

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