

IN THE
INDIANA SUPREME COURT

No. 22A-MI-2910

ANGELA Y. SMITH
Appellant-Intervenor,

and

DYLAN WILLIAMS AND \$11,180 IN
UNITED STATES CURRENCY,
Appellant-Respondent,

v.

STATE OF INDIANA,
Appellee-Petitioner.

Appeal from the Marion County
Superior Court,

No. 49D03-2009-MI-33278,

The Honorable Gary Miller, Judge.

RESPONSE TO TRANSFER

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Transfer is not merited because the Court of Appeals properly rejected Intervenor Angela Smith's claim to the forfeited property. She failed to show that she is the owner of the property with a stake in the outcome of this forfeiture action. Her claim was farfetched and unsubstantiated. The State did not somehow waive any challenge to her claim below. Instead, her interest was contested at the forfeiture hearing and rejected.

ARGUMENT

Further review on transfer is not warranted.

Intervenor Smith seeks transfer asking this Court to find that the forfeiture of \$11,180 was improper and that the State somehow waived its opportunity to challenge her claim to the currency. At the outset, the State observes that the questions presented raise no Indiana Appellate Rule 57(H) reason to grant transfer. Intervenor Smith claims the Court of Appeals' opinion "conflicts with controlling precedent and significantly departs from accepted law and practice" (Transfer Pet. 5). But her arguments identify no conflict or departure. Intervenor Smith is asking for error correction under the specific circumstances of this case and possession of the money simply because she is "the only claimant who filed an answer" (Transfer Pet. 14).

The transfer petition does not even address the merits of the Court of Appeals' central finding affirming that Intervenor Smith failed to establish her claim to the money. Instead, the petition argues for the first time that the State (a) waived its opportunity to challenge her ownership of the property and (b) agreed

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that she owned the property (Transfer Pet. 13-14). *See Smith, Williams, and \$11,120 v. State*, No. 22A-MI-2910, slip op at 5-6 (Ind. Ct. App. July 24, 2023).

These new arguments should be found to be waived because a party may not raise a new issue for the first time in a petition to transfer. *Reisweg v. Statom*, 926 N.E.2d 26, 30 n.3 (Ind. 2010); *Wurster v. State*, 715 N.E.2d 341, 345 n. 4 (Ind. 1999).

But whether viewed as a “standing” issue or simply whether Intervenor Smith met her burden to establish a claim in the forfeiture court, her ownership was the central issue at the forfeiture hearing and was never conceded by the State. After the State presented its forfeiture case, Intervenor Smith even acknowledged that she had the burden to prove her claim:

I think at this point in time ordinarily it would be appropriate for me to move request the Court find the State hasn't met their burden. This is a little unique in that I have an Intervenor. I think that she has to testify to show her standing for the money. So, rather than make that Motion I think I'm just going to call [Intervenor Smith], if that's okay?

(Tr. 17).

The State also specifically challenged Intervenor Smith's claim. The State argued the claim was “dubious” and simply “doesn't make sense” (Tr. 33-34). The State observed that the core of her claim was that there are only “two people in the world that know the source of that money, [the possessor] Mr. Williams and [Intervenor] Ms. Smith” and that she should be awarded the money without any evidence from Williams (Tr. 32-33). The State also proactively presented evidence that Williams was asked about the source of the money at the time of his arrest for drug offenses and did not mention Intervenor Smith (Tr. 12). Moreover, the State

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did not concede that the money was Intervenor Smith’s—as she claims in the Petition to Transfer—but instead argued strenuously that her claim to be the owner was not believable (Tr. 33-34). The trial court reasonably rejected Intervenor Smith’s claim for the money because it was entirely circumstantial, weak, and unsupported by the person found in possession of the money.

Finally, Intervenor Smith spends much of her petition challenging the Court of Appeals’ choice not to address the merits of the forfeiture order. Intervenor Smith claims the validity of the forfeiture to be a necessary, threshold inquiry (Trans. Pet. 11). But there was no need to address the merits of the forfeiture where there is no valid claimant.¹ *See Smith*, slip op. at 5-6. As explained in the Brief of the Appellee, the State recognizes the forfeiture statutes do not directly address what occurs if the State should fail to meet its burden at an evidentiary hearing, but no owner is identified (Appellant Br. 10-11). But there is a statutory mechanism for default forfeiture to the State where “there is no answer on file” within “the time allotted for an answer.” Ind. Code § 34-24-1-3(e). Intervenor Smith’s argument seeks to change the statutory default to create an entitlement for anyone voicing a claim to property without regard to whether there is any basis for the claim. There is no statutory warrant for that result, and her new rule would encourage circumstances—as might well be occurring here—where a third party makes a claim without any involvement from the person found in possession of the

¹ In any event, however, the State’s merits brief shows that sufficient evidence was presented to support the forfeiture order (Appellee Br. 11-14).

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property because the possessor's prior admissions would invalidate both the possessor and intervenor's claim. An invalid, intervening claim should not be able to thwart forfeiture actions. The Court of Appeals' decision avoids that result and should stand.

CONCLUSION

This Court should deny the petition to transfer.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that on September 25, 2023, the foregoing document was electronically filed using the Indiana E-filing System (IEFS), and that on the same date the foregoing was served upon opposing counsel, via IEFS.

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