

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

CALVIN WELLS)	
Appellant,)	
)	
v.)	CASE NO.
)	A23A1301
STATE OF GEORGIA, ex.rel.)	
JOSEPH K. MULHOLLAND)	
)	
Appellee.)	

STATE’S RESPONSE TO BRIEF OF APPELLANTS

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STATE’S RESPONSE TO BRIEF OF APPELLANT

COMES NOW the State of Georgia, by and through undersigned counsel and the District Attorney for the South Georgia Judicial Circuit and files this response to the brief of Appellant.

STATEMENT OF THE CASE

In December of 2021 the State was investigating Appellants for crimes involving the illegal purchase and retention of secondary metals as well as various violations of the Georgia RICO statute. At that time the State seized the property of Appellants, including land, business, and personal items such as a computer and iPad – the items which are the subject of the instant appeal.

On March 29, 2022 the State filed a Notice of Voluntary Dismissal stating that the State was voluntarily dismissing the forfeiture complaint against the land and business as “the interest holder, First Bank of Blakely, has a superior claim to

the defendant in rem, having used same in securing sundry loans it advanced to Claimants in the instant civil action.” (Notice of Voluntary Dismissal at p. 2).

On April 26, 2022, Appellants filed a Motion for Immediate Release of Property. In that document Appellants sought return of the real property, business, and the computer, iPad, and all related documents seized.

In response the State filed a brief opposing said release on April 27, 2022. The trial court held a hearing on this matter on July 6, 2022. The trial court entered an order denying Appellants’ request for release of property on October 27, 2022. The trial court then entered a separate order setting aside the October order and re-entered the same order on March 6, 2023.

Appellants filed their Notice of Appeal on March 8, 2023. This Court docketed this case on April 11, 2023. Appellants then filed their brief in support of their notice of appeal on May 1, 2023. The State’s response follows.

ARGUMENT AND CITATION OF AUTHORITY

This appeal focuses on an issue related to Civil Asset Forfeiture. Appellants claim that because the state voluntarily dismissed its claim of forfeiture against real property and Appellants business that Appellants are thus entitled to relinquishment of all property seized whether that be evidence of crimes believed by the state to have been committed by Appellants. The state contends that the dismissal of one portion of a claim of civil asset forfeiture does not relinquish all

property seized if such seizure does not suffer from the same seizure issues as the subject of the voluntary dismissal or if the items seized are evidence of a crime.

I. THE TRIAL COURT PROPERLY HELD THAT THE STATE WAS ENTITLED TO RETAIN EVIDENCE OF APPELLANTS CRIME DESPITE A VOLUNTARY DISMISSAL OF A CIVIL ASSET FORFEITURE CLAIM AGAINST APPELLANTS' REAL PROPERTY AND BUSINESS.

In their first enumeration of error Appellants claim that the trial court erred in holding that the state did not have to return Appellants' computer, iPad, and documents related to their business of illegally obtaining and disposing of secondary metals. Appellant claims that the items (iPad and computer) should be returned under O.C.G.A. 9-16-18(b) "because the forfeiture was resolved in Claimants' favor." Appellants' also claimed that the property should be returned because the State failed to prosecute a forfeiture action within the required time frame. (Brief of Appellants at 8).

(A.) The issue regarding the computer and iPad were not resolved in Appellants' favor.

Appellant's first claim that the issue of forfeiture was resolved in their favor and that the computer and iPad should be returned to them. A review of the record and orders in this case reveal that such is not the case.

The State's notice of voluntary dismissal focused solely on the real property and business operated by Appellants. Nowhere in the voluntary dismissal was there any mention of documents, computers, or iPads. Additionally, Appellant's

filed an answer to the seizure as well as a motion to dismiss the civil forfeiture action. That motion to dismiss was made partially null and void by the states voluntary dismissal against real property and the business, but the trial court's order makes clear that such motion to dismiss was unsuccessful as it related to any documents, computers, or iPads as that order states specifically that the documents, computers, and iPads were seized as evidence pursuant to a search warrant as evidence in an on-going criminal investigation and that the state was not required to relinquish those items back to Appellants.

Therefore, Appellants' claim that "the forfeiture action was resolved in Claimants favor" is patently false and any argument related to that claim should not be considered. The only portion of the civil asset forfeiture action which was resolved in Appellants' favor is based upon the states voluntary dismissal of the forfeiture action against real property belonging to Appellants as well as their business structures on said real property. Those items have been returned to Appellants.

(B.) Georgia statutes allow for the retention of items listed in a complaint for civil asset forfeiture, even in cases where the state is unsuccessful, if the items are evidence in a criminal investigation.

Appellants also claim that under O.C.G.A. 9-16-18(b), all items listed in the complaint for asset forfeiture must be returned once the petition for forfeiture is unsuccessful. This is not the case under Georgia law or federal law.

(1.) Georgia law.

a.) Georgia rules regarding statutory construction

In order to better understand the interaction of the rule regarding civil asset forfeiture the State asserts that a review of the Georgia rules governing statutory construction would be beneficial. The rules governing statutory construction can be found at O.C.G.A. 1-3-1.

The portions of that code section which are applicable to the case at bar state:

“(a) In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy. Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands.

(b) In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.”

O.C.G.A. 1-3-1 (a) – (b).

Appellant specifically references O.C.G.A. 9-16-18(b).¹ This, however is the general statute, not the specific statute regarding the issue at bar, thus the doctrine of *ejusdem generis*² should apply and this Court

¹ “On entry of judgement for a person claiming an interest in the property that is subject to a civil forfeiture proceeding, the court shall order that the property or interest in the property be released or delivered promptly to that person free of liens and encumbrances.”

² “Under the rule of statutory construction known as ‘ejusdem generis,’ when a generally described activity such as ‘otherwise is subject to regulation’ follows an enumeration of specifically described activities, the general activity

should look to the controlling statute of O.C.G.A. 9-16-7(c).³ Under the doctrine of *ejusdem generis* the specific will always govern over the general. *Bell South Telecommunications, LLC v. Cobb County*, 305 Ga. 144, 151 (824 S.E.2d 233) (2019)(“ Where two statutes are in conflict, the later-enacted statute prevails over the one enacted earlier, and the more specific statute governs over the more general one.”)

In this case Appellants contend that O.C.G.A. 9-16-18 controls but a review of this statute shows it to be a general requirement that all property be returned if a claimant is successful against the state in a claim of asset forfeiture. However, we are dealing with Appellants’ demand that evidence of a crime be returned to them because such items were named on the state’s claim for asset forfeiture. O.C.G.A. 9-16-7, however, deals directly (specifically) with situations in which a piece of seized property is also evidence of a crime, thus it should control this Court’s decision in the instant case.

Additionally, under O.C.G.A. 1-3-1 no court should review a statute – or any portion thereof – as meaningless or surplusage. See,

will ordinarily be construed as referring to the same kind or class of activity as the preceding specific activities, unless something shows that a wider sense was intended.” (punctuation omitted) (emphasis added)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Statutory Texts* 199 (1st ed. 2012) (“The principle of *ejusdem generis* essentially says just that: It implies the addition of similar after the word other.”).

³ “If the seizing officer fails to comply with subsection (a) of this Code or the state attorney fails to comply with subsection (b) of this Code section, the property shall be released on the request of an owner of the interest holder, pending complaint for forfeiture pursuant to Code Section 9-16-12, or 9-16-13, unless the property is being held as evidence....”

Allison v. Domain, 158 Ga. App. 542 (281 S.E.2d 299) (1981); *Brown v. State Merit System of Personnel Administration*, 245 Ga. 239 (264 S.E.2d 186 (1980)); and *Exum v. City of Valdosta*, 246 Ga. 169, 170 (269 S.E.2d 441)(1980) (“The construction which will uphold a statute in whole and in every part is preferred.”). A statute must also be viewed so as to make all its parts harmonize and to give sensible and intelligent effect to each part. *Osborn v. State*, 161 Ga. App. 132 (291 S.E.2d 22)(1982). Further, any specific clause in any statute depends upon the intention with which it is used as manifested by the context considered with reference to the subject matter to which it relates. *Thomas v. MacNeill*, 200 Ga. 418 (37 S.E.2d 705)(1946). Also, courts must look diligently for intention of the General Assembly in enacting legislation under review. *Vickery v. Foster*, 74 Ga. App. 167 (39 S.E.2d 90)(1946), reversed on other grounds 202 Ga. 55, 60 (42 S.E.2d 117)(1947), see also *Lemons v. Yarbrough*, 206 Ga. 50 (55 S.E.2d 551)(1949) (“The cardinal rule for the construction of statutes is to try to ascertain the intent of the General Assembly.”). When this legislative intent is discovered it must be carried into effect. *City of Roswell v. City of Atlanta*, 261 Ga. 657 (410 S.E.2d 28)(1991). Construction of a statute must also square with common sense and sound reasoning. *Blalock v. State*, 166 Ga. 465 (143 S.E.

426)(1928). It is also well established that when the intent of the legislature is ascertained it must govern the issues before the court, and mere letter must yield to spirit. *Roberts v. State*, 4 Ga. App. 207 (60 S.E. 1082)(1908).⁴ See also, *Demere v. Germania Bank*, 116 Ga. 317 (42 S.E. 488)(1902), and *Youmans v. State*, 7 Ga. App. 101 (66 S.E. 383)(1909). The legislative intent of a statute will always prevail over the literal sense of that statute's terms. *City of Jesup v. Bennett*, 226 Ga. 606 (176 S.E.2d 81)(1970). Also, “[w]here the letter of the statute results in absurdity or injustice or would lead to contradictions, the meaning of general language may be restrained by the spirit or reason of the statute.” *Sirmans v. Sirmans*, 222 Ga. 202, 204 (149 S.E.2d 101)(1966) citing *New Amsterdam Cas. Co. v. Freeland*, 216 Ga. 491, 495 (117 S.E.2d 538)(1960).

b.) Civil Asset Forfeiture rules

⁴ “And it is also well settled that the mere letter does not always express the intent. ‘A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers.’ This thought has been quaintly expressed by Plowden in his Commentaries: ‘It is not the words of the law, but the internal sense of it, that makes the law; and our law consists of two parts, viz., of body and soul; the letter of the law is the body of the law, and the sense and reason of the law are the soul of the law, quia ratio legis est anima legis. And the law may be resembled to a nut, which has a shell and a kernel within: the letter of the law represents the shell, and the sense of it the kernel; and as you will be no better for the nut if you make use only of the shell, so you will receive no benefit from the law if you rely upon the letter; and as the fruit and profit of the nut lie in the kernel and not in the shell, so the fruit and profit of the law consist in the sense more than in the letter. And it often happens, that when you know the letter, you know not the sense, for sometimes the sense is more confined and contracted than the letter, and sometimes it is more large and extensive.’”

The Georgia rules for civil asset forfeiture can be found in Title 9 Chapter 16 of the Official Code of Georgia Annotated.

Appellants claim that this issue is controlled by O.C.G.A. 9-16-18, *supra.* at FN1. The State asserts that this issue is controlled by O.C.G.A. 9-16-7, *supra.* at FN3.

In their brief Appellants assert that since “there is no [statutory] provision in the forfeiture code expressly addressing what should happen to seized property in scenarios like this case..., O.C.G.A. 9-16-18(b) should be read broadly to encompass all scenarios where the forfeiture case resolves in the claimants’ favor.” (Brief of Appellant at p. 11). Appellants then attempt to distance themselves from the specific statutory provision that expressly deals with items seized which are evidence of crimes or criminal intent. (Brief of Appellant at p. 12; “On its face 9-16-7 only applies to situations where the State *does not file* a forfeiture action.” Emphasis in original). Appellant provides no citation to cases or other statutory law that support this “only” situation.

As stated *supra.*, in section I.(B.)(1.)(a), this Court must follow the rules of statutory construction as codified in O.C.G.A. 1-3-1. Also, in reading these statutes this Court must give words within those statutes their ordinary meaning when interpreting the statute as well as determine the legislative intent behind enacting said statute. As stated previously, O.C.G.A. 9-16-7 states:

“If the seizing officer fails to comply with subsection (a) of this Code or the state attorney fails to comply with subsection (b) of this Code section, the property shall be released on the request of an owner of the interest holder, pending complaint for forfeiture pursuant to Code Section 9-16-12, or 9-16-13, unless the property is being held as evidence....”

O.C.G.A. 9-16-7(c).

Appellants assert that this statute only applies when the state does not file a forfeiture action. However, Appellants also claim that finding the states argument to be valid “...would invite the absurd result of allowing the State to hold property forever so long as it files, and then promptly dismisses, a forfeiture complaint against the property.” (Brief of Appellants at 11).

Appellants’ two arguments are in direct conflict with each other. Either the state failed to file – as asserted by Appellants as the only possible interpretation of O.C.G.A. 9-16-7 – or it would be absurd to hold that the state could file, then abandon (dismiss) the pending action and still keep the property. Neither of Appellants arguments are consistent with Georgia law or the rules of statutory construction.

Since Appellant cites no law supporting his assertion that O.C.G.A. 9-16-7 is applicable only when the state does not file a forfeiture action the State will apply the rules of statutory construction to that statute. The only caveat word in the statute is “pending.” The legislators passed O.C.G.A. 9-16-7 as stating “the property shall be released on the request of an owner or interest holder, pending a

complaint for forfeiture pursuant to O.C.G.A. 9-16-12 (in rem forfeiture) or 9-16-13(in personam forfeiture).

The first part of subsection (c) references if the state or seizing officer fail to comply with the statutorily required timelines for filing as stated in O.C.G.A. 9-16-7(a) and (b). Thus, a discussion of the meaning of the word “pending” is necessary. Based upon the argument of Appellants, it appears that Appellants define “pending” as non-existent, or they assert that if the timelines in (a) or (b) are not complied with the state must have never filed a complaint for forfeiture.

The Supreme Court of Georgia has recently defined “pending” for us. In *Seals v. State*, 311 Ga. 739, 743 (860 S.E.2d 419)(2021), the Court held:

“Similarly, when a count has not been resolved, we think of that count as “pending.” See Webster's New World Dictionary of the American Language 1050 (2d College ed. 1980) (defining “pending” as “not decided, determined, or established”); see also Black's Law Dictionary 1134 (6th ed. 1990) (providing set of definitions for “pending” that includes: “Begun, but not yet completed; during; [**424] before the conclusion of; prior to the completion of; unsettled; undetermined; in the process of settlement or adjustment. Awaiting an occurrence or conclusion of action, period of continuance or indeterminacy. Thus, an action or suit is ‘pending’ from its inception until the rendition of final judgment.”)”

Seals, Id.

When used in the context of this litigation, a review of the documents below show that the only items voluntarily dismissed in this case are the real property of Appellants and the business associated with that property. All other items listed

were not included in that voluntary dismissal and are thus, not decided, determined, or established, begun but not yet completed, unsettled, undetermined, awaiting an occurrence or conclusion of action, and are in a period of continuance or indeterminacy. *Seals, supra*. Thus, “pending” in this instance does not mean “never file” as Appellants assert. Appellants’ assertion that O.C.G.A. 9-16-7 only applies to when the state has not filed a complaint for forfeiture is a *non sequitur*.

In fact, the state may file a complaint for civil forfeiture and violate one of the time requirements in O.C.G.A. 9-16-7 which would result in the return of a claimant’s property. *Griffin v. State*, 250 Ga. App. 93, 94 (550 S.E.2d 138)(2001). It thus becomes apparent that the mandates of O.C.G.A. 9-16-7 do apply in cases where the state has filed a complaint for forfeiture but has violated one of the time requirements listed therein.

Since we now know that O.C.G.A. 9-16-7 does, in fact apply to cases where the state has filed a complaint for forfeiture but that complaint is flawed or dismissed we must now look to the legislative intent of not requiring the state to relinquish all property back to a claimant if such property is evidence in a criminal case.

The State further contends that the legislative intent is clear in this statute by the specific words “unless the property is being held as evidence.” But, because

there is no case law addressing the legislative intent in creating this statute the State will show this Court the reason for similar rules in the federal system.

(2.) Federal law.

Under federal law there exists a civil forfeiture action (18 USC §985) and a criminal forfeiture action (21 USC §853). Congress then enacted the Civil Asset Forfeiture Reform Act (CAFRA) in 2000.

The State asserts that this Court should look to federal interpretation of the criminal forfeiture act and the civil forfeiture act as persuasive authority as there is no case law interpreting O.C.G.A. §9-16-7. The State concedes that the only federal court that is binding upon this Court is the Supreme Court of the United States. *Gresham v. Harris*, 329 Ga. App. 465, 467 (765 S.E.2d 400)(2014). Because Georgia's Civil Practice Act is modeled on the Federal Rules of Civil Procedure, decisions of the federal courts interpreting federal rules are persuasive authority. *Synovus Bank v. Peachtree Factory Center, Inc.*, 331 Ga. App. 628, 630 (HN 6, FN2) (770 S.E.2d 887) (2015)

(i.) *18 USC §983(f) and CAFRA*

The State asserts that this statutory provision is the most closely analogous to the Georgia civil asset forfeiture act. The Congress of the United States enacted the Civil Asset Forfeiture Act of 2000 (CAFRA) to establish rules governing asset forfeiture in a civil area and to provide additional rights to the defendants /

claimants in a seizure action. This act was codified in 18 USC § 983 and included §985 governing the seizure of real property. (114 Stat. 214, P.L. 106-185 §7(a)).

Under this act it is unequivocal that the government is not required to return forfeited items that are considered evidence of the underlying crime. The statute states in pertinent part:

(f) Release of seized property.

- (1) A claimant under subsection (a) is entitled to immediate release of seized property if—
 - (A) the claimant has a possessory interest in the property;
 - (B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;
 - (C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;
 - (D) the claimant’s likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and
 - (E) none of the conditions set forth in paragraph (8) applies.

18 USC §983(f)

Section (8) states:

- (8) This subsection shall not apply if the seized property—
 - (A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;
 - (B) is to be used as evidence of a violation of the law;
 - (C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or
 - (D) is likely to be used to commit additional criminal acts if returned to the claimant.

18 USC §983(f)(8).

The State asserts that subsection (8), like the Georgia statute (O.C.G.A. §9-16-7(c), shows the clear intent of Congress. The State, however, is providing the following as persuasive authority interpreting the federal civil asset forfeiture statutes.

Case law interpreting this issue is scarce, much like the Georgia statute. The Eleventh Circuit did, however, review the issue of returning items like those described in section (8), *supra.*, in *United States v. Bowman*, 341 F.3d 1228 (11th Cir. AL., 2003). In that case the defendants were owners of an adult entertainment establishment. The Government believed that there was criminal activity going on at the establishment *Bowman, supra*, 341 F.3d at 1230. The Government seized the real property of the establishment alleging that continued use of the real property would allow defendants to continue acts constituting illegal activity.

The Eleventh Circuit reviewed the claims of the defendants in *Bowman* and held:

“[I]t would not be appropriate to return real property to the property owner if the Government can establish at the post-seizure adversarial hearing (as it has in this case) that there is probable cause to believe that the property is connected to criminal activity. The effect of returning the property to the property owner under these circumstances would be to allow the continuation of illegal activity, an outcome Congress surely did not intend.”

Bowman, supra., at 1235-1236.

The Eleventh Circuit also said that the enactment of CAFRA did not change this holding, saying, “As for Congress’s fairness concerns, ‘fairness to the property owner does not mean allowing a property owner to continue to use his property to further crime.’” *Bowman*, at 1236. See also, *Luis v. United States*, 578 U.S. 5, 13 (136 S. Ct. 1083, 194 L. Ed. 2d 256)(2016) (“The Government may well be able to freeze, perhaps to seize, assets of the latter ‘tainted’ kind before trial....And title to property used to commit a crime (or otherwise ‘traceable’ to a crime) often passes to the Government at the instant the crime is planned or committed.”). The Court in *Luis* also held that “...the Government even before trial had a ‘substantial’ interest in the tainted property sufficient to justify the property’s pretrial restraint.” *Luis, supra.*, 578 U.S. at 16 citing *Caplin & Drysdale Chartered v. United States*, 491 U.S. 617 (109 S. Ct. 2667, 105 L. Ed. 2d 528)(1989), and *United States v. Monsanto*, 491 U.S. 600 (109 S. Ct. 2657, 105 L. Ed. 2d 512)(1989).

Applying these rules to the case at bar, once Appellants began using the computer and iPad in the illegitimate aspects of their seemingly legitimate business, under federal law, ownership of that property would automatically vest in the federal government so long as the Government could prove by probable cause, that the property was evidence of a crime. In this case, Appellants concede that the computer and iPad were used as part of their business. (Appellants’ brief at 7).

(ii.) 21 USC §853

The federal system has a criminal forfeiture statute and a civil forfeiture statute. This section deals with the government's criminal forfeiture statute. This section of the United States Code deals with forfeitures arising out of criminal conduct, most likely drug related crimes.

Under this statute the issue at bar in this case – the complaint for return of seized property – has been litigated and decided adversely to Appellants' position. In *Kaley v. United States*, 571 U.S. 320, 334 – 335 (134 S. Ct. 1090, 188 L. Ed. 2d 46)(2014), the Supreme Court of the United States heard argument from two criminal defendants regarding the return of seized items. Defendants claimed that they were not afforded an opportunity to contest the seizure because the government seized the items under 21 USC §853(e) pre-trial without a hearing. This process was approved by the Supreme Court of the United States in *United States v. Monsanto*, 491 U.S. 600, 615 (109 S. Ct. 2657, 105 L. Ed. 2d 512)(1989).

The Kaley's asserted that the Supreme Court of the United States should review the case under the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (96 S. Ct. 893, 47 L. Ed. 2d 18)(1976).⁵ In applying this balancing test the Supreme

⁵ The balancing test is stated as follows:

- (1) “the burden which the requested procedure would place upon the Government against:
- (2) the private interest at stake as viewed alongside;

Court of the United States held that requiring such a hearing would jeopardize the Government's case and "...sometimes (particularly in organized crime and drug trafficking prosecutions, in which forfeiture questions often arise), that sneak preview might not just aid the defendant's preparations but also facilitate witness tampering or jeopardize witness safety." *Kaley, supra.* at 335.

The State contends that, like returning property in any organized crime case that may jeopardize a witness' safety, returning property seized as evidence pursuant to a valid search warrant would likewise jeopardize the State's case as chain of custody of the original item would not be intact.

Appellants' assert that the State could make copies of the documents and make a digital copy of the iPad and computer, but this does not satisfy the rules of evidence regarding copies of items of evidence. Under the best evidence rule (O.C.G.A. §25-5-4(a)), the best evidence of a writing (like all the documents contained within the seized computer and iPad, as well as the business records seized in this case) to be introduced shall be produced unless its absence shall be satisfactorily accounted for. The State contends that imaging and returning the computer back to Appellants in this case is not a satisfactory explanation for absence of state control of the original.

United States v. Bowman, 341 F. 3d 1228, 1235 – 1236 (11th Cir., AL. 2003)

(3) the risk of an erroneous deprivation of that interest without the procedure and the probable value, if any of [the] additional ...procedural safeguards." *Kaley, supra.* at 333.

II. THE STATE CAN HOLD ITEMS WHICH ARE EVIDENCE IN AN ON-GOING CRIMINAL INVESTIGATION.

In their final enumeration Appellants assert that the State cannot withhold seized property as evidence in a criminal case. Appellants contend that the State should be required to return the items comprising the video security system and their documentary files from their business. (Appellants' brief at 13). Appellants assert that returning these items is mandatory because "the State did not name [these items] as defendants in the forfeiture case." *Id.*

A review of the search warrant in this case reveals that those items were seized pursuant to a valid search warrant, signed by the magistrate of Baker County. On page 2 of the search warrant the officer sought:

"2. Electronic data processing and storage devices;
10. Photographs, digital videos, and digital video recorders in particular photographs or videotapes of co-conspirators, of assets, and/or sell and purchase of regulated metals."

Therefore, the items complained of were seized pursuant to a valid search warrant and will be retained until completion of the criminal case. See *Pickens v. State*, 363 Ga. App. 716 (872 S.E.2d 480)(2022)(The affidavit and search warrant were sufficient to provide the magistrate with probable cause to conclude that the items were seizable as evidence.).

Once probable cause is established – in this case by search warrant with a magistrate's signature – the property is properly seized. Once it is seized as part of

a criminal case it is not returnable to any claimant or defendant until the conclusion of the prosecution. The Georgia Code provides for the storage and retention of said property. See, O.C.G.A. §17-5-55. In their brief in the lower court Appellants cited the trial court to O.C.G.A. §17-5-50 in support of their argument. That statute deals with improperly or illegally seized items. Because these items were seized pursuant to a valid search warrant O.C.G.A. §17-5-50 does not apply.

CONCLUSION

For the foregoing reasons the State asserts that this Court should **AFFIRM** the decisions of the trial court and **DENY** Appellants' appeal on all issues.

The State asserts that this brief complies with all rules of this Court and specifically that this brief does not exceed the word count limit imposed by Rule 24(f).

Respectfully submitted this 16th day of May, 2023.

/s/ Christopher M. Quinn

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2023, I served a copy of the foregoing brief of the State of Georgia upon counsel for Appellants via email to :

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As stated in Appellants' brief there is an agreement between the parties to accept service of these documents via email.

/s/ Christopher Quinn
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