

Manalang, \$526 in United States Currency and one silver 2005 Ford Explorer with the vehicle identification number 1FMDU77K65UB63592 (the property). The request further alleged that the State believed the property was subject to forfeiture pursuant to, *inter alia*, the Drug Asset Forfeiture Procedure Act (the Act) (725 ILCS 150/1 to 14 (West 2012)), because the currency "was found in close proximity to illegal drugs and/or drug paraphernalia," and because the Explorer was "used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of illegal drugs and/or drug paraphernalia." The request asked the court for a finding that probable cause existed that the property "may be subject to forfeiture," and was accompanied by, *inter alia*, the January 12, 2012, affidavit of St. Clair County Sheriff's Deputy Thomas Peters, who averred that he believed the property was subject to forfeiture because officers who were about to execute a search warrant at the claimant's residence had spotted the claimant driving the Explorer and effected a traffic stop, during which the claimant "stated he had a pill bottle in his truck containing heroin and pills." An inventory search of the Explorer led to the discovery, in the center console of the vehicle, of purported heroin.

¶ 5 On January 20, 2012, the trial judge entered an order that stated, in its entirety, the following: "Evidence is insufficient. Request is denied." On January 23, 2012, the trial judge entered an order in which he ordered the State to release the property to the claimant "today." On January 24, 2012, the State filed a motion to stay and reconsider, and on that same day, the trial judge entered an order in which he stayed enforcement of his previous two orders. On January 25, 2012, the trial judge entered an order in which he lifted his stay of the previous day, denied the State's motion to reconsider his earlier orders, and stated that the "[s]upporting affidavit is insufficient to establish probable cause because it fails to establish a lawful stop." On January 26, 2012, the State filed a more detailed affidavit from Peters. On February 15, 2012, the State filed a motion to certify questions pursuant to Supreme

Court Rule 308 (eff. Feb. 26, 2010); an objection to this motion was filed by the claimant on February 22, 2012, and on that same day, the trial judge entered an order denying the motion to certify questions. On March 22, 2012, the claimant filed a motion to dismiss the case, which was denied, as premature, following a hearing. On May 1, 2012, the State filed a verified complaint for forfeiture. On May 15, 2012, the claimant again moved to dismiss the case. On October 12, 2012, the trial judge entered an order in which he granted the claimant's motion to dismiss, with prejudice. The State filed a timely notice of appeal from all of the trial judge's orders in the case.

¶ 6

ANALYSIS

¶ 7 "A forfeiture action is civil in nature and is an *in rem* proceeding against the item used in the commission of a crime." *People v. 1998 Lexus GS 300*, 402 Ill. App. 3d 462, 465 (2010). On appeal, the State contends the trial judge erred in multiple ways in this case, including by conflating the probable cause needed to proceed under the Act with the probable cause necessary to effect a lawful traffic stop in the context of a criminal case. The State points to the many cases from this court and the Supreme Court of Illinois that support its position, including *People v. \$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 338 (1997), wherein the court held that, to satisfy the probable cause requirement of the Act, "a complaint for forfeiture must allege facts providing reasonable grounds for the belief that there exists a nexus between the [property] and illegal drug activity, supported by less than *prima facie* proof but more than mere suspicion." The claimant counters that: (1) subsequent changes to the Act now "require more information," and (2) in any event, the trial judge found "that probable cause did not exist." Neither of the claimant's contentions is convincing. Although it is true that the Act was amended, no changes were made specifically with regard to the term "probable cause," and certainly no new definition of that term was provided that would lead us to believe the General Assembly

intended to supercede the judicially developed definition that currently exists. See, *e.g.*, 725 ILCS 150/3.5(a), (d) (West 2012). Moreover, to the extent the trial judge concluded that there was insufficient probable cause, the judge was incorrect. As noted above, to satisfy the probable cause requirement of the Act, "a complaint for forfeiture must allege facts providing reasonable grounds for the belief that there exists a nexus between the [property] and illegal drug activity, supported by less than *prima facie* proof but more than mere suspicion." *People v. \$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 338 (1997). There is no requirement, in the statute itself or in the voluminous case law interpreting it, that the State prove the existence of a lawful traffic stop in order to meet the probable cause requirement of the Act. In the case at bar, the January 12, 2012, affidavit of Peters provided reasonable grounds, beyond a mere suspicion, for the belief that a nexus existed between the property and illegal drug activity. Any finding to the contrary is not supportable.

¶ 8

CONCLUSION

¶ 9 For the foregoing reasons, we reverse the order of the circuit court of St. Clair County and remand for further proceedings.

¶ 10 Order reversed; cause remanded.