

NOTICE

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2015 IL App (4th) 140769-U

NO. 4-14-0769

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 9, 2015
Carla Bender
4th District Appellate
Court, IL

In re: THE PEOPLE OF THE STATE OF ILLINOIS,)
ex rel., RAMON M. ESCAPA, State's Attorney of)
Schuyler County, Illinois,)
Petitioner-Appellee,)

v.)

JEFFERSON D. CALLAGHAN and BRENDA WILTS,)
a/k/a BRENDA CALLAGHAN; RED 1996 MAZDA)
B3000, REG. #1335038, VIN #4F4CR16V9TTM27674)
(Property Description #1); Gray 2003 HOMESTEADER)
TRAILER, MODEL 714PT, REG. #273836 T/B, VIN)
#5HABE1421DN022677 (Property Description #2); and)
Gray 2013 FORD F150 CREW CAB FX4, REG.)
#1073653, VIN #1FTFW1ET4DKE86176 (Property)
Description #3),)
Respondents-Appellants.)

Appeal from
Circuit Court of
Schuyler County
No. 13MR31

Honorable
Alesia A. McMillen,
Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's order granting the State's petition for forfeiture of the Mazda B3000 pickup truck and the Homesteader trailer is affirmed.

(2) The trial court's judgment is reversed as to the Ford F150 pickup truck where its forfeiture was against the manifest weight of the evidence.

¶ 2 In April 2014, a jury acquitted Jefferson D. Callaghan of burglary, unlawful possession of burglary tools, and theft. Thereafter, the State filed a petition for forfeiture of a red 1996 Mazda B3000 pickup truck (Mazda), a gray 2013 Ford F150 pickup truck (Ford), and a

gray 2003 enclosed Homesteader trailer (Homesteader), belonging to Jefferson and his wife, Brenda Wilts, a/k/a Brenda Callaghan (respondents), alleging they were used in the burglary. Following a July 2014, hearing, the trial court granted the State's petition as to all three items.

¶ 3 Respondents appeal, arguing the forfeiture order entered by the trial court was against the manifest weight of the evidence where (1) the court based its decision on evidence not properly before it, (2) the State failed to present adequate evidence the Ford was used during the burglary, and (3) Brenda was an innocent owner of the subject property. We affirm the trial court's judgment granting the State's forfeiture petition as to the Mazda and the Homesteader but reverse as to the Ford.

¶ 4 I. BACKGROUND

¶ 5 Because the parties are familiar with the large amount of testimony taken over the course of the three-day criminal trial, we recount only what is necessary to reach a resolution of the issues raised on appeal.

¶ 6 In the underlying criminal case, the State charged Jefferson with burglary, unlawful possession of burglary tools, and theft.

¶ 7 During the trial, Rushville police officer James Meyer testified he responded to a burglary call at an Ayerco gas station and convenience store at approximately 4 a.m. on November 12, 2013. Upon his arrival, the manager took him to the spot where a three-by-two-foot bright orange safe was now missing. The digital-video-recording system for the surveillance cameras was also missing. Meyer observed tire tracks from a dolly on the floor. According to Meyer, those tracks "came straight in from the front door of Ayerco, across the center of the floor, around the backside towards the coolers, and back behind the clerk's counter."

Meyer testified he started his investigation by looking at prior and current employees who might have had a key because the front door did not show signs of a forced entry.

¶ 8 At approximately 6 a.m. that same morning, Meyer drove to a few of the individuals' residences on his list to see if any of the snow in the front yard had been disturbed. According to Meyer, it had stopped snowing at approximately 11:30 the night before and most traffic in Rushville does not begin until approximately 5 or 6 a.m. One of the individuals on his list was Jacob Wilts, Brenda's son and Jefferson's stepson. Jacob lived with Brenda and Jefferson. Meyer testified when he drove up to the residence, it was "immediately apparent that somebody had driven through their front yard, and it looked like [they had] continued around [to] the backyard." The tracks did not have any snow on them, which indicated to Meyer they had been made after the snow had fallen. Meyer also noticed the snow had been melted off of the hoods of the Mazda and the Ford, which indicated to him the vehicles had been driven recently. By comparison, a Dodge Ram, which was parked with the other vehicles, "was covered in snow." On cross-examination, Meyer was shown a photograph taken by the crime-scene investigators and admitted there was snow on the Ford. (We note respondents have not included any of the exhibits in the record on appeal.)

¶ 9 The State showed Meyer another exhibit, which according to his testimony, showed the tracks as well as "a red two-wheeled dolly cart" and the enclosed Homesteader trailer located in the backyard. Meyer testified "you could see the tire tracks that had come along the backside of the residence, the red two-wheeled dolly and the dolly tracks in the snow over to the enclosed trailer."

¶ 10 At that point, Meyer called for Deputy Sergeant Murray to come to his location.

While Meyer was waiting for Murray, Meyer observed Jefferson exit the home, walk to the Mazda, and open the vehicle's front driver's side door. Jefferson appeared to be looking in the vehicle, leaning in with the upper portion of his body, but he did not completely enter it. According to Meyer, Jefferson "appeared to retrieve the keys out of the vehicle" before locking it and shutting the door. Jefferson then walked over to the Ford, looked into the vehicle, felt around for his keys, turned around, and walked back over to the Mazda. He then peered into the rear section of the Mazda's extended cab. Jefferson then began walking back to the residence, at which point Meyer approached him.

¶ 11 When Meyer pointed out the tracks to him, Jefferson told Meyer he had driven the Mazda through his yard the night before at around 9 p.m. to drop off some things in the rear of the house. Jefferson indicated to Meyer everyone in the house had been asleep and no one had driven the vehicles that morning. According to Meyer, Jefferson's demeanor changed when he told him they were investigating a burglary at Ayerco. Jefferson became nervous, turned his body away from Meyer, stopped making eye contact, and began smoking his cigarette faster. However, Jefferson stated he did not have a problem showing Meyer and Murray around the property. During their walk around the property, Meyer observed an area on the ground where the snow had been cleared away. Meyer testified, "There were multiple pry bars laying there, numerous amounts of bright orange paint chips laying on the ground."

¶ 12 When Meyer asked Jefferson if they could see inside the Homesteader, Jefferson started acting a little more nervous and stated they had recently had bedbugs in the residence and the only things in the Homesteader were mattresses and bedbugs. Meyer noted dolly tracks led to the side door of the Homesteader. However, Jefferson proceeded to the rear door of the

Homesteader and told them they would be able to see everything inside from that vantage point. Jefferson lowered the rear door and dropped it down until it was waist-high but would not lower it all the way to the ground. When Meyer began looking inside, Jefferson stated he did not want the bedbugs to escape and closed the door.

¶ 13 Meyer asked Jefferson if he had a problem with them looking in the side door. Jefferson said he had nothing to hide and allowed Meyer to open the side door. When Meyer opened the door, he observed "a bright orange safe lying on its side and a red pair of jaws of life sitting on top of it with a battery pack down to the side." Jefferson then asked, "Is that what you were looking for?" At that point, Meyer placed Jefferson under arrest. The contents of the safe were later counted and it was found to contain \$17,992.45 in cash. While the cash is ordinarily deposited daily, the amount recovered matched four days' worth of Ayerco receipts.

¶ 14 Police then obtained a search warrant for the other vehicles and Jefferson's home. In the bed of the Ford, police found a padlocked toolbox. In the toolbox, police found a set of "bump keys." Bump keys allow a person to unlock locks without having a key designed for that particular lock. Police also found a charging unit for the battery pack for the jaws of life. In the truck bed of the Mazda, police found an imprint matching the size of the safe. They also found bright orange paint chips on the edge of the tailgate. Inside the Mazda, police found a camouflage ski mask as well as the digital-recording device removed from Ayerco.

¶ 15 The video from the Ayerco surveillance camera was played for the jury. (Like the other exhibits, the video is not contained in the record on appeal.) According to Meyer's testimony, the video showed an individual opening the door to the Ayerco after hours using what appeared to be a set of keys. Entry to the store was achieved without any signs of force. An

individual wearing a camouflage ski mask, a gray fleece hoodie, with black patches on the shoulders, blue jeans, and white sneakers then entered the convenience store with a red two-wheeled dolly. Clothing consistent with that worn by the individual in the video was recovered from Jefferson's home. A shoe imprint, later determined to match a pair of white sneakers seized from respondents' home, was found at the scene of the burglary inside Ayerco.

¶ 16 Jacob testified he had previously been employed at Ayerco. Meyer explained to him he stopped at the house because Jacob was an ex-employee of Ayerco. Jacob was present when the Homesteader was opened and the safe was discovered by police. According to Jacob, Jefferson was "[p]retty surprised" and "kind of angry that it was there."

¶ 17 According to Jacob, Jefferson drives the Mazda from time to time but his main vehicle is the Ford. Generally, they leave all the keys in the vehicles because the vehicles can get stacked up in the driveway and Brenda, his mother, does not like to get trapped. However, Jacob testified Jefferson always kept the Ford locked. Jefferson normally kept the keys to the Ford in his pocket because he did not want anyone to drive it. Jacob testified they all drove the Mazda but the transmission had been "messed up in it." Jacob testified the Ford was parked behind the Mazda the night before the burglary took place.

¶ 18 Jacob also testified he and Jefferson had been members of the rescue squad. He testified he had heard rumors a pair of jaws of life had gone missing from the rescue squad. While Jacob indicated he had been trained on how to use the jaws of life, he denied ever seeing the pair found on top of the safe. Jacob also testified he had never been inside the toolbox in the back of the Ford because it is padlocked and Jefferson always kept the keys with him.

¶ 19 Jefferson did not testify. However, Brenda, defendant's wife, testified. She

explained she and Jefferson are employed by mortgage companies to visit foreclosed homes and make sure the properties are being taken care of properly. According to Brenda, depending on the situation, they could change the locks, winterize the house, and fix any broken windows. Brenda explained they use bump keys to access the properties when no key is available. Brenda testified she has observed Jefferson use the bump keys in the past. According to Brenda, a bump key "looks kind of like a normal key, except it's kind of flat. You put it in the lock, and you got to put pressure on it as if you were unlocking your door. You got to have good pressure on it, and you tap it to, to move the tumblers inside. And you can't release it. You got to hold it there. And when it moves the tumbler, you got to keep tapping, until you get all the tumblers out of the way. And it, it's kind, kind of time consuming."

¶ 20 The day before the burglary she, Jefferson, and her three nephews had been out of town doing property inspections. They went in the Ford and Brenda drove. They arrived back in Rushville around 5 p.m. and Brenda parked the Ford behind the Mazda. Brenda testified it was their policy to leave the keys in the vehicles because she "can't stand to be trapped" in the driveway. Brenda testified they never lock the vehicles. She testified when she parked the Ford, she "would have left [the keys] in the ignition." She also testified the transmission in the Mazda had been "slipping real bad" and, despite having it worked on it, was still not running properly. When Brenda went to bed, Jefferson was with her. During the night, Brenda got up to use the bathroom at some point and Jefferson was in bed next to her. The next thing she recalled was being awakened by her son telling her Jefferson had been arrested.

¶ 21 Brenda testified her two sons, her three nephews, and Dakota Deppe, her daughter's boyfriend, all lived in the house with her and Jefferson. Brenda testified Deppe came and went

whenever he wanted and kept weird hours. According to Brenda, Deppe would sleep "all day and run all night." During the time Deppe was staying with them, Brenda noticed "[s]tuff was coming up missing." A gray fleece jacket with black shoulders and sleeves belonging to Jefferson had gone missing. The last time she saw it, Deppe was wearing it. Brenda also testified Deppe had borrowed her daughter's fleece hoodie. These items of clothing were consistent with clothes worn by the individual in the surveillance video. Brenda noted Deppe stopped living with them a few days after the day of the burglary. Brenda testified the white sneakers that left the shoeprint inside the Ayerco belonged to her and she had never seen Jefferson wear them.

¶ 22 During closing argument, Jefferson's trial counsel focused on questions regarding the thoroughness of the police investigation and asked why Meyer did not attempt to get additional surveillance video from the neighboring businesses. Counsel cited testimony indicating it was unusual for the safe to contain four days' worth of deposits and argued the burglary could have been an inside job. Counsel also inferred Deppe could have committed the burglary and questioned why police did not conduct a meaningful investigation of him. Finally, counsel painted Jefferson's question to police, "Is that what you were looking for?," as an expression of his shock rather than an indication of guilt.

¶ 23 Following trial, the jury found Jefferson not guilty of burglary, unlawful possession of burglary tools, and theft.

¶ 24 On December 26, 2013, the State filed a petition seeking forfeiture of the Mazda, the Homesteader, and the Ford, arguing they were all used to facilitate the burglary. The State alleged "police discovered several items used in the commission of the burglary, specifically, a

sledge hammer containing orange paint, bump keys on a key ring[,] and pry bars" inside the Ford.

¶ 25 During the July 2014 hearing on the State's petition, the following exchange took place prior to any argument by either party:

"MR. ESCAPA [(Schuyler County State's Attorney)]: [A]s the Court's well aware, we have held a trial, and that was held from April 14th through April 16th, in which the defendant was found not guilty on all the charges, your Honor. I would advise the Court that at this time, instead of rehashing all that testimony, the parties have reached a stipulated agreement whereby we're going to stipulate to just a couple of things, your Honor: One, all trial exhibits that were introduced at the jury trial in this matter on those three dates; your Honor, we're also going to stipulate to all the witnesses, the testimony of the witnesses heard at that trial which the Court was presiding over; and, also, your Honor, we're going to stipulate as to the registered owner status. That is, in fact, [Jefferson] and [Brenda] are the owners of the property subject to these proceedings. Your Honor, I have an agreed order to that effect, if the Court's so inclined.

THE COURT: And is that correct, [(addressing respondents' counsel)] that is the stipulation of the parties?

MR. GRAHAM [(respondents' counsel)]: Yes, your Honor.

THE COURT: Okay. Then I've signed that stipulation.

We'll enter it of record.

And then are the People wishing to produce any more evidence on their petition at this time?

MR. ESCAPA: Your Honor, just to clear up any other issues, your Honor, I would just ask the Court to take, which I believe I can, just judicial notice of [case No.] 13-CF-51 [(the underlying criminal case)] in case there's something that's not covered in that stipulation. I would ask the Court to take judicial notice of any transcripts or anything that are in that file. The Court was, presided over all of the matters in that case.

THE COURT: And, Mr. Graham, [do] you want to be heard with regard to that request?

MR. GRAHAM: No, your Honor.

THE COURT: Very well then. The Court will take judicial notice of the record in that CF matter."

¶ 26 The State then proceeded to highlight certain evidence presented at the criminal trial with regard to the Mazda, as follows:

"[I]n regards to the [Mazda], your Honor, if the Court recalls, numerous pieces of evidence [were found]: One being the tailgate, which had orange paint, which resembled the orange paint on the safe itself, your Honor; the [digital-video recorder] being located in the extended cab portion and being identified as belonging to Ayerco; the

carton of Marlboro Lights located in the extended cab portion; the ski mask that was located in the passenger seat; and the tracks in the yard; and the admission by [Jefferson] that he had in fact driven that vehicle that night and had driven it to the back of the home."

¶ 27 Regarding the Homesteader, the State argued the following:

"[T]here is an orange safe, your Honor, which was found inside, as the Court recalls, and was identified by numerous witnesses as being the safe that belonged to Ayerco; numerous pry marks on the orange safe, your Honor. As the Court also recalls, there was—the Jaws of Life were found and identified as belonging to the Schuyler County Rescue Squad [(where Jefferson had worked)], and which had been missing for almost a period of almost two years."

¶ 28 Finally, with regard to the Ford, the State offered the following argument:

"[N]ow we get to the one vehicle that's a little different from the rest, your Honor. And that's the [Ford]. Your Honor, several things were found inside this vehicle. And I would ask the Court to pay particular attention to the items that were found in there; one of them being the bump keys that were found inside the vehicle. Your Honor, the other being the tool box that was in the back of the truck. Inside that tool box was the charger for the Jaws of Life, which was found in the back of [Jefferson's]—I think it would be safe to make an assumption that [this was] where the Jaws of Life [was] being stored[, *i.e.*,] on

[Jefferson's] vehicle in the back of his truck, and [there] were padlock[s] on the latches."

¶ 29 At the conclusion of the hearing, the trial court took the matter under advisement.

¶ 30 On August 1, 2014, the trial court issued its written order. In the order, the court observed, *inter alia*, Brenda testified using bump keys "is not the same as opening a lock with a key, you must jiggle the key and use some finesse to open a lock with [them]." The court noted the Ayerco security tape shows the burglar using something smaller than a pry bar or other tool to open the door. According to the court, the video showed "the burglar moving the object about in his hands to gain access, not the movement of just inserting a key in a lock and turning it." The court also found Brenda's testimony established she and Jefferson were the only ones in the house who knew how to use the bump keys. With regard to the Ford, the court stated "a sledge hammer containing orange paint, bump keys[,] pry bars were found." The court concluded the evidence clearly showed the Mazda, the Homesteader, and the Ford were used in the commission of the burglary.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, respondents argue the forfeiture order entered by the trial court was against the manifest weight of the evidence where (1) the court based its decision on evidence not properly before it, (2) the State failed to present adequate evidence the Ford was used during the burglary, and (3) Brenda was an innocent owner of the subject property.

¶ 34 A. The Parties' Stipulation

¶ 35 As a threshold matter, respondents contend the forfeiture order entered by the trial court was against the manifest weight of the evidence where the court based its decision on evidence not properly before it.

¶ 36 A stipulation is "an agreement between parties or their attorneys with respect to an issue before the court." *People v. Woods*, 214 Ill. 2d 455, 468, 828 N.E.2d 247, 256 (2005). They are looked upon favorably because they promote the disposition of cases, simplify the issues, and save expense to the parties. *Woods*, 214 Ill. 2d at 468, 828 N.E.2d at 256. " 'A stipulation is conclusive as to all matters necessarily included in it' [citation] and '[n]o proof of stipulated facts is necessary, since the stipulation is substituted for proof and dispenses with the need for evidence' [citation]." *Woods*, 214 Ill. 2d at 469, 828 N.E.2d at 256. "Generally speaking, a [party] is precluded from attacking or otherwise contradicting any facts to which [they] stipulated." *Woods*, 214 Ill. 2d at 469, 828 N.E.2d at 256.

¶ 37 The agreed order entered by the trial court on August 1, 2014, stated the following:

"A. The parties stipulate to the People's and Defendant's trial exhibits introduced at the jury trial in the [underlying criminal case].

B. The parties stipulate to the testimony of the witnesses heard at the jury trial in the [underlying criminal case].

C. The parties stipulate as to the registered owner status, being that [respondents] are the owners of the property subject to these proceedings."

¶ 38 Respondents acknowledge the parties stipulated to the trial testimony and exhibits from the underlying criminal case and the fact they are the owners of the subject property.

However, respondents contend "it is unclear how such stipulation would function since the testimony was wrought with objections and contradictory testimony." Here, however, the parties did not stipulate to the truth of any of the evidence, just to its admissibility. As such, the trial judge, who presided over the jury trial, would have weighed the evidence and made credibility determinations just as she would have had the evidence been presented during a live proceeding.

¶ 39 Respondents also question what exactly the trial court reviewed prior to making its ruling as "none of the record testimony or exhibits were actually presented to the Court for consideration." It is clear the parties intended the trial court to consider the evidence and exhibits presented during the criminal trial in determining the forfeiture matter. During the hearing, the State asked to the court to take judicial notice of the underlying case to cover anything the stipulation might not have covered. See *People v. One 1999 Lexus, VIN JT8BH68X2X0018305*, 367 Ill. App. 3d 687, 690, 855 N.E.2d 194, 198 (2006) ("Exceptions to the requirement of formal admission of documents have been recognized where the opposing party stipulates to their admission or they contain facts that may be judicially noticed."). We note the same trial judge who presided over the criminal trial presided over the forfeiture proceedings. Thus, the court had already heard the testimony and seen the exhibits presented by both parties.

¶ 40 While the trial judge, at the end of the forfeiture hearing, stated she would review the trial transcripts, she was not obligated to do so before ruling on the petition for forfeiture. The court entertained arguments from both parties during the forfeiture hearing. The court could have rendered its decision at the conclusion of the hearing. The fact it reserved its judgment to consider the matter further did not obligate the court to hold off on issuing a decision until a

report of the proceedings was provided. Respondents' argument to the contrary fails to persuade us the court erred in this regard.

¶ 41 B. Forfeiture of the Ford

¶ 42 Respondents next argue the trial court's order granting forfeiture of the Ford was against the manifest weight of the evidence where the State failed to present adequate evidence it was used during the commission of the burglary. Respondents do not directly challenge the court's forfeiture finding as to the Mazda or the Homesteader. Indeed, an impression of the safe was found in the bed of the Mazda and the safe was ultimately located inside the Homesteader. As such, we will confine our analysis in this section to the Ford.

¶ 43 Forfeiture proceedings are civil in nature; they are *in rem* proceedings against items used in the commission of crimes. *People v. 1998 Lexus GS 300, VIN JT8D68S4W0028350*, 402 Ill. App. 3d 462, 465, 930 N.E.2d 582, 585 (2010). In forfeiture proceedings, "[t]he State brings the action against seized property pursuant to the legal fiction that the property itself is guilty of facilitating a crime." *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 497, 841 N.E.2d 928, 938 (2005).

¶ 44 In the first step of the forfeiture proceedings, the State bears the initial burden to "show the existence of probable cause for forfeiture of the property." 725 ILCS 150/9(G) (West 2012); *People v. \$174,980 United States Currency*, 2013 IL App (1st) 122480, ¶ 22, 996 N.E.2d 1102. Because forfeiture proceedings are civil in nature, the State needs to prove its right to the property by a preponderance of the evidence rather than beyond a reasonable doubt. 720 ILCS 5/36-2 (West 2012); *People ex rel. Power v. One 1979 Chevrolet Camaro*, 96 Ill. App. 3d 109, 112, 420 N.E.2d 770, 772 (1981). We note, while Jefferson was acquitted of all of charges in the

underlying criminal case and Brenda was not charged, it is well settled a conviction is not a prerequisite to a forfeiture proceeding. *People ex rel. Hanrahan v. One 1965 Oldsmobile*, 52 Ill. 2d 37, 41-42, 284 N.E.2d 646, 650 (1972), *rev'd on other grounds*, 409 U.S. 38 (1972).

¶ 45 To satisfy the probable-cause requirement, the State is required to allege and prove "facts providing reasonable grounds for the belief that there exists a nexus between the property and illegal *** activity, supported by less than *prima facie* proof but more than mere suspicion. [Citation.] Probable cause in this context requires only a probability or substantial chance of the nexus and not an actual showing." *1945 North 31st Street*, 217 Ill. 2d at 505, 841 N.E.2d at 942.

¶ 46 A trial court's findings in a forfeiture proceeding will not be disturbed unless they are against the manifest weight of the evidence. *One 1999 Lexus*, 367 Ill. App. 3d at 689, 855 N.E.2d at 197-98. "A judgment is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or where the factual findings upon which it is based are unreasonable, arbitrary, or not based on the evidence." *IMC Global v. Continental Insurance Co.*, 378 Ill. App. 3d 797, 804, 883 N.E.2d 68, 76 (2007).

¶ 47 In this case, the State maintains both the Ford and the Mazda were used in the burglary. However, there was no direct evidence regarding the Ford's use. While the State's petition for forfeiture alleged and the trial court's order found "a sledge hammer containing orange paint" and "pry bars" were found in the Ford, the evidence presented did not show any pry bars were discovered inside the Ford. In addition, expert testimony at trial established the orange paint found on the sledgehammer recovered from the Ford did not match the orange paint from the safe. Indeed, on appeal, the State does not emphasize the importance of either the sledgehammer or the pry bars. Instead, the State argues the location of the bump keys and

unreliability of the Mazda were sufficient circumstantial evidence to prove the Ford was used in the commission of the burglary.

¶ 48 When circumstantial evidence is relied upon, the evidence must support an inference which is reasonable and probable, not merely possible. See *Pyne v. Witmer*, 129 Ill. 2d 351, 369, 543 N.E.2d 1304, 1313 (1989). When a party seeks to rely on circumstantial evidence, the conclusion sought must be more than speculative. *Williams v. Chicago Board of Education*, 267 Ill. App. 3d 446, 451-52, 642 N.E.2d 764, 768 (1994). Instead, it must be the only probable conclusion to be drawn from the facts. *Williams*, 267 Ill. App. 3d at 452, 642 N.E.2d at 768. "Where from the proven facts the nonexistence of the fact to be inferred appears to be just as probable as its existence, then the conclusion that it exists is a matter of speculation, surmise, and conjecture." *Romano v. Municipal Employees Annuity & Benefit Fund of Chicago*, 402 Ill. App. 3d 857, 864-65, 931 N.E.2d 827, 835 (2010) (citing *Consolino v. Thompson*, 127 Ill. App. 3d 31, 34, 468 N.E.2d 422, 425 (1984)).

¶ 49 The leap needed in this case to conclude the Ford was used in the commission of the crime is unreasonable. The evidence was overwhelming the Mazda was used. However, Meyer's testimony did not indicate more than one set of vehicle tire tracks was found in the snow at respondents' residence and no evidence was presented to show the tracks found belonged to the Ford. Further, while Meyer initially testified the snow on the Ford had melted, indicating to him it had recently been driven, on cross-examination he admitted photos taken by the crime-scene investigators showed snow on that vehicle.

¶ 50 The State also theorizes Brenda drove the Ford as a backup vehicle because the Mazda was unreliable. As evidence of her participation, the State points to Brenda's shoeprint

from her white sneakers, which was found at the scene. However, according to Meyer's testimony, the video depicts just one individual inside Ayerco and that person was wearing white sneakers. If Brenda indeed accompanied Jefferson, she could just as easily have been a passenger in the Mazda as she could have driven the Ford.

¶ 51 Moreover, even if bump keys were used to open the door to the Ayerco, the fact they were later found inside the Ford does nothing to show that vehicle was used in the burglary. Uncontradicted testimony showed Jefferson kept the bump keys in the Ford for work. A reasonable inference could be made the keys were removed from the Ford prior to leaving for Ayerco in the Mazda and then returned to the Ford afterward. Similarly, the fact the charger for the battery for the jaws of life was located in the toolbox does not mean the Ford was used in the commission of the burglary. Indeed, the State does not argue the mere storage of these items was sufficient to subject the vehicle to forfeiture. By that logic, the fact the clothing worn during the burglary was found in the house would subject the residence to forfeiture. Instead, the State argues the presence of these items shows the Ford was actually driven to the Ayerco and actively used in the commission of the burglary. Based on the evidence presented, however, such a conclusion would be, at best, speculative.

¶ 52 In sum, the evidence presented falls short of supporting the logical inference necessary to show the Ford was used in the burglary. In other words, the use of the Ford was merely possible and not reasonable and probable under the facts presented in this case. Thus, the portion of the trial court's order finding forfeiture of the Ford is against the manifest weight of the evidence and must be reversed.

¶ 53 C. Innocent-Owner Defense

¶ 54 Finally, respondents argue the trial court's conclusion Brenda knew the Mazda and the Homesteader were used in the burglary was against the manifest weight of the evidence. (Because we have found the State failed to successfully show the Ford was used in the burglary, we confine our discussion in this section to the Mazda and Homesteader.) Specifically, Brenda contends the court erred in not finding she was an innocent owner of the subject property. We disagree.

¶ 55 If the State meets its threshold requirement and establishes probable cause, the burden then shifts to the claimant to show by a preponderance of the evidence the property is not subject to forfeiture. 725 ILCS 150/9(G) (West 2012); *\$174,980 United States Currency*, 2013 IL App (1st) 122480, ¶ 24, 996 N.E.2d 1102. A claimant can "satisfy this burden by establishing one of the innocent-owner defenses provided in Section 8 of the [Drug Asset Forfeiture Procedure Act (Forfeiture Act)]." *1945 North 31st Street*, 217 Ill. 2d at 498, 841 N.E.2d at 938; 725 ILCS 150/8 (West 2012).

¶ 56 Under section 8 of the Forfeiture Act, a claimant will be deemed an "innocent owner" if he can establish that he "is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur." 725 ILCS 150/8(A)(i) (West 2012). However, "[i]f the State does show existence of probable cause and the claimant does not establish by a preponderance of evidence that the claimant has an interest that is exempt under Section 8 of this Act, the court shall order all property forfeited to the State." 725 ILCS 150/9(H) (West 2012).

¶ 57 In this case, the evidence established a shoeprint found at the scene matched shoes Brenda admitted belonged to her. Brenda was unable to explain why her shoeprint was found

inside the Ayerco. This evidence is sufficient to place her at the scene of the burglary. Further, ample evidence established the Mazda, which Brenda co-owned with Jefferson, was used to move the safe. In addition, the safe was located by police inside the Homesteader, which Brenda also co-owned with Jefferson. The Homesteader was located on their property behind their house. The fact no force was used to gain entry to the Ayerco supports the inference the bump keys were used. According to the evidence presented, only Jefferson and Brenda knew how to use the bump keys. It is more likely than not Brenda knew or had reason to know the Mazda and the Homesteader had been used in the burglary. Based on our review of the record in this case, we cannot say the opposite conclusion is clearly evident.

¶ 58

III. CONCLUSION

¶ 59 For the foregoing reasons, we affirm the trial court's judgment in part and reverse in part.

¶ 60 Affirmed in part and reversed in part.