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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE |) | Appeal from the Circuit Court |
| OF ILLINOIS, |) | of Lake County. |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 14-CF-784 |
| |) | |
| ERNEST R. JENKINS, |) | Honorable |
| |) | Christen Bishop, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s forfeiture order was proper, as the court had jurisdiction, the seizure was not untimely, defendant was afforded due process, and his constitutional challenge to the statute was forfeited.

¶ 2 Defendant, Ernest R. Jenkins, appeals *pro se* from a judgment of the circuit court of Lake County granting the State’s motion to forfeit his property. Because the trial court did not err in doing so, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant, who proceeded *pro se*, was found guilty following a jury trial of, among other things, one count of knowingly accessing a computer to defraud (720 ILCS 5/17-50(a)(3) (West 2014)). Defendant appealed *pro se*, and we affirmed his convictions. See *People v. Jenkins*, 2018 IL App (2d) 160278-U.

¶ 5 Because we detailed the evidence when we affirmed, we will set forth only the facts necessary to a disposition of this appeal. Defendant fraudulently obtained over \$4 million from two retirement accounts managed by his employer. Defendant's employer, whose global headquarters was in Lake County, maintained a computer system to manage the various retirement accounts. Defendant, who lived and worked in Georgia, committed the fraud by accessing his employer's computer system.

¶ 6 Following the trial, defendant filed a motion in arrest of judgment, contending that the State never established that he committed any of the charged acts in Illinois, and thus the trial court lacked jurisdiction. The court found that defendant had committed criminal conduct in Lake County when he fraudulently accessed the computer system and stole funds from the retirement accounts. We agreed. See *Jenkins*, 2018 IL App (2d) 160278-U, ¶¶ 30-33.

¶ 7 While the criminal case was pending in the trial court, the State filed a motion for forfeiture. See 725 ILCS 5/124B-600 (West 2014). On February 3, 2017, the court ordered the forfeiture of \$26,125.69 from three Bank of America accounts, \$86,363.16 from six Wells Fargo accounts, and \$96,424.28 from three JP Morgan Chase accounts; \$15,383.26 in United States currency, foreign currency, and traveler's checks; and a Mercedes Benz automobile, an International truck, and an HP computer.

¶ 8 Defendant filed a motion in arrest of judgment in the forfeiture proceeding, alleging again that the State never established that he committed any criminal acts in Illinois. On February 3,

2017, the trial court denied the motion in arrest of judgment. Defendant, in turn, filed a timely notice of appeal.¹

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant contends *pro se* that (1) the trial court erred in denying his motion in arrest of judgment; (2) the trial court otherwise lacked jurisdiction over the forfeiture proceeding; (3) his property was seized in violation of section 124B-150(a) of the Code of Criminal Procedure (Code) of 1963 (725 ILCS 5/124B-150(a) (West 2014)); (4) he was denied due process regarding the forfeiture of his property; and (4) section 124B-150 is unconstitutional.

¶ 11 We first address defendant's contention that the trial court improperly denied his motion in arrest of judgment. The law-of-the-case doctrine bars re-litigation of an issue previously decided in the same case. *People v. Peterson*, 2017 IL 120331, ¶ 25. Thus, an issue decided by the appellate court in a first appeal is generally binding on remand and in a second appeal. *Peterson*, 2017 IL 120331, ¶ 25.

¹ Defendant filed a *pro se* notice of appeal on February 9, 2017 (No. 2-17-0105). Defendant appealed from the February 3, 2017, orders denying his motion in arrest of judgment and granting the State's motion for forfeiture. Curiously, on May 8, 2017, the circuit clerk filed a second notice of appeal (No. 2-17-0331). The appeal was from the April 6, 2016, criminal judgment. Defendant, in turn, filed a motion to have the two appeals consolidated, and we granted that motion.

We now dismiss appeal No. 2-17-0331. The notice of appeal in that case was both untimely, as it was filed well beyond the 30-day time limit (see Ill. S. Ct. R. 606(b) (eff. Dec. 11, 2014)), and unnecessary, as there had already been a notice of appeal filed from the criminal judgment (No. 2-16-0278).

¶ 12 Here, defendant contends that, because he did not commit any criminal acts in Lake County, there was no jurisdiction, and thus the trial court improperly denied his motion in arrest of judgment. However, we held in defendant's appeal from his criminal conviction that the State had established that he had committed criminal acts in Lake County, and thus there was jurisdiction. See *Jenkins*, 2018 IL App (2d) 160278, ¶¶ 30-33. Accordingly, the trial court properly denied his motion.

¶ 13 We next address whether the trial court otherwise had jurisdiction over the forfeiture proceeding. Defendant initially contends that the notice of appeal from the criminal judgment divested the court of jurisdiction over the forfeiture proceeding. We disagree.

¶ 14 The filing of a notice of appeal transfers jurisdiction to the appellate court and simultaneously divests the trial court of jurisdiction to enter additional orders of substance. *People v. Kozlow*, 332 Ill. App. 3d 457, 459 (2002). After a notice of appeal has been filed, the trial court may not modify the judgment being appealed or otherwise interfere with the appellate court's review. *Kozlow*, 332 Ill. App. 3d at 459. Nonetheless, the trial court retains jurisdiction to determine matters that are collateral or incidental to the judgment being appealed. *Kozlow*, 332 Ill. App. 3d at 459.

¶ 15 In this case, although the notice of appeal from the criminal judgment precluded the trial court from entering any further orders as to that judgment, the trial court retained jurisdiction to rule on collateral matters. The State's motion for forfeiture, as a civil proceeding (see *People ex rel. Nerheim v. 2005 Black Chevrolet Corvette*, 2015 IL App (2d) 131267, ¶ 21), was clearly collateral to the criminal judgment. Further, the trial court's ruling in the forfeiture proceeding did not modify, or otherwise interfere with our review of, the criminal judgment. Thus, the

notice of appeal from the criminal judgment did not divest the trial court of jurisdiction over the forfeiture proceeding.

¶ 16 Defendant alternatively contends that the assignment of the civil forfeiture proceeding to a judge different from the one assigned to the criminal proceeding deprived the trial court of jurisdiction. It did not.

¶ 17 Although defendant relies on section 124B-600 of the Code (725 ILCS 5/124B-600 (West 2014)), that reliance is misplaced. Section 124B-600 provides, in pertinent part, that a defendant who commits computer fraud shall forfeit any property that the “sentencing court” determines forfeitable. 725 ILCS 5/124B-600 (West 2014). Defendant seizes on the phrase “sentencing court” to argue that only the judge who sentenced him had jurisdiction to rule on the civil forfeiture. That is incorrect. The term “court” is much broader than the term “judge.” Indeed, the two terms are not synonymous. *People v. Wolfe*, 124 Ill. App. 2d 349, 352 (1970). A trial court can consist of many judges. *Wolfe*, 124 Ill. App. 3d at 352. Thus, assignment of the civil forfeiture to a judge different from the one who presided over the criminal proceeding did not violate section 124B-600 or otherwise deprive the trial court of jurisdiction.

¶ 18 Defendant next contends that his property was seized in violation of section 124B-150(a) of the Code (725 ILCS 5/124B-150(a) (West 2014)). It was not.

¶ 19 Defendant’s argument misinterprets section 124B-150(a). That section provides a mechanism for the trial court to preserve the availability of property pending final disposition of a forfeiture proceeding. 725 ILCS 5/124B-150(a) (West 2014). Contrary to defendant’s assertion, section 124B-150(a) does not prohibit the seizure of property before formal charges have been instituted.

¶ 20 Defendant next maintains that, because he was not allowed to challenge the seizure of his property until over a year after it was seized, he was denied his due-process right to be notified and heard before his property was taken. We disagree.

¶ 21 Defendant was clearly notified of the forfeiture proceeding, as the State filed in the pending criminal proceeding its motion for forfeiture of his property. That motion identified the property that the State sought to have forfeited.

¶ 22 Additionally, once defendant was notified that the State sought to forfeit his property, he had ample opportunity to object and be heard during the forfeiture proceeding. Indeed, that proceeding provided the meaningful hearing required by due process. See *United States v. Von Neumann*, 477 U.S. 242, 249 (1986) (a forfeiture proceeding involving a vehicle provides the post-seizure hearing required by due process); *United States v. Eight Thousand Eight Hundred & Fifty Dollars (\$8,850)*, 461 U.S. 555, 563-69 (1983) (18-month delay in initiating forfeiture of cash did not violate due-process right to a meaningful hearing at a meaningful time); see also *People v. One 1998 GMC*, 2011 IL 110236, ¶ 30 (following the reasoning of *Von Neumann* and *\$8,850* in holding that the due-process right to a meaningful post-seizure hearing at a meaningful time was satisfied by the forfeiture proceeding). Thus, defendant was not denied due process.

¶ 23 Lastly, defendant contends that section 124B-150 of the Code is unconstitutional. We need not reach that issue, however, as defendant has forfeited it.

¶ 24 Although in a criminal case a constitutional challenge to a statute can be raised for the first time on appeal, in a civil case such a challenge is normally forfeited if not raised in the trial court. *People v. Koy*, 2014 IL App (2d) 130906, ¶ 21. However, a reviewing court may overlook general forfeiture principles in a civil case and consider the constitutional issue not

raised below, if the issue is one of law, it is fully briefed and argued by the parties, and the public interest favors considering the issue. *Koy*, 2014 IL App (2d) 130906, ¶ 21.

¶ 25 As noted, the statutory forfeiture proceeding was civil. See *People ex rel. Nerheim*, 2015 IL App (2d) 131267, ¶ 21 (forfeiture proceedings are generally considered civil); see also *Koy*, 2014 IL App (2d) 130906, ¶ 30 (noting that Illinois law clearly recognizes the civil nature of statutory forfeiture proceedings). Because section 124B-150 creates a procedure that is part of a civil proceeding, defendant was required to challenge its constitutionality first in the trial court. Having failed to do so, he forfeited such challenge in this court. Further, we will not overlook the forfeiture, as the constitutional issue has not been fully argued and briefed by both parties and there is no public policy reason that favors our deciding the issue.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 28 Affirmed.