



**NAVAJO
COUNTY
ATTORNEY'S
OFFICE**



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October 19, 2016

Institute for Justice
Paul V. Avelar
Keith E. Diggs
398 S. Mill Ave. Suite 301
Tempe, Arizona 85291

Dear Mr. Avelar & Mr. Diggs:

Please find enclosed a Declaration of Remission as to the 2012 Volkswagen to which your clients have asserted ownership. The reasons for this action are set forth in some detail in the enclosed court filing.

As to arranging the physical return of the vehicle, you or your clients may contact my legal assistant, Maxine Tyler (928-524-4019), who would be happy to arrange an appointment for the vehicle to be picked up. If your clients will not be picking the vehicle up themselves, we would require some form of written documentation from your office designating the individual they have given permission to pick the vehicle up in order to ensure we are turning it over to the correct person. That person would also need to have appropriate identification when he or she arrives to pick the car up. The property can probably be picked up at any time during normal business hours Monday through Friday.

Thank You,

Jason Moore
Deputy County Attorney

1 Jason Moore
2 Deputy Navajo County Attorney
3 State Bar ID#019911
4 P. O. Box 668
5 Holbrook, Arizona 86025
6 928-524-4019

CONFORMED

COPY OF ORIGINAL FILING

OCT 19 2016

NAVAJO COUNTY SUPERIOR COURT
DEANNE M. ROMO, CLERK

7
8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF NAVAJO**

10 IN THE MATTER OF:)

11 U.S. Currency \$31,780.00; 2012 Volkswagen,)
12 Jetta, VIN #3VW3L7AJ0CM366141.)

NO.CV 201600217

13) **DECLARATION OF PARTIAL**
14) **REMISSION AND**
15) **WITHDRAWAL OF MOTION TO**
16) **STRIKE AND APPLICATION**
17) **AND ORDER OF FORFEITURE**
18) **AS TO WILLIAM AND MARIA**
19) **PLATT**

20 The State of Arizona, by and through undersigned legal counsel, hereby informs
21 the Court and the Claimants William and Maria of Platt of the Remission of the above-captioned
22 2012 Volkswagen and hereby withdraws its' Motion To Strike, and the Notice Of Forfeiture And
23 Application And Order Of Forfeiture as to the same parties¹. This Notice of Withdrawal is
24 submitted in the interest of justice, and is supported by the following.

25 **REASONS FOR DISMISSAL**

26 The State submits this Notice of Withdrawal based on new information received
27 during the pendency of the vehicle forfeiture proceedings which tends to support William Platt's
28 and Maria's Platt's assertion that the vehicle is subject to return based on the innocent owner
exemption to asset forfeiture. Accordingly, although the initial seizure and notice of forfeiture of

¹ The State intends on returning the subject vehicle to William Platt and Maria Platt, who currently assert an ownership interest in the vehicle. The State intends on filing an in rem complaint for forfeiture as to the \$31,780.00 in U.S. Currency.

1 this vehicle, and cash, was authorized under Arizona law, and although the original submittal by
2 William Platt and Maria Platt entitled Notice of Pending Forfeiture Not Uncontested!, as well as
3 the original submittal by Terance Shea Platt, failed to meet the statutory requirements to confer
4 standing on the Platts to challenge the forfeiture, the State, in the interest of justice, and for the
5 following reasons, has concluded that the return of the vehicle to the Platts, and an interim *in rem*
6 forfeiture complaint as to the cash, is both fair and proper under the circumstances. This
7 decision, however, requires explanation so that its contours are properly understood.
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9

10 A. The Original Seizure And Forfeiture Proceedings Were Proper Under
11 Arizona Law.

12 On May 3, 2016, Arizona Department of Public Safety (“DPS”) Officer Plumb
13 conducted a lawful traffic stop involving the subject 2012 VW Jetta. The 2012 VW Jetta was
14 ultimately discovered to contain \$31,780.00 in cash and marijuana. The vehicle had illegal tint
15 on the windows, and was suspicious in that the windows of this relatively late-model vehicle
16 would not readily roll down – an indication that illegal contraband may have been placed in the
17 vehicle’s door panels. The vehicle was not being driven by the registered owners, who lived in
18 Washington State. The driver of the vehicle, along with a companion, claimed that the vehicle
19 was being driven cross-country, and had even spent some two months in a Florida airport
20 parking lot. Although the driver claimed to be returning to Washington State, his claimed route
21 of travel was not direct, and took the vehicle through several out-of-the-way metropolitan areas.
22 Maintenance records located in the vehicle suggested that it had been maintained by the driver,
23 who was the son of the registered owners, and that insurance was maintained in the name of
24 someone other than the registered owners.
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27 Indeed, the State’s initial conclusion that Mr. Platt Jr. was the true, or *de facto*,
28 owner of this vehicle was both reasonable and justified. An initial presumption of ownership

1 arises from the certificate of title, but such presumption may be rebutted by other competent
2 evidence, such as by evidence of actual ownership or that another is the true owner of the
3 vehicle. *Wallace Imports, Inc. v. Howe*, 138 Ariz. 217, 673 P.2d 961 (App. 1983). The State had
4 that evidence based on the totality of the circumstances present. The maintenance records in
5 hand indicated that Mr. Platt Jr. was the person regularly maintaining the vehicle and acting as its
6 true owner since 2014. Platt Jr. was also in possession of the vehicle on the date of the seizure of
7 the vehicle driving it cross county. He had been in possession and control of the vehicle for, at
8 least, a period of six to eight weeks according to information he provided to investigating
9 officers, and had advised them of having parked the vehicle for an extended period at an airport
10 in Florida at least six weeks earlier, having paid a \$700 parking fee to retrieve it. Mr. Platt Jr.
11 additionally referred to the car as his own during the investigation. The position taken by the
12 Platts originally, that how a vehicle is titled or registered is dispositive as to ownership, was and
13 is mistaken.

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17 For all of the reasons stated in the original Notice of Pending Forfeiture Making
18 Uncontested Forfeiture Available, Notice Of Forfeiture And Application And Order Of
19 Forfeiture, and Motion to Strike, the 2012 VW Jetta and \$31,780.00 were, and are, the proper
20 subjects of civil asset forfeiture.

21
22 B. The Platts' Failure To File A Conforming Petition For Remission Deprived
23 Them Of Standing To Make A Claim To The Vehicle.

24 Additionally, and as stated in the State's Motion to Strike, Claimants William and
25 Maria Platt, and Terance Shea Platt, did not submit either a petition for remission or claim with
26 the State or the Court that met the basic requirements of A.R.S. § 13-4311(E) within the statutory
27 guidelines. In response to this failure, the Claimants first argue that their submission to the
28 County Attorney's Office were not, in fact, defective. In support of their position, Claimants

1 argue that A.R.S. § 13-4311(E) does not actually require a Petition for Remission to indicate that
2 it is sworn or submitted under the penalty of perjury. According to the Claimants, their
3 subjective intent that a Petition or Claim be sworn and submitted under penalty of perjury should
4 simply be inferred by the State or the Court whenever a Petition or Claim is filed or submitted.
5 Claimants further argue that because they subjectively intended their submission to the County
6 Attorney's Office to be under penalty of perjury, it was in fact valid. This argument is without
7 any legal merit and cannot be taken seriously. Indeed, accepting this argument would result in
8 the very harm that the statute seeks to avoid; namely, requiring the State to actively defend
9 against false claims only waiting to later discover whether, or not, the unverified claim or
10 petition was subjectively "meant to be" submitted under penalty of perjury.

13 The statutory requirements requiring a Claim or Petition to be submitted under
14 penalty of perjury are found in A.R.S. §§ 13-4309(2) and A.R.S. 13-4311(E). A.R.S. §13-
15 4309(2) provides as follows:

17 2. An owner of or interest holder in the property may elect to file either a
18 claim with the court within thirty days after the notice or a petition for
19 remission or mitigation of forfeiture with the attorney for the state within
20 thirty days after the notice and not after a complaint has been filed, but may
not file both. *The claim or petition shall comply with the requirements for
claims in section 13-4311, subsections E and F.*

21 (emphasis added). In turn, A.R.S. § 13-4311(E) provides that:

23 E. *The claim shall be signed by the claimant under penalty of perjury* and shall set forth
24 all of the following:

- 25 1. The caption of the proceeding as set forth on the notice of pending forfeiture
26 or complaint and the name of the claimant.
- 27 2. The address at which the claimant will accept future mailings from the court or
28 attorney for the state.
3. The nature and extent of the claimant's interest in the property.

- 1 4. The date, the identity of the transferor and the circumstances of the claimant's
- 2 acquisition of the interest in the property.
- 3 5. The specific provisions of this chapter relied on in asserting that the property is
- 4 not subject to forfeiture.
- 5 6. All facts supporting each such assertion.
- 6 7. Any additional facts supporting the claimant's claim.
- 7 8. The precise relief sought.

8 (emphasis added). It should be noted that both A.R.S. § 13-4309(2) and 13-4311(E) are written
9 in terms of a mandatory "shall". Further, they are written in simple language that can easily be
10 understood. The Platts were given a copy of the A.R.S. § 13-4311(E) in full with the Notice of
11 Pending Forfeiture. Regardless of whether a potential Claimant chooses to file a Petition for
12 Remission with the County Attorney or a Claim with the Court, it must be submitted under
13 penalty of perjury. The Courts are required to, "interpret statutes to give effect to the
14 legislature's intent. When a statute is clear and unambiguous," they must apply "its plain
15 language and need not engage in any other means of statutory interpretation." *State v. Gongora*,
16 235 Ariz. 178, 179, 330 P.3d 368, 369 (Ct. App. 2014), citing *State v. Arellano*, 213 Ariz. 474, ¶
17 9, 143 P.3d 1015, 1018 (2006), quoting *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 14, 110 P.3d 1013,
18 1017(2005).

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22 No Arizona Court that has ever considered the requirement that a Claim or Petition be
23 submitted under penalty of perjury has ever taken the casual attitude toward it which is displayed
24 in the Memorandum submitted on behalf of the Platts. And that it is certainly not because
25 Arizona courts have lacked ample opportunity to consider the requirement. In *In the Matter of*
26 *\$70,269.91 (Benson)*, the Arizona Court of Appeals considered the statutory requirement that
27 claims be submitted under penalty of perjury. In that case, which the Platts acknowledge as
28

1 controlling authority, the Court characterized the requirement in A.R.S. § 13-4311(E) that a
2 claim or petition to be signed under penalty of perjury a “primary substantive concern” because
3 the risk of false claims is great. The Court stated that:
4

5 Ownership claims in forfeiture actions must satisfy two primary substantive
6 concerns. First, the claimant must claim and verify a specific property interest. *See Baker*
7 *v. United States*, 722 F.2d 517, 519 (9th Cir.1983). The claim must be verified on oath or
8 solemn affirmation because “[t]he danger of false claims in these cases is substantial.”
Id.; *United States v. U.S. Currency In the Amount of \$103,387.27*, 863 F.2d at 559.

9 172 Ariz. at 20, 833 P.2d at 37.

10 Other cases that have considered the requirement in A.R.S. 13-4311(E) that claims or
11 petitions must be sworn have strictly enforced the requirement that Claims or Petitions clearly be
12 submitted under penalty of perjury include *In the Matter of the Forfeiture of \$3,000 in United*
13 *States Currency*, 164 Ariz. 120, 791 P.2d 646 (App. 1990) (upholding trial Court’s decision
14 dismissing a petition because it was not signed under penalty of perjury), and *State ex rel.*
15 *McDougall v. Superior Court*, 173 Ariz. 385, 387, 843 P.2d 1277, 1279 (App. 1992) (Claim
16 verified by Claimant’s attorney rather than the Claimant himself held to be invalid even though
17 Ariz. R. Civ. P. 11(b) generally allows an attorney so sign a verification because 13-4311(E)
18 specifically requires the Claimant to sign the claim under penalty of perjury). In short, every
19 Arizona case that has considered the matter has taken the requirement that claims and petitions
20 for remission be submitted under penalty of perjury has taken the matter seriously and enforced
21 it literally. Not only is the statute itself very clear about the requirement, there is no ambiguity in
22 the case law interpreting the statute either.
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26 If the clear and unambiguous requirement of A.R.S. § 13-4311(E) and existing
27 case law that has interpreted that provision were not enough, one must seriously consider the
28 practical impact of the interpretation pressed by the Platts. If the subjective intent of a potential

1 claimant controlled whether or not a petition for remission or a claim was submitted under
2 penalty of perjury rather than whether objective evidence of that fact appears on the face of the
3 submission to the Court or County Attorney, it would write the legislature's requirement that
4 claims and petitions for remission be submitted under penalty of perjury right off the books.
5 Although they are loathe to say it outright in their pleadings, what the Platts actually asked for in
6 the Memorandum was for the Court to judicially remove the requirement that claims and
7 petitions be submitted under penalty of perjury from the statute.
8

9
10 The results of the course of action that the Platts suggested to the Court would
11 completely defeat the clear legislative intent of deterring false claims by requiring they be
12 submitted under penalty of perjury. The requirement in A.R.S. § 13-4311(E) that claims and
13 petitions be submitted under penalty of perjury is not just a matter of "three little words" as the
14 Platts describe it in their brief. The requirement that claims and petitions for remission be sworn
15 or verified is not just a technical requirement either . . . it is a statutory, substantive requirement.
16 See § 13-4311(E); *Benson*, 172 Ariz. at 20, 833 P.2d at 37. The fact that a document is sworn
17 and submitted under penalty of perjury gives it real substance and meaning. Without objective
18 evidence that a claim or petition for remission is submitted under penalty of perjury claimants
19 would be free to confabulate and mislead both the Court and the County Attorney without
20 consequence. A potential claimant could merely state that they "intended" for the document to
21 be sworn, and not bother with submitting the document under penalty of perjury. Under those
22 circumstances, it would be impossible to hold the potential claimant legally responsible for their
23 sworn statements. This is exactly what the legislature intended to prevent when it required the
24 claims and petitions be submitted under oath.
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28 In short, the arguments of the Platts that their original submissions to the County

1 Attorney's Office were in compliance with the requirement in A.R.S. § 13-4311(E) that a
2 Petition for Remission be submitted under penalty of perjury is not a serious one. Were it still
3 relevant, the Platts argument should have been easily rejected by the Court. The Platts'
4 submissions to the County Attorney's Office were facially defective and the State was correct
5 when it advised the Court and the Platts of that fact in the Application and Order of Forfeiture.
6

7 The Platts also suggest to the Court that even if the defect is one that Arizona Courts have
8 determined to be substantive in nature rather than technical or procedural, such as a lack of oath
9 or affirmation indicating document was submitted under penalty of perjury as we have here, that
10 the State still had an obligation to "inquire into whether the property is subject to forfeiture and
11 the facts and circumstances surrounding petitions for remission or mitigation of forfeiture"
12 pursuant to A.R.S. § 13-4309(b). The Platts further suggest that after conducting that
13 investigation, the State's attorney should have issued a "declaration of forfeiture" pursuant to
14 A.R.S. § 13-4309(b). After a declaration of forfeiture, the Platts argue they would have had a
15 right to file a claim with the Court pursuant to A.R.S. § 13-4309(c) & (d). It is on this basis that
16 they believe they could construe the State's Application and Order of Forfeiture as a Declaration
17 and Order of Forfeiture and file a claim with the Court at that time.
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20 Again however, the interpretation of the statutes as suggested by the Platts would render
21 the requirement that a timely Claim or Petition be submitted that meets the requirements of
22 A.R.S. § 13-4311(E) meaningless. Under the interpretation pressed by the Platts, a petition for
23 remission, regardless of how deficient and whether classified as "substantive" in nature, as in
24 this case, or "procedural," triggers the duty of the County Attorney to conduct a further
25 investigation into the matter under A.R.S. 13-4309(b), and that after conducting that
26 investigation, the State should issue a declaration of forfeiture pursuant to the same statute.
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1 Plaintiffs then argue that a potential claimant can fix the deficient petition for remission by filing
2 a claim that meets the requirements of A.R.S. § 13-4311(E). Obviously, this would render the
3 statutory requirement of A.R.S. 13-4311(E) that a petition for remission be sworn and contain
4 the eight requirements set forth in the state meaningless. Potential claimants could merely ignore
5 the statutory requirements in submitting a Petition for Remission and count on their ability to
6 later file a Claim meeting the statutory requirements. The interpretation the Platts actually ask
7 for is, again, a judicial re-write of A.R.S. § 13-4311(E).
8

9
10 Accordingly, the State's decision to withdraw a claim in forfeiture to the 2012 VW Jetta,
11 or to proceed as to the cash with an *in rem* complaint, should, in no way, be deemed an
12 agreement with the Platts that either of their submittals effectively conferred standing upon them
13 to contest the forfeiture of the 2012 VW Jetta or cash – the submittals did not, and they have no
14 such standing. Rather, the State's decision to return the vehicle is based solely on an evaluation
15 of whether this 2012 VW Jetta should be returned to them as a matter of ensuring a basic, just
16 result, and, having done so, to pursue the forfeiture of the cash through the filing of a judicial *in*
17 *rem* forfeiture proceeding.
18

19
20 C. The State, In The Interest Of Achieving A Just Result, Has Chosen To
21 Withdraw Its Claim To The 2012 VW Jetta.

22 Notwithstanding the above, the State seeks a just result, and understands its
23 obligation to assess forfeiture decisions on a case-by-case basis, and to constantly evaluate those
24 decisions as new, additional information is received. Accordingly, although the original seizure
25 and forfeiture proceedings are legal justified, and although potential Claimants William and
26 Maria Platt did not submit either a petition for remission or claim with the Court that met the
27 requirements of A.R.S. § 13-4311(E), a subsequent review of this matter and new information
28

1 received since the time of the Platts' original, defective claim has caused the State to withdraw
2 any claim in forfeiture to the 2012 VW Jetta

3 Among other things, the State has been reviewing the tape recordings of the
4 interviews conducted by law enforcement, and the jail conversations recorded at the Navajo
5 County Jail involving the Platt family. The State has also engaged in further discussions about
6 the matter with the lead investigating law enforcement officer. Indeed, even prior to the recent
7 Memorandum on the Motion to Strike, filed by Mr. and Mrs. Platt, the State had been engaged in
8 further evaluation of its position in this case. The ongoing review being conducted by the State's
9 attorney has revealed some additional information which reduces the likelihood that that the
10 vehicle had been, *de facto*, transferred to Terence Shea Platt as the true owner without formally
11 transferring title into his name.
12

13 In addition to the further review conducted by the attorney for the State, and as
14 noted in footnote eight of the Memorandum recently filed by the Platts opposing the State's
15 Motion to Strike their Claim, it does appear that the State may have arrived at an honest, but
16 mistaken, conclusion that maintenance on the vehicle had been ordered by Platt Jr., when Platt
17 Sr. had been the party arranging the maintenance. The State did not know that the "T." in Mr.
18 Platt Sr.'s first name stood for "Terance," which is his son's first name. The vehicle registration
19 information the State was supplied with simply indicated Mr. Platt senior's middle initial was
20 "T" and did not state his whole middle name. Further, Mr. Platt's Sr.'s submissions to the Court
21 or County Attorney's Office have not included his middle name either. The State attorney was
22 also unaware at the time of filing of this matter that Terance Shea Platt went by the name "Shea"
23 or that "William Terence Platt" went by the name "Terry." Mr. Platt Jr. was further referred to
24 as "Terence" throughout the police reports that the State reviewed prior to filing in this matter,
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1 and so believed that was the name he went by, with "Terry" being his logical nickname. So the
2 conclusion the State had drawn regarding who was maintaining the vehicle clearly may be
3 mistaken. However, any mistaken inference the State had made regarding the vehicle
4 maintenance records was an honest one.
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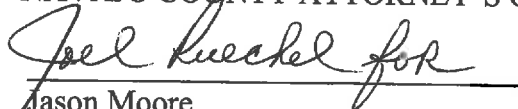
6 These same conclusions do not apply to the \$31,780.00, for which the State will continue
7 to seek forfeiture, albeit through the filing of an *in rem* forfeiture complaint².
8

9 **CONCLUSION**

10 For all of the above reasons, the State withdraws its Motion To Strike and the Notice of
11 Forfeiture and Application and Order of Forfeiture as to William and Maria Platt. In doing so,
12 the State withdraws and dismissed any current, or future, claim in forfeiture as to the 2012 VW
13 Jetta. The State will, instead, pursue a forfeiture claim as to only as to the \$31,780.00 cash only,
14 not through these proceedings, but through a separate, *in rem* forfeiture complaint.
15

16
17 RESPECTFULLY SUBMITTED THIS 19 DAY OF October, 2016.

18 NAVAJO COUNTY ATTORNEY'S OFFICE

19 

20 Jason Moore

21 Deputy Navajo County Attorney
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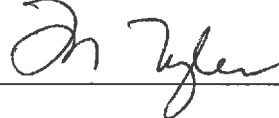
² Based on the Claimants' submittals in this matter, Terance Shea Platt appears to be the only potential claimant as to the cash.

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I hereby certify that a true and correct
Copy of the foregoing was mailed this
20 day of October, 2016 to:

Terence S. Platt
1821 Nova Lane
Richland, WA 99352

Institute for Justice
Paul V. Avelar
Keith E. Diggs
398 S. Mill Ave., Ste. 301
Tempe, AZ 85291

By:  _____