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AFFIRMED; Opinion Filed January 22, 2019.



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-17-01250-CV

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**FIVE HUNDRED TWENTY TWO DOLLARS IN UNITED STATE CURRENCY; ONE FIREARM; SCOPE; TWO CELL PHONES; AND SILVER MERCEDES ML 320 VIN #4JGAB54E77A260775, Appellant**

v.

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 397th Judicial District Court**  
**Grayson County, Texas**  
**Trial Court Cause No. CV-16-1161**

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**MEMORANDUM OPINION**

Before Justices Schenck, Reichek, and Nowell  
Opinion by Justice Nowell

This case presents an appeal from a final judgment of forfeiture ordering money and property be forfeited to the State of Texas. Following a bench trial, the court found the money and property that are the subject of this suit<sup>1</sup> (collectively, "Property") were used or intended to be used in the commission of a felony. Mark Zimmerman owned the Property. In three issues, Zimmerman argues the trial court erred by denying his motion for discovery, proceeding with trial before discovery was conducted, and violating his civil rights by ordering his personal bank

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<sup>1</sup> The final judgment lists the money and property as: "1) five hundred twenty two dollars in United States currency; 2) Smith & Wesson, Body Guard 38. SPL., serial number: CPK0750BG38; 3) Remington Model 710, 7MM serial number: 71281551, Bushnell Scope, Caldwell Bipod; 4) LG cell phone, model# LGMS330, IMEI# 355867-07-330680-8; 5) Samsung cell phone, model# SM-G530T1, IMEI# 359130/06/6489214; and (6) Silver, Mercedes, ML320, 4JGAB54E71A260775, TX. GJC-9097."

APPENDIX A

account be frozen. In a fourth issue, Zimmerman asserts the Grayson County jail and its officials violated his civil rights by denying his access to the law library. We affirm the trial court's judgment.

At the beginning of the trial, the judge stated this civil forfeiture proceeding followed a criminal case in which a jury found Zimmerman guilty.<sup>2</sup> Zimmerman was incarcerated at the time of the civil trial. The State announced it was ready to proceed with trial. Zimmerman, acting pro se, stated he wanted to file a motion for continuance, but had been unable to obtain one from the law library. Additionally, he advised the court he wanted to file a motion for discovery because the State had not provided any. He stated he previously filed a motion seeking discovery, but did not know whether an order was entered. Zimmerman primarily sought documents relating to the freezing of his personal checking account; he did not know whether the account was frozen at the time of trial. The State explained to the trial court that it executed a subpoena for Zimmerman's bank records, but it did not seek money from his checking account in its notice of seizure.

The State was not aware of any discovery requests from Zimmerman, but represented that any discovery would have been the same documents that were produced in Zimmerman's criminal case along with Zimmerman's own bank records. Regarding its evidence in the civil case, the State told the trial court: "there is nothing that's going to be used that Mr. Zimmerman didn't see in his criminal case."

Following the trial, the court entered a final judgment of forfeiture ordering the Property be forfeited to the State. This appeal followed.

In his first and second issues, Zimmerman argues the trial court erred by denying his motion for discovery and proceeding with trial. Although Zimmerman informed the court that he filed a

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<sup>2</sup> This Court considered the merits of Zimmerman's appeal from his criminal conviction in *Zimmerman v. State*, No. 05-17-00492-CR, 2018 WL 3968419 (Tex. App.—Dallas Aug. 20, 2018, no pet.). Zimmerman was convicted of four drug-related offenses.

motion seeking discovery, no motion appears in the record. If we were to assume Zimmerman filed such a motion, he did not obtain a ruling on the motion. “To preserve a complaint for appellate review, a party must (1) complain to the trial court by way of ‘a timely request, objection, or motion; and (2) the trial court must rule or refuse to rule on the request, objection, or motion.’” *Seim v. Allstate Texas Lloyds*, 551 S.W.3d 161, 164 (Tex. 2018) (quoting *Mansions in the Forest, L.P. v. Montgomery Cty.*, 365 S.W.3d 314, 317 (Tex. 2012) (per curiam)); *see also* TEX. R. APP. P. 33.1(a) (preservation of error). Because Zimmerman did not file a motion or obtain a ruling on any request he may have presented to the trial court, we conclude he has not preserved his complaint for appellate review. We overrule Zimmerman’s first and second issues.

In his third issue, Zimmerman asserts the trial court violated his civil rights by ordering a freeze on his personal bank account. The record does not include an order freezing Zimmerman’s bank account. A civil forfeiture action is an *in rem* proceeding and the trial court’s jurisdiction depends on its control over the property at issue. *See State v. Thirty Thousand Six Hundred Sixty Dollars and no/100*, 136 S.W.3d 392, 405 (Tex. App.—Corpus Christi 2004, pet. denied) (en banc); *see also State v. One Million Seven Hundred Eleven Thousand Sixty-one Dollars and Seventy-nine Cents (\$1,711,061.79) in U.S. Currency, Elgin Watch, Rope Necklace, ID Bracelet, Two (2) Costume Jewelry Rings, & Five (5) Silver Bars*, No. 04-18-00379-CV, 2018 WL 6793787, at \*2 (Tex. App.—San Antonio Dec. 27, 2018, no pet. h.). When the property is not within the court’s control, the trial court does not have jurisdiction over it. *See Thirty Thousand Six Hundred Sixty Dollars and no/100*, 136 S.W.3d at 405. Because the State did not seek forfeiture of Zimmerman’s bank account, the account did not fall within the trial court’s control and the trial court lacked jurisdiction to take action with respect to it. Further, there is no evidence the trial court acted beyond its jurisdiction to order the account be frozen. We conclude Zimmerman’s third issue presents nothing for our review, and we overrule his third issue.

In his fourth issue, Zimmerman argues the Grayson County jail and its officials violated his civil rights by denying him access to the law library. Zimmerman informed the trial court he sought a motion for continuance to obtain documents related to the title of the vehicle subject to this suit. The State did not argue at trial that the vehicle was purchased with illegal proceeds. Rather, it showed the car was used in the course of a felony drug transaction and, therefore, was subject to forfeiture. The trial court concluded any documents related to Zimmerman's procurement of the title to the vehicle were unnecessary. Zimmerman does not assert the trial court's conclusion was in error or any error probably caused the rendition of an improper judgment. *See* TEX. R. APP. P. 44.1 (reversible error in civil cases). Having reviewed the record, we conclude the trial court did not err. Additionally, Zimmerman did not argue in the trial court that his civil rights were violated; therefore, we do not consider that argument on appeal. *See* TEX. R. APP. P. 33.1(a). We overrule Zimmerman's fourth issue.

We affirm the trial court's judgment.

171250F.P05

/Erin A. Nowell/  
ERIN A. NOWELL  
JUSTICE

**CAUSE NO. 16-1161**

# THE STATE OF TEXAS

V.

**FIVE HUNDRED TWENTY-TWO DOLLARS  
IN UNITED STATES CURRENCY;  
ONE FIREARM; SCOPE; TWO CELL  
PHONES; and SILVER MERCEDES ML320  
VIN# 4JGAB54E71A260775**

**IN THE 397<sup>TH</sup> DISTRICT COURT**

OF

## GRAYSON COUNTY, TEXAS

## **FINAL JUDGMENT OF FORFEITURE**

On this date, came to be considered this case for final hearing. The Plaintiff, State of Texas, appeared by and through the Criminal District Attorney for Grayson County, Texas, and the Claimant appeared in person.

The Plaintiff presented evidence. After considering the evidence and arguments of the Parties, the Court is of the opinion that the forfeiture should be, in all things, granted.

The Court finds that the money and property made the subject of this lawsuit were used or intended to be used in the commission of a felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act).

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the 1) FIVE HUNDRED TWENTY-TWO DOLLARS (\$522.00) IN UNITED STATES CURRENCY; 2) SMITH & WESSON, BODY GUARD 38. SPL., SERIAL NUMBER: CPK0750BG38; 3) REMINGTON MODEL 710, 7MM SERIAL NUMBER: 71281551, BUSHNELL SCOPE, CALDWELL BIPOD; 4) LG CELL PHONE, MODEL# LGMS330, IMEI# 355867-07-330680-8; 5) SAMSUNG CELL PHONE, MODEL# SM-G530T1, IMEI# 359130/06/648921/4; AND, 6) SILVER, MERCEDES, ML320, 4JGAB54E71A260775, TX. GJC-9097 made the subject of this suit are hereby

## APPENDIX B

forfeited to the State of Texas by and through the Grayson County Criminal District Attorney, acting as their agent.

**IT IS FURTHER ORDERED** that all right, title and/or interest in or to the 1) FIVE HUNDRED TWENTY-TWO DOLLARS (\$522.00) IN UNITED STATES CURRENCY; 2) SMITH & WESSON, BODY GUARD 38. SPL., SERIAL NUMBER: CPK0750BG38; 3) REMINGTON MODEL 710, 7MM SERIAL NUMBER: 71281551, BUSHNELL SCOPE, CALDWELL BIPOD; 4) LG CELL PHONE, MODEL# LGMS330, IMEI# 355867-07-330680-8; 5) SAMSUNG CELL PHONE, MODEL# SM-G530T1, IMEI# 359130/06/648921/4; AND, 6) SILVER, MERCEDES, ML320, 4JGAB54E71A260775, TX. GJC-9097 is hereby transferred to the State of Texas.

**IT IS FURTHER ORDERED** that the property which is the subject of this suit, and which is hereby forfeited to the State of Texas, shall be administered by the Grayson County Criminal District Attorney (hereafter referred to as "the CDA"), acting as the agent of the State, in accordance with accepted accounting practices and in accordance with the provisions of any local agreement entered into between the CDA and any applicable law enforcement agencies and that such property shall be disposed of in accordance with the provisions of Article 59.06 TEX. CODE CRIM. PROC.

This order disposes of all issues and all parties and is final and appealable.

  
JUDGE PRESIDING

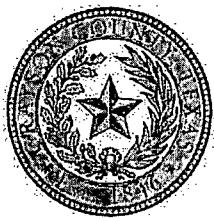
10-18-17

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BY 

17 OCT 19 PM 1:37

KELLY ASHMORE  
DISTRICT CLERK  
GRAYSON, TX

APPENDIX B



State of Texas  
397th Judicial District Court  
Grayson County, Texas

Brian K. Gary  
Judge

October 18, 2017

Via Fax No. 903-892-8550

Mr. Joe Brown  
200 S. Crockett Ste. 116A  
Sherman, TX 75090

Via Hand Delivery

Mr. Mark Zimmerman  
200 S. Crockett  
Sherman, TX 75090

RE: Cause No. CV-16-1161; *The State of Texas vs. Five Hundred Twenty-Two Dollars in United States Currency; One Firearm; Scope; Two Cell Phones; and Silver Mercedes ML320 VIN#4JGAB54E71A260775*

Dear Mr. Brown and Mr. Zimmerman:

After reviewing further case law, under the evidence in this case, the Court finds the State is entitled to the forfeiture of the car in this matter. Accordingly, the Court has signed the attached order.

Sincerely,

A handwritten signature in black ink, appearing to read "BKG".  
Brian K. Gary

BKG:jlt

APPENDIX B

APPENDIX C



OFFICIAL NOTICE FROM

SUPREME COURT OF TEXAS

Post Office Box 12268

Austin, Texas 78711-2268

IN THE BUSINESS  
STATE OF TEXAS

STATE PENALTY

RE: DEATH PENALTY

COA #: 05-17-01250-CV

STYLE: FIVE HUNDRED TWENTY-TWO DOLLARS IN U.S. CURRENCY v.

STATE

U.S. POSTAGE » PITNEY BOWES

ZIP 78701 DATE: 07/09/2019

00013 TCA: CV-16-1161

Today the Supreme Court of Texas denied the petition  
for review in the above-referenced case.

MAIL TO:

2-60  
MARK DAVID ZIMMERMAN  
TDCJ NO. 02136697  
FERGUSON UNIT  
12120 SAVAGE DRIVE  
MIDWAY, TX 75852

75852-385420

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**Additional material  
from this filing is  
available in the  
Clerk's Office.**