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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2017-CP-26-07411
(Appellate Case No. 2020-000092)

Jimmy A. Richardson, II, Solicitor for the 15th Judicial Circuit,
on Behalf of the 15th Circuit Drug Enforcement Unit,

Appellant,

v.

Twenty Thousand Seven Hundred Seventy-One and 00/100 Dollars
(\$20,771.00), U.S. Currency and Travis Green,

Respondents.

RECORD ON APPEAL

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The Supreme Court of South Carolina

Jimmy A. Richardson, II, Solicitor for the 15th Judicial
Circuit, on behalf of the 15th Circuit Drug Enforcement
Unit, Appellant,

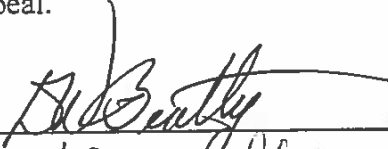
v.

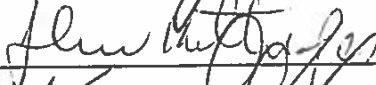
Twenty Thousand Seven Hundred Seventy-One and
00/100 Dollars (\$20,771.00), US Currency, and Travis
Green, Respondent.


Appellate Case No. 2019-000519


ORDER

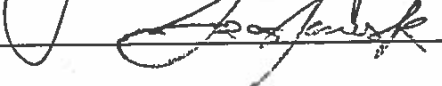
Appellant has filed a Notice of Appeal, an Initial Brief, a Petition for Expedited Consideration or in the Alternative Supersedeas Relief, and a Motion to Certify, all of which seek to challenge the February 21, 2019 circuit court order suspending forfeiture actions in the Fifteenth Judicial Circuit until the Legislature can address the decision of the Supreme Court of the United States in *Timbs v. Indiana*, 139 S. Ct. 682 (2019). In an order filed May 1, 2019, the circuit court rescinded the February 21, 2019 order at issue. Because the underlying basis for this appeal no longer exists, we now dismiss this appeal.


_____ C.J.


_____ J.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

May 13, 2019

cc:

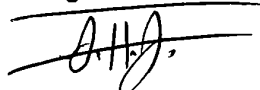
James Richard Battle, II, Esquire

Benjamin Alexander Hyman, Esquire

<p>STATE OF SOUTH CAROLINA COUNTY OF HORRY JIMMY RICHARDSON, II, SOLICITOR FOR THE FIFTEENTH JUDICIAL CIRCUIT, ON BEHALF OF THE 15TH CIRCUIT DRUG ENFORCEMENT UNIT, Petitioner, vs. TWENTY THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 00/100 DOLLARS, (\$20,771.00) U.S. CURRENCY, Respondent Property, TRAVIS LEE GREEN, Respondent.</p>	<p>IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO: 2017-CP-26-07411 ORDER</p>
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This matter comes before the Court pursuant to the above-captioned forfeiture action in which the State requests that the Court approve the forfeiture of monies seized by agents pursuant to S.C. Code Section 44-53-520.

This case was assigned to the Honorable Judge Steven H. John by the Chief Administrative Judge of the Fifteenth Circuit Court of Common Pleas on May 14, 2019. At the Court's request, the parties submitted and filed briefs as to the constitutionality of South Carolina's forfeiture statutes as well as a Consent Brief in which the parties



stipulated to the underlying facts of this case, as well as the statutorily prescribed method of distribution of forfeited funds by the Fifteenth Circuit Solicitor's Office and the relevant law enforcement agencies.

This Court finds that South Carolina's forfeiture statutes, S.C. Code Sections 44-53-520 and 44-53-530, violate the prohibition on excessive fines found in the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution.

Furthermore, this Court finds that S.C. Code Sections 44-53-520 and 44-53-530 violate due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution in that the forfeiture statutes (1) place the burden on the property owner to prove their innocence, (2) unconstitutionally institutionally incentivize forfeiture officials to prosecute forfeiture actions, and (3) do not mandate judicial review or judicial authorization prior to or subsequent to the seizure.

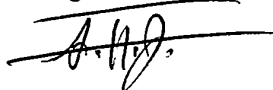
STATEMENT OF FACTS

The Complaint in this action alleges that agents with the 15th Circuit Drug Enforcement Unit made three controlled buys of cocaine from Defendant Green. The agents arrested Defendant Green and charged him with two counts of distribution of cocaine and one count of trafficking cocaine.

Agents then executed a search warrant on Defendant Green's residence located at 185 Avondale Drive in Myrtle Beach, S.C., discovering a backpack containing approximately 132 grams of an off-white rock-like substance, 32 grams of a white powdery substance, 319 grams of a green leafy substance, and 27 morphine tablets.

Agents also seized \$19,800.00 located in a closet and \$971.00 that was on Defendant Green's person at the time of his arrest. On November 10, 2017, Plaintiff filed the Complaint in this matter requesting that the Court approve the forfeiture of the monies seized by the agents pursuant to S.C. Code Section 44-53-520.

The parties have stipulated that, pursuant to S.C. Code Section 44-53-530(e), (f), and (g), the law enforcement agencies involved in a forfeiture proceeding receive



seventy-five percent of all funds in excess of \$1000.00, the prosecuting agency receives twenty percent of all funds in excess of \$1000.00, and five percent of all funds in excess of \$1000.00 are remitted to the State Treasurer and deposited to the credit of the general fund of the State. S.C. Code Section 44-53-530(e).

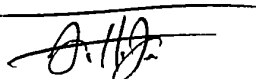
The first \$1000.00 of any cash that is seized is retained by the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency. S.C. Code Section 44-53-530(f).

All forfeited funds are maintained in a separate account by each agency and can be drawn upon and used only by that agency. "For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters." S.C. Code Section 44-53-530(g).

Although the "accounts must not be used to supplant operating funds in the current or future budgets," the funds are permitted to be used by each agency for recurring purchases if approved by the governing body for the law enforcement agency before the purchases are made. *Id.*

LAW AND ANALYSIS

This Court finds that S.C. Code Sections 44-53-520 and 44-53-530 are unconstitutional because (1) they violate the prohibition on excessive fines found in the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution; (2) they violate due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution in that they place the burden on the property owner to prove his or her innocence; (3) they violate due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution in that they institutionally incentivize forfeiture officials to prosecute forfeiture actions; and (4) they violate due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution in that a seizure under S.C. Code Sections 44-53-530(b)(1) and (4), the law does not provide for any judicial review or judicial authorization prior to or subsequent to the seizure.



S.C. Code Sections 44-53-520 and 44-53-530 Violate the Excessive Fines Clause of the United States Constitution and South Carolina Constitution

The Eighth Amendment to the United States Constitution prohibits the government from imposing unduly harsh penalties: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

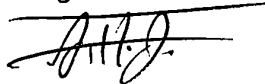
The Eighth Amendment’s Excessive Fines Clause “limits the government’s power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’” *Timbs v. Indiana*, 139 S.Ct. 682, 687 (2019), citing *United States v. Bajakajian*, 524 U. S. 321, 327–328 (1998) (quoting *Austin v. United States*, 509 U. S. 602, 609–610 (1993)). The Excessive Fines Clause applies to the states under the Fourteenth Amendment’s Due Process Clause. *Timbs*, 139 S.Ct. at 682. Furthermore, the Excessive Fines Clause applies to civil *in rem* forfeitures when they are at least partially punitive. *Austin v. United States*, 509 U.S. 602 (1993).

The South Carolina Constitution also contains a provision prohibiting excessive fines:

§ 15. Right of bail; excessive bail; cruel or unusual or corporal punishment; detention of witnesses. All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, *nor shall excessive fines be imposed*, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained. (1970 (56) 2684; 1971 (57) 315; 1998 Act No. 259.).

South Carolina Constitution, Article I, Section 15 (emphasis added).

This Court finds that South Carolina’s forfeiture statutes violate both the federal and South Carolina constitutional protections against excessive fines by permitting the government to seize unlimited amounts of cash and other property without regard to the proportionality of the crime that may have been committed. Indeed, they allow the government to seize unlimited amounts of cash and other property *when no crime has been*



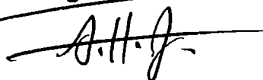
committed, without a criminal conviction and without proof of a crime having been committed beyond a determination of probable cause.

For example, South Carolina's forfeiture statutes would allow law enforcement to seize millions of dollars in assets from an individual when the maximum fine authorized by law is minimal or when no crime has been committed at all. This unfettered authorization to seize unlimited amounts of property from citizens without regard to the proportionality of the offense committed – indeed, without evidence proving that the individual committed an offense – compels this Court to find that the statutory scheme is unconstitutional and must be invalidated under the federal and state constitutional prohibitions on excessive fines and pursuant to the United States Supreme Court's decision in *Timbs*.

S.C. Code Sections 44-53-520 and 44-53-530 Violate Due Process under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section Three of the South Carolina Constitution because They Place the Burden of Proof on Defendants

This Court finds that the requirement under South Carolina's forfeiture statutes that property owners prove their innocence, placing the burden of proof on the property owner, violates the Due Process Clauses of the federal and South Carolina Constitutions. See *Harjo v. City of Albuquerque*, 326 F.Supp.3d 1145 (D. N.M., 2018) (finding that New Mexico forfeiture program violates due process by placing the burden of proof on innocent property owners).

Although, in some cases, the affirmative defense rules pronounced by the United States Supreme Court permit the burden of proof to be placed on the defendant in a criminal case, see *Smith v. U.S.*, 568 U.S. 106 (2013), these rules only apply if the government first proves some wrongful act by the defendant. Because S.C.'s forfeiture statutes do not require meaningful proof of any wrongful act by the defendant, they unconstitutionally shift the burden of proof to defendants who, in some cases, are not even charged with a crime. See *Martin v. Ohio*, 480 U.S. 228, 233-34 (1987), *Nelson v. Colorado*, 137 S.Ct. 1249 (2017) (invalidating a Colorado statute that required a defendant to "prove her innocence by clear and convincing evidence to obtain the refund of costs, fees, and restitution paid pursuant to an invalid conviction").



The *Nelson* Court applies the balancing test announced in *Mathews*, evaluating (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the governmental interest at stake. See *Mathews v. Eldridge*, 424 U. S. 319, 335 (1976). As in *Nelson*, Defendant Green has an obvious interest in regaining the money that was taken from him by the State of South Carolina. Like the statute in question in *Nelson*, the South Carolina forfeiture scheme “creates an unacceptable risk of the erroneous deprivation of defendants’ property,” in that it does not require any meaningful proof of a defendant’s guilt before the seizure of a defendant’s property. Furthermore, the state of South Carolina has zero legitimate interest in seizing or withholding money or other property when the defendant has not been convicted of a crime, and the government has not proven that the property was connected to a crime.

This Court finds that South Carolina’s forfeiture procedures violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section Three of the South Carolina Constitution by failing to provide meaningful protections for the due process rights of defendants in that they place the burden of proof on property owners and allow the state to seize and withhold money or other property when a defendant has not been convicted of a crime, when a defendant has not even been charged with a crime, or when the government has not provided any meaningful evidence that the property is connected with a crime.

S.C. Code Sections 44-53-520 and 44-53-530 Violate Due Process under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section Three of the South Carolina Constitution because They Institutionally Incentivize Forfeiture Officials

This Court finds that S.C. Code Sections 44-53-520 and 44-53-530 are unconstitutional because they violate due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution in that they institutionally incentivize forfeiture officials to prosecute forfeiture actions.

Because forfeiture programs in South Carolina are self-funding, they violate due process in that they create an institutional incentive for forfeiture program officials to

vigorously pursue forfeitures even where there is no basis for a forfeiture and when leniency would be more appropriate. See *Tumey v. Ohio*, 273 U.S. 510 (1927).

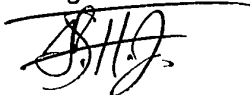
Enforcement personnel are responsible for conducting investigations following a seizure, including verifying whether the seizure was justified and determining whether to return a defendant's property, demand the full amount of forfeiture money or property, or negotiate a settlement in which a defendant who has not been proven guilty must relinquish some of their property, ensuring the continued flow of forfeiture funds.

Furthermore, the very existence of the forfeiture programs depends on the maintenance of income generated by the programs. The budgets for forfeiture programs and the expenditures of individual agencies who benefit financially are necessarily tied to the amount of revenue generated by the programs. Consequently, forfeiture officials, including law enforcement officers, assistant solicitors, and outside counsel retained to prosecute forfeiture actions, are affected by the desire to generate as much money as possible through the forfeiture programs.

Forfeiture programs in South Carolina have an unconstitutional incentive to prosecute forfeiture cases because, in practice, these programs set their own budget and can spend forfeiture funds in any amount and on any items that they choose, including recurring expenses, and without any meaningful oversight. "Thus, there is a 'realistic possibility' that forfeiture officials' judgment 'will be distorted by the prospect of institutional gain' -- the more revenues they raise, the more revenues they can spend." *Harjo v. City of Albuquerque*, 326 F.Supp.3d at 1151, citing *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 251 (1980).

Because the revenues generated by the forfeiture programs are used to pay the expenses of the forfeiture programs, to justify the salaries of forfeiture employees, and to maintain a level of discretionary spending that would not otherwise be available to the agencies involved, enforcement personnel have an institutional financial incentive to vigorously pursue forfeitures regardless of the merits of the action.

In *Tumey*, the United States Supreme Court invalidated a statutory scheme that financially benefited a judge who was paid only for guilty verdicts but not acquittals. "The Supreme Court has recognized several factors that bear on whether a law, procedure, or program unconstitutionally biases an official: (i) whether the amount of penalties or prosecutions affects an official's salary; (ii) the official's authority over



allocating the penalty funds; (iii) the percentage of the budget that the fees and penalties constitute; and (iv) whether surplus funds are allocated to the program or to other programs." *Harjo v. City of Albuquerque*, 326 F.Supp.3d at 1184, see *Marshall v. Jerrico*, 446 U.S. at 245-46, see also *Ward v. Village of Monroeville*, 409 U.S. 57, 58 (1972) (concluding that a mayor's impartiality was sufficiently compromised to violate due process when a substantial portion of the "village income is derived from the fines, forfeitures, costs, and fees imposed by him in his mayor's court").

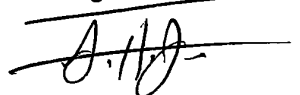
The test for impartiality is less strict when the official performing the duty "act[s] in a prosecutorial or plaintiff-like capacity." *Harjo*, 326 F.Supp.3d at 1185, citing *Marshall*, 446 U.S. at 248.

Our legal system has traditionally accorded wide discretion to criminal prosecutors in the enforcement process, and similar considerations have been found applicable to administrative prosecutors as well.... [i]n an adversary system, they are necessarily permitted to be zealous in their enforcement of the law. The constitutional interests in accurate finding of facts and application of law, and in preserving a fair and open process for decision, are not to the same degree implicated if it is the prosecutor, and not the judge, who is offered an incentive for securing civil penalties.

Harjo, 326 F.Supp.3d at 1185, citing *Marshall*, 446 U.S. at 248-49 (internal citations omitted).

"Although providing a lower standard, the due process clause still imposes 'limits on the partisanship of administrative prosecutors.'" *Harjo*, 326 F.Supp.3d at 1185, citing *Marshall*, 446 U.S. at 249. "A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions." *Id.*, citing *Marshall*, 446 U.S. at 249-50. "Such personal interest can take the form of economic profit or 'the prospect of institutional gain as a result of zealous enforcement efforts.'" *Id.*, citing *Marshall*, 446 U.S. at 250.

In *Marshall*, the Court found that the Department of Labor's Employment Standard Administration ("ESA") did not violate due process where assistant regional administrators prosecute and collect civil penalties from companies that violate child labor laws. *Marshall*, 446 U.S. 238. The Court found that there was no unconstitutional institutional incentive because the civil penalties collected amounted to less than one



percent of the ESA's budget, the amount of ESA's budget that was returned to the treasury was substantially greater than the amount of civil penalties that were collected, and the allocation of civil penalties was controlled by a national officer and not a regional administrator, so that there was no assurance that the penalties collected would be returned to the regional administrator's office. *Marshall*, 446 at 250-251.

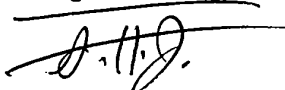
In *Marshall*, expenditures of civil penalties were controlled by a national officer with no local control over the funds. In South Carolina, forfeiture income and expenditures are controlled by each agency, the funds remain in the agency, and spending decisions are made solely by the agency. Furthermore, law enforcement agencies are specifically authorized to use forfeiture funds for recurring expenses in the discretion of the agency's governing body.

Whereas, in *Marshall*, civil penalties collected were returned to the treasury, under South Carolina's forfeiture program only five percent of total forfeiture income is required to be remitted to the State treasurer and deposited to the credit of the general fund of the state. S.C. Code Section 44-53-530(e)(3). Surplus forfeiture funds are not remitted to the general fund, and, instead, are spent by the agencies who receive the funds as their share of the statute's profit-sharing scheme.

A full 75% of all forfeiture income is retained by the law enforcement agency that seized the property, while 20% of forfeiture income is retained by the state's solicitor's offices. S.C. Code Section 44-53-530(e). 44-53-530(g) requires that all forfeiture income:

...be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters.

S.C. Code Section 44-53-530(g).



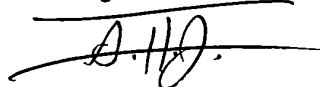
The requirement that expenditures be related to “drug enforcement activities” in the case of law enforcement agencies or to “the prosecution of drug offenses” in the case of solicitor’s offices, has no meaningful oversight, results in discretionary spending on items that most likely would not have been approved by the legislature, includes recurring expenses from year to year, and ensures that the forfeiture programs in each agency are self-funding.

The amount and nature of discretionary spending, determined by officials in each agency, is necessarily based on the amount of forfeiture revenue accomplished by that agency in any given year.

Forfeiture officials in each agency are thus permitted to approve spending over and above appropriations approved by the legislature, and they can spend as much forfeiture income as they bring in each year. With these facts, “there is a realistic possibility that the forfeiture program prosecutors’ judgment will be distorted, because in effect, the more revenues the prosecutor raises, the more money the forfeiture program can spend.” *Harjo*, 326 F.Supp.3d at 1195, citing *Ward v. Village of Monroeville*, 409 U.S. at 60 (“Plainly that possible temptation may also exist when the mayor’s executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor’s court.”).

Similarly, in *Flora*, the District Court for the Southern District of Iowa found that “a special Iowa police task force charged with, among other things, drug investigation, enforcement, and civil asset forfeiture,” had an unconstitutional profit incentive where “the task force distributed ten percent of any successful civil forfeiture to the county attorney’s office, twenty percent to the state, and the remaining funds back to the task force.” *Harjo*, 326 F.Supp.3d at 1196, citing *Flora v. Sw. Iowa Narcotics Enforcement Task Force*, 292 F.Supp.3d 875, 884-85, 904 (S.D. Iowa, 2018). The District Court denied the task force’s summary judgment motion on profit incentive because: “(i) the profit-sharing agreement did not ‘limit forfeiture shares to expenses accrued by the Task Force and the [county attorney’s office] in pursuing the forfeitures’; and (ii) whether the task force received excessive funds from its seizures ‘rest[ed] on the sole determination of the Task Force Unit Supervisor.’” *Harjo*, 326 F.Supp.3d at 1196, citing *Flora*, 292 F.Supp.3d at 904.

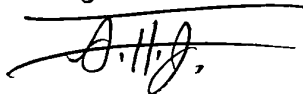
Facts that demonstrate an unconstitutional incentive to prosecute forfeiture cases under South Carolina’s forfeiture scheme include:



- Forfeiture revenues in each agency are directed to a designated special revenue fund;
- These funds are used to pay expenses directly associated with the program;
- These funds are used to pay for discretionary items that would otherwise be unavailable to law enforcement agencies;
- The funds are used to pay for recurring expenses, creating a secondary budget within each agency that is not subject to legislative approval and that results in agency dependence on forfeiture funds to continue paying those expenses;
- The existence of forfeiture programs in each agency depends on the revenue generated by forfeitures;
- Forfeiture revenue is used to justify the salaries of forfeiture officials;
- Declines in forfeiture revenue may require the elimination of positions of forfeiture officials;
- Declines in forfeiture revenue would require the elimination of significant discretionary spending by each agency involved; and
- In practice, officials involved in the forfeiture programs control how forfeiture income is budgeted and spent with little or no oversight from the legislature.

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Harjo v. City of Albuquerque*, 326 F.Supp.3d at 1184, quoting *Marshall*, 446 U.S. at 242. "This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process." *Id.* Due process does "not permit any procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused." *Id.*

This Court finds that South Carolina's forfeiture procedures violate the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution in that they institutionally incentivize forfeiture officials.



The forfeiture program, forfeiture officials, and law enforcement agencies in South Carolina are dependent on the revenue generated by the forfeiture program. South Carolina forfeiture programs have de facto power over their own spending – the more revenue they raise, the more they can spend.

S.C. Code Sections 44-53-520 and 44-53-530 Violate Due Process under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section Three of the South Carolina Constitution because They Do Not Provide for Judicial Review or Judicial Authorization Prior to or Subsequent to the Seizure

Under S.C. Code § 44-53-530(a), the seizing agency is required to file a forfeiture action *within a reasonable time of the seizure*. The statute does not define a reasonable time. The law permits a seizure without a warrant if the seizure is made as incident to arrest or if probable cause exists to believe that the property was used in violation of the drug laws. *See*, S.C. Code § 44-53-520(b)(1) and (4). The statute does not have a provision for any type of pre-seizure or post-seizure hearing to determine if probable cause exists. For a seizure under subsections (b)(1) and (4), the law does not provide for any judicial review or judicial authorization prior to or subsequent to the seizure.

In practice, many seizures under South Carolina’s forfeiture laws are *not* followed up by the filing of a forfeiture action, leaving many defendants with the choice of retaining an attorney to file a civil action against the state or simply allowing law enforcement to keep their money or property.

Because the statutes do not require a pre-seizure or post-seizure hearing, S.C. Code § 44-53-520 and S.C. Code §44-53-530 do not comply with the due process clause of Article I, Section 3 of the South Carolina Constitution or the Fifth and Fourteenth Amendments of the United States Constitution.

The United States Supreme Court has said, “Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property.” *U.S. v. Good*, 510 U.S. 43, 48 (1993). While the United States Supreme Court has recognized that under limited exigent circumstances, a pre-seizure hearing may not be required, the Court has never held that a state may dispense with such hearing. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974).



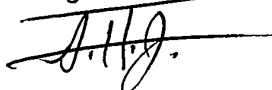
In *State v. Matheason*, the Washington Supreme Court declared its state forfeiture laws unconstitutional because it failed to provide for any type of meaningful hearing after the seizure of the property. *State v. Matheason*, 524 P.2d 388 (1974). The Washington Court stated, "Inasmuch as subsection (b)(4) does not provide for notice and hearing even after seizure it is violative of due process even under the holding in *Calero*." *Id.* at 390. Like South Carolina's statute, the Washington statute required that a forfeiture action be filed "promptly" but did not otherwise provide for any type of post-seizure hearing. In *Matheason*, the forfeiture action was filed in response to the action by the owner to regain possession of his automobile. *See also, State v. One 1972 Mercury Capri*, 537 P.2d 763 (1975).

In *Department of Law Enforcement v. Real Property*, the Florida Supreme Court held that a forfeiture statute that does not provide for a post-seizure hearing is unconstitutional as a denial of procedural due process. *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (1991). The Court held that, "Regarding matters of personal property, due process permits the state to seize personal property prior to notice or an opportunity for a hearing provided that notice is sent and the opportunity for an adversarial preliminary hearing is made as soon as possible after the seizure." *Id.* at 965.

California reached a similar result when it held that, "The rule is well settled that to constitute due process of law in regard to the taking of the property the statute should give the parties interested adequate remedy for the vindication of their rights..." *People v. Broad*, 12 P.2d 941, 943 (1932).

In declaring a portion of its forfeiture law unconstitutional, the Oregon Court of Appeals said, "[N]o reason appears why the city would be overly burdened or any public interest disserved by providing an immediate post-seizure probable cause hearing... We conclude that the due process balance manifestly tilts in favor of a prompt post-seizure hearing." *State ex rel. Schrunk v. Metz*, 867 P.2d 503, 511 (1993).

Similarly, the New York Court of Appeals has said, "We therefore conclude, after balancing these considerations, that due process requires that a prompt post-seizure retention hearing before a neutral magistrate be afforded, with adequate notice, to all defendants whose cars are seized and held for possible forfeiture. At such a hearing, the County must establish that probable cause existed for the defendant's initial warrantless arrest, that it is likely to succeed on the merits of the forfeiture action, and that retention



is necessary to preserve the vehicle from destruction or sale during the pendency of the proceeding." *County of Nassau v. Canavan*, 802 N.E.2d 616, 625 (2003).

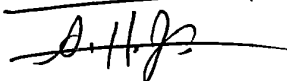
The South Carolina statute does permit a property owner to file a civil action to obtain the return of their property, but this ignores the fact that the government is seizing and keeping a citizen's property without any judicial determination of the right of the government to keep his or her property. Due process cannot mean that the state has the right to decide *when* they wish to afford a person a hearing to determine whether the government has the right to seize their property. No citizen in a free nation should have their property seized without a hearing and be at the mercy of the agency seizing the property to determine when they will have a hearing. Due process demands more than this.

This Court finds that South Carolina's forfeiture procedures violate the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution because they do not provide for judicial review or judicial authorization prior to or subsequent to the seizure.

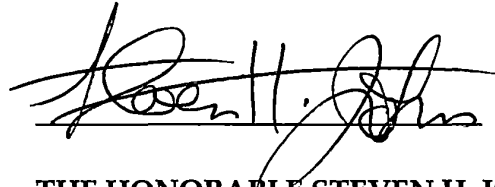
CONCLUSION

This Court finds that South Carolina's forfeiture statutes, S.C. Code Sections 44-53-520 and 44-53-530, violate the prohibition on excessive fines found in the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution.

Furthermore, this Court finds that S.C. Code Sections 44-53-520 and 44-53-530 violate due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Three of the South Carolina Constitution in that the forfeiture statutes (1) place the burden on the property owner to prove their innocence, (2) unconstitutionally institutionally incentivize forfeiture officials to prosecute forfeiture actions, and (3) do not mandate judicial review or judicial authorization prior to or subsequent to the seizure.



AND IT IS SO ORDERED.



THE HONORABLE STEVEN H. JOHN
Chief Administrative Judge
Court of General Sessions
Fifteenth Judicial Circuit

August 28 2019
Conway, South Carolina



<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF HORRY</p> <p>JIMMY RICHARDSON, II, SOLICITOR FOR THE FIFTEENTH JUDICIAL CIRCUIT, ON BEHALF OF THE 15TH CIRCUIT DRUG ENFORCEMENT UNIT,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>TWENTY THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 00/100 DOLLARS, (\$20,771.00) U.S. CURRENCY,</p> <p style="text-align: center;">Respondent Property,</p> <p>TRAVIS LEE GREEN,</p> <p style="text-align: center;">Respondent.</p>	<p>IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT</p> <p>CASE NO: 2017-CP-26-07411</p> <p>Order on Petitioners Motion to Alter or Amend</p>
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This case was assigned to the Honorable Judge Stephen H. John by the Chief Administrative Judge of the Fifteenth Circuit Court of Common Pleas on May 14, 2019. At the Court's request, the parties submitted and filed briefs (Ex. 1 Petitioner's Brief and Ex. 2 Defendant's Brief) as to the constitutionality of South Carolina's forfeiture statutes as well as a Consent Memorandum (Ex. 3 Consent Memorandum) in which the parties stipulate to the underlying facts of this case and the statutorily prescribed method of distribution of forfeited funds by the Fifteenth Circuit Solicitor's Office and the relevant law enforcement agencies.

By Order dated August 28, 2019 (Ex. 4 Oder), the Court found that South Carolina's forfeiture statutes, S.C. Code Sections 44-53-520 and 44-53-530, violate the prohibition on excessive fines found in the Eighth Amendment to the U.S. Constitution and Article I, Section 15 of the S.C. Constitution.

Furthermore, the Court found that S.C. Code Sections 44-53-520 and 44-53-530 violate due process under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section Three of the S.C. Constitution in that the forfeiture statutes 1) place the burden on the property owner to prove their innocence, 2) unconstitutionally institutionally incentivize forfeiture officials to prosecute forfeiture actions, and 3) do not mandate judicial review or judicial authorization prior to or subsequent to the seizure.

Petitioner then filed a Motion to Alter or Amend the Court's judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (Ex. 5 Motion to Alter or Amend), with ten numbered objections to the Court's Order. Defendant replied to each of the Petitioner's arguments (Ex. 6 Reply to Motion).

After hearing oral arguments on December 6th, 2019 it is the order of this court that the prior order issued August 28th, 2019 is REAFFIRMED.

THE HONORABLE STEVEN H. JOHN
Chief Administrative Judge
Court of General Sessions
Fifteenth Judicial Circuit

Conway, South Carolina

Dated: _____, 2019



Horry Common Pleas

Case Caption: Jimmy A Richardson II , plaintiff, et al VS Travis Lee Green
Case Number: 2017CP2607411
Type: Order/Amend

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2019-12-23 10:45:29 page 3 of 3

ELECTRONICALLY FILED - 2019 Dec 23 11:52 AM - HORRY - COMMON PLEAS - CASE#2017CP2607411

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JIMMY A. RICHARDSON, II, SOLICITOR
FOR THE FIFTEENTH JUDICIAL CIRCUIT,
ON BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

Petitioner,

vs.

TWENTY THOUSAND SEVEN HUNDRED
SEVENTY-ONE AND 00/100 DOLLARS,
(\$20,771.00) U.S. CURRENCY,

Respondent Property,

TRAVIS LEE GREEN,

Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-26-

SUMMONS

TO: THE ABOVE-NAMED RESPONDENT AND ANYONE CLAIMING AN
INTEREST IN THE ABOVE-DESCRIBED RESPONDENT PROPERTY:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their offices at 1200 Main Street, Post Office Box 530, Conway, South Carolina 29528-0530, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint, or to otherwise responsively plead to the Complaint, or to otherwise appear and defend, within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ James R. Battle
James R. Battle (SCBar No. 73604)
BATTLE LAW FIRM, LLC
Attorney for the Petitioner
PO Box 530
Conway, South Carolina 29528
(843) 248-4321 Telephone
(843) 248-4512 Fax
Email: jbattle@battlelawsc.com

November 8, 2017
Conway, SC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

JIMMY A. RICHARDSON, II, SOLICITOR
FOR THE FIFTEENTH JUDICIAL CIRCUIT,
ON BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

Petitioner,

vs.

TWENTY THOUSAND SEVEN HUNDRED
SEVENTY-ONE AND 00/100 DOLLARS,
(\$20,771.00) U.S. CURRENCY,

Respondent Property,

TRAVIS LEE GREEN,

Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-26-

COMPLAINT

Petitioner would respectfully allege as follows:

1. Petitioner is the Circuit Solicitor of the Fifteenth Judicial Circuit of the State of South Carolina and brings this action on behalf of the 15th Circuit Drug Enforcement Unit.
2. Petitioner is authorized by § 44-53-530 of the Code of Laws of South Carolina 1976 as amended to initiate this Complaint for the forfeiture of the Respondent Property.
3. Respondent Property is described as follows:

TWENTY THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 00/100
DOLLARS, (\$20,771.00) U.S. CURRENCY.
4. Agent Curry with the 15th Circuit Drug Enforcement Unit received information through a confidential source (“CS”) that Travis Lee Green was selling cocaine and other illicit drugs within Horry County, South Carolina. On September 26, 2017, Agent Curry utilized the CS to purchase approximately 7 grams of a substance represented as cocaine from Green. Then on

October 13, 2017, the CS purchased 14 grams of a substance represented as cocaine, and again on October 25, 2017, the CS purchased another 7 grams. On November 2, 2017 the 15th Circuit Drug Enforcement Unit arrested Travis Lee Green on charges of Distribution of Cocaine (two counts) and Trafficking Cocaine (one count) and then executed a search warrant on Green's residence located at 185 Avondale Drive in Myrtle Beach. Agents discovered a backpack hidden in the garage of the residence which contained approximately 132 grams of an off white rock like substance, approximately 32 grams of a white powder substance, approximately 319 grams of a green leafy substance and 27 tablets of Morphine that was identified through a drug database. Agents also located \$19,800.00 in a closet inside the garage of the house. Agents also seized \$971.00 from Green's person at the time of arrest. Based on Agent Curry's 16 years of narcotic experience and training, the substances purchased during this investigation and found at Green's residence during the search warrant are consistent with that of cocaine products and marijuana, as well as Schedule II Narcotics.

5. The seizure(s) happened in Horry County.
6. The Respondent Property is monies or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or is proceeds traceable to an exchange in violation of Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976, as amended.
7. The Respondent Property is money seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances in violation of Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

8. The Respondent Property is property which was knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation or trafficking of various controlled substances as defined in Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

WHEREFORE, the Petitioner prays that:

- a. The Respondent Property be declared forfeited to the State of South Carolina pursuant to § 44-53-520 of the Code of Laws of South Carolina 1976, as amended;
- b. The 15th Circuit Drug Enforcement Unit be declared the seizing agency;
- c. The Court transfer the Respondent Property to the seizing agency pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended; and
- d. For such other and further relief as the Court deems proper.

November 8, 2017

s/James R. Battle
James R. Battle (SCBar No 73604)
BATTLE LAW FIRM, LLC
Attorney for the Petitioner
PO Box 530
Conway, South Carolina 29528
(843) 248-4321 Telephone
(843) 248-4512 Fax
Email: jbattle@battlelawsc.com

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NUMBER: 2017-CP-26-07411
)	
JIMMY A. RICHARDSON, II, SOLICITOR)	
FOR THE FIFTEENTH JUDICIAL CIRCUIT,)	
ON BEHALF OF THE 15 TH CIRCUIT DRUG)	
ENFORCEMENT UNIT,)	
)	
Plaintiff,)	ANSWER
)	(JURY TRIAL DEMANDED)
vs.)	
)	
TWENTY THOUSAND SEVEN HUNDRED)	
SEVENTY-ONE AND 00/100 DOLLARS,)	
(\$20,771.00), U.S. Currency,)	
)	
Defendant Property,)	
)	
TRAVIS LEE GREEN,)	
)	
Defendant.)	
_____)	

The Defendant, Travis Lee Green through his undersigned attorney, B. Alex Hyman, would respectfully allege and show:

AS A FIRST DEFENSE
(General Denial)

1. That any and all allegations not specifically admitted or qualified in this Answer are denied and the Defendant demands strict proof thereof.
2. That the Defendant admits the allegations in Paragraph 1 and 2.
3. As to Paragraph 3, the Defendant would admit that a quantity of United States Currency was removed from his person or property in the approximate amount of Twenty Thousand Seven Hundred Seventy-One and 00/100 (\$20,771.00) Dollars.
4. As to Paragraphs 3, 4, 5, 6, 7 and 8 the Defendant would deny the allegations and demand strict proof thereof.

Wherefore the Defendant now prays:

1. That the Plaintiff's cause of action be dismissed.
2. That this Court issues an Order placing the Defendant in legal possession of the property.

4. For such other and further relief as this Court deems just and proper.

/s B. Alex Hyman
B. Alex Hyman SC Bar: 0075416
Attorney for Defendant
1208 Third Avenue
Conway, SC 29526
843-248-2024 – Office
843-248-3230 – Fax

Conway, South Carolina
Dated: January 9, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2017-CP-26-07411

JIMMY A. RICHARDSON, II,)
SOLICITOR FOR THE)
FIFTEENTH JUDICIAL)
CIRCUIT, ON BEHALF OF)
THE 15TH CIRCUIT DRUG)
ENFORCEMENT UNIT,)

Petitioner,)
vs.)

TWENTY THOUSAND SEVEN)
HUNDRED SEVENTY-ONE AND)
00/100 DOLLARS,)
\$20,771.00 U.S. CURRENCY,)

Respondent Property,)

TRAVIS LEE GREEN,)

Respondent.)

Transcript of Record
Motion to Alter or Amend

December 6, 2019

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

James Richard Battle, II, Esquire
Attorney for Plaintiff

Benjamin Alexander Hyman, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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I N D E X

DECEMBER 6, 2019

Pg.

By the Court	3
Argument by Battle	4
Argument by Hyman	14
Ruling of the Court	19
Certificate of Court Reporter	23

E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

1 **DECEMBER 6, 2019**

2 BY THE COURT:

3 THE COURT: This is 2017-CP-26-7411. It is styled Jimmy
4 A. Richardson, II, Solicitor for the Fifteenth Judicial
5 Circuit on behalf of the Fifteenth Circuit Drug Enforcement
6 Unit, Petitioner, versus Twenty-seven Thousand Seven Hundred
7 Seventy-one Dollars, U.S. Currency, Respondent Property,
8 Travis L. Green, Respondent.

9 In this particular matter, this action had been filed by
10 the petitioner, the respondent filed a response. The
11 respondent was represented by Mr. Alex Hyman. The current
12 administrative judge for the Court of Common Pleas, Civil
13 Court, is Judge Larry Hyman, his father. Based upon that,
14 Judge Hyman obviously with the conflict issued an order
15 whereby he assigned the case to me as the Chief Administrative
16 Judge of the Court of General Sessions. Upon receipt of that,
17 I reviewed the pleadings in this matter and having been aware
18 of a recent decision by the U.S. Supreme Court that
19 potentially could affect the issues joined in this matter, I
20 asked the parties to brief and argue the issue of the
21 constitutionality of the forfeiture statute in the State of
22 South Carolina. The parties complied with that, gave the
23 Court full and complete information. Based upon that, the
24 Court then issued its Order in this matter whereby for the
25 various reasons set forth in the Court's order I declared the

1 forfeiture statute as currently set forth in the Code of Laws
2 of the State of South Carolina to be unconstitutional.

3 In that regard, after that, the petitioner in this matter
4 filed a Motion to Alter or Amend the Court's Ruling, and the
5 respondent filed their reply to the petitioner's Motion to
6 Reconsider. We are here today to hear arguments from both
7 counsel regarding this particular matter.

8 Mr. Battle, on behalf of the petitioner, I'll be glad to
9 hear from you, sir.

10 ARGUMENT BY BATTLE:

11 MR. BATTLE: Yes, sir. So, I filed a Motion to Alter or
12 Amend the Court's Order and the purpose was to give the Court
13 an opportunity to see the issues that we would be bringing up
14 on appeal and give the Court an opportunity to either alter or
15 amend its Order based on those issues.

16 The first -- and I've submitted a memo. I feel like the
17 memo is comprehensive enough to give the Court an idea of our
18 concerns with the Order, but I will read them. There are 10
19 points.

20 First, that the Court lacked authority to issue a sua
21 sponte Order that the forfeiture statute was unconstitutional.

22 Second, the Court did not apply any standard of review in
23 issuing its Order.

24 Third, the Court's Order did not analyze the
25 constitutionality of the forfeiture statute's individual

1 subsections. The Court's Order ignored the underlying facts
2 of the instant case in determining the forfeiture statute
3 violated the 8th Amendment's Excessive Fines Clause.

4 Fifth, the Court's Order did not distinguish or discuss
5 any prior South Carolina case law concerning forfeiture and
6 the 8th Amendment.

7 Sixth, the Court's Order never set forth how the
8 forfeiture statute limited the Court's ability to enforce the
9 8th Amendment's Excessive Fines Clause.

10 Seventh, the Court's Order inaccurately described the
11 forfeiture statute's burden of proof and treated the
12 forfeiture statute as criminal forfeiture.

13 Eighth, the Court's Order did not account for judicial
14 oversight when it ruled the forfeiture statute unlawfully
15 incentivized the seizure of property.

16 Ninth, the Court's Order inaccurately described the
17 forfeiture statute's post-seizure process.

18 And finally, tenth, the Court's Order did not address how
19 its ruling would affect other forfeiture statutes which use
20 the procedure set forth in S.C. Code Section 44-53-530.

21 In the memo, each of those points contains argument,
22 citing case law and that was previously submitted back on
23 September 4th, but the purpose of this hearing was to see if
24 the Court had any questions concerning those points and any
25 discussion the Court felt was necessary.

1 THE COURT: All right. Well, let me do ask a question.

2 MR. BATTLE: Sure.

3 THE COURT: Regarding the first point that you set forth.

4 MR. BATTLE: Yes, sir.

5 THE COURT: What is it that you would like to present to
6 the Court other than what has already been presented in
7 writing? What is it that you would like to have the Court
8 consider before some ultimate ruling in this matter?

9 MR. BATTLE: So, the first point concerns sua sponte
10 Order by the Court. I don't know, you know, that the Court is
11 missing information. I think the question is whether the
12 Court had the authority to on its own determine that a statute
13 is unconstitutional.

14 THE COURT: Well, I did ultimately determine it to be
15 unconstitutional, but what I did was based upon a decision of
16 the United States Supreme Court ---

17 MR. BATTLE: Yes, sir.

18 THE COURT: --- *Timbs v. Mabry*. When I looked at the
19 pleadings of this case, it was the Court's belief that this
20 issue was in some manner affected by the decision of the
21 United States Supreme Court. And therefore, I asked the
22 parties to brief that issue. I had made no determination as
23 to whether it was constitutional or unconstitutional or had
24 any defects of any kind. But, based upon the prior filing of
25 the U.S. Supreme Court and its order in that case, I saw that

1 these issues were present and I asked the parties to, to brief
2 it. I did determine ultimately that our statute is
3 unconstitutional but I had not made -- not any
4 predetermination of that.

5 Now, just let me expand the question. Besides what you
6 have already presented to me in writing. What else is there
7 that you would like the Court to consider before reaching an
8 ultimate decision? What -- is there some testimony of some
9 party? Is there some other document of some kind you want me
10 to examine? Is there anything else you want the Court to look
11 at before I would reach an ultimate consideration, because you
12 filed a Motion for Reconsideration? So, if there is something
13 you want me to examine, now is the time to give it to me and
14 I'll be glad to do so.

15 MR. BATTLE: Right.

16 THE COURT: Or, if you need some party to come before the
17 Court and testify, then let me know.

18 MR. BATTLE: Well, okay, so the first point I think we'll
19 just have to agree to disagree about how the order came about.

20 THE COURT: Okay.

21 MR. BATTLE: But, you know, as far as law or facts that
22 the Court should consider, the first is a standard of review
23 set forth in *South Carolina Department of Natural Resources*.
24 The Court's order made no mention of any standard of review or
25 the seriousness of overturning the will of the legislature and

1 the impact that doing a ruling that a statute is facially
2 unconstitutional, how that would impact other statutes which
3 also use that same framework for determining a forfeiture.
4 Prior South Carolina case law -- so, the case of *Medlock v.*
5 *One 1985 Jeep Cherokee* is specifically on point as to how the
6 Court should consider an excessive fines 8th Amendment, or how
7 the Court should apply the 8th Amendment to forfeiture cases.
8 That was never discussed. And, you know, that sets forth a
9 three-point test to determine if there's been an excessive
10 fines violation. And, you know, the -- I guess, I don't know
11 how deep in weeds we want to get on forfeiture, but you know
12 the issue I think that the Court is taking with the 8th
13 Amendment is like a proportional, that there's no regard for
14 the level of criminality versus the property that's seized.
15 So, like the analogy or the anecdote that is used in the
16 Court's order is the police can seize unlimited, like a
17 millions of dollars, with a miniscule amount of drugs
18 involved. That is prohibited under *Medlock*, the second -- I
19 guess the second test or the second prong of that test, the
20 Court looks at the role and culpability of the owner of the
21 property. So, you know, the example that the Court is putting
22 forth would be -- would fail under the *Medlock* test. You
23 know, those, those are the types of, you know, information
24 that the Court didn't consider. I don't know if it wasn't,
25 you know, if the Court didn't know about it, but it's not

1 addressed in the order.

2 THE COURT: Okay. All right. So, ---

3 MR. BATTLE: I -- go ahead, I'm sorry.

4 THE COURT: I'm sorry. So, just so that I understand...

5 MR. BATTLE: Uh-huh, (affirmative response).

6 THE COURT: The issues that you raise in your Motion for
7 Reconsideration, those are the matters you want the Court to
8 look at, but other than legal argument or reference to a
9 statute or case law, there is nothing else that you would like
10 to present to the Court by way of testimony or documents or
11 anything like that? Is that right or ---

12 MR. BATTLE: Well, I mean, I ---

13 THE COURT: So, what I'm saying is, if there anything
14 else that you want the Court to hear, I want you to have the
15 ability and to bring it to my attention.

16 MR. BATTLE: Right.

17 THE COURT: So, if what you want me to consider is
18 contained within your Motion to Alter or Amend, that's fine.

19 MR. BATTLE: Right.

20 THE COURT: But, if there's something else, then I'm
21 expecting you to tell me about it. Is there anything else?

22 MR. BATTLE: Well, I mean, as I said -- you know, I think
23 the memo is comprehensive. If I had a preference on how it
24 would come about, we would've had a hearing and the Court's
25 Order would've addressed the underlying facts of this

1 forfeiture with Travis Green. You know, I'm sitting here
2 today, I haven't had an opportunity to present witnesses, to
3 present the underlying facts of this case. This order came
4 about prior to any type of evidentiary presentation, so ---

5 THE COURT: So, is that what you're asking for?

6 MR. BATTLE: Yes, sir. I'd love to have a trial in this
7 case.

8 THE COURT: Well, okay. Well, it would be a hearing on
9 the issue of the constitutionality. Okay? Not a hearing on
10 the forfeiture. Okay? So, it would be on that issue. Now,
11 if you feel it's necessary to supply background information,
12 then I'd be fine with that. But, this would not be a trial on
13 the forfeiture. This would be a hearing -- if background
14 information is necessary, then that's fine -- but to determine
15 whether or not the state can proceed with the forfeiture or
16 not because if it's unconstitutional the state can't proceed
17 with the forfeiture. Obviously, if it is constitutional, you
18 can proceed with the forfeiture and then you're entitled to go
19 forward with the forfeiture hearing.

20 MR. BATTLE: Right.

21 THE COURT: So, we're not having a, quote, forfeiture
22 hearing, but to get to that point in time, if you determine
23 and you want to have the ability to present some live
24 testimony, I'll be glad for you to do that. I didn't see that
25 in your memo. Okay?

1 MR. BATTLE: Right. Well -- so, I guess the horse is
2 kind of out of the barn a little bit. I mean, I have a
3 feeling I know how the Court is gonna rule if we have a
4 hearing on ---

5 THE COURT: Well, it may be, that might be.

6 MR. BATTLE: Right.

7 THE COURT: But, you know, it does not mean that if you
8 have additional information and you want to present that
9 information to me, I'm giving you the opportunity to do so.

10 MR. BATTLE: Judge, I think the basis for the Court's
11 order is it makes a facial determination that the statute is
12 unconstitutional. As Mr. Hyman put in his response brief, the
13 facts would be irrelevant. You know, it's not an as-applied
14 determination by the Court, it's a facial determination.

15 THE COURT: Okay.

16 MR. BATTLE: So, I -- my understanding is we're here
17 today on legal arguments.

18 THE COURT: Well, and we are, but ---

19 MR. BATTLE: Right.

20 THE COURT: And I appreciate that. But, I am, if you
21 want to ---

22 MR. BATTLE: Uh-huh, (affirmative response).

23 THE COURT: --- certainly willing to conduct a hearing
24 where you can present testimony that you think would apply to
25 the issues you have set forth. I'll be glad for you to do so

1 if you want to do that.

2 MR. BATTLE: You mean ---

3 THE COURT: I'm leaving it to you.

4 MR. BATTLE: You mean like a legal expert?

5 THE COURT: I don't -- I can't tell you how to present
6 the matter.

7 MR. BATTLE: Right.

8 THE COURT: You know, if there's some factual situation
9 of this underlying case that you think impacts one of your
10 arguments and you need to bring that fact out by a witness ---

11 MR. BATTLE: Uh-huh, (affirmative response).

12 THE COURT: --- I'm glad for you to do that. If you
13 think that there is some legal argument in there that you
14 think it is important to call whomever to expound on that
15 particular issue, I'm glad for you to do that.

16 MR. BATTLE: Uh-huh, (affirmative response).

17 THE COURT: All right? So, I'm giving you the
18 opportunity if you want -- if you want to do that or not is
19 what I'm telling you. So, ---

20 MR. BATTLE: Well, I'm kind of -- I'll kind of go back in
21 the record. So, Mr. Hyman and I, we presented a memo, which
22 was these are the stipulated facts.

23 THE COURT: Yes, sir.

24 MR. BATTLE: And so to a large part, we're not contesting
25 the activity of Mr. Green leading up to his property being

1 seized.

2 THE COURT: Right.

3 MR. BATTLE: So, you know, I have that in the record.

4 THE COURT: Yes, sir.

5 MR. BATTLE: And then I have the Court's Order subsequent
6 to that, which was a facial challenge to the statute. And
7 then I presented a memo saying I think these are issue that
8 the Court's Order has.

9 THE COURT: Okay.

10 MR. BATTLE: The Court can either alter and amend its
11 order accordingly, you know, rescind the Order, however. You
12 know, I don't know of a fact witness who could come in and
13 present factual testimony that the statute, you know --
14 there's no -- you see what I'm saying, like ---

15 THE COURT: Yes, sir. And I understand that, but I --
16 but ---

17 MR. BATTLE: I guess I'm confused.

18 THE COURT: No, well -- and I'm sorry if I'm doing that.
19 I just wanted to make sure that you have had the opportunity
20 to present to me, either any legal arguments or factual
21 arguments or evidence that you think would help the Court
22 regarding the Motion for Reconsideration of my original Order.
23 So, I'm sort of leaving it open-ended to you that if you -- if
24 there's something you want to give to me, I'm welcome to
25 receive it. If you make the determination that's not what you

1 want to do or you don't have anything, then I'm fine with
2 that, too. But I just want you to know you have the
3 opportunity to do so if you so choose to do so. Okay?

4 MR. BATTLE: Okay.

5 THE COURT: All right.

6 MR. BATTLE: Thank you, Judge.

7 THE COURT: Yes, sir.

8 All right, Mr. Hyman.

9 ARGUMENT BY HYMAN:

10 MR. HYMAN: Yes, Your Honor. I will kind of follow Mr.
11 Battle's lead in that obviously I have filed a reply to the
12 petitioner's Motion to Reconsider on this. My reply
13 enumerates case law. But just briefly to just kinda go over
14 what his request was. The first one being that the Court
15 lacked authority to issue a sua sponte Order that the
16 forfeiture statute was unconstitutional. Hearing Your Honor
17 explain his decision-making process in that, I think -- I
18 think is correct. Even if it was sua sponte Order, I do not
19 think that Your Honor would be barred from making that. I
20 think it could also be looked at that my brief, where I
21 specifically enumerated that the constitutional -- or that the
22 statute was unconstitutional, it could be lead to believe --
23 it could be looked at to say that that was an implicit motion
24 to be -- for it to be held unconstitutional. Other than that,
25 there were multiple times when the courts have -- the state

1 courts, and I have listed those in my reply, had issued sua
2 sponte Orders. I think given that and the fact that you were
3 on notice of a U.S. Supreme Court case that dealt with a very
4 similar statute and dealt with the excessive nature of that
5 statute, I think that when it boils down to it, your Order, if
6 considered sua sponte, would be not only looking at subject
7 matter jurisdiction, but also looking at it as a matter of
8 significant public interest.

9 Judge, in regards to Number 2, in that the Court did not
10 apply any standard of review, I've found no case law that says
11 that a Trial Court's Order is improper, if it fails to
12 articulate the standard of review. That being say, I think
13 that looking at the statute as a whole, and not the
14 application portion of it but the face of it, that statute is
15 -- the pieces of that statute are so intertwined and comingled
16 that one can't operate without the other. The only way to
17 hold it unconstitutional is facially. And when you hold it
18 unconstitutional facially, we're not worried about the facts.
19 So, the state of the review on that, I believe that it's clear
20 and beyond a reasonable doubt that the statute is
21 unconstitutional.

22 In regards to the Court's Order did not analyze the
23 constitutionality of the forfeiture statutes, its individual
24 subsections, again, just reiterating that this is a facial
25 argument, not an application argument. And I believe that the

1 parts of that statute are so connected with the other parts is
2 they mutually depend upon each other. I have enumerated some
3 case law on that, the *Knotts* case, Judge, the -- and the
4 fourth things it says that the Court's Order ignored the
5 underlying facts. Again, we are looking at a facial
6 determination, not the application. In the Court's Order, it
7 did address the -- a hypothesis of a court taking millions of
8 dollars for a minor drug offense. Judge, in the reply -- or
9 excuse me, in the request it says that the Court did not state
10 any factual basis of that or any case involving that. There
11 is a case, Judge, *Flora v. Southwest Iowa Narcotics*
12 *Enforcement Taskforce*. That case involves \$120,000 that was
13 taken and it was a minor, very, very minute amount of
14 marijuana taken. So, again, this is something that is
15 sweeping across the country and is not just concerning South
16 Carolina. I know we are dealing with our South Carolina
17 statute; however, looking across the board, this is something
18 that obviously that our U.S. -- our U.S. Supreme Court is
19 looking at as well as our State Supreme Court.

20 As to the reply's, Question Number 5, involving the
21 *Medlock* case, the -- Mr. Battle stated that he believes the
22 *Medlock* would grant authority to potentially weed out the
23 minor drug dealer from the excessive fines. The *Medlock* case
24 only says the role and culpability of the owner. That
25 certainly is not -- that is so broad, it would not be able to

1 significantly reduce something like that from occurring. I
2 understand where he argues about that, but I don't think that
3 is the case. Judge, in as far as Number 6, it says the
4 Court's order never set forth how the forfeiture statute
5 limited the Court's ability to enforce. I would argue, Judge,
6 that I am not aware of any requirement that the Court explain
7 that, explain why it could not find this hypothetical, again,
8 that I talked about. He discusses the hypothetical about the
9 million dollars and that kind of thing. In most of the
10 instances where you are dealing with a forfeiture, many of
11 them are by consent. You don't necessarily have a policing
12 power to look at every single forfeiture unless it hits your
13 desk. And that is where you look at it and it just absolutely
14 opens itself up to incentivization with different police
15 agencies. And quite frankly, it leads to a situation where
16 there is no oversight.

17 Judge, in regards to Number 7, it says the Court's order
18 inaccurately described the forfeiture statute's burden of
19 proof. While we would absolutely admit that the burden does
20 shift as far as South Carolina law is concerned, one thing
21 that we have seen, and it is in the Court's order, is that
22 there is a case out of -- it is *Arlene Harjo v. City of*
23 *Albuquerque* out of New Mexico where the federal courts in that
24 case specifically said requiring an innocent owner or
25 requiring a defendant in that case, for the burden to be

1 placed on then, they held that to unconstitutional.

2 Judge, as far as the Court's -- Number 8, says the
3 Court's Order did not account for judicial oversight when it
4 ruled the forfeiture statute unlawfully incentivized the
5 seizure of property. Again, Judge, that is implying that the
6 limited amount of oversight that the Courts have over these
7 forfeiture statutes is enough. There is no other oversight,
8 and again, the potential orders that y'all see in front of
9 you, it's not on every single forfeiture. It's not on the
10 forfeitures prior to the seizing of the property.

11 And again, as to Number 9, it says the Court's Order
12 inaccurately describes the forfeiture statutes post-seizure
13 process. Again, I think that's the same, same issue there,
14 Judge. There's a lot of other states that have moved towards
15 a pre-seizure or post-seizure prior to filing a hearing. They
16 almost look at it as a probable cause hearing to determine
17 whether or not the state can even move forward with a
18 forfeiture complaint. Judge, again, we don't have that.

19 And as far as Number 10, the Court's Order did not
20 address how its ruling would affect other forfeiture statutes.
21 I don't think the Court should address that. The issue we
22 have in front of us is the statute involved in this case,
23 which is the 44-53-520 and 530. How it interlocks with other
24 statutes, some of those statutes have nothing to do with drug
25 forfeitures or anything like that. I don't believe it's

1 proper for the Court to go down that road and try to
2 potentially fix all the problems.

3 I think one other thing that needs to be made a point
4 about is that there is currently a bill before the House to
5 change our statute in regards to the forfeiture. That leads
6 me to believe that there is obviously some people in the
7 legislature who believe that our statute is unconstitutional.
8 Now, while that has not been heard, I think that it is on the
9 horizon. All those being said, I'm sure that I left some case
10 law out that I have enumerated in my reply, but I would simply
11 state that I believe that Your Honor's Order was correct.
12 And, again, I don't believe that there was a violation in
13 issuing what's been called a sua sponte Order.

14 THE COURT: All right, sir.

15 MR. HYMAN: Thank you.

16 THE COURT: All right, Mr. Battle, any brief reply that
17 you have?

18 MR. BATTLE: No, Your Honor.

19 THE COURT: All right. Thank you very much.

20 MR. BATTLE: Yes, sir.

21 RULING OF THE COURT:

22 THE COURT: All right, gentleman. I've spent a good bit
23 of time looking at not only this underlying matter, but the
24 cases that have been presented by the petitioner and the
25 respondent, and I've gone through those. When this matter was

1 first assigned to me by Judge Hyman, I did take it upon myself
2 to look at the pleadings and the things that were filed in
3 this matter. Having been aware of the United States Supreme
4 Court decision in *Timbs vs. Mabry*, I found it such that the
5 Court could not ignore a decision of the United States Supreme
6 Court that could affect the application of the law in South
7 Carolina on this particular matter. While the respondent had
8 not at that point in time filed a motion to declare the
9 statute unconstitutional, it is the Court's responsibility to
10 apply the proper law to the matter before it. That is why I
11 asked counsel to brief the issue of the constitutionality of
12 the South Carolina statute. The parties presented to the
13 Court a factual background stipulation that they agreed upon.
14 The Court's decision in this matter, as both the petitioner
15 and respondent have argued, is that the order is facially
16 based. It's not an application-based decision. It is not
17 based on what the law enforcement agency or Mr. Green did or
18 didn't do in this matter. It is an examination of the statute
19 of the State of South Carolina, the decision of the U.S.
20 Supreme Court, and whether or not this statute is
21 constitutional on a facial basis.

22 I find that the arguments in this matter would clearly be
23 important and would require some other work if I had made my
24 decision not on the finding that the statute is
25 unconstitutional on a facial basis. So, therefore, with that,

1 I am going to reaffirm the Court's prior ruling in this matter
2 and adopt that prior ruling in its totality.

3 Mr. Hyman, I would ask that you draft a proposed argument
4 based on the matters presented, the Court's decision in this
5 matter, forward it on to Mr. Battle for his review, and then
6 notify the Court and Mr. Battle whenever it is that you
7 electronically file the order for the Court's consideration.
8 All right?

9 MR. HYMAN: Yes, Your Honor.

10 THE COURT: All right. Thank you, gentlemen, I
11 appreciate it very much.

12 MR. BATTLE: Thank you, Judge.

13 MR. HYMAN: Judge, just one ---

14 THE COURT: Yes, sir.

15 MR. HYMAN: I may have a stand-your-ground hearing next
16 week in Williamsburg County.

17 THE COURT: All right.

18 MR. HYMAN: I'm not positive on that.

19 THE COURT: All right. So, ---

20 MR. HYMAN: I didn't want to leave the Court waiting.

21 THE COURT: No, no, no. All right. So, by the 20th?
22 Today is the 6th, so that's two weeks from today.

23 MR. HYMAN: That'd be perfect.

24 THE COURT: All right.

25 MR. HYMAN: Thank you, Judge.

1 THE COURT: Yes, sir. Thank you very much.

2 **ADJOURNED - 10:16 A.M.**

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Jimmy A. Richardson, II v. Travis Lee Green, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on December 6, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

March 19, 2020.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JIMMY A. RICHARDSON, II, SOLICITOR
FOR THE FIFTEENTH JUDICIAL CIRCUIT,
ON BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

Petitioner,

vs.

TWENTY THOUSAND SEVEN HUNDRED
SEVENTY-ONE AND 00/100 DOLLARS,
(\$20,771.00) U.S. CURRENCY,

Respondent Property,

TRAVIS LEE GREEN,

Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-26-07411

**NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Petitioner hereby provides notice and moves that the Court alter or amend its August 28, 2019 Order, which denied the forfeiture of the above Respondent Property and found South Carolina’s forfeiture statute, S.C. Code §§ 44-53-520 and 44-53-530, (“forfeiture statute”) unconstitutional. The basis for Petitioner’s motion is set forth below:

1. This Court lacked authority to issue a sua sponte Order that the forfeiture statute was unconstitutional.

In the instant case, neither party filed a motion questioning the constitutionality of the forfeiture statute, and the Court did not hold an oral hearing prior to issuing its Order. In *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982), the Supreme Court ruled it could not *sua sponte* declare a statute unconstitutional unless the statute infringed on the Supreme Court’s jurisdiction. The forfeiture statute does not infringe on the Supreme Court’s jurisdiction, and this Court does

not hold authority higher than the Supreme Court. Therefore, this Court's *sua sponte* Order was improper.

2. The Court did not apply any standard of review in issuing its Order.

The standard for finding a statute unconstitutional is extremely high. The Supreme Court “is reluctant to find a statute unconstitutional,” and “[e]very presumption is made in favor of a statute’s constitutionality.” *Knotts v. S.C. Dept. of Natural Resources*, 348 S.C. 1, 6, 558 S.E.2d 511, 513 (2002). “A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.” *Id.* (internal citations omitted). The Court’s Order did not address this standard of review or any standard of review, and therefore, the Order is improper.

3. The Court’s Order did not analyze the constitutionality of the forfeiture statute’s individual subsections.

In *Knotts*, the Supreme Court recognized the principle “that a statute may be constitutionally valid in part while unconstitutionally invalid in part.” *Id.* at 9, 515. The Court’s Order is a blanket ruling that the forfeiture statute is unconstitutional without distinguishing subsections, and therefore, it is improper.

4. The Court’s Order ignored the underlying facts of the instant case in determining the forfeiture statute violated the 8th Amendment’s Excessive Fines Clause.

The Court’s Order determined the forfeiture statute facially violated the 8th Amendment’s Excessive Fines Clause without applying the facts of the underlying case. Specifically, the Court omitted the following facts: (1) Respondent Green pled guilty to selling drugs prior to the instant forfeiture appearing on the trial roster; (2) the Court sentenced Respondent Green to 15 years incarceration prior to the instant forfeiture appearing on the trial

roster; and (3) the maximum fine for Respondent Green's conviction was \$50,000.00, which is over twice the amount of the seized property, \$20,771.00. These facts were omitted from the Court's Order and should have been considered in any analysis the forfeiture statute violated the Excessive Fines Clause.

Moreover, the Court's Order presented the facts as allegations by Petitioner. However, these facts were uncontested and presented in a Consent Memorandum to the Court.

5. The Court's Order did not distinguish or discuss prior any South Carolina case law concerning forfeiture and the 8th Amendment.

In *Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001*, 322 S.C. 127, 470 S.E.2d 373 (1996), the Supreme Court set forth a specific test to determine whether a forfeiture has violated the 8th Amendment's Excessive Fines Clause. The Court's Order never mentioned *Medlock* or any other South Carolina case concerning the 8th Amendment. This failure to address prior case law before determining a statute unconstitutional was improper.

6. The Court's Order never set forth how the forfeiture statute limited the Court's ability to enforce the 8th Amendment's Excessive Fines Clause.

To support its ruling, the Court's Order described a hypothetical forfeiture where law enforcement seized millions of dollars in assets from an individual when the maximum fine was minimal or no crime had been committed. The Court's Order did not cite any actual forfeiture that met this description and did not explain why it could not find this hypothetical forfeiture violated the 8th Amendment or how the forfeiture statute prevented the Court from making such a finding. Therefore, the Court's analysis fell short of explaining how the forfeiture statute violated the 8th Amendment.

7. The Court's Order inaccurately described the forfeiture statute's burden of proof and treated the forfeiture statute as criminal forfeiture.

Under the forfeiture statute, the “initial burden lies with the state to show it had probable cause for believing a substantial connection exists between the property to be forfeited and the criminal activity.” *Gowdy v. Gibson*, 391 S.C. 374, 379, 706 S.E.2d 495, 497 (2011). “Once probable cause is shown, the burden shifts to the property owner to show by a preponderance of the evidence that the property was innocently owned.” *Id.* The Court’s Order did not mention *Gowdy* or the forfeiture statute’s burden of proof. Instead, the Court found the respondent has the initial burden of proof. This is not an accurate description of the forfeiture statute or South Carolina case law.

The Court’s Order also cited out of state cases relevant to *criminal* forfeiture. However, the forfeiture statute in question is *civil* forfeiture. *Id.* (“An action for forfeiture of property is a civil action at law.”). “The critical difference between civil forfeiture and criminal forfeiture is the identity of the defendant. In civil forfeiture, the Government proceeds against a thing (*rem*). In criminal forfeiture, it proceeds against a human being (*personam*). And the difference between civil forfeiture and criminal forfeiture arise from the practical and theoretical considerations implicated when the Government proceeds against the inanimate object or a person.” *Mims Amusement Co. v. South Carolina Law Enforcement Div.*, 355 S.C. 141, 156, 621 S.E.2d 344, 351 n. 4 (2005).

In the instant case, the primary respondent is the property, \$20,771.00. Respondent Green is listed as a respondent because he claimed an interest in the property – not because he is a criminal defendant. S.C. Code § 44-53-530(a) (“The petition shall identify any other persons known to the petitioner to have interests in the property.”) Petitioner’s burden, pursuant to

Gowdy, is to show a “substantial connection” between the seized property and criminal activity. The criminal activity could be anyone’s criminal activity and is not restricted to Respondent Green’s criminal activity.

The issues raised by Court – the necessity of a criminal charge or a defendant’s conviction – are issues for *criminal* forfeiture. Because the Court’s Order did not treat the forfeiture statute as *civil* forfeiture, it used flawed analysis to determine it was unconstitutional and therefore, was improper.

8. The Court’s Order did not account for judicial oversight when it ruled the forfeiture statute unlawfully incentivized the seizure of property.

In order for property to be forfeited to the State and disbursed pursuant to S.C. Code § 44-53-530(e), the forfeiture must be approved by a circuit court judge. S.C. Code § 44-53-530(a) (“The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture, he shall then determine the lienholder’s interest as provided in this article.”). All forfeitures – consent agreements at the time of seizure, settlement agreements, defaults, and trials – must be approved and signed by a circuit court judge and/or jury. The Court’s Order did not account for its third-party oversight when it ruled the forfeiture statute unlawfully incentivized law enforcement officers and prosecutors.

9. The Court’s Order inaccurately described the forfeiture statute’s post-seizure process.

The forfeiture statute requires a petition to the court of common pleas and notice of hearing be sent to all persons with interests in the seized property. S.C. Code § 44-53-530(a). The contents of the petition are specifically set forth in the same statute. *Id.*

The law enforcement agency seizing the property “shall take reasonable steps to maintain the property” during the pendency of the case (S.C. Code § 44-53-520(i)), and the seizing agency

shall submit its report on the seizure to the prosecuting agency “within ten days or a reasonable period of time after the seizure” (S.C. Code § 44-53-520(j)).

The Court’s statement “[i]n practice, many seizures under South Carolina’s forfeiture laws are *not* followed up by the filing of a forfeiture action” is not supported with any examples or authority. (Court’s Order, p. 12 (*italics in original*)). Moreover, this practice *would* violate the forfeiture statute. Many of the out of state cases cited in the Court’s Order concern the absence of a post-seizure hearing. The forfeiture statute does require a petition and hearing, and therefore, the Court’s description of the post-seizure process is inaccurate. The only exception to the petition and hearing requirement is a consent order “approved by the court” and signed by “all owners and other persons with interests in the property.” S.C. Code § 44-53-530(d).

Moreover, Petitioner does not control when forfeiture hearings are called for a hearing. The forfeiture petitions are filed with the Clerk of Court and called at their discretion. Because the Court’s Order relied inaccurate facts, its ruling was improper.

10. The Court’s Order did not address how its ruling would affect other forfeiture statutes which use the procedures set forth in S.C. Code § 44-53-530.

S.C. Code § 44-53-530 sets forth a specific procedure for seizing property. The Court’s Order ruled this statute facially unconstitutional. The following state statutes cite S.C. Code § 44-53-530 as the proper procedure for forfeiting property:

- (1) S.C. Code § 16-27-55 – forfeiture of property related to the Animal Fighting and Baiting Act;
- (2) S.C. Code § 39-15-1195 – forfeiture of counterfeit goods in violation of trademarks and service marks;
- (3) S.C. Code § 16-19-80 – forfeiture of gambling proceeds; and

(4) S.C. Code § 16-13-135 – forfeiture of property and funds from retail theft.

Because these statutes rely on the procedures set forth in S.C. Code § 44-53-530 and the Court’s Order did not address the implications to these other forfeiture statutes, the Court’s Order was improper.

CONCLUSION

For the reasons set forth above, the Court should vacate its Order and allow the instant forfeiture action to go to trial.

Respectfully submitted,

s/James R. Battle
SC Bar No. 73604
Battle Law Firm, LLC
PO Box 530
1200 Main St.
Conway, SC 29528
T: 843-248-4321
Special Prosecutor for Petitioner

September 4, 2019

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF HORRY</p> <p>JIMMY RICHARDSON, II, SOLICITOR FOR THE FIFTEENTH JUDICIAL CIRCUIT, ON BEHALF OF THE 15TH CIRCUIT DRUG ENFORCEMENT UNIT,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>TWENTY THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 00/100 DOLLARS, (\$20,771.00) U.S. CURRENCY,</p> <p style="text-align: center;">Respondent Property,</p> <p>TRAVIS LEE GREEN,</p> <p style="text-align: center;">Respondent.</p>	<p>IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT</p> <p>CASE NO: 2017-CP-26-07411</p> <p>Reply to Petitioner’s Motion to Reconsider</p>
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This case was assigned to the Honorable Judge Stephen H. John by the Chief Administrative Judge of the Fifteenth Circuit Court of Common Pleas on May 14, 2019. At the Court’s request, the parties submitted and filed briefs as to the constitutionality of South Carolina’s forfeiture statutes as well as a Consent Brief in which the parties stipulate to the underlying facts of this case and the statutorily prescribed method of distribution of forfeited funds by the Fifteenth Circuit Solicitor’s Office and the relevant law enforcement agencies.

By Order dated August 28, 2019, the Court found that South Carolina’s forfeiture statutes, S.C. Code Sections 44-53-520 and 44-53-530, violate the prohibition on excessive fines found in the Eighth Amendment to the U.S. Constitution and Article I, Section 15 of the S.C. Constitution.

Furthermore, the Court found that S.C. Code Sections 44-53-520 and 44-53-530 violate due process under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section Three of the S.C. Constitution in that the forfeiture statutes 1) place the burden on the property owner to prove their innocence, 2) unconstitutionally institutionally incentivize forfeiture officials to prosecute forfeiture actions, and 3) do not mandate judicial review or judicial authorization prior to or subsequent to the seizure.

Petitioner then filed a Motion to Alter or Amend the Court’s judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, with ten numbered objections to the Court’s Order. Defendant replies to each of Petitioner’s arguments below.

1. This Court lacked authority to issue a sua sponte Order that the forfeiture statute was unconstitutional.

The Court did not issue a sua sponte Order that the forfeiture statute is unconstitutional. However, if the court had issued its order sua sponte, it would have been within the court's authority to do so.

The Court did not issue a sua sponte Order that the forfeiture statute is unconstitutional.

Defendant filed an extensive Brief on the Constitutionality of SC Code Sections 44-53-520 and 44-53-530 on June 24, 2019, outlining in detail why the forfeiture statute is unconstitutional.

Petitioner filed Petitioner's Memorandum in Response to the Court's Query on June 24, 2019, outlining in detail why Petitioner believes the forfeiture statute is unconstitutional.

Defendant's Brief on the Constitutionality of SC Code Sections 44-53-520 and 44-53-530 states that South Carolina's forfeiture statutes violate the prohibition on excessive fines found in the Eighth Amendment to the U.S. Constitution and Article I, Section 15 of the S.C. Constitution and that South Carolina's forfeiture statutes violate due process under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section Three of the S.C. Constitution.

Implicit in Defendant's Brief outlining why the statutes are unconstitutional is Defendant's request that the Court declare the statutes unconstitutional, which the Court subsequently did, more than two months after Defendant's Brief was filed, in its August 28, 2019 Order.

The Court does have authority to issue a sua sponte Order that the forfeiture statute is unconstitutional.

Although the Court issued its Order in response to Defendant's request that the Court declare the forfeiture statutes unconstitutional, the Court would have authority to issue a sua sponte Order if the Court deemed it appropriate.

Petitioner cites to one case, State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982), for the proposition that a trial court cannot "declare a statute unconstitutional unless the statute infringed on the Supreme Court's jurisdiction." Mot. to Recons. p.1. This case does not support Petitioner's position.

In Keenan, the South Carolina Supreme Court sua sponte declared South Carolina Code § 22-5-320 unconstitutional, noting that one of the exceptions to the rule that the appellate courts "will not ordinarily inquire into the constitutionality of a statute on its own motion" is when subject matter jurisdiction is in question:

The question of the constitutionality of § 22-5-320 has not been raised by the parties. While it is fundamental that the Court will not ordinarily inquire into the constitutionality of a statute on its own motion, a recognized exception to this rule is that such a matter may be considered sua sponte where the statute encroaches upon the jurisdiction of the Court. See, e.g., State v. Huber, 129 W.Va. 198, 40 S.E.2d 11 (1946); State v. Gatlin,

241 La. 321, 129 So.2d 4 (1961); 16 Am.Jur.2d, Constitutional Law, § 174, p. 564 (1979); 16 CJS, Constitutional Law, § 96, p. 331, n. 21 (1956).

Keenan at 364.

Although there is a distinction between when *the South Carolina Supreme Court* will raise an issue sua sponte *on appeal* and when a *trial court* may raise an issue sua sponte, undersigned counsel notes that South Carolina's appellate courts have addressed issues sua sponte on appeal including:

- When subject matter jurisdiction is in question. Keenan, 278 S.C. 361; State v. Huber, 129 W.Va. 198, 40 S.E.2d 11 (1946); State v. Gatlin, 241 La. 321, 129 So.2d 4 (1961).
- When it is a "matter of significant public interest." State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (S.C., 2012); Ex parte Brown, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011); Patrick v. Maybank, 198 S.C. 262, 17 S.E.2d 530 (S.C., 1941); State v. Dudley, 581 S.E.2d 171, 354 S.C. 514 (S.C. App., 2003); Travelscape Llc v. South Carolina Dep't of Revenue, 391 S.C. 89, 705 S.E.2d 28 (S.C., 2011).
- Illegality of a contract. Hyta v. Finley, 137 Idaho 755, 53 P.3d 338, 340-41 (2002); Parente v. Pirozzoli, 87 Conn.App. 235, 866 A.2d 629, 635 (2005); Ward v. West Oil Co., 387 S.C. 268, 692 S.E.2d 516 (S.C., 2010).
- To hold an appeal in abeyance. Hughes v. State, 626 S.E.2d 805, 367 S.C. 389 (S.C., 2006).
- Where the best interests of a minor child are concerned. Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 107, 536 S.E.2d 372, 374 (2000); Marrero v. Hankins, 2010 UP 318 (S.C. App., 2010); State v. Passmore, 363 S.C. 568, 611 S.E.2d 273 (Ct.App. 2005); SC Dept. of Social Services v. Roe, 639 S.E.2d 165, 371 S.C. 450 (S.C. App., 2006).
- Appealability. Ashenfelder v. City of Georgetown, 389 S.C. 568, 571, 698 S.E.2d 856, 858 (Ct. App. 2010); St. Francis Xavier Hosp. v. Ruscon/Abco, 285 S.C. 584, 586, 330 S.E.2d 548, 549 (Ct. App. 1985); Levi v. N. Anderson Cnty. EMS (S.C. App., 2014).
- Appointment of a guardian ad litem for an incompetent litigant. Dept. of Social Services v. McDow, 280 S.E.2d 208, 276 S.C. 509 (S.C., 1981).
- Remand to the trial court for additional findings of fact. Gahagan v. Williams, 263 S.C. 279, 210 S.E.2d 230 (S.C., 1974).
- Death penalty review for prejudicial error. State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (S.C., 1982).
- Declaring a court rule unconstitutional and void. State v. Duncan, 264 S.E.2d 421, 274 S.C. 379 (S.C., 1980).
- Reversal of the amount of a default judgment. Renney v. Dobbs House, Inc., 274 S.E.2d 290, 275 S.C. 562 (S.C., 1981).
- Inclusion of irrelevant material in the Record on Appeal. State v. Barrett, 278 S.C. 414, 297 S.E.2d 794 (S.C., 1982).
- Remand to award additional damages to a plaintiff. Fryar v. Currin, 312 S.E.2d 16, 280 S.C. 241 (S.C. App., 1984).

The South Carolina Supreme Court's authority to declare a statute unconstitutional sua sponte is considerably broader than Petitioner states in the Motion to Reconsider and includes both when an issue impacts subject matter jurisdiction and when it is a "matter of significant public interest."

Regardless, that does not matter because this case is not yet before the South Carolina Supreme Court. It is in the trial court.

Petitioner has not cited any case that supports the proposition that a trial court may not sua sponte declare a statute unconstitutional, and undersigned counsel is not aware of any such case.

Although undersigned counsel is unaware of any South Carolina appellate opinions addressing this specific issue, other states have found that it is proper for a trial court to declare a statute unconstitutional on its own motion. For example, in State v. Collins, 528 S.W.2d 814 (1975), the Tennessee Supreme Court held that it was not error for a trial court to consider the constitutionality of a statute sua sponte, stating that "[i]t is incumbent upon the courts to apply the controlling law, whether or not cited or relied upon by either party:"

Was it error for the trial judge to consider the constitutionality of the 1973 Act sua sponte?

It is incumbent upon the courts to apply the controlling law, whether or not cited or relied upon by either party. Simmons v. State ex rel. Smith, 503 S.W.2d 103 (Tenn. 1973), cf. Smith v. Norris, 218 Tenn. 329, 403 S.W.2d 307 (1966).

No cases were cited and none can be found that limit judicial consideration of the law to cases or propositions of law urged by the parties. The idea that apparently exists in some segments of the bench and bar that courts cannot or must not give sua sponte consideration to the law applicable to the case on trial, or on appeal, is an anachronism, if indeed, it ever had validity in American jurisprudence.

Collins, 528 at 817.

2. *The Court did not apply any standard of review in issuing its Order.*

Undersigned counsel agrees that the Supreme Court "is reluctant to find a statute unconstitutional," and "[e]very presumption is made in favor of a statute's constitutionality." Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 6, 558 S.E.2d 511, 513 (2002). "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." Id. (internal citations omitted).

The repugnance of South Carolina's forfeiture statutes is "clear and beyond a reasonable doubt," for reasons that the Court explained in detail in the Court's Order. Doubtless, the Trial Court in this case is reluctant to find a statute unconstitutional as is the South Carolina Supreme Court.

Regardless, a trial court's Order is not rendered improper by a trial court's failure to articulate the standard of review on appeal.

3. The Court's Order did not analyze the constitutionality of the forfeiture statute's individual subsections.

Petitioner states, "[i]n *Knotts*, the Supreme Court recognized the principle 'that a statute may be constitutionally valid in part while unconstitutionally invalid in part.' *Id.* at 9, 515." Mot. to Recons. p. 2.

Knotts does set forth the criteria for finding that a statute may be constitutionally valid in part while unconstitutionally valid in part:

...where a part of a statute is unconstitutional, if such part is so connected with the other parts as that they mutually depend upon each other as conditions and considerations for each other, so as to warrant the belief that the Legislature intended them as a whole, and if they cannot be carried into [348 S.C. 10] effect, the Legislature would not have passed the residue independently of that which is void, the whole act is void. On the other hand, where a part of the statute is unconstitutional, and that which remains is complete in itself, capable of being executed, wholly independent of that which is rejected, and is of such a character as that it may fairly be presumed that the Legislature would have passed it independent of that which is in conflict with the Constitution, then the courts will reject that which is void and enforce the remainder. (Citations omitted). *Knotts v. SC Dept. of Natural Resources*, 348 S.C. 1, 558 S.E.2d 511 (S.C., 2002).

Knotts, 348 SC at 10.

Each part of South Carolina's forfeiture statutes "is so connected with the other parts as that they mutually depend upon each other as conditions and considerations for each other."

Institutional Incentivization

The Knotts Court found that the statute in question "does not grant any entity, other than legislative delegations, the power to direct spending from the fund. Removing the unconstitutional legislative delegation clause leaves the program without a body to direct expenditures." Knotts, 348 SC at 10. As a result, the Court determined that the entire statute must be declared unconstitutional.

Similarly, South Carolina's forfeiture statutes do not grant any entity, other than the individual law enforcement and prosecution agencies, the power to direct spending from the fund. SC Code Section 44-53-530(g) requires that all forfeiture income:

...be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities, or for

drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters.

S.C. Code Section 44-53-530(g).

The Court found that S.C. Code Sections 44-53-520 and 44-53-530 violate due process under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section Three of the S.C. Constitution in that they institutionally incentivize forfeiture officials to prosecute forfeiture actions.

Removing the unconstitutional grant of discretionary spending to the individual agencies (the same agencies who investigate and prosecute forfeitures) would “leave the program without a body to direct expenditures.” Knotts, 348 SC at 10. Therefore, the entire statute must be declared unconstitutional.

Eighth Amendment

The Court found that S.C. Code sections 44-53-520 and 44-53-530 violate the excessive fines clause of the U.S. Constitution and SC Constitution.

The provisions of South Carolina’s forfeiture statutes that permit law enforcement to seize unlimited amounts of cash and other property without regard to the proportionality of the crime that may have been committed or when no crime has been committed impact all other provisions in the statutes.

When the vehicle for monetary income is removed from the statutes, the remaining portions of the statute are meaningless. It “is so connected with the other parts as that they mutually depend upon each other as conditions and considerations for each other.”

Burden of Proof

Similarly, the burden of proof cannot be rewritten by the Court, and to remove the statute’s language regarding burden of proof renders the entire statute unworkable. It “is so connected with the other parts as that they mutually depend upon each other as conditions and considerations for each other.”

Lack of Judicial Review

The Court cannot rewrite the statute to include a requirement for a pre-seizure or post-seizure hearing. The statutes’ lack of a provision for meaningful judicial review precludes constitutional enforcement of the remaining statutory provisions. Therefore, it “is so connected with the other parts as that they mutually depend upon each other as conditions and considerations for each other.”

4. The Court’s Order ignored the underlying facts of the instant case in determining the forfeiture statute violated the 8th Amendment’s Excessive Fines Clause.

Petitioner states that “[t]he Court’s Order determined the forfeiture statute facially violated the 8th Amendment’s Excessive Fines Clause without applying the facts of the underlying case.” Mot. to Recons. p.2.

Petitioner misunderstands the meaning of “facially violated.” A statute that is “facially invalid,” as opposed to a statute that is unconstitutional “as applied,” is unconstitutional regardless of the underlying facts. It is not necessary for the Court to apply the underlying facts in the Court’s analysis of the statute’s constitutionality:

"A facial challenge is an attack on a statute itself as opposed to a particular application." *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) (citing *City of Los Angeles, Calif. v. Patel*, — U.S. —, 135 S.Ct. 2443, 192 L.Ed.2d 435 (2015)). Consequently, in analyzing a facial challenge to the constitutional validity of a statute, a court "considers only the text of the measure itself and not its application to the particular circumstances of an individual." 16 C.J.S. Constitutional Law§ 163, at 161 (2015).

One asserting a facial challenge claims that the law is "invalid in toto—and therefore incapable of any valid application." *Steffel v. Thompson*, 415 U.S. 452, 474, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974).

Doe v. State, 421 S.C. 490, 502, 808 S.E.2d 807 (S.C., 2017).

If the Court were to determine that the statutes are unconstitutional based on the underlying facts, then the statute would be unconstitutional “as applied.”

5. The Court’s Order did not distinguish or discuss prior any South Carolina case law concerning forfeiture and the 8th Amendment.

There is no prior South Carolina case law concerning whether the forfeiture statutes are facially invalid.

In Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001, 322 S.C. 127, 470 S.E.2d 373 (1996), the SC Supreme Court set forth a test to determine whether a forfeiture has violated the 8th Amendment’s Excessive Fines Clause *as applied* to the underlying facts of that case.

The Court adopted a three-part instrumentality test articulated by the Fourth Circuit Court of Appeals which requires the court to examine (1) the nexus between the offense and the property and the extent of the property's role in the offense, (2) the role and culpability of the owner, and (3) the possibility of separating offending property that can readily be separated from the remainder. Medlock, 322 S.C. 127.

The Court should not apply the underlying facts in its analysis of the statute’s constitutionality, because a statute that is “facially invalid” is unconstitutional regardless of the underlying facts. See Doe, 421 S.C. 490.

6. The Court’s Order never set forth how the forfeiture statute limited the Court’s ability to enforce the 8th Amendment’s Excessive Fines Clause.

The Court's Order states:

This Court finds that South Carolina's forfeiture statutes violate both the federal and S.C. constitutional protections against excessive fines by permitting the government to seize unlimited amounts of cash and other property without regard to the proportionality of the crime that may have been committed. Indeed, they allow the government to seize unlimited amounts of cash and other property *when no crime has been committed*, without a criminal conviction and without proof of a crime having been committed beyond a determination of probable cause.

Order, p.4.

Undersigned counsel is unaware of any requirement that the Court "explain why it could not find this hypothetical forfeiture violated the 8th Amendment or how the forfeiture statute prevented the Court from making such a finding," and the Court's explanation above is appropriate.

Furthermore, Petitioner seems to be suggesting that the Court must identify specific facts from specific cases before declaring a statute facially invalid. This is unnecessary, because "[a] facial challenge is an attack on a statute itself as opposed to a particular application." Doe, 421 S.C. 490.

7. The Court's Order inaccurately described the forfeiture statute's burden of proof and treated the forfeiture statute as criminal forfeiture.

South Carolina's forfeiture statutes describe a civil forfeiture process that "allows the state to seize and withhold money or other property when a defendant has not been convicted of a crime, when a defendant has not even been charged with a crime, or when the government has not provided any meaningful evidence that the property is connected with a crime."

The Court did not treat the forfeiture statutes as criminal forfeiture. Petitioner mischaracterizes the Court's Order by stating that "the Court found the respondent has the initial burden of proof." Mot. to Recons. p.4.

It is true that the "initial burden lies with the state to show it had probable cause for believing a substantial connection exists between the property to be forfeited and the criminal activity." Gowdy v. Gibson, 391 S.C. 374, 379, 706 S.E.2d 495, 497 (2011), and that, "[o]nce probable cause is shown, the burden shifts to the property owner to show by a preponderance of the evidence that the property was innocently owned." Id.

This requirement that "property owners prove their innocence, placing the burden of proof on the property owner, violates the Due Process Clauses of the federal and S.C. Constitutions." See Harjo v. City of Albuquerque, 326 F.Supp.3d 1145 (D. N.M., 2018) (finding that New Mexico forfeiture program violates due process by placing the burden of proof on innocent property owners).

Petitioner states that the Court “cited out of state cases relevant to *criminal* forfeiture.” Mot. to Recons. p.4. However, like South Carolina’s forfeiture statutes, the forfeiture program that the District Court declared unconstitutional in Harjo was civil forfeiture:

The forfeiture program, however, violates procedural due process, because owners have to prove that their cars *are not subject to civil forfeiture*.

Harjo, 326 F.Supp.3d at 1151 (emphasis added).

8. The Court’s Order did not account for judicial oversight when it ruled the forfeiture statute unlawfully incentivized the seizure of property.

As the Court stated in its Order:

Enforcement personnel are responsible for conducting investigations following a seizure, including verifying whether the seizure was justified and determining whether to return a defendant’s property, demand the full amount of forfeiture money or property, or negotiate a settlement in which a defendant who has not been proven guilty must relinquish some of their property, ensuring the continued flow of forfeiture funds.

Order, p.5.

The Court does not micromanage or “police” the activities of enforcement personnel. “Judicial oversight” does not cure the statutes’ unconstitutionality, and undersigned counsel is unaware of any appellate opinions that articulate this test.

9. The Court’s Order inaccurately described the forfeiture statute’s post-seizure process.

Petitioner states that:

[t]he forfeiture statute does require a petition and hearing, and therefore, the Court’s description of the post-seizure process is inaccurate. The only exception to the petition and hearing requirement is a consent order “approved by the court” and signed by “all owners and other persons with interests in the property.” S.C. Code § 44-53-530(d).

Mot. to Recons., p.6.

As the Court explained in its Order, the forfeiture statutes do not provide for judicial review or judicial authorization prior to or subsequent to the seizure in all cases:

Under South Carolina Code § 44-53-530(c), the seizing agency is required to file a forfeiture action *within a reasonable time of the seizure*. The statute does not define a reasonable time. The law permits a seizure without a warrant if the seizure is made as incident to arrest or if probable cause exists to believe that the property was used in violation of the drug laws. See, S.C. Code § 44-53-520(b)(1) and (4). The statute does not have a provision for any type of pre-seizure or post-seizure hearing to determine if probable cause exists. For a seizure under subsection (b)(1) and (4), the law does not

provide for any judicial review or judicial authorization prior to or subsequent to the seizure.

Order, p.12.

The “reasonable time” requirement in the statute results in delays in filing forfeiture actions, the failure to file a forfeiture action, and citizens being forced to file suit against the government to secure the return of their property.

10. The Court’s Order did not address how its ruling would affect other forfeiture statutes which use the procedures set forth in S.C. Code § 44-53-530.

The Court should not address other forfeiture statutes whose constitutionality are not currently before the Court. Furthermore, the effect of the Court’s ruling on other forfeiture statutes does not make SC Code Sections 44-53-520 and 530 any more or less constitutional.

/s B. Alex Hyman
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Conway, South Carolina
Dated: October 7, 2019

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

JIMMY A. RICHARDSON, II, SOLICITOR
FOR THE FIFTEENTH JUDICIAL CIRCUIT,
ON BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

Petitioner,

vs.

TWENTY THOUSAND SEVEN HUNDRED
SEVENTY-ONE AND 00/100 DOLLARS,
(\$20,771.00) U.S. CURRENCY,

Respondent Property,

TRAVIS LEE GREEN,

Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-26-07411

**PARTIES' CONSENT MEMORANDUM
IN RESPONSE TO THE COURT'S
QUERY**

Pursuant to the Honorable Steven H. John's emailed requests, the parties submit the
followed:

Uncontested Facts

In the fall of 2017, Officer Freddy Curry received intelligence that Respondent Travis Green was selling large quantities of illegal drugs in the Myrtle Beach area. On September 26, 2017, Curry utilized a confidential informant ("CI") to purchase 7 grams of cocaine from Green for \$350.00. On October 13, 2017, Curry utilized a CI to purchase 14 grams of cocaine from Green for \$700.00. On October 25, 2017, Curry utilized a CI to purchase 7 grams of cocaine from Green for \$350.00.

To make these controlled purchases, the CI called Green, arranged a meet location, and then made the exchange at the agreed location. For the last controlled purchase, officers observed

Green leave his residence in Myrtle Beach, drive to the location, make the exchange, and then drive back to his residence.

Based on these controlled buys, Curry obtained arrest warrants against Green for two counts of distribution of cocaine and one count of trafficking cocaine and a search warrant for his residence. On November 2, 2017, officers served Green with the arrest warrants and executed the search warrant. They found the following:

- a. 132 grams of crack-cocaine
- b. 32 grams of cocaine
- c. 319 grams of marijuana
- d. 27 Morphine tablets
- e. \$20,771.00 in U.S. Currency (\$971.00 was in Green's wallet and \$19,800.00 was in an outdoor garage closet.)
- f. 2 digital scales with white powder residue

Based on the drugs found in Green's residence, officers additionally charged Green with: (1) trafficking crack-cocaine, 2nd offense; (2) trafficking cocaine, 2nd offense; (3) possession with intent to distribute marijuana, 2nd offense; and (3) possession with intent to distribute controlled substance, 2nd offense.

On October 16, 2018, Green pled guilty to the distribution of cocaine, 2nd offense, and possession with intent to distribute marijuana, 1st offense. Pursuant to S.C. Code § 44-53-370(b)(1), distribution of cocaine, 2nd offense, carries a penalty of 5 to 30 years incarceration and/or a fine of up to \$50,000.00. Pursuant to S.C. Code § 44-53-370(b)(2), possession with intent to distribute marijuana, 1st offense, carries a penalty of 0 to 5 years incarceration and/or a

fine of up to \$5,000.00. This Court sentenced Green to 15 years incarceration for the cocaine charge and 5 years for the marijuana charge – both sentences to run concurrently.

Distribution of Forfeited Property

If this Court granted Petitioner's request for a forfeiture of the seized property, \$20,771.00, the parties agree the property would be distributed pursuant to S.C. Code § 44-53-530(e), (f), and (g). This statute states in whole:

(e) All real or personal property, conveyances, and equipment of any value defined in Section 44-53-520, when reduced to proceeds, any cash more than one thousand dollars, any negotiable instruments, and any securities which are seized and forfeited must be disposed of as follows:

- (1) seventy-five percent to the law enforcement agency or agencies;
- (2) twenty percent to the prosecuting agency; and
- (3) five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.

(f) The first one thousand dollars of any cash seized and forfeited pursuant to this article remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency.

(g) All forfeited monies and proceeds from the sale of forfeited property as defined in Section 44-53-520 must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters.

These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law.

In the case of a state law enforcement agency or state prosecution agency, monies and proceeds must be remitted to the State Treasurer who shall establish separate, special accounts as provided in this section for local agencies.

All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under the provisions of Chapter 4, Title 30, the Freedom of Information Act.

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June 28, 2019

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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July 22, 2020

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