RECEIVED

Jul 24 2020

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, Respondent.

FINAL BRIEF OF APPELLANT

James R. Battle
S.C. Bar No. 73604
Battle Law Firm, LLC
PO Box 530
Conway, SC 29528
T: 843-248-4321
F: 843-248-4512
jbattle@battlelawsc.com

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATUTES

RULES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. WHETHER S.C.'S FORFEITURE STATUTES FACIALLY VIOLATE THE 8TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 15 OF THE S.C. CONSTITUTION BY VIOLATING THE EXCESSIVE FINES CLAUSE?

2. WHETHER S.C.'S FORFEITURE STATUTES FACIALLY VIOLATE DUE PROCESS UNDER THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 3 OF THE S.C. CONSTITUTION BY PLACING A BURDEN ON DEFENDANTS?

3. WHETHER S.C.'S FORFEITURE STATUTES FACIALLY VIOLATE DUE PROCESS UNDER THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND ARTICLE I, SECTION 3 OF THE S.C. CONSTITUTION BY DIRECTING THE MAJORITY OF FORFEITURE PROCEEDS TO LAW ENFORCEMENT?

4. WHETHER POST-SEIZURE JUDICIAL REVIEW UNDER S.C.'S FORFEITURE STATUTES FACIALLY VIOLATES DUE PROCESS UNDER THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND ARTCLE I, SECTION 3 OF THE S.C. CONSTITUTION?

STATEMENT OF THE CASE

On November 10, 2017, Appellant Solicitor Richardson filed the instant forfeiture petition. (R. p. 21).

On January 9, 2018, Respondent Travis Green answered the forfeiture petition. (R. p. 25).

On March 25, 2019, Solicitor Richardson filed the first appeal of this case, and on May 13, 2019, this Court dismissed the appeal due to the trial court withdrawing its administrative order. (R. p. 1).

On August 28, 2019, the Honorable Steven H. John ruled S.C.'s Forfeiture Statutes facially unconstitutional and denied the forfeiture in the instant case. (R. p. 3).

On September 4, 2019, Solicitor Richardson filed a motion for Judge John to alter or amend his Order. (R. p. 50). On October 7, 2019, Green's attorney filed a response (R. p. 57),

and on December 6, 2019, Judge John heard oral argument from the parties. At oral argument, Judge John stated:

> The Court's decision in this matter, as both the petitioner and respondent have argued, is that the order is facially based. It's not an application-based decision. It is not based on what the law enforcement agency or Mr. Green did or didn't do in this matter. It is an examination of the statute of the State of South Carolina, the decision of the U.S. Supreme Court, and whether or not this statute is constitutional on a facial basis.

(R. p. 46, lines 14-21).

On December 23, 2019, Judge John denied Solicitor Richardson's motion and reaffirmed his Order. (R. p. 18).

On January 20, 2020, Solicitor Richardson filed a timely notice of appeal of Judge John's Order.

STATEMENT OF THE FACTS

The below facts were consented to by the parties and filed with the trial court. (R. p. 67).

In the fall of 2017, Officer Freddy Curry with the 15th Circuit Drug Enforcement Unit ("DEU") 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 distribution of cocaine, 2nd offense, and possession with intent to distribute marijuana, 1st offense. Pursuant to S.C. Code Ann. § 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 Ann. § 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. Judge John sentenced Green to 15 years' incarceration for the cocaine charge and 5 years for the marijuana charge – both sentences to run concurrently.

STANDARD OF REVIEW

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.* (quoting *Joytime Distribs. and Amusement Co., Inc. v. State,* 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999)).

"A facial challenge is an attack on a statute itself as opposed to a particular application." *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017) (internal citations omitted). "One asserting a facial challenge claims that the law is 'invalid *in toto* – and therefore incapable of any valid application.'" *Id.* (quoting *Steggel v. Thompson*, 415 U.S. 452, 474 (1974)). "Thus, unless the statute is unconstitutional in all its applications, an as-applied challenge must be used to attack its constitutionality." *Id.* at 503, 813 (internal quotations omitted).

ARGUMENT

I. S.C.'s Forfeiture Statutes Do Not Facially Violate either the 8th Amendment of the U.S. Constitution or Article I, Section 15 of the S.C. Constitution by Violating the Excessive Fines Clause.

A. General Overview of S.C.'s Forfeiture Statutes

S.C.'s Forfeiture Statutes originated from the Uniform Controlled Substances Act of 1970. David R. Fine, *Bennis v. Michigan and Innocent Owners in Civil Forfeiture: Balancing Legitimate Goals with Due Process and Reasonable Expectations*, 5 Geo. Mason L. Rev. 595, 605 (1997). This was a model statute created by the National Conference of Commissioners on Uniform State Laws and based on federal statute 21 U.S.C. § 881. Forty-eight states adopted this statute. *Id.* The remaining two states drafted their own forfeiture statutes. *Id.*

Judge John's Order (hereinafter "the trial court's Order") overturned two statutes: (1) S.C. Code Ann. § 44-53-520, which lists the property subject to seizure and the process for law enforcement to make a seizure;[1] and (2) S.C. Code Ann. § 44-53-530, which sets forth the process for the circuit solicitor to carry out a forfeiture and the disbursement of forfeited property.

The legal process under S.C. Code § 44-53-530 is also used to carry out forfeitures under the following statutes:

> (1) S.C. Code Ann. § 16-27-55 – forfeiture of property related to the Animal Fighting and Baiting Act;
>
> (2) S.C. Code Ann. § 39-15-1195 – forfeiture of counterfeit goods in violation of trademarks and service marks;
>
> (3) S.C. Code Ann. § 16-19-80 – forfeiture of gambling proceeds; and
>
> (4) S.C. Code Ann. § 16-13-135 – forfeiture of property and funds from retail theft.

The trial court's Order did not address how its ruling would affect these additional statutes.

S.C.'s Forfeiture Statutes are *civil* asset forfeiture statutes. *See Mims Amusement Co. v. South Carolina Law Enforcement Div.*, 366 S.C. 141, 156, 621 S.E.2d 344, 351 n. 4 (2005) ("The critical difference between civil forfeiture and criminal forfeiture is the identity of the defendant."). In civil forfeiture, the state proceeds against a thing (*rem*). *Id.* In criminal forfeiture, it proceeds against a human being (*personam*). *Id.*

S.C.'s Forfeiture Statutes address the forfeiture of two types of property: (1) contraband *per se*, which is property illegal to possess, such as cocaine, heroin, and other illegal narcotics;

[1] Throughout this brief, "seizure" refers to the initial seizure of property by law enforcement, and "forfeiture" refers to a court's adjudication of that seizure.

and (2) derivative contraband, which is property normally legal to possess, such as cash or cars, but becomes contraband when it is used for illegal purposes. *Id.* at 149, 348.

Since the passage of S.C. Code Ann. § 44-53-520 in 1971, the General Assembly has amended it eight times. The General Assembly has amended S.C. Code Ann. § 44-53-530 eleven times. In general, the Forfeiture Statutes' amendments show the General Assembly balancing the interests of narcotics enforcement and the citizens claiming an interest in seized property.

In 1984, the General Assembly passed S.C. Code Ann. § 44-53-586 to give people the ability to get seized property back if they could show by a preponderance of the evidence they did not know of the property's criminal use. This statute is not mentioned in the trial court's Order.

In 2019 both houses of the legislature introduced bills which would have dramatically rewritten S.C.'s Forfeiture Statutes. *See* 2019 S.B. No. 590 & 2019 H.B. No. 3968.

To date, most states, the District of Columbia, and the federal government have civil forfeiture statutes. The states which require a conviction for a forfeiture, California, Connecticut, North Carolina, Montana, Nebraska, and New Mexico, made this change through legislative amendments to their laws. These states still utilize *criminal* asset forfeiture, which ties seized property to the criminal trial and/or plea negotiations of defendants.

While it is a crime in South Carolina to possess forfeitable property under S.C. Code Ann. § 44-53-590, there is no criminal asset forfeiture for illegal narcotics.

B. The 8th Amendment's Excessive Fines Clause

The trial court found S.C.'s Forfeiture Statutes violate the 8th Amendment's Excessive Fines Clause "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." (R.

p. 6). The trial court cited *Timbs v. Indiana*, 139 S.Ct. 682 (2019) to support its position and argued S.C.'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." (R. p. 7).

i. *Timbs v. Indiana* Held the 8th Amendment Applies to State Actors and Did Not Hold Civil Forfeitures Unconstitutional.

In *Timbs v. Indiana* 139 S.Ct. 682 (2019), Tyson Timbs pled guilty in Indiana state court to dealing in a controlled substance and conspiracy to commit theft. The police seized his Land Rover SUV, which he purchased for $42,000.00 with money he received from an insurance policy after the death of his father. The police seized the Land Rover on the basis that it had been used to transport heroin.

The Indiana trial court and the Indiana Court of Appeals denied the forfeiture on the basis that it violated the 8th Amendment's Excessive Fines Clause – arguing the purchase price of the car was more than four times the fine for the crime of conviction. However, the Indiana Supreme Court reversed on the basis the 8th Amendment's Excessive Fines Clause did not apply to state actors.

Pursuant to a writ of certiorari, the U.S. Supreme overruled the Indiana Supreme Court and held the Excessive Fines Clause did apply to state actors. *Timbs*, 139 S.Ct. at 687 ("The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment."). There is no other holding in *Timbs.* It did not analyze the constitutionality of Indiana's forfeiture statute, and it did not determine the underlying forfeiture violated the Excessive Fines Clause.

South Carolina determined the Excessive Fines Clause applied to its Forfeiture Statutes in *Medlock v. One 1985 Jeep Cherokee Vin 1JCWB7828FT129001*, 322 S.C. 127, 470 S.E.2d 373 (1996).

In *Medlock*, this Court set forth the following test to determine whether a seizure violated the Excessive Fines Clause:

> (1) the nexus between the offense and the property and the extent of the property's role in the offense;
>
> (2) the role and the culpability of the owner; and
>
> (3) the possibility of separating offending property that can readily be separated from the remainder.

Id. at 132, 377; *see also Austin v. U.S.*, 509 U.S. 602, 622 (1993) (holding the Excessive Fines Clause applied to civil forfeiture but leaving it to the lower courts to develop a constitutionally excessive test). The second prong of the test, "the role and culpability of the owner," requires the trial court to consider the proportionality of the property's value to the owner's conduct.

This Court's holding in *Medlock* and the U.S. Supreme Court's holding in *Austin* show a preference for enforcing the 8th Amendment through a judicial balancing test applied on a case by case basis. *See Austin*, 509 U.S. at 622 ("Prudence dictates that we allow the lower courts to consider [the excessiveness of a fine] in the first instance.").

The trial court's Order did not mention *Medlock*, and it did not explain why or how *Timbs* rendered S.C.'s Forfeiture Statutes unconstitutional. Without more, *Timbs* does not support the trial court's finding that S.C.'s Forfeiture Statutes are facially unconstitutional.

ii. The Trial Court's Hypothetical Is an As-Applied Challenge to S.C.'s Forfeiture Statutes.

The trial court's hypothetical, that S.C.'s Forfeiture Statutes allow law enforcement to seize millions of dollars when there is only a minimal fine, is an as-applied analysis. (R. p. 7);

s*ee Doe*, 421 S.C. at 502, 808 S.E.2d at 813 ("In an 'as-applied' challenge, the party challenging the constitutionality of the statute claims that the 'application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional.'") (internal quotations omitted). However, the trial court did not apply the facts of the instant case. Instead, it used an extreme hypothetical.

If the trial court is using an as-applied challenge, then "the practical effect of holding a statute unconstitutional 'as applied' is to prevent its future application in a similar context, but not to render it utterly inoperative." *Id.* at 503, 814. The trial court's holding was "the statutory scheme [of S.C.'s Forfeiture Statutes] is unconstitutional." (R. p. 7). It cannot get there imagining extreme instances where the Excessive Fines Clause may be violated. *See Doe*, 421 S.C. at 503, 808 S.E.2d at 813 (To be successful, a facial challenge must show "the statute is unconstitutional in all its applications.").

Moreover, if the trial court ever faced such a forfeiture petition, S.C.'s Forfeiture Statutes allow the trial court to deny the forfeiture due to violating this Court's *Medlock* test and the 8th Amendment's Excessive Fines Clause.

iii. The Amounts Subject to Seizure Are Limited by the 8th Amendment on a Case by Case Basis.

Seizures vary dramatically in the value of the property and the criminal conduct involved. The 8th Amendment's Excessive Fines Clause operates independent of statutory requirements as a barricade to the government's punishing power. *See State v. Timbs*, 134 N.E.3d 12, 30 & 38 (Ind. 2019) (Writing on remand from the U.S. Supreme Court's *Timbs* order, the Indiana Supreme Court noted, "[T]he Framers of our Constitution erected, in the Eighth Amendment, multiple, separate barricades against the government's punishing

power."). S.C.'s Forfeiture Statutes are constitutional because the amounts subject to seizure are limited by the 8th Amendment on a case by case basis.

The U.S. Supreme Court's opinion in *U.S. v. Bajakajian*, 524 U.S. 321 (1998) illustrated this point. In *Bajakajian*, federal authorities arrested Mr. Bajakajian for leaving the U.S. without declaring more than $10,000.00 in cash. Pursuant to the federal statute, the authorities could seize "any property…involved in such an offense" and therefore, without any statutory limit, seized the full $357,144.00 Mr. Bajakajian carried. *Id.* at 324 (quoting 18 U.S.C. § 982(a)(1)).

In addressing this matter, the U.S. Supreme Court did not strike down the statute. *Id.* at 336 ("The first…is that judgments about the appropriate punishment for an offense belong in the first instance to the legislature"); *see also Solem v. Helm*, 463 U.S. 277, 290 (1983) (Reviewing courts…should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes.); and *Gore v. U.S.*, 357 U.S. 386, 393 (1958) ("Whatever views may be entertained regarding severity of punishment,…these are peculiarly questions of legislative policy.").

Instead, the Court determined forfeitures violated the Excessive Fines Clause if they were "grossly disproportional to the gravity of a defendant's offense" and affirmed the return of Mr. Bajakajian's money. *Bajakajian,* 524 U.S. at 344. The "grossly disproportional" test is for the courts to apply on a case by case basis.

The Indiana Supreme Court, responding to *Timbs,* adopted the *Bajakajian* test. *State v. Timbs,* 134 N.E.3d at 35 ("Most courts addressing the excessiveness of *in rem* fines have followed *Bajakajian* in applying a gross-disproportionality standard."). The Indiana Supreme Court now uses the following judicial test:

> [T]o stay within the bounds of the 8th Amendment's Excessive Fines Clause, a use-based fine must meet two requirements: (1) the property must be actual means by which underlying offense was committed; and (2) harshness of the forfeiture penalty must not be grossly disproportional to gravity of the offense and claimant's culpability for the property's misuse.

Id. at 27.

South Carolina's Excessive Fines Clause test, found in *Medlock*, 322 S.C. 127, 470 S.E.2d 373, predates *Bajakajian* by two years. If this Court wants to update South Carolina's Excessive Fines Clause test, they should adopt the *Bajakajian* test and not strike the entire Forfeiture Statute.

C. The South Carolina Constitution

The trial court's Order also found the Forfeiture Statutes violate South Carolina Constitution, Article I, Section 15. (R. p. 6). This Section prohibits the imposition of excessive fines.

While the trial court's Order did not provide any further analysis of this State's Excessive Fines Clause, this Court applied South Carolina's Excessive Fines Clause to a statutory fine in *Singletary v. Wilson*, 191 S.C. 153, 3 S.E.2d 802 (1939).

In *Singletary*, a circuit court judge found Mr. Singletary guilty of forgery and sentenced him to 6 years' incarceration and to pay a $300.00 fine. Mr. Singletary appealed his sentence on the basis the forgery statute was unconstitutional because it did not set a maximum fine. This Court noted, "It is generally the case that in enacting penal statutes the Legislature fixes and designates a maximum penalty, but when it is not done, the power to impose a fine is limited by the constitutional provision that excessive fines shall not be imposed." *Id.* at 153, 804. "[T]he failure of a statute to fix a maximum fine does not render it unconstitutional." *Id.* Instead, if the maximum fine is not fixed by statute, the fine "must be subject to be reviewed on appeal to this

Court, if clearly abused, under Article I, [Section 15] of the Constitution, which not only forbids the infliction of cruel and unusual punishment, but forbids the imposition of excessive fines." *Id.*

Like the U.S. Supreme Court in *Bajakajian*, this Court chose to apply South Carolina's Excessive Fines Clause on a case by case basis instead of striking a statute as unconstitutional.

For the above stated reasons, S.C.'s Forfeiture Statutes do not violate either the 8th Amendment or the South Carolina Constitution by violating the Excessive Fines Clause.

II. S.C.'s Forfeiture Statutes Do Not Facially Violate Due Process under either the 5th and 14th Amendments of the U.S. Constitution or Article I, Section 3 of the S.C. Constitution by Placing a Burden on Defendants.

A. General Overview of the Forfeiture Statutes' Due Process

As stated above, S.C.'s Forfeiture Statutes are *in rem* proceedings where the defendant is the seized property.

At a forfeiture trial, "[t]he 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). Derivative contraband, by definition, requires an initial showing of criminal purpose before it can be forfeited. *See Mims Amusement Co.*, 366 S.C. at 151, 621 S.E.2d at 349 ("A property interest in derivative contraband is not extinguished automatically if the property is used unlawfully; therefore, forfeiture of such property is permitted only as authorized by statute and in compliance with the safeguards of due process.").

The state's probable cause burden at trial is a carryover from law enforcement's burden at the time of seizure. S.C. Code Ann. § 44-53-520(b). Put differently, at a forfeiture trial the state seeks to confirm that law enforcement had probable cause to make the seizure. *See Medlock*, 322 S.C. at 130, 470 S.E.2d at 376.

"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." *Gowdy*, 391 S.C. at 379, 706 S.E.2d at 497.

This burden shifting scheme comes from the federal government's civil forfeiture scheme under 21 U.S.C.A. § 881.

Neither the U.S. Supreme Court nor any federal circuit court has ever held this burden shift unconstitutional. Several states, including Indiana, use this burden shifting scheme. *See State v. Timbs*, 134 N.E.3d at 27-28.

B. Due Process under the 5th and 14th Amendments

The trial court's Order did not distinguish between 5th Amendment Due Process and 14th Amendment Due Process and treated them as one in the same. *See Dusenbery v. U.S.*, 534 U.S. 161, 167 (2002) ("The Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person of property without 'due process of law.'") (internal quotation omitted).

The trial court found that S.C.'s Forfeiture Statutes violate due process because they did not satisfy the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). (R. p. 8). The *Mathews* test examines the procedural due process of a legal proceeding by considering: (1) the private interest affected by the proceeding; (2) the risk of error created by the chosen procedure; and (3) the countervailing governmental interest supporting the challenged procedure. *Id.* at 335.

i. The Private Interest Affected by the Proceeding

For the first *Mathews* element, the trial court found, "Defendant Green has an obvious interest in regaining the money that was taken from him." (R. p. 8). Solicitor Richardson does not dispute Green has an interest in the seized $20,771.00.

ii. The Risk of Error Created by the Chosen Procedure

For the second *Mathews* element, the trial court found S.C.'s Forfeiture Statutes create "an unacceptable risk of the erroneous deprivation of defendants' property in that [they] [do] not require any meaningful proof of a defendant's guilt before the seizure of a defendant's property." (R. p. 8). Therefore, under the Forfeiture Statutes, the state can seize money "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 to a crime." (R. p. 8).

a. Case Law Cited by the Trial Court

To support its argument, the trial court's Order primarily cited two cases: *Nelson v. Colorado*, 137 S.Ct. 1249 (2017) and *Harjo v. City of Albuquerque*, 326 F.Supp.3d 1145 (D.N.M. 2018).

In *Nelson*, the U.S. Supreme Court used the *Mathews* balancing test to invalidate a Colorado statute which required individuals acquitted of a crime to again prove their innocence by clear and convincing evidence to get restitution money back. However, *Nelson* did not invalidate S.C.'s Forfeiture Statutes. The Colorado statute, which was not a forfeiture statute, required individuals meet an *initial* burden of clear and convincing, and the state did not have to make *any* showing to keep the restitution money. *Id.* at 1254. Under S.C.'s Forfeiture Statutes,

the state has the initial burden, and the seized property, as derivative contraband, is presumed legitimate.

In *Harjo,* a New Mexico federal district court judge found an Albuquerque ordinance allowing car seizures violated 14th Amendment Due Process. The car seizure ordinance at issue was aggressive. It allowed law enforcement to seize a car if it was operated by someone arrested for their second driving while intoxicated ("DWI"). When a vehicle was seized, the owner had ten days to pay a $50 fee to request an administrative hearing. *Id.* at 1153. If the owner did not request a hearing, the vehicle was deemed abandoned and sold at auction, i.e. an automatic forfeiture.

The district court judge held putting a burden of proof on an innocent owner, i.e. someone who owned the car but was not arrested for the DWI, created "such a risk of erroneous deprivation that it [violated] procedural due process." *Id.* at 1207. The judge also found treating the seized car as the defendant was constitutionally inadequate because it did not require Albuquerque to prove anything about the owner. *Id.* ("[P]roving that the City of Albuquerque has probable cause to seize a vehicle does not reveal anything about what the vehicle's owner could or could not have reasonably foreseen.").

Despite *Harjo, in rem* civil forfeiture proceedings remain constitutional. *See Bennis v. Michigan*, 516 U.S. 442, 446 (1996) ("[A] long and unbroken line of cases holds that an owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use."); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 664 (1974) ("Statutory forfeiture schemes are not rendered unconstitutional because of their applicability to the property interests of innocents."); *Van Oster v. State of Kansas*, 272 U.S. 465, 468 (1926) ("It has long been settled that statutory

forfeitures of property intrusted [sic] by the innocent owner or lienor to another who uses it in violation of [the law] is not a violation of the due process clause of the Fifth Amendment."); and recently *Pooler v. Wilson*, No. 2:19-CV-3347-DCN, 2020 WL 1663451, at *5 (D.S.C. Apr. 3, 2020) (The Honorable Federal District Court Judge David C. Norton found "[S.C.'s Forfeiture Statutes] do not violate the United States Constitution.").

The cases cited by the trial court are either distinguishable from S.C.'s Forfeiture Statutes or offer remote precedence on a more aggressive forfeiture law.

b. Criminal Charges against Named Parties

The trial court's Order frequently referenced that defendants in forfeiture actions may have had their criminal charges dismissed or may have never been criminally charged. This is a misnomer because the people named in the forfeiture action are people claiming an interest in the seized property. *See* S.C. Code Ann. § 44-53-530(a) (The forfeiture petition must name anyone known to the circuit solicitor to have an interest in the property) & S.C. Code Ann. § 44-53-586 (If the circuit solicitor leaves someone out, they may apply to the court for the return of the property.).

The outcome of criminal charges against named defendants has evidentiary importance, but it is not determinative of the forfeiture action. For example, in the instant case, Green pled guilty to distributing cocaine. This conviction helps Solicitor Richardson connect the seized $20,771.00 to criminal activity, but Green's guilty plea did not trigger an automatic forfeiture.

Moreover, at the forfeiture hearing, which the trial court did not hold, Green could have presented evidence that, notwithstanding his guilty plea, he legitimately earned the $20,771.00. *See Pope v. Gordon*, 369 S.C. 469, 633 S.E.2d 148 (2006) (This Court denied the state's

forfeiture against defendant convicted of drug trafficking because seized funds came from his legitimate car detailing business.).

Conversely, if Green's charges had been dismissed, this would have helped Green but not been determinative. Green's charges could have been dismissed because he pled guilty to drug charges from a separate arrest; or his charges were dismissed on a technical issue; or some other reason which did not exonerate Green.

Forfeiture actions can also name third parties, such as a relative or a lending company, who were not arrested but claim an interest in the seized property. If the circuit solicitor meets their burden of probable cause, these third-party claimants must meet a preponderance of the evidence standard to show the property was innocently owned.

This burden has a practical purpose. If third-party claimants were not required to make at least some showing of credibility, there would be few successful forfeitures. *See Gowdy v. Gibson*, 391 S.C. 374, 385, 706 S.E.2d 495, 501 (2011) (This Court supported the circuit court's determination that Gibson's mother fabricated the claim that the $146,050.00 found in the safe was her life savings when she did not know the combination to the safe, could not reach the safe, did not have any tax returns or documents to support an income, looked surprised when officers found the money, and did not make any claim to the money until right before trial.); *see also Pooler*, 2020 WL 1663451, at *5 (The court found Pooler's claim to her boyfriend's seized $104,596.00 improbable given she did not produce any tax returns or evidence of her rental business, and the money was found in small bills, bound by rubber bands, hidden in a compartment under a bathtub, and surrounded by narcotics.).

In short, some third-party claims are credible, and some are not. S.C.'s Forfeiture Statutes empower the court or the jury to make this determination and decide where the seized property should go.

c. Meaningful Time and Manner

Mathews, the case which provided the trial court's balancing test, held due process "is not a technical conception" but "flexible." 424 U.S. at 334. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (internal quotation omitted). S.C.'s Forfeiture Statutes meet these requirements.

Under S.C.'s Forfeiture Statutes, the seizure is typically initiated either through the service of an arrest warrant or a seizure warrant. S.C. Code Ann. § 44-53-520(b). The forfeiture petition must be filed within a reasonable period of time. S.C. Code Ann. § 44-53-530(a); *see Farmer v. Florence County Sheriff's Office*, 390 S.C. 358, 701 S.E.2d 48 (Ct. App. 2010), *rev'd on other grounds*, 401 S.C. 606, 738 S.E.2d 473 (2013) (holding seized property should be returned due to law enforcement's delay in filing forfeiture petition).

All persons with an interest in the property must be named in the forfeiture petition. S.C. Code Ann. § 44-53-530(a). Service and discovery must follow the requirements of the S.C. Rules of Civil Procedure. All parties with an interest in the property must receive notice of the hearing. S.C. Code Ann. § 44-53-530(a).

Defendants are entitled to a jury trial. *Medlock*, 308 S.C. 68, 417 S.E.2d 85. At the trial, persons claiming an interest in the seized property may cross-examine witnesses and present evidence through testimony and/or documentation pursuant to the S.C. Rules of Evidence.

If the court declares the property forfeited and the solicitor failed to name a claimant, that claimant may petition the court for the return of the seized property. S.C. Code Ann. § 44-53-586.

These conditions satisfy *Mathews'* requirement that due process offer the ability to be heard at a meaningful time and in a meaningful manner.

iii. The Countervailing Governmental Interest Supporting the Challenged Procedure

For the final *Mathews* element, the trial court's Order found the state "has zero legitimate interest in seizing or withholding money or other property when the defendant has not been convicted of a crime, and the [state] has not proven that the property was connected to a crime." (Forfeiture Order, p. 6). This statement is partially correct. Whether the defendant has been convicted is not determinative of an *in rem* civil forfeiture. But if the state has not connected the property to a crime, the property should be returned.

Notwithstanding the trial court's finding, S.C.'s Forfeiture Statutes serve a legitimate government interest. *See Myers v. Real Property at 1518 Holmes Street*, 306 S.C. 232, 236, 411 S.E.2d 209, 212 (1991) ("We find that forfeiture is directed to the prevention of serious public harm, and is within the legitimate exercise of the police power."); and *Mims Amusement Co.*, 366 S.C. at 147, 621 S.E.2d at 347 ("[F]orfeiture serves a deterrent purpose both by preventing the further illicit use of the property and by imposing an economic penalty, thereby rendering the illegal behavior unprofitable.").

S.C.'s Forfeiture Statutes directly address the primary reason people sell drugs – to make money, and they are law enforcement's primary means for getting contraband off the street. For these reasons, S.C.'s Forfeiture Statutes serve a legitimate governmental interest and satisfy the three *Mathews* requirements.

C. The South Carolina Constitution

The trial court's Order found S.C.'s Forfeiture Statutes violate South Carolina Constitution, Article I, Section 3. (R. p. 7).

While the trial court did not provide any separate analysis for South Carolina's Constitution, this Court has held due process under South Carolina's Constitution roughly mirrors 14th Amendment Due Process. *See Kurschner v. City of Camden Planning Com'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("The fundamental requirements of due process [under S.C.'s Constitution] include notice, an opportunity to be heard in a meaningful way, and judicial review.").

Moreover, this Court has upheld S.C.'s Forfeiture Statutes against due process challenges under this State's Constitution. *See Myers*, 306 S.C. 232, 411 S.E.2d 209 (holding the Forfeiture Statutes' notice requirements did not violate due process protection of this State's Constitution). Therefore, arguments supporting 14th Amendment approval should also apply to South Carolina's Due Process Clause.

For the above stated reasons, S.C.'s Forfeiture Statutes do not violate Due Process under either the 5th and 14th Amendments or South Carolina's Constitution by placing a burden on defendants.

III. S.C.'s Forfeiture Statutes Do Not Facially Violate Due Process under either the 5th and 14th Amendments of the U.S. Constitution or Article I, Section 3 of the S.C. Constitution by Directing the Majority of Forfeiture Proceeds to Law Enforcement.

A. General Overview of Forfeiture Statutes' Distribution of Proceeds

i. Distribution

Under S.C. Code Ann. § 44-53-530(f), the first $1,000.00 of a forfeiture goes to the law enforcement agency. All money above $1,000.00 is distributed as follows:

(1) 75% to the law enforcement agency

(2) 20% to the prosecuting agency

(3) 5% to the State Treasurer

Cars, boats, equipment, and real property not reduced to proceeds go to the law enforcement agency or prosecuting agency. S.C. Code Ann. § 44-53-530(a).

ii. Protections for Seized Property

At the time of a seizure, law enforcement "shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Any monies seized must be deposited in an interest bearing account pending final disposition." S.C. Code Ann. § 44-53-520(i).

iii. Restrictions on Forfeited Property

Forfeited money can only be used by law enforcement 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 Ann. § 44-53-530(g).

The money "must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account." *Id.*

"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." *Id.*

"Property or conveyances seized by a law enforcement agency or department must not be used by officers for personal purposes." S.C. Code Ann. § 44-53-520(k).

iv. Oversight

"The use of property…must be documented and the documentation available upon request [under the Freedom of Information Act]." S.C. Code Ann. § 44-53-530(h).

"All expenditures from [forfeiture accounts] must be documented, and the documentation made available for audit purposes and upon request [under the Freedom of Information Act]." *Id.*

"An expenditure from these accounts must be made in accordance with the established procurement procedures of the jurisdiction where the account is established." S.C. Code Ann. § 44-53-530(i).

"All expenditures from [confidential informant accounts] must be fully documented and audited annually with the general fund of the appropriate jurisdiction." S.C. Code Ann. § 44-53-530(j).

B. Due Process under the 5th and 14th Amendments

The trial court's Order found S.C.'s Forfeiture Statutes violate Due Process under the 5th and 14th Amendments because "they institutionally incentivize forfeiture officials to prosecute forfeiture actions." (R. p. 8). To support this argument, the trial court's Order presented a litany of assumed facts, policy opinions, and case law.

i. Assumed Facts

Beyond S.C.'s Forfeiture Statutes, there are no facts in the record about how the proceeds are distributed, and the trial court did not cite any. Therefore, the trial court assumed facts such as: "[I]n 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." (R. p. 9).

Because the trial court's Order facially invalidated a state law, these assumptions must apply to every police agency, prosecuting agency, and governing authority in the state.

Moreover, the trial court lifted many of these assumed facts from *Harjo*. *See e.g. Harjo*, 326 F.Supp.3d at 1151 ("The Court concludes that the City of Albuquerque has an unconstitutional institutional incentive to prosecute forfeiture cases, because, in practice, the forfeiture program sets its own budget and can spend, without meaningful oversight, all of the excess funds it raises from previous years.").

However, unlike the instant case, the record in *Harjo* contained depositions from multiple City of Albuquerque officials and fiscal year budgets which showed the City of Albuquerque set "targets" for its forfeiture program in the coming year, considered forfeiture revenue in its performance evaluations of employees, and declines in forfeiture revenue were tied to employees' job security. *Id.* at 1161. None of those facts are present in the instant case.

The judge in *Harjo* invalidated Albuquerque's forfeiture ordinance by applying these facts to the ordinance, i.e. using an as-applied challenge. *Id.* at 1196 ("Thus, the forfeiture program described in the pleadings and on the Forfeiture Ordinance's face is constitutional, but the forfeiture program that this case's discovery reveals is not."). In the instant case, the trial court found S.C.'s Forfeiture Statutes facially invalid and did not have any of the facts available to the district judge in *Harjo*.

The disposition of forfeited property is clearly set forth in S.C.'s Forfeiture Statutes. Any facial challenge should use the language in the statutes and not assumed facts.

ii. Policy Opinions

Intermingled in the trial courts assumed facts were policy opinions. For example, the "agency's governing body," e.g. a city council, offered no "meaningful oversight," and the

"legislature" should control how forfeiture income is budgeted. (R. p. 11-13). Citing *Marshall v. Jerrico*, 446 U.S. 238 (1980), the trial court noted 1% of an agency's budget coming from forfeitures was valid, but 75% of forfeitures going to law enforcement was invalid. (R. p. 11). All forfeiture money going to the treasury was valid, but 5% going to the State Treasurer was invalid. (R. p. 11).

Policy opinions about what percentage of forfeiture money should go where or who should have oversight do not satisfy the high standard for declaring a statute facially unconstitutional. Moreover, by issuing policy opinions, the trial court assumed a legislative function and violated the separation of powers between the legislature and the judiciary. *See* S.C. Const. art. 1, § 8. Separation of powers ("In the government of the State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."); *S.C. Public Interest Foundation v. S.C. Trans. Infrastructure Bank*, 403 S.C. 640, 649, 744 S.E.2d 521, 526 (2013) ("Under a separation of powers, the legislative department makes the laws, the executive department carries the laws into effect, and the judicial department interprets and declares the laws.").

iii. Case Law Cited by the Trial Court

The cases cited by the trial court did not invalidate the distribution scheme under S.C.'s Forfeiture Statutes. They either discussed how prosecutors should be incentivized. *See Tumey v. Ohio*, 273 U.S. 510, 535 (1927) (A state legislature "may, and often ought to, stimulate prosecutions for crime by offering to those who shall initiate and carry on such prosecutions rewards for thus acting in the interest of the state and the people."); and *Marshall*, 446 U.S. at 248 ("Prosecutors need not be entirely 'neutral and detached'…In an adversary system, they

are necessarily permitted to be zealous in their enforcement of the law.") (internal quotation omitted).

Or they were willing to invalidate a statute using as-applied analysis but not facial analysis. *See Harjo*, 326 F.Supp.3d at 1151 ("[T]he forfeiture program described in the pleadings and on the Forfeiture Ordinance's face is constitutional"); and *Flora v. Southwest Iowa Narcotics Enforcement Task Force*, 292 F.Supp.3d 875, 905 (S.D. Iowa 2018) (finding Iowa's forfeiture statute facially constitutional because the plaintiff could not invalidate the statute in all circumstances.).

Marshall did find 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." 446 U.S. at 249-250. But *Marshall* refused to "say with precision what limits there may be on a financial or personal interest of one who performs a prosecutorial function." *Id.* at 250.

Here, the trial court's Order facially invalidated S.C.'s Forfeiture Statutes because they directed the majority of forfeiture proceeds to law enforcement. Statutory protections such as accounts being subject to audit or expenditures being required to follow procurement procedures were either dismissed or not mentioned by the trial court. However, in order to facially invalidate S.C.'s Forfeiture Statutes, the trial court had to show constitutional repugnance beyond a reasonable doubt. *Knotts*, 348 S.C. at 6, 558 S.E.2d at 513. The trial court's Order did not meet this high burden.

C. The South Carolina Constitution

The trial court's Order found S.C.'s Forfeiture Statutes' created an unconstitutional incentive in violation of South Carolina Constitution, Article I, Section 3. (R. p. 8).

Because the trial court did not provide any separate analysis for South Carolina's Constitution and this State's Due Process Clause roughly mirrors the 14th Amendment, arguments supporting 14th Amendment approval should also apply to South Carolina's Due Process Clause.

For the above stated reasons, S.C.'s Forfeiture Statutes do not violate Due Process under either the 5th and 14th Amendments or South Carolina's Constitution by directing the majority of forfeiture proceeds to law enforcement.

IV. Post-Seizure Judicial Review under S.C.'s Forfeiture Statutes Does Not Facially Violate Due Process under either the 5th and 14th Amendments of the U.S. Constitution or Article I, Section 3 of the S.C. Constitution.

A. Due Process under the 5th and 14th Amendments

The trial court's Order found S.C.'s Forfeiture Statutes violate Due Process under the 5th and 14th Amendments because they do "not have a provision for any type of pre-seizure or post-seizure hearing to determine if probable cause exists." (R. p. 14). To support this argument, the trial court's Order stated, "In practice, many seizures under South Carolina's forfeiture laws are *not* followed up by the filing of a forfeiture action." (R. p. 14) (emphasis in original).

i. Pre-Seizure Hearing

The Due Process Clause does not require S.C.'s Forfeiture Statutes to have a pre-seizure hearing. In *Myers*, this Court found "no authority that seizure of real property requires pre-seizure notice and hearing. Indeed, the U.S. Supreme Court in *Calero-Toledo* recognized

that seizure for the purpose of forfeiture 'presents an extraordinary situation in which postponement of notice and hearing until after seizure [does] not deny due process.'" 306 S.C. at 236, 411 S.E.2d at 212 (quoting *Calero-Toledo*, 416 U.S. at 680); *see also State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 196, 525 S.E.2d 872, 883 (2000) (reaffirming holding in *Myers*).

As articulated in *Calero-Toledo*, the extraordinary situation created by forfeitures is: (1) the seizure without prior notice allows the state to assert *in rem* jurisdiction and takes the property out of further illegal use; (2) pre-seizure notice would frustrate the interests of the forfeiture statute, e.g. allow the property to be moved, destroyed, or concealed; and (3) the seizing authority, i.e. the state, is not a self-interested private party. 416 U.S. at 680.

The extraordinary situation created by forfeitures is the exception to "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).

ii. Time for Filing Forfeiture Petition

"The [forfeiture] petition *must* be submitted to the court within a reasonable time period following seizure." S.C. Code Ann. § 44-53-530(a) (emphasis added).

This is not a flimsy requirement. In *Farmer*, the Court of Appeals ruled "[d]elays between the seizure and the institution of forfeiture proceedings must be reasonable, and unjustifiable delays have been, on due process grounds, recognized as reason to bar the government from further proceedings and to order the return of the seized property." 390 S.C. at 365, 701 S.E.2d at 51.

The U.S. Supreme Court ruled a delay in filing a forfeiture petition is the same as the denial of a speedy trial and instructed courts to consider: (1) length of delay, (2) reason for the

delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant. *U.S. v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850.00) in U.S. Currency*, 461 U.S. 555, 564 (1983).

While S.C.'s Forfeiture Statutes do not state a specific time period to file a forfeiture petition, there is an enforceable expectation of diligence.

iii. Disposition of Seizures

Seizures are disposed in one of four ways: (1) consent agreement signed by all interested parties without the filing of any pleadings; (2) default order; (3) settlement agreement and/or return of seized property; and (4) trial.

The consent agreements prior to the filing of pleadings must be signed by a judge. S.C. Code Ann. § 44-53-530(d).

The default orders, which are controlled by South Carolina's statutes and Rules of Civil Procedure, must be signed by a judge. In addition, service by publication cannot be done where the solicitor has received notice from an interested party and/or the interested party is incarcerated. S.C. Code Ann. § 44-53-530(a).

The settlement agreements and/or return of the seized property must be signed by a judge. S.C. Code Ann. § 44-53-530(d).

Finally, trial verdicts, pursuant to South Carolina's Rules of Civil Procedure and common law, must be signed by a judge.

In short, a judge reviews and authorizes all dispositions of seized property.

The trial court's Order found in practice solicitors do not file forfeiture actions. (R. p. 14). There is no evidence in the record to support this finding, and the trial court did not cite

any. Moreover, the failure by a solicitor to file a forfeiture petition is a dereliction of the solicitor's duty – not a facial invalidation of S.C.'s Forfeiture Statutes.

Similarly, the trial court's finding that S.C.'s Forfeiture Statutes do not require a post-seizure hearing is starkly contradicted by S.C. Code Ann. § 44-53-530(a)'s requirement "[t]he judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed." *See also Medlock*, 308 S.C. 68, 71, 417 S.E.2d 85, 87 (holding S.C.'s Forfeiture Statutes require a bench trial and must afford a jury trial).

The trial court's Order cited several cases concerning a post-seizure hearing. Solicitor Richardson agrees that interested parties in a forfeiture action are entitled to a post-seizure hearing and follows the hearing requirements set forth in S.C.'s Forfeiture Statutes.

iv. Timing of Post-Seizure Hearing

The trial court's Order found "the state has the right to decide *when* they wish to afford a person a hearing." (R. p. 16) (emphasis in original). This finding is not supported by any evidence.

Forfeiture petitions must be filed in Common Pleas Court (S.C. Code Ann. § 44-53-530(k)), and trials are scheduled by the Chief Administrative Judge for Common Pleas Court. *See* Supreme Court Admin. Order, 2011-02-04-01 (Feb. 4, 2011) ¶ 2 ("[T]he authority of circuit judges designated as chief judges for administrative purposes shall include…[t]o set jury and nonjury trial rosters and/or dockets for all civil terms of circuit court and to designate which presiding judge shall hear each roster or rosters."); *State v. Langford,* 400 S.C. 421, 435, 735 S.E.2d 471, 478 (2012) ("Setting the trial docket therefore is the prerogative of the court."); and *Newman v. Old West, Inc.*, 286 S.C. 394, 397, 334 S.E.2d 275, 276 (1985) ("[I]n the interest of

judicial economy and disposition of cases for all litigants, the administrative judge must have control of the trial docket.").

At bottom, the state does not control when forfeiture trials are called.

B. The South Carolina Constitution

The trial court's Order found S.C.'s Forfeiture Statutes' deny judicial review in violation of South Carolina Constitution, Article I, Section 3. (R. p. 14).

The trial court did not provide any separate analysis for South Carolina's Constitution, and because this State's Due Process Clause roughly mirrors the 14th Amendment, arguments supporting 14th Amendment approval should also apply to South Carolina's Due Process Clause.

CONCLUSION

For the reasons set forth above, this Court should reverse the trial court's Order and remand this case for trial.

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
Attorney for Appellant

July 24, 2020

Certificate of Counsel

The undersigned hereby certifies that the Final Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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
F: 843-248-4512
jbattle@battlelawsc.com

July 24, 2020

Attorney for Appellant