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In the
Indiana Supreme Court

No. 27S04-1702-MI-70

STATE OF INDIANA,

Appellant (Plaintiff below),

v.

TYSON TIMBS,

Appellee (Defendant below).

Appeal from the Grant Superior Court 1,
No. 27D01-1308-MI-92
The Honorable Jeffrey D. Todd, Judge

On Petition to Transfer from the Indiana Court
of Appeals, No. 27A04-1511-MI-1976

November 2, 2017

Slaughter, Justice.

The State sought to forfeit Defendant's Land Rover after he used it to transport illegal drugs. The trial court held the proposed forfeiture would violate the Eighth Amendment's Excessive Fines Clause. We conclude the Excessive Fines Clause does not bar the State from forfeiting Defendant's vehicle because the United States Supreme Court has not held that the Clause applies to the States through the Fourteenth Amendment.

Factual and Procedural History

Defendant, Tyson Timbs, used life-insurance proceeds after his father's death to pay $42,058.30 for a Land Rover in January 2013. Over the next four months, Timbs regularly drove the Land Rover between Marion and Richmond, Indiana, to buy and transport heroin. Timbs's trafficking came to the attention of a confidential police informant, who told a member of the Joint Effort Against Narcotics team that he could buy heroin from Timbs. Police set up a controlled buy, and the informant and an undercover detective bought two grams of heroin from Timbs for $225. Police made another controlled buy a couple of weeks later, acquiring another two grams of heroin for $160. During the second buy, the detective set up a third controlled buy with Timbs. The day the third buy was to occur, police apprehended Timbs during a traffic stop. The Land Rover had 1,237 miles on its odometer when

Timbs bought it in January, and more than 17,000 miles when police seized the vehicle in late May.

In June 2013, the State charged Timbs with two counts of Class B felony dealing in a controlled substance and one count of Class D felony conspiracy to commit theft. Nearly two years later, in 2015, Timbs pleaded guilty to one count of Class B felony dealing and one count of Class D felony conspiracy to commit theft in exchange for the State's dismissing the remaining charge. The trial court accepted the plea and sentenced Timbs to six years, with one year executed in community corrections and five years suspended to probation. Timbs also agreed to pay police costs of $385, an interdiction fee of $200, court costs of $168, a bond fee of $50, and a $400 fee for undergoing a drug-and-alcohol assessment with the probation department.

Within a couple months of bringing criminal charges, the State also sought to forfeit the Land Rover. After a bench trial, the court issued written findings that denied the State's action, concluding that forfeiture would be an excessive fine under the Eighth Amendment. "The amount of the forfeiture sought is excessive, and is grossly disproportional to the gravity of the Defendant's offense." The trial court observed that the maximum statutory fine for Timbs's Class B felony was $10,000 on the day he was arrested and noted the vehicle was worth approximately four times this amount when he bought it just a few months earlier. The court made no finding about the vehicle's value on Timbs's arrest date. Based on its holding, the

court ordered the State to release the vehicle immediately. A divided Court of Appeals affirmed. *State v. Timbs*, 62 N.E.3d 472 (Ind. Ct. App. 2016). We granted transfer, thus vacating the Court of Appeals' opinion, and now reverse.

Standard of Review

Before addressing whether forfeiture of Timbs's Land Rover would be an excessive fine, we must decide the antecedent question of whether the Excessive Fines Clause applies to forfeitures by the State. Whether a Bill of Rights provision applies to the States is a purely legal question. We review such questions de novo. *State v. Harper*, 8 N.E.3d 694, 696 (Ind. 2014). Unlike legal questions, a trial court's factual determinations are reviewed for clear error. *Fischer v. Heymann*, 12 N.E.3d 867, 870 (Ind. 2014). We will not reweigh evidence or determine the credibility of witnesses, and we will consider only the evidence favorable to the judgment and the logical inferences drawn from it. Ind. Trial Rule 52(A); *Hitch v. State*, 51 N.E.3d 216, 226 (Ind. 2016).

Discussion and Decision

I. The United States Supreme Court has never enforced the Excessive Fines Clause against the States, and we opt not to do so here.

The framers' original conception was settled long ago that the Bill of Rights applies only to the national government and cannot be enforced against the States.

See Barron v. Baltimore, 32 U.S. (7 Pet.) 243, 247 (1833). Only after ratification of the Fourteenth Amendment did the Supreme Court, in the early twentieth century, begin to apply various provisions of the Bill of Rights to the States through the doctrine of selective incorporation. Justice Black's argument for total incorporation of the Bill of Rights, *see, e.g.*, *Adamson v. California*, 332 U.S. 46, 71-72, 89 (1947) (Black, J., dissenting), has never carried the day. *McDonald v. City of Chicago*, 561 U.S. 742, 761-63 (2010).

To date, the Supreme Court has incorporated most of the first eight amendments – with a few notable exceptions: the Third Amendment's protection against quartering soldiers, the Fifth Amendment's grand-jury requirement, and the Seventh Amendment's right to a civil jury trial. *Id*. at 765 n.13 (citations omitted). At issue here is whether the Eighth Amendment's Excessive Fines Clause is enforceable against the States. We hold it is not.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Supreme Court has never held that States are subject to the Excessive Fines Clause. The Court initially declined to decide the Clause's incorporation status.

> Because of the result we reach today, we need not answer several questions that otherwise might be necessarily antecedent to finding the

> Eighth Amendment's Excessive Fines Clause applicable to an award of punitive damages, . . . [including] whether the Eighth Amendment's prohibition on excessive fines applies to the several States through the Fourteenth Amendment[.]

Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 276 n.22 (1989).

A dozen years later, in a case involving not a fine but another punitive-damages award, the Supreme Court stated in dictum that the Fourteenth Amendment's Due Process Clause "makes the Eighth Amendment's prohibition against excessive fines and cruel and unusual punishments applicable to the States." *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 433-34 (2001) (citing *Furman v. Georgia*, 408 U.S. 238 (1972) (per curiam)). A prominent treatise on criminal procedure observed that *Cooper*'s statement incorporating the Excessive Fines Clause was merely dictum. "In noting that the due process clause also incorporated the Eighth Amendment prohibitions against excessive fines and cruel and unusual punishments, the Court cited *Furman v. Georgia*, . . . which involved an application of the prohibition against cruel and unusual punishments." Wayne R. Lafave et al., Criminal Procedure § 2.6(b), n.45 at 833 (4th ed. 2015).

Despite *Cooper*'s 2001 dictum that the Clause can be enforced against States, the Supreme Court's most recent pronouncement on this subject, in 2010, suggests the Clause has not been incorporated after all. *McDonald*, 561 U.S. at 765 n.13. *McDonald* was an

incorporation case. At issue was whether the Second Amendment's individual right to keep and bear arms, recognized in *District of Columbia v. Heller*, 554 U.S. 570 (2008), is enforceable against the States. *McDonald* held that it is – a position commanding the support of five Justices, four of whom agreed it was enforceable through the Due Process Clause. Only Justice Thomas believed the basis for decision should be the Privileges and Immunities Clause. *McDonald*, 561 U.S. at 805-58 (Thomas, J., concurring in part and in the judgment). En route to deciding that the Second Amendment applies to the States, *McDonald* observed that "[o]nly a handful of the Bill of Rights protections remain unincorporated", *id*. at 765, and included on that list "the Eighth Amendment's prohibition on excessive fines." *Id*. at 765 n.13. Citing only *Browning-Ferris* and not *Cooper*, the Court stated, "We have never decided whether the . . . Eighth Amendment's prohibition of excessive fines applies to the States through the Due Process Clause." *Id*.

It is not self-evident why the *McDonald* Court did not mention *Cooper*. Perhaps the omission was an oversight, though we will not conclude lightly that the Supreme Court whiffed on the existence or meaning of its precedent. The more likely explanation is that *McDonald* was treating *Cooper*'s statement as superfluous to *Cooper*'s holding and therefore dictum. Just as *Cooper*'s statement that the Excessive Fines Clause is enforceable against the States is dictum, so too is *McDonald*'s statement that the Clause is not.

So where does that leave us? Given the lack of clear direction from the Supreme Court, we have a couple of options. One option is to ignore *McDonald* and follow the lead of some courts that have either applied the Excessive Fines Clause to challenged state action or assumed without deciding that the Clause applies. *See*, *e.g.*, *Hamilton v. City of New Albany, Indiana*, ___ Fed. Appx. ___, 2017 WL 2615453, at *5 (7th Cir. Jun. 16, 2017) (vacating summary judgment for city on plaintiff's federal excessive-fines claim and remanding for trial without mentioning incorporation or *McDonald*); *Cripps v. Louisiana Dep't of Agriculture and Forestry*, 819 F.3d 221, 234 (5th Cir. 2016) ("Assuming *arguendo* that the Excessive Fines Clause applies, the record indicates that each of Plaintiffs' offenses resulted in fines that do not exceed the limits prescribed by the statute authorizing it."); *Discount Inn, Inc. v. City of Chicago*, 803 F.3d 317, 320 (7th Cir. 2015) (holding that "the fines imposed by the challenged [city] ordinances are not excessive even if the 'excessive fines' clause is applicable"); *Public Employee Retirement Admin. Comm'n v. Bettencourt*, 47 N.E.3d 667, 672 n.7, 681 (Mass. 2016) (holding forfeiture violates federal excessive-fines clause based on *Cooper* without mentioning *McDonald*).

A second option is to await guidance from the Supreme Court and decline to find or assume incorporation until the Supreme Court decides the issue authoritatively. We choose this latter, more cautious approach for two reasons. First, although the Supreme Court has addressed this issue only in dicta, its

statement in *McDonald* that the Clause has not been incorporated is entitled to more weight because it is the Court's most recent. Second, Indiana is a sovereign state within our federal system, and we elect not to impose federal obligations on the State that the federal government itself has not mandated. An important corollary is that Indiana has its own system of legal, including constitutional, protections for its citizens and other persons within its jurisdiction. Absent a definitive holding from the Supreme Court, we decline to subject Indiana to a *federal* test that may operate to impede development of our own excessive-fines jurisprudence under the Indiana Constitution.

Although we ultimately disagree with our Court of Appeals' decision to apply the Excessive Fines Clause to the State's forfeiture, we understand the Court's reason for doing so. After all, the State specifically advised the Court that it "need not decide [the issue of incorporation] . . . because the penalties imposed were not unconstitutionally excessive." Despite the State's choice not to wage the incorporation battle here, we need not abide a party's consent to a misstatement or misapplication of law. *Stephenson v. State*, 864 N.E.2d 1022, 1030 (Ind. 2007). We reserve to ourselves – not the parties – the prerogative to pronounce what law governs a particular dispute. The parties' consensus here to subject the State's forfeiture to review under the Clause does not require that we follow suit. And we decline to do so, mindful that our colleagues on the Court of Appeals and the trial court may be correct in

foretelling where the Supreme Court will one day lead on whether to apply the Clause to the States.

To be clear, our decision on incorporation should not be read to prejudge the merits of pending or prospective forfeiture challenges based on *other* provisions of state or federal law. Our narrow holding here is confined to the Court of Appeals' reliance on a provision of the United States Constitution – the Excessive Fines Clause – that the Supreme Court has never enforced against the States. We decline to address other potential problems with the State's forfeiture because Timbs raised only an excessive-fines challenge under federal law.

II. Based on the trial court's findings, the State proved it is entitled to forfeit the Land Rover.

Because we have resolved the Eighth Amendment issue against Timbs, we turn to whether the State proved its entitlement to forfeit the vehicle under Indiana law. The governing statute provides, in pertinent part, that to obtain forfeiture the State must show that a person used the vehicle to transport an illicit substance listed in the statute for the purpose of dealing or possessing the substance.

> Sec. 1. (a) The following may be seized:
>
> (1) All vehicles . . . , if they are used . . . by the person . . . in possession of them to transport . . . the following:

> (A) A controlled substance for the purpose of committing . . . any of the following:
>
> (i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1)
>
> * * *
>
> (iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2)
>
> * * *
>
> (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6)

I.C. § 34-24-1-1 (Supp. 2012). *See also Katner v. State*, 655 N.E.2d 345, 349 (Ind. 1995).

After a bench trial, the trial court made the following factual findings relevant here.

> Between the date of purchase, and May 31st, 2013, [Timbs] drove the vehicle frequently from Marion to Richmond to purchase heroin. The Land Rover was used by [Timbs] to transport heroin back to Marion. [Timbs] both used and sold the heroin. When the Land Rover was seized by the State at the end of May 2013, the odometer reading was between 17,000 and 18,000 miles. The increased mileage primarily resulted from [Timbs] traveling between Marion and Richmond to engage in illegal drug trafficking.

On appeal, Timbs challenges these findings under the corpus-delicti rule, which requires independent evidence of a crime beyond the defendant's confession. But the rule applies only to an *out-of-court* confession in a *criminal* proceeding and thus does not benefit Timbs. *See Willoughby v. State*, 552 N.E.2d 462, 466 (Ind. 1990). Timbs's inculpatory testimony occurred *in court*, while his counsel was present, in this *civil*-forfeiture proceeding, where he admitted to multiple trips to Richmond in the Land Rover to acquire heroin and transport it back to Marion. Because corpus delicti is no obstacle to the use of Timbs's testimony, the court's findings are supported by the evidence, and the State proved them by the required preponderance of the evidence, I.C. § 34-24-1-4(a). These findings establish each of the statutory elements recited above to prove the State's entitlement to forfeit the Land Rover – namely, that Timbs used the vehicle to transport and possess heroin, a schedule I controlled substance, *id*. § 35-48-2-4(c) (Supp. 2013), and a narcotic drug, *id*. §§ 35-48-2-4(c), 35-48-1-20(1) (2008 Repl.), for the purpose of engaging in illegal drug trafficking.

Conclusion

For these reasons, we reverse the trial court's judgment for Timbs and remand with instructions to enter judgment for the State on its forfeiture complaint.

Rush, C.J., and David, Massa, and Goff, JJ., concur.

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IN THE
COURT OF APPEALS OF INDIANA

State of Indiana, *Appellant-Plaintiff*, v. Tyson Timbs and a 2012 Land Rover LR2, *Appellees-Defendants.*	October 20, 2016 Corrected Court of Appeals Case No. 27A04-1511-MI-1976 Appeal from the Grant Superior Court 1 The Honorable Jeffrey D. Todd, Judge Trial Court Cause No. 27D01-1308-MI-92

Mathias, Judge.

[1] The State of Indiana filed a complaint for forfeiture in Grant Superior Court seeking to obtain a 2012 Land Rover LR2 owned by Tyson Timbs ("Timbs"). The trial court ruled in favor of Timbs, and the State appeals, presenting one issue, which we restate as whether the trial court erred in concluding

that forfeiture of Timbs's vehicle would constitute a constitutionally excessive fine.

[2] We affirm.

Facts and Procedural History

[3] In January 2013, Timbs purchased a Land Rover LR2 ("Land Rover") for the sum of $42,058.30 from a dealer in Indianapolis. Timbs paid for the Land Rover with life insurance policy proceeds that he received following the death of his father. Thereafter, Timbs began to use this vehicle to drive from Marion, Indiana to Richmond, Indiana for the purposes of purchasing heroin. Timbs also used the Land Rover to transport the heroin back to Richmond.

[4] In May 2013, a confidential informant ("CI") told a member of the Joint Effort Against Narcotics ("JEAN") team[1] that he could purchase heroin from Timbs. The police then set up a controlled buy, and on May 6, 2013, an undercover detective and the CI met Timbs at an apartment.[2] The detective gave the CI the purchase money, and the CI went inside the apartment with Timbs and returned with two grams of heroin that he had purchased for the previously agreed-to price of $275.

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[1] The JEAN team is composed of members from the Grant County Sheriff's Department, the Grant County Prosecutor's Office, and the Marion Police Department.

[2] This apartment was apparently not Timbs's residence. *See* Tr. pp. 27-28.

[5] The police set up another controlled buy on May 22, 2013, to take place at a local gas station. This time, the undercover detective purchased two grams of heroin from Timbs for a price of $260. After this transaction, the detective spoke with Timbs about arranging yet another purchase of heroin. However, on the day this controlled buy was set to take place, the police instead apprehended Timbs during a traffic stop.

[6] On June 5, 2013, the State charged Timbs with two counts of Class B felony dealing in a controlled substance and one count of Class D felony conspiracy to commit theft. On August 5, 2013, the State filed a complaint for forfeiture, seeking to obtain Timbs's Land Rover.

[7] On April 12, 2015, Timbs entered into a plea agreement with the State whereby he agreed to plead guilty to one count of Class B felony dealing in a controlled substance and Class D felony theft in exchange for the State dismissing the remaining charges. The following day, the trial court accepted the plea and sentenced Timbs pursuant to the agreement to six years, with one year executed in community corrections and five years suspended to probation. Pursuant to the plea agreement, Timbs also agreed to reimburse the JEAN team $385 for the cost of the investigation and pay a drug abuse, prosecution, and interdiction fee of $200; court costs of $168; a bond fee of $50; and a $400 certified court program fee after undergoing a drug and alcohol assessment with the probation department. The complaint for forfeiture remained pending.

[8] On July 15, 2015, the trial court held a hearing on the forfeiture complaint. At the hearing, Timbs argued that forfeiture of his Land Rover, which he claimed was worth over $40,000, constituted an excessive fine, given that he had only dealt drugs twice, that he was only convicted for one count of dealing, and that the maximum statutory fine for his crime was $10,000. The trial court took the matter under advisement and, on August 28, 2015, entered an order in favor of Timbs, which provided in relevant part:

> 7. The State now seeks a judgment against the Defendant for forfeiture of the Land Rover; a vehicle that just five (5) months before it was seized had a fair market value of almost four (4) times the maximum monetary fine of $10,000.
>
> 8. The Court finds that the judgment of forfeiture sought by the State violates the Excessive Fines Clause of the Eighth Amendment of the United States Constitution. The amount of the forfeiture sought is excessive and is grossly disproportional to the gravity of the Defendant's offense.
>
> 9. While the negative impact on our society of trafficking in illegal drugs is substantial, a forfeiture of approximately four (4) times the maximum monetary fine is disproportional to the Defendant's illegal conduct.
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> Judgment is entered in favor of the Defendant and against the State. The Land Rover LR2, at issue, is ordered released to the Defendant immediately.

Appellant's App. pp. 15-16. The State filed a motion to correct error on September 14, 2015, claiming for the first time that the trial court should have ordered a sale of the Land Rover from which a non-excessive fine could be deducted.[3] The trial court held a hearing on the State's motion to correct error on October 14, 2015, and entered an order denying the State's motion on October 21, 2015. The State now appeals.

Standard of Review

[9] At trial, the State bore the burden of establishing the requirements of forfeiture. *See* Ind. Code § 34-24-1-4(a). Thus, the State is appealing from a negative judgment. *See Merrillville 2548, Inc. v. BMO Harris Bank N.A.*, 39 N.E.3d 382, 390-91 (Ind. Ct. App. 2015), *reh'g denied*, *trans. denied*. On appeal, we will not reverse a negative judgment unless it is contrary to law. *Id*. Here, the State argues that the trial court erred in determining that the forfeiture of the Land Rover constituted an excessive fine. This court has held that forfeitures are subject to the Excessive Fines Clause of the Eighth Amendment to the United States Constitution. *$100 and a Black Cadillac v. State*, 822 N.E.2d 1001, 1011 (Ind. Ct. App. 2005), *trans. denied* (citing *Austin v. United States*, 509 U.S. 602, 609-10 (1993)).[4]

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[3] The State does not reiterate this claim on appeal, and even if it did, it is well settled that an issue may not be presented for the first time in a motion to correct error. *Van Winkle v. Nash*, 761 N.E.2d 856, 859 (Ind. Ct. App. 2002).

[4] The State claims that there is a question as to whether the Excessive Fines Clause of the Eighth Amendment is applicable to

We review the trial court's conclusion regarding the excessiveness of a fine *de novo*. *United States v. Bajakajian*, 524 U.S. 321, 336 (1998).

Discussion and Decision

> In rem forfeiture is an ancient concept under which courts obtained jurisdiction over property when it was virtually impossible to seek justice against property owners guilty of violating maritime law because they were overseas. Civil forfeiture traces to ancient Roman and medieval English law; both made objects used to violate the law subject to forfeiture to the sovereign. Civil forfeiture is no longer tethered to difficulties in obtaining personal jurisdiction over an individual. It now serves as one of the most potent weapons in the judicial armamentarium[.] Civil forfeiture is a leading method for imposing economic sanctions against narcotics traffickers.

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the states via the Fourteenth Amendment. The United States Supreme Court has yet to hold that the Excessive Fines Clause is applicable to the States. *See Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 276 (1989) ("We shall not decide whether the Eighth Amendment's prohibition on excessive fines applies to the several States through the Fourteenth Amendment."). But this court held in *$100 and a Black Cadillac* that the Excessive Fines Clause did apply to Indiana's forfeiture statutes. 822 N.E.2d at 1011. We see no reason to disagree with our prior opinion. We also note that the Indiana Constitution contains its own provision against excessive fines. *See* Ind. Const. art. 1, sec. 16 ("Excessive fines shall not be imposed). Because neither side addresses the Indiana Constitution, we base our opinion on the federal Excessive Fines Clause.

> Today, all states have statutory provisions for some form of asset forfeiture, and there are more than four hundred federal forfeiture statutes relating to various federal crimes. An important feature of many of these statutes is characterization of the process as civil forfeiture under which (by contrast to criminal forfeiture) a property owner need not be found guilty of a crime – or even charged – to lose permanently their cash, car, home or other property. The relative ease of effecting such forfeiture and the disposition of the assets have become a matter of public note.

Serrano v. State, 946 N.E.2d 1139, 1141 (Ind. 2011) (citations omitted).

[10] The Eighth Amendment provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. At the time the Constitution was adopted, "the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *$100 and a Black Cadillac*, 822 N.E.2d at 1011 (quoting *Bajakajian*, 524 U.S. at 327). Accordingly, the Excessive Fines clause of the Eighth Amendment "limits the government's power to extract payments, *whether in cash or in kind*, as punishment for some offense." *Id*. (quoting *Bajakajian*, 524 U.S. at 328) (emphasis added) (internal quotation marks omitted). As noted above, this court has already held that forfeitures in Indiana are subject to the Excessive Fines Clause. *Id*. (citing *Austin*, 509 U.S. at 622).

[11] To determine whether a fine or forfeiture is "excessive," for purposes of the Excessive Fines Clause, we consider whether the amount of the forfeiture bears "some relationship to the gravity of the offense that it is designed to punish." *Id*. (quoting *Bajakajian*, 524 U.S. at 334). A punitive forfeiture violates the Excessive Fines Clause "if it is grossly disproportional to the gravity of a defendant's offense." *Id*. (quoting *Bajakajian*, 524 U.S. at 334).[5]

[12] Here, there is no question that the nature of Timbs's offense was serious. He committed a Class B felony. However, our General Assembly has determined that a Class B felony should be punishable by a maximum fine of $10,000. Here, the evidence before the trial court was that Timbs's vehicle was worth approximately *four times* the amount of the maximum fine. Although we do not suggest that forfeiture of any asset valued over the maximum fine is automatically a violation of the Excessive Fines Clause, it is instructive to our analysis that the value of the asset sought by the State is well in excess of the maximum fine. Moreover, it is undisputed that the Land Rover was not purchased with the proceeds of any criminal behavior; it was purchased with life insurance proceeds.

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[5] The State claims that the Supreme Court in *Bajakajian* "allow[ed] a forfeiture three times the applicable fine" of $5,000. This is incorrect. The Supreme Court was abundantly clear that the only question before it was whether forfeiture of the *entire* amount of cash at issue, $357,144, was proper. *See Bajakajian*, 524 U.S. at 339 n.11.

[13] The State notes that an asset may be forfeited even if the State does not convict the owner of the criminal charge. *See Katner v. State*, 655 N.E.2d 345, 348 (Ind. 1995) (noting that a conviction on the underlying criminal activity is not a prerequisite for forfeiture). Thus, the State argues, it could have sought forfeiture of the Land Rover even if Timbs had not been convicted. However, this does not negate the fact that our General Assembly has set the maximum fine for the crime for which Timbs was convicted at $10,000, whereas the value of the Land Rover was upwards of $40,000.

[14] We also note that financial burdens had already been imposed on Timbs when he pleaded guilty. Pursuant to his plea agreement, Timbs agreed to reimburse the JEAN team $385 for the cost of the investigation and pay a drug abuse, prosecution, and interdiction fee of $200; court costs of $168; a bond fee of $50; and a $400 certified court program fee. Notably, the trial court imposing the sentence found no need to impose *any* fine, much less the maximum fine of $10,000.

[15] The State also argues that the evidence before the trial court was that Timbs committed criminal acts other than the one for which he was convicted. This may be true. However, the complaint for forfeiture referred only to May 31, 2013.[6] If the State wished to

[6] The complaint set forth in relevant part:

> 1. On or about May 31, 2013, officers of the Plaintiff, J.E.A.N. Team Drug Task Force, seized from the Defendant, TYSON TIMBS, One (1) 2012 Land Rover LR2 . . . in Grant County, Indiana.

seek forfeiture of the Land Rover based on Timbs's other criminal acts, it should have done so more clearly in its forfeiture complaint. Moreover, even considering these other acts, we note that the only evidence before the trial court was that Timbs sold heroin twice, both times as a result of controlled buys. The remaining times he transported heroin, it was apparently for his own use. The trial court was free to consider these circumstances in making its determination.

[16] We also find the State's citation to *United States v. Aleff*, 772 F.3d 508 (8th Cir. 2014), to be unpersuasive. In *Aleff*, the defendants were convicted of conspiracy to defraud the federal government and ordered to pay almost $304,000 in restitution. Thereafter, the federal government brought suit against the defendants under the False Claims Act, and the District Court

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> 2. On said date and at said place, the Defendant, TYSON TIMBS, had in his possession, the above described vehicle, said vehicle had been furnished or intended to be furnished by Defendant, TYSON TIMBS, in exchange for an act that is in violation of a criminal statute, or used to facilitate any violation of a criminal statute or is traceable as proceeds of the violation of a criminal statute under Indiana Law, as provided in I.C. 34-24-1-1.
>
> 3. The Defendant, TYSON TIMBS, is the owner of the vehicle.
>
> WHEREFORE, the Plaintiffs demand judgment against the Defendant for forfeiture of vehicle, for the delivery of said vehicle upon forfeiture as provided for in I.C. 34-24-1-1, for reimbursement of law enforcement costs as provided by statute, and for all other relief just and proper in the premises.

Appellant's App. p. 14.

awarded the government treble damages and statutory penalties of over $1,300,000. On appeal, the Eighth Circuit Court of Appeals held that this was not grossly disproportionate under the Excessive Fines Clause. *Aleff*, 772 F.3d at 512-13. In so holding, the court noted that the defendants' scheme to defraud the government was extensive and took more than six years. *Id*. at 513. The defendants "received $303,890 from the public fisc to which they were not entitled," and the government "suffered damage to the integrity of one of its programs." *Id*. More importantly, the damages recovered by the government were within the limits of damages allowed by the False Claims Act. *Id*.

[17] The present case is readily distinguishable from *Aleff*. Timbs did not engage in a years-long scheme to defraud the State, nor did the State here seek to recover treble damages under a false claims statute. It instead sought to forfeit a vehicle that was not purchased with the proceeds of Timbs's crimes. Here, the value of the asset subject to potential forfeiture was well over the statutory maximum fine, whereas in *Aleff*, the damages were more than the actual damages but still within the statutory maximum allowed under the False Claims Act.[7]

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[7] The same holds true for the State's citation to *United States v. Mackb*y, 339 F.3d 1013 (9th Cir. 2003), which was also brought under the False Claims Act. The total damages awarded in that case were within the statutory limits and the government was directly defrauded. *Id*. at 1018. Although the amount awarded, $729,455, was much greater than the $58,151 sought by the

Conclusion

[18] Forfeiture of the Land Rover, which was worth approximately four times the maximum permissible statutory fine, was grossly disproportionate to the gravity of Timbs's offense. We therefore affirm the trial court's conclusion that forfeiture of the Land Rover violated the Excessive Fines Clause of the Eighth Amendment.

[19] Affirmed.

Vaidik, C.J., concurs.

Barnes, J., dissents with opinion.

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government, the defendants had filed fraudulent Medicare claims for which they received payment of $331,078. *Id*.

IN THE
COURT OF APPEALS OF INDIANA

State of Indiana, *Appellant-Plaintiff*, v. Tyson Timbs and a 2012 Land Rover LR2, *Appellees-Defendants.*	Court of Appeals Case No. 27A04-1511-MI-1976

Barnes, Judge, dissenting.

[20] I respectfully dissent. I realize that my colleagues point to the allegedly "disproportionate" nature of the forfeiture sought by the State here. I understand their concern. I would simply say as follows:

[21] Forfeitures are constitutional and, although some have been found to be excessive, are a useful law enforcement tool. *See U.S. v. Ursery*, 518 U.S. 267, 290, 116 S. Ct. 2135, 2148 (1996).

[22] We have ruled that, in limited situations, the Excessive Fines Clause of the Eighth Amendment may come into play in a forfeiture case. *See $100 and a Black Cadillac*, 822 N.E.2d at 1011-12.

[23] However, it is clear and without conflict in the evidence that the vehicle here was Timbs's and was used to facilitate crime, i.e., to transport Timbs to the place of an arranged heroin buy. The vehicle did not

have only a tangential relationship to the crime or to the defendant. It should not matter that Timbs committed the crime using an expensive new Land Rover rather than an old, inexpensive "beater."

[24] The majority correctly points out that the record reflects Timbs "only" sold heroin twice. I simply posit that Timbs was arrested before the third buy could take place, and we are left to wonder how much heroin he had access to.

[25] I am keenly aware of the overreach some law enforcement agencies have exercised in some of these cases. Entire family farms are sometimes forfeited based on one family member's conduct, or exorbitant amounts of money are seized. However, it seems to me that one who deals heroin, and there is no doubt from the record we are talking about a dealer, must and should suffer the legal consequences to which he exposes himself.

[26] Timbs dealt heroin and got caught. I vote to reverse the trial court's denial of the State's forfeiture request.

STATE OF INDIANA
IN THE GRANT SUPERIOR COURT 1
COUNTY OF GRANT, SS:
2015 TERM

CAUSE NO. 27D01-1308-MI-92

STATE OF INDIANA, and the J.E.A.N. Team Drug Task Force, Marion Police Department, and Grant County Sheriff's Department,

Plaintiffs

vs

TYSON TIMBS,
One (1) 2012 Land Rover LR2
VIN#SALFR2BG7DH322169,

Defendants

FILED

AUG 28 2015

/s/ Carolyn J. Mowery
CLERK GSC 1

JUDGMENT ORDER

The State appears by counsel, Joshua N. Taylor, and the Defendant appears in person and by counsel, Todd Glickfield, for a hearing on the State's Complaint for Forfeiture filed on August 5th, 2013. Evidence and argument are submitted to the Court and concluded. Having taken this matter under advisement the Court now finds and orders as follows:

1. On or about January 30th, 2013, the Defendant purchased a 2013 Land Rover LR2 vehicle from Tom Wood Jaguar-Volvo in Indianapolis for the sum of $42,058.30.

At the time of purchase, the Land Rover odometer read 1,237 miles.

2. The uncontroverted evidence demonstrated that the Defendant paid for the Land Rover, in full, with life Insurance proceeds he received following his father's death.

3. Between the date of purchase, and May 31st, 2013, the Defendant drove the vehicle frequently from Marion to Richmond to purchase heroin. The Land Rover was used by the Defendant to transport the heroin back to Marion. The Defendant both used and sold the heroin. When the Land Rover was seized by the State at the end of May 2013, the odometer reading was between 17,000 and 18,000 miles. The increased mileage primarily resulted from the Defendant traveling between Marion and Richmond to engage in illegal drug trafficking..

4. On June 5th, 2013, the Defendant was charged in Grant Superior Court II under cause number 27D02-1306-FB-46 with two (2) counts of Dealing in a Schedule I Controlled Substance, Class B felonies, and one count of Conspiracy to Commit Theft, a Class D felony. Ultimately, the Defendant plead guilty to one (1) count of Dealing in a Schedule I Controlled Substance, and Theft. On April 13th, 2015, pursuant to a written plea agreement, the Defendant was sentenced to an aggregate

term of six (6) years at the Indiana Department of Corrections with one (1) year executed and five (5) years suspended and served on formal, supervised probation. The executed portion of the Defendants sentence is being served on home detention through the Grant County Community Corrections Home Detention Program.

5. As part of the plea agreement entered into by the Defendant, he is ordered to reimburse the J.E.A.N Team Drug Task Force $385.00 for costs of investigation; pay a drug abuse, prosecution, and interdiction fee of $200.00; pay court costs of $168.00; and pay a bond fee of $50.00. Finally, the Defendant is ordered to undergo a drug and alcohol assessment and follow through with recommended treatment, and pay a $400.00 Certified Court Program fee to the Grant County Probation Department.

6. The maximum fine for a Class B felony was $10,000.00 on the date of the Defendant's arrest in 2013.

7. The state now seeks a judgment against the Defendant for forfeiture of the Land Rover; a vehicle that just five (5) months before it was seized had a fair market value of almost four (4) times the maximum monetary fine of $10,000.00.

8. The Court finds that the judgment of forfeiture sought by the State violates the

Excessive Fines Clause of the Eighth Amendment of the United States Constitution. The amount of the forfeiture sought is excessive, and is grossly disproportional to the gravity of the Defendant's offense.

9. While the negative impact on our society of trafficking in illegal drugs is substantial, a forfeiture of approximately four (4) times the maximum monetary fine is disproportional to the Defendant's illegal conduct.

10. Judgment is entered in favor of the Defendant and against the State. The Land Rover LR2, at issue, is ordered released to the Defendant immediately.

Dated this 28th day of August, 2015.

/s/ Jeffrey D. Todd
Jeffrey D. Todd, Judge
Grant Superior Court No. 1

STATE OF INDIANA
IN THE GRANT SUPERIOR COURT 1
COUNTY OF GRANT, SS:
2015 TERM

CAUSE NO. 27D01-1308-MI-92

STATE OF INDIANA, and the J.E.A.N. Team Drug Task Force, Marion Police Department, and Grant County Sheriff's Department,

Plaintiffs

vs

TYSON TIMBS,
One (1) 2012 Land Rover LR2
VIN#SALFR2BG7DH322169,

Defendant

FILED

OCT 21 2015

/s/ Carolyn J. Mowery
CLERK GSC 1

ORDER

The parties appear in person and by counsel for a hearing on the Plaintiff's Motion to Correct Error filed on September 14th, 2015. Arguments are submitted to the Court and concluded. Having taken this matter under advisement, the Court now denies the Plaintiff's Motion to Correct Error in all respects.

Dated this 21st day of October, 2015.

/s/ Jeffrey D. Todd
Jeffrey D. Todd, Judge
Grant Superior Court No. 1

STATE OF INDIANA
IN THE GRANT SUPERIOR COURT
COUNTY OF GRANT
2017 TERM

CAUSE NUMBER: 27D01-1308-MI-92

STATE OF INDIANA, and the
J.E.A.N. Team Drug Task Force,
Marion Police Department, and
Grant County Sheriff's Department,

Plaintiffs

vs

TYSON TIMBS, One (1) 2012
Land Rover LR2
VIN#SALFR2BG7DH322169,

Defendant

ORDER OF JUDGMENT

Pursuant to the Indiana Supreme Court's opinion issued on November 2, 2017, judgment is entered in favor of Plaintiffs and against the Defendant for forfeiture of one (1) 2012 Land Rover LR2 VIN#SALFR2BG7DH322169.

SO ORDERED, this 9 day of November, 2017.

/s/ Jeffrey D. Todd
JEFFREY D. TODD, JUDGE
GRANT SUPERIOR COURT 1

STATE OF INDIANA	)	IN THE GRANT COUNTY
	) ss:	SUPERIOR COURT 1
COUNTY OF GRANT	)	CAUSE NO. 27D01-1308-MI-92

STATE OF INDIANA, and the J.E.A.N. Team Drug Task Force, Marion Police Department, and Grant County Sheriff's Department,	)
Plaintiffs,	)
vs.	)
TYSOM TIMBS, and One (1) 2012 Land Rover LR2 VIN#SALFR2BG7DH322169,	)
Defendants.	)

ORDER GRANTING DEFENDANTS' MOTION TO WITHDRAW ORDER OF JUDGMENT AND SUSPEND PROCEEDINGS PENDING APPEAL TO THE UNITED STATES SUPREME COURT

The Court, having considered Defendants' Motion to Withdraw Order of Judgment and Suspend Proceedings Pending Appeal to the United States Supreme Court and all related filings and being duly advised, now GRANTS said motion. Accordingly, the Court WITHDRAWS its prior Order of Judgment dated November 9, 2017. Further proceedings are hereby STAYED pending the resolution of all appeals.

SO ORDERED, this 15 day of November, 2017.

/s/ Jeffrey D. Todd
JEFFREY D. TODD, JUDGE
GRANT SUPERIOR COURT 1

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