No. _____

In the
Supreme Court of the United States

ANDRE JENKINS,
Petitioner,

v.

CITY OF CLEVELAND,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Ohio Eighth Appellate District, County of Cuyahoga

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. The questions presented here centralize issues related to whether the warrantless seizure here of money for forfeiture (by local police) can be justified. While it was seized in the wake of a very minor traffic offense, here involving a car that arguably was *parked illegally* which may without any documentation, simply turned over to the Government for forfeiture - - thus avoiding the State's own forfeiture procedures. Before that happened the officers learned the vehicle was owned by a convicted drug offender, and the driver (once identified) turned out to be a recently released notorious drug dealer. (See ***U. S. v. Jenkins*, 285 F. Supp. 2d 999 [N.D. Ohio 2003])**.

Our thesis is that once this money was seized in the name of the State it *in rem* jurisdiction vested and it was this impervious to being lawfully supplanted. Indeed, this was because of the Concurrent Jurisdiction Doctrine. Here we rely on this Court's Opinions in ***Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294 U.S. 189 (1935)** and ***Hagan v. Lucas*, 35 U.S. 400, 9 L. Ed. 470 (1836)**. Postured then by the belief this is so, the prime reason, indeed one of the dispositive questions here asks:

> Isn't it a fact that the Cleveland Court should have invalidated any Federal Court forfeiture declaration it may have relied on.

This we believe was so because the facts show there is no way any federal Court could have properly acquired jurisdiction. This follows because the State Court never

relinquished its jurisdiction, which vested: *when seizures are made the name of the State.*

II. Another question asks how can it be so, given the right to challenge the lawfulness of any seizure is absolute, that a District Court can could abort the effort by a claimant, in a forfeiture, to show he was victimized **until** he first proves he was in lawful possession. Stated another way, does an owner have to prove lawful possession before he can challenge the seizure of his properly?

STATEMENT OF RELATED PROCEEDINGS

There are no related cases or proceedings that Counsel is aware of. This case involved an isolated incident.

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OTHER RELEVANT RULES AND AUTHORITIES

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, Andre Jenkins, respectfully prays that a Writ of Certiorari issue to review the judgment of the Ohio Court of Appeal for the Eighth Judicial District, which Judgment became final when The Ohio Supreme Court, on **July 23, 2019**, denied further appellate review. See ***Jenkins v. City of Cleveland,* 156 Ohio St. 1464 (2019)**.

OPINIONS BELOW

The Opinion here being centralized from the Ohio Court of Appeals and labelled ***Jenkins v. City of Cleveland*, 2019 Ohio 458**, is also reported in **2019WL520037**. **(See Appendix "B," at App. 2.)** A *prior* Opinion, ***Jenkins v. City of Cleveland***, was also unofficially reported in that manner, *i.e.*, **2017 Ohio 1054**, and at **2017WL1091058**.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment by the Court of Appeals was finalized on **July 23, 2019**, when the Ohio Supreme Court denied further appellate review. **(See Appendix "A," at App. 1)** So postured, the jurisdiction of this Court is invoked under **Title 28 U.S.C., §1257(3)**.

The issues in this case, which are most critical of the police, particularly the arresting officer in this case, and of the undisguised penchant of our local Courts to coddle him and others of his ilk makes for

Constitutional issues here of great general and public interest. This follows because of the extreme reluctance of our Courts in Ohio to credit the awesome significance of an indisputable reality, and how it is rotely exploited by those police with a mind to do so. Justice Scalia, which is hard to improve on. What he recognized, and so wrote is hard to improve on. What he recognized, and so wrote in ***Morrison v. Olson*, 487 U.S. 654 (1988)** "law enforcement is not automatic. It isn't blind … we know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning..." **Id., at 727-728.** Why this truly sagacious, indeed insuperably valid, thought does not receive the acclaim it deserves is not a mystery to this counsel. This follows because in our judgment most Courts arguably would prefer to continue gospelizing the testimony of police officers. This is especially so when it conflicts with an alleged wrongdoer's testimony - - and especially if he has a record or it is a drug case.

The point here being that what is most clear in these situations is that inasmuch as the police officer surely will pick a person he thinks he can more easily exploit. This he will do rather than engage those merely believed to be simple traffic offenders. It is in these situations that the officer's actions have really become personal. Actually, the person so stopped has truly been victimized. For his (or her) only crime was that of being on the officer's list of profiled or unpopular people, or on a list of people who are obnoxious (or only appear to be so) to the officer. In these circumstances, the motorist is literally at the mercy of the officer's ability to conjure up a violation.

Thus, the person stopped can be thrown into a searing contest he is almost always destined to lose.

If the above thesis is logical, then surely this Court should openly declare that where (as here) indisputably formidable and compellingly overwhelming evidence of a pretext is shown. Surely ***Whren v. United States,* 517 U.S. 806 (1996)**, was not intended to imperviously foreclose voiding what could otherwise be regarded as an invalid search. **Id., at 819**. For sure what was said in ***Whren,*** on this narrow point, was well calculated to mean something, or it would not have even been said if ***Whren*** was meant to close the door - - as some Courts feel it did on the profile stop issue. The reference is to the statement in that case that "there was nothing to really demonstrate that the actions of the officers were contrary to a normal traffic stop." **Id., p. 808**. The same quandary, for some of us, arises from the Court's reference to "the run-of-the-mine case[s]." **Id., p. 818**. What does that mean? Our belief is it means there could be a case where this Court will credit the belief rejected in ***Whren*** (as being virtually impossible) that police do sometimes lie about observed traffic offenses. And, that they do for ulterior reason.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principle provisions of the United States Constitution involved in this case are the search and seizure clause of the Fourth Amendment and the self-incriminating clause of the Fifth Amendment. Likewise, relevant here is the due process clauses of the Sixth and Fourteenth Amendments. The pertinent text of these reads as follows:

AMENDMENT IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

> confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The facts that engulf Andre Jenkins in this appellate effort are simply put. For that reason, they should be easily reckoned with and resolved, and would be but for a mindset on display here. This shows, as we see it, the extreme negative penchant of our Courts in these situations. It allows the State's version of the asserted facts to dominate what is regarded by them as simply believable. This is particularly so when there's the State's version of events and any other version conflicts with it. These conflicts are almost always resolved in favor of the State - - even when its implausibility (or irrationality) is manifest - - the case, here. The fact that it is done without the benefit of sworn testimony should be a problem for the Court and resolved in our favor.

In this case, there was a previous appeal, dubbed here ***Jenkins v. City of Cleveland*, 2017WL1091058 (8th Dist. Case No. 104768**), decided March 23, 2017. There, the Court ruled: "we find that the trial Court erred by dismissing Jenkins' Petition for the Return of Property, without a Hearing." **Id., ¶25**. This ruling was backgrounded by facts that showed Jenkins *supposedly* illegally parked his vehicle in front of a carry-out restaurant before the police accosted him for that "violation." In doing so, Jenkins and his passenger were hassled (as is always the case) by the police. Later, they learned the person to whom the car was registered was a major drug dealer, who had recently been incarcerated. The facts will also show that in the end, while engaged in visually looking at Jenkins in connection with the issuance of their ticket, it appeared to them (so they said) that Jenkins tried to hide something by reaching into the backseat of the vehicle. The Record shows this was not any foolish effort to retrieve something to menace their safety, which would have rendered their response appropriate. Jenkins felt offended here.

All that aside, he lodged this action, as he had a right to do, under favor of **O.R.C., §2981.03(A)(4)**. When he did that, there was no federal Court action afoot. And, there was no Court finding to the contrary even possible. Simply put then, let's be clear. There is absolutely nothing illegal about hiding something from the police to keep others from seeing it. This would be a very legal act. Of course, the absence of a Hearing, which was the Court's choice, leaves us with contested versions even of that event itself. Still, from that we know that what was in the box being put out of sight

was not a gun, or even drugs. It was money only. Still, in all, it was seized without probable cause by the police. Indeed, by these officers on their own authority. No other basis for its seizure can even possibly be shown.

As to this money, we do know that, to date, the police are yet to claim this money was being illegally possessed by Andre Jenkins. Also, we know that no longer is it a fact that, as the Cleveland police continue to believe, the **Jenkinses** of the world, especially those who are ex-convicts - - as was Andre Jenkins, have no rights the Cleveland Police are bound to respect. One of those rights is in the Fourth Amendment which is clearly written and protects him from being illegally subjected to the wrongful seizure of his property. This occurs, we have maintained, and shown, even when the seized money cannot possibly be connected to any illegal activity, and for sure the police lack probable cause. Still, some believe that **O.R.C., §2981.05**, does not apply to them. This is so because some Cleveland police officers believe they are above the law. They believe all they need to do in these situations is to simply turn the money over to the federal Government. And then most of it can end up in the City's coffers. Well, that is what happened here in the end.

Indeed, as ***Jenkins I*** shows, having been seized in the name of the State, jurisdiction over this money was vested in the Court of this State, arguably the basis of our belief this was so is **O.R.C., §2933.26** and ***State v. Jacobs*, 137 Ohio St. 2d 363 (1940)**. Also see **O.R.C., §2981.05**. Thus, given the will of our Legislature, as expressed in **§2981.03(A)(4)**, ***Jenkins I*** got it right in

that segment of the Opinion aptly dubbed therein ***Factual and Procedural History* (¶¶2-6)**. This, because it fairly shows how difficult it is to even get to the lawfulness of the seizure issues.

Indeed, we are still maintaining that because, as our Supreme Court stated when it decided ***State v. Haynes*, 25 Ohio St. 2d 264 (1971)**, federal standards apply to all constitutional issues, even in Ohio. **Id., p. 267**. This is significant, because it may happen that one day the City will realize that they can be compelled to prove the monies here were lawfully seized. See ***One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965)**. This follows because even Cleveland Police officers cannot *willy nilly* turn over people's money to the federal Government for profit. This simply because they want to. Indeed, given the money was seized in the name of the State, **only** a Court can release this money to anyone other than the person from whom it was taken - - in our judgment.

Of course, the real truth is that rather than talk about why they no longer have possession of this money and try to explain to this Court what made them think they had been empowered to give this money to anyone, including the federal Government, in spite of **O.R.C., §2933.26**, they will again simply ignore the issue. Can that be right? Well, the fact that this is so seems clearly to be because our Courts simply allow them to do this. Why?

STATEMENT OF THE FACTS

Regardless of the thesis that will be advanced by the City, the one fact it will not be able to avoid could not be any clearer. It stems from the fact that the Fourth Amendment applies to all aspects of the seizure made of Andre Jenkins *and* of his money. This is really Hornbook Law. Yet, it happened the money involved here was seized. The lawfulness of this warrantless seizure is yet to be determined. And, that seems to be alright with our Courts. Why is this so?

Given that aside from the fact no contraband of any sort was found, and only a very minor traffic ticket was issued, these officers nonetheless seized these monies. Understand this was done despite the fact they lacked probable cause to do so. Given we know the only possible basis for its seizure, under the law, if they were enforcing the Ohio forfeiture law, is two-fold. **O.R.C., §2981.05**, provides the sole basis for the seizure of property not incident to an arrest. Also, it is clear the City contended it no longer had possession of these monies because they gave it to the Government. In making that argument, it seems clear enough the *onus* should have been on them to prove they did so lawfully. Saying, "this is what was done", was hardly enough. This because the money was being held by them as a mere custodian for a Court and there were still other issues involved that required a resolution from the Court in whose possession the money was being held, subject "to orders of the Court." **O.R.C., §2933.26**. When read in the light of ***State v. Jacobs*** this is made clear.

Here, too, it should not be ignored that this argument was made before by the City of Cleveland - - *i.e.*, that once before they had while acting on their own authority arrogated unto themselves, gestapo style, the right and power to dispose of these monies. Here, reference is to ***Black v. City of Cleveland*, 58 Ohio App. 29 (8th Dist. 1978)**. There, the police gave away a large quantity of whiskey seized in the raid of an afterhours cheat spot. And, our Court of Appeals rightly treated the whiskey as being a fungible item, not unlike this money here, and ordered the value of property returned. So in this case, let's be clear. There is nothing in the law that commissioned Cleveland police officers to conspire with any other law enforcement agency, or any of its employees, to profit if they would seek a forfeiture in the Government's name - - which arguably occurred here.

Next, we do contend the law is clear: all money seized in the name of the State arguably becomes subject to the orders of a State Court insofar as to how it should be disposed of. This means the Cleveland police would have been powerless to give this money to anyone - - including the federal Government. This is so all the moreso since they were also under the policies initiated by the U.S. Attorney General. Also, see **O.R.C., §2933.26** and ***State v. Jacobs, passim***.

Postured by the above analysis, which is really incontestable, clearly the *onus* is, and was, on the State to prove the police acted properly when they turned the money over to a group of agents of the federal Government regardless of the reason. This is so because whoever did that was wrong in turning over

the money, and the person who took it was way out of line. Surely then, they will show the Court, they not only had power to do so (while acting on their own authority), but they did so in accordance with the laws of the State and the Federal Government and, they will show us why that is so. This will be done, we suppose, by reference to any logical resolution predicated on facts rather than warped rhetoric. Indeed, of the type we will get from the City.

In any event, sooner rather than later, it only makes sense that some Court will simply have to address the fundamental issue here. It recognizes the significance of the absence given the above quote from ***State v. Jacobs, passim***. Not only is it a fact the seizure simply cannot be defended in law, logic, or common sense, but the reality is that no Court authorized this money (that was seized in the name of the State) to be removed from the custody of the State. See **O.R.C., §2933.26** and ***State v. Jacobs***, ***passim***. The fact it was actually removed on the basis of a warrant, from its mere custodian, hardly constitutes the type of action that could vest *in rem* jurisdiction on the federal system over this money. Some of us know this.

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

What really magnifies the issue being submitted to the Court actually distill from an insuperable thesis. Simply put, we have here a very discernible fact that shows clearly far too many officers have ulterior motive of the type in evidence, here, which clearly was based on a profiled belief if a targeted motorist is searched

along with his vehicle it will yield proof of wrongdoing are (in cases of this type a cache of money that they can simply seize for forfeiture) - - the case, here.

The arguments made below show that once they traced the vehicle, it showed it was registered to a somewhat recently convicted Major Drug Dealer. And they learned, once they encountered our Petitioner in the legally parked vehicle (on a public street), it was Andre Jenkins, who had recently come home after being released from federal prison following a sentence for having been caught with 73 kilograms of cocaine in his possession and a large sum of money. Understandably he was going to be hassled. The issues as to the lawfulness of these seizures were as the arguments below show. This because of the way the forfeiture systems at work here were used to abort this Petitioner's all out efforts to make use of the State's forfeiture schemes - - all to no avail.

Thus, here we are, our quest is for justice. So far it has been denied us. It is thus up to the Court whether they can get away with it.

ARGUMENT NO. I

DUE PROCESS IS INVARIABLY DENIED WHEN, WITHOUT A FACTUAL BASIS (AND SOLELY ON THE BASIS OF NAKED, UNCLAD, UNPROVEN, UNPROVABLE AND UNFOUNDED CONCLUSIONS), THE COURT CONCLUDES IT LACKED JURISDICTION TO DETERMINE WHETHER MONEY SEIZED INCIDENT TO AN ARREST BY LOCAL POLICE WAS FORFEITABLE - - INDEED, WITHOUT REGARD TO WHETHER IT WAS LAWFULLY SEIZED.

Simply put, no federal officers were involved in any way in the ticketed violation, or the seizure of this money from Jenkins. The question then is how could the State Courts, consistent with due process, allow the Cleveland police to literally subvert the law, *i.e.*, Ohio's forfeiture laws, with impunity, as was done, here? And, this by simply calling some federal agent and turning Jenkins' money over to him. This the officer did despite the fact the arrest was based solely on a traffic offense. Surely, it has to be that the State Courts had the power and an obligation to prevent the police from transferring property (seized "as evidence") in defiance of State law, because it was profitable to the City for them to do so.

Granted, the arguments made herein and placed before the Court will emphasize the fact that the police powers at work were vested in the officers involved by the State. **O.R.C., §737.11**. With this being so, the various prevailing positions taken in the Court below

to the contrary, notwithstanding, the contentions argued in this Brief are really unassailable. Specifically put, the original seizure of these monies under Ohio law, indisputably, vested our Common Pleas Court with jurisdiction over this property. This unassailable reality is augmented by the receipt given Jenkins for his money.

Clearly then, there was no way the State Courts should have subscribed to the warped belief, and the hollow proposition, that "enforcement of the drug forfeiture laws presents a plausible claim of urgency that is strong enough to dispense with normal due process guarantees" in cases such as this one. ***Krimstock v. Kelly*, 306 F.3d 40, at 66 (2nd Cir. 2002)**. The point here being emphasized is magnified further for those of us who recognize the awesome significance of the holding in ***Hagan v. Lucas*, 35 U.S. 400 (10 Pet. 400) (1836)**. There, the Court held the pendency of a State Court action (here the pendency of this case) involving the identical property was sufficient to bar any federal Court action with reference to the same property. This is the holding that is on appeal.

Most relevant then to any resolution of this appeal is the fact that (while it is doubtlessly true the trial Judge gave judicious and studied attention to certain aspects of our contentions) a grim reality remains. There were a number of disputed issues before the trial Court that required specific, factually based, findings by the Court. Some of these issues were subsumed and ignored in the disposition Entry, *i.e.*, the Judgment Entry being centralized. Of course, only one was

addressed - - the possession issue. See ***Jenkins v. City of Cleveland*, 2019WL520037**, of the Opinion. And, it was resolved on the basis of the naked and untenable assertion of a lack of jurisdiction.

For sure, as well, a primary issue turns on whether the original seizure of this money was illegal. Also, another asks whether (as we believe) the trial Court had *in rem* jurisdiction over this money vested from the point of its seizure, or from when our Motion was first filed. And, if it did not, it vested when it was first seized in the name of the State. Thus, an explicit finding was surely required to be made that bears directly on these precise issues. Simply put, the trial Court needed a factual basis for any conclusions concerning the whereabouts of this money, and its legal status, before ruling he lacked jurisdiction. Also needed is a finding that the seizure warrant issued to a federal agency can be equated to a Court in the jurisdictional dispute, and to a seizure made in the name of the State.

Of meaningful significance is the riddle as to how far afield did the State Courts below actually stray in refusing to give Andre Jenkins his day in Court? This the Court did by declaring that their Court's jurisdiction was trumped by counsel-opposite's naked and unclad pontification that it lacked jurisdiction. Critically important here is the fact that the State offered no evidence that showed when, if it ever happened, some federal Court acquired jurisdiction over this money.

For sure, there are those of us, which include the Court, that fully realize from the critical facts here that this seizure was consummated wholly and solely by Cleveland police officers. Clearly they believed, in counsel's judgment, that once they realized he had recently been released from prison in the wake of a conviction that showed he had once-upon-a-time been a major drug dealer in the Cleveland area,[1] and was actually driving a vehicle owned by one recently imprisoned for serious drug violations that he was fully clothed with probable cause; hence, when the search made of the vehicle revealed this money it had to be drug money. And, it was there for the taking, which is what they did. Also, we know this money, to be forfeited to the Government, had to be adopted which should have occurred before the State acquired possession. Well, we know that did not happen. Still we know the chief of the Cleveland police never applied for adoption (**O.R.C., §2981.14**) and we know none of the federal agencies applied. Then it could only be the Attorney General must have applied, but there is no proof that happened either. For if that had happened, rather than tell us the money had already been forfeited to the Government, its proof should have addressed that issue as well. This follows because the issue before the State Court challenged its jurisdiction. And, given the fact that the seizure by State officers in the name of the State vested jurisdiction in the State Court. How can it be the City prevailed here by proving it had the money?

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[1] ***U.S. v. Jenkins*, 285 F. Supp. 2d 999 (N.D. Ohio 2003)**, which case involved his possession of 73 kg of cocaine.

ARGUMENT NO. II

ABSENT A SPECIFIC FACTUAL FINDING THAT THE FEDERAL COURT HAD INDEED ACTUALLY, LAWFULLY, ACQUIRED JURISDICTION, AND GIVEN THAT "THE COURT THAT EXERCISES FIRST JURISDICTION" OVER SEIZED PROPERTY DOES SO EXCLUSIVELY, IT FOLLOWS THE COURT HERE ERRED WHEN IT DECLARED IT LACKED JURISDICTION OVER PROPERTY THAT WAS SEIZED IN THE NAME OF THE STATE.

Early on in this country the law was declared to be that "the first Court assuming jurisdiction" over *res* can maintain that jurisdiction to the exclusion of any other. See ***Penn General Casualty Company v. Pennsylvania*, 294 U.S. 189, at 195 (1935)**. Also see ***Hagan v. Lucas*, 35 U.S. 400 (10 Pet. 400) (1836)**, where it was held that even with slaves, once jurisdiction over them had vested in a State Court, it remained exclusively, therein. **Id., p. 403**. Admittedly, slavery in this country fortunately ended, but the law this case spawned is still compellingly valid.

Granted the State has argued the naked fact that because a Government agency had actually *seized* these monies, and actually had possession, and eventually, which seizure it created, as having occurred, this showing was dispositive. In our judgment this argument being hollow, indeed, goes too far. Simply put, (1) it ignores the fact that possession obtained through an invalid seizure neither strips the first Court

(our Court) of its jurisdiction nor vests it in the second. See ***Taylor v. Carry L*, 61 U.S. 583, at 599-600 (1957)**. And (2) it ignores the fact that our local Court acquired "*in rem*" jurisdiction before any other Court acquired superior jurisdiction - - if it ever acquired any.

Here it is worth emphasizing this Court is not without the power to sanction the City for unleashing police officers on the public who do not know right from wrong. ***City of Canton v. Harris*, 489 U.S. 378 (1989)**. For sure, ***Black v. City of Cleveland*, 58 Ohio App. 2d 29 (8th Dist. 1978)**, makes clear our Courts can rectify wrongs of this ilk. Cf., ***Rufo v. U.S.*, 20 F.3d 63 (2nd Cir. 1994)** and ***Mora v. U.S.*, 955 F.2d 156 (2nd Cir. 1992)**. Here we seek, in addition to the return of this money, attorney fees as well. On this point, the testimony will eventually show, the officers' malevolent motives were clear enough. Indeed, one does not have to even be very bright to understand what happened here and why.

Of course, it could not be any clearer the Courts below simply refused to address the issue that the case was properly lodged with our Common Pleas Court. Likewise, it is clear the State offered no proof the money was ever lawfully transferred to the Government. And, **the Appellant's action for the return of this money was lodged before any Court action was taken in federal Court**. Again, the facts here are indisputable that, before the Government filed its forfeiture action, the Appellant filed this action under favor of **O.R.C., §2981.03(A)(4)**. We deem that as being dispositive. With that being so, since money is fungible, who had custody of this money

when this was filed is relevant. This because under the law, which is indisputable the first Court to exercise *in rem* or *quasi in rem* jurisdiction, cannot be overcome, unless the property involved is turned over in a legitimate way to the other jurisdiction, and that simply did not happen here. It really is that simple. Yet, our Court looked the other way.

ARGUMENT NO. III

GIVEN THE FIRST COURT (STATE OR FEDERAL) TO ASSERT *IN REM* JURISDICTION, AND GIVEN THE SEIZURE WHEN IT WAS MADE BY THE STATE LAW ENFORCEMENT OFFICER (COULD ONLY HAVE BEEN MADE, LAWFULLY THAT IT) FOR PURPOSE OF AN *IN REM* FORFEITURE, AND GIVEN O.R.C., §2981.03(A)(4) CAN ONLY BE SAID TO HAVE AUTHORIZED CIVIL FORFEITURE (- - *I.E.*, THE *IN REM* FORFEITURES ACTIONS TALKED ABOUT IN O.R.C., §2981.05), IT FOLLOWS THAT THE GOVERNMENT'S COMPLAINT, FILED *AFTER* THESE MONIES WERE SEIZED IN THE NAME OF THE STATE (FOR FORFEITURE) AND AFTER THE APPELLANT'S ACTION, CLEARLY COULD NOT TRUMP THE EARLIER ACTION AS THE COURTS BELOW RULED IT COULD, THIS DESPITE THE FACT OF THE LAW IN THESE CASES MADE AND PROVIDED.

Given the efficacy of the above unassailable tenet (and with that being so), the Court's dispositive analysis, and related ruling encompassed in ¶36 of the its Opinion, simply cannot be defended in law, logic or commonsense. So, let's be very clear, the central issues distill from the following categorical tenet. As we see it, it seems clearly to mandate the Courts below were required to follow the following clear-cut thesis, fully applicable here, that:

> [I]f . . . two suits are *in rem* or *quasi in rem*, requiring that the court or its officer have possession or control of the property which is the subject of the suit in order to proceed with the cause and to grant the relief sought; the jurisdiction of one court must of necessity yield to that of the other. To avoid unseemly and disastrous conflicts in the administration of cur dual judicial system. and to protect the judicial processes of the court first assuming jurisdiction. , the principle . . . is established that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other.

***Pennsylvania General Casualty Co. v. Pennsylvania*, 294 U.S. 189 (1935)**. Also see ***Donovan v. Dallas*, 377 U.S. 408, at 412 (1964); *Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456 (1939);** and ***U.S. v. $506,231.00 in U.S. Currency*, 125 F. 3d 442 (7th Cir. 1997)**.

Also, this Court should recognize that it can hardly ignore the efficacy of our belief that it should comment, and reject our contention, that the idea the Supreme Court has actually recognized that once jurisdiction actually vests, as it did here, in the State Courts, only that Court (or some other State Court) can lawfully relinquish its hold on that money.

With that being so, a critical fact is that not only the trial Court, but the Court of Appeals, in, both, of its Opinions, seem clearly to refuse to reckon with the central question here. It asks, which was the first Court to exercise *in rem* jurisdiction? Simply put, the

issue does not turn on who had possession when Jenkins filed this lawsuit. This follows because it has never been a fact in the history of the world that might make right. Indeed, the fact that the Courts below failed to credit the fact that, under the law of the State, inasmuch, as this money was being held subject to the orders of a State Court (indeed by the police we suppose), one thing is clear. There is no way it can be said that action literally trumped the will of the Legislature - - that is, as expressed through **O.R.C., §2933.26**, which informs us that items seized in the name of the State are being held subject to its Orders.

For me, given the fact that the dispositive law on this issue is encompassed in the following thesis that shows the resolution of this dispositive issue is clear enough. The seizing of the money by the Government, in the wake of the warrant it relies on, cannot be viewed as the type of judicial act that is capable of vesting *in rem* jurisdiction in the federal Court. On the other hand, given there was never any *in personam* jurisdiction over this money, as was the situation in ***U.S. v. $174,206.00 in U.S. Currency*, 320 F.3d 658, at 661 (6th Cir. 2003**), the Government's reliance on that case is misplaced. This follows because in that case, the seizure there made was on the basis that the money was evidence related to the criminal charges Thomas Richard and his brother were charged with and convicted of. Here, the basis for the seizure had to be solely for forfeiture. This follows because other basis for the seizure ever existed. And, the sole charge made against Jenkins was a traffic offense, related to illegally affecting the flow of traffic - - nothing else. He was simply given a ticket. Yet, his money was taken.

Because this was so and nowhere has it ever been contended that the State ever asked that it be adopted, as could have occurred, (**O.R.C. §2881.14**) it has to be that there was a direct adoption here made at the Government's request. But we have no proof that is what occurred.

Thus, so far as we know, there has never been even a showing these monies were lawfully seized, or a finding as to how the Government even got possession of this money, yet the State Court made the finding (in effect) the State Court lacked jurisdiction.

For those of us capable of the required level of sophistication in assaying legal issues above the Hornbook level, let's be very clear. We recognize, as should the Court, that there is no way the seizure by the police of this money from Andre Jenkins can ever be defended. Likewise, we are contending the concurrent jurisdiction doctrine resolves itself here in his favor if we merely credit his filing in the wake of **O.R.C., §2981.03(A)(4)**, a sort of forfeiture action was indeed then pending for sure. And this fact would survive any claim of jurisdiction even if the argument is made there was no forfeiture action lodged by the State pending before the Government's complaint was filed. Our thesis then would be Jenkins' action was indeed a forfeiture action since it was filed under our forfeiture statutes.

What seems clearly to be the fact is the trial Court, as well as, the Court of Appeals, both, have missed the point that money is fungible and the money taken from Jenkins, by the Cleveland Police, at all times regardless of who had actual custody, was being held

subject to the Orders of the Common Pleas Court. See **O.R.C., §2933.26** and ***State v. Jacobs*, *passim*,** which makes that clear enough. With that being so, it could not be any clearer that absent proof that while the Government may have acquired possession of the actual money, the fact of that possession is irrelevant here. This because *in rem* jurisdiction did not vest in the federal Court in the wake of that acquisition. The seizure itself was in contemplation of the Government filing a forfeiture complaint, which it did on **March 1, 2016**. Undeniably, the date shows the Government's action was filed too late, here. And, it clashed with the "concurrent jurisdiction" concept.

Again, the critical facts then show the officers' seizures could only have been in contemplation of a belief it was subject to civil forfeiture (**O.R.C., §2981.05**), since there was no basis to even believe it could be connected to any crime. While we also believe that reality must be reckoned with the complaint in this case was filed on **November 10, 2015**. Clearly, this date is earlier than the date the Government filed its complaint, which was March 1, 2016 - - a critical date here.

On the other hand, there is an easy way that issues of this ilk could be prevented. This would occur if the Court recognized on this Record, the obvious - - that the lodging of a civil action under favor of **O.R.C., §2981.03(A)(4)**, is an *in rem* Court action.

ARGUMENT IV

GIVEN THE FUNDS IN A FORFEITURE CASE WERE INDISPUTABLY SEIZED BY LOCAL POLICE, AND GIVEN THE ONLY POWER THE OFFICERS HAD TO DO SO WAS THE STATE'S FORFEITURE STATUTES (- - HERE, O.R.C., §2981.14) WHICH VESTS JURISDICTION IN THE STATE'S COURT, CAN THE LOCAL POLICE *WILLY NILLY*, AND ON THEIR OWN AUTHORITY, TRANSFER AND VEST JURISDICTION IN THE FEDERAL COURT DESPITE THE "CONCURRENT JURISDICTION DOCTRINE."

Here, the facts are clear: there was no involvement by any federal law enforcement officers in the seizure of these monies. It was achieved in the wake of a very minor traffic offense involving a parked vehicle. The money was seized incident to a search made of the vehicle. Indeed, in spite of purging the money, it was turned over to the Government and a federal seizure action was filed. We contend given "the concurrent sentence doctrine" only the State Courts had jurisdiction over that money. See ***Little v. Gaston*, 232 So. 231 (Ala Civ. App. 2017)**. There it was said:

> A federal forfeiture proceeding may not be initiated against property seized by State or local law enforcement while the property remains subject to the *in rem* or *quasi in rem* jurisdiction of a State Court, as the Court first assuming *in rem* jurisdiction over the property retains jurisdiction to the exclusion of all others.

Here, the law then seems clearly to be, as stated in the Government's **Asset Forfeiture Policy Manual (2019)**, that:

> *A State Court may be deemed to acquire jurisdiction over property seized by a State or local agency* in a variety of ways, including where a State or local agency seizes the property pursuant to a State search warrant or seizure warrant . . . where a party files an action in State court seeking the return of the property, or even *where a state or local law enforcement officer simply seizes the property in the absence of state process. If a state court has in rem jurisdiction over property, the state court must relinquish jurisdiction before any initiation of federal in rem forfeiture.*

Id., p. 69. If there is another way, and it will explain what happened, then surely it will be used by counsel to with this case of course the opposite will really say all we need to prevail to win this case - - if that is possible and we doubt that it is.

Given Ohio statutes[2] and case law[3] place items seized by local law enforcement officers under judicial control, it follows any seizure made in the name of the State constitutes an assertion of jurisdiction by the

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[2] **O.R.C., §§2933.24-2933.26 & 2981.03, *et. al.***

[3] ***State v. Jacobs*, 137 Ohio St. 363 (1940)**; ***Demetrius Harris v. City of Mayfield Heights*, No. 95601, 2011WL1584579 (8th Dist. OH April 21, 2011)**; and ***Long v. Ohio*, 2012-Ohio-366 (Dec. 5, 2012)**.

State Courts over the seized items. In a nutshell, the precise contention here being made is easily stated: this seizure fell within the ambit of Ohio's legislative and case law schemes. These schemes mandate that all property seized in the name of the State must invariably be held subject to further orders of the Court. Clearly the jurisdiction that vested in the wake of this seizure was *in rem* jurisdiction. This thesis is fully consistent with the way concurrent jurisdiction issues should be resolved by all federal agencies. It is all the more significant here. Since the trial Court never concerned itself with the position we had taken that these monies were simply taken by these police officers and turned over to the Government.

With this being so, it follows the asserted jurisdictions over these monies by the federal Court simply cannot survive meaningful scrutiny. Obviously, the local Court saw it otherwise. So postured, what this case makes so compellingly clear is these officers were literally powerless to seize any property on their own authority. Simply put, they were literally without any power to transfer this property with such mercenarious intent to the Government. Moreover, surely these local police officers could not so calculatingly avoid very precise laws of this State by a simple act of contumacy. Now, as we understand it, the State is basically arguing that the Government's actual possession of this money is all that was required for it to have jurisdiction. Of course, this argument ignores a grim fact: "Possession obtained through an invalid seizure neither strips the first court of jurisdiction nor vests in the second . . .." ***U.S. v. $79,123.49 in U.S. Currency*, 830 F.2d 9 (1971)**.

CONCLUSION

What magnifies the compelling facts that centralize our contention, here, which is what the Ohio Courts in this case simply do not get it, is easily put. For if they did, they would have understood that once these Cleveland police officers seized these monies, in the wake of the very minor traffic parking violation, jurisdiction vested in the State's Court - - here, the Cleveland Municipal Court. With that being so, unless and until that Court relinquished its Jurisdiction, no other Court could possibly acquire Jurisdiction. Simply put, the tenet that says this is really Hornbook Law.

Indeed, it is a long-standing principle we rely on, here. It holds the jurisdiction that had already vested (in the Cleveland Municipal Court) upon the seizure, was literally impervious to be divested thereof by the Federal Court. Our belief, and hopefully the Court's is, the State Courts had jurisdiction over this money from the moment it was taken from our Petitioner **in the name of the State,** and it was relinquished by the State. Indeed - - no basis in law exist that shows there is a reason why this Court should depart from its holding ***Penn General Casualty Co. v. Pennsylvania,* 294 U.S. 189, 195 (1935),** or ignore its full thrust.

Having said that, nothing further need be said.

Respectfully submitted,

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