No. 22-7132

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ABRAHAM A. AUGUSTIN — PETITIONER
(Your Name)

vs.

BRADLEY COUNTY SHERIFF'S OFFICE, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals of Tennessee at Knoxville
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Abraham A. Augustin
(Your Name)

P.O. Box 1032
(Address)

Coleman, Florida 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER A CLAIM FOR MISSING PROPERTY THAT WAS NEVER FORFEITED NOR RETURNED TO THE PROPERTY OWNER SHOULD BE DISMISSED AND DEPENDENT UPON A FAVORABLE OUTCOME OF OTHER PROPERTY THAT FORFEITED, ALBEIT ILLEGALLY?

II. WHETHER MODERN CIVIL-FORFEITURE STATUTES CAN BE SQUARED WITH THE DUE PROCESS CLAUSE AND OUR NATION'S HISTORY?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was November 21, 2022. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: December 6, 2022, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTEENTH AMENDMENT: No State shall ... 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.

Tennessee Code Annotated Section 4-5-102. See Appendix E

T.C.A. § 4-5-322. See Appendix F

T.C.A. § 39-11-708. See Appendix G

T.C.A. § 40-33-201. See Appendix H

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T.C.A. § 40-33-213. See Appendix N

T.C.A. § 40-33-215. See Appendix O

T.C.A. § 53-11-201. See Appendix P

T.C.A. § 53-11-451. See Appendix Q

I. QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A CLAIM FOR MISSING PROPERTY THAT WAS NEVER FORFEITED NOR ETURNED TO THE PROPERTY OWNER SHOULD BE DISMISSED AND DEPENDENT UPON A FAVORABLE OUTCOME OF OTHER UNRELATED PROPERTY THAT WAS FORFEITED, ALBEIT ILLEGALLY?

II. WHEHTER MODERN CIVIL-FORFEITURE STATUTES CAN BE SQUARED WITH THE DUE PROCESS CLAUSE AND OUR NATION'S HISTORY?

II. JURISDICTION

Petitioner Abraham Augustin filed a claim for monetary damages due to civil rights violations in the Bradley County Circuit Court in Cleveland, Tennessee, on February 9, 2016. The circuit court dismissed the case on December 20, 2017 due to lack of subject matter jurisdiction. An appeal followed resulting in the Tennessee Court of Appeals affirming in part and reversing in part in a published decision issued on October 2, 2019. See **Augustin v. Bradley Cty. Sheriff's Office**, 598 S.W.3d 220 (Tenn. Ct. App. October 2, 2019). Upon remand, the circuit court subsequently dismissed the case on March 24, 2021. A second appeal followed resulting in the appellate court on November 21, 2022 affirming the lower court's dismissal. A petition for rehearing was timely filed and denied on December 6, 2022. A permission to appeal to the Tennessee Supreme Court was sought and denied on February 8, 2023.

This Court has jurisdiction pursuant to Rule 10(c) of the Supreme Court of the United States due to the Tennessee Court of Appeals' decision on an important federal question in a way that conflicts with relevant decisions of this Court.

III. INTRODUCTION

Following the seizure of Augustin's property by the Bradley County Sheriff's Office ("BCSO"), the seizures were divided into two categories. The first category consisting Augustin's cash ($15,640 in U.S. Currency) and a BMW vehicle were the subjects of forfeiture warrants and forfeiture orders. The BCSO applied for

forfeiture warrants for the cash and vehicle and forwarded them to the Tennessee Department of Safety which failed to serve Augustin these documents before forfeiting his property without fair-due process-notice. In fact, the Department of Safety mailed these forfeiture documents to North Carolina for service while Augustin was being housed in the BCSO's county, the Bradley County Justice Center ("BCJC") in Cleveland, Tennessee. Following the return of the forfeiture warrants as non-deliverable, forfeiture orders were issued and also mailed to North Carolina for service. Consequently, Augustin's cash and vehicle were forfeited without fair-due process-notice and he never received any notice before the forfeiture of his property.

Regardless of the illegality involved in the forfeiture of the first category of property, the Tennessee Court of Appeals refused to vacate the forfeiture and the matter is currently pending a granting of certiorari before this Court. See **Augustin v. TN Dept. of Safety and Homeland Security**, U.S. Supreme Court Docket # 22-6516, filed on January 11, 2023. It is the second category of seizures that is relevant to this case.

The second category of seizures consisting the seized contents of a U-Haul rental truck was never the subject of any forfeiture warrant nor forfeiture order. Furthermore, the contents were never returned to Augustin and instead either vanished mysteriously in the custody of the BCSO or still in its possession.

Following the remand of this case in the first appeal, the circuit court ruled Augustin would have to first obtain a vacatur of the forfeiture of the cash and vehicle before the claim for his still-missing contents could be adjudicated. Augustin informed the trial court that the cash and vehicle were processed by the Department of Safety—which is why the forfeiture of that property was subject to a judicial review—but not the U-Haul contents. The two cannot be merged as an unfavorable outcome in the judicial review in the chancery court would bar relief for the still-missing U-Haul contents in the circuit court. The circuit court refused to change its position. Consequently, this appeal followed.

IV. STATEMENT OF THE CASE AND FACTS RELEVANT TO THE QUESTIONS PRESENTED

The relevant facts necessary to frame the questions presented for review were stated in the Court of Appeals opinion issued previously. They are provided here for the convenience of this Court.

On December 3, 2009, the BCSO arrested Augustin on Hamilton County warrants for aggravated kidnaping and aggravated robbery. During this arrest, although no drugs or weapon was recovered from Augustin's person or vehicle, the BCSO seized his cash $5,790 (consisting $847 from his wallet and $4,943 in a sports bag) in U.S. Currency on drug pretense.

Since Augustin had no pending criminal charges in Bradley County and the warrants originated from Hamilton County, within a few hours of his arrest, he was turned over to the custody of Hamilton County. A Hamilton County magistrate set a bond, which Augustin posted on December 5, 2009. While on bond, on Wednesday December 9, 2009 the Federal Bureau of Investigation ("FBI") arrested Augustin on federal kidnaping and weapons charges. During this arrest, while assisting the FBI, the BCSO seized an additional $9,850 in cash and a U-Haul rental truck with its contents from Augustin also on drug pretense, even though Augustin was never found with any drugs in his possession. Furthermore, it also seized $8,669 in cash and an Infiniti G-25 vehicle from Augustin's codefendant, Lorrance B. Dais. Upon his federal arrest, Augustin was immediately turned over to the custody of the BCSO to be transferred from the arrest scene to the Bradley County Justice Center—where Augustin would remain from December 9, 2009 to approximately March 17, 2011.

During their arrest, Augustin and Dais asked the BCSO deputies to allow their female companion, Ms. Justine Vanorden, to continue driving the U-Haul rental truck to deliver the contents to Augustin's sister, but the BCSO refused, seized the contents and drove Ms. Vanorden to the local bus station where she was left with no money or vehicle to find her way back home to North Carolina.

Two days after Augustin's federal arrest, on December 11, 2009, the day of his scheduled Hamilton County arraignment, he was never taken to the arraignment. And during his absence, all pending criminal state offenses were suddenly and unexplainably dismissed, Augustin would not discover this until 2012 while in federal prison and investigating the whereabouts of the missing contents.

On December 22, 2009, the United States formally indicted Augustin on federal kidnaping and weapons charges (since his previous arrest on December 9 was the result of a federal complaint) and on March 23, 2010, superseded his indictment with seven additional charges, including a drug conspiracy and use of a firearm during said conspiracy. On October 20, 2010, Augustin was found not guilty of the drug conspiracy and use of a firearm during the conspiracy, but guilty of all other offenses. Augustin was sentenced on March 10, 2011. He was then transferred about a week later to Ocilla, Georgia, to begin his transition to federal prison. During his fifteen-month stay at the BCJC, the BCSO and Department of Safety never served Augustin any forfeiture warrants and forfeiture orders regarding his seized property.

V. SUMMARY OF THE ARGUMENT

I. The Tennessee Court of Appeals erroneously affirmed the circuit court's ruling. The circuit court erroneously merged the U-Haul contents—that were never the subject of a forfeiture warrant nor turned over to the Department of Safety for forfeiture proceedings—with the judicial review of the cash and vehicle, pending a favorable outcome in the chancery court. Pursuant to Tennessee Code Annotated Section 40-33-204(g), it is the receipt of the forfeiture documents by the Department of Safety that gives it jurisdiction over the property to commence forfeiture proceedings. The U-Haul contents that were never the subject of a forfeiture warrant should not be dependent upon the outcome of the forfeiture proceedings of property that was the subject of forfeiture warrants. It is the Department of Safety's involvement and decision that is subject to the judicial review. If the Department of Safety was never involved in the forfeiture of property, judicial review is inappropriate. And relief for any property—not

forfeited—that depends on a judicial review is erroneous and unconstitutional. Therefore, to deny relief for monetary damages due to constitutional violations until a favorable outcome is obtained in the judicial review for unrelated property—illegally forfeited—is unethical and unconstitutional.

II. The appellate court never addressed this issue challenging the constitutionality of the State's forfeiture statutes. Tennessee forfeiture statutes are unconstitutional for many reasons: First, they allow the forfeiture of property even when there is no criminal conviction for an offense giving rise to forfeiture or the criminal offense has been dismissed. And in instant case, they even allow forfeiture of property for drug offenses even when the property owner was never even criminally charged with—nor arrested for—drug offenses. Such procedures alone fail to comport with due process and our Nation's history. The forfeiture statutes create grey areas for corrupt officers to seize property unlawfully, out of greed, for profit as this Court has documented. Generally, modern civil forfeiture statutes have become a means for legal plunder. They do not provide the necessary legal protections to prevent the deprivation of property without due process. These statutes are enacted to give officers every technicality in an arsenal of almost unlimited tactics to seize property without any judicial oversight and deprive property owners of fair—due process—notice before forfeiture of property. Having become a means to pillage poor and vulnerable communities, these statutes do more harm than good. In fact, early in our Nation's history this was non-existent. Outside of a limited class of crimes, such as piracy, forfeiture of one's property was unheard of. The architect of our Constitution would be horrified at our modern civil forfeiture statutes today, such as Tennessee's, that allow forfeiture of property for drug offenses even when there were no drugs found, no arrest for a drug offense, and never any probable cause to have arrested the property owner for a drug offense. This is a fairly recent phenomenon that has been antithetical to the Due Process Clause and must change. Pursuant to this Court's recent precedent analyzing laws that criminalize rights and conduct covered by the Constitution, one must examine if the right is covered by the Constitution,

and if so, how have the founding fathers addressed this issued in the past. Under this standard, modern civil forfeiture statutes are unconstitutional.

VI. BACKGROUND OF THE ISSUES AND REAONS FOR GRANTING THE PETITION

A.

A CLAIM FOR MISSING PROPERTY THAT WAS NEVER FORFEITED NOR RETURNED TO THE PROPERTY OWNER SHOULD NOT BE DISMISSED AND DEPENDENT UPON A FAVORABLE OUTCOME OF OTHER UNRELATED PROPERTY THAT WAS FORFEITED, ALBEIT ILLEGALLY.

A. Preservation of the issue.

Augustin first raised this issue in the circuit court in a pleading titled, Objections to February 3, 2021 Proposed Memorandum and Order, filed on March 8, 2021 (See Appellate Record Vol. III, 400). This issue was also raised on appeal as the first claim in the appellate brief. It was again raised in the petition for rehearing to the Court of Appeals and permission to appeal to the Tennessee Supreme Court. This issue was raised and preserved at every stage.

B. Reasons for granting the writ.

The first issue presented for consideration pertains to the proper avenue of relief for a property owner deprived of property—never forfeited nor returned—seized by law enforcement under drug forfeiture pretense.

The right to not be deprived of property without due process by the states is protected by the Fourteenth Amendment of the U.S. Constitution:

> No State shall ... deprive any person of life, liberty or property, without due process of law.

U.S. Const. Amend. XIV.

And this is also reflected in the Tennessee Constitution:

That no man shall be ... deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

Tenn. Const. Art. I. Section 8.

Since the BCSO never provided Augustin with a Notice of Seizure regarding the confiscation of the U-Haul contents—which would record the reason for the seizure—one could endlessly speculate the reasons the seizure occurred. However, since all of the December 3 and 9, 2009 seizures were on drug pretense, even though Augustin was never found with any drugs, one is more than likely to conclude the contents were seized also on drug pretense, thus opening for review the statutory scheme that would be—and should have been—applicable to the seizure and forfeiture of the contents under the Tennessee Drug Control Act.

Pursuant to Tennessee Code Annotated Section 53-11-451(a), certain property is subject to forfeiture, including controlled substances, vehicles used or intended for use to transport or facilitating the transportation of controlled substances, and all "moneys ... used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act ...." Tenn. Code Ann. §53-11-451(a). See **Appendix Q**. Property seized under section 53-11-451(a) is subject to the forfeiture scheme outlined in Tennessee Code Annotated §40-33-201, et seq. ("All personal property, including conveyances, subject to forfeiture under ... §53-11-451 ... shall be seized and forfeited in accordance with the procedure set out in this part."). The Tennessee Supreme Court has described the procedure applicable in this situation "as following 'an administrative model for forfeiture of property.'" **State v. Sprunger**, 458 S.W.3d 482, 495 (Tenn. 2015) (quoting Helms v. Tenn. Dep't of Safety, 987 S.W.2d 545, 547 (Tenn. 1999)).

In the published opinion issued during this case's first appeal, the appellate court expounded on this procedure in great detail. See **Augustin**, 598 S.W.3d at 227-29. Since not one of these procedures was

followed, they are irrelevant to this claim and are germane only as a model that should have been—but never—followed.

Take for example, Section 40-33-203 and its requirement:

> Upon effecting a seizure, the seizing officer shall prepare a receipt titled a Notice of Seizure. The Notice of Seizure shall be a standard form promulgated by the applicable agency.

T.C.A. §40-33-203(a). See **Appendix J**.

Furthermore, Subsection (c) of that statute states:

> Upon the seizure of any personal property subject to forfeiture pursuant to §40-33-201, the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a Notice of Seizure.

Id.

The subsection then lists the six requirements "the Notice of Seizure shall contain": "(1) A general description of the property seized ...; (2) the date the property was seized and the date the notice of seizure was given to the person in possession of the seized property; (3) the vehicle identification number (VIN) ...; (4) the reason the seizing officer believes the property is subject to seizure and forfeiture; (5) the procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and (6) the consequences that will attach if no claim for recovery is filed within the applicable time period." T.C.A. §40-33-203(c)(1)-(6). Id.

Undoubtedly, none of these requirements was followed. And if one is still unconvinced of this, then the requirements and failure of the next statute make clear the BCSO's intentions. Section 40-33-204 mandates that following the seizure of the property,

> no forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with this section by a general sessions, circuit, criminal court or popularly elected city judge. The forfeiture warrant shall authorize the institution of a forfeiture proceeding under this part.

T.C.A. §40-33-204. See **Appendix K**.

The statute is clear in its explicit statement that it is the issuance of the forfeiture warrant that authorizes the institution of the forfeiture proceeding under this part. Therefore, if no forfeiture warrant is issued then there is no authority for forfeiture proceedings. And in such a case, the statutes provide the next step the seizing agency, the BCSO, must follow:

> If no forfeiture warrant is issued, and the property is not intended for evidence in a criminal proceeding, the seizing officer shall immediately return the property to the owner ... or if the owner cannot be determined, to the person in possession of the property at the time of seizure.

T.C.A. §40-33-204(h). See **Appendix K**.

Since no forfeiture warrant was sought nor issued for the U-Haul contents, and the property was not immediately returned, then perhaps it was needed for evidence in a criminal proceeding. In fact, all documents regarding the seizure provided to Augustin suggest the U-Haul contents were seized initially to be searched. Furthermore, in the published Augustin opinion issued during the first appeal, the Court of Appeals recognized this issue when it stated:

> This is particularly important as to Appellant's allegation that Appellee improperly disposed of his U-Haul and its contents, as none of the documents in the record indicate that it was seized in accordance with procedures outlined in section 40-33-201 et seq.

Augustin, 598 S.W.3d at 234.

See **Lankford v. City of Hendersonville**, ___ S.W.3d ___, 2018 Tenn. App. LEXIS 165 (Tenn. Ct. App. March 29, 2018), appeal denied, ___ S.W.3d ___, 2018 Tenn. LEXIS 458 (Tenn. July 18, 2018) (Inmate's personal property was not seized under the forfeiture statutes because assault and aggravated assault were not among the offenses giving rise to forfeiture proceedings, and the property was seized in the course of a criminal investigation, not as part of a civil forfeiture proceeding.). Also see **Sprunger**, 458 S.W.3d at 498, ruling the State of Tennessee did not comply with the procedural requirement in a forfeiture proceeding because there was "no indication that there was any agency involvement in the forfeiture proceeding at all. Significant parts of the remaining procedures, such as the affidavit supporting

the forfeiture warrant, the record of any ex parte hearing on the application for the warrant that may have occurred, and most importantly the instructions to the property owner on how to contest the forfeiture, are likewise either missing or never existed."

And documents before this Court today suggest the contents were never released at all, as initially proposed during the first appeal, as no signature exists for the person the property was thought to have been released to. (III R., 304)

The evidence supports the BCSO did not comply with the procedural requirements and because the Department of Safety was not involved in the proceeding nor was there even a forfeiture proceeding, the U-Haul contents claim is not even remotely related to a forfeiture proceeding subjected to a judicial review. The circuit court, therefore, erred in dismissing the monetary damages for the U-Haul contents claim until an unrelated judicial review should reverse the forfeiture for the cash and vehicle.

The appellate court's most recent opinion is erroneous and has created precedents where law enforcement can seize certain property that are drug related and use such property as leverage to seize additional ones unrelated to drugs. In the end, by requiring the property owner to first prevail in a judicial review for property that are drug related, such a position prevents him from obtaining relief for property that are non-drug related, seized, never returned nor forfeited. Take for example, law enforcement who seizes a motorist vehicle because he was observed purchasing a small amount of marijuana for personal consumption across town. One could easily make the case the motorist violated §53-11-451(a)(4), which describes goods that are "subject to forfeiture" and includes,

> All conveyances, including aircraft, vehicles or vessels that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of [narcotics].

T.C.A. §53-11-451. See **Appendix Q**.

Marijuana, no matter its amount, is a controlled substance under Schedule I and, accordingly, more dangerous than cocaine, a Schedule II. And let's say after the arrest, such law enforcement drove across town to seize the motorist's OTHER vehicles and property not used in the narcotics violations. And although law enforcement easily proved the motorist purchased and transported marijuana and, consequently, forfeited his vehicle as a result, law enforcement makes no attempt to forfeit the OTHER vehicles and property also seized but not used in the narcotics violations. In fact, law enforcement never seek a forfeiture warrant for such property nor ever returned them to the property owner. And when relief is sought for this clear constitutional violation, the court requires the property owner to first obtain a vacatur of the forfeiture of the forfeited vehicle used in the narcotics violations before granting relief for law enforcement's constitutional violations in having deprived the property owner of his property without due—fair notice—process. This is wrong and unconstitutional.

B.

MODERN CIVIL-FORFEITURE STATUTES CANNOT BE SQUARED WITH THE DUE PROCESS CLAUSE AND OUR NATON'S HISTORY.

A. Preservation of the issue.

Augustin raised this issue on direct appeal. It was also raised in the application for permission to appeal to the Tennessee Supreme Court.

B. Reasons for granting the writ.

The second issue presented for consideration pertains to the constitutionality of the forfeiture statutes, §40-33-201 et seq., as to whether they comport with the Due Process Clause and our Nation's history.

As an initial note, pursuant to §53-11-451(b), property "may be seized [by law enforcement] upon process issued by any circuit or criminal court having jurisdiction over the property," or

> Seizure without due process may be made if: (1) the seizure is incident to an arrest or a search warrant ...; (2) the property ... has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding ...; (3) [law enforcement] ... has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or (4) [law enforcement] ... has probable cause to believe that the property was used or is intended to be used in violation of [Tennessee Drug Control Act].

T.C.A. §53-11-451(b)(1), (2), (3), & (4). See **Appendix Q**.

The authority of law enforcement to seize a citizen's property based on *probable cause* that the property was used or is intended to be used in violation of the Drug Control Act has been the most problematic, controversial, and abused. Usually, this *probable cause* is corroborated by a criminal court and/or the same criminal court exercising jurisdiction over the criminal prosecution and filed charges. In instant case, Augustin was never charged with any criminal charges nor was he provided the opportunity to challenge this *probable cause*.

This Court and the Tennessee Supreme Court have both clarified that forfeiture actions are in rem, regarding the property; while they proceed parallel to criminal prosecutions and are "based upon the same underlying events," they are civil in nature. **United States v. Ursery**, 518 U.S. 267, 274 (1996); **Stuart v. Tenn. Dep't of Safety**, 963 S.W.2d 28, 34 (Tenn. 1998). But the Tennessee Supreme Court has had to acknowledge the forfeiture statutes have at times been abused by law enforcement.

> Recently, critics of civil forfeiture have suggested that law enforcement has in some instances abused civil forfeitures and have emphasized that forfeiture can occur even where there is no conviction for the underlying offense. ... Tennessee courts have noted that, under Tennessee's statutes, forfeiture can occur even where the underlying criminal charges are dismissed. See, e.g., Watson v. Tenn. Dep't of Safety, 361 S.W.3d 549, 557 (Tenn. Ct. App/. 2011); Hargrove v. State Dep't of Safety, No. M2004-00410-COA-R3-CV, 2005 WL 2240970, at *2 (Tenn. Ct. App. Sept. 15, 2005).

Spunger, 458 S.W.3d at 493.

The court's language of "no conviction for the underlying offense," especially, "where the underlying

criminal charges are dismissed," imply an understanding that the defendant would also be charged with criminal charges in connection to the seizure of property. In order for criminal charges to be *dismissed*, they must have first been filed. And the criminal charges are to be for the "*underlying offense*" constituting the property seizure.

It is also the understanding of the court's language that the seizure of property "proceed parallel to criminal prosecutions and are based upon the same underlying events," while being civil in nature. Therein, this finding of probable cause for the criminal arrest and prosecution is simultaneously the same for the seizure of property. The two events—one criminal and the other civil—are inextricably intertwined, "proceed parallel" and form "an underlying offense." However, although they proceed parallel, the dismissal of one is nugatory on the other. Nevertheless, there must exists some probable cause that is usually manifested in a criminal arrest or prosecution. For example, narcotics found in the possession of a defendant is an "underlying offense."

This presents a conundrum: Can law enforcement seize a citizen's private property for narcotics violations without having the probable cause (i.e., evidence of narcotics violations) to initiate a criminal arrest and prosecution for narcotics violations? In such an event, the forfeiture proceeding would not be parallel to the criminal prosecution and based upon the same underlying events (or offense) as this Court originally intended.

1. No arrest for narcotics violations is incompatible with property seizure for narcotics violations.

The policy that one's property can be seized for narcotics violations, even though one is not arrested for narcotics, is ripe for abuse and needs to be overturned. It is law enforcement's authority and understanding that they do not need a conviction for an offense (before pursuing forfeiture) that would

incite them to pursue forfeiture in cases where the defendant was not even criminally charged with an offense giving rise to forfeiture.

It is Augustin's position that the forfeiture statutes create an open window for officers to abuse them. The forfeiture laws allow forfeiture to proceed even when the criminal violation (that gave rise to the property seizure) has been dismissed. Even though this is unconstitutional, at least in those cases it can be said there was an initial determination by a judge that some inkling of probable cause had existed at some point and it was enough to result in initiating a criminal arrest and prosecution.

But in Augustin's case, where there was no criminal arrest for narcotics violations because there was no narcotics found, but the property was seized for narcotics violations, this created the opportunity for abuse. Take for example the different seizure notices issued by the seizing officers during the two arrests for non-narcotics offenses: The December 3, 2009 Notice of Seizure for the $4,943 cash stated the Drug/Substance to be "Cocaine/Marijuana," while the notices for the BMW vehicle (Appellate Record I, 103) and $847 cash (A.R. I, 107)—also seized on the same day—stated only "Cocaine." And the amount of drugs also differed. All December 3, 2009 cash seizures stated the amount of "Cocaine" was "4 ounces" (A.R. I, 103 & 107), but the $4,943 cash notice added a "1 ounce" of "Marijuana" and the $9,850 cash notice disagreed stating it was instead a "1/2 ounce" of "Marijuana." The BMW vehicle notice stated the amount of Cocaine was "8 ounces" (A.R. I, 13). But the affidavit used to apply for the forfeiture warrants stated the Cocaine was "a ¼ kilogram of Cocaine," i.e., 9 ounces (A.R. I, 110). As the case progressed, the Cocaine more than doubled.

Apparently, each seizing officer had the authority to choose his own (combination of) drug(s) amount as the reason for the seizure. There never was a "1/2" or a "1 ounce" of Marijuana found anywhere or at any time throughout this case. The entire affidavit facts are manufactured and false. None of these allegations of narcotics violation was ever independently corroborated.

It is usually acceptable if evidence of narcotics violations exist to justify the existence of an arrest warrant or an arrest by law enforcement, then seizure of property may follow. The evidence to an arrest and/or the arrest itself corroborate the existence of probable cause for the narcotics violations. However, when no evidence exist for narcotics violations and no arrest or search warrant would be issued due to the absence of probable cause, can an officer simply seize property in the name of narcotics violations that no probable cause exist for? Augustin asserts it is the unconstitutionality of the forfeiture statutes that allows the BCSO to find no drugs during his two arrests for non-drug charges and yet seize all his property for (fabricated) drugs and amounts never recovered.

It is Augustin's position that a lack of probable cause to initiate an arrest should also serve as a bar to initiate seizures and forfeiture of property. Simply put, the lack of an arrest and filing of drug charges for drug violations should also prevent seizures of property for drug violations. If not, then corrupt officers can simply target high-end, luxury vehicles (or the usual opposite) for traffic stops (e.g., speeding or any other non-narcotics violations) and simply seize valuable and coveted property found during their search for drugs, even though the search turned over no drugs.

Remarkably, this Court has already commented on this very issue. Faced with the many well-documented abuses of forfeiture, Supreme Justice Clarence Thomas stated:

> Civil proceedings often lack certain procedural protections that accompany criminal proceedings, such as the right to a jury trial and a heightened standard of proof. Partially as a result of this distinct legal regime, civil forfeiture has in recent decades become widespread and highly profitable. See, e.g., Institute for Justice, D. Carpenter, L. Knepper, A. Erickson & J. McDonald, Policing for Profit: The Abuse of Civil Forfeiture 10 (2d ed. Nov. 205) (Department of Justice Assets Forfeiture Fund took in $4.5 billion in 2014 alone) ... And because the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture. Id., at 14 (noting that the Federal Government and many states permit 100 percent of forfeiture proceeds to flow directly to law enforcement), see also App. to Pet. Cert. B-2 (directing that the money in this case be divided between the "Cleveland Police Dept." and the "Liberty County District Attorney's Office.").
>
> This system where police can seize property with limited judicial oversight and retain it for their own use has led to egregious and well-chronicled abuses. According to one nationally publicized report, for example, police in the town of Tenaha, Texas, regularly seized the property of out-of-town drivers

passing through and collaborated with the district attorney to coerce them into signing waivers of their property rights. Stillman, Taken, The New Yorker, Aug. 12 & 19, 2013, pp. 54-56. In one case, local officials threatened to file unsubstantiated felony charges against a Latino driver and his girlfriend and to place their children in foster care unless they signed a waiver. Id., at 49. In another, they seized a black plant worker's car and all his property (including cash he planned to use for dental work), jailed him for a night, forced him to sign away his property, and then released him on the side of the road without a phone or money. Id., at 51. He was forced to walk to a Wal-Mart, where he borrowed a stranger's phone to call his mother, who had to rent a car to pick him up. Ibid.

These forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. Id., at 53-54; Sallah, O'Harrow, & Rich, Stop and Seize, Washington Post, Sept. 7, 2014, pp. A1, A10. Perversely, these same groups are often the most burdened by forfeiture. They are more likely to use cash than alternative forms of payment, like credit cards, which may be less susceptible to forfeiture. And they are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home.

Williams v. United States, No. 16-122, 197 L. Ed. 2d 474, 475-76 (2017).

Supreme Justice Thomas in a rare occurrence published an opinion castigating how some of the forfeiture statutes throughout the nation created their own inducement for abuse, and stated the sole reason why certiorari to this Court had been denied was because petitioner raised the claim for the first time in the writ application. The question presented was: Whether modern civil-forfeiture statutes can be squared with the Due Process clause and our Nation's history? Had petitioner raised this issue in the lower courts, the action (Lisa Olivia Leonard v. Texas, No. 16-122, 2017 U.S. LEXIS 1573, 197 L. Ed. 2d 474 (2017)) would have been granted certiorari and based on the numerous documented abuses that the states' forfeiture statutes create, it's doubtful this Court would have found them constitutional. Faced with the many well-publicized reports throughout the nation of local law enforcement abusing forfeiture statutes (as legal plunder), even though certiorari was denied, Supreme Justice Thomas still felt compelled to document these abuses and express the Court's skepticism in the constitutionality of these statutes by stating:

I am skeptical that this historical practice is capable of sustaining as a constitutional matter, the contours of modern practice, for two reasons.

Id. at 476.

"First, historical forfeiture laws were narrower in most respects than modern ones" and "were limited to a few specific subject matters, such as customs and piracy." Id. at 476-77. "Secondly, it is unclear whether courts historically permitted forfeiture actions to proceed civilly in all respects." Id. at 477.

> Whether forfeiture is characterized as civil or criminal carries important implications for a variety of procedural protections, including the right to a jury trial and the proper standard of proof. Indeed, as relevant in this case, there is some evidence that the government was historically required to prove its case beyond a reasonable doubt.

Id.

In the end, Supreme Justice Thomas concluded:

> Unfortunately, petitioner raised her due process arguments for the first time in this Court. As a result, the Texas Court of Appeals lacked the opportunity to address them in the first instance. I therefore concur in the denial of certiorari. Whether this Court's treatment of the broad modern forfeiture practice can be justified by the narrow historical one is certainly worthy of consideration in greater detail.

Id.

And examining today the State of Tennessee's forfeiture statutes with the many abuses they have created, by allowing forfeiture to proceed when the defendant was found not guilty and when the underlying offense was dismissed or where no criminal charges were ever filed in the first place, it is highly doubtful Tennessee's forfeiture statutes could pass the constitutional muster since they have become a legal plunder for local law enforcement (especially the BCSO reported to be the highest property seizing and forfeiting county in the State). One has to wonder, how many of these forfeitures were administrative forfeitures due to no claim being filed by the defendant because the claimant was incarcerated by the BCSO and the forfeiture warrants were sent to the defendant's home address where he would not receive notice, and thus never file a claim?

Frederic Bastiat, a French economist, statesman and author, wrote and defined "Legal Plunder," during the years of the Second French Revolution of 1848, in his classic book, The Law:

But how is this legal plunder to be identified. Quite simply: See if the law takes from some person what belongs to them, and gives it to persons it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime. Then abolish the law without delay. If such a law, which is an isolated case, is not abolished immediately, it will spread, multiply and develop into a system.

2. Lack of relief for still-missing U-Haul contents.

Another root cause of unconstitutionality of the forfeiture statutes is the grey area created for seizing officers, like BCSO Detective Carl Maskew, who seized property for narcotics violations but then never applied for a forfeiture warrant for said property or ever returned it. Detective Maskew seized the U-Haul's contents on December 9, 2009 without probable cause (in violation of §53-11-451(b) see **Appendix Q**), never provided Augustin a seizure notice (in violation of §40-33-203, see **Appendix J**), failed to apply for a forfeiture warrant (in violation of §40-33-204(b) and (c)(2), see **Appendix K**), and failed to "return the property to the owner" as required (in violation of §40-33-204(h)). The forfeiture statutes allow the BCSO to still keep the property only if "needed for evidence in a criminal proceeding," however, if this is not applicable or no longer needed, "the seizing agency shall return immediately the property to the owner." Tenn. Code Ann. §40-33-204(h).

Evidently, it is the issuance of the forfeiture warrant by a judge that removes the authority of the seizing agency (the BCSO) over the property and transfers it to the Tennessee Department of Safety. T.C.A. §40-33-204(g). Therefore, if no forfeiture warrant is issued, then the Department of Safety exercises no authority over the property. Subsection (h). If, as in this case, the BCSO violates all the seizure/confiscation provisions and doesn't return the property, what recourse is available for the property owner to seek its return? Section 40-33-213, a judicial review, is for the seeking of relief from "the decision of the applicable agency," i.e., the Department of Safety. See **Appendix N**. Not applicable

to the U-Haul contents. Section 40-33-215 does reward damages "if the seizing officer acted in bad faith in seizing or failing to return the property seized," but that's only if the defendant first "prevails in an action against a seizing agency." T.C.A. §40-33-215(a) and (b). See **Appendix O**.

The statutory requirement to first "prevail[] in an action against a seizing agency" is referring to a judicial review. This creates a grey area. Only if one prevails in a judicial review can one seek damages pursuant to §40-33-215. **Id**. If the property was never the subject of a forfeiture warrant to be forwarded to the Department of Safety, then a judicial review (that's only for the Department of Safety's decisions) in unavailable. And such an unavailability also disqualifies relief under §40-33-215 for the still-missing contents. Therefore, what proper recourse if available for the defendant in Augustin's case?

For example, the circuit judge of the BCSO case on remand agreed that Augustin's constitutional rights were violated throughout the forfeiture, especially regarding the missing U-Haul contents, but he required Augustin to first prevail in the judicial review before giving him relief for his missing property. But his judicial review would only be for the unrelated cash and vehicle. And only if Augustin first prevails in this judicial review can he obtain relief for the missing U-Haul contents. To tie the relief of the contents to the success of the vacatur of the forfeiture of his cash and vehicle is truly unconstitutional. The forfeiture statutes do not provide relief for a defendant such as Augustin whose property is seized, never forfeited, and never returned.

VII. CONCLUSION

In conclusion, the lower court should not have dismissed the monetary damages claim for constitutional violations pending a favorable outcome in the judicial review for unrelated, illegally forfeited property. In consideration of the Bruen decision by this Court, modern civil-forfeiture statutes cannot be squared with the Due Process Clause and our Nation's history.

VIII. RELIEF REQUESTED

Augustin begs this Court to grant the writ, vacate and reverse the judgment of the State court, find the dismissal decision by the lower courts unconstitutional, and that modern civil-forfeiture statutes cannot be squared with the Due Process Clause.

Dated this 15th day of March 15, 2023.

Respectfully Submitted,