No. 121636

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS ex rel. MATTHEW HARTRICH, State's Attorney of Crawford County, Illinois,	)	Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-15-0035
Plaintiff-Appellant,	)	There on Appeal from the Circuit Court of the Second Judicial Circuit,
v.	)	Crawford County, Illinois, No. 14-MR-20
2010 HARLEY-DAVIDSON,	)	
Defendant,	)	The Honorable Christopher L. Weber
(Petra Henderson, Claimant-Appellee).	)	Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

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ARGUMENT

The People's opening brief demonstrated that the forfeiture of claimant Petra Henderson's motorcycle is not grossly disproportionate to her conduct facilitating an aggravated DUI because, among other reasons, (1) the motorcycle played an indispensable part in the commission of a serious felony; (2) such a forfeiture is a suitable penalty for one who knowingly permits her vehicle to be used in this manner (or at least the General Assembly reasonably so concluded), and (3) claimant knowingly consented to the criminal use of her property. In response, claimant attempts to downplay the importance of the first two points. As to the third, she seeks to relitigate the trial court's well-founded factual determination that she gave consent to her husband Mark to drive her Harley Davidson, despite knowing that he was intoxicated and that his license had been revoked for a previous DUI. Claimant also raises a host of policy objections to civil asset forfeiture generally. But all of these arguments fail to show that the forfeiture runs afoul of the Eighth Amendment.

I. Claimant's Motorcycle Is Subject to Forfeiture Because of Her Knowing and Intentional Conduct.

Claimant's central theme is that she "is not the wrongdoer," her actions were merely "negligent," and the People are punishing *her* for the bad deeds of *her husband*. *See* Cl. Br. 1, 8, 11-13, 15-16.[1] But the forfeiture statute requires "knowledge and consent" by the owner of the vehicle. 720 ILCS 5/36-1 (2014). In other words, the motorcycle is subject to forfeiture only if its owner acted intentionally to facilitate a

[1] Citations to the Appendix to the People's opening brief appear as "A_." Citations to the common law record appear as "C_." Citations to the report of proceedings appear as "R_." Citations to the People's trial exhibit appear as "PX_." Citations to claimant's brief in the appellate court appear as "Cl. App. Br. _." Citations to the People's and claimant's briefs in this Court appear as "Peo. Br. _" and "Cl. Br. _," respectively.

crime.[2] Both the trial court and the appellate court determined that claimant knowingly consented to her husband driving while impaired. R90-91; A9-10.

This Court, too, should reject claimant's attempt to relitigate the issue of consent. Claimant fails to acknowledge that this Court overturns a trial court's factual findings only if they are against the manifest weight of the evidence. *People ex rel. Waller v. 1989 Ford F350 Truck*, 162 Ill. 2d 78, 86 (1994). And Judge Weber's finding that claimant knowingly consented to Mark driving the motorcycle was supported by the evidence. Claimant was riding as a passenger behind Mark when police observed the couple swerving through the streets of Robinson, Illinois. R56-58. Although claimant testified that she resisted when Mark asked to drive, Judge Weber found her testimony incredible, noting that "in this situation . . . actions speak louder than words." R90. The appellate court rightly saw no reason to disturb this finding. A9-10.

Indeed, as Judge Weber pointed out, the account of the evening offered by claimant and her husband was "self-serving,"[3] and the court had good reason to be suspicious of the testimony that claimant acquiesced to Mark driving only after he first jumped on the bike and refused to move. R68-69, 79-81. That account appeared to conflict with testimony that the passenger, rather than the driver, must get on the motorcycle first. R66-67. Claimant is also incorrect in arguing that it is "uncontroverted" that only claimant drove the motorcycle up until the final ride home from the Corner Place bar. Cl. Br. 8. The trial court could have doubted this testimony

[2] Although she challenged the applicability of the statute in the appellate court, Cl. App. Br. 9-12, claimant does not press a statutory argument here. She now argues only that her "low culpability" renders the forfeiture unconstitutional. Cl. Br. 8.

[3] Contrary to claimant's argument, Cl. Br. 15, it is not true that all testimony is inherently self-serving. Illinois courts require witnesses to testify under oath so that trial testimony will conform to truth rather than self-interest.

too, because, although Mark's license had been revoked in 2008, he exercised significant control over the motorcycle, which was purchased in claimant's name in 2010. R75; PX3. Mark testified that he was the one responsible for "maintenance" and "caretaking," R72; he proposed taking the motorcycle out joyriding on April 25, 2014, R65; and he held onto the key fob throughout the evening, R71. The court was permitted to rely on its common sense to disbelieve the Hendersons' version of events. *People v. Hale*, 2013 IL 113140, ¶ 24 (approving trial court's rejection of "self-serving" testimony).

The fact that the People did not pursue criminal charges against claimant — in addition to pressing the forfeiture — does not reduce her culpability. Claimant cites *People ex rel. Waller v. 1996 Saturn*, 298 Ill. App. 3d 464, 472 (2d Dist. 1998), for the proposition that a claimant who "has never been charged with any crime" is less culpable than one who has been convicted of the criminal act underlying the forfeiture.[4] Cl. Br. 7-8. But the language on which claimant relies is taken from a federal district court case from California, which held only that, absent a criminal conviction, a "court cannot assume that the claimant committed the offense." *United States v. Real Prop. Located at 6625 Zumirez Drive, Malibu, Cal.*, 845 F. Supp. 725, 733 (C.D. Cal. 1994). Judge Weber made no such assumption here; his verdict followed a full trial at which claimant's consent was the central issue. So whatever force the language from *1996 Saturn* and *Zumirez* may have, it does not apply to this case.

And even accepting, for the sake of argument, that claimant's conduct was less culpable than her husband's, the relative culpability of the two is irrelevant to the Eighth

[4]Although it is not part of the record before this Court, claimant acknowledged in her appellate court brief that she was charged criminally under 625 ILCS 5/6-304.1 with permitting a driver under the influence to operate a motor vehicle. Cl. App. Br. A1 (attaching criminal complaint). The criminal case against her was eventually dismissed. *Id.* at A2.

Amendment analysis. The only question for this Court is whether the forfeiture of claimant's vehicle is grossly disproportionate to her own conduct. Cases like *Commonwealth v. 1997 Chevrolet*, 106 A.3d 836 (Pa. Commw. Ct. 2014), relied on by claimant, Cl. Br. 14-15, do not suggest otherwise. The *1997 Chevrolet* court reversed and remanded in a case ordering the forfeiture of a woman's residence and vehicle based on a purported connection to her son's drug dealing. The remand was ordered for a number of reasons, including for the lower court to more carefully consider the relationship between the property and the drug crimes and the extent of the mother's knowledge of the crimes. *Id.* at 864-66. Here, there is no question that claimant's motorcycle was integral to Mark's aggravated DUI and that claimant had full knowledge of Mark's conduct. *1997 Chevrolet* is thus inapposite.

II. Claimant Misstates the Law for Determining When a Forfeiture Violates the Excessive Fines Clause.

Claimant acknowledges that the Eighth Amendment test is the "grossly disproportionate" standard outlined in *United States v. Bajakajian*, 524 U.S. 321 (1998), but in describing that standard, she misstates the case law in two important respects. First, her brief begins by suggesting that there is a "trend" toward "limit[ing] the overreaching inherent in forfeiture statutes." Cl. Br. 1. But she identifies no supporting authority. In fact, any such trend would be in direct conflict with the United States Supreme Court's admonition that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature," not the courts. *Bajakajian*, 524 U.S. at 336. The General Assembly's judgment — embodied in § 36-1 — is that forfeiture is an appropriate penalty for an owner who knowingly consents to her vehicle's use to commit an aggravated DUI. 720 ILCS 5/36-1(f)(1) (2014). Claimant identifies no

reason to question that judgment. And as the People explained in their opening brief, the forfeiture serves punitive, deterrent, and remedial purposes.[5] Peo. Br. 11-12.

Second, claimant rejects out of hand as a "non sequitur" the People's argument (Peo. Br. 10-12) that the constitutionality of the forfeiture is supported by the close connection between the property and the crime. Cl. Br. 4, 11. She suggests that this argument conflates the statutory and constitutional tests. *Id*. But claimant misreads this Court's precedent when she argues that "[t]he test [of when a forfeiture violates the Eighth Amendment] cannot turn on the relationship between the property and the offense." *Id.* at 4 (citing *1989 Ford F350 Truck*, 162 Ill. 2d at 89). *1989 Ford F350 Truck* did not preclude an inquiry into such a relationship. Rather, the Court held that the Eighth Amendment analysis should not turn "exclusively" on an instrumentality test. 162 Ill. 2d at 89. But the question of "whether the property was an integral part of the commission of the crime" remains one piece of the broader inquiry mandated by *Waller*. *Id.* at 90. Indeed, even the cases on which claimant relies make clear that the property-crime connection remains an important Eighth Amendment consideration. *See 1997 Chevrolet*, 106 A.3d at 858 ("instrumentality must be considered whenever civil *in rem* forfeiture is challenged under the Eighth Amendment"); *Von Hofe v. United States*, 492 F.3d 175, 185 (2d Cir. 2007) ("The greater the property's involvement in the offense . . . the stronger the argument that the forfeiture is not excessive.").

Claimant also argues that the forfeiture is excessive because the value of her motorcycle is somewhat greater than the $25,000 maximum statutory fine for an

[5] Claimant is incorrect when she argues that "the forfeiture serves as no deterrence to crime." Cl. Br. 13. The forfeiture both deters claimant from permitting intoxicated drivers to use her property and deprives her husband of ready access to the vehicle when he is intoxicated.

aggravated DUI. Cl. Br. 13. But this is not a case like *Bajakajian* where the forfeited cash was "many orders of magnitude" greater than the statutory fine imposed. 524 U.S. 321, 340 (1998). The comparison between the amount of the forfeiture and available fines was only one factor among many discussed in *Bajakajian*. *Id*. And the case law is full of examples of courts approving forfeitures that exceed available statutory fines by a percentage similar to or greater than the one in this case. *See United States v. Sperrazza*, 804 F.3d 1113, 1127 (11th Cir. 2015) (forfeiture valued at $870,238.99 not excessive compared to maximum fine of $500,000); *United States v. Cheeseman*, 600 F.3d 270, 285 (3d Cir. 2010) (forfeiture valued at $500,000 not excessive compared to maximum fine of $250,000); *United States v. Wallace*, 389 F.3d 483, 486 (5th Cir. 2004) (forfeiture of airplane valued at $30,000 not excessive compared to maximum fine of $15,000); *United States v. One Parcel of Real Estate Located at 25 Sandra Court, Sandwich, Ill.*, 135 F.3d 462, 466 n.4 (7th Cir. 1998) (forfeiture of $60,000 in equity not excessive compared to maximum fine of $40,000).

III. Claimant's Policy Arguments Are Beside the Point.

Claimant's brief also identifies various policy critiques of civil forfeiture law generally. She complains that, because law enforcement agencies typically retain the proceeds from asset forfeitures, those agencies have an incentive to push the limits in seizing property. Cl. Br. 1-2, 5. The law often does not require that the owner of forfeited property be criminally prosecuted, and because forfeiture proceedings are civil in nature, claimant points out that an indigent claimant has no right to state-funded counsel. *Id.* at 5. In addition, she notes that some forfeiture laws require a claimant to post a bond to challenge the forfeiture. *Id*.

These policy arguments — whatever their merits — are irrelevant here. The legislature, and not the courts, must determine the content of the state's public policy. *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 55-56 (2011). Moreover, none of the policy concerns identified by claimant is even implicated by the facts of this case. The language of § 36-1 squarely encompasses the forfeiture of claimant's motorcycle, so this case is not an example of overly aggressive enforcement. And even though the People exercised prosecutorial discretion not to pursue criminal charges against claimant, she has been represented by counsel throughout these proceedings, including at trial and on appeal. There is no evidence in the record that claimant was ever required to post a bond to challenge the forfeiture.

The recent enactment of civil asset forfeiture reform by the General Assembly likewise has no implications for this case. Public Act 100-512, signed into law on September 19, 2017, amends several of the state's forfeiture laws by requiring additional public disclosure by law enforcement agencies and making other procedural changes. The law has no formal application to this case, as its effective date is July 1, 2018. And even assuming the law applied, none of the amendments would have made a difference in the outcome here. At the time of trial, the People were required to prove by a preponderance of the evidence that the seized vehicle was used in the commission of an offense, and the burden then shifted to claimant to prove by a preponderance of the evidence that she did not know or have reason to know about the criminal use. 720 ILCS 5/36-2(d) & (e) (2014). Following the effective date of the amendments, the People will bear the burden of proving knowledge. Pub. Act 100-512, § 36-2.5(e). But such burden-shifting would make no difference here because claimant's knowledge was never in

dispute. The legislation also makes clear that the Excessive Fines Clause applies to § 36-1. Pub. Act 100-512, § 36-3.1. The People have never argued otherwise.

CONCLUSION

For these reasons and those set forth in the People's opening brief, this Court should reverse the judgment of the Appellate Court and affirm the trial court's judgment.

September 26, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is eight pages.

/s/ Jason F. Krigel
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STATE OF ILLINOIS)
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 26, 2017, the **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the email addresses of the persons named below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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