

STATE OF INDIANA
IN THE GRANT SUPERIOR COURT
COUNTY OF GRANT
2020 TERM

CAUSE NUMBER: 27D01-1308-MI-92

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

Plaintiffs

vs

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

Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter comes to the Court via a Complaint for Forfeiture brought on behalf of the State of Indiana, JEAN Team Drug Task Force, Marion Police Department, and Grant County Sheriff's Department (collectively the State) against a 2013 Land Rover LR2 (misidentified in the caption as a 2012 Land Rover LR2) and the vehicle's owner, Tyson Timbs. The Court, having considered evidence presented at the trial held on July 15, 2015, and at the evidentiary hearing held on February 21, 2020, now enters the following findings of fact, conclusions of law and judgment on the State's claim for forfeiture. In so doing, the Court answers the question of gross disproportionality based upon the framework set out in *State v. Timbs*, 134 N.E.3d 12 (Ind. 2019). To the extent that any part of these findings of fact and conclusions of

law appear to have been adopted from either party's proposed findings of fact and conclusions of law, the Court represents that any such language adopted constitutes the Court's own finding or conclusion. In addition, all conclusions of law that are more appropriately findings of fact are deemed findings of fact, and all findings of fact that are more appropriately conclusions of law are deemed conclusions of law.

CASE HISTORY

1. In 2013, the State filed this forfeiture action alleging that Tyson Timbs used the Land Rover at issue to illegally purchase, possess, and deal narcotics, and that the Land Rover was an instrument of his crimes; therefore, subject to forfeiture under Indiana Code section 34-24-1-1(a)(1)(A).
2. Following a bench trial held on July 15, 2015, this Court, *sua sponte*, ruled that forfeiture of the Land Rover would be grossly disproportional to the gravity of the dealing narcotic offense that Timbs committed. Having made such a finding, this Court ruled that the forfeiture sought by the State would violate the Eighth Amendment's Excessive Fines Clause.
3. The State appealed and the Indiana Court of Appeals affirmed this Court's judgment and reasoning. *State v. Timbs*, 62 N.E.3d 472, 473, 477 (Ind. Ct. App. 2016). Thereafter, the Indiana Supreme Court granted the State's petition to transfer and reversed, holding that the Excessive Fines Clause of the Eighth Amendment had not been incorporated against the States. *State v. Timbs*, 84 N.E.3d 1179, 1180-81, 1185 (Ind. 2017).
4. Timbs petitioned the Supreme Court of the United States for certiorari. The Court granted his petition and held that the Excessive Fines Clause applies to the States through the Fourteenth

Amendment. *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019).

Accordingly, the Court remanded the case back to the Indiana Supreme Court for further proceedings.

5. On remand, the Indiana Supreme Court held that the forfeiture of Timbs's vehicle would not violate the Excessive Fines Clause provided it "meet[s] two requirements: (1) the property must be the actual means by which the offense was committed; and (2) the harshness of the forfeiture penalty must not be grossly disproportional to the gravity of the offense and the claimant's culpability for the property's misuse." *Timbs*, 134 N.E.3d at 27.
6. The Indiana Supreme Court also determined that the State had satisfied the first requirement as the Land Rover was the actual means by which Timbs committed the crime of dealing in a controlled substance, thus it was an instrument of a crime committed and subject to forfeiture pursuant to Indiana Code section 34-24-1-1(a)(1)(A). *Id.* at 30, 31.
7. As to the second requirement, the Indiana Supreme Court remanded the case to this Court to apply its new proportionality test and "determine whether Timbs has overcome his burden to establish that the harshness of the forfeiture's punishment is not only disproportional, but grossly disproportional, to the gravity of the underlying dealing offense and his culpability for the Land Rover's corresponding criminal use." *Id.* at 40.
8. Following remand, this Court held an evidentiary hearing on February 21, 2020, to allow the parties to supplement the existing record.

FINDINGS OF FACT

9. Tyson Timbs became dependent on opiates after his podiatrist

prescribed him hydrocodone for persistent foot pain in or about 2007. After a period of time, Timbs began supplementing his prescribed pain medication with pills he purchased on the street. Eventually, his dependency on narcotic pain medication escalated to a dependency on a far more dangerous opiate: heroin. In the years that followed, Timbs struggled through cycles of relapse and recovery until he was arrested in 2013.

10. In December of 2012, Timbs's father died. As the beneficiary of his father's life insurance policy, Timbs was paid a death benefit of \$73,009.06 in January of 2013. Regrettably, Timbs received these insurance proceeds while active in his heroin addiction.
11. Around January 30, 2013, Timbs used \$41,558.30 of the insurance proceeds to buy the 2013 Land Rover at issue here. He purchased heroin with the remainder of the proceeds to fuel his opiate addiction.
12. From the time he purchased the Land Rover until he was arrested, Timbs obtained the heroin he used by regularly driving the Land Rover from Marion to Richmond to meet his supplier.
13. These trips accounted for most of the 16,000 miles Timbs put on the Land Rover before it was seized by law enforcement.
14. In the spring of 2013 an acquaintance contacted Timbs and asked him if he would sell some heroin. Timbs agreed and the acquaintance arranged for Timbs to meet with an interested buyer. Unbeknownst to Timbs, the buyer was an undercover member of the Grant County JEAN Team Drug Task Force posing as a drug user.
15. Thereafter, an undercover officer purchased heroin from Timbs on two occasions. The first controlled buy took place on May 6, 2013. Timbs drove the Land Rover to this buy and sold the officers two grams of heroin for \$225.00.
16. About two weeks later an undercover officer contacted Timbs and

arranged a second buy. This transaction took place at a gas station close to Timbs's home. Rather than drive the Land Rover to this second buy, Timbs walked. Once there he sold the undercover officer another two grams of heroin for \$160.00.

17. An undercover officer then arranged to buy heroin from Timbs for a third time. While driving the Land Rover to this third controlled buy, Timbs was pulled over and arrested. The State took possession of the Land Rover that same day.
18. The State charged Timbs with two counts of Class B felony dealing in a controlled substance and one count of Class D felony conspiracy to commit theft.
19. Pursuant to a written plea agreement, the criminal case against Timbs was resolved when he pled guilty to one of the dealing counts and to the conspiracy charge. The agreed upon sentence was six years with one year to be served on home detention and the balance of the sentence suspended to formal, supervised probation. Timbs was also assessed \$385.00 for the cost of the JEAN Team investigation, an interdiction fee of \$200.00, \$168.00 in court costs, a \$50.00 bond fee, and \$400.00 for a drug and alcohol assessment.
20. While the criminal case was pending, the State filed its Complaint for Forfeiture. The lengthy procedural history that transpired from 2013 until February of 2020 was addressed earlier in this Court's findings.
21. At the evidentiary hearing held on February 21, 2020, the defense called three witnesses to testify: Tyson Timbs, Jason Phillips, and Kristi Byers. Timbs testified about his journey through addiction, recovery, reintegration, and the hardships created by the State's seizure of his Land Rover. Phillips provided expert testimony about the Land Rover's value on the date it was seized, and Byers provided relevant testimony as to the obstacles offenders face as they seek to

reintegrate into society after being prosecuted and sentenced.

Timbs also introduced into evidence Exhibits A-R. The State chose to call no witnesses or move to admit any exhibits.

22. Since 2013, Timbs's economic circumstances have ranged from modest to precarious.
23. On the date he was arrested Timbs was unemployed and the Land Rover was his only asset. For all intents and purposes, Timbs was "broke."
24. In the years since his arrest, Timbs has attempted to reintegrate into society and to survive economically.
25. He completed house arrest with no violations other than falling behind in home detention fees. Several times his sister provided him with the money he needed to pay those fees.
26. Timbs remains on probation and has had no probation violations. Furthermore, no evidence was presented to suggest that Timbs has committed any crimes since the date of his arrest in 2013.
27. While on probation Timbs has participated in the Grant County Substance Abuse Task Force, shared his story and insights with a gubernatorial drug task force, and on at least one occasion agreed to a request by the Grant County Probation Department to help with another probationer. In an effort to remain clean, Timbs also participated in Narcotics Anonymous and Alcoholics Anonymous Programs.
28. Since his arrest Timbs has held down several jobs. These jobs include working at a machine shop in Pendleton for about a year and a half; working in Huntington for roughly another year and a half; working in Gas City for about a year, and also working in Peru.
29. Presently, Timbs works in McCordsville which is roughly an hour's drive from his home in Marion.

30. Timbs currently earns approximately \$36,000.00 per year, but he has been unable to accumulate any savings. Ordinary household expenses consume much of his income.
31. Being without a vehicle has made it more difficult for Timbs to reintegrate into society and earn a living. This is true for virtually all offenders.
32. Having a car is almost indispensable to maintaining a job in Indiana: only 0.9% of Hoosier workers get to and from their jobs using public transportation. In Grant County, it is estimated that a mere 0.2% of workers commuted using public transportation from 2009-2013. From 2013 to 2017, it is estimated that only 0.3% of workers in Grant County commuted using public transportation.
33. Cars are crucial to maintaining employment in most parts of Indiana and employment is crucial to reducing recidivism. According to a publication on the Indiana Department of Corrections' website, unemployment is one of the top two predictors of recidivism in Indiana. Automobiles are also vital to offenders like Timbs who are suffering from substance abuse disorders. Routinely, these offenders are ordered to participate in drug and alcohol treatment, and a car is usually utilized to attend addiction services and treatment programs located in and around Grant County.
34. For Timbs, access to a car has been critical to holding down jobs at many of the companies where he has worked since his arrest. Only one job worked by Timbs since 2013 has been less than a thirty-minute drive from his home, and practically all of those jobs required him to commute by car. Timbs cannot utilize public transportation to reach his current job as no such system operates between Marion and McCordsville.
35. Timbs has not had access to his Land Rover since it was seized seven

years ago. Instead, the State has stored it in an outdoor lot subject to the elements. During this time Timbs has had to borrow his aunt's car in order to get to work and to fulfill other obligations.

36. While the current value of the Land Rover is unknown, it was worth at least \$35,000.00 on the date it was seized by the State.

CONCLUSIONS OF LAW

37. The framework for evaluating gross disproportionality set out in the Indiana Supreme Court's remand decision primarily requires consideration of three factors: (1) the harshness of the punishment or degree to which the forfeiture is remedial or punitive, (2) the severity of the underlying offense, and (3) the claimant's culpability for the property's criminal use. *Timbs*, 134 N.E.3d at 35.

38. First, as to the harshness of the punishment or degree to which the forfeiture is remedial or punitive, the Court explained that "a court's assessment may include the following:

- the extent to which the forfeiture would remedy the harm caused;
- the property's role in the underlying offenses;
- the property's use in other activities, criminal or lawful;
- the property's market value;
- other sanctions imposed on the claimant; and
- effects the forfeiture will have on the claimant." *Id.* at 36.

39. Second, "when determining the severity of the underlying offense, a court's assessment may include the following:

- the seriousness of the statutory offense, considering statutory penalties;

- the seriousness of the specific crime committed compared to other variants of the offense, and considering any sentence imposed;
- the harm caused by the crime committed; and
- the relationship of the offense to other criminal activity.” *Id.* at 37.

40. Third, the Court held that “[t]he culpability consideration focuses on the claimant’s blameworthiness for the property’s use as an instrumentality of the underlying offenses.” *Id.* On one end of the culpability spectrum is “a claimant [who] is entirely innocent of the property’s misuse,” while “[o]n the other end of the spectrum is a claimant who used the property to commit the underlying offense.” *Id.* at 37, 38.

41. Finally, the Court explained that after evaluating each of the three factors, “the court must determine whether Timbs has overcome his burden of establishing that the harshness of the forfeiture’s punishment is not only disproportional, but grossly disproportional, to the gravity of the underlying dealing offense and its culpability for the Land Rover’s corresponding criminal use.” *Id.* at 39.

CULPABILITY

42. The easiest part of the framework for the Court to address is Timbs’s blameworthiness or culpability for the property’s use as an instrumentality of the underlying offense. Timbs has always acknowledged that the Land Rover belonged to him and he used it to commit the crime of dealing in a controlled substance; therefore, his culpability is at the high end of the spectrum.

HARSHNESS OF THE PUNISHMENT

43. The following factors identified in the Indiana Supreme Court's remand decision weigh in favor of concluding that the seizure of Timbs's Land Rover was more remedial than punitive rendering the punishment less harsh:
- a. The Land Rover did play a role in the underlying offense. It was used by Timbs to transport heroin from his home to the location of the first controlled buy.
 - b. The Land Rover was used for other criminal activities. It was the means by which Timbs transported heroin from Richmond to Marion for several months in 2013. Conversely, the record does not reflect exactly how the vehicle was used lawfully by Timbs before it was seized by the State. However, vehicles are generally used for countless lawful activities.
44. The following factors identified by the Indiana Supreme Court weigh in favor of concluding that the seizure of Timbs's Land Rover was more punitive than remedial rendering the punishment more harsh;
- a. The forfeiture of the Land Rover did nothing to remedy the harm caused. Often, the illegal sale of narcotics causes physical and emotional harm to users and negatively impacts families, and coworkers. It also overburdens the justice system and strains our healthcare system. However, Timbs's specific crime was victimless. It caused no actual harm as the sale he made was to undercover officers; hence, the heroin was never used. Assuming *arguendo* that the State was harmed by incurring costs to investigate Timbs, the plea

- agreement in the criminal case provided for Timbs to make the State whole by reimbursing these costs in full.
- b. The market value of the Land Rover at the time it was seized was at least \$35,000, yet the maximum fine for a felony is only \$10,000. Indiana Code section 35-50-2-4-7. In addition to the value of the vehicle greatly exceeding the maximum fine, the Court finds it significant that the Land Rover was Timbs's only asset and the funds he used to purchase it were not the fruit of criminal activity. Furthermore, unlike the seizure of an automobile from a person of means, the seizure of the Land Rover from a destitute man like Timbs constituted a life-altering sanction that made it difficult for him to maintain employment and seek treatment for his addiction.
- c. The other sanctions imposed on Timbs included a six-year restriction on his liberty and \$1,203.00 in fees and costs. A six-year restriction on an offender's liberty, regardless of means, is always burdensome, and \$1,203.00 is a significant sanction to someone who is unemployed, penniless, and addicted to heroin.
- d. The forfeiture had a particularly negative effect on Timbs. First, it deprived him of his only asset. Second, it made it harder for him to maintain employment. Third, it also served as an impediment to his recovery from opiate dependency by making it more difficult for him to get to and from treatment programs. "[A]utomobiles occupy a central place in the lives of most Americans, providing access to jobs, schools, and recreation as well as to daily

necessities of life.” *Washington v. Marion County Prosecutor*, 264 F. Supp. 3d 957, 975 (S.D. Ind. 2017)(citations omitted), *remanded on other grounds*, 916 F. 3d 676 (7th Cir. 2019). Moreover, their “importance as a means to earn a living and participate in the activities of daily life is particularly pronounced in Indiana, where public transportation options are limited, even in the state’s largest cities.” *Id.* at 976. Because employment and treatment are crucial to reintegration into society after committing a criminal offense, the seizure of the Land Rover put the public at risk as it increased the likelihood that Timbs would recidivate. Perhaps of greater import, seizure of the Land Rover runs contrary to one of the touchstones of our penal system- “reformation, and not vindictive justice.” *Ind. Const.* art. 1, § 18.

45. Upon weighing and balancing the factors, the Court finds that the seizure of the Land Rover was excessively punitive and unduly harsh.

SEVERITY OF THE OFFENSE

46. Again, following the framework set forth by the Indiana Supreme Court, dealing in a controlled substance as a Class B felony must generally be categorized as a serious offense as it is punishable by up to 20 years in prison. As this Court has previously noted, the negative impact on our society of trafficking illegal drugs can be substantial. However, some offenses in violation of this statute are less egregious than others.
47. Timbs’s transgression was minor when compared to other variants of

the same offense. He was no drug "kingpin," a fact recognized by the State when it agreed that the minimum sentence of six years with only one year executed on home detention was appropriate. In addition, there is no evidence in the record that Timbs was engaged in trafficking narcotics beyond two controlled buys. He simply does not fit into the class of persons for whom the statute was principally designed: individuals who regularly sell narcotics to earn a living. Selling narcotics was not an occupation for Timbs. Instead, he sold heroin to feed his addiction. But for his addiction, there is every reason to believe that Timbs would never have sold heroin to anyone.

48. As previously mentioned, Timbs's offense caused no harm. He sold heroin to a law enforcement officer rather than a fellow drug abuser. An offense with no victim is seldom severe.
49. The offense committed by Timbs is related to other criminal activity; however, that other criminal activity also involved victimless crimes—possession of heroin for Timbs's personal use.
50. After considering all relevant factors, the Court concludes that the crime Timbs committed was of minimal severity.

CONCLUSION

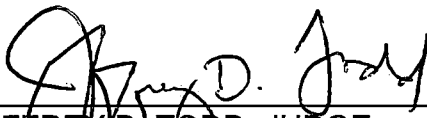
Tyson Timbs was an opiate user who committed a victimless crime in violation of a statute promulgated primarily to punish a class of individuals into which he did not fall. In the criminal case brought against him the State agreed that his crime warranted the minimum sentence of six years with no time to be served in the Grant County Jail or the Indiana Department of Corrections. At the time of his arrest Timbs was an unemployed addict with virtually no criminal record who sold a few grams of heroin to law enforcement. Although he was broke, he was ordered to pay fees and costs in

excess of \$1,200.00. Thereafter, the State sought forfeiture of his only asset; an asset he purchased using life insurance proceeds rather than drug money, and a tool essential to maintaining employment, obtaining treatment, and reducing the likelihood that he would ever again commit another criminal offense. After taking into account the harshness of the punishment, the severity of the offense and his culpability, the Court finds, by a significant margin, that Timbs has overcome his burden to establish that the harshness of the forfeiture of his 2013 Land Rover is grossly disproportional to the gravity of the underlying dealing offense and his culpability for the Land Rover's corresponding criminal use.

JUDGMENT

Judgment is entered in favor of Defendants and against Plaintiffs. The 2013 Land Rover LR2, at issue, is ordered released to Defendant Tyson Timbs immediately.

SO ORDERED, this 27 day of April, 2020.


JEFFREY D. TODD, JUDGE
GRANT SUPERIOR COURT 1