

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

**PLAINTIFF-APPELLEE'S APPENDICES
VOLUME 2 OF 2**

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PLAINTIFF-APPELLEE'S APPENDIX N
Order Denying Reconsideration and Relief from Judgment

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN
EX REL, KYM L. WORTHY, WAYNE
COUNTY PROSECUTOR,

Plaintiff,

v.

Case No. 19-014106-CF
Hon. David J. Allen

ONE 2006 SATURN ION,
VIN: 1G8AJ55F86Z101751,

Defendant Property,

and

STEPHANIE GRACE WILSON,

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**ORDER DENYING PLAINTIFF'S MOTIONS FOR RECONSIDERATION, STAY THE
PROCEEDINGS AND RELIEF FROM JUDGMENT**

At a session of said Court held on: May 13, 2021
In the 3rd Circuit Court, Detroit, Michigan
Present: Hon. David J. Allen

THIS MATTER having come before this Court pursuant to Claimant's Motion for
Reconsideration, Motion to Stay the Proceedings and Motion for Relief from Judgment, and the
Court being fully advised;

IT IS HEREBY ORDERED that Plaintiff's Motions are Denied.

Dated: 6/7/2021

/s/ David J. Allen
HON. DAVID J. ALLEN

**STATE OF MICHIGAN
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No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
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Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX O
People's Brief on Appeal in the Court of Appeals

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, ex rel
KYM L. WORTHY, WAYNE COUNTY PROSECUTING
ATTORNEY,

Plaintiff-Appellant,

-v-

No. 357183

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,

and

STEPHANIE GRACE WILSON,
Claimant-Appellee,

Wayne County Circuit Court No. 19-014106

PLAINTIFF-APPELLANT'S
BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

FILED UNDER AO 2019-6

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STATEMENT OF JURISDICTION

Because this is an appeal of right from a final judgment in favor of the Claimant, the Court has jurisdiction under MCR 7.203(A). This brief on appeal is timely filed within 56 days of the filing of the lower-court transcripts. See MCR 7.212(A)(1)(a)(iii).

STATEMENT OF QUESTION PRESENTED

I.

A motion for summary disposition in favor of the claimant in a forfeiture case must be denied when there is evidence that the defendant vehicle was used to buy drugs. According to Sgt. Rivers' deposition testimony, the claimant Ms. Wilson admitted to him that she knowingly used the defendant vehicle to help her friend buy heroin. Did the trial court err by granting summary disposition in favor of the claimant in light of these facts?

The trial court answered this question, "No."

The Plaintiff answers, "Yes."

STATEMENT OF FACTS

On June 24, 2019, officers of the Special Operations Unit of the Wayne County Sheriff's Office were conducting surveillance on a known drug house at 4727 Lumley in Detroit.¹ Sergeant Chivas Rivers observed the defendant vehicle—a 2006 Saturn Ion—park on Lumley near the drug house.² He then saw an unknown male exit 4727 Lumley and approach the passenger side of the defendant vehicle, reaching his arm into the window in what appeared to be a hand-to-hand drug transaction.³

A short time later, the vehicle left the location, turning east on Cypress without using a turn signal.⁴ Officers stopped the vehicle on the I-94 service drive and Chopin. Sgt. Rivers spoke with the driver, claimant Stephanie Wilson, who said that she had driven her passenger, Malcolm Smith, to the Lumley address to purchase heroin.⁵ Specifically, Wilson maintained that Smith would get sick without the drugs, and so she brought him down every day to get a fix.⁶ Upon searching the defendant vehicle, the police found five empty syringes under the passenger seat, but no controlled substances.⁷

Additionally, Wilson and Smith had been stopped earlier in 2019 under almost identical circumstances: Wilson had driven Smith to a drug house in her car to purchase heroin; the police stopped them

¹ Deposition testimony of Sergeant Chivas Rivers, 1.25.21, at 15-16.

² Id. at 20.

³ Id. at 20-21.

⁴ Id. at 22.

⁵ Id. at 39.

⁶ Id.

⁷ Id. at 40.

immediately afterwards; both Smith and Wilson admitted that Wilson had bought and consumed \$10 worth of heroin.⁸

On October 23, 2019, Plaintiff-Appellant filed a forfeiture complaint under MCL 333.7521 against the Saturn Ion. In March of this year, Claimant filed a motion for summary disposition, arguing among other things that no issue of material fact existed. Judge Allen granted the motion on April 29, 2021, and denied a motion for reconsideration on May 13, 2021. According to the court, the fact that the police recovered no drugs from the car meant that no reasonable mind could find that the defendant vehicle had knowingly been used as transportation to buy illegal narcotics under MCL 333.7521(d). The trial court thus issued an order of judgment in favor of claimant Wilson on April 29, 2021. This appeal ensues.

⁸ Id. at 43.

ARGUMENT

- I. A motion for summary disposition in favor of the claimant in a forfeiture case must be denied when there is evidence that the defendant vehicle was used to buy drugs. According to Sgt. Rivers' deposition testimony, claimant Wilson admitted to him that she knowingly used the defendant vehicle to help her friend buy heroin. The trial court erred by granting summary disposition in favor of the claimant in light of these facts.

Standard of Review

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Hoffner v Lanctoe*, 492 Mich 450, 459 (2012).

Discussion

Ms. Wilson *admitted* she used the defendant vehicle to help Malcolm Smith buy heroin. Again, according to the sworn testimony of one of the officers who seized the defendant vehicle, the passenger bought drugs from a house on Lumley and then when the car was stopped the owner conceded that she intentionally drove Smith to that address for that purpose. Since the government has the authority to seize a vehicle that has knowingly been used as transportation to buy illegal narcotics, there was no basis for the trial court to rule that no issue of material fact existed.

Under MCL 333.7521(1)(d), a car is subject to forfeiture if it was used "to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [illegal narcotics]," unless the owner of the car did not know about or consent to that use. In other words, if the owner of a vehicle knowingly uses it as transportation to and from a drug sale, the car is subject to forfeiture. Here, if Ms. Wilson intentionally used her Ion to help get her friend his heroin fix, then the

car can be properly taken by the government. According to Sgt. Rivers, that is exactly what Ms. Wilson admitted to when police stopped her and Smith in the Saturn.

And, as the court knows, in a motion for summary disposition all reasonable doubt should be given to the party opposing the motion. *Reaver v Westwood*, 148 Mich App 343 (1986). That is, the court must look at all the evidence in the light most favorable to the nonmoving party. *Atlas Valley Golf & Country Club*, 227 Mich App 14 (1997). As such, the trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes; if material evidence conflicts, summary disposition under MCR 2.116(C)(10) is not appropriate. *Pioneer State Mut Ins v Dells*, 301 Mich App 368, 377 (2013). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Id.*

Thus, while it is true that Ms. Wilson denied in her deposition that there had been any drug transaction whatsoever, that denial merely created an issue of fact for the trier of fact. Viewed in the light most favorable to the Plaintiff, the evidence demonstrated that Ms. Wilson did indeed knowingly use her car to facilitate the purchase of drugs. It was not just a legal error, but a gross error, for Judge Allen to rule that no reasonable mind could find the legal standard met to forfeit the vehicle. That ruling must be overturned.

RELIEF REQUESTED

THEREFORE, the Plaintiff respectfully requests that this Honorable Court reverse the trial court's grant of summary disposition and the ensuing entry of final judgment for the Claimant.

Respectfully submitted,

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Dated: July 27, 2021

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with AO 2019-6. The body font is 12 pt. Century Schoolbook set to 150% line spacing. This document contains 951 countable words.

/s/ David A. McCreedy

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PLAINTIFF-APPELLEE'S APPENDIX P
Claimant's Brief on Appeal in the Court of Appeals

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STATE OF MICHIGAN
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No. 357183

Wayne County Circuit Court
No. 19-014106

Filed Under AO 2019-6

ORAL ARGUMENT
NOT REQUESTED

Response Brief for Claimant-Appellee

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this final judgment granting summary disposition to Claimant-Appellee pursuant to MCR 7.203(A).

COUNTER-STATEMENT OF QUESTIONS INVOLVED

1. Three distinct grounds for summary disposition were briefed before the trial court, and the court did not specify the basis of its grant of summary disposition in its Order. The People nevertheless address only one of the three proposed grounds for summary disposition on appeal. Did the People waive their right to appeal the two independent, alternative potential bases for summary disposition on appeal?

Claimant-Appellee answers this question, "Yes."

2. The People waited three months and 29 days before filing a forfeiture complaint against Stephanie Wilson's car. Michigan courts have found a delay three days longer than that to be outside the statute of limitations for initiation of forfeiture complaints. Did the People initiate forfeiture proceedings "promptly" after seizure as required by MCL 333.7523(1)?

Claimant-Appellee answers this question, "No."

3. Does the People's complaint state a claim on which relief can be granted when, under MCL 333.7521(2), the People must ultimately demonstrate a substantial connection between Stephanie's vehicle and a drug crime by clear and convincing evidence and the complaint does not allege a substantial connection?

Claimant-Appellee answers this question, "No."

4. The People do not allege that Stephanie bought, sold, or used illegal drugs. Rather, the People allege that she used her car to give a drug user a ride. Is the transportation of a drug user a forfeitable offense under MCL 333.7521(1)(d)?

Claimant-Appellee answers this question, "No."

COUNTER-STATEMENT OF FACTS

Officers from the Wayne County Sheriff's Office stopped Stephanie Wilson moments after she picked up Malcolm Smith, the father of her young son. App. 18.¹ The People allege that Malcolm told officers that he had purchased and used ten dollars' worth of heroin. App. 36. But after searching Stephanie's car, officers found no drugs in the vehicle, no drugs on Stephanie, and no drugs on Malcolm. Appellee's App. 21. The only physical evidence of potential wrongdoing was the presence of empty syringes under Malcolm's seat. *Id.* No tickets were issued, neither Stephanie nor Malcolm were arrested, and both were allowed to walk away from the scene. *Id.* at 15, 20. Nevertheless, officers seized Stephanie's 2006 Saturn Ion, and all the property inside—including things like her college diploma and her son's birth certificate.² App. 35. The People then did nothing for one day shy of four months. 121 days after seizure, the People filed their complaint seeking forfeiture of the vehicle. *Id.* at 37.

After the completion of discovery, Stephanie filed a motion for summary disposition on three grounds. App. 43. First, the People's failure to promptly file a forfeiture complaint warranted dismissal under MCL 2.116(c)(7). *Id.* Second, summary disposition was necessary under MCL 2.116(c)(8) because the People's complaint fails to state a claim on which relief could be granted. *Id.* at 43. Third, pursuant to MCL 2.116(c)(10), Stephanie demonstrated why there are no genuine issues of material fact and why she is entitled to judgment as a matter of law. *Id.* at 46. Judge David Allen granted Claimant's motion for summary disposition. App. 5. The People now appeal.

But the People ignore the first two grounds on which Stephanie sought summary disposition. *See* Appellant's Br. at 5. The only argument the People make in

¹ The People failed to provide an appendix as required by MCR 7.212(C)(10). Appellee includes her own appendix here.

² Because there were no drugs in Stephanie's car, the People's argument for forfeiture is based not on an alleged transportation of drugs, but rather that Stephanie "knowingly used [her car] as transportation to buy illegal narcotics." Appellant's Br. at 8. Though it is not entirely clear, the People's theory seems to be that Malcolm bought and used a small amount of heroin while the car was parked in front of a "drug house." *See id.* at 6.

this appeal is that there are genuine issues of material fact for trial.³ Specifically, the People argue that there is a material factual question about whether Stephanie “knowingly use[d] [her car] as transportation to and from a drug sale.” *Id.* at 8. This argument is based on a reading of the forfeiture statute—which authorizes forfeiture only of vehicles used to transport illegal substances and the raw materials and equipment used to manufacture them—as also authorizing forfeiture of vehicles used to transport individuals who wish to buy drugs. *See* MCL 333.7521(1)(d); *id.* But, setting aside the relative merits of that argument, Judge Allen’s Order does not specify which of the three grounds in Stephanie’s motion was the basis for his ruling. The Order says:

WHEREAS, the Court having reviewed the motion, the People’s response, the Claimant’s reply, and the evidence submitted . . .

IT IS HEREBY ORDERED AND ADJUDGED that Claimant’s Motion for Summary DISPOSITION is hereby GRANTED; that JUDGMENT is entered in favor of Claimant; and that the People are ORDERED to return Claimant’s property immediately.

App. 5.

In response to the order of summary disposition, the People initially refused to release Stephanie’s car and filed motions for reconsideration and a stay pending appeal. Judge Allen denied these motions and again ordered that the car be released immediately. App. 8. Only then—two years after the seizure—was Stephanie able to retrieve her car. Despite its lack of financial value, the People continue their quest to forfeit the car.⁴

³ In an explanation of the judgment below in their Brief on Appeal, the People state, “[a]ccording to the court, the fact that the police recovered no drugs from the car meant that no reasonable mind could find that the defendant vehicle had knowingly been used as transportation to buy illegal narcotics under MCL 333.7521(1)(d).” Appellant’s Br. at 7. As his orders show, however, Judge Allen did not provide explanations of the bases for his decisions. App. 4–8.

⁴ It may seem strange that the People remain committed to their efforts to forfeit Stephanie’s valueless car for its alleged proximity to someone else’s \$10 drug transaction, but additional context illuminates the People’s otherwise puzzling dedication to this case. Stephanie is a plaintiff in a federal class-action broadly challenging the constitutionality of Wayne County’s seizure and forfeiture practices. *See Ingram v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS (E.D. Mich filed Feb. 4,

STANDARD OF REVIEW

This Court reviews a grant of summary disposition de novo. *Bernardoni v. City of Saginaw*, 499 Mich 470, 472 (2016). When multiple grounds for summary disposition are raised below, this Court may affirm based on any one of those grounds. *Id.* at 472 n.1 (observing, in a case where the trial court did not specify on which grounds summary disposition was granted, that “[b]ecause we find summary disposition appropriate under MCR 2.116(C)(10), we decline to consider whether summary disposition is also appropriate under MCR 2.116(C)(7).”). Because the Court can affirm on any basis raised below when the trial court does not specify the grounds on which summary disposition was granted, this Court may only reverse here if it determines that each of Claimant’s three grounds for summary disposition—including the two unaddressed by the People on appeal—are insufficient. *See id.*

ARGUMENT

I. The People do not contest two grounds for the trial court’s grant of summary disposition.

In their brief, the People address only one ground for summary disposition—that there are no material factual issues and Stephanie is entitled to judgment as a matter of law under MCR 2.116(c)(10) (which authorizes summary disposition where there are no genuine issues of material fact). But the People ignore two other grounds. Stephanie also moved for summary disposition under MCR 2.116(c)(7) (which authorizes summary disposition where an action is filed outside a statute of limitations) and 2.116(c)(8) (which authorizes summary disposition where the complaint fails to state a claim on which relief can be granted). App. 43. And the trial court’s order granting summary disposition does not state on which of the three grounds it is based. App. 5. The People do not address these alternative bases for summary disposition; they are not included in the People’s statement of the questions presented; nowhere

2020), <https://bit.ly/2BasTpW>. The People have indicated a connection between their pursuit of this case and Stephanie’s exercise of her constitutional rights in that federal case. *See* Wilson Depo, at 25:25–28:12 (the People questioning Stephanie about why she joined the federal case and later declined a settlement offer to dismiss her federal claims in exchange for the return of her vehicle).

do the People acknowledge that the trial court did not specify which of the three grounds served as the basis for its decision. The People have abandoned these issues on appeal, and this Court should affirm the judgment below on the two unchallenged grounds for summary disposition.

“When an appellant fails to address the basis of a trial court’s decision, this Court need not even consider granting relief.” *Seifeddine v. Jaber*, 327 Mich App 514, 521–22 (2019). In *Seifeddine*, the plaintiff appealed from a trial court decision in a divorce proceeding upholding a provision of an Islamic marriage certificate requiring him to pay his wife \$50,000 upon their divorce. *Id.* Among other issues, the ex-husband argued that the Islamic ceremony was not a legal marriage and that any contractual obligation to pay \$50,000 was contingent on a legal marriage. *Id.* at 521. This Court rejected his argument for two reasons. First, the Court found that the plaintiff had “waived [the] issue by failing to include it in his statement of questions presented.” *Id.* Second, though he addressed other grounds for the trial court’s decision on appeal, plaintiff had failed to address the trial court’s finding that the Islamic marriage ceremony and party had been the consideration for the \$50,000 obligation. *Id.* The Court held that the ex-husband’s “failure to adequately brief the issue constitutes abandonment.” *Id.*

As in *Seifeddine*, the People here failed to fully “acknowledge or address” possible bases of the trial court’s decision. *See id.* Two of three grounds for summary disposition are omitted from the People’s statement of the question presented. Appellant’s Br. at 5. Nowhere do the People explain why the forfeiture complaint was timely filed and why their complaint states a claim for relief. The People have, therefore, waived their right to appeal on those grounds, and the trial court’s judgment should be affirmed.

Because the People have abandoned any argument about two of the three bases for summary disposition—and because the trial court’s order did not state which of the three grounds it had ruled—the Court’s inquiry can stop here. *See Bernardoni v. City of Saginaw*, 499 Mich 470, 472 (2016) (declining to consider alternative grounds for summary disposition where one was appropriate and trial court did not specify on

which of three grounds it had ruled). Even if the Court were to consider the two grounds ignored by the People, both should be affirmed on the merits.⁵

A. Summary disposition was appropriate under MCR 2.116(c)(7) because the People did not “promptly” begin forfeiture proceedings.

Under MCR 2.116(c)(7), a trial court may grant summary disposition where—among other things—the “statute of limitations” has run. The statute of limitations in this case required that forfeiture proceedings be “instituted promptly.” MCL 333.7523(1). Michigan courts have interpreted this to warrant dismissal of a forfeiture proceeding filed four months after seizure of the property. *In re Forfeiture of One 1983 Cadillac*, 176 Mich App 277, 280–83 (1989); *see also Lenawee Prosecutor v. One 1981 Buick Two-Door Riviera*, 165 Mich App 762, 766–67 (1988) (dismissing forfeiture action based on six-month delay); *People v. One 1979 Honda Auto.*, 139 Mich App 651, 656–57 (1984) (upholding delay of two and a half months).

Here, the Wayne County Sheriff’s Office seized Stephanie’s car on June 24, 2019. App. 35. The People filed their forfeiture complaint 121 days later, on October 23, 2019. *Id.* at 37. This delay is virtually the same as the 124-day delay in *One 1983 Cadillac*—far closer than it is to the two-and-a-half-month delay upheld in *One 1979 Honda*. The trial court’s judgment granting summary disposition should therefore be affirmed under MCR 2.116(c)(7).

B. Summary disposition was appropriate under MCR 2.116(c)(8) because the complaint does not allege facts on which relief could be granted.

Under MCR 2.116(c)(8), a party is entitled to summary disposition where “[t]he opposing party has failed to state a claim on which relief can be granted.” Analyzing a motion for summary disposition under MCR 2.116(c)(8), courts accept all well-pleaded allegations as true and view them in the light most favorable to the non-moving party.

⁵ By discussing the alternative bases for summary disposition below, Claimant does not waive her argument that—because the People did not include the alternative bases in their statement of the question presented or discuss them in their brief on appeal—this Court should affirm without considering them.

Wade v. Dep't of Corr., 439 Mich 158, 162–63 (1992). Conclusory statements without any factual support are insufficient to state a claim for which relief can be granted. *Diem v. Sallie Mae Home Loans, Inc.*, 307 Mich App 204, 210 (2014). The Court should grant a motion under (c)(8) where the claims are so clearly doomed that, as a matter of law, no factual development could justify recovery. *Wade*, 439 Mich at 163. Only the pleadings are relevant to a motion under (c)(8). Here, in the context of a request for forfeiture based on MCL 333.7521, the People were required to allege a substantial connection between the vehicle and a drug crime. MCL 333.7521(2). Because the People failed to do so, they have not stated a claim on which relief could be granted.

Taking the People's allegations as true for the purposes of MCR 2.116(c)(8), they allege Stephanie parked her car outside of a "known drug house" where an "unknown person" approached her passenger side window to "conduct what appeared to be a hand to hand drug transaction" with Malcolm. App. 35–36. "Shortly after," Stephanie drove away and was quickly pulled over based on an alleged failure to signal. *Id.* at 36. Stephanie's passenger allegedly told police that "he had purchased and used \$10.00 worth of heroin." *Id.* Police searched the car and "recovered five syringes from under the passenger seat, which Smith stated that he uses for heroin." *Id.* They did not, however, recover any heroin from the car or its occupants. App. 21. Nor do they allege there was heroin remaining in the syringes. App. 36. The People allege at most that Stephanie drove Malcolm to a location where he purchased and used a small amount of drugs in a stationary car.

Even if everything the People allege were true—that Stephanie drove Malcolm to the "known drug house" so that he could use drugs—they are not entitled to forfeiture under MCL 333.7521. *See* MCL 333.7521(1)(d). Cars are not subject to forfeiture based on such a tenuous facilitation of drug use. Rather, vehicles are only subject to forfeiture when they are used in the specific ways set out in MCL 333.7521(1)(d) (namely, to transport illegal substances or the raw materials and equipment used to manufacture them). Because the People acknowledge that no such illegal substances were in the car when it was pulled over a "short time" after the alleged transaction, *see* Appellant's Br. at 6, they failed to provide the allegations necessary to justify forfeiture—that any illegal substances were transported anywhere—and therefore failed to state a claim on which relief could be granted. The

trial court's grant of summary disposition is therefore appropriate under MCR 2.116(c)(8).

II. Summary disposition was appropriate under MCR 2.116(c)(10) because there are no issues of material fact.

On appeal, the People address only the third ground for summary disposition below—that there is no issue of material fact and that summary disposition is appropriate under MCR 2.116(c)(10). Because the People waived their right to appeal the alternative, independent grounds for summary disposition already addressed, the Court need not reach this argument. *See Bernardoni v. City of Saginaw*, 499 Mich 470, 472 (2016). The trial court's grant of summary disposition, however, was also proper under MCR 2.116(c)(10).

Summary disposition is appropriate when there is no genuine issue of material fact and the moving party shows herself to be entitled to judgment as a matter of law. MCR 2.116(c)(10). A motion under (c)(10) tests the factual sufficiency of a claim. *Smith v. Globe Life Ins. Co.*, 460 Mich 446, 454 (1999)

When reviewing a motion under (c)(10), courts consider affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties. *See Quinto v. Cross & Peters Co.*, 451 Mich 358, 362 (1996). Courts must view the evidence in the light most favorable to the non-moving party, but where no genuine issue of material fact exists, judgment should be entered as a matter of law. *Id.* A genuine issue of material fact exists when reasonable minds may differ after viewing the evidence most favorably to the non-movant. *See West v. Gen. Motors Corp.*, 469 Mich 177, 183 (2003).

The People's argument on appeal is premised on a misreading of the statute governing vehicle forfeitures. That statute authorizes forfeiture of a vehicle where it is used to transport drugs or other controlled substances or the materials and equipment needed to produce them. MCL 333.7521(1)(d). The People assert, instead, that, pursuant to MCL 333.7521(1)(d), "if the owner of a vehicle knowingly uses it as transportation to and from a drug sale, the car is subject to forfeiture." Appellant's Br. at 8. The People offer little analysis and no case law in support of this assertion. A close reading of the statute shows why the People's interpretation is wrong.

The full text of MCL 333.7521(1)(d) authorizes forfeiture of:

Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b).

The “property described in subdivision (a) or (b)” includes illegal drugs and the materials used to produce them. MCL 333.7521(1)(a)–(b). The People read this statute to mean vehicles may be forfeited when they are “used or intended for use, to transport, or in any manner to facilitate the transportation” of *individuals* “for the purpose of sale or receipt [of contraband property].” This reading of the statute is only possible by adding the phrase—“of individuals” or “of people.”

The better reading of the statute is that forfeiture is appropriate when a vehicle is “used . . . to transport, or in any manner facilitate the transportation . . . of property described in subdivision (a) or (b).” The phrase “for the purpose of sale or receipt” makes clear that forfeiture of vehicles is authorized when contraband is transported for the purpose of sale or receipt. These forfeitures—forfeitures of vehicles resulting from transportation of illegal drugs—would not be authorized by the People’s reading of the statute. The statute cannot grammatically mean both “transportation [of a person] . . . for the purpose of sale or receipt of property” and “transportation . . . of property [that is intended to be sold or received].” It strains reason to argue (as the People argue) that the statute authorizes forfeiture of a car used to give a drug user a ride to purchase drugs, but not the forfeiture of a car used to transport large quantities of actual drugs.

The trial court’s finding that there are no issues of material fact is based on this proper understanding of the statutory language. It does not matter whether, as the People allege, Stephanie gave Malcolm a ride to a location where he bought and used drugs. Mercifully for the friends and loved ones of those battling addiction, a passenger cannot render your car forfeitable by the state if he buys or consumes drugs after riding in it. The People produced no evidence—and do not allege—that Stephanie used her car to transport illegal drugs. The forfeiture statute does not permit them to take the car because she used it to transport a person who may have used them.

CONCLUSION

The People do not challenge, and have waived their right to appeal, two of three grounds of Claimant's motion for summary disposition that the trial court granted. Further, even if the Court considers the People's sole argument on appeal (which it should not) summary disposition was appropriate under MCR 2.116(c)(7), MCR 2.116(c)(8), and MCR 2.116(c)(10). For these reasons, Claimant respectfully requests that the Court affirm the trial court's grant of summary disposition.

Dated: August 30, 2021

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX Q
People's Reply Brief in the Court of Appeals

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, ex rel
KYM L. WORTHY, WAYNE COUNTY PROSECUTING
ATTORNEY,

Plaintiff-Appellant,

-v-

No. 357183

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,

and

STEPHANIE GRACE WILSON,
Claimant-Appellee,

Wayne County Circuit Court No. 19-014106

PLAINTIFF-APPELLANT'S
REPLY BRIEF

FILED UNDER AO 2019-6

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ARGUMENT

- I. The trial court's on-the-record ruling mentioned one—and only one—ground for summary disposition: *the lack of a genuine issue of material fact*. Since there was no ruling on the Claimant's two other alleged grounds for relief, there was no basis for the Plaintiff to appeal them. Therefore, the material-fact issue raised by the Plaintiff-Appellant is properly before this court.

As the transcript of the April 29, 2021 hearing demonstrates, not a single word was spoken by the court regarding any of the Claimant's proffered grounds for summary disposition—*except the claim that there was no genuine issue of material fact*. Specifically, Ms. Wilson alleged in her amended motion for summary disposition that there were no drugs found in her car, and even if the syringes were evidence of drug use, “cars are not subject to forfeiture based on their facilitation of drug use.” (March 15, 2021 Amended Motion at 4.) One hundred percent of Judge Allen's comments in questioning the attorneys at the April hearing, and in his ruling, focused on whether the defendant Saturn had been used to facilitate the purchase of narcotics. (4.29.21 at 4-8.) In that vein, the court pointed out that the officers found nothing criminal when they searched the car: “[n]o drugs, no one arrested, no tickets.” The court then rhetorically questioned, “And we keep the car on those facts?” One page later, Judge Allen again noted that a couple minutes after an alleged hand-to-hand narcotics sale was made to Ms. Wilson's passenger, the car was pulled over “and empty syringes, no drug.” The court then again emphasized that “people can come and go and go up to a car and hand a lot of things over. ... I mean either he [the passenger] slugged them down pretty darn fast, threw them out the window or something, but there's no drug there.” Then in the same sentence in which Judge Allen granted

Ms. Wilson's motion, he said in reference to whether the car was used to purchase drugs, "It is assumption on sumption [sic], it's kind of where there's smoke there's fire argument, but there just isn't clear there and the Court's going to grant the Motion for Summary Disposition for the reasons stated in Ms. Miller's brief." *Id.*

This is not the first time a trial court has failed to explicitly rule on alternate grounds for relief claimed by a party moving for summary disposition. In such a circumstance, panels of this court have routinely looked to what the court said in its ruling. When the ruling is based on facts outside the pleadings, it is presumed that the court relied on MCR 2.116(C)(10) and held that no genuine issue of material fact existed. See *Travis Inc v Preka Holdings*, 306 Mich App 266, 273 (2014); *Haynes v Village of Beulah*, 308 Mich App 465, 467 (2014); *Shelby Township v Papesh*, 267 Mich App 92, 97-8 (2005). "If the trial court does not specify under which specific subrule it granted or denied a motion for summary disposition, and it considered material outside the pleadings, we review the decision under MCR 2.116(C)(10)." *Travis*, 306 Mich App at 273.

Here, there can be no doubt that the court considered facts outside the pleadings. To begin with, both Claimant's motion for summary disposition and her brief in support relied on one of the depositions in this case. In the section of her brief entitled Undisputed Facts, she cited Sgt. Chivas Rivers' deposition for the following facts: (a) no drugs were recovered from the car, (b) no tickets were issued, (c) no one was arrested, (d) officers let Ms. Wilson and Mr. Smith walk away from the scene, and (e) no criminal charges were filed against either person. She further cited that deposition for the facts that (f) Rivers did not see either individual using drugs and (g) the syringes were not tested for drug residue. And the court, in its discussion of the motion, noted that no drugs were recovered and that no one was arrested or ticketed: facts

from the deposition. Given that the ruling below was premised on MCR 2.116(C)(10), Plaintiff-Appellant has properly positioned this appeal for review.

Additionally, the Claimant herself disputed significant facts alleged by Plaintiff-Appellant. For example, she claimed in her deposition that she had not admitted that her passenger had bought heroin. (Deposition of Stephanie Grace Wilson, January 26, 2021, at 13.) She also maintained that Smith had gotten into her car in the area of the drug house, not that she had driven him there. *Id.* at 15. Correspondingly, she denied that someone had conducted a drug sale with Smith while he sat in her car. *Id.* at 16. Obviously, material facts are disputed in this case.

The Claimant cites one case in this section of her brief, for the proposition that this appeal must be decided based on the Claimant's two alternative theories of relief. But *Bernardoni v City of Saginaw*, 499 Mich 470 (2016), has nothing to do with this appeal. In *Bernardoni*, the trial court granted summary disposition without specifying which rule it had relied on. The Court of Appeals noted that the lower court had relied on material outside the pleadings, and thus treated the ruling as one involving a genuine issue of material fact, holding that such an issue existed. The Supreme Court reversed, finding that there was no genuine issue of fact and so judgment had been properly entered for the defendant. Because it reversed on that one ground, the Supreme Court had no reason to address whether the defendant had been entitled to summary judgment for an additional reason. But declining to address alternative reasons for affirming the trial court is not the same as holding that an undecided alternative ground must be raised by an appellant otherwise the appellate court must rule in favor of the

appellee. That proposition is nowhere in the law. Accordingly, Plaintiff-Appellant's appeal must be decided on the merits.

- II. The law is clear that a vehicle may be forfeited when the owner knowingly uses it as transportation to obtain drugs, and that is what is alleged in this case by the Plaintiff but denied by the Claimant; there is clearly a genuine issue of material fact.**

The Claimant is wrong about the law in this area too: vehicles used as transportation to and from drug sales are subject to forfeiture. In *Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182 (1990), the Blazer had been used "to transport customers to and from the home of an illicit drug dealer for the purpose of purchasing various quantities of cocaine." *Id.* at 183. Just as the Claimant alleges in this case, "no facts would be developed to show that the vehicle was ever used to actually transport controlled substances." *Id.* (The People do not concede this, however.) Nevertheless, this court held that the truck was subject to forfeiture if the People could prove that there was a "substantial connection" between the seized property and the alleged criminal activity. *Id.* at 185.

Similarly, citing the *1987 Blazer* case, the unreported case of *In re Forfeiture of 1999 Ford Contour* states that "MCL 333.7521(1)(d) clearly indicates that a vehicle used to transport a customer to and from the home of an illicit drug dealer for the purpose of purchasing controlled substances is subject to forfeiture." Since the Ford Contour had been used by the claimant's wife to transport her to a house to purchase marijuana, the vehicle was properly subject to forfeiture unless an exception applied.

That is exactly what the facts suggest here. The Claimant knowingly transported her passenger to a drug house for him to purchase and consume heroin.¹ As such, her car is properly subject to forfeiture, assuming that the People can prove the facts as alleged. There is a genuine issue of material fact here, and so summary judgment for the Claimant was error. The trial court must be reversed.

¹ Even if the Claimant's proposed reading of the statute is correct, and requires that *drugs* be transported, not people, there still is an issue of material fact: the evidence suggests that Smith consumed or threw away the drugs while the car was underway.

RELIEF REQUESTED

THEREFORE, the Plaintiff respectfully requests that this Honorable Court reverse the trial court's grant of summary disposition and the ensuing entry of final judgment for the Claimant.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with AO 2019-6. The body font is 12 pt. Century Schoolbook set to 150% line spacing. This document contains 1401 countable words.

/s/ David A. McCreedy

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
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v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
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and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX R
Claimant's Application for Leave to Appeal in this Court

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STATE OF MICHIGAN
IN THE SUPREME COURT

In re FORFEITURE OF 2006 SATURN ION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

2006 SATURN ION,

Defendant,

and

STEPHANIE WILSON,

Claimant-Appellant.

Supreme Court Case No. _____

Court of Appeal Case No. 357183

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Claimant-Appellant Stephanie Wilson's
Application for Leave to Appeal

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Introduction and Statement of Grounds for Application

The Court of Appeals opinion below misinterprets MCL 333.7521(1)(d) in a way that could subject any vehicle owner in Michigan to the forfeiture of her vehicle through no fault of her own. The statute authorizes forfeitures of vehicles used to transport controlled substances for the purpose of drug trafficking. The Court of Appeals' decision below interprets MCL 333.7521(1)(d) to instead broadly authorize forfeiture any time a passenger in a vehicle possesses any amount of drugs for personal use—even residual or unusable amounts of drugs, even for a moment. If, as the dissenting opinion below argues and its plain language confirms, MCL 333.7521(1)(d) applies where controlled substances are being transported for “the purpose of sale or receipt,” only vehicles used in drug trafficking can be forfeited under that statute. If, on the other hand, the majority is correct that the statute effectively authorizes forfeiture of any vehicle transporting a passenger who possesses any amount of drugs, any vehicle in the state becomes forfeitable the moment its driver offers a ride to the wrong person. The sweeping effect of the Court of Appeals' decision is to subject virtually every vehicle in Michigan to seizure and potential forfeiture. That question warrants review by this Court. Doubly so because seizures—which deprive people of their property for months or years, sometimes with zero evidence that any crime occurred—already are out of control.

Like here. The People do not allege that Stephanie Wilson has ever bought, sold, or used drugs. Rather, the People allege that in June 2019 Stephanie gave a ride to the father of her son, Malcolm Smith, whom everyone agrees was a drug user. There were no drugs in Stephanie's car; instead, officers allege that Malcolm admitted to having purchased ten dollars' worth of heroin sometime before he got in Stephanie's car. Even so, the People have doggedly pursued forfeiture for years, for a 2006 Saturn Ion, the owner of which everyone agrees did nothing wrong.

After the trial court granted Stephanie summary disposition and ordered her car returned in 2021, the People appealed, arguing that the car was subject to forfeiture because it was used to

transport someone who admitted to purchasing drugs. The People were unsuccessful on that theory, but the Court of Appeals offered a new one: Although there were no drugs found in Stephanie's car, which was stopped just moments after officers claim they witnessed the alleged drug transaction, it is plausible that Malcolm used the heroin while Stephanie was *driving*, meaning she "transported" heroin, rendering her car forfeitable under MCL 333.7521(1)(d). Even in the face of a strident dissent criticizing the majority's statutory interpretation, the majority offers little in the way of precedential support. That's because none exists. The lower courts lack guidance on this question of statutory interpretation, addressed for the first time by a court of appeals here—and never addressed in a published decision.

The Court of Appeals' reading of "transport[ing]" controlled substances in MCL 333.7521(1)(d) to encompass a passenger's brief possession of a small amount of drugs for personal use is contrary to the language and purpose of that statute and unsupported by case law. What it means to "transport" drugs for purposes of MCL 333.7521(1)(d) is a question of statutory interpretation that "involves a legal principle of major significance to the state's jurisprudence," and the outer limits of forfeitures in Michigan is an issue that "has significant public interest." MCR 7.305(B)(2), (3). Further, the Court of Appeals decision is "clearly erroneous and will cause material injustice." MCR 7.305(B)(5)(a). If the decision in this case stands, it could change the lives of virtually every good-hearted person in Michigan. All of us at times give rides to a loved one, an acquaintance, or even a stranger. If the forfeiture statute is as harsh as the Court of Appeals has interpreted it to be, any of us could have our car seized because sometimes people we care about become addicted to drugs. The injustice of that policy is manifest and clearly contrary to the Legislature's intent. Consequently, this Court should grant this application for leave to appeal.

Statement Identifying Judgment

Claimant-Appellant Stephanie Wilson seeks leave to appeal the Court of Appeals' opinion in *In re Forfeiture of 2006 Saturn Ion*, Court of Appeals Docket No. 357183, attached as **Exhibit 1**. The judgment, issued on March 24, 2022, reversed the district court's grant of Stephanie's motion for summary disposition and remanded the case for further proceedings. Judge Douglas Shapiro entered his dissenting opinion on the same date. **Exhibit 2**.

Statement of Questions Presented

1. Does MCL 333.7521(d), which states that a vehicle is subject to forfeiture if it is "used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [controlled substances and the materials used to produce them]," authorize the forfeiture of a vehicle based on the momentary presence of a small amount of illegal drugs for the purpose of personal use by a passenger in a vehicle?

The Court of Appeals answers, "Yes."

The Circuit Court did not decide.

Plaintiff-Appellee answers, "Yes."

Claimant-Appellant answers, "No."

2. If the Court of Appeals' interpretation of MCL 333.7521(d) is correct, is the People's theory plausible that Claimant's passenger prepared and used heroin in a moving car during the handful of minutes between the alleged drug exchange and the time that the car was stopped by Sergeant Rivers of the Wayne County Sheriff's Office?

The Court of Appeals answers, "Yes."

The Circuit Court did not decide.

Plaintiff-Appellee answers, "Yes."

Claimant-Appellant answers, "No."

Statement of Facts and Proceedings

On June 24, 2019, Claimant-Appellant Stephanie Wilson drove to pick up Malcolm Smith, the father of her young son, after he called her asking for her help. **Exhibit 1** at 1. Moments after Malcolm got into Stephanie's car, officers from the Wayne County Sheriff's Office pulled her over. *Id.* at 1-2. The People allege that Malcolm told officers he had purchased and used ten dollars' worth of heroin. *Id.* But the officers found no drugs in the vehicle, no drugs on Stephanie, and no drugs on Malcolm. *Id.* The only physical evidence of potential wrongdoing was the presence of empty syringes under Malcolm's seat. *Id.* The officers did not issue any tickets, nor did they arrest either Stephanie or Malcolm. **Exhibit 3**, Excerpts from Deposition of Chivas Rivers, 18:3-10. The officers nevertheless seized Stephanie's 2006 Saturn Ion, along with all the property inside—including things like her college diploma and her son's birth certificate. **Exhibit 1** at 2. After holding the vehicle without action for 121 days, the People filed a complaint seeking forfeiture. See *id.*

After the completion of discovery, Stephanie filed a motion for summary disposition on three grounds. *Id.* First, she argued that the People's failure to promptly file a forfeiture complaint made dismissal appropriate under MCL 2.116(C)(7). *Id.* Second, she argued that dismissal was also appropriate under MCL 2.116(C)(8) because the People had failed to state a claim on which relief could be granted. *Id.* And, finally, she argued that, pursuant to MCL 2.116(C)(10), there were no genuine issues of material fact and that she was entitled to judgment as a matter of law. *Id.* Judge David Allen of the Wayne County Circuit Court granted Stephanie's motion for summary disposition without specifying on which of the three grounds he based his decision. *Id.* The People moved for reconsideration and for a stay of the order and filed an ex parte motion for relief from judgment. *Id.* Judge Allen denied all three motions and ordered the prompt return of Stephanie's vehicle. *Id.*

The People appealed, arguing that summary disposition under MCL 2.116(C)(10) was inappropriate because there was evidence that Stephanie had used her vehicle to help Malcolm purchase

drugs. **Exhibit 4**, People's Br. on Appeal, 5. In response, Stephanie argued first that Judge Allen's order also independently and appropriately granted summary disposition under MCL 2.116(C)(7) and MCL 2.116(C)(8) and that the Court of Appeals should affirm on those grounds. **Exhibit 5**, Resp. of Claimant-Appellee, 4-6. She also argued that summary disposition had been appropriate under MCL 2.116(C)(10) because, even if—as the People argued in their briefing on appeal—Stephanie's vehicle had been used to transport someone to purchase drugs, merely transporting a drug user did not justify forfeiture under the plain text of MCL 333.7521(d). *Id.* at 8-9.

In its opinion reversing Judge Allen's order, the Court of Appeals agreed with the People that the lower court's grant of summary disposition had been based only on Stephanie's argument under MCL 2.116(C)(10). **Exhibit 1** at 3. It also found that summary disposition was inappropriate under MCL 2.116(C)(10) because a reasonable factfinder could have determined that Stephanie's vehicle was used in a way that would allow for its forfeiture under MCL 333.7521(d). *Id.* at 4. Notably, the Court did not adopt the People's argument that “merely ... transporting a person who intended to purchase or did purchase illicit drugs” would have rendered the vehicle forfeitable under MCL 333.7521(d). *Id.* Rather, the Court held that a reasonable factfinder could have determined that—for what everyone agrees was a very short time—Stephanie's vehicle was used to “transport” the ten dollars' worth of heroin allegedly purchased by Malcolm. This “transportation” of a controlled substance, according to the Court, would have authorized forfeiture under MCL 333.7521(d) and made summary disposition inappropriate under MCL 2.116(C)(10).

Dissenting from the Court's opinion, Judge Shapiro argued that the majority's decision rested on a misinterpretation of MCL 333.7521(d). The statute, in the dissent's reading, does not authorize forfeiture of any vehicle “so long as drugs were transported in the vehicle for some infinitesimal period of time.” **Exhibit 2** at 3. Rather, the statute's forfeiture provisions are aimed at drug traffickers transporting large amounts of drugs. *Id.* The dissent argues that the majority's reading, which authorizes

the forfeiture of cars for even the brief presence of a small amount of drugs for personal use, is at odds with this more natural and logical reading of MCL 333.7521(d).

Stephanie Wilson now applies to this Court for leave to appeal.

Argument

I. Standard of Review

This Court reviews a ruling on a motion for summary disposition de novo. *Hoffner v Lancetoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). Evaluating a motion for summary disposition under MCR 2.116(C)(10), a court must consider the entire record in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Summary disposition is only appropriate under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

This case involves a question of statutory interpretation, which this Court also reviews de novo. *Aroma Wines & Equip, Inc v Columbian Distrib Servs, Inc*, 497 Mich 337, 345; 871 NW2d 136 (2015).

II. Vehicles are not subject to forfeiture based on a passenger's momentary possession of a small amount of drugs.

It is a “settled principle” that “forfeitures are not favored in the law.” *In re Forfeiture of \$5,264*, 432 Mich 242, 258; 439 NW2d 246 (1989); see also *People v 8120 Ravine Rd, Alamo Twp*, 151 Mich App 358, 362, 390 NW2d 242, rev'd in part on reh'g, 153 Mich App 343, 395 N.W.2d 59 (1986). Contravening this settled principle, the Court of Appeals adopted an expansive reading of the forfeiture statute at issue—so expansive that it went beyond the People's arguments. Under the Court of Appeals' reading, if a passenger in a vehicle possesses a small amount of drugs for personal use—even for a moment—that vehicle has “transported” a controlled substance for purposes of MCL 333.7521(1)(d). This interpretation is unsupported by the plain language of the statute, by the statute's

purpose, or by Michigan case law. This issue is one of “significant public interest” and involves “a legal principle of major significance to the state’s jurisprudence,” making this Court’s review appropriate pursuant to MCR 7.305(B)(2) and MCR 7.305(B)(3). Further, if left unaddressed, the Court of Appeals’ clear error will cause “material injustice,” warranting review by this Court. MCR 7.305(B)(5)(a).

A. *The Court of Appeals’ misinterpretation of the forfeiture statute presents an issue of major significance to Michigan jurisprudence.*

Stephanie’s car was one of nearly 2,000 vehicles seized and forfeited by Michigan law enforcement in 2019. Mich State Police Grants and Community Servs Div, *2020 Asset Forfeiture Report (Covers Jan. 1, 2019, thru Dec. 31, 2019)*, p 4, available at <https://www.michigan.gov/-/media/Project/Web-sites/msp/gcsd/pdfs/2020_Asset_Forfeiture_Report_Final_063020.pdf> (accessed May 4, 2022). During the same period, it was one of 4,696 forfeitures of property based on the controlled substances section of the Public Health Code—by far the most commonly invoked forfeiture statutes. *Id.* at 5. Despite the ubiquity of vehicle forfeitures in the state, and of forfeitures based on controlled substance violations more broadly, there is surprisingly little judicial guidance on the circumstances under which forfeiture is authorized by MCL 333.7521(d). That statute makes vehicles forfeitable when they are used to transport controlled substances and the materials used to produce them. But there are no published decisions by the courts of appeals—and the decision below is the first unpublished decision—delineating what it means to “transport” a controlled substance. In the absence of much-needed guidance, law enforcement is free to sweep as many vehicles as possible into the statute’s purview, as they have done here. And, looking to the decision below in the absence of published authority, the lower courts may continue to sanction this behavior, making nearly all Michigan vehicle owners vulnerable to forfeiture under a statute intended to fight drug trafficking. The breadth of Michigan’s forfeiture statutes is a principle of “major significance” warranting review by this Court. MCR 7.305(B)(3).

The Court of Appeals held that, under the facts alleged by the People, Stephanie's vehicle was used to "transport" drugs and was thus subject to forfeiture under MCL 333.7521(d). **Exhibit 1** at 4. The court based this conclusion exclusively on the testimony of Sergeant Rivers, who testified that he watched someone "reach[] his arm into the window [of Stephanie's car] in what appeared to be a hand to hand drug transaction" when it was parked "in front of a known drug location." Although Sergeant Rivers acknowledged that there were no drugs in the car when it was stopped "shortly after"¹ that alleged transaction, **Exhibit 3** at 21:18-20, 21:24-22:4, the Court of Appeals held that a reasonable factfinder could "infer that claimant used her vehicle to transport the heroin after Smith purchased it" because Malcolm could have "used the heroin in the short time between when claimant drove away from the house and when Rivers stopped claimant." **Exhibit 1** at 4 & n 1.

The majority opinion offers little justification for this counterintuitive reading of the word "transport." Instead, the court merely paraphrases MCL 333.7521(1)(d) as authorizing forfeiture of any "vehicle ... used to *facilitate any prohibited transaction concerning illicit drugs*." **Exhibit 1** at 3, quoting *People v One 1979 Honda Auto, Vin No 284S2150186*, 139 Mich App 651, 655; 362 NW2d 860 (1984) (emphasis added). But that's not what the statute says. The scope of vehicle forfeitures under MCL 333.7521(1)(d) is more narrow, authorizing forfeiture of "...a conveyance, including an aircraft, vehicle, or vessel used or intended for use, *to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [controlled substances and the materials used to produce them]*." MCL 333.7521(1)(d) (emphasis added). As the dissent observes, even under the facts alleged by the People, Stephanie's car was "in no sense...used for the transportation of drugs." **Exhibit 2** at 2. The word "transport," the dissent points out, "denotes traveling from one place to another." *Id.*; see also *Merriam-Webster's Collegiate Dictionary* (11th ed) (defining "transport" in part as "to transfer or convey from one place to

¹ Rivers testified to pulling Stephanie over immediately after she turned onto Cypress Street, which is about two blocks from the Lumley Street location where Rivers saw Stephanie stopped.

another.”). Even under the People’s implausible theory, Stephanie did not use her car to move Malcolm’s drugs from one place to another. She transported *Malcolm*. And even if Malcolm possessed and (instantly) consumed drugs in Stephanie’s car, it does not follow that she “transported” heroin. Describing Stephanie as “transporting heroin” in such a scenario is akin to describing a person as having “transported” a hamburger when she stops at a drive-thru.

The Court of Appeals read MCL 333.7521(d) contrary to its plain, unambiguous meaning. And, even if the court reasonably concluded that the word “transport” is ambiguous, it further erred by failing to “look to the object of the statute, the harm which it is designed to remedy, and apply a reasonable construction which best accomplishes the statute’s purpose.” *In re Forfeiture of \$5,264*, 432 Mich 242, 248; 439 NW2d 246 (1989). The dissent aptly explains why forfeiture of Stephanie’s vehicle would be contrary to the legislative purpose of MCL 333.7521(1)(d). First, other language in the statute makes clear that the legislature intended to authorize forfeitures of conveyances used in drug trafficking. For example, the conveyances listed include “aircrafts” and “vessels,” modes of transportation associated with large scale movement and sale of drugs, not “small amounts of drugs for personal use.” **Exhibit 2** at 3. This commonsense reading, the dissent notes, is also supported by the comment to § 505 of the Uniform Controlled Substances Act—which contains a provision nearly identical to MCL 333.7521(d). That comment states:

Effective law enforcement demands that there be a means of confiscating the vehicles and instrumentalities used by drug traffickers in committing violations under this Act. The reasoning is to prevent their use in the commission of subsequent offenses involving transportation or concealment of controlled substances and to deprive the drug trafficker of needed mobility. [Uniform Laws Annotated, Uniform Controlled Substances Act (1970), § 505 comment.]

The majority’s broad reading of “transport” contradicts the purpose of the statute, sweeping the property of countless individuals with little or no connection to drug use—let alone the sale or distribution of drugs—into a provision meant to target drug traffickers.

It comes as little surprise then that the majority offers little case law in support of its break from the plain statutory text and its purposes. The court cites two cases in support of its statement that a “vehicle which, if used to facilitate any prohibited transaction concerning illicit drugs, is subject to forfeiture” under MCL 333.7521(1)(d). **Exhibit 1** at 3, citing *People v One 1979 Honda Auto*, Vin No 284S2150186, 139 Mich App 651, 655; 362 NW2d 860 (1984); *In re Forfeiture of One 1985 Mercedes Benz*, 174 Mich App 203, 205; 435 NW2d 426 (1988). The first, *One 1979 Honda Auto*, offers a flawed statutory interpretation later rejected by a Court of Appeals; and the second offers no support for this expansive interpretation of MCL 333.7521(1)(d). Importantly, these cases involve the transportation of drugs *for delivery and sale*. The court offers no case for the proposition that the mere presence of drugs or, as in this case, paraphernalia—however briefly—renders a vehicle forfeitable under MCL 333.7521(1)(d). And no such case exists.

The mischaracterization of MCL 333.7521(1)(d) quoted by the majority comes from *People v One 1979 Honda Auto*, in which the court rejected the challenge of an innocent co-owner to a vehicle forfeiture. The court held there that, even where a co-owner of a vehicle is innocent, “the guilty knowledge of one co-owner that the conveyance or vehicle is involved in a prohibited transaction subject to forfeiture is sufficient to provide a basis for such forfeiture.” 139 Mich App at 655-56. This holding was later disavowed in another decision by the Court of Appeals, *In re Forfeiture of \$53.00*, 178 Mich App 480, 444 NW2d 182 (1989). There, the court held that, under the applicable forfeiture law, “[t]he state may only forfeit the ownership interest of the noninnocent owner.” *Id.* at 496. After engaging in a close reading of the statutory text and analyzing the legislative purpose, the court held that the interpretation of the statutory innocent owner exception in *One 1979 Honda Auto* was too narrow. *Id.* at 492-96. Although *In re Forfeiture of \$53.00* did not expressly address the flawed rephrasing of MCL 333.7521(1)(d) quoted by the majority below, the court’s careful explanation of why *One 1979 Honda Auto* was wrongly decided is nevertheless helpful here.

The second case relied on by the majority offers no support for its broad reading of MCL 333.7521(d). That case, *In re Forfeiture of One 1985 Mercedes Benz*, involved the forfeiture of a vehicle used to transport prescription drugs for illegal sale and in the trafficking of “massive quantities of drugs and paraphernalia.” 174 Mich App 203, 205; 435 NW2d 426 (1988). Far from arguing that a vehicle is forfeitable under MCL 333.7521(1)(d) if it is merely used to “facilitate any prohibited transaction concerning illicit drugs,” the court in *In re Forfeiture of One 1985 Mercedes Benz* accurately states, “To justify forfeiture, the government must show that probable cause exists to believe the vehicle was used to transport or facilitate the transportation of controlled substances and that probable cause continued to exist at the time suit was commenced.” *Id.* It offers no guidance on the meaning of the word “transport,” and applies that term only in its proper context—where a vehicle is used by drug traffickers to transport drugs for the purposes of sale. The Court of Appeals erred in relying on the case to support the proposition that the brief presence of drugs in a vehicle constitutes “transportation” for purposes of MCL 333.7521(1)(d).

The majority’s inability to identify case law on the proper interpretation of MCL 333.7521(d) highlights the need for this Court’s guidance on this important issue. By its terms and in accordance with its purpose, the statute encompasses only vehicles used in drug trafficking. The majority’s interpretation, on the other hand, effectively authorizes forfeiture of any vehicle if its driver offers a lift to a habitual drug user. This question of statutory interpretation is a crucial one, warranting this Court’s review.

B. This Court should grant leave to appeal pursuant to MCR 7.305(B)(2) because the issue has “significant public interest” and involves “the state or one of its agencies or subdivisions.”

Stephanie is also a plaintiff in a federal civil rights, class action lawsuit challenging Wayne County’s vehicle forfeiture practices.² That case has generated significant interest in the ways in which Michigan drivers lose their vehicles under the state’s forfeiture laws. This civil rights lawsuit, however, is not the only indication that there is significant public interest in issues surrounding civil forfeiture in Michigan. In recent years, the Michigan legislature has enacted a variety of reforms to the state’s forfeiture laws. First, in 2015, the legislature passed laws raising the standard of proof required for forfeitures and enacted reporting requirements. MCL 28.111. The next year, the state eliminated the upfront bond requirement to contest seizures. 2016 PA 418. Most recently, in 2019, Michigan began requiring a criminal conviction for civil asset forfeiture.³ MCL 333.7521a. This case presents a narrower issue than those raised in the ongoing federal civil rights lawsuit and various legislative reforms, but those developments all indicate significant public interest in the ways in which law enforcement is authorized to use forfeiture and the effects of those forfeitures on Michigan residents.⁴

C. This Court should grant leave to appeal pursuant to MCR 7.305(B)(5)(a) because the decision below was “clearly erroneous and will cause material injustice.”

The Court of Appeals committed two clear errors below. First, as detailed above, the court erroneously read MCL 333.7521(1)(d), which applies only to vehicles used to transport drugs, to also authorize forfeiture based on the mere presence—however fleeting—of drugs in a vehicle. Second, even under this flawed statutory interpretation, the Court of Appeals erred in holding that a reasonable

² Claimant-Appellant’s attorneys also represent her in the federal case.

³ This criminal conviction requirement did not go into effect until one month after Stephanie’s car was seized and was consequently not available as a defense against the forfeiture here.

⁴ As the dissent notes, there is also significant public interest in this issue outside of Michigan, with “several state courts [disallowing] forfeiture of property based on possession of controlled substances for personal use.” **Exhibit 2** at 4, citing 1 ALR 5th 375.

factfinder could have found that Stephanie's vehicle was used to transport drugs. Both of these clear errors will cause material injustice, to Stephanie and many others, if left unaddressed by this Court.

I. The Court of Appeals' clear error in statutory interpretation will cause material injustice.

Far from disrupting the sale and production of controlled substances, the majority's erroneous interpretation of MCL 333.7521(1)(d) causes harm only to a single mother who was not involved in the alleged drug transaction, possession, and use leading to forfeiture. As Judge Shapiro writes in dissent, "it is clear that the confiscation of claimant's vehicle has not hindered drug traffickers. Instead, as the trial court reasoned, the only effect appears to have been making it more difficult for claimant to buy groceries for her family." **Exhibit 2** at 4. Stephanie spent nearly two years without her car solely because of its alleged proximity to a ten-dollar drug deal. During that time, she struggled to get to school and work, to take her son to his doctor's appointments, and otherwise fulfill her many responsibilities as a single mother. When she finally got the car back after the trial court's judgment, it required extensive repairs, which she completed at enormous expense. If the decision stands, Stephanie will once again lose her car and once again have her life upended by the People's dogged pursuit of a 2006 Saturn Ion—all for an alleged ten-dollar drug deal in which everyone agrees Stephanie played no part. Worse, because there are no published decisions on this issue, lower courts are likely to rely exclusively on unpublished guidance like the decision below to permit the forfeiture of vehicles belonging to other innocent people. MCL 333.7521(1)(d) was intended to disrupt drug trafficking by targeting the property of drug traffickers. The decision of the Court of Appeals causes material injustice by instead making it a tool to disrupt the lives of the friends and loved ones of those battling addiction.

2. No reasonable factfinder could have found that Stephanie's vehicle was used to transport drugs.

Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A genuine issue of material fact exists when “reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.” *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). But even under the Court of Appeals’ strained definition of “transporting drugs”—covering the brief presence of a small amount of drugs in a moving vehicle—no reasonable factfinder could determine that Stephanie’s vehicle was used to transport drugs. The Court of Appeals’ holding rests on the theory that Stephanie’s passenger, Malcolm Smith, could have “used the heroin in the short time between when claimant drove away from the house and when Rivers stopped claimant.” **Exhibit 1** at 4 & n 1. But under the facts alleged by the People, there were mere minutes between the alleged drug deal and the time that Stephanie was stopped. Sergeant Rivers pulled Stephanie over for failing to use a turn signal about two blocks from where he first observed her car parked. The People’s theory requires Malcolm to have accepted the heroin through the window and, rather than cooking, preparing, and using the drugs in a parked car, opting instead to wait for Stephanie to drive away to prepare and inject the heroin in a moving car. Under the People’s theory, Malcolm performed this challenging task so efficiently that the presence of empty syringes was the only indication he had just done so when the car was stopped moments after Stephanie began driving away. No reasonable factfinder could find this absurd theory plausible. Because the Court of Appeals clearly erred in holding otherwise, and because its decision will cause material injustice for the reasons already discussed, this Court should grant leave to appeal. MCR 7.305(B)(5)(a).

Relief Sought

Claimant Stephanie Wilson requests that this Court grant her application for leave to appeal, reverse the Court of Appeals' decision below, and reinstate the trial court's order granting summary disposition in her favor. The presence of a small amount of drugs for personal use by a vehicle's passenger does not render that vehicle subject to forfeiture under MCL 333.7521(1)(d). The Court of Appeals erred in holding otherwise and, without guidance from this Court, this statutory misinterpretation will persist in the Courts of Appeals and among Michigan law enforcement, unjustly depriving more innocent people like Stephanie of their vehicles.

Dated: May 5, 2022

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX S

People's Answer to Application for Leave to Appeal in this Court

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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, ex rel
KYM L. WORTHY, WAYNE COUNTY PROSECUTING
ATTORNEY,

Plaintiff-Appellee,

-v-

No. 164360

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,

and

STEPHANIE GRACE WILSON,
Claimant-Appellant,

PLAINTIFF-APPELLEE'S
ANSWER TO CLAIMANT-APPELLANT'S APPLICATION FOR
LEAVE TO APPEAL

FILED UNDER AO 2019-6

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STATEMENT OF JURISDICTION

This Court has jurisdiction under MCR 7.303(B)(1).

STATEMENT OF QUESTION PRESENTED

I.

A motion for summary disposition in favor of the claimant in a forfeiture case must be denied when there is evidence that the defendant vehicle was used in the purchase or transportation of drugs. Claimant Wilson admitted that she knowingly used the defendant vehicle to help her friend buy heroin, and the evidence suggests that she drove the car with the drugs inside. In light of these facts, was the Court of Appeals right to reverse the trial court's grant of summary disposition in favor of the claimant?

The Plaintiff answers, "Yes."

The Claimant answers, "No."

INTRODUCTION

To paraphrase a popular saying, Claimant is entitled to her own opinion, but not to her own facts. Or her own law, for that matter. Unfortunately, her application takes liberties with both.

Specifically, she maintains that the Court of Appeals opinion in this case has authorized the police to seize cars from people like her who “everyone agrees” have done nothing wrong. But the forfeiture statute, subsection 7521(1)(d)(ii), unquestionably protects innocent owners from having their vehicles seized: “A conveyance is not subject to forfeiture [for acts] committed or omitted without the owner’s knowledge or consent.” The Court of Appeals did not amend the statute.

Moreover, she is not innocent. Although this fact is nowhere in her application, Claimant *admitted* to the police that she knowingly picked up Malcolm Smith to take him to get his fix. Instead of owning up to her admission, or dealing with the facts in the light most favorable to the Plaintiff (as the law requires at this stage), she ignores the unfavorable evidence, and latches on to her friend’s claim that he “admitted to having purchased ten dollars’ worth of heroin sometime *before he got in Stephanie’s car.*” (Emphasis added.) But the fact is that the police *saw* Smith involved in a hand-to-hand buy *while in Claimant’s car*. Additionally, she and Smith had been stopped before (in 2019) doing the same thing: Wilson driving him to purchase and consume heroin. No one who gives a ride to a friend, family member, or random stranger is going to have their car taken from them merely because the passenger is found to have drugs. Certainly that is not what happened to the Claimant here.

Claimant also argues that the Court of Appeals rejected the Plaintiff’s legal argument on appeal but overturned the trial court anyway on a theory of their own. Again, that is not what happened. It is

true that the People's primary argument on appeal was that knowingly transporting *a person* to and from a drug deal is grounds for forfeiture of the car. But Plaintiff also maintained, on page 8 of our reply brief, that even if Claimant's reading of the statute were correct—that it was *the drugs* that had to be transported—"the evidence suggests that Smith consumed or threw away the drugs while the car was underway." Plaintiff continues to believe that the statute authorizes forfeiture for transporting persons to the drugs; but it is also plainly within the statute's ambit to forfeit a car that has actually transported the drugs.

Either way, leave should be denied.

FACTS

On June 24, 2019, officers of the Special Operations Unit of the Wayne County Sheriff's Office were conducting surveillance on a known drug house at 4727 Lumley in Detroit.¹ Sergeant Chivas Rivers observed the defendant vehicle—a 2006 Saturn Ion—park on Lumley near the drug house.² He then saw an unknown male exit 4727 Lumley and approach the passenger side of the defendant vehicle, reaching his arm into the window in what appeared to be a hand-to-hand drug transaction.³

A short time later, the vehicle left the location, turning east on Cypress without using a turn signal.⁴ Officers stopped the vehicle on the I-94 service drive and Chopin. Sgt. Rivers spoke with the driver, claimant Stephanie Wilson, who said that she had driven her passenger, Malcolm Smith, to the Lumley address to purchase heroin.⁵ Specifically, Wilson maintained that Smith would get sick without the drugs, and so she brought him down every day to get a fix.⁶ Upon searching the defendant vehicle, the police found five empty syringes under the passenger seat, but no controlled substances.⁷

Additionally, Wilson and Smith had been stopped earlier in 2019 under almost identical circumstances: Wilson had driven Smith to a drug house in her car to purchase heroin; the police stopped them

¹ Deposition testimony of Sergeant Chivas Rivers, 1.25.21, at 15-16.

² Id. at 20.

³ Id. at 20-21.

⁴ Id. at 22.

⁵ Id. at 39.

⁶ Id.

⁷ Id. at 40.

immediately afterwards; both Smith and Wilson admitted that Wilson had bought and consumed \$10 worth of heroin.⁸

On October 23, 2019, Plaintiff-Appellant filed a forfeiture complaint under MCL 333.7521 against the Saturn Ion. In March of 2021, Claimant filed a motion for summary disposition, arguing among other things that no issue of material fact existed. Judge Allen granted the motion on April 29, 2021, and denied a motion for reconsideration on May 13, 2021. According to the court, the fact that the police recovered no drugs from the car meant that no reasonable mind could find that the defendant vehicle had knowingly been used as transportation to buy illegal narcotics under MCL 333.7521(d). The trial court thus issued an order of judgment in favor of claimant Wilson on April 29, 2021. The Court of Appeals reversed in an opinion dated March 24, 2022.

⁸ Id. at 43.

ARGUMENT

- I. A motion for summary disposition in favor of the claimant in a forfeiture case must be denied when there is evidence that the defendant vehicle was used in the purchase or transportation of drugs. Claimant Wilson admitted that she knowingly used the defendant vehicle to help her friend buy heroin, and the evidence suggests that she drove the car with the drugs inside. In light of these facts, the Court of Appeals was right to reverse the trial court's grant of summary disposition in favor of the claimant.

Standard of Review

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Hoffner v Lanctoe*, 492 Mich 450, 459 (2012). And, as the court knows, in a motion for summary disposition all reasonable doubt should be given to the party opposing the motion. *Reaver v Westwood*, 148 Mich App 343 (1986). That is, the court must look at all the evidence in the light most favorable to the nonmoving party. *Atlas Valley Golf & Country Club*, 227 Mich App 14 (1997). As such, the trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes; if material evidence conflicts, summary disposition under MCR 2.116(C)(10) is not appropriate. *Pioneer State Mut Ins v Dells*, 301 Mich App 368, 377 (2013). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

Discussion

Ms. Wilson *admitted* she used the defendant vehicle to help Malcolm Smith buy heroin, and the police saw her drive the car away after the sale while the drugs were likely inside. That is, according to

the sworn testimony of one of the officers who seized the defendant vehicle, Malcolm Smith bought drugs from a house on Lumley and then when the car was stopped the Claimant conceded that she intentionally drove Smith to that address for that purpose. Since the government has the authority to seize a vehicle that has knowingly been used as transportation to buy or transport illegal narcotics, there was no basis for the trial court to rule that no issue of material fact existed.

Unfortunately, the statutory subsection in question, MCL 333.7521(1)(d), is poorly written. It states:

[A] conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [a controlled substance]" is subject to forfeiture.

The problem is that the statute does not specify *what* is being transported. Again: "A conveyance ... used or intended for use to transport _____ or in any manner facilitate the transportation of _____, for the purpose of sale or receipt of a controlled substance, is subject to forfeiture." Given the context, the thing transported by the conveyance could be either *a person* or *the drugs*.

According to the Court of Appeals in *Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182 (1990), "people" fits in the blank. That is, under the statute, the conveyance could be taken if used "to transport *customers* to and from the home of an illicit drug dealer for the purpose of purchasing various quantities of cocaine." *Id.* at 183 (emphasis added). The Court of Appeals ruled similarly in the unreported case of *In re Forfeiture of 1999 Ford Contour*, where the panel held that "MCL 333.7521(1)(d) clearly indicates that a vehicle used to transport *a customer* to and from the home of an illicit drug dealer for the purpose of purchasing controlled substances is subject to

forfeiture.” (Emphasis added.) Since the Ford Contour had been used by the claimant’s wife to transport her to a house to purchase marijuana, the vehicle was properly subject to forfeiture unless an exception applied.

But here, the Court of Appeals held that it must be the drugs that were transported, and the Plaintiff takes no issue with that view. Again, as the Court noted and as the People argued on appeal, the evidence suggests that Smith either consumed the heroin while the car was underway, or threw the narcotics out the window before the car was stopped by the police. Somehow he bought drugs on Lumley but all that was left by the time the police apprehended them were the syringes under his seat. This raises an issue of material fact for a jury to decide whether Smith actually bought heroin and whether it was still in the car when they drove away.

But if an owner of a vehicle knowingly uses it as transportation to and from a drug sale, the car is subject to forfeiture. Here, if Ms. Wilson intentionally used her Ion to help get Smith his heroin fix, and Smith didn’t shoot up on the spot, then the car can be properly taken by the government. Those are the facts that Plaintiff reasonably intends to prove at trial, and summary judgment was therefore inappropriate. The Court of Appeals was correct in that regard, and there is no reason for this Court to grant leave.

RELIEF REQUESTED

THEREFORE, the Plaintiff respectfully requests that this Honorable Court deny leave to appeal.

Respectfully submitted,

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Dated: June 9, 2022

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with AO 2019-6. The body font is 12 pt. Century Schoolbook set to 150% line spacing. This document contains 1,228 countable words.

/s/ David A. McCreedy

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,**

and

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX T

Claimant's Reply in Support of Application for Leave to Appeal

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STATE OF MICHIGAN
IN THE SUPREME COURT

In re FORFEITURE OF 2006 SATURN ION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

2006 SATURN ION,

Defendant,

and

STEPHANIE WILSON,

Claimant-Appellant.

Supreme Court Case No. 164360

Court of Appeal Case No. 357183

Wayne County Circuit Court
Case No. 19-014106-CF

ORAL ARGUMENT REQUESTED

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Reply in Support of
Application for Leave to Appeal

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Introduction

The People's answering brief ignores the one legal issue before this Court—whether a driver “transport[s]” drugs, and therefore can lose her car forever, when she transports someone whom the People believe briefly possessed a small amount of drugs in the car—even when no drugs are found. Under the Court of Appeals' holding, MCL 333.7521(1)(d) authorizes forfeiture of a person's car for “transport[ing]” drugs for “the purpose of sale or receipt,” even where (like here) there are no drugs in the car nor on the people inside. Unless this Court takes this case and reverses, the People will continue to forfeit people's cars based on allegations that a driver transported a drug user somewhere.

In their late-filed brief, the People merely quibble with Stephanie's description of the facts.¹ But, for purposes of this appeal, the operative facts are those alleged by the People in support of their contention that Stephanie “transported” drugs in violation of MCL 333.7521(1)(d). The allegations are that Stephanie “transported” drugs when she gave a ride to Malcolm Smith, who allegedly had ten dollars' worth of drugs on him when he got into Stephanie's car. Again, there were no drugs found in the vehicle or on Malcolm. However, the People, and the majority opinion below, insist this is enough to permanently take away Stephanie's car.

The People offer no case, no textual or historical analysis, and virtually no rationale in support of the majority's broad reading of what it means to “transport” drugs. On the other hand, Stephanie's application explains why the majority's reading is contrary to caselaw and the plain text and purpose of MCL 333.7521(d) and why, therefore, the Court of Appeals clearly erred in overruling the trial court's grant of summary disposition. This error will “cause material injustice” and “involves a legal principle of major significance to the state's jurisprudence.” *See* MCR

¹ Under MCR 7.305(D), the People's brief was due on June 2, 2022—28 days after Stephanie filed and served her Application for Leave to Appeal. Without providing notice to the Court or Stephanie's counsel, the People instead filed their brief on June 9, 2022.

7.305(B)(3), (5)(a). As a result, this Court should grant Stephanie's application for leave to appeal and ultimately reverse the decision below.

Argument

I. A broad reading of "transportation" of drugs, like the majority used below, is unsupported by the text of MCL 333.7521(1)(d), unsupported by caselaw, and contrary to the statute's policy and history.

As Stephanie explained in her application, the majority opinion below offers little analysis in support of the majority's holding that momentary, incidental possession of a small amount of drugs by a passenger in a vehicle constitutes "transportation" of a controlled substance for purposes of forfeiture under MCL 333.7521(d). Application for Leave to Appeal, 6-11. The majority opinion cites no caselaw supporting that proposition, nor does it attempt to reconcile such a broad interpretation with the more limited scope suggested by the statute's text and history. The People fare no better. The answering brief offers no case supporting the broad reading applied by the majority. And the People's two-paragraph analysis of the legal issue makes no attempt to address several other problems with the majority's statutory interpretation—problems noted by the dissent below and fully outlined by Stephanie in her application to this Court.

To be sure, the People cite cases. But only one published case deals with the question presented—whether forfeiture of a person's car is authorized by MCL 333.7521(1)(d) when there are no drugs in the car, but one passenger allegedly had drugs recently. *See* People's Answering Brief ("Response") at 10. And in that case, *Forfeiture of One 1987 Chevrolet Blazer*, the Court of Appeals embraced an even broader reading of a different statute, holding that MCL 333.7521(1)(f) authorizes vehicle forfeitures when a driver transports a person to a location where the passenger buys drugs. 183 Mich App 182 (1990). We contend that *1987 Chevrolet Blazer* was wrongly decided, but it is not relevant to the narrower question here. As the majority opinion correctly noted below, *1987 Chevrolet Blazer* dealt with forfeitures under MCL 333.7521(1)(f)—not under the statute at issue here, MCL

333.7521(d). Application for Leave to Appeal, **Exhibit 1** at 4 n.2 (“Plaintiff here has not argued that the vehicle was subject to forfeiture under MCL 333.7521(1)(f), so we offer no opinion on whether that subsection would support forfeiture in this case or whether *In re Forfeiture of One 1987 Chevrolet Blazer* was rightly decided.”). The Court of Appeals did not rely on *1987 Chevrolet*, and neither should this Court, because this appeal addresses the narrower question of what it means to transport *drugs*, not people who may wish to buy them.

The People acknowledge that the holding of *1987 Chevrolet Blazer* presents a question for another day, saying they “take[] no issue” with the Court of Appeals’ decision that “it must be the drugs that were transported.” *Id.* at 11. However, immediately after this concession, the People continue arguing that “if an owner of a vehicle knowingly uses it as transportation to and from a drug sale, the car is subject to forfeiture.” *Id.* Again, that is not the question presented by the opinion below. Rather, the question presented—unaddressed anywhere in the People’s brief—is what it means to “transport” *drugs* under MCL 333.7521(1)(d).²

Turning to the question presented, MCL 333.7521(d) authorizes the forfeiture of conveyances “used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [controlled substances and the materials used to produce them].” MCL 333.7521(d). But, as noted in the dissent below, Stephanie’s car was “in no sense ... used for the transportation of drugs.” Application for Leave to Appeal, **Exhibit 2** at 2. Under any view of the facts alleged, Stephanie had no intention to move drugs from one place to another. Rather, she used her car to move Malcolm from one place to another. *See id.* (“Here, the vehicle did not move the

² The People also chide Stephanie for failing to mention that a police officer claims she “admitted” to driving Malcolm to a “known drug house,” so that he could buy drugs. *See* Response at 5, 7. But that (very) disputed fact is only relevant to the People’s original theory that forfeiture is authorized merely for driving someone somewhere where people buy drugs. And again, that theory is no longer at issue.

drugs from one location to another. Rather, the vehicle was allegedly used to transport an *individual* to a drug sale, upon which the drugs were immediately (or nearly immediately) consumed.”).

The object of statutory construction is to understand the meaning of statutory text. And under the plain text of MCL 333.7521(1)(d), the legislature has authorized forfeiture of vehicles used to “transport” drugs for “the purpose of sale or receipt” of drugs. The only natural reading of the text is that it is meant to target vehicles used to facilitate the transportation of *drugs*, not *people* who may buy drugs or may have drugs on their person. The majority below was unconvinced by this plain, unambiguous reading of the words “transport” for “the purpose of sale or receipt” of drugs and declared the text ambiguous. We believe the text unambiguously means what it says: vehicles used to transport drugs are subject to forfeiture.

But even assuming the text is ambiguous, the majority erred by then failing to address the ambiguity by “look[ing] to the object of the statute, the harm which it is designed to remedy, and apply[ing] a reasonable construction which best accomplishes the statute’s purpose.” *See In re Forfeiture of \$5,264*, 432 Mich 242, 248; 439 NW2d 246 (1989). Had the majority done so below, it would have seen (as the dissent saw) that MCL 333.7521(1)(d) authorizes the forfeiture of “the vehicles and instrumentalities used by drug traffickers,” and not the cars of friends and relatives of individuals addicted to drugs. Uniform Laws Annotated, Uniform Controlled Substances Act (1970), § 505 comment. This Court’s review is warranted on this ground alone: having perceived the text of MCL 333.7521(1)(d) as ambiguous, the Court of Appeals failed to apply the canons of statutory construction and, had it done so, it would have adopted (like the dissent) a construction of the statute that does not authorize the forfeiture of every taxi, bus, and Uber—and the cars of every well-meaning parent or friend in Michigan—who might transport a drug user somewhere.

II. The correct interpretation of MCL 333.7521(1)(d) is an important question unsettled in the lower courts that warrants review by this Court.

The People do not respond to Stephanie's detailed explanation of why this case meets the various criteria for this Court's review set out in MCR 7.305, but they do blithely assert that, "No one who gives a ride to a friend, family member, or random stranger is going to have their car taken from them merely because the passenger is found to have drugs." Response at 5. But that is precisely what the People's interpretation of MCL 333.7521(d) allows. In fact, this case illustrates how the truth is worse: Malcolm had no drugs on him when he and Stephanie were pulled over and there were no drugs in Stephanie's car.

The People point to the innocent-owner protections in the statute. This is cold comfort to individuals seeking to help friends or loved ones battling drug addiction. Even with such a passenger's assurance that they do not currently possess any drugs, drug addicts lie about drugs all the time. Establishing a lack of guilty knowledge on the vehicle owner's part in such a circumstance would be, at best, an uphill battle. And it would be a battle a person could engage in only after hiring a lawyer and setting out to affirmatively prove her innocence.

But even if the People could guarantee the most robust possible application of the innocent owner protection to each case, this appeal still presents an issue of major significance to Michigan jurisprudence, warranting this Court's review under MCR 7.305(B)(3). There is an enormous difference between the scope of MCL 333.7521(d) under the Court of Appeals' interpretation and the correct interpretation advanced by Stephanie. The Court of Appeals effectively reads "transportation" of drugs as indistinguishable from "possession" of drugs. Under that court's reading, the mere presence of controlled substances, however briefly and however small the amount, renders a vehicle subject to forfeiture under MCL 333.7521(d). On the other hand, Stephanie argues—as did the dissent below—that simple possession plus momentary forward motion does not meet the statutory bar of "transportation" of drugs "for the purpose of sale or receipt." Rather, by

authorizing the forfeiture of vehicles used to “transport” drugs, MCL 333.7521(d) targets those vehicles used to move significant quantities of drugs for the purpose of illegal trafficking. Vastly more vehicles would be subject to forfeiture under the former interpretation than the latter, and establishing which interpretation is correct gives crucial guidance to both law enforcement and property owners. The appeal thus raises an issue of “major significance” to Michigan jurisprudence, making review appropriate under MCR 7.305(B)(3). And if left uncorrected, the Court of Appeals’ erroneous decision will not only unjustly deprive Stephanie of her property, but also pose a grave threat to other vehicle owners, causing “material injustice” and warranting review pursuant to MCR 7.305(B)(5)(a).

* * *

This case is an excellent vehicle for deciding an important statewide issue of statutory construction. A majority of the Court of Appeals held that MCL 333.7521(1)(d) authorizes forfeiture of a person’s car whenever another person transports drugs somewhere without the driver’s knowledge. The dissenting opinion below lays out a compelling case for a narrower reading of the statute—the one adopted by the trial court when it threw this case out—authorizing forfeitures only in cases where vehicles are knowing used to transport *drugs*, not *people* who may have drugs on them. The injustice of the outcome below is manifest and it is vitally important to the law in Michigan that this Court review this case.

Conclusion

This Court should grant Stephanie Wilson’s application for leave to appeal, reverse the Court of Appeals’ decision below, and reinstate the trial court’s order granting summary disposition in her favor.

Dated: May 5, 2022

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
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No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
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Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX U
Court of Appeals' Ruling in Cranford v Wayne Co

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STATE OF MICHIGAN
COURT OF APPEALS

JIMMIE CRANFORD,

Plaintiff-Appellant/Cross-Appellee,

v

WAYNE COUNTY SHERIFF, ERIC SMITH and
WAYNE COUNTY,

Defendants-Appellees/Cross-
Appellants.

UNPUBLISHED

May 25, 2001

No. 218859

Wayne Circuit Court

LC No. 99-904127-CZ

Before: Hood, P.J., and Doctoroff and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition and dismissing all counts of plaintiff's first amended complaint. Defendants cross-appeal the trial court's denial of their request for sanctions on the basis that plaintiff's complaint was frivolous. We affirm in part, reverse in part, and remand.

I

This action arises from events surrounding plaintiff's reassignment in the Wayne County Sheriff's Department. Plaintiff alleged that he was a long-time employee of the Sheriff's Department and, at the time of the events that led to this lawsuit, he held the position of Deputy Chief, with responsibilities for several units including narcotics enforcement, civil process, felony warrants, friend of the court enforcement, and special operations. Defendant Eric Smith was the chief of operations and plaintiff's immediate supervisor, and defendant Robert Ficano was the Wayne County Sheriff.

According to plaintiff, he was in charge of "Operation Push Off" [Push-Off], a vehicle forfeiture program through which the police would seize the vehicles of persons who either purchased drugs or attempted to purchase drugs from known suppliers. Under the terms of the Push-Off guidelines, which were established by the prosecutor and distributed for use to those involved in the program, seized vehicles were either sold and the proceeds used to support the drug enforcement program, or the vehicle owner could negotiate a financial settlement resulting in the release of the vehicle. The guidelines provided, in pertinent part, that the seizure of

vehicles is to be conducted pursuant to the provisions of the forfeiture statute, MCL 333.7521 *et seq.*; MSA 14.15(7521) *et seq.*

In November 1998, Smith allegedly ordered plaintiff to personally go to the prosecutor's office and secure the release of an automobile that had been confiscated under the push-off program from a relative of an elected city official. When plaintiff attempted to protest, he was directly ordered by Smith to secure the release of the automobile and to request that the prosecutor waive the towing and impound fees. Plaintiff obeyed the order. The prosecutor agreed to return the vehicle, but refused to waive the towing and impound fee.

Plaintiff further alleged that, on January 25, 1999, during a stake-out, the police observed "John Doe III" attempt to purchase a controlled substance from a known drug house, stopped him, and confiscated his 1988 Chevrolet Blazer. That afternoon, Smith called plaintiff and ordered him to "sweep under the rug" the report relating to the seizure of John Doe III's Blazer. When plaintiff protested, Smith gave him a direct order to return the vehicle to John Doe III. Plaintiff later learned that John Doe III was the son of a highly placed elected official.

The next morning, January 26, 1999, plaintiff called Ficano and requested a meeting with him to report that he had been ordered by Smith to do what he believed were questionable acts. Plaintiff wished to seek guidance from the sheriff and to advise him that he was about to report this "developing pattern" to the prosecutor. Ficano called Smith into the meeting. When Smith arrived, he told plaintiff that he was to follow orders and the matter was closed as far as Smith was concerned. Smith then allegedly issued a general order stripping plaintiff of all of his duties and responsibilities and transferring him to duty at the county jail.

Plaintiff also alleged that, on January 29, 1999, Smith issued an order, dated January 19, 1999, which provided that, "effective immediately," police officers would not seize vehicles unless illegal drugs were found in the vehicle or on the person of the vehicle's occupants. Plaintiff alleged that this "back-dated" order was issued solely for the purpose of returning John Doe III's vehicle.

II

Plaintiff's first amended complaint alleged five separate claims: (1) violation of the whistle-blowers' protection act (WPA), MCL 15.361, *et seq.*; MSA 17.427(1) *et seq.*; (2) retaliation in violation of public policy; (3) civil conspiracy; (4) defamation; and (5) intentional infliction of emotional distress. The trial court granted defendants' motion for summary disposition of plaintiff's claims under MCR 2.116(C)(7) and (8).

We review a trial court's decision granting summary disposition *de novo*. *Groncki v Detroit Edison Co*, 453 Mich 644, 649; 557 NW2d 289 (1996). Summary disposition may be granted under MCR 2.116(C)(7) if a claim is barred because of immunity granted by law. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). For purposes of a motion under MCR 2.116(C)(7), the allegations in the complaint "must be accepted as true unless specifically contradicted by the affidavits or other appropriate documentation submitted by the movant." *Id.*, citing *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Michigan Ins Repair Co Inc v Manufacturers Nat'l Bank of Detroit*, 194 Mich App 668, 673; 487 NW2d 517 (1992). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

III

Plaintiff first argues that the trial court erred in determining that the facts alleged in his complaint did not identify a violation of the forfeiture statute, MCL 333.7521, *et seq.*; MSA 14.15(7521), *et seq.*, and, therefore, the complaint failed to state a claim for relief under the WPA. MCL 15.362; MSA 17.428(2), provides:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

To establish a *prima facie* violation of the WPA, a plaintiff must show (1) that he engaged in a protected activity as defined by the WPA, (2) he was discharged, threatened, or otherwise discriminated against, and (3) a causal connection existed between the protected activity and the adverse employment action. MCL 15.362; MSA 17.428(2); *Henry v City of Detroit*, 234 Mich App 405, 409; 594 NW2d 107 (1999); *Phinney v Perlmutter*, 222 Mich App 513, 553; 564 NW2d 532 (1997).

An employee is engaged in a protected activity under the WPA if he reports, or is about to report, a suspected violation of the law to a public body. *Henry, supra* at 409-410. A law enforcement agency or any member or employee of a law enforcement agency is a "public body" within the meaning of the act. MCL 15.361(d)(v); MSA 17.428(1)(v). Thus, the prosecutor's office is a public body. In addition, this Court held in *Henry* that internal police procedures are "rules or regulations promulgated pursuant to law." *Id.* at 410. Therefore, plaintiff's alleged threat to report a suspected violation of the Wayne County Sheriff's department's internal procedures would qualify as protected activity.

Further, an employee "about to" report receives the same level of protection as one who has reported to a public body. *Shallal v Catholic Social Services*, 455 Mich 604, 611; 566 NW2d 571 (1997). In order to establish that he was "about to" report, the plaintiff must prove "by clear and convincing evidence" that he was about to report a violation or a suspected violation of a law to a public body. MCL 15.363(4); MSA 17.428(3)(4). The plaintiff's proof need not consist of

“a concrete action” to satisfy the “about to” report element. *Shallal, supra* at 615. It is sufficient if the plaintiff actually threatened to report. *Id.* at 616.

Here, the trial court dismissed plaintiff’s WPA claim because plaintiff failed to allege that he was about to report conduct that amounted to a violation of the law. The trial court concluded that the forfeiture statute merely confers discretion upon a seizing agency, as opposed to making forfeiture mandatory in every case, and defendants were under no obligation to seize the vehicles in question. However, we believe that the trial court misconstrued plaintiff’s complaint.

Property may be “seized” without process where there is probable cause to believe that the property was used or is intended to be used in violation of the controlled substances act. MCL 333.7522(d); MSA 14.15(7522)(d). When property is seized, the seizing agency must notify the owner, and forfeiture proceedings must be instituted promptly. MCL 333.7523(1)(a); MSA 14.15(7523)(1)(a). Unless all criminal proceedings involving or relating to the property have been completed, the prosecutor must be immediately notified of the seizure and the intention to forfeit and dispose of the property. MCL 333.7523(1)(b); MSA 14.15(7523)(1)(b). When property is seized, the seizing agency may do any of the following: (1) place the property under seal, (2) remove the property to a place designated by the court, or (3) require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with the law. MCL 333.7523(2); MSA 14.15(7523)(2). Further, the seizing agency may dispose of the forfeited property by (1) retaining it for official use, (2) selling it, (3) requiring the administrator to take custody of the property and removing it for disposition in accordance with law, (4) forwarding it to the bureau for disposition, or (5) donating appropriate items to elementary or secondary schools. MCL 333.7524(1) and (2); MSA 14.15(7524)(1) and (2).

Plaintiff does not dispute that the forfeiture statute conveys discretion to seize, nor does he assert that the police are required to seize property “in every case” where forfeiture is permitted. In fact, the pertinent allegations in plaintiff’s complaint do not implicate defendants’ initial discretionary decision whether to forfeit a vehicle. Rather, plaintiff’s WPA claim is predicated on the argument that, once an agency exercises its discretionary authority with respect to forfeiture, and the appropriate notice is given, the authority over the vehicle then rests in the prosecutor’s office and the police no longer have the discretion to “give back” the forfeited vehicle. Plaintiff’s theory is supported by the pertinent forfeiture statutes which delineate what the seizing agency or governmental unit in possession of the property may do with seized or forfeited items, but gives no authority to return the items to the owner. MCL 333.7523(2); MSA 14.15(7523)(2); MCL 333.7524(1) and (2); MSA 14.15(7524)(1) and (2). Further, defendants’ own internal policies limited return of seized vehicles to circumstances where the owners negotiate releases.

Here, plaintiff alleges that for political reasons defendants instructed him to secure the return of vehicles that had already been seized and were subject to the authority of the prosecutor’s office. It is apparent that the surreptitious release of vehicles under these circumstances would not comport with the forfeiture statute or defendants’ Push-Off guidelines. Accepting plaintiff’s allegations as true, we conclude that they sufficiently allege that he was discriminated against because of his conduct in threatening to report a suspected violation of the

forfeiture statute or internal police procedures. Accordingly, we reverse the trial court's dismissal of plaintiff's WPA claim.

IV

Plaintiff also argues that the trial court erred by dismissing his claim of retaliation in violation of public policy. However, plaintiff admits that his retaliation claim cannot survive should this Court hold that the trial court erred in dismissing his WPA claim. We agree.

A claim alleging retaliation in violation of public policy is based on the principle that "some grounds for discharging an employee are so contrary to public policy as to be actionable." *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 79; 503 NW2d 645 (1993), citing *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 695; 316 NW2d 710 (1982). However, a public policy claim is sustainable only where there is not an applicable statutory prohibition against discharge in retaliation for the conduct at issue. *Dudewicz, supra* at 80. Thus, a valid claim under the WPA preempts a public policy claim of retaliatory discharge. *Id.* at 79-80. Accordingly, we affirm the trial court's dismissal of plaintiff's public policy claim.

V

Next, plaintiff claims that the trial court erred in dismissing his claim of civil conspiracy. The essential elements of a civil conspiracy are (1) a concerted action (2) by a combination of two or more persons (3) to accomplish an unlawful purpose (4) or a lawful purpose by unlawful means. *Mays v Three Rivers Rubber Corp*, 135 Mich App 42, 48; 352 NW2d 339 (1984); *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992).

The trial court dismissed this claim because it concluded that "the failure of defendants to conduct a civil forfeiture indicates no unlawful purpose nor commission of a lawful purpose by unlawful means." However, plaintiff's complaint alleged that defendants ordered him to return already forfeited vehicles because the vehicles were seized from relatives of highly placed elected officials. Again, the allegations in plaintiff's complaint are not directed at the initial discretionary decision whether to seize a vehicle. Instead, plaintiff's claim implicates defendants' conduct at a point where defendants no longer had discretion to determine which vehicles to seize. Accepting plaintiff's allegations as true, we find that they sufficiently allege an unlawful purpose, and the trial court erred in dismissing the civil conspiracy claim pursuant to MCR 2.116(C)(8).

We similarly conclude that defendants were not entitled to summary disposition of the conspiracy claim pursuant to MCR 2.116(C)(7) on the basis of governmental immunity. State agencies are immune from tort liability if they are "engaged in the exercise or discharge of a governmental function" at the time the alleged tort occurs. MCL 691.1407; MSA 3.996(107).¹

¹ Specifically, MCL 691.1407(5); MSA 3.996(107)(5) provides:

(continued...)

A governmental function is an “activity which is expressly or impliedly mandated or authorized by constitution, statute, or other law.” *Harrison v Director of Department of Corrections*, 194 Mich App 446, 450; 487 NW2d 799 (1992), citing *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 591; 363 NW2d 641 (1984). An agency’s *ultra vires* activities are not entitled to immunity. *Ross, supra*.

The scope of an employee’s authority must be considered in the light of the particular circumstances of the employment. *Backus v Kauffman (On Remand)*, 238 Mich App 402, 410; 605 NW2d 690 (1999). The chief of police and other high ranking police executives are “absolutely immune from tort liability” when acting within the scope of their executive authority, even if they act in error. *Meadows v City of Detroit*, 164 Mich App 418, 427; 418 NW2d 100 (1987). However, in *Marrocco v Randlett*, 431 Mich 700, 710-711; 433 NW2d 68 (1988), overruled on other grounds, 454 Mich 135 (1997), our Supreme Court held that

the highest executive officials of local government are not immune from tort liability for acts not within their executive authority. The determination whether particular acts are within their authority depends on a number of factors, including the nature of the specific acts alleged, the position held by the official alleged to have performed the acts, the charter, ordinances, or other local law defining the official’s authority, and the structure and allocation of powers in the particular level of government The trial court is the proper forum for an initial determination.

Here, plaintiff alleged that defendants acted in concert to violate state law by returning already forfeited vehicles to the sons of influential city politicians, and by asking plaintiff to cover up these violations by sweeping the reports involving these matters “under the rug.” Although defendants had the discretion pursuant to MCL 333.7522(d); MSA 14.15(7522)(d) to determine whether to seize the vehicles in question, the statute gives defendants no authority to revoke forfeitures. It is apparent that the conduct alleged in plaintiff’s complaint would not be within the scope of defendant’s authority and, therefore, would not be protected by governmental immunity. We conclude that the trial court erred when it dismissed plaintiff’s civil conspiracy claim.

VI

Lastly, plaintiff argues that the trial court erred when it dismissed his claim for intentional infliction of emotional distress. Plaintiff alleged that defendants’ decision to strip him of his responsibilities and authority and transfer him to the county jail constituted intentional infliction of emotional distress because it was known throughout the department that when an officer falls

(...continued)

A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

out of favor, he is sent to the county jail to punish and humiliate him. The trial court ruled that plaintiff's allegations, even if accepted as true, did not support a claim for intentional infliction of emotional distress because the "mere transfer from one department to another without a demotion or reduction in pay does not constitute extreme and outrageous conduct." We agree.

In order to state a claim for intentional infliction of emotional distress, plaintiff had to establish (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). The conduct complained of must be so outrageous in character and so extreme in degree that it goes beyond all possible bounds of decency and is regarded as atrocious and utterly intolerable in a civilized community. *Graham, supra*. Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Id.* The off-cited test is whether "the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" *Id.* at 674-675, citing *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 603; 374 NW2d 905 (1985).

We agree with the trial court's conclusion that the loss of responsibilities and the transfer to the county jail is not conduct that goes beyond all possible bounds of decency, or is atrocious and utterly intolerable in a civilized community. *Graham, supra* at 674. Accordingly, we conclude that the trial court did not err when it dismissed plaintiff's intentional infliction of emotional distress claim.

VII

On cross-appeal, defendants argue that plaintiffs' action was frivolous and, therefore, the trial court erred in denying their request for sanctions under MCL 600.2591; MSA 27A.2591. A trial court's finding that a claim is frivolous will not be reversed on appeal unless clearly erroneous. *In re Attorney Fees and Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999). Having determined that plaintiff sufficiently pleaded cognizable claims for violation of the WPA and civil conspiracy, we find no merit to defendants' claim that plaintiff's complaint was frivolous and affirm the trial court's denial of sanctions.

In conclusion, we affirm the trial court's decision to grant summary disposition of plaintiff's claims of retaliation in violation of public policy and intentional infliction of emotional distress. We also affirm the court's denial of defendant's request for sanctions. However, we reverse the court's dismissal of plaintiff's claims for violation of the WPA and civil conspiracy.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Michael J. Talbot

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX V

Court of Appeals' Ruling in In re Forfeiture of 1999 Ford Contour

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STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF 1999 FORD CONTOUR.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

1999 FORD CONTOUR,

Defendant,

and

FREDDIE BURSE,

Claimant-Appellee/Cross-
Appellant.

UNPUBLISHED

February 2, 2012

No. 300482

Wayne Circuit Court

LC No. 10-002976-CF

Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

In this forfeiture action, plaintiff appeals as of right from a circuit court order granting the claimant's motion for summary disposition pursuant to MCR 2.116(C)(10).¹ The claimant has filed a cross appeal, challenging the trial court's denial of his request for sanctions. We affirm in part, reverse in part, and remand for entry of an order granting summary disposition in favor of plaintiff.

I. BACKGROUND

¹ The claimant moved for summary disposition under MCR 2.116(C)(8) and (10). The trial court did not specify under which subrule it granted the motion. However, because the parties' arguments that addressed the limited connection between the claimant's vehicle and the attempted drug transaction relied on evidence outside the pleadings, review is appropriate under MCR 2.116(C)(10). *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002).

This case concerns the forfeiture of a vehicle titled in the claimant's name, and the material facts are undisputed. Plaintiff alleged that the claimant's wife drove the vehicle to an address where an officer was working undercover. She walked from the vehicle to the side of the house and attempted to purchase two bags of marijuana. An undercover officer told her to return in 15 minutes. After she drove away, a unit conducted a traffic stop of the vehicle. The complaint alleged that the vehicle was subject to forfeiture on several statutory grounds, including because under MCL 333.7521(1)(d) the vehicle was used in an attempt to purchase marijuana. The trial court granted summary disposition to the claimant because it agreed with the claimant that, to the extent MCL 333.7521(1)(d) applied, the exception in § 7521(1)(d)(iii) – relating to the possession of marijuana – also applied.

II. ANALYSIS

A. FORFEITURE ACTION

A motion for summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court also reviews de novo issues involving statutory interpretation. *Bloomfield Twp v Oakland Co Clerk*, 253 Mich App 1, 9; 654 NW2d 610 (2002).

In interpreting statutes, “[w]e begin our analysis by consulting the specific statutory language at issue.” *Bloomfield Twp*, 253 Mich App at 10. Additionally,

[w]hen faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written. [*Id.* (citation and internal quotation marks omitted).]

Forfeiture actions pursuant to MCL 333.7521 are in rem proceedings. *In re Forfeiture of \$30,632.41*, 184 Mich App 677, 678; 459 NW2d 99 (1990). Although forfeitures are generally not favored in the law, the forfeiture provisions within the controlled substances act are a part of the Public Health Code and are intended to promote the health, safety, and welfare of Michigan's citizens. *In re Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182, 184-185; 454 NW2d 201 (1990). On appeal, plaintiff only contends that the vehicle was subject to forfeiture pursuant to MCL 333.7521(1)(d), which states in pertinent part:

(1) The following property is subject to forfeiture:

* * *

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner

to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):^[2]

* * *

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).^[3] [Footnotes added.]

This Court has held that MCL 333.7521(1)(d) clearly indicates that a vehicle used to transport a customer to and from the home of an illicit drug dealer for the purpose of purchasing controlled substances is subject to forfeiture. *Forfeiture of 1987 Chevrolet Blazer*, 183 Mich App at 183-185. The vehicle at issue here was used by claimant's wife to transport her to a house to purchase marijuana, a controlled substance. Hence, unless an exception applies, the vehicle was properly subject to forfeiture under the statute. See *People v One 1979 Honda Auto*, 139 Mich App 651, 655; 362 NW2d 860 (1984) (the mere possession of marijuana within a vehicle does not subject the vehicle to forfeiture).

However, as plaintiff argues, the plain reading of the exception found in MCL 333.7521(1)(d)(iii) reveals that it prohibits the forfeiture only when the vehicle merely contains a controlled substance, without additional evidence that the vehicle was also *used to facilitate* a marijuana transaction. This holds true because the exception references MCL 333.7403, which only prohibits the possession of marijuana. Thus, if a vehicle contains marijuana, and there is no evidence that it was used or intended to be used to facilitate the transportation for the sale or receipt of marijuana, the exception would apply because the only connection between the vehicle and the drug is its location. However, if as in this case, the evidence shows that the claimant intended to use the vehicle (or "conveyance") for the purpose of the sale or receipt of a drug, forfeiture is permitted under MCL 333.7521(1)(d).

This distinction, between mere possession of a controlled substance and possession "plus something more," is a distinction drawn by the controlling statutes, and is likewise contained in other statutory provisions. Specifically, under the controlled substances act— which categorizes illegal drug offenses — mere possession is distinct from other offenses, including possession with the intent to deliver marijuana. See *People v Broilo*, 58 Mich App 547, 550; 228 NW2d 456 (1975); MCL 333.7401; MCL 333.7403. Mere possession of marijuana, MCL 333.7403, occurs

² Only the property described in subsection (a) applies to this case. MCL 333.7521(1)(a) provides, "[t]he following property is subject to forfeiture: (a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article."

³ As discussed later, MCL 333.7403(2)(d) applies to this case because it proscribes the possession of marijuana. However, MCL 333.7404 does not because it proscribes the *use* of various controlled substances, including marijuana. Nor does MCL 333.7341(4) apply, because it prohibits the use or intended use of *imitation* controlled substances.

when (1) the defendant possesses a controlled substance; (2) the controlled substance in the defendant's possession is marijuana; and (3) the defendant knew that he was possessing marijuana. *People v Pegenau*, 447 Mich 278, 292; 523 NW2d 325 (1994). Possession with intent to deliver marijuana, MCL 333.7401, requires a showing that (1) the defendant knowingly possessed a controlled substance; (2) with the intent to deliver the controlled substance; and (3) the controlled substance was marijuana. *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005). As can be seen from MCL 333.7401 and MCL 333.7403, to prove possession with intent to deliver marijuana, the prosecution must present additional evidence that a defendant intended "something more" than mere possession of marijuana.

Likewise, under the forfeiture statute the plaintiff must prove "something more" in addition to mere possession to avoid the exception found in MCL 333.7521(1)(d)(iii). That is, the plaintiff must prove that the claimant used a conveyance to facilitate the sale or receipt of a controlled substance. Under MCL 333.7521, this Court has defined "facilitate" to mean to "make easier." *In re Forfeiture of 719 North Main*, 175 Mich App 107, 112; 437 NW2d 332 (1989). Hence, where the plaintiff provides evidence that demonstrates – as the evidence here does – that a claimant used a vehicle with the intent to facilitate a drug transaction, the vehicle is properly subject to forfeiture pursuant to MCL 333.7521(1)(d) because the plaintiff has proven that in addition to mere possession, the use of a vehicle to buy or sell marijuana, has occurred.⁴ The trial court erred in granting the motion for summary disposition in favor of the claimant. On remand, the trial court shall vacate its order granting the motion for summary disposition in favor of the claimant and enter an order granting summary disposition in favor of plaintiff.

As an alternative basis for affirmance, the claimant argues that he was entitled to summary disposition on the basis of the innocent owner exception in MCL 333.7521(1)(d)(ii), which states, "[a] conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent." In support of his motion, the claimant submitted an affidavit in which he averred that he was the owner of the vehicle, that he "was not involved in any way in the incident that led to the claim for forfeiture and seizure of the vehicle," and that he "was not operating the vehicle at that [sic] time that my wife allegedly went to purchase marihuana nor did I accompany her on that trip." The averments do not establish that the claimant was entitled to summary disposition under the innocent owner exception. The claimant did not state that he did not have knowledge of or consent to his wife's acts. Cf. *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 252; 805 NW2d 217 (2011) ("The statute's requirement that the claimant lack 'knowledge or consent' of the acts or omission forming the basis for forfeiture

⁴ The claimant's reliance on *In re Forfeiture of 1987 Mercury*, 252 Mich App 533; 652 NW2d 675 (2002) is misplaced. In that case, this Court held that a prevailing claimant in a drug forfeiture action had no responsibility for the towing or storage fees associated with the plaintiff's forfeiture of a vehicle. *Id.* at 548. The court did not address whether the trial court correctly applied the forfeiture exception, and neither towing nor storage fees are at issue in this case. Thus, this case does not support the claimant's position.

means the innocent owner defense is defeated if the claimant has either knowledge of 'or' consented to the illegal activity.").

B. SANCTIONS

On cross-appeal, the claimant argues that the trial court erred by denying his motion for sanctions. This Court reviews for clear error the trial court's finding in regard to whether a claim is frivolous for purposes of awarding sanctions. *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 195; 565 NW2d 887 (1997). The crux of the claimant's argument for sanctions is that the complaint lacked legal merit. However, for the reasons previously discussed, plaintiff's argument concerning the interplay between MCL 333.7521(1)(d) and § 7521(1)(d)(iii) is well-founded. Consequently, plaintiff's claim was not frivolous and the trial court properly declined to apply sanctions.

Affirmed in part, reversed in part, and remanded for entry of an order granting summary disposition in favor of plaintiff. We do not retain jurisdiction.

No costs, a question of public importance being involved. MCR 7.219(A).

/s/ Christopher M. Murray

/s/ Michael J. Talbot

STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF 1999 FORD CONTOUR.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

1999 FORD CONTOUR,

Defendant,

and

FREDDIE BURSE,

Claimant-Appellee/Cross-
Appellant.

UNPUBLISHED

February 2, 2012

No. 300482

Wayne Circuit Court

LC No. 10-002976-CF

Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

SERVITTO, J. (*concurring in part/dissenting in part*).

Though I concur with the majority's resolution of the cross-appeal concerning sanctions, and I agree that the claimant was not entitled to summary disposition on the basis of the innocent owner exception set forth in MCL 333.7521(1)(d)(ii), I respectfully dissent from the majority's conclusion that the trial court erred in granting summary disposition in favor of the claimant based upon the exception set forth in MCL 333.7521(1)(d)(iii).

MCL 333.7521(1)(d) states, in pertinent part:

(1) The following property is subject to forfeiture:

* * *

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

* * *

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).

MCL 333.7403(2)(d) proscribes possession of marijuana. MCL 333.7404 proscribes use of various controlled substances, including marijuana.

Plaintiff argues that the exception in § 7521(1)(d)(iii) “only applies to those vehicles that were *not* used to facilitate a marijuana transaction, but had simply contained possession amounts, without more.” To accept plaintiff’s construction, this Court would have to conclude that the vehicle could not be forfeited if the claimant’s wife actually possessed marijuana within the vehicle at the time of the traffic stop, but that forfeiture would be permitted if she used the vehicle to attempt to acquire possession of marijuana, but was not successful in *actually* acquiring it. Plaintiff’s contention that § 7521(1)(d)(iii) does not apply in the latter situation is not supported by the statutory language or the hierarchical structure of the statute.

To be subject to forfeiture under § 7521(1)(d) in the first instance a vehicle must be used (or intended for use) to transport or facilitate the transportation of a controlled substance for purposes of sale or receipt. The “violation” at issue here for purposes of § 7521(1)(d)(iii) involved mere possession, i.e., the claimant’s wife’s attempt to acquire possession of the marijuana. There was no evidence that the claimant’s wife was involved in any illegal activity beyond mere possession. Therefore, I would find that the trial court did not err in finding that the exception in § 7521(1)(d)(iii) applied, thereby entitling the claimant to summary disposition.

/s/ Deborah A. Servitto

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX W
Court of Appeals' Ruling in In re Forfeiture of 2002 Lincoln

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STATE OF MICHIGAN
COURT OF APPEALS

In re Forfeiture of 2002 Lincoln.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

2002 LINCOLN,

Defendant,

and

RAY ANTHONY LASSITER,

Claimant-Appellant.

UNPUBLISHED
November 20, 2014

No. 317369
Wayne Circuit Court
LC No. 13-006959-CF

Before: O'CONNELL, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

In this forfeiture action, claimant appeals as of right an order granting forfeiture of his vehicle. We affirm.

This action arises out of the forfeiture of claimant's vehicle when claimant was seen driving his vehicle to a known drug trafficking house and then admitted to the police that he traveled to the house to purchase crack cocaine. On appeal, he argues that there was insufficient evidence to seize his vehicle because nothing was found in the vehicle or on his person. We disagree.

Any challenge to the sufficiency of the evidence in a civil case is waived by a party's failure to raise the issue in a timely motion at trial. *Shaw v Ecorse*, 283 Mich App 1, 22; 770

NW2d 31 (2009). Claimant did not challenge the sufficiency of the evidence before the trial court, so this issue is waived.¹ Nevertheless, we will briefly address the merits of the claim.

When reviewing a challenge to the sufficiency of the evidence in a civil matter, this Court views the evidence and all legitimate inferences in a light most favorable to plaintiff. *Badalamenti v William Beaumont Hospital-Troy*, 237 Mich App 278, 284; 602 NW2d 854 (1999). Questions of credibility are left to the trier of fact and will not be resolved anew by this Court. See *Allard v State Farm Ins Co*, 271 Mich App 394, 406-407; 722 NW2d 268 (2006).

MCL 333.7521(1)(d) provides that a vehicle is subject to forfeiture if it is “used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of” a controlled substance. Here, the testimony at the forfeiture hearing established that claimant parked the forfeited vehicle in front of a house known for trafficking drugs. A short while later claimant left the home and drove away in his vehicle. A police officer stopped claimant and asked him about the house he had just left. The officer testified that claimant told him that he went to the house to purchase crack cocaine on credit, but the drug dealers were not issuing credit at that time. At the hearing, claimant admitted telling the officer that he went to the house asking for drugs. Claimant also admitted that he had purchased drugs at the house on prior occasions. Claimant stated that he was “thinking out loud” and was “a little facetious,” when making the statement to the officer. He also stated that he was really at the house to pick up a friend or possibly some music. However, the trial court did not find claimant’s testimony credible. Viewed in the light most favorable to plaintiff, sufficient evidence was presented for the trial court to find that the vehicle was subject to forfeiture under MCL 333.7521(1)(d).

Affirmed.

/s/ Peter D. O’Connell

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood

¹ In addition, claimant failed to adequately support his position on appeal. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Although, claimant asserts there was insufficient evidence to support the order of forfeiture, he does not cite to relevant legal authority for this proposition. Claimant also attempts to make arguments that the arresting officer abused his discretion in seizing the vehicle and that the judge erred in not finding claimant credible, without citing to any authority. Accordingly, we conclude his arguments are abandoned on appeal.

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX X

Court of Appeals' Ruling in In re Forfeiture of 2007 Ford Focus

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STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF 2007 FORD FOCUS.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

2007 FORD FOCUS, VIN NO.
1FAHP34N57W192507,

Defendant,

and

STEVEN ROSS,

Claimant-Appellant.

UNPUBLISHED

October 8, 2015

No. 321640

Wayne Circuit Court

LC No. 13-004428-CF

Before: GADOLA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Claimant, Steven Ross, appeals as of right a judgment of forfeiture. We reverse and remand.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case arises from a traffic stop in which Westland Police Officer Robert Fruit found a gram of marijuana in claimant's 2007 Ford Focus. Claimant's daughter, Linda Ross, was the driver and sole occupant of the vehicle. Linda worked as a delivery driver and had received the marijuana as a tip earlier in the day after delivering a pizza to a customer.¹

¹ Contrary to what is stated in the dissenting opinion, neither party disputes Linda's contention that she did not purchase the marijuana; rather, it was given to her as a tip, in addition to cash,

On April 2, 2013, plaintiff filed a complaint for judgment of forfeiture under MCL 333.7521. In response, claimant asserted that forfeiture was not appropriate because Linda had not used or intended to use the vehicle to sell or receive a controlled substance. At a forfeiture trial, Fruit testified that Linda told him, upon her arrest, that she purchased the marijuana from a customer to whom she had delivered a pizza. However, Linda testified, and the trial court found credible, that she received the marijuana as a tip for delivering pizza and that she did not intend to go to the customer's house in order to purchase the marijuana.

At the close of proofs, claimant argued that Linda's only intent was to deliver a pizza and that she "just so happen[ed]" to obtain marijuana during the course of her delivery. Claimant argued that this unintended receipt of a controlled substance did not subject the vehicle to forfeiture. Rather, Linda merely possessed the marijuana, which, pursuant to an exception found in MCL 333.7521(1)(d)(iii), prohibited forfeiture of the vehicle. The trial court agreed with claimant's contention that, in order to be subject to forfeiture, plaintiff had to show "more than mere possession." However, the court opined that the evidence in this case showed that the vehicle was used for the purpose of receiving a drug. According to the trial court, the evidence in support of this finding was "the undisputed testimony . . . of [Linda] that in fact she used the vehicle to deliver a pizza and she received the marijuana" Consequently, held the trial court, the instant case was more than a "mere possession" case because the evidence "demonstrates unequivocally and without question that in fact the car was used to receive marijuana."

II. ANALYSIS

Claimant contends that the trial court erred in entering a judgment of forfeiture on his vehicle because Linda merely possessed the marijuana found in the vehicle, which is not a conveyance subject to forfeiture; she did not use or intend to use the vehicle to facilitate transportation for the purpose of sale or receipt of the marijuana (e.g. to facilitate a marijuana transaction), as is required for forfeiture to apply under MCL 333.7521(1)(d). We agree.

A. STANDARD OF REVIEW

We review for clear error a trial court's decision in a forfeiture proceeding. *In re Forfeiture of \$180,975*, 478 Mich 444, 450; 734 NW2d 489 (2007). Likewise, we review for clear error a trial court's findings of fact. *In re Forfeiture of \$25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996). "A finding is clearly erroneous where, although there is evidence to support it, the reviewing court is firmly convinced that a mistake has been made." *Forfeiture of \$180,975*, 478 Mich at 450. "In applying the clearly erroneous standard, regard is given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Forfeiture of \$19,250*, 209 Mich App 20, 29; 530 NW2d 759 (1995). We review de novo questions of law such as the interpretation and application of statutes. *People v \$176,598 US Currency*, 242 Mich App 342, 346; 618 NW2d 922 (2000).

from a customer. As noted later in this opinion, the trial court also accepted this as true. The dissent is thus weighing in on credibility sua sponte.

B. MCL 333.7521

Resolution of the issue in this case requires the interpretation and application of MCL 333.7521. As our Supreme Court recently stated:

When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to ascertain and give effect to the intent of the Legislature. We begin this analysis by examining the language of the statute itself, as this is the most reliable evidence of that intent. If the language of a statute is clear and unambiguous, we presume that the Legislature intended the meaning clearly expressed. Accordingly, the statute must be enforced as written and no further judicial construction is permitted. To the extent possible, effect should be given to every phrase, clause, and word in the statute, and no word should be treated as surplusage or rendered nugatory. [*Gardner v Dep't of Treasury*, ___ Mich ___, ___; ___ NW2d ___ (2015) (issued July 9, 2015, Docket Nos. 150293, 150294, 150295) (citations omitted), slip op at 5-6.]

MCL 333.7521 *et seq.*, governs property subject to forfeiture under the Public Health Code. The statute provides, in relevant part:

(1) The following property is subject to forfeiture:

* * *

(a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.

* * *

(d) *Except as provided in subparagraphs (i) to (iv)*, a conveyance,^[2] including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

* * *

(ii) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.

² As used in § 7521(1)(d), the term “conveyance” “refers to some type of vehicle which, if used to facilitate any prohibited transaction concerning illicit drugs, is subject to forfeiture.” *People v One 1979 Honda Auto*, 139 Mich App 651, 655; 362 NW2d 860 (1984).

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4)³. [MCL 333.7521 (emphasis added).]

We begin by focusing our analysis on § 7521(1)(d), which the trial court found authorized forfeiture in this case. Pursuant to the plain language of the statute, forfeiture of a vehicle or other conveyance is dependent upon the following: (1) the vehicle is either used or intended for use in transporting or in facilitating the transportation of a controlled substance; and (2) that use is for the purpose of either *sale* or *receipt* of a controlled substance—in this case, marijuana. The statute does not define “purpose,” making it proper to consult a dictionary for its common meaning. See *Klooster v Charlevoix*, 488 Mich 289, 304; 795 NW2d 578 (2011). Black’s Law Dictionary defines “purpose” as “[a]n objective, goal, or end[.]” *Black’s Law Dictionary* (10th ed). Merriam-Webster’s Collegiate Dictionary defines “purpose” as “something set up as an object or end to be attained[.]” *Merriam-Webster’s Collegiate Dictionary* (2014). Accordingly, in a forfeiture action under § 7521(1)(d), plaintiff must show, by a preponderance of the evidence, that the vehicle was used or intended for use with the specific objective, goal, or end of selling or receiving a controlled substance. See MCL 333.7521(1)(d); *Forfeiture of \$25,505*, 220 Mich App at 574 (explaining that the plaintiff bears the burden of proof in a forfeiture proceeding). Thus, § 7521(1)(d) makes clear that more than mere possession of a controlled substance is required before a vehicle is subject to forfeiture.

The idea that more than mere possession is required for forfeiture of a vehicle under § 7521(1)(d) is further illustrated by examining the exceptions to forfeiture found in § 7521(1)(d)(i)-(iv). The issue raised in this case requires that we focus on the exception found in § 7521(1)(d)(iii). That exception provides that a vehicle is not subject to forfeiture for—pertinent to this case—a violation⁴ of MCL 333.7403(2)(d) or MCL 333.7404. As referenced in the exception, MCL 333.7403(2)(d) proscribes the knowing or intentional possession of marijuana. MCL 333.7404(1), meanwhile, proscribes the use of, among other controlled substances, marijuana. Consequently, it follows that according to the plain language of § 7521, a claimant’s vehicle is not subject to forfeiture for mere possession or use of marijuana. See *People v One 1979 Honda Auto*, 139 Mich App 651, 655; 362 NW2d 860 (1984) (“Were the instant case involved solely with the possession of marijuana, the automobile in question here would clearly not be subject to forfeiture.”).

C. CLAIMANT’S VEHICLE IS NOT SUBJECT TO FORFEITURE

We agree with claimant that forfeiture was not appropriate, based on the plain language of § 7521. Linda testified, and the trial court found credible, that she merely possessed and used

³ MCL 333.7341(4) pertains to the use or possession of an imitation controlled substance and is not at issue in this case.

⁴ The application of § 7521 is not dependent upon a criminal prosecution, see *In re Forfeiture of \$53*, 178 Mich App 480, 496; 444 NW2d 182 (1989). Neither is the exception to the statute, as it applies to a “violation” of § 7403(2)(c), (d), or § 7404, rather than a “conviction” under those respective sections.

a small amount of marijuana in the vehicle after receiving the drug as a tip for delivering a pizza. The trial court also found credible that Linda intended to drive to the house where she received the drug because she had to deliver a pizza; she did not intend to go there in order to obtain marijuana.⁵ Despite Linda's testimony that she sometimes received marijuana as a tip from various customers, there was no evidence that she expected to receive it on this particular occasion, that this particular customer had given her marijuana before, or that she was motivated to go to the customer's house by anything other than a delivery call. The evidence shows that, at least in her mind, the marijuana was an unexpected bonus. In other words, the record lacks evidence that Linda used the vehicle for the purpose of receiving or selling marijuana; such evidence is required for forfeiture under the statute. See MCL 333.7521(1)(d) (in order to be subject to forfeiture, the claimant must use or intend to use the vehicle "for the purpose of sale or receipt of" a controlled substance). Linda's actions in this case constitute a mere violation of MCL 333.7403(2)(d) (possession) and MCL 333.7404(1) (use).⁶ The plain language of § 7521(1)(d)(iii) states that a vehicle "is *not* subject to forfeiture for" such violations. Consequently, plaintiff failed to meet its burden of showing, by a preponderance of the evidence, that Linda used the vehicle for the purpose of receiving marijuana, and, further, the trial court clearly erred in granting a judgment of forfeiture. See MCL 333.7521(1)(d); *Forfeiture of \$180,975*, 478 Mich at 450; *Forfeiture of \$25,505*, 220 Mich App at 574.

In disagreeing that this case is more than a "mere possession" case, plaintiff contends, and the trial court agreed, that forfeiture was proper because Linda used the vehicle to *receive* the marijuana. Plaintiff—along with the trial court—takes the position that merely receiving marijuana after using a vehicle amounts to using a vehicle for the purpose of receiving the drug. This construction is not supported by the plain language of § 7521. According to plaintiff and the trial court's perspective, the fact that "the car was used to receive marijuana" because marijuana was placed into it established—on its own—that Linda used the vehicle for the *purpose* of receiving marijuana. By that logic, a vehicle would be subject to forfeiture in all cases of mere possession, because the drug's presence would automatically impute "purpose . . . of receipt" to the vehicle's occupant. This construction would effectively strip all meaning from § 7521(1)(d)(iii), which is an unacceptable result under our canons of statutory construction. See *Gardner*, ___ Mich at ___; slip op at 5-6.

In addition, reading the conditions for forfeiture under § 7521(1)(d) in context with the exception found in § 7521(1)(d)(iii) highlights the shortcoming of the trial court's interpretation. Section 7521(1)(d) provides for the forfeiture of a vehicle that is "used or intended for use, to transport, or in any manner to facilitate the transportation, *for the purpose of sale or receipt of*" a controlled substance. MCL 333.7521(1)(d) (emphasis added). As noted, in a forfeiture action under § 7521(1)(d), plaintiff must show, by a preponderance of the evidence, that the vehicle was

⁵ To the extent Fruit's testimony contradicted Linda's testimony, we note that the trial court found Linda to be credible, and we defer to that credibility determination. *Forfeiture of \$19,250*, 209 Mich App at 29.

⁶ As noted above, the exception applies to "violations" of those sections, not necessarily criminal convictions.

used or intended for use with the specific objective, goal, or end of selling or receiving a controlled substance. See MCL 333.7521(1)(d). At the same time, the Legislature expressly stated in § 7521(1)(d)(iii) that forfeiture is not appropriate for mere possession or use of a controlled substance. When these two provisions are read in context, it is apparent that the Legislature intended to premise forfeiture on more than mere possession or use of a controlled substance. Instead, as plainly expressed in § 7521, forfeiture must be premised on the use or intended use of the vehicle *for the purpose* of sale or receipt of a controlled substance. Merely possessing or using a controlled substance in a vehicle is not, by itself, sufficient to warrant forfeiture under the statute.⁷

D. 1999 FORD CONTOUR

In concluding that claimant's vehicle was subject to forfeiture, the trial court relied heavily on this Court's decision in *In re Forfeiture of 1999 Ford Contour*, unpublished opinion per curiam of the Court of Appeals, issued February 2, 2012 (Docket No. 300482), remanded in part on other grounds 491 Mich 937 (2012).⁸ In that case, the claimant's wife drove the vehicle to an address where a police officer was working undercover. *Id.* at 2. She attempted to purchase two bags of marijuana from the officer, who told her to return in 15 minutes. *Id.* When the claimant's wife left, police officers conducted a traffic stop and seized the vehicle. *Id.* The complaint alleged that the vehicle was subject to forfeiture under § 7521(1)(d) because it was used in an attempt to purchase marijuana. *Id.* The trial court granted summary disposition to the claimant, finding that, to the extent § 7521(1)(d) applied, the exception in § 7521(1)(d)(iii) regarding the possession of marijuana also applied and precluded forfeiture. *Id.*

In deciding whether the trial court erred by granting summary disposition, this Court explained that when a vehicle is used to transport a customer to and from the home of a drug dealer, the vehicle is subject to forfeiture. *Id.* at 3, citing *In re Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182, 185; 454 NW2d 201 (1990). Unless the exception in § 7521(1)(d)(iii) applied, the panel reasoned that the vehicle in that case was subject to forfeiture. After examining § 7521(1)(d)(iii), the panel found the exception was inapplicable. The panel explained that "the plain reading of the exception found in MCL 333.7521(1)(d)(iii) reveals that it prohibits the forfeiture only when the vehicle merely contains a controlled substance, without additional evidence that the vehicle was also *used to facilitate* a marijuana transaction." *Id.* "Thus," explained the panel, "if a vehicle contains marijuana, and there is no evidence that it was used or intended to be used to facilitate the transportation for the sale or

⁷ This construction of § 7521 is reinforced by the idea that a forfeiture proceeding is brought against the property, not the individual. See *In re Forfeiture of \$53*, 178 Mich App 480, 496; 444 NW2d 182 (1989). By ensuring that the vehicle was used for the purpose of selling or receiving the controlled substance, and not for merely possessing the substance, § 7521 connects the controlled substance to the vehicle.

⁸ Although *1999 Ford Contour* is not binding because it is an unpublished opinion, we can look to the case as persuasive authority. MCR 7.215(C)(1); *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010).

receipt of marijuana, the exception would apply because the only connection between the vehicle and the drug is its location.” *Id.* The 1999 *Ford Contour* court drew a distinction between “mere possession” of a controlled substance and possession “plus something more”—that is, possession *plus* the use of a vehicle to facilitate the sale or receipt of a controlled substance. *Id.* at 3-4. In that case, the panel found the exception did not apply because the evidence showed that the claimant *intended* to use the vehicle *for the purpose* of receiving marijuana. *Id.* at 4 (“Hence, where the plaintiff provides evidence that demonstrates—as the evidence here does—that a claimant used a vehicle with the intent to facilitate a drug transaction, the vehicle is properly subject to forfeiture pursuant to MCL 333.7521(1)(d) because the plaintiff has proven that in addition to mere possession, the use of a vehicle to buy or sell marijuana, has occurred.”).

Although we are not bound by 1999 *Ford Contour*, we agree that it accurately portrays forfeiture under § 7521. However, contrary to plaintiff’s contentions and the trial court’s analysis, we find that the facts in the instant case are materially distinguishable from 1999 *Ford Contour*, thereby mandating a different outcome in this case. Based on the evidence presented, we do not perceive this case as one involving possession plus “something more.” As noted, the trial court found credible Linda’s testimony that she drove to the home where she obtained marijuana not intending to receive the drug, but instead intending to deliver a pizza that the customer ordered. Again, the marijuana was, at least from Linda’s perspective, an unexpected bonus. That it was *unexpected* is what distinguishes the instant case from 1999 *Ford Contour*, where the claimant’s wife drove the vehicle to the home *for the purpose* of receiving drugs at the home. For that reason, the claimant’s vehicle in 1999 *Ford Contour* came within the ambit of § 7521. Here, by contrast, Linda’s unexpected receipt of the marijuana leaves plaintiff unable to prove that she used the vehicle to facilitate the receipt of the drug, and leads us to conclude that Linda merely possessed the drug inside the vehicle, which did not subject the vehicle to forfeiture under § 7521.

III. CONCLUSION

Because we find that the trial court erred by concluding that claimant’s vehicle was subject to forfeiture, we reverse the order of forfeiture and remand for entry of an order denying the complaint. Additionally, because we reverse the trial court’s judgment of forfeiture, we need not address claimant’s alternative argument with regard to the innocent-owner defense.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael F. Gadola

/s/ Jane M. Beckering

STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF 2007 FORD FOCUS.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

2007 FORD FOCUS, VIN NO.
1FAHP34N57W192507,

Defendant,

and

STEVEN ROSS,

Claimant-Appellant.

UNPUBLISHED

October 8, 2015

No. 321640

Wayne Circuit Court

LC No. 13-004428-CF

Before: GADOLA, P.J., and JANSEN and BECKERING, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. I would affirm the trial court's judgment of foreclosure because the prosecution proved its case by a preponderance of the evidence.

As stated in the majority opinion, we review for clear error a trial court's findings of fact during a forfeiture proceeding. *In re Forfeiture of \$19,250*, 209 Mich App 20, 29; 530 NW2d 759 (1995). "A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*

" 'In Michigan, forfeiture proceedings are in rem civil proceedings and the government has the burden of proving its case by a preponderance of the evidence.' " *In re Forfeiture of \$25,505*, 220 Mich App 572, 574; 560 NW2d 341 (1996) (citation omitted). As discussed in the majority opinion, MCL 333.7521 provides, in relevant part:

(1) The following property is subject to forfeiture:

(a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.

* * *

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b)[.]

The prosecution established by a preponderance of the evidence that Linda Ross ("Linda") used the vehicle to receive marijuana. Westland Police Officer Robert Fruit testified that he conducted a traffic stop of the vehicle on the night of the incident. Linda was the only person in the vehicle. Officer Fruit smelled a strong odor of burnt marijuana in the vehicle, and Linda told him that she had been smoking marijuana. Linda told Officer Fruit that she purchased marijuana from a customer and that she knew that the customer sold marijuana. She told Officer Fruit that she drove to another location and smoked the marijuana inside of the vehicle. Officer Fruit recovered marijuana and a marijuana pipe from under the front passenger seat of the vehicle. Officer Fruit's testimony established that Linda used the vehicle in order to receive marijuana from the customer since she drove to the customer's house knowing that he sold marijuana and purchased marijuana from him. See MCL 333.7521(1); *Forfeiture of \$25,505*, 220 Mich App at 574. In addition, the prosecution admitted a police report from a December 2012 incident, in which Linda was a passenger in a vehicle where marijuana was found. Linda explained during her testimony that the police found a marijuana grinder containing marijuana residue in her front right pocket during the December 2012 incident. This testimony further indicates that Linda used the vehicle in order to receive marijuana in this instance. See *Forfeiture of \$25,505*, 220 Mich App at 574. Therefore, the vehicle was subject to forfeiture. See *id.*

The trial court clearly erred when it credited Linda's testimony over Officer Fruit's testimony. Linda testified that she received the marijuana as a tip for a pizza that she delivered. According to Linda, she receives marijuana as a tip a few times per month. However, there were several inconsistencies in Linda's testimony. Linda testified that she received a monetary tip for delivering the pizza, which indicates that she did not receive the marijuana as a tip. The fact that Linda had a marijuana pipe in the vehicle shows that she intended to receive marijuana in the near future. Linda failed to explain why she had a marijuana pipe in the vehicle. Linda also testified regarding the December 2012 case. She denied that the marijuana that was found in the vehicle was hers, but failed to explain why the grinder was in her pocket. Furthermore, Linda had reason to fabricate her story in order to avoid forfeiture of the vehicle. Considering the testimony as a whole, Linda's testimony was incredible. See *Forfeiture of \$19,250*, 209 Mich App at 29. In contrast, Officer Fruit's testimony regarding the incident was credible since he did not contradict himself during his testimony and had no reason to fabricate his story. See *id.*

Therefore, the trial court made a mistake when it credited Linda's testimony over Officer Fruit's testimony. See *id.*

Accordingly, the prosecution established by a preponderance of the evidence that Linda used the vehicle to purchase marijuana and, therefore, used the vehicle for the purpose of receipt of marijuana. I would affirm the judgment of forfeiture.

/s/ Kathleen Jansen

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX Y
Court of Appeals' Ruling in State v Certain Real Property

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STATE OF MICHIGAN
COURT OF APPEALS

STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CERTAIN REAL PROPERTY, EDWIN T. DEWS,
BEVERLY J. DEWS, SHARON SHEA and ROCK-
A-ROLLA RECORDS, INC.,

Defendants-Appellants.

UNPUBLISHED

October 30, 1998

No. 192693

Saginaw Circuit Court

LC No. 93-900203-CF

Before: Bandstra, P.J., and Griffin and Young, Jr., JJ.

PER CURIAM.

Defendants appeal as of right from an order of forfeiture entered after a bench trial. The trial court also denied defendants' motion for "reconsideration" and, in the alternative, for a new trial. We affirm.

Defendants first claim that the forfeiture proceeding was procedurally defective. Defendants argue that, under MCL 333.7453(2); MSA 14.15(7453)(2), the prosecuting attorney was required to notify defendants at least two days before the execution of the 1993 search warrant that defendants possessed material determined by the prosecuting attorney to be drug paraphernalia. This argument lacks merit. By its express terms, subsection (2) applies only to potential criminal prosecutions, not civil forfeiture actions. For example, subsection (2) provides that notice be made "[b]efore a person is *arrested* for a *violation* of subsection (1)" and that, if the person "complies with the notice, no *arrest* will be made." (Emphasis added). Further, MCL 333.7453(3); MSA 14.15(7453)(3) provides that a person's compliance with the notice sent under subsection (2) is a complete defense "against a *prosecution* under section 7453." (Emphasis added). There is *nothing* in the controlled substances act to suggest that the notice requirement contained in § 7453 must be met before a civil forfeiture action may properly be commenced. Indeed, there is no need even to commence a criminal prosecution in

order for a civil forfeiture action to be brought. *In re Forfeiture of \$53*, 178 Mich App 480, 496; 444 NW2d 182 (1989).¹

Defendants next contend that the trial court did not have “subject matter jurisdiction” over property other than that found to be “drug paraphernalia” as that term is used in MCL 333.7521(1)(g); MSA 14.15(7521)(1)(g). We find no merit to this argument. We can discern no basis, statutory or otherwise, for defendants’ claim that the trial court did not have authority to proceed under *any* of the forfeiture statute’s provisions. To the contrary, as applied to this case, § 7521 broadly provides not only for the forfeiture of *any* property “which is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance,” MCL 333.7521(1)(b); MSA 14.15(7521)(1)(b), but also

- (1) property “which is used, or intended for use, as a container for property described in subdivision . . . [b],” MCL 333.7521(1)(c); MSA 14.15(7521)(1)(c);
- (2) a conveyance “used or intended for use, to transport . . . for the purpose of sale or receipt of property described in subdivision . . . [b],” MCL 333.7521(1)(d); MSA 14.15(7521)(1)(d);
- (3) “[a]ny thing of value . . . that is used or intended to be used to facilitate *any* violation of [the controlled substances act],” MCL 333.7521(1)(f); MSA 14.15(7521)(1)(f) (emphasis added); *and*
- (4) “[a]ny *other* drug paraphernalia not described in subdivision (b) or (c),” MCL 333.7521(1)(g); MSA 14.15(7521)(g) (emphasis added).

We likewise reject as completely unfounded defendants’ assertion “that the [L]egislature did not intend in the statutory scheme to allow forfeiture of either real or personal property premised on minor offenses with penalties of a year or less.”

We next address defendant Edwin Dews’ separate claim that, as applied to his interest in the property confiscated, the Double Jeopardy provisions of the United States Constitution, US Const Am V, and the Michigan Constitution, Const 1963, art 1, § 15 barred this civil forfeiture action because it followed defendant’s criminal convictions in federal court arising out of the same alleged criminal transaction. There is a presumption that double jeopardy analysis does not apply when a criminal action is followed by an *in rem* civil forfeiture proceeding. That presumption can only be rebutted by the “clearest proof” indicating that the forfeiture is “so punitive in purpose or effect” that it is equivalent to a criminal proceeding. *United States v Ursery*, 518 US 267, 289 n 3; 116 S Ct 2135; 135 L Ed 2d 549 (1996); *People v Acoff*, 220 Mich App 396, 398-399; 559 NW2d 103 (1996). In the instant case, defendant Dews’ double jeopardy claim fails because he has not shown that the civil forfeiture proceeding was so punitive in form or effect as to render it criminal. *Acoff*, *supra* at 399.

Defendants also argue that, because an earlier forfeiture proceeding brought in 1992 resulted in a consent judgment, the instant forfeiture action is barred by res judicata. This argument is without merit. Res judicata bars a subsequent action between the same parties when

the evidence or facts essential to the maintenance of the two actions are identical. *Dart v Dart*, 224 Mich App 146, 156; 568 NW2d 353 (1997). “However, if the facts change, or new facts develop, res judicata will not apply.” *Michigan Fraternal Order of Police v Detroit*, 207 Mich App 606, 608; 525 NW2d 509 (1994).

We are not persuaded by defendants’ res judicata argument because new facts were present in the second forfeiture action that were not present in the first. Immediately after the first forfeiture action was settled, police officers discovered that defendants were continuing to offer for sale, at various Rock-A-Rolla locations, items that the prosecuting attorney considered to be drug paraphernalia. As a result, the prosecuting attorney filed a second forfeiture action that was broader in scope than the first. Defendants’ continuing course of conduct constitutes a change in circumstance rendering res judicata inapplicable. Cf. *Fraternal Order of Police, supra*.²

We also reject the argument of defendants Beverly Dews and Sharon Shea that they are “innocent owners” and that their interests in the real and personal property are therefore not subject to forfeiture. See MCL 333.7521(1)(f); MSA 14.15(7521)(1)(f). The “innocent owner” defense is an affirmative defense. See *United States v One Parcel of Property Located at 121 Allen Place, Hartford, Connecticut*, 75 F3d 118, 121 (CA 2, 1996).³ As such, it was required to have been raised in the responsive pleading or in a motion made before the filing of a responsive pleading. MCR 2.111(F)(2), (3). Because defendants failed to do so, the defense was waived. *Stanke v State Farm Mutual Automobile Ins Co*, 200 Mich App 307, 311; 503 NW2d 758 (1993). Furthermore, the burden is on the owner to establish this defense. MCL 333.7521(1)(d)(ii) and (f); MSA 14.15(7521)(1)(d)(ii) and (f); *In re Forfeiture of \$53, supra* at 486.⁴ Having failed to cite any record evidence establishing their status as innocent owners, these defendants would not be entitled to relief on this issue in any event.

Defendants next argue that the trial court made findings that are “contrary to law and against the great weight of the evidence.” A trial court’s findings of fact when sitting without a jury will not be set aside on appeal unless they are clearly erroneous. *In re Forfeiture of \$18,000*, 189 Mich App 1, 4; 471 NW2d 628 (1991). Defendants first argue that the trial court erred in finding that defendants’ real property and records, accounts, and inventory of records, posters, T-shirts, etc. were subject to forfeiture. We disagree. The trial court found that the six parcels of real property were subject to forfeiture under §§ 7521(1)(c) and (f), and that the records, accounts, and inventory were subject to forfeiture under § 7521(f). Both subsections require proof by a preponderance of the evidence that property subject to forfeiture has a “substantial nexus” to some alleged criminal violation of the controlled substances act. *In re Forfeiture of \$5,264*, 432 Mich 242, 260-262; 439 NW2d 246 (1989); *In re Forfeiture of 19203 Albany*, 210 Mich App 337, 342; 532 NW2d 915 (1995). The trial court found that the six parcels of real property and the records, accounts, and inventory were subject to forfeiture because they were substantially connected to the sale of drug paraphernalia in violation of MCL 333.7453; MSA 14.15(7453).

Defendants essentially contend that the trial court's analysis is faulty because the prosecution failed to provide sufficient proof that the defendants sold "drug paraphernalia" as that term is defined in MCL 333.7451; MSA 14.15(7451). That statutory provision defines "drug paraphernalia," in relevant part, as

any equipment, product, material, or combination of equipment, products, or materials, which is *specifically designed* for use in . . . manufacturing; compounding; converting; producing; processing; preparing; testing; analyzing; packaging; repackaging; storing; containing; concealing; injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. [Emphasis added.]

Regardless whether the prosecution established by a preponderance of the evidence that the items in question were "specifically designed" for one or more of the proscribed uses, the record supports the trial court's order of forfeiture. The prosecution presented ample evidence from which the trial court could find by a preponderance of the evidence that defendants, through all five Rock-A-Rolla stores, sold literally thousands of products, ranging from test tubes and vials to scales, grinders, and cocaine cutting agents, that were then used by customers to either manufacture,⁵ deliver, or consume controlled substances, all of which are violations of the controlled substances act. See MCL 333.7401; MSA 14.15(7405); MCL 333.7404; MSA 14.15(7404). Defendants' stores, in turn, certainly were "used or intended to be used to facilitate" such illicit activity. Furthermore, all excess inventory was stored in the warehouse and held for later distribution. There was more than a mere incidental or fortuitous connection between the real property and drug activity. Accordingly, we conclude, albeit under a slightly different analysis, that forfeiture of the real property was proper under § 7521(1)(f). *In re Forfeiture of \$5,264, supra*. For the same reasons, and also because the evidence established most of the drug-related items (e.g., cutting agents, test tubes, scales) as having been "used, or intended for use, in manufacturing, compounding, processing, [or] delivering . . . a controlled substance," MCL 333.7521(1)(b); MSA 14.15(7521)(b), the real property was also subject to forfeiture under § 7521(1)(c) as a container. *In re Forfeiture of 19203 Albany, supra*.

With respect to defendants' records, accounts and inventory, we find no clear error in the trial court's finding that they were subject to forfeiture under § 7521(1)(f). This property was an integral part of an ongoing enterprise largely involving the sale of drug-related items. Unquestionably, the records, accounts and inventory were "used or intended to be used" to facilitate violations of the controlled substances act. Defendants also briefly contend that forfeiture of the 1983 van was improper because "it is inconceivable that [the Legislature] did not intend forfeiture on the basis of what could potentially be a 90-day misdemeanor." As stated, we reject this argument as unfounded.

Finally, defendants argue that the trial court erred by ordering the sale of the real property at less than fair market value and in a manner contrary to a prior order. However, because we are affirming the trial court's order of forfeiture, defendants no longer have any legally protected interest in the outcome of the sales. Therefore, they lack standing to raise this issue. *People v Yeoman*, 218 Mich App 406, 420; 554 NW2d 577 (1996).

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Robert P. Young, Jr.

¹ We further note that defendants' claim of unfair surprise is incredible in light of the fact that, in 1992, defendants were notified that the prosecuting attorney considered them to be in possession of drug paraphernalia and were requested "to refrain from selling" it.

² We further note that "[t]he doctrine of res judicata was judicially created in order to 'relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.'" *Hackley v Hackley*, 426 Mich 582, 584; 395 NW2d 906 (1986) (citation omitted). Clearly, those concerns are not present here.

³ Because Michigan's civil forfeiture statute essentially parallels the federal statute, Michigan courts find persuasive federal case law involving similar provisions. *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 149; 486 NW2d 326 (1992).

⁴ Because the burden was on them to plead and prove the defense, we reject as unfounded defendants' whimsical argument that, "as a result of the lack of evidence, they asserted positions equivalent to innocent owners."

⁵ Under the controlled substances, "manufacture" means

the production, preparation, propogation, compounding, conversion, or processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. [MCL 333.7106(2); MSA 14.15(7106)(2).]

"Manufacture" also includes "the packaging or repackaging of the substance or labeling or relabeling of its container," *id.*, but does not include "[t]he preparation or compounding of a controlled substance by an individual *for his or her own use*." MCL 333.7106(2)(a); MSA 14.15(7106)(2)(a) (emphasis added).

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX Z
Court of Appeals' Ruling in People v 1989 Pontiac Grand Am

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief of Research,
Training, and Appeals

JOSEPH D. SHOPP (P81256)
Assistant Prosecuting Attorney
1441 St. Antoine, 11th Floor
Detroit, Michigan 48226
(313) 224-7317

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

1989 PONTIAC GRAND AM,

Defendant,

and

BYRON OVIE WEBB,

Defendant-Appellant.

UNPUBLISHED

May 9, 1997

No. 188136

Wayne Circuit Court

LC No. 95-549203-CF

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ.

PER CURIAM.

Following a bench trial, the trial court ordered forfeiture of defendant's 1989 Pontiac Grand Am pursuant to the controlled substance forfeiture statutes, MCL 333.7521 *et seq.*; MSA 14.15(7521) *et seq.* Defendant appeals as of right. We affirm.

First, defendant asserts that the seizure of his car was unlawful.¹ An automobile which is used to transport customers to and from the home of an illicit drug dealer for the purpose of purchasing cocaine is subject to forfeiture. MCL 333.7521(1)(d); MSA 14.15(7521)(1)(d); *In re Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182, 185; 454 NW2d 201 (1990). The police are permitted to seize a vehicle without a warrant where there is probable cause to believe that the vehicle was used or was intended to be used in violation of the controlled substance statutes. MCL 333.7522(d); MSA 14.15(7522)(d). At the forfeiture hearing, a police officer testified that defendant told him that he and Germaine Chapman, defendant's wife who was also the driver of the car, had come to the address where the car was seized so that Chapman could purchase a rock of cocaine. This evidence was sufficient to establish that the police had probable cause to seize defendant's car without a warrant. *Id.*

* Circuit judge, sitting on the Court of Appeals by assignment.

Next, defendant argues that the trial court lacked jurisdiction to issue the forfeiture order because the police officers who seized the car were acting outside their own municipality. The officers were members of the Royal Oak Township Police Department, and conducted the search and seizure in Detroit. Assuming arguendo that these officers lacked authority to search and seize, see MCL 764.2a; MSA 28.861(1), the exclusionary rule does not apply to evidence seized by police who were acting outside their jurisdiction. *People v Clark*, 181 Mich App 577, 580-581; 450 NW2d 75 (1989). Accordingly, the officers' lack of authority in this case did not deprive the trial court of jurisdiction.

Defendant next argues that the prosecution failed to meet its burden of proof because it did not establish a substantial connection between defendant's car and the illegal activity. We disagree. The prosecution presented evidence that the forfeited vehicle was used with defendant's apparent knowledge to transport his wife to and from the home of a drug dealer for the purpose of purchasing cocaine. This evidence was sufficient to establish a substantial connection to the illegal activity. 1987 *Chevrolet Blazer*, *supra*, p 185.

Defendant also argues that his rights to due process and to confront witnesses were violated because none of the arresting or seizing officers testified at the hearing. We disagree. A defendant's rights to due process and confrontation are not violated by the prosecution's failure to call witnesses. *People v Lee*, 212 Mich App 228, 257; 537 NW2d 233 (1995).

Finally, defendant asserts that the trial judge exceeded his authority and acted with partiality and subjectivity during the hearing. The trial court did participate extensively in questioning Chapman during her cross-examination by the defense. While a trial court may question witnesses to clarify testimony or elicit additional relevant information, the trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). In addition, a trial court may not assume the prosecutor's role with advantages unavailable to the prosecution. *People v Davis*, 216 Mich App 47, 51; 549 NW2d 1 (1996).

To preserve this issue for appellate review, a defendant must move to disqualify the judge in conformity with MCR 2.003. *In re Forfeiture of \$53*, 178 Mich App 480, 497; 444 NW2d 182 (1989). This was not done in the trial court so we need not review this issue. Additionally, a trial court's comments are subject to a harmless error test. *People v Weathersby*, 204 Mich App 98, 110; 514 NW2d 493 (1994). Even assuming that the trial court's questions crossed the line of partiality, we do not find that his conduct deprived the defense of a fair trial or caused prejudice. *Id.*, p 111.

Affirmed.

/s/ Myron H. Wahls
/s/ Hilda R. Gage
/s/ Wesley J. Nykamp

¹Defendant argues that his arrest as well as the seizure of the car was unlawful, but since defendant was released at the scene and never charged, we assume defendant intends to challenge the lawfulness of the car seizure rather than the arrest.

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

**PLAINTIFF-APPELLEE'S APPENDICES
VOLUME 1 OF 2**

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX A
Circuit Court Register of Actions

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REGISTER OF ACTIONS

CASE NO. 19-014106-CF

PEOPLE OF THE STATE OF MICHIGAN, EX REL, KYM L. WORTHY,
WAYNE COUNTY PROSECUTING ATTORNEY v ONE 2006 SATURN ION,
VIN: 1G8AJ55F86Z101751

10/23/2019

Case Type: (CF) - Forfeiture Claims
Subtype: Forfeiture
Date Filed: 10/23/2019
Location: Civil Division
Judicial Officer: Allen, David J.

PARTY INFORMATION

Claimant WILSON, STEPHANIE GRACE

Lead Attorneys
Barton W. Morris
Retained
(248) 541-2600(W)

Defendant ONE 2006 SATURN ION, VIN:
1G8AJ55F86Z101751

Plaintiff PEOPLE OF THE STATE OF MICHIGAN, EX
REL, KYM L. WORTHY, WAYNE COUNTY
PROSECUTING ATTORNEY

Sinah Hamdan
Retained
(313) 224-8528(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

10/23/2019 **Complaint, Filed**
(Clerk: Robertson, I)

10/23/2019 **Service Review Scheduled**
(Clerk: Robertson, I) (Due Date: 01/22/2020)

10/23/2019 **Status Conference Scheduled**
(Clerk: Robertson, I)

10/23/2019 **Case Filing Fee - Waived**
(Clerk: Robertson, I)

10/24/2019 **Order for Miscellaneous Action, Signed and Filed**
(Clerk: Byrd, R)

10/31/2019 **Service of Complaint, filed**
(Clerk: McMiller, C)

01/02/2020 **Notice of Hearing, Filed**
(Clerk: Robertson, I)

01/03/2020 **Order for Miscellaneous Action, Signed and Filed**
(Clerk: Byrd, R)

01/21/2020 **Status Conference Scheduling Order, Signed and Filed**
(Clerk: Byrd, R)

01/22/2020 **Status Conference (8:00 AM)** (Judicial Officer Allen, David J.)
Result: Reviewed by Court

01/27/2020 **Notice of Hearing, Filed**
(Clerk: Bynum, D)

01/28/2020 **Order for Miscellaneous Action, Signed and Filed**
(Clerk: Byrd, R)

06/05/2020 **Brief, Filed**
(Clerk: McMiller, C)

06/05/2020 **Motion for Summary Judgment/Dispo, Filed-WVD**
Fee: Waived; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: McMiller, C)

06/19/2020 **Proof of Service, Filed**
(Clerk: McMiller, C)

06/19/2020 **Appearance of Attorney, Filed**
(Clerk: McMiller, C)

06/19/2020 **Proof of Service, Filed**
(Clerk: Byrd, R)

06/22/2020 **Proof of Service, Filed**
(Clerk: Flanagan, J)

06/22/2020 **Proof of Service, Filed**
(Clerk: Flanagan, J)

06/22/2020 **Miscellaneous Motion, Filed**
Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Flanagan, J)

06/24/2020 **Order for Miscellaneous Action, Signed and Filed**
(Clerk: Byrd, R)

06/24/2020 **Notice of Hearing, Filed**
(Clerk: Foster, S)

06/24/2020 **Proof of Service, Filed**
(Clerk: Foster, S)

07/06/2020 **Telephone Conference (11:00 AM)** (Judicial Officer Allen, David J.)
Zoom, Minutes Comment: N/A (Clerk: Byrd, R Date: 07-07-20)
06/22/2020 Reset by Court to 07/13/2020

07/13/2020 *Reset by Court to 07/06/2020*
 Result: Reviewed by Court
 07/13/2020 Reply to Brief, Filed
 (Clerk: Byrd,R)
 07/13/2020 Proof of Service, Filed
 (Clerk: Byrd,R)
 07/21/2020 Proof of Service, Filed
 (Clerk: Byrd,R)
 07/22/2020 Order Granting Leave, Signed and Filed
 (Clerk: Byrd,R)
 10/16/2020 Miscellaneous Pleadings, Filed
 (Clerk: Byrd,R)
 10/16/2020 Proof of Service, Filed
 (Clerk: Byrd,R)
 11/12/2020 Witness List, Filed
Proof of Service, Filed (Clerk: Lawrence,M)
 11/12/2020 Miscellaneous Pleadings, Filed
 (Clerk: Lawrence,M)
 11/12/2020 Proof of Service, Filed
 (Clerk: Lawrence,M)
 11/30/2020 Proof of Service, Filed
 (Clerk: Chapman,L)
 11/30/2020 Witness List, Filed
Proof of Service, Filed (Clerk: Chapman,L)
 12/04/2020 Proof of Service, Filed
 (Clerk: Atkinson,M)
 12/04/2020 Miscellaneous Pleadings, Filed
 (Clerk: Atkinson,M)
 12/17/2020 Notice of Hearing, Filed
 (Clerk: Mayfield,A)
 12/17/2020 Proof of Service, Filed
 (Clerk: Mayfield,A)
 12/17/2020 Motion to Adjourn, Filed
Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Mayfield,A)
 12/21/2020 Præcipe, Filed (Judicial Officer: Allen, David J.)
 (Clerk: Byrd,R)
 01/05/2021 Proof of Service, Filed
 (Clerk: McMiller,C)
 01/05/2021 Notice of Taking Deposition, Filed
 (Clerk: McMiller,C)
 01/06/2021 Settlement Conference (9:00 AM) (Judicial Officer Allen, David J.)
 Via Zoom
04/08/2020 Reset by Court to 06/24/2020
06/24/2020 Reset by Court to 10/21/2020
10/21/2020 Reset by Court to 12/02/2020
12/02/2020 Reset by Court to 01/06/2021
 Result: Held for Further Settlement
 01/06/2021 Motion Hearing (9:00 AM) (Judicial Officer Allen, David J.)
Claimant's Motion to Adjourn Scheduling Order Dates
 Result: Held
 01/06/2021 Motion Granted, Order to Follow (Judicial Officer: Allen, David J.)
Grant Claimant's Motion to Extend Discovery thru February (Clerk: Byrd,R)
 01/19/2021 Notice of Hearing, Filed
 (Clerk: Chapman,L)
 01/19/2021 Subpoena-Order to Appear, Signed and Filed
 (Clerk: Byrd,R)
 01/19/2021 Proof of Service, Filed
 (Clerk: Chapman,L)
 01/25/2021 Order Adjourning Settlement Conference, Signed and Filed
 (Clerk: Byrd,R)
 03/12/2021 Proof of Service, Filed
 (Clerk: Williams,J)
 03/12/2021 Motion for Summary Judgment/Disposition, Filed
Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Williams,J)
 03/15/2021 Settlement Conference (9:00 AM) (Judicial Officer Allen, David J.)
 Via Zoom
 Result: Held for Further Settlement
 03/15/2021 Proof of Service, Filed
 (Clerk: Canyon,R)
 03/15/2021 Motion for Summary Judgment/Disposition, Filed
Fee: \$20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Canyon,R)
 04/08/2021 Notice of Hearing, Filed
 (Clerk: Mayfield,A)
 04/08/2021 Proof of Service, Filed
 (Clerk: Mayfield,A)
 04/12/2021 Reply to Brief, Filed
 (Clerk: Harrison,S)
 04/12/2021 Miscellaneous Pleadings, Filed
 (Clerk: Harrison,S)
 04/12/2021 Miscellaneous Pleadings, Filed
Proposed Order (Clerk: Byrd,R)
 04/12/2021 Proof of Service, Filed

04/13/2021 (Clerk: Harrison,S)
Præcipe, Filed (Judicial Officer: Allen, David J.)
 04/28/2021 (Clerk: Byrd,R)
Reply to Brief, Filed
 04/28/2021 (Clerk: Foster,V)
Miscellaneous Pleadings, Filed
 Proposed Order (Clerk: Byrd,R)
 04/28/2021 **Proof of Service, Filed**
 (Clerk: Foster,V)
 04/29/2021 **Motion Hearing** (10:00 AM) (Judicial Officer Allen, David J.)
 Defense - Motion to Dismiss
 Result: Held
 04/29/2021 **Closed - Case Dismissed, Order to Follow** (Judicial Officer: Allen, David J.)
 Grant DF's Motion to Dismiss (Clerk: Byrd,R)
 04/29/2021 **Proof of Service, Filed**
 (Clerk: Byrd,R)
 04/30/2021 **Final - Order for Summary Judgment/Disp, Signed and Filed**
 (Clerk: Byrd,R)
 05/05/2021 **Brief, Filed**
 (Clerk: Harrison,S)
 05/05/2021 **Proof of Service, Filed**
 (Clerk: Harrison,S)
 05/05/2021 **Motion for Stay of Proceedings, Filed-WVD**
 Fee: Waived; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Harrison,S)
 05/05/2021 **Proof of Service, Filed**
 (Clerk: Upshaw,E)
 05/05/2021 **Motion for Reconsideration/Rehearing, Filed-WVD**
 Fee: Waived; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Upshaw,E)
 05/07/2021 **Præcipe, Filed** (Judicial Officer: Allen, David J.)
 (Clerk: Byrd,R)
 05/07/2021 **Miscellaneous Pleadings, Filed**
 Proposed Order (Clerk: Byrd,R)
 05/07/2021 **Miscellaneous Pleadings, Filed**
 Proposed Order (Clerk: Byrd,R)
 05/07/2021 **Proof of Service, Filed**
 (Clerk: Byrd,R)
 05/07/2021 **Proof of Service, Filed**
 (Clerk: Byrd,R)
 05/07/2021 **Notice of Hearing, Filed**
 (Clerk: Harrison,S)
 05/07/2021 **Proof of Service, Filed**
 (Clerk: Harrison,S)
 05/07/2021 **Objection to 7-Day Order, Filed**
 (Clerk: Harrison,S)
 05/10/2021 **Affidavit, Filed**
 (Clerk: Mayfield,A)
 05/10/2021 **Proof of Service, Filed**
 (Clerk: Mayfield,A)
 05/10/2021 **Answer to Motion, Filed**
 (Clerk: Mayfield,A)
 05/11/2021 **Proof of Service, Filed**
 (Clerk: Mayfield,A)
 05/11/2021 **Miscellaneous Pleadings, Filed**
 (Clerk: Mayfield,A)
 05/13/2021 **Motion Hearing** (10:00 AM) (Judicial Officer Allen, David J.)
 PEOPLE OF THE STATE OF MICHIGAN, EX REL, KYM L. WO - Motion for Stay of Judgment/Order
 Result: Held
 05/13/2021 **Motion Denied, Order to Follow** (Judicial Officer: Allen, David J.)
 Deny Pl's Motion for Stay and Deny Pl's Motion for Reconsideration (Clerk: Byrd,R)
 05/14/2021 **Notice of Presentment**
 7-Day Order and Proof of Service received (Clerk: Byrd,R)
 05/14/2021 **Proof of Service, Filed**
 (Clerk: Byrd,R)
 05/28/2021 **CANCELED Review Hearing** (8:00 AM) (Judicial Officer Allen, David J.)
 Dismiss Hearing or Injunction
 Movant files dispositive motion
 Dismiss Hearing or Injunction
 06/02/2021 **Proof of Service, Filed**
 (Clerk: Byrd,R)
 06/07/2021 **Order Denying Motion, Signed and Filed**
 (Clerk: Byrd,R)
 06/18/2021 **CANCELED Review Hearing** (8:00 AM) (Judicial Officer Allen, David J.)
 Dismiss Hearing or Injunction
 Non-Movant response due
 Dismiss Hearing or Injunction
 07/13/2021 **CANCELED Settlement Conference** (9:00 AM) (Judicial Officer Allen, David J.)
 Dismiss Hearing or Injunction
 Via Zoom
 Dismiss Hearing or Injunction
 12/17/2021 **Transcript, Filed**
 4/29/21. Reba Hooper, CSMR-6917. (Clerk: Heimiller,K)
 12/17/2021 **Transcript, Filed**
 5/13/21. Reba Hooper, CSMR-6917. (Clerk: Heimiller,K)
 03/24/2022 **Higher Court Order/Decision Received by Circuit Court**

03/24/2022 *Per Curiam. Reverse and remand for further proceedings. COA 357183. (Clerk: Heimiller,K)*
Higher Court Order/Decision Received by Circuit Court
 05/05/2022 *Judge Shapiro dissents (would affirm grant of summary disposition to claimant). COA 357183. (Clerk: Heimiller,K)*
Proof of Service, Filed
 05/05/2022 *(Clerk: Upshaw,E)*
Miscellaneous Pleadings, Filed
(Clerk: Upshaw,E)

FINANCIAL INFORMATION

Plaintiff PEOPLE OF THE STATE OF MICHIGAN, EX REL, KYM L. WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY
 Total Financial Assessment 80.00
 Total Payments and Credits 80.00
Balance Due as of 04/11/2023 0.00

06/24/2020	Transaction Assessment			20.00
06/24/2020	eFiling	Receipt # 2020-42048	Barton W. Morris Jr.	(20.00)
12/18/2020	Transaction Assessment			20.00
12/18/2020	eFiling	Receipt # 2020-96581	Barton W. Morris Jr.	(20.00)
03/13/2021	Transaction Assessment			20.00
03/13/2021	eFiling	Receipt # 2021-22267	Barton W. Morris Jr.	(20.00)
03/16/2021	Transaction Assessment			20.00
03/16/2021	eFiling	Receipt # 2021-22898	Barton W. Morris Jr.	(20.00)

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX B
People's Complaint for Judgment of Forfeiture

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief of Research,
Training, and Appeals

JOSEPH D. SHOPP (P81256)
Assistant Prosecuting Attorney
1441 St. Antoine, 11th Floor
Detroit, Michigan 48226
(313) 224-7317

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN, EX REL
KYM L. WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,

Plaintiff,
v.

Case No. 19- -CF
Judge David J. Allen

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751;
Defendant Property,

and

STEPHANIE GRACE WILSON
Claimant,

SINAH HAMDAN (P80462)
Attorney for Plaintiff
Asst. Prosecuting Atty., Forfeiture Unit
Wayne Co. Prosecuting Attorney's Office
1441 Saint Antoine St., 12TH Fl.
Detroit, Michigan 48226
Phone: 313-224-8528

COMPLAINT FOR JUDGMENT OF FORFEITURE

There is no other civil action between these parties arising out of the same transaction or occurrence alleged in this complaint pending in this court, nor has any such action previously been filed and dismissed or transferred after having been assigned to a judge.

NOW COMES THE PLAINTIFF, PEOPLE OF THE STATE OF MICHIGAN, EX REL, KYM L. WORTHY, Wayne County Prosecuting Attorney, JAMES D. GONZALES, Chief of Special Operations, Wayne County Prosecuting Attorney's Office, BRIAN T. MOODY, Deputy Chief of the Forfeiture Unit, Wayne County Prosecuting Attorney's Office, and SINAH HAMDAN, Assistant Prosecuting Attorney, Forfeiture Unit, Wayne County Prosecuting Attorney's Office, and in support of their Complaint, state as follows:

JURISDICTIONAL AVERMENTS

1. This complaint is brought pursuant to M.C.L.A. 333.7521 et seq. and as such this Court has jurisdiction to hear such Complaint.
2. On June 24, 2019, Defendant Property, ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751, was seized from the Claimant, STEPHANIE GRACE WILSON, in the City of Detroit, Wayne County, Michigan.
3. Said Defendant Property was seized based upon the probable cause belief that it was:
 - a. In close proximity to property that was used and/or intended for use, as a container for a controlled substance subject to forfeiture; and/or
 - b. In close proximity to a conveyance, used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of a controlled substance subject to forfeiture; and/or
 - c. In close proximity to a controlled substance subject to forfeiture; and/or
 - d. Was furnished or intended to be furnished in exchange for a controlled substance, or was traceable to an exchange for a controlled substance; and/or
 - e. Was used or intended to be used to facilitate a violation of the controlled substance laws of this State; and/or
 - f. Was used or intended to be used as a thing of value to facilitate the violation of the drug laws of this State; and/or
 - g. Is equipment of any kind which is used or intended to be used to manufacture, deliver, import and/or export a controlled substance and that it is a thing of value either derived or furnished in exchange for illegal controlled substances, traceable to such an exchange, or used or intended to be used to facilitate a violation of the drug laws of this state.

FACTUAL ALLEGATIONS

4. On June 24, 2019, the above-described Defendant Property was seized by officers of the Wayne County Sheriff's Department and said Defendant Property presently is being held by that agency pending the resolution of this civil in rem forfeiture action.
5. More specifically, on June 24, 2019, a deputy of the Wayne County Sheriff's Office was conducting street enforcement as part of Campaign PUSHOFF. The Deputy was conducting surveillance on a known drug house and observed Defendant Vehicle, ONE SILVER 2006 SATURN ION, VIN: 1G8AJ55F86Z101751, parked in close

proximity to the drug house. The deputy observed an unknown person exit the drug house and approach Defendant Vehicle, reach his arm into the passenger side window, and conduct what appeared to be a hand to hand drug transaction. The man was then observed re-entering the drug house.

6. Shortly after, Defendant vehicle departed the location and began traveling east on Cypress without using a turning indicator. A traffic stop was conducted and the driver was identified as Claimant STEPHANIE GRACE WILSON. In the passenger seat of the Defendant Vehicle was the father of Claimant's child, who indicated he had purchased and used \$10.00 worth of heroin. He indicated he has been using for several years. Claimant STEPHANIE GRACE WILSON indicated that she brings him to that location once a day. Officers conducted a search of the vehicle and recovered five syringes from under the passenger seat, which Smith stated that he uses for heroin.
7. The Claimant, STEPHANIE GRACE WILSON, is the registered owner of Defendant Vehicle. She was given a Notice of Seizure and Intent to Forfeit as well as a verbal warning for the traffic violation.
8. Claimant also had a vehicle seized in January of this year for a PUSHOFF offense.
9. Plaintiff asserts that based on the totality of the facts noted above and those to be presented upon the trial of this matter, the above-described Defendant Property is subject to forfeiture and should be ordered forfeited by this Honorable Court.

CONCLUSION AND RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court, after a hearing on this matter, enter an order of forfeiture as required by law and award costs as permitted.

Respectfully submitted,

KYM L. WORTHY
Wayne County Prosecutor
JAMES D. GONZALES
Chief of Special Operations
BRIAN T. MOODY
Deputy Chief, Forfeiture Unit

Dated: Oct. 23, 2019

/s/ Sinah Hammad
SINAH HAMDAN (P80462),
Asst. Pros. Attorney, Forfeiture Unit,
Wayne co. Prosecutor's Office
FFN: 17692

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX C

Claimant's Answer to Complaint for Judgment of Forfeiture

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief of Research,
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JOSEPH D. SHOPP (P81256)
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN
EX REL, KYM L. WORTHY, WAYNE
COUNTY PROSECUTOR,

Plaintiff,

v.

Case No. 19-014106-CF
Hon. David J. Allen

ONE 2006 SATURN ION,
VIN: 1G8AJ55F86Z101751,

Defendant Property,

and

STEPHANIE GRACE WILSON,

Claimant.

Kym L. Worthy (P38875)
Attorney for Plaintiff
Wayne County Prosecutor's Office
1441 Saint Antoine St.
Detroit, MI 48226
(313) 224-5777

Barton W. Morris, Jr. (P54701)
Attorney for Claimant
The Law Offices of Barton Morris
520 N. Main St.
Royal Oak, MI 48067
(248) 541-2600

**CLAIMANT'S ANSWER TO
THE PEOPLE'S COMPLAINT FOR JUDGMENT OF FORFEITURE**

NOW COMES THE CLAIMANT, Stephanie Grace Wilson, by and through her attorney,
Barton W. Morris, Jr., and in answer to the People's Complaint for Judgment of Forfeiture states
as follows:

BACKGROUND

Stephanie Grace Wilson is the registered owner of the Defendant Property, the 2006 Saturn Ion that was seized by officers of the Wayne County Sheriff's Department on June 24, 2019, based on the conduct of Malcolm Smith—the father of Claimant's child.

Claimant's vehicle (and all its contents) have remained in the custody of Wayne County now for 364 days.

Within 20 days of seizure, Claimant filed paperwork with the county asserting her ownership and intention to contest forfeiture. She requested a hearing before a judge and was told by an employee of the county's Vehicle Seizure Unit that she had a hearing scheduled for July 10, 2019. However, no hearing was scheduled.

On October 23, 2019, the county filed its Complaint for Judgment of Forfeiture and obtained a Court order compelling Claimant to attend a pre-trial conference in November.

This pre-trial conference turned out to be a meeting between Claimant, Plaintiff's attorney, and another representative of the Wayne County Prosecuting Attorney. No judge or other intermediary was present.

Prosecutors tried to dissuade Claimant from contesting forfeiture and encouraged her to pay a "redemption fee" of \$1,800, plus towing and storage fees, to get her vehicle (and the personal property within) back. Claimant refused to settle and again requested a hearing before a judge.

Prosecutors obtained three subsequent orders for Claimant to attend pre-trial conferences.

Claimant attended all four conferences and each played out like the first—with prosecutors encouraging her to pay the redemption fee and drop her contest of forfeiture.

At the fourth conference, prosecutors again tried to dissuade Claimant from contesting forfeiture. Plaintiff's attorney offered to accept the \$1,800 redemption fee and waive towing and storage fees. Claimant was told that another pre-trial conference would be scheduled at which she would be asked to make an offer representing how much she could afford to pay for the return of her vehicle (and the personal property within).

Claimant purchased the vehicle for \$1,000.

A fifth pre-trial conference was set for April 8, 2020. Apparently due to the ongoing pandemic, the Court has reset this conference for June 22, 2020 and again for October 21, 2020.

On May 11, 2020, Claimant joined a federal class-action lawsuit challenging the constitutionality of the county's seizure and forfeiture practices. *See Ingram, et al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS (E.D. Mich. filed Feb. 5, 2020), <https://bit.ly/2BasTpW>.

On June 5, 2020, the county filed a motion for summary disposition seeking to forfeit the Defendant Property based on Claimant's failure to file an answer to the complaint the county had filed more than seven months earlier. On June 10, the county sent Claimant a copy of its motion and brief in support by ordinary First-Class U.S. Mail. Claimant received this mailing on June 15.

Plaintiff's attorney had contacted Claimant as recently as late March informing her that the Court had reset the April pre-trial conference. That conference still has not taken place. The Court recently set the conference for October 21, 2020.

At no time did Plaintiff's attorney inform Claimant of her obligation to file an answer to the October complaint.

Claimant has asked several times to arrange a time to retrieve her belongings from the vehicle, including her college diploma and other important documents. There is no basis for the

seizure of these personal items. The county's complaint does not seek the forfeiture of anything other than the vehicle. Yet, the county has repeatedly told Claimant that the only way to access her car to retrieve her things is for her to pay the "redemption fee."

Claimant's answers to the numbered allegations in Plaintiff's complaint are as follows:

JURIDICTIONAL AVERMENTS

1. Admit. Claimant does not contest the Court's jurisdiction over the Defendant Property.
2. Admit.
3. Denied. Claimant notes that Plaintiff's boilerplate recitation of the several statutory bases for forfeiture includes no factual material establishing the existence of probable cause.

FACTUAL ALLEGATIONS

4. Admit.
5. Deny.
6. Deny.
7. Admit that Claimant is the registered owner of the Defendant Property and that she was given a Notice of Seizure and Intent to Forfeit; deny that she was given a verbal warning for any traffic violation.
8. Admit that Claimant had another vehicle seized in January 2019, otherwise denied.
9. Deny.

AFFIRMATIVE DEFENSES

Claimant asserts the following affirmative defenses:

1. The complaint fails to state a claim on which relief can be granted because it does not establish probable cause for the initial seizure or the county's continued impoundment of the Defendant Property.
2. The complaint fails to state a claim for the forfeiture of personal property within the Defendant Property.
3. Claimant has acted in good faith in all ways relevant to the allegations in the complaint.
4. Plaintiff should be estopped from pursuing civil forfeiture because it has unreasonably delayed the initiation of forfeiture proceedings.
5. The doctrine of laches prohibits Plaintiff from pursuing a civil remedy when it has unreasonably delayed in seeking civil relief.
6. Plaintiff failed to promptly file a complaint for forfeiture as required by Michigan law.
7. Plaintiff has unclean hands that preclude a civil remedy. Plaintiff has repeatedly sought to dissuade Claimant from challenging the forfeiture of her vehicle (and the property within it), seeking instead to extract an unconstitutional fee from her. Plaintiff has repeatedly misrepresented the procedures governing forfeiture in Michigan.
8. Claimant is an innocent owner of the Defendant Property (and the personal property within).
9. Plaintiff's seizure of the Defendant Property (and the personal property within) violated Claimant's constitutional right to be free from unreasonable searches and seizures.

10. Plaintiff's continued seizure of the Defendant Property (and the personal property within) violates Claimant's constitutional right to be free from unreasonable seizures.
11. Plaintiff's continued seizure of Claimant's personal effects in the vehicle violates her constitutional right to be free from unreasonable seizures.
12. Plaintiff violated procedural due process by denying Claimant a prompt-post seizure hearing, as required by the U.S. and Michigan Constitutions.
13. The Defendant Property (and the personal property within) cannot be forfeited because the result would be constitutionally excessive and grossly disproportionate to Claimant's non-existent offense.
14. Plaintiff cannot obtain a civil judgment of forfeiture because Plaintiff has not acted in good faith.
15. Plaintiff cannot obtain a civil judgment of forfeiture because Claimant did not know, or have reason to know, that the Defendant Property was being employed, or was likely to be employed, in any unlawful, illegal, or wrongful activity.
16. Plaintiff's procedures for seizing and forfeiting property violate the procedural due process protections of the U.S. Constitution and Michigan Constitution by denying innocent property owners like Claimant an opportunity to establish that they did not know or have reason to know about the alleged illegal conduct of others.
17. Forfeiture would violate the substantive due process protections of the U.S. Constitution and Michigan Constitution, as applied to Claimant.

18. Forfeiture would violate the takings protections of the U.S. Constitution and Michigan Constitution.
19. Claimant reserves the right to assert additional affirmative defenses, or amend these affirmative defenses, as discovery warrants.

JURY TRIAL DEMANDED

Claimant demands trial by jury for all issues so triable.

CONCLUSION AND RELIEF

WHEREFORE Claimant respectfully requests that this Honorable Court award the following relief after a hearing on this matter:

- (1) Dismissal of the complaint for failure to state a claim on which relief can be granted;
- (2) An order denying Plaintiff's request to forfeit the Defendant Property and a finding that the Defendant Property is not subject to forfeiture;
- (3) An order declaring Plaintiff's forfeiture procedures unconstitutional both facially and as applied;
- (4) An order declaring Michigan's forfeiture procedures unconstitutional facially and as applied;
- (5) An order denying Plaintiff's request to forfeit the Defendant Property on the ground that doing so would be an excessive fine;
- (6) Regardless of the Court's disposition of the Defendant Property, an order requiring Plaintiff to return Claimant's personal property within the vehicle;
- (7) Attorneys' fees and costs; and
- (8) All other relief to which Claimant may show herself to be entitled.

Respectfully submitted,

By: /s/Barton W. Morris, Jr.
Barton W. Morris, Jr. (P54701)
Attorney for Claimant
Law Offices of Barton Morris
520 North Main Street
Royal Oak, MI 48067
(248) 541-2600
barton@bartonmorris.com

Dated: June 22, 2020

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX D
Transcript of Sergeant Chivas Rivers' Deposition Testimony

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Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief of Research,
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Detroit, Michigan 48226
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SERGEANT CHIVAS RIVERS, 1-25-2021

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN EX REL,
KYM L. WORTHY, WAYNE COUNTY PROSECUTOR,

Plaintiff,

vs.

Case No. 19-014106-CF
Hon. David J. Allen

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,

Defendant Property,

and

STEPHANIE GRACE WILSON,

Claimant.

_____/

TRANSCRIPT of the proceedings of the
videoconference deposition of SERGEANT CHIVAS RIVERS
was taken in the above-entitled matter by and before
Susan Bauman, CSR No. 6320 and Notary Public for the
County of Oakland at 3501 Hamtramck Drive,
Hamtramck, Michigan on Monday, January 25, 2021
commencing at 10:02 a.m.

Page 1

Chapa & Giblin Court Reporters
(248) 626-2288

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A P P E A R A N C E S:

WAYNE COUNTY PROSECUTOR'S OFFICE

BY: SINAH HAMDAN, ESQ.

1441 Saint Antoine Street

Detroit, Michigan 48226

(313) 224-5777

Shamdan@waynecounty.com

Appearing on behalf of the Plaintiff.

THE LAW OFFICES OF BARTON MORRIS

BY: MICHAEL E. NORMAN, ESQ.

520 North Main Street

Royal Oak, Michigan 48067

(248) 541-2600

mike@bartonmorris.com

Appearing on behalf of the Claimant.

WAYNE COUNTY CORPORATE COUNSEL

BY: DAVIDDE STELLA, ESQ.

500 Griswold Street, 30th Floor

Detroit, Michigan 48226

(313) 224-0696

dstella@waynecounty.com

Appearing on behalf of Wayne County
Corporate Counsel.

SERGEANT CHIVAS RIVERS, 1-25-2021

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I N D E X

DIRECT CROSS REDIRECT RECROSS

WITNESS:

SERGEANT CHIVAS RIVERS

By Mr. Norman 4 45

By Ms. Hamdan 34

E X H I B I T S

(NONE)

SERGEANT CHIVAS RIVERS,1-25-2021

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THE REPORTER: My name is
Susan Bauman, certified stenographic reporter
and notary public in the State of Michigan.
This deposition is being held via
videoconferencing equipment.
The witness and reporter are not in the same
room.
The parties and their counsel consent to this
arrangement and waive any objections to this
manner of reporting. Please indicate your
agreement by stating your name and your
agreement on the record and please announce
anyone else in the room with you.

MR. NORMAN: Michael Norman.

I agree.

MS. HAMDAN: Sinah Hamdan. I

agree.

S E R G E A N T C H I V A S R I V E R S,
After being duly sworn by the Notary Public, was
examined and testified as follows:

DIRECT EXAMINATION BY MR. NORMAN:

Q. Good morning, Sergeant Rivers. My name is

1 Michael Norman. I represent Stephanie Wilson.
2 Have you ever given a
3 deposition before?

4 **A. No, sir. Never.**

5 Q. Okay. We're going to go over a few rules. I
6 am going to ask you a series of questions none
7 of which are designed to be misleading or
8 confusing. However, because they're not
9 written down if I ask you a question and you
10 don't understand it, you can always ask me to
11 clarify it, repeat it or rephrase it until you
12 understand what I'm asking you. Is that fair?

13 **A. Fair.**

14 Q. Okay. I will do my best to allow you to get
15 your answer completely out before I ask you
16 another question. And although you may know
17 what I'm asking you, please let me get the
18 question all the way out before you start to
19 answer because it makes it easier for the
20 court reporter. Is that okay?

21 **A. That's okay.**

22 Q. All right. I need verbal answers. Although
23 we are on video the only memorialization of
24 this conversation is going to be the written
25 transcript. And so it requires verbal answers

SERGEANT CHIVAS RIVERS, 1-25-2021

1 instead of head nods. Is that acceptable?

2 **A.** **Yes. But can I just clarify? I'm kind of**
3 **having a hard time hearing you right now**
4 **although my phone is all the way up. So if**
5 **I'm kind of looking a little off, it's because**
6 **I'm kind of struggling to hear you here.**

7 **Q.** All right. Let me see if I can turn my volume
8 up. Mine looks like it's all the way up. I
9 will try to talk louder.

10 MS. HAMDAN: And, Sergeant,
11 if you need him to repeat something, don't
12 hesitate to ask.

13 THE WITNESS: Okay.

14 BY MR. NORMAN:

15 **Q.** And then also if you would answer yes or no
16 instead of saying uh-huh or huh-huh because
17 although I'll know what you're saying it
18 doesn't record well in the transcript.

19 **A.** **Okay.**

20 **Q.** And the last thing is I don't expect to be
21 here very long but if you need to take a break
22 at anytime, you can. You just have to let me
23 know and answer whatever the last question was
24 that was on the record.

25 **A.** **Okay.**

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1 MR. NORMAN: All right.

2 This will be the deposition of Deputy Rivers

3 taken pursuant to Notice and agreement of

4 counsel and to be used for all purposes

5 available under the Michigan Court Rules.

6 Q. Deputy Rivers, would you please state your

7 full name?

8 A. **First name is Chivas. Last name is Rivers.**

9 Q. And you are employed with the Wayne County

10 Sheriff's Department?

11 A. **Yes, sir.**

12 Q. How long have you been so employed?

13 A. **Approximately 11 years.**

14 Q. All right. And can you just briefly describe

15 your training as a deputy?

16 A. **I worked several years in the jail doing jail**

17 **security. I was fugitive apprehension tether,**

18 **fugitive apprehension for a few years.**

19 **Narcotics, officer enforcement officer for a**

20 **couple of years. And I am currently assigned**

21 **to the U.S. Marshals Task Force.**

22 Q. Okay. Can we talk briefly about your time as

23 a narcotics officer?

24 A. **Yes.**

25 Q. What year did you begin that job?

Page 7

1 **A. I believe it started in 2000- -- January 2017**
2 **to August 2019.**

3 Q. Okay. And prior to beginning that position
4 did you have any specialized training in
5 narcotics?

6 **A. Prior to the position?**

7 Q. Yes.

8 **A. No, sir.**

9 Q. Okay. Is it fair then to say that the
10 training for that position was on-the-job
11 training?

12 **A. Yes, that would be fair.**

13 Q. All right. And just to make sure I
14 understand, did you take any classes on
15 narcotics or take any other classes in order
16 to begin the position as a narcotics officer?

17 **A. You said that I can ask you to rephrase the**
18 **question?**

19 Q. Yes, sir.

20 **A. I guess my confusion would be you say classes.**
21 **Like are we talking formal classes or classes**
22 **through narcotics?**

23 Q. Well, either one. I'll rephrase the question.
24 Did you take any classes in
25 a classroom setting related to your position

SERGEANT CHIVAS RIVERS, 1-25-2021

1 as a narcotics officer?

2 **A. Yes.**

3 **Q.** Okay. Describe those classes for us.

4 **A.** The classes that we took were on the job with
5 more experience in narcotics for officers.
6 It's drug classes, identification of various
7 drugs. The identification of various drugs I
8 guess I would say like an enactment of how the
9 body reacts to various drugs.

10 **Q.** How many classes did you take?

11 **A.** I'm not sure.

12 **Q.** Do you know how many hours you spent taking
13 classes?

14 **A.** No. I'm not sure.

15 **Q.** All right. And then you said you are
16 currently assigned to the U.S. Marshals Task
17 Force?

18 **A.** Yes, sir.

19 **Q.** On June 24th of 2019 were you assigned to the
20 U.S. Marshals or were you still working as a
21 narcotics officer?

22 **A.** I was assigned to narcotics.

23 **Q.** In what month do you recall that you were
24 assigned to the U.S. Marshals?

25 **A.** I wasn't transferred to the U.S. Marshals

Page 9

1 **until 2020, February 2020.**

2 Q. All right. We're here today obviously about
3 my client Stephanie Wilson and an incident
4 that occurred on June 24th, 2019. Do you have
5 any independent recollection of Stephanie
6 Wilson?

7 A. **Sorry. I don't understand what you mean by**
8 **"independent."**

9 Q. Do you remember having contact with Stephanie
10 Wilson on June 24th of 2019?

11 A. **Yes, I do.**

12 Q. All right. So we will get to that in one
13 second.

14 Can you tell me what
15 campaign push off is?

16 A. **Can I tell you what campaign push off is?**

17 Q. Yes. Are you familiar with campaign push off?

18 A. **Ideally or technically?**

19 Q. Either.

20 A. **Campaign push off from what I understand and**
21 **know about it are vehicles that are seized**
22 **due to narcotics and prostitution.**

23 Q. Okay. How did you come to know what campaign
24 push off was?

25 A. **On-the-job training.**

Page 10

1 Q. All right. Did you have any particular
2 training in forfeiture?

3 A. On-the-job training.

4 Q. Can you describe what that training was?

5 A. It was more like a shadow training. You spend
6 time with experienced narcotics officers to --
7 I guess until they see fit that you're
8 experienced enough to go out on your own if
9 that makes sense.

10 Q. Yes.

11 Are you aware if there's any
12 review by those officers that you are
13 shadowing?

14 A. I'm sorry. I don't understand.

15 Q. The officers who you shadow for your
16 on-the-job training are you aware of them
17 doing any review of your performance?

18 A. Yes.

19 Q. Okay. And do you believe those are written
20 reviews?

21 A. I wouldn't know. I don't know. You would
22 have to talk to my TFO.

23 Q. And who would your TFO be?

24 A. It would have been Robert Landrum and Sherry
25 Tanner.

SERGEANT CHIVAS RIVERS, 1-25-2021

- 1 Q. All right. So regarding the incident on June
2 24th, 2019 I have received a one-page incident
3 report and two photos. Are you aware of any
4 other reports related to Stephanie Wilson?
- 5 A. I am not, no.
- 6 Q. All right. Did you complete the incident
7 report related to the June incident?
- 8 A. Yes, I did.
- 9 Q. All right. And would you have put all of the
10 relevant information into that report?
- 11 A. I'm sorry. Repeat that.
- 12 Q. Would you have put all of the information
13 deemed relevant into that report?
- 14 A. Yes.
- 15 Q. On June 24th -- well, let me just back up.
16 Is it fair when I ask you
17 questions to accept that we're talking about a
18 specific date of June 24th, 2019?
- 19 A. I don't understand what you're asking. I'm
20 sorry.
- 21 Q. When I refer to the incident, is it fair that
22 I'm referring to an incident that occurred on
23 June 24th, 2019?
- 24 A. Yes.
- 25 Q. Okay. Just to keep me from repeating June

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1 24th, 2019 every time I ask you a question.

2 **A.** I do apologize. Like I'm really struggling to
3 hear right now. But I can hear you. So if I
4 say, "repeat," I'm not trying to be funny or
5 anything. It's just that I'm really having a
6 hard time hearing.

7 **Q.** Okay. And I'm not sure what's going on. My
8 volume is all the way up. So I'll talk as
9 loud as I can. And like I said we won't be
10 here super long.

11 On the day of the incident
12 were you equipped with a body camera?

13 **A.** No, sir.

14 **Q.** The vehicle that you were in was it equipped
15 with a camera?

16 **A.** No, sir.

17 **Q.** And then Sergeant Merrow and Sherry Tanner
18 were also present at the incident?

19 **A.** I would need to refer to my report if that's
20 okay.

21 **Q.** Yes, sir. Do you have the report with you?

22 **A.** I do.

23 **Q.** And referring to it would refresh your memory?

24 **A.** Yes, sir.

25 Yes, sir, Sergeant Merrow

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SERGEANT CHIVAS RIVERS, 1-25-2021

1 **and Sherry Tanner.**

2 Q. Regarding Sergeant Merrow first is that a he
3 or a she?

4 **A. It's a male. Richard Merrow.**

5 Q. Was he in the same vehicle that you were in?

6 **A. No, sir.**

7 Q. Okay. He was in a separate vehicle?

8 **A. Yes, sir.**

9 Q. Was it a marked police vehicle?

10 **A. No, sir.**

11 Q. Are you aware of whether or not Sergeant
12 Merrow was equipped with either a body camera
13 or a vehicle camera?

14 **A. I would say, no, sir. I don't particularly**
15 **know what's inside of Sergeant Merrow's**
16 **vehicle.**

17 Q. Okay. And then let me ask you about Sherry
18 Tanner. Do you know what her employment is?

19 **A. When you say, "employment," are you asking is**
20 **she employed by the Wayne County Sheriff's**
21 **Department?**

22 Q. Yes.

23 **A. Yes, she is.**

24 Q. All right. And was she in the same vehicle as
25 you or as Sergeant Merrow at the time of the

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1 incident?

2 **A. No, sir.**

3 Q. Okay. So she was in a separate vehicle?

4 **A. Yes, sir.**

5 Q. And then the same question. Are you aware of
6 whether or not Sherry Tanner was equipped with
7 a body camera or a vehicle camera at the time
8 of the incident?

9 **A. No, sir, I wouldn't know what's inside of**
10 **Sherry Tanner's vehicle.**

11 Q. Was it a marked police vehicle?

12 **A. No, it was not.**

13 Q. All right. So I would like to draw your
14 attention to the address at 4727 Lumley in
15 Detroit, Michigan.

16 **A. Yes.**

17 Q. Okay. And on the day of the incident you were
18 surveilling that property?

19 **A. Yes.**

20 Q. How did you come to be surveilling that
21 property on that day? Did you get
22 instructions to go there?

23 **A. Well, yes. And the orders to do surveillance**
24 **of that would have come from Sergeant Rich**
25 **Marrow.**

1 Q. Okay. Do you know what your purpose was in
2 surveilling the property?

3 A. Yes. The purpose was for narcotics activity.

4 Q. Okay. Were you aware of any particular
5 complaints regarding narcotics activity at
6 that address?

7 A. When you say, was I aware, was I informed?

8 Q. Yes. Did you become aware or were you aware
9 that there was narcotics activity alleged at
10 that address?

11 A. Yes.

12 Q. And how did you become aware of it?

13 A. Information would have come by Sergeant
14 Richard Merrow.

15 Q. Okay. Do you know of any specific complaints
16 about that property?

17 A. When you say, "specific," I don't -- I kind of
18 don't understand the question. And the reason
19 I guess I say this is because are you saying
20 what I have known directly or indirectly? I
21 guess that's confusing for me.

22 Q. Okay. I'm sorry. And one of the things I
23 should have mentioned at the beginning is I
24 just want your personal knowledge. And so
25 I'll rephrase that question.

SERGEANT CHIVAS RIVERS, 1-25-2021

1 Do you have any personal
2 knowledge of any particular complaint or
3 complaints regarding narcotics at the address
4 of 4727 Lumley?

5 **A. Yes.**

6 **Q.** Okay. Tell me what particular complaints you
7 are aware of.

8 **A. Again, the information would have been**
9 **provided by Sergeant Rich Merrow. He was the**
10 **one that handled the complaints and received**
11 **everything. So that's why I asked was it**
12 **directly or indirectly. Because all intel**
13 **that I would have gotten concerning 4727**
14 **Lumley would have come through Sergeant Rich**
15 **Merrow.**

16 **Q.** Okay. And I'm just trying to understand what
17 information you got regarding that address.

18 **A. I do apologize. But I wouldn't remember**
19 **exactly what information he provided at that**
20 **time.**

21 MS. HAMDAN: And I would
22 just like to state on the record he's made it
23 pretty clear that the information was
24 received, whatever was received was from
25 Sergeant Merrow. So I would put on the record

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1 that that's been asked and answered.

2 BY MR. NORMAN:

3 Q. All right. So on the date of the incident
4 prior to having any contact with Stephanie
5 Wilson had you made any arrest of any person
6 at 4727 Lumley on June 24th, 2019?

7 A. **Are you asking me if I made any arrest that**
8 **day on the 24th from Lumley?**

9 Q. Yes.

10 A. **No arrest, no.**

11 Q. Did you have any interactions with any other
12 parties at the address prior to Miss Wilson?

13 A. **Yes.**

14 Q. Okay. How many other parties did you have
15 contact with on that day prior to Miss Wilson?

16 A. **I do not recall.**

17 Q. Can you tell me what -- well, let me rephrase.

18 Did you have contact with
19 anyone inside of the Lumley address?

20 A. **I do not recall. I don't recall.**

21 Q. Okay. Do you recall if you had any contact
22 with anyone else who arrived at Lumley in a
23 vehicle?

24 A. **That day or any day?**

25 Q. That day.

SERGEANT CHIVAS RIVERS, 1-25-2021

- 1 **A.** **I don't recall.**
- 2 **Q.** Had you ever surveilled the property at Lumley
- 3 before June 24th of 2019?
- 4 **A.** **Yes.**
- 5 **Q.** All right. On how many occasions?
- 6 **A.** **I don't recall.**
- 7 **Q.** If you know, was there anyone at the Lumley
- 8 Street address who was providing information
- 9 to law enforcement about the activities at
- 10 Lumley?
- 11 **A.** **I don't -- I wouldn't know.**
- 12 **Q.** Okay. So let me move on to when you first
- 13 observed -- well, do you remember the type of
- 14 vehicle that Miss Wilson was driving?
- 15 **A.** **On that particular incident?**
- 16 **Q.** Yes.
- 17 **A.** **Yes.**
- 18 **Q.** Okay. When did you first observe her vehicle?
- 19 **A.** **If I can refer back to my report?**
- 20 **Q.** Yes.
- 21 **A.** **My first encounter with this vehicle on this**
- 22 **day was the vehicle parked on Lumley near 4727**
- 23 **Lumley.**
- 24 **Q.** Okay. And this was a 2006 Saturn?
- 25 **A.** **Yes, sir, a Saturn Ion.**

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SERGEANT CHIVAS RIVERS, 1-25-2021

1 Q. So tell me where you were when you observed
2 that vehicle pull up at the location you just
3 mentioned.

4 A. I can't say exactly where I was.

5 Q. Okay. Tell me were you looking at the front
6 of the vehicle, the back of the vehicle, the
7 side, do you recall?

8 A. I don't recall, no.

9 Q. All right. So you saw the vehicle pull up.
10 Tell me what happened next.

11 A. I observed an unknown black male exit 4727
12 Lumley and approach the passenger side of the
13 vehicle.

14 Q. All right. Did you ever ascertain who that
15 black male was?

16 A. Not this day, no.

17 Q. All right. On that day did you have any
18 contact with that black male who exited the
19 address?

20 A. I don't recall.

21 Q. And I'm assuming if you don't recall you also
22 did not arrest that person on that day; is
23 that correct?

24 A. Well, I don't recall because I've gotten many
25 search warrants and had many different

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1 contacts with people addresses. And I can't
2 say that I recall if we made contact with that
3 individual or not. I don't know. I don't
4 remember.

5 Q. Okay. And that's a perfectly acceptable
6 answer. If you're not sure about something
7 you can just tell me that you're not sure or
8 you don't know.

9 A. Okay.

10 Q. So you don't recall whether or not that person
11 was arrested?

12 A. No, sir.

13 Q. And you don't recall whether or not you had
14 any communication with that person?

15 A. No, sir.

16 Q. All right. So you said you approached the
17 car. What happened next?

18 A. I approached the vehicle. He reached his arm
19 into the window in what appeared to be a hand
20 to hand drug transaction.

21 Q. Did you approach the vehicle after you saw
22 that transaction?

23 A. No.

24 Q. And why did you not approach the vehicle at
25 that point?

1 **A.** We needed the vehicle to depart -- to depart
2 the location. We didn't want to make any
3 vehicle stops in front of a known drug
4 location.

5 Q. All right. So you saw the person approach the
6 car, reach inside. And then tell me what
7 happened next.

8 **A.** Shortly after the vehicle departed the
9 location and was traveling east on Cypress.

10 Q. And at some point did you pull that vehicle
11 over?

12 **A.** Yes.

13 Q. And what was the reason for stopping the
14 vehicle?

15 **A.** When he turned east on Cypress they didn't use
16 any turn signal.

17 Q. So you pulled him over based on a turn without
18 a turn signal?

19 **A.** Yes.

20 Q. All right. When you stopped the vehicle did
21 you have lights and sirens?

22 **A.** Yes.

23 Q. And when you activated those did the vehicle
24 pull over?

25 **A.** Yes.

SERGEANT CHIVAS RIVERS, 1-25-2021

1 Q. When you made the traffic stop with your
2 lights and sirens, was that vehicle free to
3 leave the scene?

4 A. I don't understand the question.

5 Q. When you pull somebody over with your lights
6 and sirens, can that car just pull off if they
7 don't want to talk to you?

8 A. Are they allowed to leave when they -- I still
9 don't kind of understand the question.

10 Q. Okay. When you activate your lights and
11 sirens that's a direction that a vehicle needs
12 to pull over; is that accurate?

13 A. That's correct.

14 Q. And if that vehicle does not pull over, would
15 that be a crime?

16 A. If I'm conducting a traffic stop on that
17 vehicle?

18 Q. Yes.

19 A. Are you asking me is that a crime for a
20 vehicle not to pull over?

21 Q. Yes. Is that a crime?

22 A. Yes.

23 Q. And so when you pull someone over using your
24 lights and sirens, they're expected to stop
25 and wait for you to approach the vehicle; is

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1 that accurate?

2 **A.** **If I'm making a traffic stop on that vehicle,**
3 **yes.**

4 **Q.** Okay. And that's what you did with this
5 vehicle, correct?

6 **A.** **Correct.**

7 **Q.** So the vehicle pulled over. Did you approach
8 the passenger side or the driver's side of the
9 vehicle?

10 **A.** **I don't recall.**

11 **Q.** And was Sergeant Merrow or Sherry Tanner
12 involved in that stop at all?

13 **A.** **Yes, they were.**

14 **Q.** Do you recall where you were in relation to
15 the vehicle? You were behind it I would
16 assume?

17 **A.** **I would assume, yes.**

18 **Q.** Do you recall where Sergeant Merrow and Sherry
19 Tanner were in relation --

20 **A.** **No, sir.**

21 **I'm sorry. I didn't allow**
22 **you to finish.**

23 **Q.** I was saying you didn't know where Sergeant
24 Merrow and Sherry Tanner were in relation to
25 you?

1 **A.** **No, sir.**

2 **Q.** Okay. Did anyone other than you -- well, let
3 me back up.

4 Did you speak to the
5 occupants of the vehicle?

6 **A.** **I did.**

7 **Q.** Did anyone other than you speak to the
8 occupants of the vehicle on this day?

9 **A.** **I'm not sure.**

10 **Q.** All right. Do you recall how many occupants
11 were in the vehicle?

12 **A.** **Yes.**

13 **Q.** How many?

14 **A.** **Two.**

15 **Q.** And did you identify those two people?

16 **A.** **Yes, I did.**

17 **Q.** And who did you identify them as?

18 **A.** **I identified Stephanie Wilson and Malcolm**
19 **Smith.**

20 **Q.** All right. Now had you had any interaction
21 with either Stephanie Wilson or Malcolm Smith
22 prior to June 24th of 2019?

23 **A.** **Yes, I did.**

24 **Q.** Did you have contact with -- I guess I should
25 have asked a better question.

1 Did you have contact with
2 Stephanie Wilson before June 24th of 2019?

3 **A. Yes, I did.**

4 Q. Okay. And when if you recall was your last
5 interaction with Stephanie Wilson prior to
6 June 24th?

7 **A. January 17th, 2019.**

8 Q. Okay. And that's a very specific date. What
9 about that date stands out to you?

10 **A. I would ask you to rephrase the question.**

11 Q. Okay. How is it that you recall that January
12 17th interaction with Stephanie Wilson? Did
13 something memorable occur on that day?

14 **A. Yes, on that day her vehicle was seized for a**
15 **narcotics investigation.**

16 Q. Okay. Do you recall from where?

17 **A. If I can reflect back to my report.**

18 Q. Sure.

19 **A. When you say, "where," are you asking where**
20 **the stop was made?**

21 Q. Yes, sir.

22 **A. It was Warren and McGraw inside of a gas**
23 **station parking lot.**

24 Q. And then the same question for Mr. Smith do
25 you recall what your last -- well, had you had

1 any contact with Mr. Smith prior to June 24th?

2 **A. Yes, sir, January 17th, 2019.**

3 Q. Okay. And that was in the same contact with
4 Miss Wilson?

5 **A. Yes.**

6 Q. Had you had any other contact with either
7 Mr. Smith or Miss Wilson prior to the January
8 event?

9 **A. I don't recall.**

10 Q. All right. Now going back to the incident
11 we're here about, the June 24th incident, did
12 you recover -- well, let me back up.

13 So you approached the
14 vehicle. Did you write a ticket or anything
15 for Miss Wilson for the illegal turn?

16 **A. No, sir. She was given a verbal warning.**

17 Q. Tell me what happened after the verbal warning
18 regarding the ticket -- I mean regarding her.

19 **A. Can you rephrase? I don't understand the
20 question.**

21 Q. Okay. So you pulled the vehicle over. You
22 approached one side of the car we're not sure
23 which. And you give Miss Wilson a verbal
24 warning about the turn without a turn signal?

25 **A. Correct.**

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- 1 Q. All right. Tell me what you do next.
- 2 A. Wilson and Smith were allowed to remove
3 whatever personal items from the vehicle.
- 4 Q. Okay. So you asked them to exit the vehicle?
- 5 A. I guess I would ask that you rephrase because
6 at this point I would only assume that they
7 were already out of the vehicle.
- 8 Q. Okay. And what I'm trying to do is get a
9 timeline. So you pulled them over. You gave
10 her a verbal warning. Did they just get out
11 of the car? Did you ask them to exit the
12 vehicle? Tell me what happens next.
- 13 A. I guess again I would say that I'm confused
14 about the question because you're saying
15 during the stop. At that time I just gave her
16 a verbal warning. And I don't recall that
17 playing out that way.
- 18 Q. Okay. So you gave her a verbal warning. Then
19 did you tell her that she was free to leave?
- 20 A. After the verbal warning?
- 21 Q. Yes.
- 22 A. Yes.
- 23 Q. Okay. And did she drive off?
- 24 A. I'm not sure what she did. But she didn't
25 drive off in the vehicle that was impounded,

1 **no.**

2 Q. So I guess we're -- and perhaps it's my
3 question. So let me try to ask it in a better
4 way.

5 You gave Miss Wilson a
6 verbal warning about the traffic turn that she
7 didn't use a signal for, correct?

8 **A. Correct.**

9 Q. And then at some point Miss Wilson and
10 Mr. Smith got out of the vehicle; is that
11 correct?

12 **A. That's correct.**

13 Q. Did they get out of the vehicle at your
14 direction?

15 **A. Yes.**

16 Q. Okay. So after the verbal warning you asked
17 Miss Smith and -- I mean Miss Wilson and
18 Mr. Smith to exit the vehicle?

19 **A. I can't say that it was at that time, no.**

20 Q. Okay. At some point did you call for a tow
21 truck for the vehicle?

22 **A. I did, yes.**

23 Q. Okay. So I want to back up to what happened
24 in between the verbal warning and the tow
25 truck.

- 1 **A. Okay.**
- 2 Q. So typically when somebody makes an illegal
3 turn their vehicle is not towed away; is that
4 accurate?
- 5 **A. I can't say yes or no. I don't know.**
- 6 Q. Do you make a lot of traffic stops?
- 7 **A. It would depend on the question. I'm not sure**
8 **about the question.**
- 9 Q. All right. So why did you call for a tow
10 truck to pick up the Saturn Ion?
- 11 **A. After the interview I had with Mr. Smith and**
12 **Miss Wilson.**
- 13 Q. Okay. So after the verbal warning there was
14 some interview that took place?
- 15 **A. Again, you say, "after the verbal warning."**
16 **But I can't tell you when I gave the verbal**
17 **warning to Miss Wilson. I can't say it was**
18 **before or after.**
- 19 Q. Okay. But at some point your lights and
20 sirens are on behind Miss Wilson's vehicle?
- 21 **A. Correct.**
- 22 Q. You approached the vehicle?
- 23 **A. Correct.**
- 24 Q. And you interviewed Mr. Smith and Miss Wilson?
- 25 **A. Correct.**

- 1 Q. Did you mirandize Miss Wilson or Mr. Smith
2 prior to the interview?
- 3 A. No.
- 4 Q. All right. Do you know whether that interview
5 occurred with them in the vehicle or out of
6 the vehicle? And by the vehicle I mean the
7 Saturn Ion.
- 8 A. No, sir.
- 9 Q. Was Miss Wilson or Mr. Smith ever placed in
10 your police vehicle?
- 11 A. Not that I recall, no.
- 12 Q. When you were talking to Miss Wilson and
13 Mr. Smith were they free to leave the scene?
- 14 A. Can you rephrase the question?
- 15 Q. After the traffic stop occurred and before the
16 vehicle was towed could Miss Wilson have left
17 the scene of the incident?
- 18 A. Yes.
- 19 Q. Okay. You were not holding them there?
- 20 A. Rephrase the question again.
- 21 Q. Your vehicle was there with its lights and
22 sirens on, correct?
- 23 A. Correct.
- 24 Q. And was that true during the interview?
- 25 A. Were my lights on at the time of the

- 1 **interview? Is that what you're asking?**
- 2 Q. Yes. Was your vehicle parked behind
- 3 Miss Wilson's vehicle with its lights and
- 4 sirens on?
- 5 A. **With lights on. Probably not sirens, but yes.**
- 6 Q. And then you interviewed Miss Wilson and
- 7 Mr. Smith?
- 8 A. **Correct.**
- 9 Q. All right. And I think you stated before that
- 10 although Sergeant Merrow and Sherry Tanner
- 11 were there they did not speak to either Wilson
- 12 or Smith; is that accurate?
- 13 A. **I don't know if they spoke to either one of**
- 14 **them.**
- 15 Q. Did you recover any narcotics from the
- 16 vehicle?
- 17 A. **No.**
- 18 Q. All right. Did you recover any narcotics from
- 19 Miss Wilson's person or Mr. Smith's person?
- 20 A. **No.**
- 21 Q. Now I see included in the report was a picture
- 22 of some syringes. Did you recover those from
- 23 the vehicle?
- 24 A. **Yes.**
- 25 Q. All right. Do you know whether or not those

1 syringes were tested for any controlled
2 substance?

3 **A. I do not, no.**

4 Q. Did you see either Miss Wilson or Mr. Smith
5 using any controlled substance?

6 **A. No.**

7 Q. Are you aware of any criminal charges stemming
8 from this incident against Miss Wilson or
9 Mr. Smith?

10 **A. No, sir, I'm not aware.**

11 Q. Did you become aware of who owned the Saturn
12 Ion?

13 **A. Yes.**

14 Q. Do you know who the owner was?

15 **A. Per my report the vehicle was -- according to**
16 **LEIN it was registered to Wilson.**

17 Q. Are you aware of any other incident reports or
18 police reports related to Stephanie Wilson or
19 Malcolm Smith related to anything that
20 happened on June 24th?

21 **A. I don't understand the question.**

22 Q. Aside from the one report we've talked about
23 and the picture of the syringes are you aware
24 of any other incident or police reports that
25 were done related to the June 24th incident?

SERGEANT CHIVAS RIVERS, 1-25-2021

- 1 **A.** **No, sir, I don't.**
- 2 Q. The interviews that you say you had with --
- 3 well, let me take Miss Wilson's first. When
- 4 you spoke to Miss Wilson, was your
- 5 conversation with her recorded in any fashion?
- 6 **A.** **No, sir.**
- 7 Q. And the same question for Mr. Smith. That was
- 8 also not recorded, correct?
- 9 **A.** **No, sir.**
- 10 Q. All right. I believe I don't have any other
- 11 questions at this time. Miss Hamdan may have
- 12 some or may not.
- 13 MS. HAMDAN: I do. Thank
- 14 you.
- 15 CROSS EXAMINATION BY MS. HAMDAN:
- 16 Q. Sergeant, you indicated that you are currently
- 17 assigned to the U.S. Marshals Task Force; is
- 18 that correct?
- 19 **A.** **That's correct.**
- 20 Q. So what type of work does that entail?
- 21 **A.** **Fugitive apprehension.**
- 22 Q. Okay. And that's something where you also
- 23 work with federal officers. Is that a fair
- 24 statement?
- 25 **A.** **Yes, ma'am.**

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1 Q. So it's a pretty prestigious position?

2 A. Yes.

3 Q. Congratulations on that.

4 A. Thank you.

5 Q. So in regards to your time in narcotics at the
6 time that you first made contact with
7 Stephanie Wilson in the January 2019 incident
8 about how long had you been in the narcotics
9 unit?

10 A. I got there --

11 Q. And it doesn't have to be exact. If you can
12 just give like a general estimate, that would
13 be great.

14 A. Approximately a year.

15 Q. Okay. And during that time can you give an
16 estimate of how many stops you've made in
17 regards to your cases in narcotics?

18 A. No, ma'am, I can't.

19 Q. Okay. And you indicated during this June
20 incident that you were doing some sort of
21 surveillance where officers were in unmarked
22 vehicles. Can you indicate why that's
23 necessary or important when you're doing
24 surveillance?

25 A. For the unmarked vehicles?

SERGEANT CHIVAS RIVERS, 1-25-2021

1 Q. Yes.

2 A. Often a lot of times when narcotics activity
3 or prostitution is in the area and they see
4 marked vehicles, they tend to shutdown
5 operations and cease any type of drug activity
6 with us being known to be in the area.

7 Q. So is it fair to say that just for the
8 importance of maintaining your investigation
9 and not tipping these people off it's
10 important to be in an unmarked vehicle so that
11 you can properly perform the surveillance?

12 A. Yes, ma'am.

13 Q. Okay. And I know you said you couldn't give
14 an exact number as to how many cases you've
15 had. But would you say it's more than like
16 50 --

17 A. Yes, ma'am.

18 Q. -- in that year?

19 A. Yes.

20 Q. Okay. Would you say it's more than 100?

21 A. Yes, ma'am.

22 Q. Okay. And you indicated that you had
23 surveilled that property at Lumley prior to
24 this occasion; is that correct?

25 A. Yes, ma'am.

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1 Q. And is it common when you are surveilling drug
2 activity at a property that you would surveil
3 for a period of time prior to being able to
4 make an arrest or execute a warrant?

5 A. Yes, ma'am.

6 Q. And why is it important to do that for a
7 period of time?

8 A. Sometimes you may not be able to get all the
9 necessary evidence or information needed to
10 get a search warrant for that particular
11 location or whatever you're trying to obtain.
12 Sometimes it takes time.

13 Q. Right. And would you say that's a fairly
14 common thing that you surveil for an extended
15 period of time?

16 A. Yes.

17 Q. Okay. And if we can just go back to that June
18 2019 incident and just talk a little bit more
19 about what went on. So you were conducting
20 surveillance on this property at Lumley. And
21 you observed the vehicle pull up. When you
22 observed the black male approach the vehicle,
23 did something automatically go off in your
24 head where you said this looks like a drug
25 transaction?

1 **A. Yes.**

2 Q. Okay. And what about that interaction tipped
3 you off?

4 **A. The male reaching his hand inside of the**
5 **vehicle consists with what we call hand to**
6 **hand drug transactions.**

7 Q. Okay. Did you observe any extended
8 conversation take place or anything like that?

9 **A. No, ma'am.**

10 Q. And you witnessed him reach his arm into the
11 vehicle?

12 **A. Yes, ma'am.**

13 Q. And when you initiated this stop, you said you
14 had the lights and the sirens on and that
15 later on you had the lights on during the
16 interview, correct?

17 **A. Correct.**

18 Q. Now when you have your police lights on is
19 that typically an indicator that someone's
20 under arrest?

21 **A. No, it's not.**

22 Q. Okay. Do you typically or do you know of any
23 officer who would mirandize someone during a
24 traffic stop?

25 **A. No, ma'am, I wouldn't mirandize someone during**

1 **a traffic stop.**

2 Q. And why is that? Why not?

3 A. **Because that individual that I'm conducting**
4 **the traffic stop on is not under arrest.**

5 Q. Okay. And you indicated that you interviewed
6 Miss Wilson and Mr. Smith, correct?

7 A. **Yes, ma'am.**

8 Q. During that interview did they give any
9 indication as to why they were in that area?

10 A. **Yes, they did.**

11 Q. And what did they indicate their purpose was
12 for being in the area?

13 A. **After I spoke to Miss Wilson she stated that**
14 **she was transporting Mr. Smith down there to**
15 **purchase narcotics from the Lumley address**
16 **because he was getting sick.**

17 Q. Okay. Did she indicate that she had ever been
18 there before?

19 A. **I don't recall.**

20 Q. Would you like to refer back to your report?

21 A. **Yes.**

22 **She stated, "He was getting**
23 **sick without it. And I bring him down here**
24 **once a day."**

25 Q. Okay. And when she stated that, you went

SERGEANT CHIVAS RIVERS, 1-25-2021

1 ahead and you conducted a search of the
2 vehicle, correct?

3 **A. Correct.**

4 Q. And would you say that's typical for a traffic
5 stop that you would search the vehicle?

6 **A. Typical, yes. It depends on what's involved**
7 **on the traffic stop.**

8 MR. NORMAN: Sorry. Can we
9 take a break for a moment? I have a judge on
10 the line. Sorry.

11 MS. HAMDAN: Sure.

12 (Recess).

13 BY MS. HAMDAN:

14 Q. And just going back we were discussing the
15 interview that you conducted.

16 **A. Correct.**

17 Q. And following the interview you conducted a
18 search of the vehicle. And you ended up
19 recovering it looks like some drug
20 paraphernalia; is that correct?

21 **A. That's correct.**

22 Q. Okay. Do you recall how many syringes you
23 recovered?

24 **A. Five syringes.**

25 Q. Do you recall where you recovered those from?

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- 1 **A.** **Underneath the passenger side of the seat.**
- 2 **Q.** Okay. And did anyone indicate what those were
- 3 for, what they were used for?
- 4 **A.** **Yes. Smith indicated that he had used them to**
- 5 **inject heroin.**
- 6 **Q.** Okay. And at the time that the vehicle was
- 7 going to be towed did you give Miss Wilson and
- 8 Mr. Smith an opportunity to remove any
- 9 belongings from the vehicle?
- 10 **A.** **Yes, I did.**
- 11 **Q.** Do you recall if they did?
- 12 **A.** **I don't recall.**
- 13 **Q.** Okay. Just going back to the January
- 14 incident. Do you recall the first point where
- 15 you recognized the Chevy Malibu that was
- 16 involved in that incident?
- 17 **A.** **Yes.**
- 18 **Q.** When you observed it do you recall where it
- 19 was and what it was doing?
- 20 **A.** **Yes. It was parked on Northfield near 6024**
- 21 **Northfield.**
- 22 **Q.** And did you observe anyone approach the
- 23 vehicle?
- 24 **A.** **No, ma'am.**
- 25 **Q.** Did you observe either of the parties exit the

- 1 vehicle?
- 2 **A. Yes, ma'am.**
- 3 Q. Okay. Do you recall which person exited the
- 4 vehicle?
- 5 **A. At the time he wasn't identified. But it was**
- 6 **the passenger of the vehicle.**
- 7 Q. Okay. And was he later identified as Malcolm
- 8 Smith?
- 9 **A. Yes, ma'am.**
- 10 Q. Okay. So you observed him exit the vehicle.
- 11 And where did he go?
- 12 **A. He approached 6024 Northfield.**
- 13 Q. And was there anything significant about that
- 14 address to you at the time?
- 15 **A. Yes, ma'am. That location was under**
- 16 **investigation for narcotics activity.**
- 17 Q. Okay. So you saw him enter the house. Do you
- 18 recall approximately how long he was in there?
- 19 **A. Not exactly, no.**
- 20 Q. Okay. Would you say it was a longer stay or a
- 21 shorter stay?
- 22 **A. It was a short stay.**
- 23 Q. And then he returned to the vehicle and the
- 24 vehicle departed?
- 25 **A. Correct.**

1 Q. And then you initiated a stop. And as you
2 stated it was in the gas station parking lot
3 by the time you guys were able to conduct the
4 stop, correct?

5 A. Correct.

6 Q. Okay. And was an interview conducted at that
7 time?

8 A. Yes, ma'am, it was.

9 Q. And did either party indicate what they were
10 doing at that property?

11 A. Yes, ma'am. After conducting the interview
12 with Smith he stated that he was there to
13 purchase \$10 worth of heroin.

14 Q. Okay. Did Stephanie make any statements at
15 that time?

16 A. Yes.

17 Q. And do you recall --

18 A. She -- I'm sorry.

19 Q. No. You're good.

20 A. She stated that she was transporting him to
21 the location because he was getting sick
22 without it.

23 Q. Okay. And from your time in narcotics did you
24 see that as something that was common that if
25 someone was addicted to heroin they would get

1 sick if they didn't get their fix of those
2 drugs?

3 **A. Yes.**

4 **Q.** And at that time once you concluded that stop
5 and the vehicle was going to be towed was
6 Miss Wilson allowed to remove belongings from
7 her vehicle?

8 **A. Yes.**

9 **Q.** Okay. So would you say that these two
10 situations as far as how interviews go were
11 somewhat similar?

12 **A. Yes, ma'am, they were.**

13 **Q.** And when you're writing out your police
14 reports, would you ever -- is it common
15 practice to refer back to an old report for a
16 defendant?

17 **A. No. Generally after we file away a report for**
18 **the first time, I usually don't even see that**
19 **report again.**

20 **Q.** Okay. So you just basically make a statement
21 as to whatever happened that day. It's not
22 something where you would even remember this
23 person and to think to look back at an old
24 report?

25 **A. No, not really. It kind of depends on the**

1 **individual.**

2 Q. Okay. But it's not like you would refer back

3 and take from an old report, correct?

4 A. **No. No. Not at all.**

5 Q. Okay. And have you testified in court on

6 narcotics' cases before?

7 A. **Yes.**

8 Q. Do you know approximately how many times?

9 A. **No, ma'am.**

10 Q. Okay. Would you say it's more than five?

11 A. **Yes, ma'am.**

12 MS. HAMDAN: Okay. Nothing

13 further on my end.

14 MR. NORMAN: I have just a

15 couple of follow-up questions.

16 REDIRECT EXAMINATION BY MR. NORMAN:

17 Q. The Saturn Ion that was seized that seizure

18 was related to the incident on June 24th and

19 not anything that happened in January,

20 correct?

21 A. **When you say that seizure was related to that**

22 **particular day, I kind of don't understand the**

23 **question. I'm sorry.**

24 Q. I can rephrase.

25 So you chose to have the

SERGEANT CHIVAS RIVERS, 1-25-2021

1 Saturn Ion towed on June 24th, 2019, correct?

2 **A. Correct.**

3 Q. And that was based on activity that you

4 believe happened on June 24th, 2019, correct?

5 **A. Correct.**

6 Q. It had nothing to do with activity that

7 happened in January?

8 **A. No, not at all.**

9 Q. Okay. And when you were asking Stephanie

10 Wilson and Malcolm Smith questions after the

11 traffic stop, those questions were not about

12 the illegal turn; is that accurate?

13 **A. Some of them were, yes.**

14 Q. Okay. But in addition to questions about the

15 turn you were investigating a suspected drug

16 crime, correct? .

17 **A. Correct.**

18 MR. NORMAN: Okay. No other

19 questions.

20 MS. HAMDAN: Nothing on my

21 end.

22 MR. NORMAN: We are all set.

23 Thank you very much for your time, Sergeant

24 Rivers.

25 THE WITNESS: No problem.

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SERGEANT CHIVAS RIVERS, 1-25-2021

1 THE REPORTER: Mr. Norman,
2 do you need to order an etranscript?

3 MR. NORMAN: Yes.

4 THE REPORTER: Ms. Hamdan,
5 do you need to order an etranscript?

6 MS. HAMDAN: Yes.

7 (Deposition concluded at 11:02 a.m.)
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SERGEANT CHIVAS RIVERS, 1-25-2021

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2

3

CERTIFICATE PAGE

4

5 STATE OF MICHIGAN)

6 COUNTY OF OAKLAND)

7

8 I certify that this transcript, consisting of
9 48 pages is a complete, true, and correct record of
10 the testimony of SERGEANT CHIVAS RIVERS held in this
11 case on January 25, 2021.

12 I also certify that prior to taking this
13 deposition SERGEANT CHIVAS RIVERS was duly sworn to
14 tell the truth.

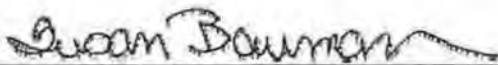
15 I also certify that I am not a relative or
16 employee of or an attorney for a party; or a
17 relative or employee of an attorney for a party; or
18 financially interested in the action.

19

20

21

22



23

Susan Bauman, CSR 6320

24

Notary Public: Oakland County, Michigan

25

My Commission expires: 10-27-2022

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX E
Transcript of Claimant's Deposition Testimony

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief of Research,
Training, and Appeals

JOSEPH D. SHOPP (P81256)
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
EX REL, KYM L. WORTHY, WAYNE
COUNTY PROSECUTING ATTORNEY,

Plaintiff,

Case No: 19-014106-CZ

vs.

ONE 2006 SATURN ION,
VIN: 1g8AJ55F86Z101751,

Defendant.

DEPOSITION OF STEPHANIE GRACE WILSON

Taken by Zoom on Tuesday, January 26, 2021, commencing at
10:00 a.m.

APPEARANCES:

For the Plaintiff: WAYNE COUNTY PROSECUTOR'S OFFICE
1441 St. Antoine
Detroit, Michigan 48226
BY: SINAH HAMDAN, ESQUIRE

For the Defendant: LAW OFFICE OF BARTON W. MORRIS
520 North Main
Royal Oak, Michigan 48067
BY: MICHAEL NORMAN, ESQUIRE

ALSO PRESENT: DAVIDDE STELLA
WESLEY HOTTOT

RECORDED BY: AUDREY R. KAHN
Court Reporter
7108 Clements
West Bloomfield, Michigan 48322
(248) 681-1867

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Direct Examination by Ms. Hamdan	4

EXHIBITS:	
NONE MARKED	

1 Tuesday, January 26, 2021

2 10:00 a.m.

3 * * * * *

4 COURT REPORTER: Ms. Wilson, raise your
5 right hand, please. Do you swear that the testimony you
6 will give in this matter will be the truth, the whole
7 truth and nothing but the truth?

8 MS. WILSON: Yes, I do.

9 STEPHANIE GRACE WILSON

10 (At 10:04 a.m., witness sworn)

11 COURT REPORTER: Thank you.

12 MS. HAMDAN: Good morning, Stephanie, how
13 are you?

14 THE WITNESS: Good, how are you?

15 MS. HAMDAN: I'm okay. And I would just
16 like the record to reflect that this is the deposition
17 taken of Stephanie Grace Wilson taken pursuant to Michigan
18 Court Rules. And, Stephanie, I'm sure your attorney has
19 probably explained somewhat as to how the deposition
20 works; is that a fair statement?

21 THE WITNESS: Yes.

22 MS. HAMDAN: Okay. Just a couple things,
23 and he might have touched on them and stuff already, but
24 just to make a record of it. One thing is that if I ask
25 you a question, I need you to give me a verbal response so

1 no headshaking, or nodding, or anything like that just so
2 the court reporter can get things down.

3 Another thing is, if I ask you a question
4 that you don't understand or you don't hear for any
5 reason, be it technical or otherwise, just let me know and
6 I can restate or repeat. And then the last thing is, it's
7 kind of similar to testifying in court, but unlike court
8 if you need a break at any time just let me know and we'll
9 take a break. I'm hoping it won't be a long deposition,
10 but if you need a break just say the word.

11 THE WITNESS: Okay.

12 DIRECT EXAMINATION

13 BY MS. HAMDAN

14 Q So first I'm going to start by asking a little bit about
15 yourself. Are you currently employed?

16 A I'm currently working with MedStaff Plus as an insurance
17 verification specialist.

18 Q Okay. And what's your education background?

19 A The highest I've gone is I got my high school diploma but
20 I'm currently in college.

21 Q And what are you studying?

22 A Nursing.

23 Q How much longer do you have?

24 A A year.

25 Q And where do you go to school?

1 A Washtenaw Community College.

2 Q And do you have any criminal history?

3 A I'm sorry, what was that?

4 Q Do you have any criminal history?

5 A Yes, I do.

6 Q Okay. Can you kind of just lay out what that entailed?

7 MR. NORMAN: I'm just going to put an
8 objection that the blanket request for criminal history is
9 outside the court rules.

10 MS. HAMDAN: Okay. I can be more specific
11 in my questioning.

12 BY MS. HAMDAN:

13 Q Stephanie, when is the first time that you've been charged
14 with a crime?

15 A 2011.

16 Q Okay. And do you recall what you were charged with?

17 A It was use of a financial -- like misuse of a financial
18 transaction device, I believe.

19 Q Okay. And was it just one charge?

20 A I believe it was charged as two charges. There were a few
21 more but I took a plea, I believe.

22 Q And you said that was 2011. Do you recall the
23 circumstances surrounding that?

24 MR. NORMAN: I'm gonna object again.

25 Getting into the specifics would be outside the court

1 rules.

2 MS. HAMDAN: Which court rules does that go
3 outside of?

4 MR. NORMAN: As far as criminal history?

5 MS. HAMDAN: Yes.

6 MR. NORMAN: You'd be requesting the
7 history itself?

8 MS. HAMDAN: Right, but which court rule is
9 that?

10 MR. NORMAN: If you give me a moment I can
11 pull up the rule. I'll just make the objection for the
12 record and we can go forward.

13 MS. HAMDAN: Okay, thank you.

14 BY MS. HAMDAN:

15 Q Can you describe the circumstances that led to that
16 charge?

17 A I misused credit card information that was in my
18 possession for personal purchases.

19 Q How did you come into possession of that credit card
20 information?

21 A It was from where I was employed.

22 Q Okay. Have you been charged with anything after that?

23 A Yes.

24 Q I'm sorry, the first charges, what ended up happening with
25 that? Were you --

1 A I was put on probation.

2 Q Was that per the plea deal?

3 A Yes.

4 Q And then when was the next time that you were charged?

5 A 2016.

6 Q And what were you charged with in 2016?

7 A It was charged as embezzlement over a thousand under

8 20,000.

9 Q And what were the circumstances surrounding that?

10 A The employer that I worked for knew that I had a previous

11 record and when they stopped paying me I held onto the

12 company laptop that they had given me, and instead of

13 paying me they went to the police and said that I stole

14 it. And the laptop was worth more than \$1100, and I was a

15 trustee of that agency.

16 Q Okay. What ended up happening with that, was that another

17 plea or were you sentenced to anything?

18 A I was sentenced to ten months Wayne County Jail, but was

19 let out early on good behavior and probation. I completed

20 everything successfully, paid all my fines and costs.

21 Q And what court was that?

22 A Frank Murphy.

23 Q And the 2011 one, was that also Frank Murphy or was that

24 somewhere else?

25 A It was Frank Murphy as well.

1 Q Okay. So 2011 and 2016. Any times other than that?

2 A No.

3 Q Okay. And what is your relationship to Malcolm Smith?

4 A He is the father of my child.

5 Q Do you recall when you two met?

6 A 2007.

7 Q And you recall how you met?

8 A In high school.

9 Q And were you aware that he was a drug user?

10 A He wasn't at the time.

11 Q Okay. Do you recall when you first realized that he was

12 using?

13 A 2010.

14 Q And has he ever used in front of you?

15 A No.

16 Q What type of drugs was he using?

17 A Opiates and I believe Xanax.

18 Q Okay. Am I correct in saying that you currently have a

19 child with Mr. Smith?

20 A Yes.

21 Q How old is that child?

22 A Eleven.

23 Q What is your relationship currently with Mr. Smith?

24 A He's the father of my child. He's been coming around now

25 that he's sober.

1 Q About how often do you see him?

2 A At least once a day, maybe less.

3 Q Is there a custody agreement in place?

4 A No. I would like the record to state that he did complete
5 rehab and is sober.

6 Q Okay. Do you know how long he's been sober?

7 A Since January 26th of 2020.

8 Q Are you aware of what his address is?

9 A I don't know his exact address.

10 Q Okay. What about his phone number?

11 A Yeah.

12 Q Could you state that for the record, please?

13 A Yes, 734-642-5242.

14 Q And when you interact with him, or when he sees your son,
15 is it typically at your residence?

16 A Yes.

17 Q Okay. Do you know what city he currently lives in?

18 A I believe Taylor.

19 Q And you stated you've never seen him do drugs in the past,
20 correct?

21 A Right. I mean, before this instance I've seen him like
22 before it got really bad, but that's when we had broke up.

23 Q Do you recall around when that was?

24 A Around 2012.

25 Q Okay. So you guys broke up around 2012?

1 A Yes.

2 Q Did you ever get back together after that?

3 A A few times on and off.

4 Q I wanted to take you back to the time of the first seizure
5 in January 2019. Were you, at that time, the owner of a
6 2002 Chevy Malibu?

7 A Yes.

8 Q Okay. Do you recall your whereabouts on that day?

9 A Yes.

10 Q Can you state where you were?

11 A In the morning, like you want the whole day or --

12 Q Yes. Yes, we can start with how you started your day that
13 day.

14 A Okay. I got up, was getting my son ready for school, and
15 I received a phone call from Malcolm which would have been
16 from time-to-time, and he asked if I could please give him
17 a ride to his mom's house. He was cold, he hadn't eaten
18 in days and he was really sick. So I told him that I had
19 to get my son to school, and then I had class but I had
20 time to pick him up, drop him off and go to class.

21 So I took my son to school, came home, got
22 my books, got everything I needed for lunch. Then I went
23 to where he was, and I believe the street was Northwood, I
24 believe, not 100 percent positive of the street names in
25 that area, I'm not familiar with it. And he walked to my

1 car from where I was sitting right off the main road, got
2 in the car. I was putting my address that I needed to go
3 to drop him off into my phone so that I could GPS it
4 because I was not familiar with the area, and a car pulled
5 up on my driver's side, motioned for me to roll down the
6 window. I rolled it down just a crack and the gentleman
7 said, "You don't want to be sitting here, there's cops in
8 the area." And I was like, okay. So I rolled up my
9 window, pulled up to the stop sign, made a left-hand turn,
10 pulled into, I believe, the Marathon Gas Station, and that
11 is where two unmarked police cars pulled in behind me with
12 their lights on.

13 Q Okay. And I'm gonna stop you there. We'll talk about
14 what happened after that in a minute. So this was in the
15 City of Detroit, correct?

16 A Yes.

17 Q Do you know why he was there in the first place?

18 A That's where he would go to get drugs right around where
19 he was at, in abandoned houses.

20 Q Do you know where his mom lived at the time?

21 A Taylor.

22 Q Okay. So the police pulled up and came up to your window.
23 And you said you first came across Malcolm at the gas
24 station, correct?

25 A For which instance?

1 Q For the January incident.

2 A No, I was parked on the side street Westwood and he came

3 from behind me.

4 Q From -- did you see where he came out of?

5 A No.

6 Q Okay. About how long would you say, as far as the amount

7 of time that passed between the time that you guys left

8 the front of that abandoned house and the time that you

9 stopped at the gas station?

10 A Well, I wasn't parked in front of an abandoned house.

11 Q Well, I'm saying when you went to pick him up from that

12 area.

13 A Oh, okay. About a minute, maybe two minutes. I made my

14 left-hand turn and pulled into the gas station.

15 Q Okay. And why did you stop at the gas station?

16 A Because I need to finish getting the GPS address so I knew

17 where to go and how get back to Taylor.

18 Q Okay. And so the police came up to your car. Did they

19 start an interview at that point?

20 A They asked me for my license, and registration, and proof

21 of insurance.

22 Q Okay. Did they ask you any questions as to why you were

23 in that area or what you were doing?

24 A They asked me what I was doing and I told them I was

25 picking up the father of my child.

1 Q Okay. Do you recall stating at any time that Mr. Smith
2 had purchased heroin?

3 A No.

4 Q Okay.

5 A I would never say that.

6 Q Okay. And you don't recall saying that you took him there
7 because he was getting sick without it?

8 A No.

9 Q So with that being said, is it your opinion that the
10 officer that wrote up the police report that contains
11 those statements that he was lying?

12 A Yes.

13 Q Okay. And so you never -- you're saying you never would
14 have made those statements. Do you recall what statements
15 you did make to the officer as to why you were there?

16 A Yes.

17 Q Okay. What did you say to them at that time?

18 A I told them I was there to pick him up because he was cold
19 and hungry and I was taking him back to his mom's house.

20 Q Okay. Was there any back-and-forth or that pretty much
21 sums it up?

22 A Officer Rivers kept saying he knew me from somewhere and I
23 kept saying that I had no idea where I knew him from but
24 we found out he was the tether officer for when I had my
25 tether in 2015.

1 Q Okay. And then they instructed you that they were going
2 to seize your vehicle; is that correct?

3 A No, they told me -- like when I had to ask them what was
4 happening after he said to get what I needed out of the
5 car, and he gave me a yellow piece of paper and said it's
6 being towed.

7 Q Okay. And the yellow piece of paper, was that the notice
8 of seizure that they give you?

9 A Yes.

10 Q Okay. Did you read over that paper?

11 A Briefly, I was in hysterics because I didn't really
12 understand what was going on.

13 Q Were you able to read over, at a later time, when you had
14 an opportunity to kind of calm down?

15 A After I found a bus route in an area that I had no idea
16 where I was, and finally got home, yes.

17 Q Okay. And you said they allowed you to retrieve personal
18 items from the vehicle at that time?

19 A Yes, I could take what I could carry.

20 Q Okay. You don't have any history of drug use, do you?

21 A No.

22 Q Okay. Now I want to ask you about the June incident in
23 2019. Were you an owner of the 2006 Saturn Ion at that
24 time?

25 A Yes, I was.

1 Q Okay. And we're going to go over the same listing of
2 events as well, so if you could start by telling me, if
3 you recall, how you started your day that day.

4 A The same.

5 Q Okay. If you want to go ahead and just start with the
6 morning.

7 A Okay, sure. The night before I got a phone call asking if
8 I could pick him up, Malcolm, again, and it was in the
9 middle of the night. I said I couldn't, I could come in
10 the morning. In the morning he called me again, asked if
11 I was coming. I said I will be there after I take Evan to
12 school and then you have to come with me to my class
13 because I won't have time to take you home, you'll have to
14 sit in the car or sleep.

15 So I took my son to school after getting
16 him ready, came home, got my books and my lunch and then
17 took off on 94 east to where he said he was at, and I
18 parked on Lumley just off Michigan Avenue and I parked
19 right in front of the Citgo Gas Station on that side
20 street. Malcolm came up from behind me, got in the car on
21 the passenger side. He was sitting there for a second,
22 opened the door, threw up because he was sick. And once
23 he got situated I gave him a napkin, he wiped off his
24 mouth and I made a right-hand turn onto Michigan Avenue,
25 with my blinker on. Then I came up to Central Avenue, was

1 waiting at the light with my blinker on, made a left-hand
2 turn onto Central, then made a right-hand turn onto the I-
3 94 service drive, and that is where I was pulled over by
4 an unmarked blue Dodge.

5 Q Okay. And when you went to pick up Malcolm, you said he
6 got into the car on Lumley, correct?

7 A Yes.

8 Q Did anyone else approach your car when you were in that
9 area?

10 A No.

11 Q And you said you were stopped close to the I-94 service
12 drive, correct?

13 A Yeah, I got to the I-94 service drive, yes.

14 Q And so they requested your license and registration; is
15 that correct?

16 A No, he didn't even ask for it 'cause I --

17 Q Okay.

18 A It wasn't Rivers, it was another officer who was yelling
19 and screaming in the window.

20 Q Do you recall who that was?

21 A I don't know his name, it was a white officer.

22 Q Okay. You said he was yelling and screaming. What was he
23 yelling and screaming?

24 A Why are you down here? What are you doing, etcetera. I
25 don't remember exactly, but it was along those lines.

1 Q And did they proceed to conduct an interview with you at
2 that time?

3 A He had asked me one other question, but I'm hard of
4 hearing in my left ear, and being on the service drive and
5 the noise, I didn't understand what he'd asked me, so he
6 said I was being f-ing stupid and told me to get out of
7 the car.

8 Q And then did you proceed to get out of the car at that
9 time?

10 A Yes.

11 Q And did he continue to question you once you were out of
12 the car?

13 A He did ask me, again, what I was doing down there.

14 Q Okay. And what did you say to him?

15 A I told him I was picking up the father of my child so I
16 could take him back to his house so he could eat and
17 shower.

18 Q Okay. And did Malcolm indicate to you why he was in that
19 area at that time?

20 A He had been living in that area for a few weeks.

21 Q Okay. And did the officers conduct a search of the
22 vehicle at that time?

23 A Yes.

24 Q And do you recall if they recovered anything?

25 A I know they said they found syringes on Malcolm.

1 Q On his person?

2 A Yes.

3 Q Okay. And so if the report is stating that they found
4 them under the passenger seat, are you saying that's an
5 untrue statement?

6 A They didn't tell me that they found anything under the
7 seat and maybe that's where Malcolm had set them, but they
8 told me that they found them on Malcolm.

9 Q Okay. And what do you think those syringes were for?

10 MR. NORMAN: Objection, that calls for
11 speculation.

12 MS. HAMDAN: Right. So, Stephanie -- let
13 the record reflect that Mr. Norman is putting an
14 objection.

15 BY MS. HAMDAN:

16 Q But, Stephanie, what do you think that those syringes were
17 for? What do you think they were used for?

18 A He had possibly in the past used them for drug use.

19 Q And you say in the past, but if he had them on him.

20 A I mean earlier in the day or the night before, but I know
21 he was out of money, so . . .

22 Q Would he ever ask you for money?

23 A He knows not to because I don't have it.

24 Q Has he ever in the past though?

25 A Yes.

1 Q Do you recall what that money was for?

2 A He would just call and ask if I had a few dollars so that
3 he could get something to eat. But most times I couldn't
4 help him unless he was in the Taylor area and I'd go get
5 him food from McDonald's or something.

6 Q And on this June 29th occasion they ended up seizing that
7 Saturn Ion; is that correct?

8 A Yes.

9 Q And were you given a notice of seizure at that time?

10 A Yes.

11 Q And were you able to read it over?

12 A Not at that time, no.

13 Q Were you able to read it over later on though?

14 A Yes.

15 Q Were you allowed to remove your personal items from the
16 vehicle?

17 A Only what I could carry.

18 Q Do you recall how you ended up getting home that day?

19 A I, again, had to find a bus route in an area that I'd
20 never been and find my way home.

21 Q Okay. Just to touch, again, on that January seizure. You
22 stated that you were able to read over the notice of
23 seizure form. Were you aware that you could contest that
24 seizure?

25 A I did not know. I read that I could have a meeting with

1 the prosecutor. So I immediately started calling as soon
2 as I got home. And I called for days and weeks on end.

3 Q Were you able to speak to anyone?

4 A Every time someone answered they said they didn't have the
5 records of my vehicle yet.

6 Q And do you recall how long after the seizure you had
7 called them?

8 A Two weeks.

9 Q Were you eventually able to speak to them once they had
10 the record of your seizure?

11 A My dad took the day off work roughly after three weeks of
12 getting the same answer, and he drove me down there and
13 they told me, again, that they didn't have my file but
14 they would call me. They called me shortly after, about a
15 day after I got home and told me it was too late for me to
16 contest or do anything. It was either pay the money or
17 forfeit my car.

18 Q And you're saying because of that you ended up abandoning
19 your vehicle, correct?

20 A Yes, ma'am.

21 Q Do you recall who you spoke to?

22 A It was the woman at the front counter at the forfeiture
23 unit, the vehicle seizure window.

24 Q Do you recall what she looked like?

25 A African-American, I apologize.

1 Q And so the second time that your car was seized, you did
2 contest that seizure; is that a correct statement?

3 A Yes, ma'am.

4 Q Did you speak to anyone when you contested the seizure of
5 the vehicle?

6 A One of the women at the seizure window, my dad took
7 another day off of work to take me down at this time the
8 day after.

9 Q Do you recall if it was the same woman that you spoke to
10 the first time?

11 A I believe it was the other woman. There was two women
12 both times that I was there.

13 Q All right. And then -- so you ended up at the pretrial,
14 which is the first time, I believe, I had contact with
15 you. But prior to that, I know that you had had contact
16 with my colleague who was handling your case, Mr. Yaldo.
17 Do you recall any conversations with him?

18 A Yes. We spoke many times and we met at Frank Murphy also.

19 Q And do you recall indicating to him that you were
20 interested in trying to redeem the vehicle?

21 A Yes, if it was financially possible.

22 Q Okay. And do you recall indicating that you were going to
23 try to get some money together so that you could pay the
24 redemption fee?

25 A So I could get the car.

1 Q And do you recall stating where you were planning on
2 getting that currency from, that money from?

3 A I think at one point I told them that I was going to be --
4 I think it was my tax money that I had that I was gonna
5 try to borrow.

6 Q Do you recall how much the redemption fee was for your
7 case?

8 A Eighteen hundred plus the towing fee, so it would have
9 been over \$2,000.

10 Q And so you said you had numerous conversations with Mr.
11 Yaldo, and you were essentially just waiting on trying to
12 get the money together, correct?

13 A Yes, and I also asked him if I could get my son's
14 belongings from the car.

15 Q So there was some back and forth, and eventually we had to
16 end up filing a complaint which you were served with; is
17 that correct?

18 A Yes.

19 Q Okay. And the first pretrial took place in November,
20 which you appeared at; do you remember that, it was on
21 November 15th?

22 A Yes.

23 Q Do you recall the discussion that we had at the first
24 pretrial?

25 A Not a hundred percent positive. I know we talked about

1 where it stood, how much I needed to come up with and you
2 just said if, you know, what do you want to do, and I said
3 I wanted to get my car back and I told you that I tried to
4 get the money.

5 Q Do you recall mentioning that you were waiting on a
6 settlement check or that you might take out a loan?

7 A Yes.

8 Q Do you recall me calling you the following week just to
9 follow up?

10 A I don't recall. I know we talked numerous times.

11 Q Do you recall indicating to me that you had applied for
12 the loan and you might be able to get some help from your
13 parents?

14 A Yes.

15 Q And then there was a second pretrial that was set to take
16 place on January 17th, 2020. Do you recall why you did
17 not appear at that pretrial?

18 A I never received notice until after the date, I believe,
19 that you had noticed it.

20 Q Do you recall when you received the notice?

21 A I'm not positive. But I called you as soon as I received
22 it.

23 Q And because you didn't appear for the second pretrial I
24 went ahead and scheduled a third pretrial which you did
25 appear for. Do you recall that?

1 A Yes.

2 Q And do you recall indicating to me in the third pretrial
3 that you missed the second pretrial because you were
4 hospitalized?

5 A I don't recall.

6 Q And at that third pretrial, do you recall indicating to me
7 that you were still working on trying to get the money
8 together and that you were planning on filing taxes?

9 A Yes.

10 Q And that was so you could get the money to pay the
11 reduction, correct?

12 A Yes.

13 Q Do you recall me saying that even if you couldn't get the
14 full 1800 that I would work with you so you could get
15 somewhere close to that?

16 A Yes. One second, my son needs something.

17 Q Sure.

18 A Sorry about that.

19 Q No problem. So we were talking about the third pretrial
20 and you indicating that you were going to file taxes so
21 that you would have money for the reduction; is that a
22 correct statement?

23 A Yes.

24 Q And just to jump back really quick. For the first
25 seizure, I know you stated you didn't contest it and that

1 they didn't have the record of the seizure, whatever they
2 needed for you to be able to do that. Did you ever
3 contact an attorney at that time?

4 A There was an attorney in the building representing another
5 person who had their car seized. And I talked to him and
6 he said that, you know, there's no reason for them to not
7 have my file and that I should contest it. So I told them
8 at the window that I wanted to contest it, but they said
9 they didn't have my file to even go forward with any of
10 that.

11 Q Do you recall who that attorney was?

12 A I may have his card somewhere, but we didn't have any
13 contact after that meeting in the building.

14 Q Okay. So up until the point, and past the point, I guess,
15 of the third pretrial, was it your intention to redeem the
16 vehicle and try to settle things and get your car back?

17 A Yes.

18 Q At what point did that change?

19 A It never changed, I've always wanted my car back because I
20 didn't do anything wrong.

21 Q And at what point did you come into contact with Barton
22 Morris?

23 A Shortly after I had contact with the Institute of Justice,
24 the federal case.

25 Q And how did you come into contact with the Institute of

1 Justice?

2 A There was a news hearing and it was in the paper, and some
3 of my relatives who knew what I was going through and what
4 had happened to me sent it to me, including my mom, and I
5 reached out to them and gave them my whole story, sent
6 them every piece of paper and evidence that I had, and
7 they started reviewing the case.

8 Q Do you recall around when that was?

9 A Probably right in between that January -- the pretrial, I
10 believe, and the third one. I don't have the exact date,
11 sorry.

12 Q That's okay. So sometime between January and February
13 would have been the third pretrial?

14 A Yes.

15 Q So between January 17th and February 21st?

16 A Yes.

17 Q Were you ever made aware that we made a settlement offer
18 to return the vehicle free of redemption and free of
19 towing and storage?

20 MR. NORMAN: I want to just make sure that
21 she understands anything she says with either attorney,
22 that's attorney/client. But you can answer the question
23 she just asked.

24 BY MS. HAMDAN:

25 Q Were you informed of that offer?

1 A Yes.

2 Q Do you recall when you were informed of that offer?

3 A I would have to look back at my messages to see. And I

4 know there were stipulations.

5 Q So that was not agreeable to you?

6 A Yes. No, it wasn't agreeable, I apologize.

7 Q And why did you feel that wasn't a good offer?

8 A Because there are too many people that this is happening

9 to that aren't doing anything wrong, or committing any

10 crime. And this shouldn't keep happening to innocent

11 people.

12 Q What is your goal in the state case?

13 A To get my car back.

14 Q But you're not willing to do that if you have to drop out

15 of the federal case?

16 A Yes.

17 MR. NORMAN: Asked and answered.

18 BY MS. HAMDAN:

19 Q And what do you wish to accomplish in that federal case?

20 A I want the rules on the seizure unit and how they conduct

21 business to be changed.

22 Q And what specifically, what rules do you have an issue

23 with?

24 A Innocent people have their belongings taken from them.

25 Q And in terms of the state, because that's -- so what is

1 your resolution in this lawsuit?

2 A Preferably to get my car back.

3 Q And when you say you saw some news airing from the
4 Institute of Justice, do you recall when you saw them
5 initially?

6 A I don't, and I didn't see them until after they were sent
7 to me.

8 Q And when you say that it is more important to you to
9 vindicate the rights of other people that have had
10 property seized that's so you can get your own car back?

11 A Yeah, if I can make sure this stops happening to innocent
12 people.

13 Q Is it your opinion that everyone that has their car seized
14 is innocent?

15 A No.

16 Q Do you recall approximately how many times you've gone to
17 Detroit to see or pick up Malcolm?

18 A Probably four. I don't have the exact number. There was
19 one or two times before the time my car was being seized.

20 Q Okay. So if I was to give you a timeframe say between
21 2017 and 2019, about how many times would you say that you
22 had gone there?

23 A Three.

24 Q Did he often call you for a ride?

25 A Not unless he was out of every other option.

1 Q Did he not have a vehicle of his own?

2 A No.

3 Q Do you now if he has a driver's license?

4 A Now he does. At the time he did not.

5 MS. HAMDAN: And I have nothing further on
6 my end. Opposing counsel may have some.

7 MR. NORMAN: No, I don't have any follow-up
8 questions.

9 (Proceedings concluded at 10:49 a.m.)

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CERTIFICATION

I certify that this transcript, consisting of 30 pages, is a true and accurate transcription of the proceedings in this case taken on January 26, 2021.

/s/ Audrey R. Kahn
Audrey R. Kahn
CSMR-1374

Dated: February 17, 2021

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX F

Brief in Support of Claimant's Motion for Summary Disposition

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN
EX REL, KYM L. WORTHY, WAYNE
COUNTY PROSECUTOR,

Plaintiff,

v.

Case No. 19-014106-CF
Hon. David J. Allen

ONE 2006 SATURN ION,
VIN: 1G8AJ55F86Z101751,

Defendant Property,

and

STEPHANIE GRACE WILSON,

Claimant.

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**BRIEF IN SUPPORT OF CLAIMANT STEPHANIE WILSON'S
MOTION FOR SUMMARY DISPOSITION**

Claimant Stephanie Grace Wilson today filed a motion for summary disposition seeking judgment in her favor. Her motion is brought under MCR 2.116(c)(7) based on the People's failure to promptly file a complaint for forfeiture, under MCR 2.116(c)(8) based on the People's failure to state a claim on which relief can be granted, and under MCR 2.116(c)(10) based on the absence of any material factual dispute and Claimant's entitlement to judgment as a matter of law.

UNDISPUTED FACTS

The undisputed facts show:

1. Claimant Stephanie Grace Wilson is the legal owner of the 2006 Saturn Ion at issue in this case. Compl. for Judgment of Forfeiture ¶ 2 (filed Oct. 23, 2019); Claimant's Answer at 2 (filed June 22, 2020); Tr. of Depo. of Sgt. Chivas Rivers (taken Jan. 25, 2021) at 33:14–33:16.

2. Her vehicle was seized by Sergeant Rivers of the Wayne County Sheriff's Department on June 24, 2019, based on allegations that Malcolm Smith—the father of Stephanie's child—was seen exiting a “known drug house” and may have engaged in a “hand to hand drug transaction.” Compl. ¶¶ 4–5.

3. However, when officers searched the vehicle, they found nothing criminal. Five empty syringes were recovered. Rivers Depo. at 32:21–32:24. But no drugs were found. *Id.* at 32:15–32:20. No tickets were issued. *Id.* at 27:10–27:16. No one was arrested. *Id.* at 18:3–18:10. The officers allowed Stephanie and Malcolm to walk away from the scene. *Id.* at 28:18–28:22. And no criminal charges have been filed against Stephanie or Malcolm. *Id.* at 33:7–33:10.

4. Sergeant Rivers nevertheless seized Stephanie's car and many things inside—including her college diploma and birth certificate, and her child's birth certificate—and her property has been in the People's possession for 630 days now. *See* Compl. ¶ 4; Claimant's Verified Mot. for Leave to File an Answer (filed June 22, 2020) at 2; Tr. of Depo. of Stephanie Wilson (taken Jan. 26, 2021) at 19:15–19:17.

5. The People waited four months—121 days—from the date of seizure until filing the Complaint seeking forfeiture of Stephanie's vehicle, but not her belongings inside. *See* Compl. ¶¶ 2–9.

6. The property inside the vehicle has been seized, without the filing of a forfeiture complaint, for more than 20 months. *See* Claimant's Verified Mot. at 2.

7. On May 11, 2020, Stephanie joined a federal class-action lawsuit broadly challenging the constitutionality of Wayne County's seizure and forfeiture practices. *See Ingram, et al. v. County of Wayne*, No. 2:20-cv-10288-AJT-EAS (E.D. Mich. filed Feb. 4, 2020), <https://bit.ly/2BasTpW>.

8. A month later, the People filed a motion for summary disposition in this case, based on Stephanie's failure to file an answer. People's Mot. for Summ. Disp. ¶ 1 (filed Jun. 5, 2020). The only thing that had changed in the intervening seven months, as the county noted in its motion, was that Stephanie had exercised her right to seek constitutional relief in federal court. *Id.* ¶ 10; *see also* Wilson Depo. at 25:25–28:12 (the People questioning Stephanie about why she joined the federal case and later declined a settlement offer to dismiss her federal claims in exchange for the return of her vehicle).

9. This Court granted Stephanie's motion to file an answer out of time and placed this case on a trial schedule.

10. Discovery has shown that the officer who seized Stephanie's car found no drugs or other contraband—not on Stephanie, not in her car, and not on her passenger. Rivers Depo. at 32:15–32:24.

11. He did not see either Stephanie or Malcolm using drugs. *Id.* at 33:4–33:6.

12. The People's only evidence that a crime occurred is one officer's assertion that Stephanie's passenger was seen exiting a "known drug house" before getting into her car and may have engaged in "what appeared to be a hand to hand drug transaction." Compl. ¶ 5; Rivers Depo. at 20:9–22:12, 38:2–38:12.

13. But when, moments later, officers pulled the vehicle over, there were no drugs; five empty syringes were the sole indication that Stephanie's passenger may have been a drug user. Rivers Depo. at 22:5–22:19, 32:15–32:24.

14. The syringes were not tested for drug residue. *Id.* at 32:25–33:3.

LEGAL STANDARD

To prevail, the People ultimately must connect Stephanie's vehicle to a drug crime by clear and convincing evidence. MCL 333.7521(2). For the reasons explained below, the People cannot possibly do so, and Stephanie is therefore entitled to judgment as a matter of law.

Summary disposition under MCR 2.116(c)(8) is appropriate where the plaintiff has failed to state a claim for which relief may be granted. Analyzing a motion for summary disposition under MCR 2.116(c)(8), courts accept all well-pleaded allegations as true and view them in the light most favorable to the non-moving party. *Wade v. Dept. of Corr.*, 439 Mich. 158, 163 (1992). Conclusory statements without any factual support are insufficient to state a claim for which relief can be granted. *Diem v. Sallie Mae*, 307 Mich. App. 204, 210 (2014). The Court should grant a motion under (c)(8) where the claims are so clearly doomed that as a matter of law no factual development could justify recovery. *Wade*, 439 Mich. at 163. The Court may consider only the pleadings when deciding a motion under (c)(8).

Summary disposition is also appropriate when there is no genuine issue of material fact and moving party shows herself to be entitled to judgment as a matter of law. MCR 2.116(c)(10). A motion under (c)(10) tests the factual sufficiency of a claim. *Smith v. Globe Life Ins. Co.*, 460 Mich. 446, 454 (1999). When reviewing a motion under (c)(10), courts consider affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties. *See Quinto v. Cross & Peters Co.*, 451 Mich. 358, 362 (1996). Courts must view the evidence in

the light most favorable to the non-moving party, but where no genuine issue of material fact exists, judgment should be entered as a matter of law. *Id.* A genuine issue of material fact exists when reasonable minds may differ after viewing the evidence favorably to the non-movant. *See West v. Gen. Motors Corp.*, 469 Mich. 177, 183 (2003).

ARGUMENT

This Court should grant summary disposition for three reasons: (1) under MCR 2.116(c)(7) because the People did not “promptly” initiate forfeiture proceedings following the seizure of Stephanie’s car and her property within the car; (2) under MCR 2.116(c)(8) because the People’s complaint fails to state a claim on which relief can be granted; or (3) under MCR 2.116(c)(10) because there is no dispute of material fact and Claimant is entitled to judgment as a matter of law.

1. Statute of Limitations

In cases involving alleged violations of Michigan’s drug laws, the People must initiate forfeiture proceedings “promptly” after seizure. MCL 333.7523(1). A forfeiture action is not prompt and must be dismissed when filed four months after seizure. *In re Forfeiture of One 1983 Cadillac*, 176 Mich. App. 277, 280–83 (1989); *see also Lenawee Prosecutor v. One 1981 Buick Two-Door Riviera*, 165 Mich. App. 762, 766–67 (1988) (dismissing forfeiture action based on six-month delay); *People v. One 1979 Honda Automobile*, 139 Mich. App. 651, 656–57 (1984) (upholding delay of two and a half months).

Here, the seizure took place on June 24, 2019. Compl. ¶ 4. The forfeiture complaint was filed three months and 29 days later, on October 23, 2019. *Id.* at 1. The delay in *One 1983 Cadillac* amounted to 124 days; here it was 121. The delay in this case is more analogous to the

four-month delay deemed impermissible in *One 1983 Cadillac* than the two-and-a-half-month delay upheld in *One 1979 Honda*.

However, even if the Court deems the forfeiture complaint to have been sufficiently “prompt” under MCL 333.7523(1), the People have still—more than 20 months after seizure—not initiated forfeiture proceedings against the property inside Stephanie’s car. A delay of 20 months is far beyond the four- and six-month delays deemed excessive in *One 1983 Cadillac* and *One 1981 Buick*. Therefore, even if the Court allows this case to go forward as to Stephanie’s vehicle, it should nevertheless grant partial judgment in her favor as to her belongings inside.

2. Failure to State a Claim

The People’s complaint fails to state a claim on which relief can be granted.

The complaint’s request for forfeiture is based on the Controlled Substances Act. Compl. ¶ 1 (“This complaint is brough pursuant to M.C.L.A. 333.7521 et seq.”). That law requires the People to demonstrate a connection between the vehicle and a drug crime by clear and convincing evidence. MCL 333.7521(2).¹ The People’s allegations—taken as true for the purposes of MCR 2.116(c)(8)—cannot establish clear and convincing evidence of a forfeitable drug crime.

The People allege that Stephanie drove her car to a “known drug house” and parked outside. Compl. ¶ 5. An “unknown person” allegedly exited the house and approached the car. *Id.* This person allegedly reached into the passenger side window to “conduct what appeared to be a hand to hand drug transaction.” *Id.* “Shortly after,” Stephanie drove away and was pulled

¹ Had the seizure occurred just six weeks later, the People would have additionally been required to show that someone has been convicted of a crime in connection with the allegedly forfeitable use of the vehicle. *See* MCL 333.7521a(1), *added by* P.A. 2019, No. 7 (effective Aug. 7, 2019). No one in this case has been charged with, let alone convicted of a crime.

over based on an alleged failure to signal. *Id.* ¶ 6. Stephanie's passenger allegedly told police that "he had purchased and used \$10.00 worth of heroin." *Id.* Police searched the car and "recovered five syringes from under the passenger seat, which Smith stated that he uses for heroin." *Id.*

The People's allegations do not amount to a forfeitable offense. Cars are not subject to forfeiture based on their facilitation of drug use. MCL 333.7521(d)(iii) (providing that "[a] conveyance is not subject to forfeiture for a violation of section . . . 7404"); *see* MCL 333.7404 (prohibiting use of a controlled substance without a prescription). Driving someone to some place where that person uses drugs is not a forfeitable crime. Yet, the People allege only that Stephanie drove Malcolm somewhere where he used drugs. Compl. ¶ 6.

When a vehicle is used to facilitate the purchase or possession of a controlled substance, it cannot be forfeited when that substance is marijuana, LSD, psilocybin, or one of several other "soft" drugs. MCL 333.7521(d)(iii) (providing that "[a] conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d)"); *see* MCL 333.7403(2)(c)–(d) (making it a misdemeanor to possess marijuana, LSD, peyote, mescaline, and psilocybin, among others). So, while an officer allegedly saw "what appeared to be a hand to hand drug transaction" involving Stephanie's car, Compl. ¶ 5, he would have to know what drug was involved. In other words, even if it were true that Malcolm purchased drugs from Stephanie's passenger seat, the car is not forfeitable if those drugs were among those—like marijuana—for which forfeiture is prohibited. This is true even taking account of the allegation that Stephanie's passenger said that "he had purchased and used \$10.00 worth of heroin." *See id.* ¶ 6. Assuming the truth of that statement, it is incongruous with the People's other allegations. Stephanie allegedly parked outside of a "known drug house," a "hand to hand drug transaction" took place, she drove off, and "[s]hortly after" was pulled over. *Id.* ¶¶ 5–6. If her passenger "had purchased and used \$10.00 worth of

heroin” in that short period of time, there would have been heroin in the car or in one of the five syringes recovered by officers. *See id.* ¶ 6. But there was no heroin; the People make no allegation to the contrary. And, assuming that a drug transaction took place, the People do not allege that the drug involved was heroin and not one of several other drugs that cannot form the basis of forfeiture.

Regardless, there is no basis for forfeiting Stephanie’s personal papers and effects inside her car. The People’s complaint does not even seek forfeiture of that property and makes no allegations that would justify its forfeiture. Nothing in the Controlled Substances Act allows for forfeiture of a college diploma or birth certificate.

3. No Material Factual Issues

Finally, there are no material factual issues for trial and Stephanie is entitled to judgment as a matter of law.

Discovery has shown that the officer who seized Stephanie’s car found no drugs or other contraband—not on Stephanie, not in her car, and not on her passenger. Rivers Depo. at 32:15–32:24. He did not see either Stephanie or Malcolm using drugs. *Id.* at 33:4–33:6.

The People’s only evidence that a crime occurred is the officer’s assertion that Stephanie’s passenger was seen exiting a “known drug house” before getting into her car and may have engaged in “what appeared to be a hand to hand drug transaction.” Compl. ¶ 5; Rivers Depo. at 20:9–22:12, 38:2–38:12. But when, moments later, officers pulled the vehicle over, there were no drugs; the five syringes were the sole indication that Stephanie’s passenger may have been a drug user. Rivers Depo. at 22:5–22:19, 32:15–32:24. And the syringes were not tested for drug residue. *Id.* at 32:25–33:3. The People are left with, at best, a case for forfeiture based on the presence of five empty syringes.

But possession of drug paraphernalia is not a forfeitable offense. For forfeiture to be warranted, the People would have to show clear and convincing evidence that Stephanie's car was "used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b)," that is, for the purpose of selling, buying, or receiving a controlled substance or some product or equipment necessary to make a controlled substance. MCL 333.7521(d). The provisions allowing for the forfeiture of drug paraphernalia—subdivisions (c) and (g)—are not included and, therefore, can never support forfeiture. In other words, a car containing empty syringes is no more forfeitable than a car containing rolling papers, a razorblade, or mirror. While the People might be entitled to an order of forfeiture for Malcolm's five syringes, *see* MCL 333.7521(g), as a matter of law they are not entitled to forfeiture of the vehicle in which those syringes were found.

Regardless, there is no basis for forfeiting Stephanie's personal papers and effects inside her car. The People's complaint does not even seek forfeiture of that property. Nor is it subject to forfeiture under MCL 333.7521. Nothing allows for forfeiture of a college diploma or birth certificate.

CONCLUSION

For these reasons, Claimant respectfully requests that the Court enter a judgment and order of summary disposition in her favor under MCR 2.116(c)(7) based on the People's failure to promptly file its complaint for forfeiture, under MCR 2.116(c)(8) based on the People's failure to state a claim on which relief can be granted, and under MCR 2.116(c)(10) based on the absence of any material factual dispute and Claimant's entitlement to judgment as a matter of law.

If the Court does not grant judgment in full to Claimant, it should grant partial judgment ordering the People to return her personal effects from within the car, which are not the subject of this or any other forfeiture action.

Respectfully submitted,

By: /s/Michael Norman
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Dated: March 12, 2021

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX G
People's Answer to Motion for Summary Disposition

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Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief of Research,
Training, and Appeals

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**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**PEOPLE OF THE STATE OF MICHIGAN, EX REL
KYM L. WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,**

Plaintiff,
v.

**Case No. 19-014106-CF
Judge David J. Allen**

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751;
Defendant Property,**
and

**STEPHANIE GRACE WILSON
Claimant,**

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**PLAINTIFF'S RESPONSE TO
CLAIMANT'S MOTION FOR SUMMARY DISPOSITION**

NOW COMES THE RESPONDENT, the People of the State of Michigan, ex rel. KYM L. WORTHY, Prosecuting Attorney, JOE JANSEN, Chief of Special Operations Division, CHARLES DAVIS, Lead Prosecuting Attorney, Forfeiture Unit, and SINAH HAMDAN, Asst. Prosecuting Atty. with the Forfeiture Unit, Wayne Co. Prosecutor's Office, and in support of this Response to Claimant's Motion for Summary Disposition states:

STANDARD OF REVIEW

1. The Claimant brings their motion for summary disposition under MCR 2.116(C)(7), MCR 2.116(c)(8), and MCR 2.116(c)(10). In a motion for summary disposition, all reasonable doubt should be given to the party opposing the motion. *Reaver v Westwood*, 148 Mich App 343 (1986). The court must look at all the evidence in the light most favorable to the nonmoving party, who must be given every reasonable doubt. *Atlas Valley Golf & Country Club*, 227 Mich App 14 (1997).

2. When considering a motion brought under MCR 2.116(C)(7), we consider all the affidavits, pleadings, and other documentary evidence filed or submitted by the parties. *Haywood v Fowler*, 190 Mich App 253, 255-256; 475 NW2d 458 (1991). We must consider all well-pleaded allegations as true and construe them most favorably to the plaintiff. *Id.* [199 Mich App 192-193.]

3. Plaintiff agrees with the standards as set forth in the Claimants' Motion, and adds to them, regarding the standards for motions filed under MCR 2.116(C)(8), summarized as follows:

- a. Such as motion test the legal sufficiency of a claim by pleadings alone.
- b. Well pleaded factual allegations are accepted as true for purposes of the motion and construed in a light most favorable to the non-movant.
- c. A motion is to be granted only where the claims alleged are ***clearly so unenforceable as a matter of law that no factual development could possible justify recovery.***
- d. A complaint must contain a statement of facts on which the pleader relies in stating a cause of action with ***specific allegations necessary to reasonably inform the adverse party of the nature of the claims*** against which the adverse party is to defend. The primary function of a pleading is to give ***notice of the nature of the claim*** so as to permit the opposition to take a responsive position.

4. Plaintiff adds to these standards that, under a MCR 2.116(C)(8) motion, the court must also accept as true any **reasonable inferences** that may be drawn from the factual allegations of the pleading of the non-movant party. *Singerman v. Municipal Service Bureau*, 455 Mich. 135, 139, 565 N.W.2d 383 (1997); *Simko v. Blake*, 448 Mich. 648; *Peters v. Dept. of Corrections*, 215 Mich.App. 485, 486, 546 N.W.2d 668 (1996). Also, if a court grants summary disposition under (C)(8), the Plaintiff must be given the opportunity to

amend its pleadings (unless amendment would not be justified). MCR 2.116(I)(5); *Weymers v. Khera*, 454 Mich.. 639,658, 563 N.W.2d 647 (1997).

5. Essentially, a (C)(8) motion is to determine whether the Plaintiff has presented on the face of its Complaint a claim upon which relief may be granted and notice of the grounds upon which it is made.

6. A summary disposition motion based on MCR 2.116(C)(10), a lack of a genuine issue of material fact, tests whether there is factual support for the claim. *Village of Dimondale v Grable*, 240 Mich App 440, 446 (1989); however, summary disposition may be proper before discovery is complete where further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion. *Village of Dimondale v Grable*, *supra*; *Prysak v R L Polk Co.*, 193 Mich App 1, 11 (1992).

7. Once a motion for summary disposition is filed under MCR 2.116(C)(10), the moving party has the initial burden of identifying the matters that have no factual disputes and may support its position beyond the “pleadings” with documentary evidence. *Guardian Industries Corp. v Dep’t of Treasury*, 198 Mich App 363, 378 (1993); MCR 2.116(G)(2). In responding, the nonmoving party cannot merely rely on the allegations or denial in his pleading, but rather has the burden to use documentary evidence to specifically show that a genuine issue of material fact exists. *Coleman-Nichols v Tixon Corp.*, 203 Mich App 645, 650 (1994). After giving the nonmoving party the benefit of reasonable doubt and drawing all inferences in the nonmovant’s favor, the trial court must determine whether a record might be developed that will leave open an issue upon which reasonable minds could differ. *Nelson v American Sterilizer Co.*, 212 Mich App 589, 594 (1995); *Ward v Franks Nursery*, 186 Mich App 120, 136 (1990); *Schippers v SPX Corp.*, 186 Mich App 595, 596 (1990); *Fulton v Pontiac General Hospital*, 160 Mich App 728, 753 (1987).

8. Plaintiff makes special notice of these standards that, under an MCR 2.116(C)(10) motion, the trial court must give the benefit of any reasonable doubt to the

nonmoving party. *Schultes v Naylor*, 195 Mich.App. 640, 645; 491 N.W.2d 240 (1992). The trial court must then determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Featherly v Teledyne Industries, Inc*, 194 Mich.App. 352, 357; 486 N.W.2d 361 (1992). Essentially, a (C)(10) motion is to determine whether the Plaintiff has presented on the face of its Complaint a claim upon which there is a genuine issue of material fact.

STATEMENT OF FACTS

9. The following factual allegations have been stated in the Complaint by Plaintiff that are relevant to this motion, showing a legal basis for forfeiture due to Defendant vehicle being “used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b),” for the purpose of selling, buying, or receiving a controlled substance or some product or equipment necessary to make a controlled substance. MCL 333.7521(1)(d) & (2).

- a. On June 24, 2019, officers of the Special Operations Unit of the Wayne County Sheriff's Office were conducting surveillance on a known drug house at 4727 Lumley in Detroit, MI.
- b. An officer observed the Defendant Vehicle 2006 Saturn Ion parked on Lumley near the drug house being surveilled. The officer then observed an unknown male exit 4727 Lumley and approach the passenger side of Defendant Vehicle, reaching his arm into the window, in what appeared to be a hand to hand drug transaction. The man then walked back toward 4727 Lumley.
- c. Shortly after, the vehicle departed the location, turning east on Cypress without using a turn signal. Officers conducted a stop on Defendant Vehicle on I-94 service drive and Chopin.
- d. The officer interviewed the passenger of the vehicle, Malcolm Smith, at which time he stated that he had purchased and used \$10.00 worth of heroin and that he had been using for several years.

- e. The driver of Defendant Vehicle, Stephanie Wilson, stated that she does not use any narcotics and that Smith is the father of her child. She went on to say that she transported Smith to the location because, "he was getting sick without it and I bring him down here once a day."
- f. Officers conducted a search of the vehicle and recovered five syringes from under the passenger seat that Smith stated he uses for heroin.
- g. Wilson was given a Notice of Seizure and Intent to Forfeit. Wilson and Smith were allowed to remove personal items from the vehicle prior to it being towed.
- h. This was the second incident in 2019 where Wilson had a vehicle seized, the first being in January 2019. Wilson made similar statements during an interview at that time, stating that she transported Smith to the location because "he was getting sick without it" after Smith indicated he had purchased and used \$10.00 worth of heroin.
- i. On May 11, 2020, Stephanie joined a federal class-action lawsuit challenging the constitutionality of Wayne County's seizure and forfeiture practices. Plaintiff had made multiple attempts to contact Stephanie between February and that time in order to resolve the case, to no avail.
- j. Following the filing of a complaint by Plaintiff and service of same on Claimant, Claimant had still failed to file an answer or even correspond with Plaintiff in order to resolve the matter. Because of this, Plaintiff filed a motion for summary disposition in June of 2020 based on Claimant's failure to file an answer or otherwise defend.

LEGAL ANALYSIS

10. In her motion for summary disposition, Claimant asserts under MCR 2.116(c)(7) that the complaint was not promptly filed, stating in paragraph 3, subsection e. that Plaintiff waited four months, or 121 days from the date of seizure until filing the Complaint for Judgment of Forfeiture. In determining whether a forfeiture proceeding was

instituted promptly, this Court must consider "the lapse of time between seizure and filing of the complaint, the reason for the delay, the resulting prejudice to the defendant and the nature of the property seized." *In re Forfeiture of One 1983 Cadillac*, 176 Mich. App. 277, 280-281; 439 N.W.2d 346 (1989), quoting *Dep't of Natural Resources v Parish*, 71 Mich. App. 745, 750; 249 N.W.2d 163 (1976).

11. The statute states that "the prosecuting attorney shall promptly institute forfeiture proceedings following the 20 day (claim) period." In this case, Plaintiff delayed the filing of the complaint due to the Claimant indicating over multiple conversations at the on multiple dates that she intended to pay a redemption fee and redeem her vehicle by way of an out of court settlement. Claimant has not suffered any prejudice due to the delay in filing. In fact, Plaintiff argues that the filing was delayed in order to accommodate Claimant as she indicated she intended to redeem but needed time to get the money to pay her redemption fee.

12. Claimant asserts under MCR 2.116(c)(8) that Plaintiff failed to state a claim upon which relief can be granted. Claimant argues that the People are unable demonstrate that the responding officer knew what drug was involved in the hand to hand drug transaction involving Defendant vehicle. Claimant argues that there are certain drugs (which they refer to as "soft drugs," which do not allow for forfeiture of the vehicle, including marijuana, LSD, peyote, mescaline, and psilocybin. Contrary to this tangent, and as indicated in the Complaint for Forfeiture which was based on the police report, both Claimant Stephanie Wilson and Malcolm Smith indicated that Malcolm had purchased heroin and that Stephanie transported Smith there in Defendant vehicle because Malcolm was "getting sick without it" Compl ¶ 6.

13. Claimant goes on to argue in their motion that a vehicle cannot be forfeited under MCL 333.7521(d)(ii) when its owner shows she is unaware of the crime and that Plaintiff fails to allege or prove that Claimant Wilson was aware of her passenger's alleged drug possession, however, Plaintiff restates that Wilson indicated that she drives Smith to the location once a day to purchase heroin because he gets sick without it. This is an indication

that Stephanie was in fact aware of Smith's drug habit as well as the fact that she was knowingly transporting him in Defendant vehicle to support his habit. It follows then that Stephanie Wilson cannot claim to be an innocent owner in this matter.

14. Claimant asserts under MCR 2.116(c)(10) that there is a lack of any material factual dispute and Claimant is entitled to judgment as a matter of law. Claimant purports this based on Stephanie Wilson's answers during a deposition January 26, 2021 and claiming those to be fact. A deposition was also taken from Sergeant Chivas Rivers, who conducted the stop and interview on the date of the seizure. During that deposition, Rivers testified that both Wilson and Smith indicated that they had come to the location to purchase heroin, with Smith stating that he had purchased and used \$10.00 worth of heroin prior to the stop. Rivers Depo at 39:13-39:24; 41:2-41:5. Based on both testimonies, Plaintiff would argue that there is most definitely an issue of material fact.

15. Nothing in Claimant's pleadings indicates that summary judgment should be granted. Claimant bases their motion supposed "facts" which are actually just Claimant's testimony during a deposition. Claimant also testified during said deposition that her criminal history includes charges of Misuse of a Financial Transaction Device in 2011, with Wilson testifying that she was charged as a result of her misusing credit card information that was in her possession through her employment for personal purchases. Stephanie pled guilty to the charge and was put on probation. Tr. of Depo. of Stephanie Wilson (taken Jan. 26, 2021) at 5:13-7:3. Wilson was charged in 2016 with Embezzlement-Agent or Trustee more than \$1,000 less than \$20,000 as a result of keeping a company laptop belonging to her employer, in her words due to her not being paid. She was sentenced to 10 months in Wayne County jail but released early on good behavior. *Id.* At 7:5-7:20. Essentially, Claimant is asking the court to rely on Claimant's deposition testimony regarding the events on June 24, 2019 leading to the seizure of Defendant Vehicle as fact, however Claimant Wilson has a history of dishonesty, as is evidenced by her criminal history.

16. Claimant states that when officers searched the vehicle, they found nothing criminal. Officers seized five syringes which the passenger and father of Wilson's child, Malcolm Smith, admitted to Sergeant Rivers that he uses for heroin. Compl.¶6. Furthermore, Smith admitted during the stop to having purchased \$10.00 worth of heroin and using it prior to the stop. *Id.*

17. Claimant argues that proceedings were not initiated promptly and cites *In re Forfeiture of One 1983 Cadillac* in support of that. The facts in that case were vastly different, however, than in this case. In *Cadillac*, the court applied the *Parish* factors, from *Dep't of Natural Resources v Parish*, 71 Mich. App. 745; 249 N.W.2d 163 (1976), with the first factor being the lapse of time between the seizure and the filing of the complaint. The court in that case declined to adopt a specific period of time which would define "prompt", citing the fact that the Legislature had not done so. Here, any delay in filing of a complaint was based on Stephanie's assurances that she wanted to redeem her vehicle and stating that she was waiting on funds to do so. Wilson Depo. at 21:22-24:22. Plaintiff spoke to Claimant on multiple occasions, both over the phone and during pretrial conferences, with Claimant stating multiple avenues wherein she would be able to redeem the vehicle by way of an Out of Court Settlement Agreement via payment of the redemption fee, ranging from a lawsuit settlement she was waiting on, to borrowing money from her parents, to her tax refund.

18. The second *Parish* factor is the reason for the delay. In the cited case, the prosecutor justified the delay by the need to research whether forfeiture actions could be brought against Claimant's dental practice/building. The court weighed in favor of the claimant due to that research having no bearing on whether proceedings could be instituted against the vehicle that had been seized.

19. The third *Parish* factor is the resulting prejudice to the Claimant. The court in *Cadillac* ruled that the Claimant had been prejudiced due to the automobile being a wasting asset whose value diminishes when it is impounded, as the Claimant had continued to make payments on the vehicle following its seizure. In the current matter, there were no payments

due or being made on Wilson's vehicle. Plaintiff would also like to add that towing and storage had been capped early on by Plaintiff so that it would not continue to increase while Wilson was negotiating and gathering money to redeem her vehicle.

20. The final *Parish* factor is the nature of the property seized. In the current case, Defendant vehicle was used to transport a party in order to purchase heroin. Furthermore, the heroin that was allegedly used prior to the police stop would have been used inside of Defendant vehicle, as the alleged hand to hand transaction occurred while Wilson and Smith were still in the vehicle and Smith later admitted to an officer that he had purchased and used \$10.00 worth of heroin. Defendant vehicle had been surveilled from the time the alleged transaction took place up until the stop took place, with neither party exiting the vehicle at any time in between.

21. To respond to paragraph 3 subsection t. in Claimant's motion, Plaintiff does not seek to forfeit Wilson's personal papers and effects contained in Defendant Vehicle. Wilson and Smith were given the opportunity to retrieve any personal items from Defendant vehicle at the time it was seized, as is evidenced by the complaint based on the police report as well as the testimony of Stephanie Wilson and Sergeant Chivas Rivers in their respective depositions. Nonetheless, Plaintiff is willing to facilitate the return of such paper effects.

CONCLUSION AND RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court, after review of this case and the law and/or a hearing on this matter, enter an order denying the motion for summary disposition, or at a minimum allow Plaintiff the opportunity to amend its complaint to conform to the Court Rules.

Respectfully submitted,

KYM L. WORTHY
Wayne County Prosecutor

JOE JANSEN
Chief of Special Operations

CHARLES S. DAVIS

Lead Prosecuting Attorney, Forfeiture Unit

/s/ *Sinah Hamdan*

Dated: April 12, 2021

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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,**

and

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX H

Brief in Support of Answer to Motion for Summary Disposition

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN, EX REL
KYM L. WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,

Plaintiff,

Case No. 19-014106-CF
Judge David J. Allen

v.

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751;

Defendant Property,

and

STEPHANIE GRACE WILSON
Claimant,

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BRIEF IN SUPPORT OF
PLAINTIFF'S RESPONSE TO
CLAIMANT'S MOTION FOR SUMMARY DISPOSITION

NOW COMES THE RESPONDENT, the People of the State of Michigan, ex rel. KYM L. WORTHY, Prosecuting Attorney, JOSEPH JANSEN, Chief of Special Operations, CHARLES S. DAVIS, Lead Prosecuting Attorney, Forfeiture Unit, and SINAH HAMDAN, Assistant Prosecuting Attorney, Forfeiture Unit, Wayne County Prosecutor's Office, and in support of its Response to Claimant's Motion for Summary Disposition, files this Brief and states as follows:

Respondent relies upon MCR 2.116, specifically, MCR 2.116(C)(7), MCR 2.116(C)(8), MCR 2.116(C)(10).

When considering a motion brought under MCR 2.116(C)(7), we consider all the affidavits, pleadings, and other documentary evidence filed or submitted by the parties. *Haywood v Fowler*, 190 Mich App 253, 255-256; 475 NW2d 458 (1991). We must consider all well-pleaded allegations as true and construe them most favorably to the plaintiff. *Id.* [199 Mich App 192-193.]

Under a MCR 2.116(C)(8) motion, the court must accept as true any factual allegations from the pleading(s) alone and those reasonable inferences that may be drawn from the factual allegations of the pleading of the non-movant party (in this case the Complaint filed by the Plaintiff). *Singerman v. Municipal Service Bureau*, 455 Mich. 135, 139, 565 N.W.2d 383 (1997); *Simko v. Blake*, 448 Mich. 648; *Peters v. Dept. of Corrections*, 215 Mich.App. 485, 486, 546 N.W.2d 668 (1996). Also, if a court grants summary disposition under (C)(8), the Plaintiff must be given the opportunity to amend its pleadings (unless amendment would not be justified). MCR 2.116(I)(5); *Weymers v. Khera*, 454 Mich.. 639,658, 563 N.W.2d 647 (1997).

When reviewing a motion under MCR 2.116(C)(10), courts must view the evidence in the light most favorable to the non-moving party, but where no genuine issue of material fact exists, judgment should be issued as a matter of law. A genuine issue of material fact exists when reasonable minds may differ after viewing the evidence favorably to the non-movant. See *West v. Gen. Motors Corp.*, 469 Mich. 177, 183 (2003).

The Defendant Property was seized for forfeiture based upon probable cause that it was in violation of the drug asset forfeiture/controlled substances act, MCL 333.7521, et seq., to wit it was:

- a. In close proximity to controlled substances and/or paraphernalia related to the manufacture, processing, distributing and or delivery of controlled substances and/or other property subject to forfeiture; and/or
- b. Was a conveyance used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of items subject to forfeiture; and/or
- c. Was furnished or intended to be furnished in exchange for a controlled substance, or was traceable to an exchange for a controlled substance; and/or
- d. Was used or intended to be used to facilitate a violation of the controlled substance laws of this State; and/or Was used or intended to be used as a container for controlled substances or other items subject to forfeiture; and/or
- e. Was used or intended to be used as a thing of value to facilitate the violation of the drug laws of this State; and/or
- f. Is equipment of any kind which is used or intended to be used to manufacture, deliver, import and/or export a controlled substance and that it is a thing of value either derived or furnished in exchange for illegal controlled substances, traceable to such an exchange, or used or intended to be used to facilitate a violation of the drug laws of this state.

Wherefore, for all the reasons set forth above in this Brief and in the Response itself, the Plaintiff respectfully requests this Court to deny and enter order denying Claimant's Motion for Summary Disposition, or at a minimum if the Court grants Claimant's Motion then permit Plaintiff to amend its Complaint to conform to the Court Rules.

Respectfully submitted,

KYM L. WORTHY

Wayne County Prosecutor

JOSEPH JANSEN

Chief of Special Operations

CHARLES S. DAVIS

Lead Attorney, Forfeiture Unit

/s/Sinah Hamdan

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Dated: April 7, 2021

**STATE OF MICHIGAN
IN THE SUPREME COURT**

APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX I
Circuit Court Transcript of April 29, 2021 Proceedings

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

CASE NO: 19-014106-CF

ONE 2006 SATURN ION and
STEPHANIE GRACE WILSON,

Defendants.

----- /
MOTION FOR SUMMARY DISPOSITION

Before the HON. DAVID J. ALLEN, Circuit Judge,
Detroit, Michigan on Thursday, April 29, 2021

APPEARANCES:

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INDEX

April 29, 2021

WITNESSES:

PAGE

None called

OTHER MATERIAL IN TRANSCRIPT

Proceedings

3

EXHIBITS

None marked

1 Detroit, Michigan
2 Thursday, April 29, 2021
3 (10:03 a.m.)
4 -- -- --
5 THE COURT CLERK: People of the State of Michigan
6 v One 2006 Saturn, Case No. 19-014106-CF.
7 THE COURT: Okay. Ms. Hamden --
8 MS. HAMDAN: Good morning, Your Honor, Sinah
9 Hamdan on behalf of the People.
10 THE COURT: Good morning, who's here with you?
11 Do we have anybody?
12 MS. HAMDAN: We do, I don't know where she went.
13 THE COURT: Who is it, do you know her name?
14 MS. HAMDAN: Sheila Miller.
15 THE COURT: Ms. Miller, are you there?
16 MS. MILLER: I am, Your Honor, I'm representing
17 Stephanie Wilson.
18 THE COURT: Okay. What's happening, folks,
19 motion?
20 MS. MILLER: I'm ready, Your Honor, I was just
21 signing in and chatting Karen.
22 THE COURT: All right. Okay, so Motion to, is
23 this Motion for Summary?
24 MS. HAMDAN: Yes.
25 MS. MILLER: Yes, it is, Your Honor.

1 THE COURT: Okay. All right, I just wasn't sure
2 this was scheduled for a motion call day, but go ahead,
3 make your record if you care to.

4 MS. MILLER: Thank you. I believe I missed the
5 appearance of the Prosecutor's Office.

6 THE COURT: It's Ms. Hamdan.

7 MS. HAMDAN: Sinah Hamdan.

8 MS. MILLER: Oh, thank you. Thank you, Your
9 Honor.

10 Your Honor, this Motion for Summary Disposition
11 was filed with three bases, the primary of which, well
12 actually there's two that are equally primary. One, that
13 the People had failed to state a claim upon which relief
14 can be granted.

15 Two, that there is no genuine issue of material
16 fact to go to a factfinder for a decision on the merits.

17 And finally that the People failed to file their
18 claim within the statutory, not the statutory period,
19 within the period required by law which is promptly under
20 case law.

21 THE COURT: I want to bring you back, you and Ms.
22 Hamdan back to some critical facts here.

23 Officer searched the vehicle, they find no
24 criminal, nothing criminal, they find some empty syringes.
25 No drugs, no one arrested, no tickets. She walks away from

1 the vehicle, vehicle gets kept end of story, right?

2 MS. HAMDAN: Correct, Your Honor, but I'd also
3 like to add that she and her passenger both admitted that
4 he had purchased and used heroin prior to the stop.

5 THE COURT: Okay. And we keep the car on those
6 facts?

7 MS. MILLER: No, Your Honor.

8 THE COURT: Well I know your answer, Ms. Miller.

9 Ms. Hamdan, I mean --

10 MS. HAMDAN: Your Honor, the car was used to
11 transport him to that location to purchase drugs from that
12 drug house. The officer witnessed a hand-to-hand
13 transaction while he was sitting in the passenger seat of
14 the vehicle, and we would argue that he used the drugs in
15 the vehicle because he indicated that he had just purchased
16 and used the \$10 worth of heroin and he was not observed
17 getting out of the vehicle.

18 THE COURT: So where is the ticket, the criminal
19 charges?

20 MS. HAMDAN: Your Honor, I'm not sure about that.

21 THE COURT: Okay. Go ahead, Ms. Miller. I cut
22 you off, I'm sorry.

23 MS. MILLER: That's all right, Your Honor.

24 Your Honor, it can't be said that the car was
25 used in order for anyone to use drugs without some evidence

1 that Stephanie Wilson had that intention. The Prosecution
2 has not presented any evidence whatsoever that before
3 arriving at the incident location Stephanie Wilson intended
4 for drugs to be purchased or used.

5 THE COURT: Well I mean where there's smoke
6 there's fire, Ms. Miller. Five empty syringes, I mean were
7 they having a cup of tea in there?

8 MS. HAMDAN: Your Honor, if I may.

9 MS. MILLER: There's no -- if I can answer the
10 question. There's no allegation that the five syringes,
11 Your Honor, were used on this incident date.

12 There is an allegation that within I believe less
13 than 2 minutes from the time that the car left the incident
14 location until the time the car was stopped that some
15 heroin was used.

16 So, no, we're not talking about any extended
17 period of time in which multiple syringes were used by
18 anyone.

19 THE COURT: So the hand-to-hand was observed and
20 a couple minutes later cars pulled over and empty syringes,
21 no drug.

22 MS. HAMDAN: Close to that, Your Honor. The
23 officer did not allege that there was in fact a
24 hand-in-hand that he witnessed, he said there may have been
25 what appeared to be a hand-to-hand.

1 So there's no evidence whatsoever that this
2 wasn't, you know, some other type of interaction, there's
3 lots of assumptions based on the police department's
4 understanding that the location was a drug house.

5 THE COURT: Yeah, I hear you.

6 Ms. Hamdan, you want to briefly respond, ma'am?

7 MS. HAMDAN: Your Honor, yes, if I may.

8 I'd just like to note as well that this seizure
9 on this stuff took place prior to the change in the law
10 which required that criminal conviction.

11 I'd also like to note that as was previously
12 alluded to a man was witnessed walking out of the drug
13 house coming up to the vehicle, sticking his hand into the
14 vehicle and then re-entering the drug house.

15 And I would also like to indicate that the
16 passenger in the vehicle at the time, Malcolm Smith, did
17 indicate that he uses those syringes to inject heroin.

18 THE COURT: All right. I mean I'm not naive
19 here, Ms. Hamdan, but I don't know, people can come and go
20 and go up to a car and hand a lot of things over. I've got
21 some empty syringes, no drugs.

22 I mean either he slugged them down pretty darn
23 fast, threw them out the window or something, but there's
24 no drug there. It is assumption on sumption, it's kind of
25 where there's smoke there's fire argument, but there just

1 isn't clear there and the Court's going to grant the Motion
2 for Summary Disposition for the reasons stated in Ms.
3 Miller's brief.

4 MS. MILLER: Thank you, Your Honor.

5 THE COURT: I assume that's a final order and
6 absent appeal the car gets returned, is that where we're
7 headed, folks?

8 MS. MILLER: Not only the car, Your Honor, but
9 there was personal property and documents belonging to the
10 claimant as well.

11 THE COURT: Well that goes without --

12 MS. HAMDAN: And I've already spoken to counsel
13 as far as the personal property and made arrangements for
14 her to retrieve that personal property from the vehicle.

15 THE COURT: Yeah, minus the syringes or anything
16 criminal obviously.

17 MS. HAMDAN: Right.

18 THE COURT: Personal property, car goes back, and
19 go from there, okay.

20 MS. MILLER: We have filed an order, Your Honor,
21 I don't know if you've had an opportunity to see it.

22 THE COURT: It's fine, you just need to e-file it
23 separately through the e-file system so it gets into my
24 que, but I will enter it, okay.

25 MS. MILLER: Thank you, Your Honor.

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THE COURT: Thanks.

MS. HAMDAN: Thank you.

THE COURT: Thanks, Ms. Hamdan.

(At 10:10 a.m. this hearing was concluded)

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CERTIFICATE OF COURT REPORTER

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

I, Reba Hooper, CSMR-6917, Official Court Reporter acting in and for the Third Judicial Circuit, State of Michigan, do hereby certify that the foregoing pages 1 through 10 was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter on April 29, 2021.

I further certify that I will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernable on the video of the proceedings.

May 31, 2021

Reba Hooper
Reba Hooper CSMR-6917
Official Court Reporter

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX J
Order Granting Summary Disposition

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief of Research,
Training, and Appeals

JOSEPH D. SHOPP (P81256)
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN
EX REL, KYM L. WORTHY, WAYNE
COUNTY PROSECUTOR,

Plaintiff,

v.

Case No. 19-014106-CF
Hon. David J. Allen

ONE 2006 SATURN ION,
VIN: 1G8AJ55F86Z101751,

Defendant Property,

and

STEPHANIE GRACE WILSON,

Claimant.

Kym L. Worthy (P38875)
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Wayne County Prosecutor's Office
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Barton W. Morris, Jr. (P54701)
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ORDER GRANTING CLAIMANT'S MOTION FOR
SUMMARY DISPOSITION

At a session of said Court held
On this date of: April 29, 2021
In the Coleman A. Young Municipal Court, Detroit, Michigan

PRESENT: Hon. David J. Allen
Third Circuit Court Judge

THIS MATTER having come before this Court pursuant to Claimant's Motion for
Summary Disposition, and

WHEREAS, the Court having reviewed the motion, the People's response, the Claimant's reply, and the evidence submitted, and

WHEREAS, on April 29, 2021, the date and time set for the hearing regarding Claimant's Motion for Summary Disposition, the parties being present were provided opportunity to be heard and provide argument to the Court,

IT IS HEREBY ORDERED AND ADJUDGED that Claimant's Motion for Summary DISPOSITION is hereby GRANTED;

that JUDGMENT is entered in favor of Claimant; and

that the People are ORDERED to return Claimant's property immediately.

/s/ David J. Allen

HONORABLE DAVID J. ALLEN

Judge for the Third Circuit Court

Date: 4/30/2021

Prepared on April 29, 2021, by:

By: /s/Barton W. Morris, Jr.
Barton W. Morris, Jr. (P54701)
Attorney for Claimant
Law Offices of Barton Morris
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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,**

and

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX K
People's Motion for Reconsideration

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**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**PEOPLE OF THE STATE OF MICHIGAN, EX REL
KYM L. WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,**

Plaintiff,
v.

**Case No. 19-014106-CF
Judge David J. Allen**

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751;
Defendant Property,**

and

**STEPHANIE GRACE WILSON
Claimant,**

SINAH HAMDAN (P80462)
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**PEOPLE'S REQUEST FOR RECONSIDERATION AND
OBJECTION TO ORDER FOR SUMMARY JUDGMENT**

NOW COMES THE PLAINTIFF, the People of the State of Michigan, ex rel. KYM L. WORTHY, Prosecuting Attorney, JOE JANSEN, Chief of Special Operations Division, CHARLES DAVIS, Lead Prosecuting Attorney, Forfeiture Unit, and SINAH HAMDAN, Asst. Prosecuting Atty. with the Forfeiture Unit, Wayne Co. Prosecutor's Office, and in support of this Request for Reconsideration and Objection to Order Granting Summary Disposition states:

1. This request for Reconsideration is brought under MCR 2.119(F). Under MCR 2.119(F)(3), the moving party must demonstrate a palpable error by which the

court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

2. Specifically, the Plaintiff believes that this court applied an erroneous standard leading to an Order Granting Claimant's Motion for Summary Disposition. The standard used in making the ruling was that there needed to be drugs seized as a predicate to this forfeiture matter, however, this is not a prerequisite for a forfeiture case. Under MCL 333.7521(d), a conveyance, including an automobile, used or intended for use, to transport, or in any manner to facilitate the transportation for the purpose of sale or **receipt of a drug that has been used, possessed, or acquired** in violation of this article is property subject to forfeiture.
3. In this instance, there were no drugs seized because, as Malcolm Smith, the passenger of the vehicle indicated during the stop, he had already injected the heroin he had purchased. This use of a drug which the Saturn Ion was used to procure falls under the statute even absent a seizure of the drug (in this case due to impossibility).

STATEMENT OF FACTS

4. The 2006 Saturn Ion at issue was seized on June 24, 2019 after officers of the Wayne County Sheriff's Office observed the vehicle while conducting surveillance on a known drug house. The vehicle was parked on Lumley near the house being surveilled and a man exited the drug house and approached the

passenger side of Defendant Vehicle, reaching his arm into the window in what appeared to be a hand to hand transaction. The man was then observed re-entering the drug house and Defendant Vehicle departed shortly after, observed turning without using a turn signal.

5. The officers initiated a stop on the vehicle and interviewed the occupants, with the passenger Malcolm Smith stating that he had purchased and used \$10 worth of heroin. The driver, Stephanie Wilson, stated that she had transported Smith to the location "because he was getting sick without it and I bring him down here once a day." Officers conducted a search of the vehicle and recovered 5 empty syringes from under the passenger seat, which Smith stated he uses for heroin.
6. The Wayne County Prosecutor's Office filed a complaint for forfeiture under MCL 333.7521 on October 23, 2019. On May 11, 2020, Wilson joined a federal class-action lawsuit challenging the constitutionality of Wayne County's seizure and forfeiture practices. Wilson through her attorney filed a motion for summary disposition on March 12, 2021 and this motion was granted on April 29, 2021, with the court citing that there were no drugs seized demonstrating no issue of material fact.

SUMMARY DISPOSITION STANDARD

7. When considering a motion for summary judgment, the court must look at all the evidence in the light most favorable to the nonmoving party, **who must be given every reasonable doubt.** *Atlas Valley Golf & Country Club*, 227 Mich App 14

(1997). When reviewing a motion for summary disposition, the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to it. *Dumas v. Auto Club Ins. Ass'n*, 168 Mich. App. 619, 626, 425 N.W.2d 480 (1988). All inferences will be drawn in favor of the nonmovant. The court must determine whether a record could be developed that would leave open an issue upon which reasonable minds could differ. *Cason v. Auto Owners Ins. Co.*, 181 Mich. App. 600, 450 N.W.2d 6 (1989). All inferences will be drawn in favor of the nonmovant. The court must determine whether a record could be developed that would leave open an issue upon which reasonable minds could differ. *Id. Cason v. Auto Owners Ins. Co.*, 181 Mich.App. 600, 450 N.W.2d 6, (1989).

8. Here, the motion for summary disposition was granted based on a finding that no issue of material fact existed in this matter. The court cited a lack of physical evidence in that no drugs were seized, only drug paraphernalia. Plaintiff disagrees, however, in that Claimant and the passenger in Defendant Vehicle, Malcolm Smith, both admitted to the officer that Smith had purchased heroin and the syringes recovered had been used to inject heroin prior to the stop. The fact that there were no drugs seized because they had already been injected does not negate the fact that Defendant Vehicle was used as an instrument to procure heroin.
9. A lack of recovered contraband does not negate the fact that the vehicle was used as transportation to purchase heroin or used as a container for the drug. Under

MCL 333.7521(1)(d), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b). As described in subsection (1)(a), this includes a controlled substance.

10. During the April 30th hearing, the court referenced the fact that no drugs were seized at the time of the stop, indicative of a question of whether or not the Defendant Vehicle was in fact used as transportation to purchase heroin. The people argue that even if this posed a question or presented an issue of material fact, the court should have weighed this question in favor of the People as the nonmoving party. The discrepancies between Wilson's deposition statements and Sergeant River's statements during deposition on their face present an issue of material fact and one upon which reasonable minds could differ.
11. The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Charbeneau v. Wayne Co. General Hospital*, 158 Mich.App. 730, 733, 405 N.W.2d 151 (1987). The People's position is that the court's granting of summary disposition due to there being no issue of material fact was erroneous. The dispute of events was not weighed in favor of the plaintiff as the nonmoving party and an erroneous standard was applied in requiring a seizure of drugs.
12. WHEREFORE, based upon the foregoing facts and application of law, the People pray this Court will now reconsider its prior ruling and reinstate *People v. 2006 Saturn Ion 19-014106-CF*.

Respectfully submitted,

KYM L. WORTHY
Wayne County Prosecutor

JOSEPH JANSEN
Chief, Special Operations

CHARLES DAVIS
Principal Attorney, Forfeiture Unit

Dated: May 5, 2021

/s/Sinah Hamdan
SINAH HAMDAN P80462
Assistant Prosecuting Attorney
Wayne County Prosecutor's Office
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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX L
People's Motion for Relief from Judgment

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**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**PEOPLE OF THE STATE OF MICHIGAN, EX REL
KYM L. WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,**

Plaintiff,

Case No. 19-014106-CF

v.

Judge David J. Allen

ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751;

Defendant Property,

and

STEPHANIE GRACE WILSON

Claimant,

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**PEOPLE'S EX PARTE MOTION FOR RELIEF FROM JUDGMENT AND OBJECTION
TO ENTRY OF ORDER**

NOW COMES THE PLAINTIFF, the People of the State of Michigan, ex rel. KYM L. WORTHY, Prosecuting Attorney, JOE JANSEN, Chief of Special Operations Division, CHARLES DAVIS, Lead Prosecuting Attorney, Forfeiture Unit, and SINAH HAMDAN, Asst. Prosecuting Atty. with the Forfeiture Unit, Wayne Co. Prosecutor's Office, and in support of this Request for Reconsideration and Objection to Order Granting Summary Disposition states:

This Motion for Relief from Judgement and Objection to Entry of Order is brought pursuant to MCR 2.610 and MCR 2.602(B)(3).

MOTION FOR RELIEF FROM JUDGEMENT

Under MCR 2.610, Plaintiff has the right to move to have the verdict and judgment set aside within 21 days after the entry of judgment, or as an alternative, the court can order a new trial or direct the entry of judgment as requested in the motion. Plaintiff pursuant to their motion

for reconsideration has asked this of the court and, seeing as how this rule as well as MCR 7.104 both allow for 21 days, it would circumvent Plaintiff's rights in a pending appeal to allow the vehicle to be returned immediately. This would have the effect of mooted Plaintiff's appeal.

OBJECTION TO ENTRY OF ORDER

In regards to the entry of the order, MCR 2.602(B)(3) states "Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the notice and proof of service along with the proposed judgment or order." In the current matter, a proposed order was e-filed under "miscellaneous document filing" and e-served on April 28, with it being e-filed again on April 29 as an order, the same day that the court ruled on Claimant's motion. The order was entered on April 30, 2021.

More specifically, Plaintiff objects to the form of the order. The last line of the order states "the People are ORDERED to return Claimant's property immediately." The term "immediately" ignores the 21 day period allotted for Plaintiff to file an appeal in this matter pursuant to MCR 7.104(A). Plaintiff has indicated their intention to do so through the filing of a motion to stay the judgment as well as a request for reconsideration. Plaintiff respectfully requests that should the court not grant their motion for reconsideration, that the court revise the judgment to conform to the Michigan Court Rules. Plaintiff would also be amenable to the court ordering a bond should the Defendant Vehicle be returned during the pendency of the appeal following the 21 days so as to not render Plaintiff's appeal rights as moot.

Wherefore, pursuant to this Motion for Relief from Judgment and Objection to Entry of Order, Plaintiff respectfully requests that the court enter the proposed order correcting the immediate return of the vehicle to conform with the court rules.

Respectfully submitted,

KYM L. WORTHY
Wayne County Prosecutor

JOSEPH JANSEN
Chief, Special Operations

CHARLES DAVIS
Principal Attorney, Forfeiture Unit

Dated: May 6, 2021

/s/Sinah Hamdan
SINAH HAMDAN P80462
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**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
O'BRIEN, P.J., and SHAPIRO and BOONSTRA, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN, ex rel KYM L.
WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,
Plaintiff-Appellee,**

v

No. 164360

**ONE 2006 SATURN ION, VIN: 1G8AJ55F86Z101751,
Defendant Property,
and**

**STEPHANIE GRACE WILSON,
Claimant-Appellant.**

**Court of Appeals No. 357510
Third Circuit Court No. 17-005080-01-FC**

PLAINTIFF-APPELLEE'S APPENDIX M
Circuit Court Transcript of May 13, 2021 Proceedings

KYM L. WORTHY
Prosecuting Attorney
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JON P. WOJTALA
Chief of Research,
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,
v
CASE NO: 19-014106-CF
ONE 2006 SATURN ION and
STEPHANIE GRACE WILSON,
Defendants.

-----/

MOTION HEARINGS

Before the HON. DAVID J. ALLEN, Circuit Judge,
Detroit, Michigan on Thursday, May 13, 2021

APPEARANCES:

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May 13, 2021

WITNESSES:

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None called

OTHER MATERIAL IN TRANSCRIPT

Proceedings

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EXHIBITS

None marked

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Detroit, Michigan
Thursday, May 13, 2021
(10:32 a.m.)

-- -- --

THE COURT CLERK: People v 2006 Saturn, Case No.
19-014160-CF.

THE COURT: Ms. Hamdan.

MS. HAMDAN: Good morning, Your Honor, Sinah
Hamdan on behalf of the People.

THE COURT: Good morning.

Is Mr. Morris or Ms. Miller here this morning?

MS. HAMDAN: That's what I'm looking for and I
don't see them unfortunately.

THE COURT: Yeah, they filed a response.

MS. HAMDAN: Right.

THE COURT: Okay. Well look, I've got a
response, I don't know where they're at. Can you try and,
I hate to make you be the one that track them down.

Can we re-call them?

MS. HAMDAN: I can try, yeah.

THE COURT: Let Karen know we'll re-call you,
okay.

MS. KAREN: They were here, they must've left, so
just let me know when they come back.

MS. HAMDAN: Will do.

1 MS. KAREN: Thank you.
2 - - -
3 (At 10:39 a.m. this matter was recalled)
4 THE COURT CLERK: People v 2006 Saturn, Case No.
5 19-014106-CF.
6 MS. HAMDAN: Good morning, Your Honor, Sinah
7 Hamdan on behalf of the People.
8 THE COURT: Ms. Hamdan, welcome back.
9 MR. MORRIS: Good morning, Judge Allen, My name
10 is Barton Morris appearing on behalf of the Claimant,
11 Stephanie Wilson.
12 THE COURT: Mr. Morris, welcome, and I think Ms.
13 Miller was here last time for the trial, so she did a nice
14 job. You're pinch hitting today or was she pinch hitting
15 for you?
16 MR. MORRIS: She was pinch hitting for me.
17 THE COURT: All right.
18 Okay, so Ms. Hamdan, what's up, you want -- where
19 is the car by the way?
20 MS. HAMDAN: The car is at the tow yard, Your
21 Honor, we filed a Motion for Reconsideration along with the
22 Motion to Stay the Order just pending the appeal.
23 As you know we do have 21 days to appeal so we
24 did ask that that order be stayed.
25 Your Honor, should the car be released during the

1 pendency of appeal we are asking that the Court instate a
2 bond in place of the vehicle.

3 THE COURT: I mean kind of comment then ruling,
4 Ms. Hamdan, I mean I get it, I know you're doing your job
5 and you've got people you report to. But, you know,
6 there's such a thing as picking your battles, this is a
7 2006 Saturn Ion, that thing ain't worth a thousand dollars.
8 Nothing personal, I get it it's business, but you appeal on
9 that.

10 Pick your battles man, you guys got bigger fish
11 to fry than some lady who wants her thousand dollar car
12 back so she can go buy groceries and get her kids around.

13 MS. HAMDAN: And Your Honor, as we have commented
14 there is a federal case pending as well.

15 Our biggest issue here is that the last hearing
16 was on a Motion for Summary Disposition filed by the
17 Claimants and with the car being returned based on there
18 being no drugs on the person, and our argument is that
19 there were no drugs on him because he had already injected
20 him.

21 THE COURT: I don't think I made my decision that
22 it was based on no drugs. I had a basic curiosity that I
23 was asking those questions, but that wasn't the basis for
24 the ruling, but anyway.

25 Mr. Morris.

1 MS. HAMDAN: Go ahead.

2 MR. MORRIS: Well first I'm sure the Court and
3 the People probably understand, Motions for Reconsideration
4 are not generally set for a hearing. Particularly they're
5 not even considered if they're just rehashing the same
6 issues that have been presented to the Court for which that
7 you already ruled upon.

8 Same thing with their Motion for Leave from
9 Judgment, they've somehow now achieved a hearing, which
10 when they're not entitled to one, so I don't even think
11 it's properly up for today.

12 Now as it relates to the Motion to Stay they
13 don't need the car to file an appeal and you're right,
14 you're absolutely right this car is worth probably less
15 than \$1000, it's been sitting in that yard since for the
16 last 22 months.

17 The paint has been aging on it and you can tell
18 it's been faded, there's flat tires. The car is I think
19 was just worth more to the Claimant than it is to the
20 People.

21 And as the People have argued or stated this is
22 really not about this case, they've filed these motions in
23 an effort to try to give themselves some type of advantage
24 or some type of play in the federal case which is simply
25 just not an appropriate basis to be filing these motions.

1 They're trying to try to like --

2 THE COURT: What's this federal case, there's a
3 federal case?

4 MR. MORRIS: Right. We've filed an action, a
5 class action I think in the federal court with respect to
6 the County's forfeiture practices, and so we've been
7 litigating this case independently with regard to the other
8 case, but they're separate cases and filing actions in this
9 case in an effort to try to gain some type of advantage or
10 try to like manipulate the other case is not appropriate.

11 MS. HAMDAN: And Your Honor, we're not trying to
12 manipulate anything if I could just state. Our issue is if
13 the car gets disposed of during the pendency of the appeal
14 that's what we have the issue with and that's what we're
15 trying to avoid.

16 Otherwise if something, you know, if things
17 change based on the appeal we're going to have to go try
18 and track down this car.

19 MR. MORRIS: Well that's not true.

20 First of all if it changes I mean listen, they're
21 entitled to have their appeal, they can go ahead and file
22 an appeal.

23 We have agreed in our Answer that we would agree
24 to not dispose of the car, so that would alleviate that
25 particular issue.

1 But I also want to point out that the Court had
2 signed an order, executed an order demanding that the
3 vehicle be returned and we went, and I hope the Court had
4 the opportunity to look at our Affidavit that spells out
5 the specifics as to what happened when we tried to get the
6 car.

7 The tow yard refused to give it to us without the
8 People's permission, and so when they contacted I think
9 Charles Davis Mr. Davis explicitly told them to violate the
10 Court's order and not give us the car because they were
11 going to appeal or they were going to file a Motion to
12 Stay.

13 Judge, again, this is, I mean they're violating a
14 court order, they're absolutely incorrect when it comes to
15 like the law that they cite with respect to them having
16 some type of entitlement to a bond when we're talking about
17 injunctive relief. Pursuant to Michigan Court Rule 2.612
18 there is no 21-day automatic stay period when it comes to
19 injunctive or equitable relief.

20 The car was supposed to be returned and it wasn't
21 and now we're here on Motions for Reconsideration with no
22 allegations of palpable error, no allegations of any
23 factual, like new factual evidence, simply just restating
24 the arguments that they had made for which they lost upon.

25 They can go ahead and file the appeal, but the

1 car should be returned as the Court has ordered it.

2 THE COURT: Let me be clear.

3 No. 1, the Motion for Reconsideration is denied.

4 No. 2, the Motion for Stay is denied.

5 No. 3, the car is to be released immediately upon
6 presentment by the Claimant for the automobile. If said
7 vehicle is not immediately removed I'll have a show cause
8 hearing not only for the tow yard, but for Mr. Davis or
9 anybody else who wants to interfere with a \$1000 vehicle
10 that was seized for \$10 worth of heroin at best period.

11 Release the vehicle, do what you're going to do
12 in the federal court. You want to go to the Court of
13 Appeals and try and get back a \$1000 car have at it.

14 That's it, no more editorial, no more order, car
15 is released.

16 Any questions?

17 MS. HAMDAN: No, Your Honor.

18 THE COURT: Mr. Morris, you and Ms. Hamdan can
19 work out the parameters of an order of 1, 2, 3. Go to the
20 tow yard, get the vehicle. If you have a problem I need to
21 know immediately, I'll schedule a show cause hearing for
22 anyone that interferes.

23 Now if Ms. Hamdan wants to run to the Court of
24 Appeals to stay the return of a \$1000 Saturn Ion, well I
25 guess this Court will have to abide by that if the Court of

1 Appeals wants to stay it. That's their department, not
2 mine.

3 Okay, folks, good lucks.

4 MS. HAMDAN: Thank you, Your Honor.

5 MR. MORRIS: Thank you, Your Honor.

6 (At 10:47 a.m. this hearing was concluded)
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1 CERTIFICATE OF COURT REPORTER

2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF WAYNE)

5 I, Reba Hooper, CSMR-6917, Official Court
6 Reporter acting in and for the Third Judicial Circuit,
7 State of Michigan, do hereby certify that the foregoing
8 pages 1 through 11 was reduced to typewritten form and
9 comprise a true rendition of the proceedings taken by means
10 of video recordation without the benefit of a court
11 reporter present during the proceedings in the
12 above-entitled matter on May 13, 2021.

13 I further certify that I will assume no
14 responsibility for any events that occurred during the
15 above proceedings for any inaudible responses by any party
16 or parties that are not discernable on the video of the
17 proceedings.

18
19
20 May 31, 2021

21 Reba Hooper
22 Reba Hooper CSMR-6917
23 Official Court Reporter
24
25