In the
Court of Appeals
Fifteenth District of Texas at Arlington

No. 15-15-00034-CV

2005 Toyota Celica VIN #1O2I3T4N5B6L7A8H9, Two Hundred Fifty Dollars in United States Currency, and Garmin GPS
Appellant

V.

THE STATE OF TEXAS
Appellee

On Appeal from the 202nd District Court
Litchfield County, Texas
The Honorable Dixie Herbster
Trial Court No. 40031

Before Tucker, C.J., Wright, J. and Franks, J.
Opinion by Tucker, Chief Justice

OPINION

Larry Bloom appeals from the trial court's order of forfeiture, which deemed his 2005 Toyota Celica,[1] $250.00 in U.S. currency, and a Garmin GPS to be contraband. On appeal, Bloom argues that (1) the trial court erred in denying his request to continue this case until the final disposition of his related criminal case; (2) the trial court erred in determining that the exclusionary rule does not apply to civil forfeiture cases; (3) in light of his affirmative defense and subsequent dismissal of the criminal indictment against him, the evidence was factually insufficient to support the finding that the seized property was contraband; (4) the civil forfeiture statutes, facially and as applied, violate Article I, Sections 9 and 19 of the Texas Constitution and are fundamentally unfair; and (5) the forfeiture order violated the Excessive Fines Clause and Article I, Section 13 of the Texas Constitution. We reject all of Bloom's contentions and affirm the trial court's judgment.

I. Factual Background

Larry Bloom was driving a 2005 Toyota Celica at 10:35 p.m. on I-30 when he was pulled over by state troopers Joe Caputo and George Mendez for having a dim license plate light.[2] Caputo approached Bloom and asked him for his driver's license[3] and registration. According to Caputo, Bloom appeared to be "unusually nervous and shifty," especially after he was informed of the reason for the traffic stop. As Caputo spoke with Bloom, Mendez asked the passenger, Alex Vause, for her identification. The troopers ran a computer check on the driver's licenses and discovered that, while Bloom had never been arrested, Vause had previously been arrested

[1] The Celica's vehicle identification number is 1O2I3T4N5B6L7A8H9.

[2] *See* TEX. TRANSP. CODE ANN. § 547.322(f) (West 2011).

[3] Bloom explained that the address on his driver's license was his parents' home address.

twice for delivery of marihuana.[4] Mendez testified that this raised "red flags because of the driver's nervousness and because they were driving on a major drug corridor at night." The troopers decided to question Bloom and Vause separately.

Caputo delivered a traffic ticket to Bloom and asked him to step out of the vehicle so he could show him the dim license plate. Caputo then began questioning Bloom. Caputo testified that "after I told the driver how important it was that he tell me the truth, he became real chatty." Bloom told Caputo that he was a college student at Litchfield University, that he and his friends had just finished taking their final exams, and that he was going to the liquor store to buy beer for a friend's party.[5] Caputo asked Bloom to recite the address for the party and confirmed that it was the address that was programed in a Garmin GPS device in the vehicle. However, Caputo noted that the directions started from Chicago Heights, an apartment complex known for high levels of drug activity.

When asked how he knew Vause, Bloom stated that she was an ex-girlfriend from high school, that he had recently run into her at a party, and that she had been his girlfriend for a little over a week. He jokingly added that he been trying to make a good impression on Vause since he had picked her up for their date, but he had obviously failed since the troopers were ruining it. In response to Caputo's questions, Bloom said that he had no weapons or drugs in the car. Yet, he declined to give consent to search the vehicle because he did not want to be late for the party and, according to Caputo, "was a criminal justice student who said he knew his rights." This made Caputo increasingly suspicious.

[4] Vause pleaded guilty to these offenses, received deferred adjudication community supervision, and successfully completed her community supervision.

[5] Both Bloom and Vause are over 21.

Meanwhile, Mendez had also asked Vause to step out of the vehicle. He asked whether she had any weapons or illegal drugs and received a negative response. Vause told Mendez that she and Bloom were "just friends," that they had been friends for a very long time, and that he was her ride to a party. Mendez informed Vause that they knew about her arrest history and asked if she would give consent for them to search the vehicle. According to Mendez, Vause declined consent because it was not her vehicle. Mendez testified that he noticed "a very faint" smell of marihuana emanating from Vause, and that "her overly cool demeanor suggested something was up." After the questioning, Caputo and Mendez compared Bloom's and Vause's answers, determined they were inconsistent, opined that Vause may be carrying marihuana for the party, and decided to wait for a canine unit to arrive.

After a canine unit alerted on the vehicle, Caputo and Mendez searched the car and found a sandwich-sized ziplock bag containing fifteen rolled marihuana cigarettes in Vause's purse. They also found a lighter in the middle console of the car, and $250 in cash in Bloom's wallet. Caputo and Mendez arrested Bloom and Vause and seized the vehicle, cash, and the Garmin.

Bloom was criminally indicted for aiding Vause in the attempted delivery of marihuana.[6] While his criminal case was pending, the State initiated civil forfeiture proceedings against the seized property.

II. The Trial Court Did Not Abuse Its Discretion By Denying The Request For A Continuance

Bloom's counsel[7] filed a motion to continue the forfeiture case until the suppression issue could be decided in the underlying criminal cause. At the hearing on the motion for continuance,

[6] *See* TEX. PENAL CODE ANN. §§ 7.01, 7.02, 15.01 (West 2011); TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2010).

[7] Although the trial court denied Bloom's motion for court-appointed counsel, the lawyer appointed to represent Bloom in his criminal cause agreed to represent Bloom pro bono.

Bloom maintained his innocence of any wrongdoing. He admitted a videotape of Vause's custodial interrogation, wherein she claimed ownership of the marihuana and adamantly stated that Bloom did not know anything about the drugs. Bloom also admitted a copy of a motion to suppress evidence, filed in both his and Vause's criminal cases, which argued that evidence obtained after Caputo handed the traffic ticket to Bloom was required to be suppressed because the length of the troopers' detention exceeded the permissible scope of the traffic stop. Bloom prayed for the trial court to grant a continuance until the suppression issues were decided, urging that the likelihood of suppression was great.[8]

In his first point of error, Bloom argues that the trial court's decision to deny the continuance was erroneous since (1) he demonstrated that there was a substantial likelihood that the criminal case against him would be dismissed, and (2) the criminal case against him was ultimately dismissed. We disagree.

'"We review the decision to grant or deny a motion for continuance for an abuse of discretion."' *$1,608.00 In U.S. Currency v. State*, No. 06-14-00084-CV, 2015 WL 1448675, at *2 (Tex. App.—Texarkana Mar. 31, 2015, no. pet.) (mem. op.) (quoting *The Crawford Family Farm P'ship v. Transcanada Keystone Pipeline, L.P.*, 409 S.W.3d 908, 924–25 (Tex. App.—Texarkana 2013, pet. denied)). "A trial court abuses its discretion 'when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 800 (Tex. 2002).

The statutes setting forth the procedure for a civil forfeiture require the matter to "proceed to trial in the same manner as in other civil cases." TEX. CODE CRIM. PROC. ANN. art. 59.05(b) (West 2006). They also clarify that "[a] final conviction for an underlying [criminal]

[8] In support of this argument, Bloom cites *State v. Daly*, 35 S.W.3d 237, 241–43 (Tex. App.—Austin 2000, no pet.), and *McQuarters v. State*, 58 S.W.3d 250, 256–57 (Tex. App.—Fort Worth 2001, pet. ref'd).

offense is not a requirement for [civil] forfeiture." *Id*. art. 59.05(d). Instead, the existence of a dismissal or acquittal of the underlying criminal offense operates as an affirmative defense, which merely raises a rebuttable presumption that the property or interest seized is nonforfeitable. *Id.*

We conclude, that '"[t]he pendency of a criminal investigation, indictment, or other proceeding does not affect a contemporaneous civil proceeding based on the same facts or parties."' *In re Gore*, 251 S.W.3d 696, 700 (Tex. App.—San Antonio 2007, orig. proceeding) (quoting *Gebhardt v. Gallardo*, 891 S.W.2d 327, 330–32 (Tex. App.—San Antonio 1995, orig. proceeding)). Accordingly, we cannot say that it was an abuse of discretion for the trial court to deny the motion for continuance. We overrule Bloom's first point of error.

III. The Exclusionary Rule Does Not Apply To Civil Forfeiture Cases

Bloom also filed a "Motion to Suppress and Motion for Return of Property" in this case. He argued that, after he had received the traffic ticket, his continued detention exceeded the scope of the traffic stop.[9] In response, the State argued that the exclusionary rule did not apply and, in the alternative, would have no import in this case. To support its alternative argument, the State attached (1) plea papers demonstrating that Vause pleaded guilty to the offense, and (2) a transcript from the plea hearing demonstrating that Vause's plea was the result of the State's

[9] A traffic stop is a detention and must be reasonable under the United States and Texas Constitutions. *See Davis v. State*, 947 S.W.2d 240, 245 (Tex. Crim. App. 1997); *Caraway v. State*, 255 S.W.3d 302, 307 (Tex. App.—Eastland 2008, no pet.). To be reasonable, a traffic stop must be temporary and last no longer than necessary to effectuate the purpose of the stop. *Florida v. Roye*r, 460 U.S. 491, 500 (1983); *Davis*, 947 S.W.2d at 245. Reasonableness is measured in objective terms by examining the totality of the circumstances. *Ohio v. Robinette*, 519 U.S. 33, 39 (1996); *Spight v. State*, 76 S.W.3d 761, 765 (Tex. App.—Houston [1st Dist.] 2002, no pet.). An investigative stop that is reasonable at its inception may violate the Fourth Amendment because of excessive intensity or scope. *Davis*, 947 S.W.2d at 243 (citing *Terry v. Ohio*, 392 U.S. 1, 18 (1968)). When the reason for the stop has been satisfied, the stop may not be used as a "'fishing expedition for unrelated criminal activity.'" *Id.* (quoting *Robinette*, 519 U.S. at 41 (Ginsburg J., concurring)). Once the officer concludes the investigation of the conduct that initiated the stop, continued detention of a person is permitted only if there is reasonable suspicion to believe that another offense has been or is being committed. *Id*. at 245.

agreement to dismiss the charges against Bloom. In its order denying the motion to suppress the evidence, the trial court specifically determined that the exclusionary rule did not apply to the civil forfeiture proceedings.[10] Bloom argues that this finding was in error.

We review a trial court's ruling on a motion to suppress evidence for an abuse of discretion, applying a bifurcated standard of review. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). An abuse of discretion occurs when the ruling is so clearly wrong as to be outside the zone of reasonable disagreement. *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992). Under the bifurcated standard applied to motions to suppress, we review de novo the application of the law to the facts of the case, yet we afford almost total deference to the trial court's determination of the facts where that determination is dependent upon the credibility and demeanor of the witnesses. *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005). The trial court's ruling must be upheld if it is correct under any theory of applicable law. *Id*.

"The Texas Supreme Court has not held that the State must prove the property was seized as the result of a lawful arrest or search in order to be entitled to forfeiture under Chapter 59." *Ninety Thousand Two Hundred Thirty-Five Dollars & No Cents in United States Currency ($90,235.00)*, No. 08–09–00151–CV, 2014 WL 5798177, at *4 (Tex. App.—El Paso 2014, no pet.) (distinguishing *State v. Thirty Thousand Six Hundred Sixty Dollars and No/100 ($30,660.00) in U.S. Currency*, 136 S.W.3d 392, 403 (Tex. App.—Corpus Christi 2004, pet. denied)).[11] *But see State v. One (1) 2004 Lincoln Navigator, VIN # 5LM FU27RX4LJ28242*, No. 13-13-00484-CV, 2014 WL 4262636, at *4 (Tex. App.—Corpus Christi Aug. 28, 2014, pet.

[10] Although the trial court's order recites that the motion was denied after a hearing, the reporter's record contains no transcript from the hearing.

[11] *But see State v. One (1) 2004 Lincoln Navigator, VIN # 5LM FU27RX4LJ28242*, No. 13-13-00484-CV, 2014 WL 4262636, at *4 (Tex. App.—Corpus Christi Aug. 28, 2014, pet. granted) (mem. op.) (citing *$763.30 U.S. Currency v. State*, No. 09–05–00437 CV, 2007 WL 474967, at *1 (Tex. App.—Beaumont Feb. 15, 2007, no pet.) (mem. op.)).

filedgranted) (mem. op.) (citing *$763.30 U.S. Currency v. State*, No. 09–05–00437 CV, 2007 WL 474967, at *1 (Tex. App.—Beaumont Feb. 15, 2007, no pet.) (mem. op.)). In fact, "[t]he Texas Supreme Court has yet to decide whether the exclusionary rule applies to civil forfeiture proceedings." *Id.* (citing *State v. $217,590.00 in United States Currency*, 18 S.W.3d 631, 632 (Tex. 2000)); *see $18,325.00 in U.S. Currency v. State*, No. 11-13-00253-CV, 2015 WL 3799296, at *1 (Tex. App.—Eastland June 18, 2015, no pet.) (mem. op.); *Forty-Five Thousand Four Hundred Eighty Dollars U.S. Currency v. State*, No. 06-12-00090-CV, 2013 WL 1343209, at *2 (Tex. App.—Texarkana Apr. 4, 2013, pet. denied) (mem. op.).[12]

The exclusionary rule is a judicially created device aimed exclusively at deterring, and thereby preventing, Fourth Amendment violations. In Texas, it requires exclusion of evidence obtained in violation of the Fourth Amendment to the United States Constitution and Article I, section 9 of the Texas Constitution, which guarantee a right to be free from unreasonable searches and seizures in criminal trials. *See* U.S. CONST. amend. IV; TEX. CONST. art. I, § 9. Although civil forfeiture proceedings are generally *in rem* actions brought against the property, not the individual, Bloom urges us to apply the exclusionary rule to his case. *See United States v. Ursery*, 518 U.S. 267, 274 (1996).

In support, he cites, *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 702 (1965), in which the United States Supreme Court found the exclusionary rule applicable in a civil forfeiture proceeding. However, in reaching that conclusion, the Court emphasized that the criminal penalty for the underlying offense was a maximum of $500.00, whereas the automobile seized had a value of approximately $1,000.00. *Id.* at 701. Thus, it concluded that the forfeiture

[12] In his brief, Bloom acknowledged these cases and argued the following: "A decision that the exclusionary rule does not apply to civil forfeiture statutes will offend principles of justice by encouraging the illegal seizure of property. Such a reading will violate Article I Section 9 of the Texas Constitution, which prohibits illegal search and seizure of property." We need not address Bloom's argument since our focus is only to determine whether the trial court erred in overruling his "Motion to Suppress and Motion for Return of Property."

was "clearly a penalty for a criminal offense and [could] result in even greater punishment than the criminal prosecution." *Id.* at 701–02. On this reasoning, *One 1958 Plymouth Sedan* is distinguishable since (1) the Texas Legislature has specified that "asset forfeiture is remedial in nature and not a form of punishment," and (2) as explained by our analysis of Bloom's last point of error, forfeiture of Bloom's property is not necessarily a greater penalty compared to the one he would have faced in the underlying criminal trial. TEX. CODE CRIM. PROC. ANN. art. 59.05(e) (West 2006).

Moreover, following the Court's decision in *One 1958 Plymouth Sedan*, the United States Supreme Court has written "the Court never has applied [the exclusionary rule] to exclude evidence from a civil proceeding, federal or state." *United States v. Janis*, 428 U.S. 433, 447 (1976); *see United States v. Monkey*, 725 F.2d 1007, 1012 (5th Cir. 1984); *In re Strategic Impact Corp.*, 214 S.W.3d 484, 488 (Tex. App.—Houston [14th Dist.] 2006, orig. proceeding) ("In civil cases, even illegally obtained evidence may be admissible at trial.").

We find that, because Texas civil forfeiture does not constitute a criminal punishment, the exclusionary rule does not apply, and the trial court did not err in so holding. We overrule Bloom's second point of error.

IV. Factually Sufficient Evidence Supports The Judgment

Below, Bloom maintained his innocence of any wrongdoing. On appeal, Bloom argues that the State failed to meet its burden in this forfeiture proceeding. His arguments are largely based on Vause's videotaped confession and the fact that the criminal indictment against him was ultimately dismissed.[13] However, as we previously mentioned, this merely raised the presumption that the seized property was nonforfeitable. TEX. CODE CRIM. PROC. ANN. art.

[13] A fair reading of Bloom's brief demonstrates that he does not argue that he proved his affirmative defense as a matter of law.

59.05(d). Thus, the question is whether the presumption was rebutted by evidence that Bloom "knew or should have known that the property was contraband." *Id.* Here, for reasons set forth below, we find that the State's evidence rebutted the presumption.

"Property that is contraband is subject to seizure and forfeiture." TEX. CODE CRIM. PROC. ANN. art. 59.02(a) (West Supp. 2014). '"Contraband' means property of any nature, including real, personal, tangible, or intangible, that is: . . . (B) used or intended to be used in the commission of: (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act) . . . . *Id.* art. 59.01(2)(B)(i) (West Supp. 2014). "The state has the burden of proving by a preponderance of the evidence that the property is subject to forfeiture." *Id.* art. 59.05(b) (West 2006). The Texas Supreme Court has imposed an additional requirement that the State show that probable cause exists for seizing property. *Ninety Thousand Two Hundred Thirty-Five Dollars & No Cents in United States Currency ($90,235.00)*, 2014 WL 5798177, at *3 (citing *Fifty–Six Thousand Seven Hundred Dollars in U.S. Currency v. State*, 730 S.W.2d 659, 661 (Tex. 1987)). "In the context of a forfeiture proceeding, probable cause is a reasonable belief that a substantial connection exists between the property to be forfeited and the criminal activity defined by the statute." *Id.* (citing *State v. $11,014*, 820 S.W.2d 783, 784 (Tex. 1991); *Fifty–Six Thousand Seven Hundred Dollars*, 730 S.W.2d at 661).

The evidence in this case established that Bloom was driving at night on I-30, a known drug corridor. According to Caputo, Bloom appeared unusually nervous, shifty, and chatty.[14] Bloom and Vause both indicated that they had known each other for a long period of time, but they gave inconsistent accounts of the nature of their relationship. Due to Bloom's demeanor and his history with Vause, the State argued that Bloom was likely to know Vause's prior

[14] *But see Approximately $31,421.00 v. State*, No. 14-14-00385-CV, 2015 WL 7730827, at *6 (Tex. App.—Houston [14th Dist.] Nov. 24, 2015, no pet. h.).

criminal history. Importantly, Vause smelled of marihuana and was carrying rolled marihuana cigarettes to a party.

Based on Bloom's demeanor and the smell of illicit drugs emanating from Vause, we find that a reasonable factfinder could conclude, by a preponderance of the evidence, that Bloom (1) had knowledge that Vause was in possession of marihuana and had the intent to deliver it at the party, and (2) intended to promote or assist Vause in carrying out the offense. Further, Caputo and Mendez could have formed a reasonable belief that Bloom's car and the Garmin were facilitating Vause's delivery of drugs, or that the two were working together to deliver drugs. Because Bloom had just come from an apartment complex known for having high levels of drug activity, including a high demand for drugs, a factfinder's belief that the cash could be drug proceeds would also be reasonable.

In sum, we find the evidence factually sufficient to prove, by a preponderance of the evidence, that the vehicle, Garmin, and cash were used or intended to be used in the commission of a drug offense. We overrule Bloom's third point of error.

V. The Texas Forfeiture Statutes Are Not Unconstitutional

Next, Bloom argues, as he did below, that the civil forfeiture statutes are punitive in nature,[15] violate Article I, Sections 9 and 19 of the Texas Constitution, and are fundamentally unfair. He raises both facial and as-applied challenges and essentially seeks a recalibration of the entire civil forfeiture scheme.

With a facial challenge, the party charging that a statute is unconstitutional must show that "the statute, by its terms, always operates unconstitutionally."[16] *Barshop v. Medina Cnty.*

[15] In addressing Bloom's second point of error, we explained that asset forfeiture is remedial in nature.

[16] In one sentence in his brief, Bloom stated, in a conclusory manner, that civil forfeiture violates Article I, Section 17 of the Texas Constitution. We find this issue inadequately briefed. TEX. R. APP. P. 38.1(i).

Underground Water Conservation Dist., 925 S.W.2d 618, 627 (Tex. 1996). Under an as-applied challenge, on the other hand, "a party concedes that a statute is generally constitutional but contends that the statute is unconstitutional when applied to a particular person or set of facts." *City of Corpus Christi v. Pub. Util. Comm'n of Tex*., 51 S.W.3d 231, 240 (Tex. 2001). We reject each of Bloom's challenges to the constitutionality of the civil forfeiture statutes.

First, Bloom argues that, while the State must show a reasonable belief that a substantial connection exists between the property to be forfeited and the criminal activity, the forfeiture statues violate his due process rights because the State is not required to actually prove that the owner knew or should have known of the illegal conduct. This argument has been rejected by the Texas Supreme Court, and we need not revisit it. *State v. Richards*, 301 S.W.2d 597, 603 (Tex. 1957); *see Bennis v. Michigan*, 516 U.S. 442, 446 (1996).[17]

Bloom's concern is with the innocent owner, but Section 59.02(c) expressly provides an innocent owner defense. In pertinent part, the innocent owner defense requires a person whose property has been seized for forfeiture to establish, by a preponderance of the evidence, that he acquired or perfected his ownership interest "before or during the act or omission giving rise to forfeiture"; and (b) "did not know or should not reasonably have known of the [allegedly criminal] act or omission." TEX. PENAL CODE ANN. § 59.02(c)(1) (West 2006).

Bloom argues that this Section also violates due process by presuming a defendant guilty and placing the burden to prove a negative on the defendant. Bloom suggests that, by requiring a defendant to prove that he "did not know or should not reasonably have known of the" illegal

[17] In urging us to revisit the constitutionality of Texas civil forfeiture, Bloom cites to the dissent in the denial of the petition for review in *El-Ali v. State*, 428 S.W.3d 824, 825 (Tex. 2014). Of course, this dissent has no precedential value. *See Canadian River Mun. Water Auth. v. Hayhook, Ltd*, 469 S.W.3d 301, 303 (Tex. App.—Amarillo 2015, pet. denied).

activity, the innocent owner defense as phrased shifts the burden of proof away from the State.[18] *See id.* We also reject this argument, which we interpret as a creative way to restate Bloom's first argument. The burden of proof in a civil forfeiture, regardless of whether a defendant decides to employ the innocent owner defense, remains the same—the State must prove that the property is subject to forfeiture by a preponderance of the evidence.

Bloom's third argument takes aim at the preponderance of the evidence standard. Citing to several news articles that point to alleged abuses of the use of civil forfeiture proceedings to deprive innocent owners of property, none of which were properly included in our appellate record, Bloom argues that burden of proof fails to adequately protect fundamental property rights and encourages abuse of police power. He points to a compilation of civil forfeiture statutes[19] from other states that have adopted either clear and convincing or beyond a reasonable doubt standards and urges this Court to declare the preponderance of the evidence standard inadequate. We decline Bloom's invitation to legislate from the bench. Because civil forfeiture proceedings are *in rem* proceedings, a higher burden of proof is not required.

We overrule Bloom's challenges to the constitutionality of the Texas civil forfeiture scheme.[20]

VI. The Forfeiture Order Does Not Constitute Excessive Punishment

The Excessive Fines Clause of the Eighth Amendment to the United States Constitution "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *Austin v. United States*, 509 U.S. 602, 609–10 (1993). Bloom argues that

[18] Bloom argues that the Texas innocent owner defense creates a burden higher than the one imposed by the federal civil forfeiture statute. *See* 18 U.S.C.A. § 983(d) (2000).

[19] This compilation was included in the appellate record.

[20] Bloom also argued that civil forfeiture statues are unconstitutional because they operate disproportionally to deprive poor Texans of property without affording them a lawyer. Because Bloom has counsel, we need not consider this argument.

forfeiture order in this case violates the Excessive Fines Clause and Article I, Section 13 of the Texas Constitution.

We review de novo the issue of whether the forfeiture is grossly disproportionate to the gravity of the defendant's offense, using the *Bajakajian* proportionality test. *See United States v. Bajakajian*, 524 U.S. 321, 334, 336–37 (1998). We examine the nature of the offense, the relationship of the offense to other illegal activities, the class of offenders addressed by the forfeiture statute, the maximum fine and sentence for the offense committed and the level of culpability reflected by the penalties, and the harm that the defendant caused. *Id.* at 337–39; *see 2007 Infiniti G35X Motor Vehicle, Vin JNKBV61E17M708556 v. State*, No. 06-13-00057-CV, 2014 WL 991970, at *4 (Tex. App.—Texarkana Mar. 13, 2014, no pet.) (mem. op.); *One Car, 1996 Dodge X–Cab Truck White in Color 5YC–T17 VIN 3B7HC13Z5TG163723 v. State*, 122 S.W.3d 422, 424 (Tex. App.—Beaumont 2003, no pet.); *see also 1992 BMW VIN WBABF4313NEK00963/Brandon Lee Thompson v. State*, No. 04–07–00116–CV, 2007 WL 2608364, at * 1 (Tex. App.—San Antonio Sept. 12, 2007, no pet.) (mem. op.); *Vasquez v. State*, 01–04–01221–CV, 2006 WL 2506965, at *6 (Tex. App.—Houston [1st Dist.] Aug. 31, 2006, pet. denied) (mem. op.).

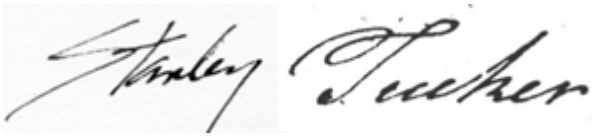
Bloom was criminally indicted for aiding Vause in the attempted delivery of marihuana to college students at a party. While the nature of this offense is non-violent, use of a vehicle to facilitate drug runs presents a real danger to the public. In fact, Bloom is within the class of offenders addressed by the forfeiture statutes, which were enacted with an aim of battling illegal drug trade without the necessity of proving guilt beyond a reasonable doubt. As indicted, Bloom's offense was a Class B misdemeanor, carrying a punishment of "(1) a fine not to exceed $2,000; (2) confinement in jail for a term not to exceed 180 days; or (3) both." TEX. PENAL

CODE ANN. § 12.22 (West 2011). The possibility of confinement indicated a higher level of culpability. In light of the range of punishment carried by the underlying offense (which included jail time), even assuming that Bloom had not yet caused any actual damage, we do not find that the seizure of the 2005 Toyota Celica,[21] the Garmin, and $250.00 in cash was so disproportionate as to constitute a violation of the Excessive Fines Clause or Article I, Section 13 of the Texas Constitution. *See Calero-Toledo v. Pearson Yacht Co.*, 416 U.S. 663, 690 (1974) (upholding the seizure of a yacht based on the discovery of a marihuana cigarette); *United States v. Wallace*, 389 F.3d 483, 486 (5th Cir. 2004) (upholding forfeiture of $30,000.00 airplane upheld, though maximum fine for failure to register airplane was $15,000.00); *$27,877.00 Current Money of United States v. State*, 331 S.W.3d 110, 122 (Tex. App.—Fort Worth 2010, pet. denied) (holding forfeiture of amount 2.3 times maximum fine not excessive).

We overrule Bloom's last point of error.

VII. Conclusion

We affirm the trial court's judgment.



Stanley Tucker

Chief Justice

FRANKS, Justice (Concurring in Part, Dissenting in Part)

[21] Without objection, on the State's request, the trial court took judicial notice that the Kelley Blue Book value of a 2005 Toyota Celica was $4,910.00.

I agree with the majority's conclusions that there was no abuse of discretion in denying the request for a continuance and that the evidence was factually sufficient to support the judgment, although I believe both of those questions are closer calls than the majority suggests. However, I disagree with the majority's conclusions on the constitutional questions. I would conclude that the exclusionary rule applies to civil forfeiture cases, that the Texas forfeiture statutes are unconstitutional under the Texas constitution, and that the forfeiture order in this case violates the Eighth Amendment of the United States Constitution.

I realize that, as an intermediate appellate court, we are bound by the decision of the Texas Supreme Court in *State v. Richards*, 301 S.W.2d 597 (Tex. 1957). However, that case was decided almost 60 years ago, and I would conclude that it is time to re-examine that precedent in light of modern circumstances. Apparently, at least some of the justices on the Texas Supreme Court agree with me on that point. *See El-Ali v. State*, 428 S.W.3d 824, 825-31 (Tex. 2014) (Willett, J., joined by Lehrmann, J., and Devine, J., dissenting to denial of pet.). Regarding the applicability of the exclusionary rule, I would follow the decision of the United States Supreme Court in *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965), and apply it to the facts of this case. Finally, I would conclude that the forfeiture in this case was grossly disproportionate to the gravity of the offense, although I recognize that the weight of authority appears to be on the State's side. Nevertheless, the facts of this case disturb me, and I believe Bloom was wronged here.

For the above reasons, I join Part II and Part IV of the opinion. I respectfully dissent from Part III, Part V, and Part VI.

Lisa Franks

Justice

Date Submitted: November 11, 2015

Date Decided: November 16, 2015