No. 82897-5-I

100949-6

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

PAUL J. PASTOR, JR., PIERCE COUNTY SHERIFF,

Plaintiff/Respondent,

v.

REAL PROPERTY COMMONLY DESCRIBED AS 713 SW 353 RD PLACE, FEDERAL WAY, KING COUNTY, WASHINGTON, and all appurtenances and improvements thereon,

Defendant In Rem,

MEI XIA HUANG,

Interested Party/Petitioner.

PETITION FOR REVIEW

Billie R. Morelli
WSBA #36105
Billie R. Morelli, PLLC
9805 Sauk Connection Road
Concrete, WA 98237
(360) 853-8368

Gary W. Manca
WSBA #42798
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Petitioner
Mei Xia Huang

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

Federal Cases

Statutes

Rules

Other Authorities

A. INTRODUCTION

Civil forfeiture statutes—a controversial set of laws that allow law-enforcement agencies to seize and sell off personal and real property, often administratively and with no judicial oversight—burden the poor and underrepresented groups. *See* Jasmine Chigbrow, Comment, *Police or Pirates? Reforming Washington's Civil Asset Forfeiture System*, 96 Wash. L Rev. 1147, 1152–69 (2021). These statutes dispossess people of their assets, impoverishing them and removing what ability they might have to successfully reintegrate into society. Compounding this inequity, these statutes create financial incentives for county sheriffs and local police to over-enforce drug laws. This profit motive drives up the incarceration rate and diverts officer time away from the more critical mission of protecting the public from violent crime.

These statutes create special proceedings unknown to the common law—a bedrock principle that Division I of the Court of Appeals did not mention in its published opinion. In a special

statutory proceeding, the time-and-manner requirements for service are jurisdictional and demand strict compliance. Here, the Pierce County Sheriff failed to serve the statutory notice of seizure within 15 days as required by the drug forfeiture statute, RCW 69.50.505. Instead, the trial court erroneously permitted the Sheriff to serve notice by publication—a process that takes several weeks. Yet the Court of Appeals upheld the trial court's order forfeiting the house of petitioner Mei Xia Huang, who has never been charged with committing any crime. To reach that result, Division I adopted a jurisdictional analysis that muddies Washington law on the various forms of a superior court's jurisdiction. And it recast RCW 69.50.505(3)'s strict time-and-manner requirements as niceties, not foundational to the trial court's jurisdiction. This Court should grant review to reconcile the apparent conflict with this Court's cases and with the Court of Appeals' own decision in an earlier case.

Jurisdiction or not, the trial court's forfeiture order also violated the constitutional prohibition on excessive fines. This

case presents a compelling constitutional question about the Excessive Fines Clause's restrictions on a seizing agency seeking to reap civil profit from its enforcement of the criminal drug laws. And Huang's tenant, not her, was suspected of the crime. Still, the Sheriff hoped to seize her house—with an assessed value 50 times the maximum fine—and sell it to fund his department. The trial court did not bat an eye, and the Court of Appeals refused to even decide the issue. This Court should decide the question because the Sheriff overreached in conflict with the constitutional test for excessive fines and because money grabs in drug cases are important but evade review.

B. IDENTITY OF PETITIONER

The petitioner is Mei Xia Huang, the owner of the real property found forfeited in this case.

C. COURT OF APPEALS DECISION

Division I's published opinion affirming the trial court's decision is reported at 506 P.3d 658. The slip opinion ("Op.") is reprinted in the attached appendix at 1–18. Division I denied

reconsideration in an order reproduced in the appendix at 19.

D. ISSUES PRESENTED FOR REVIEW

1. Whether the seizing agency's failure to serve a notice of seizure in strict compliance with the time-and-manner requirements in RCW 69.50.505(3) deprives the trial court of jurisdiction to order forfeiture of a claimant's real property.

2. Whether forfeiture of real property under RCW 69.50.505 in connection with illegal cannabis manufacturing violates the Excessive Fines Clause of the Eight Amendment when the activity has been generally decriminalized and the property's assessed value was 50 times greater than the maximum criminal fine.

E. STATEMENT OF THE CASE

(1) Overview of Civil Forfeiture and RCW 69.50.505

Civil forfeiture is widely unpopular. *See* Emily Ekins, *84% of Americans Oppose Civil Asset Forfeiture*, Cato Institute (Dec. 13, 2016), https://www.cato.org/blog/84-americans-oppose-civil-asset-forfeiture. As part of the war on drugs, states

have employed drug forfeiture statutes to raise revenues for law-enforcement agencies' operating budgets. *See generally* John L. Worrall, *Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement*, 29 J. Crim. Just. 171 (2001). Commentators have criticized Washington's law for its monetary incentives and for agencies' power to "permanently take and keep property from innocent people while providing minimal legal protections." Chigbrow, *supra*, at 1164. In fact, a recent study found that Washington's civil forfeiture laws are among the worst in the country. *See* Lisa Knepper, et al., Inst. for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* (3d ed. 2020), https://ij.org/report/policing-for-profit-3/?state=WA (last visited May 21, 2022).

Washington's drug forfeiture statute authorizes a law-enforcement agency to seek forfeiture of personal and real property. RCW 69.50.505(1). Real property is subject to forfeiture if it is used for illegal drug manufacturing that rises to

the level of a class C felony. RCW 69.50.505(1)(h). An exception applies if the criminal activity occurred "without the owner's knowledge or consent." RCW 69.50.505(1)(i). When property is forfeited and sold, the seizing agency keeps 90% of the net proceeds, and 10% goes to the state general fund. RCW 69.50.505(9)(a), (10). The statute of limitations for drug forfeiture is two years. RCW 4.16.100(2).

Seizure of real property occurs upon the superior court issuing "process." RCW 69.50.505(2). The "'process'" necessary to "'seize[]'" the property under the statute is not a summons, but rather a judicial writ such as a warrant *in rem*. *Tellevik v. Real Prop. Known as 31641 W. Rutherford St.*, 120 Wn.2d 68, 78, 838 P.2d 111, 845 P.2d 1325 (1992) (quoting RCW 69.50.505). Issuance of the writ commences the forfeiture proceeding. *See* RCW 69.50.505(3) ("[P]roceedings for forfeiture shall be deemed commenced by the seizure.").

And the issuance of the writ triggers the statutory service requirements:

> The law enforcement agency under whose authority the seizure was made shall cause notice to be served *within fifteen days following the seizure on the owner of the property seized* and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. *Service of notice of seizure of real property shall be made according to the rules of civil procedure*.

RCW 69.50.505(3) (emphasis added). The statute then gives a claimant to real property up to 90 days after service to make a claim. RCW 69.50.505(5). The claimant is entitled to a hearing within 90 days. *Tellevik*, 120 Wn.2d at 87.

(2) The Sheriff Obtained a Judgment for Forfeiture of Huang's House After Purporting to Serve Her with Notice by Publication After the Statutory 15-Day Notice Period Had Run

Huang owns a house in Federal Way at 713 SW 353rd Place, which she rented to De Qiang Yang. CP 307, 312, 635. On May 20, 2019, Sheriff's deputies searched the property when she was there and found a cannabis grow operation. CP 13, 308. Deputies detained her and found a purse with $20,400 and her Washington State Identification card listing the house's address

as hers. CP 13, 173, 372. No one was ever charged with a crime, and Huang maintained she had not known about the activity. CP 635–36.

On June 3, 2019, the Sheriff's office mailed a notice of seizure of personal property, addressed to Huang at 713 SW 353rd Place. CP 127–31.[1] Five days later, she claimed ownership of personal property taken from the house. CP 133–34.

The Sheriff then sought forfeiture of Huang's real property. On June 25, 2019, the Sheriff filed a summons and complaint in superior court. CP 1–6. On August 9, 2019, that court, on the Sheriff's *ex parte* motion, issued a "Warrant of Arrest in Rem Authorizing Seizure of Real Property." CP 22–23. On August 14, the Sheriff caused the writ, summons, complaint, lis pendens, and other documents to be posted at the house at 713 SW 353rd Place. CP 27. On August 16, 2019, Huang's attorney

[1] The forfeiture of Huang's personal property was adjudicated administratively rather than in a court of competent jurisdiction.

entered a notice of appearance. CP 24–25. On August 22, the Sheriff filed a declaration of due diligence. CP 28–30. But the Sheriff did not personally serve Huang with notice of seizure of the real property. CP 27–30. And the Sheriff did not move for leave to serve her by mail, despite serving by mail the earlier the notice of seizure of her personal property. CP 127–31. After 15 days had passed since the writ's issuance back on August 9, the Sheriff did not seek issuance of a new writ to re-commence the forfeiture proceeding.

Instead, on September 17, 2019, the Sheriff moved *ex parte* for service by publication under RCW 4.28.100(6), which the trial court granted. CP 43–44, 52–54. A week later, Huang filed an answer, which asserted an affirmative defense that she had not been served properly. CP 55–60.

The parties litigated, which ended with the trial court granting summary judgment for the Sheriff in December 2020. CP 654–62. The parties contended that the property was worth between $488,000 and $602,000. CP 638, 658. But the trial court

rejected Huang's defense that the fine was unconstitutionally excessive. CP 657. While Huang's appeal was pending, the two-year mark passed on May 20, 2021.

(3) The Court of Appeals Decided that the Failure to Service Notice Within 15 Days Created No Jurisdictional Problem, and It Declined to Hold Forfeiture of the House Was an Excessive Fine

The Court of Appeals affirmed. After surveying four forms of jurisdiction, Division I concluded that "[t]he trial court had subject matter jurisdiction to hear the civil forfeiture proceedings." Op. at 6. The Court also rejected Huang's argument that the Sheriff's failure to comply with RCW 69.50.505(3)'s service rule meant that the trial court "did not have jurisdiction to hear the civil forfeiture action." Op. at 10. The Court alternatively held that Huang had waived her arguments on personal jurisdiction. Op. at 13. Finally, the Court of Appeals declined to reach the Excessive Fines Clause issue, saying that Huang's briefing had not been detailed enough. Op. at 17.

F. ARGUMENT WHY REVIEW SHOULD BE GRANTED

(1) This Court Should Review Division I's Decision Holding that a Seizing Agency's Compliance with the Drug Forfeiture Statute Is Not Jurisdictional

This petition does not challenge whether the Sheriff's notice satisfied constitutional due process. "[B]eyond due process [requirements]," however, this Court has held that "statutory service requirements must be complied with in order for the court to finally adjudicate the dispute." *Weiss v. Glemp*, 127 Wn.2d 726, 734, 903 P.2d 455 (1995) (quotation omitted)). Even if Huang knew of the warrant *in rem*, "actual notice of the warrant in this case does not excuse the statutory requirements of service of process." *Bruett v. Real Prop. Known as 18328 11th Ave. N.E.*, 93 Wn. App. 290, 302, 968 P.2d 913 (1998). Division I's opinion conflicts with these and other cases, and this important jurisdictional issue warrants review. *See* RAP 13.4(b)(1)–(2), (4).

(a) The Court of Appeals' Interpretation Conflicts with this Court's Precedents on Jurisdiction in Special Statutory Proceedings

Division I's opinion erred at the outset by failing to acknowledge that a drug forfeiture action is a special statutory proceeding. This state's superior courts lack "inherent power" to order civil forfeiture of property used in an illegal cannabis grow operation. *State v. Alaway*, 64 Wn. App. 796, 800, 828 P.2d 591, 593 (1992). "[S]ince colonial times, forfeiture in this country has existed only by virtue of statute." *Id.*; *see also, e.g., Espinoza v. City of Everett*, 87 Wn. App. 857, 865, 943 P.2d 387 (1997) ("The power to order forfeiture derives solely from statute."). The only permissible conclusion is that a drug forfeiture action is a special statutory proceeding.

Division I's oversight on this point created a blind spot in its analysis. The Legislature has plenary power to enact procedural rules for special statutory proceedings. *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 982, 216 P.3d 374 (2009). And those special procedural rules can intersect in important ways with the trial court's jurisdiction. Jurisdiction, as this Court knows, comprises two elements—personal

jurisdiction and subject-matter jurisdiction. *Ronald Wastewater Dist. v. Olympic View Water & Sewer Dist.*, 196 Wn.2d 353, 371, 474 P.3d 547 (2020); *Buecking v. Buecking*, 179 Wn.2d 438, 447, 316 P.3d 999 (2013). Both these jurisdictional elements are implicated by RCW 69.50.505(3)'s service requirements. *See* Op. at 6, 9–10.

The failure to serve a statutory notice in compliance with a special statute deprives the trial court of jurisdiction to decide the parties' dispute. *Sowers v. Lewis*, 49 Wn.2d 891, 894, 307 P.2d 1064 (1957) (citation omitted). This jurisdictional rule applies also in civil actions other than special statutory proceedings. *Weiss*, 127 Wn.2d at 734. And the lack of personal jurisdiction means that the court cannot issue an order that "implicated their rights and interests." *Ronald*, 196 Wn.2d at 371. The order becomes "void." *Id.* Because Division I's opinion conflicts with these principles of personal jurisdiction, it requires review under RAP 13.4(b)(1).

Division I was also incorrect that a trial court has subject-

matter jurisdiction under RCW 69.50.505 despite a seizing agency's untimely service of a statutory notice. Op. at 6, 9–11. In proceedings "where statutes prescribe procedures for the resolution of a particular type of dispute," Washington courts require compliance with those statutory procedures "*before they will exercise jurisdiction over the matter*." *James v. Cnty. of Kitsap*, 154 Wn.2d 574, 588, 115 P.3d 286 (2005) (emphasis added). For example, in residential unlawful-detainer actions, "[s]trict compliance is required for time and manner requirements." *Christensen v. Ellsworth*, 162 Wn.2d 365, 372, 173 P.3d 228, 231 (2007) (citations omitted). "[A]ny noncompliance with the statutory method of process precludes the superior court from exercising subject matter jurisdiction over the unlawful detainer proceeding." *Id.* (citing *Hous. Auth. v. Terry*, 114 Wn.2d 558, 560, 789 P.2d 745 (1990)). This jurisdictional rule applies also to will contests, another type of special statutory proceeding. *In re Estate of Jepsen*, 184 Wn.2d 376, 381, 358 P.3d 403 (2015). And it applies to special statutory

appeals to superior court under the Land Use Petition Act ("LUPA"), ch. 36.70C RCW, *James v. Cnty. of Kitsap*, 154 Wn.2d 574, 587–88, 115 P.3d 286 (2005), and to petitions for judicial review of agency action, *City of Seattle v. Pub. Emp. Relations Comm'n*, 116 Wn.2d 923, 926, 809 P.2d 1377 (1991). Division I's published opinion conflicts with these cases. *See* RAP 13.4(b)(1).

Underscoring the need for this Court's review, this case is not the first time that Division I has refused to apply this Court's jurisdictional rules to drug forfeiture proceedings. *See City of Seattle v. $43,697.18 in United States Currency*, 12 Wn. App. 2d 1047, 2020 WL 1157217, at *6 (2020) ("[The claimant] fails to establish the jurisdiction rule … extends to a forfeiture proceeding."). Division I has thus repeatedly failed to recognize that this jurisdictional rule is, in this Court's words, "well established" as being generally applicable to special statutory proceedings. *James*, 154 Wn.2d at 588. Simply put, complying with a special statutory service rule is a "jurisdictional condition

precedent." *Christensen*, 162 Wn.2d at 372.

All this said, however, there is some confusion about whether a trial court's exercise of subject-matter jurisdiction despite insufficient statutory service is a legal error, or whether it instead rises to the level of a jurisdictional error that can be raised at any time. In *Buecking*, for example, this Court recognized the well-established rule that the Legislature can establish "statutory procedural limits" that become "prerequisites to the court's exercise of its jurisdiction." 179 Wn.2d at 449. A statutory procedural violation is a "legal error," *Buecking* concluded, not an error of enough jurisdictional magnitude that it can be raised for the first time on appeal (or, presumably, a CR 60 motion). *Id.* at 454. But *Buecking* concerned a marital dissolution—a subject matter expressly mentioned in article IV, section 6—whereas a drug forfeiture proceeding is within the constitutional provision for "special cases and proceedings." Art. IV, § 6. This case presents this Court with the chance to clarify this latter category of cases. But

either way, there was error in the lack of timely notice, and that error meant that the trial court should not have exercised jurisdiction. No matter what path this Court takes, Huang is entitled to reversal. *See Jepsen*, 184 Wn.2d at 381 n.5 ("[T]here is no functional difference between a court lacking power to hear the issue based on a jurisdictional statute and a court lacking the opportunity to wield that power based on a litigation precondition: either way, it is unable to adjudicate the issue." (quotation and brackets omitted)).

The Sheriff argued below, however, that a defect in statutory service under RCW 69.50.505(3) is subject to harmless-error analysis. *See* Br. of Resp't at 23. In support of that argument, the Sheriff relied on Division I's unpublished decision in *City of Seattle v. $19,560.48 in United States Currency*, 12 Wn. App. 2d 1045, 2020 WL 1156897, at *5 (2020). But the harmless-error analysis in *$19,560.48* was based on a claimed due-process violation, not a statutory violation with jurisdictional consequences. *See id.* Division I's decision there

conflicts with *Tellevik v. Real Prop. Known as 31641 W. Rutherford St. ("Tellevik II")*, 125 Wn.2d 364, 374, 884 P.2d 1319 (1994) where this Court held that dismissal was the proper remedy for the seizing agency not holding a hearing within 90 days—a remedy confirming that the timing requirements in RCW 69.50.505 matter. And it conflicts with cases like *Ronald*, 196 Wn.2d at 371 ("void"), and *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994) ("void"), that spell out the consequence of a jurisdictional failure. Thus, *$19,560.48* is an unsound decision on the interplay between the statutory procedures in RCW 69.50.505(3) and the superior court's ability to exercise jurisdiction.

The Sheriff argued also that Huang's interpretation of RCW 69.50.505(3) would prevent seizing agencies from obtaining judgments of forfeiture solely because of technical deficiencies in a notice or because of evasion by the property owner. *See* Br. of Resp't at 23–24. Division I seemed to agree, arguing that Huang's interpretation would create a *de facto* 15-

day statute of limitations. Op. at 9. Those concerns are overstated. To see why, look no further than the rental housing industry. The sky has not fallen even though this Court's precedents require strict compliance with the time-and-manner requirements for notices in unlawful-detainer actions. *Christensen*, 162 Wn.2d at 372. And here, the two-year statute of limitations had not run. *See* RCW 4.16.100(2). Indeed, the Sheriff later asked the trial court to either continue the trial date or dismiss the case without prejudice. CP 76, 78. So the Sheriff tacitly knew that he still had time to try again to serve statutory notice within 15 days of issuance of a judicial writ. *Id.*

Division I seemed to read the service-by-publication statute, RCW 4.28.100–.110, as an implied exception to RCW 69.50.505(3)'s 15-day notice period. *See* Op. at 10–12. That reading conflicts with this Court's precedents on statutory interpretation. *See* RAP 13.4(b)(1). While the drug forfeiture statute provides for a manner of service "according to the rules of civil procedure," RCW 69.50.505(3), that is a general

provision. By contrast, the 15-day statutory provision is a specific timing requirement. *See id.* It controls because "[a] general statutory provision"—here, the generality about "the rules of civil procedure"—"must yield to a more specific statutory provision." *Wash. State Ass'n of Cntys. v. State*, 199 Wn.2d 1, 13, 502 P.3d 825 (2022) (quotation omitted). And permitting a manner of service that violates the statute's timing requirement renders the 15-day timing language in RCW 69.50.505(3) a nullity. That result conflicts with the interpretive principle that "all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom Cnty. v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (citations omitted).

Finally, Division I's statutory interpretation failed to require strict compliance. In *Bruett*, the Court of Appeals required strict compliance with RCW 69.50.505's procedural rules. 93 Wn. App. at 293. And in this Court's *Tellevik* cases, this Court narrowly construed RCW 69.50.505 to ensure it satisfied

constitutional due process. *Tellevik II*, 125 Wn.2d at 370, 372. To allow a lackadaisical multi-week process for service by publication would conflict with this Court's narrow construction of the statute.

Of course, there certainly is some tension in this Court's cases on whether strict compliance with statutory service requirements is necessary to trigger the superior court's jurisdiction in special statutory proceedings. *Compare Christensen*, 162 Wn.2d at 372 ("strict compliance"), *with James*, 154 Wn.2d at 587–88 ("substantial compliance"). The implicit conflict between *Bruett*, *Tellevik*, and *Christensen*, on the one side, and *James*, on the other, creates a lack of clarity and is all the more reason for this Court to provide guidance here. *See* RAP 13.4(b)(1)–(2).

This Court should grant review to confirm that the time and manner requirements for service in RCW 69.50.505(3) are jurisdictional.

(b) Division I's Interpretation Conflicts with Another Division I Case that the Court Neglected to Cite in Its Published Opinion

This Court also should grant review under RAP 13.4(b)(2) because Division I's opinion conflicts with another Court of Appeals opinion on the drug forfeiture statute, *Bruett*, 93 Wn. App. 290. In *Bruett*, a man named Sam Feagin pleaded guilty to the crime of possessing marijuana with intent to manufacture or deliver. *Id.* at 293. He and his wife owned a home. *Id.* Law-enforcement agencies sought civil forfeiture under RCW 69.50.505. They "filed a summons, a *lis pendens*, an affidavit in support of probable cause, a motion for an order to show cause, an order to show cause, a motion for issuance of a warrant of arrest *in rem*, and a notice of seizure and intended forfeiture." *Bruett*, 93 Wn. App. at 293. At a hearing, a judge issued the requested warrant of arrest *in rem*. *Id.* at 294. An attorney represented the Feagins at this hearing, and so they had "actual knowledge of the warrant *in rem*." *Id.* But the seizing agencies never served the warrant *in rem* on the Feagins. *Id.*

The action proceeded to a bench trial. The Feagins moved for dismissal on two grounds: "(1) the court lacked jurisdiction of the property because the [seizing agency] failed to serve the warrant of arrest in rem; and (2) the [seizing agency] failed to strictly comply with procedures set forth in RCW 69.50.505." *Id.* at 294. The trial court denied the motion and entered a judgment of forfeiture. *Id.* at 294–95.

The Court of Appeals reversed. The Court concluded that "no due process violation occurred because the Feagins had notice of the intended forfeiture and were afforded a reasonable opportunity to be heard at the probable cause hearing prior to seizure and at trial." *Id.* at 299. Still, the Court held the arrest warrant *in rem* was not served on the Feagins as RCW 69.50.505 required. The Court emphasized "that a seizing agency must *strictly comply* with the service of process requirements in RCW 69.50.505." *Bruett*, 93 Wn. App. at 293 (emphasis added). The Court acknowledged that the statute's 15-day notice requirement could be "formalistic." *Id.* at 301–02. Even so, the 15-day notice

is necessary, the Court held. *Id.* at 302. As in this case, the Feagins had actual notice, but the Court still held that "actual notice of the warrant in this case does not excuse the statutory requirements of service of process." *Id.* The Court did not specify whether this defect affected the trial court's jurisdiction. But it made clear that this defect was a fatal error, reversing the trial court's judgment on that basis and "order[ed] that the property be returned to the Feagins." *Id.* at 302–03.

That analysis is irreconcilable with Division I's published opinion here, which did not cite *Bruett*. The *Bruett* Court's decision makes clear that the statutory 15-day notice requirement is not just fluff, as Division I treated it, but is a mandatory part of the process with which the seizing agency must strictly comply. This Court should grant review under RAP 13.4(b)(2) to address this apparent clash within Court of Appeals precedent.

(c) <u>The Issue Presented Is of Statewide Importance and Should Be Decided by this Court</u>

This Court also should grant review under RAP

13.4(b)(4). Commentators and scholars have found that "victims of forfeiture tend to identify with Black, Indigenous, and People of Color (BIPOC) communities and low-income communities." Chigbrow, *supra,* at 1169 (citing Christine A. Budasoff, *Modern Civil Forfeiture Is Unconstitutional*, 23 Tex. Rev. L. & Pol. 467, 480 (2019)). One theory is that "civil forfeiture significantly impacts BIPOC communities through its application in the highly racialized 'War on Drugs.'" *Id.* at 1171 (footnote omitted). Drug forfeitures not only flame the drug war by creating incentives to aggressively enforce drug laws, but also put rocket fuel on that fire. That is because the "net proceeds" that go to the seizing agency—a 90% cut—must be used "exclusively for the expansion and improvement of controlled substances related law enforcement activity." RCW 69.50.505(10). It is an unvirtuous cycle. This case's statewide importance is further underscored by RCW 69.50.505(9)(a). That provision diverts 10 percent of the net proceeds of drug forfeitures to the state's general fund. Because these strong profit

motives lead to more of these proceedings—and to more of these disparate impacts—the strict enforcement of the statute's procedural safeguards is a broadly important issue.

(d) Division I's Alternative Holding of Waiver Does Not Weigh Against Review

Division I ruled in the alternative that Huang waived her affirmative defenses based on insufficient service. Op. at 13–14. That alternative holding does not weigh against this Court's review, for two reasons. First, Division I's decision remains a published opinion. With that status, Division I's legal pronouncements on jurisdiction and the drug forfeiture statute are binding law even if this Court would find that Division's holding on waiver was correct. *See, e.g.*, *West v. Port of Tacoma*, 199 Wn. App. 1035, 2017 WL 2645665, at *10 (2017) (unpublished) ("Alternative holdings are not dicta, but instead provide binding precedent." (citation omitted)). This Court should not let the decision stand unreviewed under RAP 13.4(b) just because an alternative holding in the decision supplies an

adequate ground to sustain the result. Division I's published opinion eviscerates the protections of the statute's 15-day notice requirement for all people, not just Huang, who face a forfeiture action. Consistency in this state's law—especially on an issue of this magnitude—is more important than this case's individual outcome. *See* RAP 13.4(b)(1)-(2), (4). Second, Division I's decision on waiver was error if this Court grants review and holds that insufficient statutory service in a drug forfeiture proceeding deprives the trial court of subject-matter jurisdiction. *See* RAP 2.5(a)(1); *Jepsen*, 184 Wn.2d at 380, 382 n.7 (holding that insufficient service in a special statutory proceeding was not waivable under the Civil Rules). For these reasons, this Court should grant review despite—and even because of—the lower court's decision on waiver.

(2) <u>This Court Should Grant Review to Decide Whether a Civil Forfeiture of Real Property Worth More than 50 Times the Maximum Monetary Fine in a Cannabis Case Is an Unconstitutionally Excessive Fine</u>

Under RAP 13.4(b)(1), (3), and (4), this Court should

review the forfeiture's compatibility with the Eighth Amendment's prohibition against "excessive fines." This constitutional limitation "guards against abuses of government's punitive or criminal-law-enforcement authority." *Timbs v. Indiana*, __ U.S. __, 139 S. Ct. 682, 686, 203 L. Ed. 2d 11 (2019). This limitation, which also appears in article I, section 14 of the Washington constitution, applies to civil property forfeitures. *Austin v. United States*, 509 U.S. 602, 609–10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993); *Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 718–19, 497 P.3d 871 (2021), *review denied*, 199 Wn.2d 1003, 504 P.3d 828 (2022).

This case's circumstances highlight two urgent problems. First, when the trial court does not find that the property owner bought the house with the proceeds of criminal activity, can the entire house be forfeited when the maximum criminal fine is $10,000? Second, does the legalization of cannabis manufacturing weigh against forfeiture of an entire home?

(a) The Trial Court's Judgment of Forfeiture Conflicts with the Test for Unconstitutionally Excessive Fines

The tests for unconstitutionally excessive fines under the state and federal constitutions are "coextensive." *City of Seattle v. Long*, 198 Wn.2d 136, 159, 493 P.3d 94 (2021). The first step is to determine whether the fine was punishment; the second is whether the fine was excessive. *United States v. Bajakajian*, 524 U.S. 321, 328, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). The reviewing court determines the fine's constitutionality *de novo*. *Id.* at 336–37.

Punishment: Even if a civil fine has remedial purposes, it is still "punishment" subject to the Excessive Fines Clause if it "can only be explained as serving in part to punish." *Austin*, 509 U.S. at 610. This Court has already held that forfeiture under RCW 69.50.505 is punitive, at least when not based on assets "traceable to a criminal violation." *State v. Clark*, 124 Wn.2d 90, 103, 875 P.2d 613 (1994), *overruled on other grounds by State v. Catlett*, 133 Wn.2d 355, 945 P.2d 700 (1997). That conclusion

is right, because forfeiture under RCW 69.50.505 is meant to "penalize individuals who participate in [activities involving] controlled substances." *Deeter v. Smith*, 106 Wn.2d 376, 378, 721 P.2d 519 (1986). The Legislature itself has declared that "the forfeiture of real assets … will provide a significant *deterrent* to crime." Laws of 1989, ch. 271, § 211 (emphasis added). And deterrence, the U.S. Supreme Court recognizes, "has traditionally been viewed as a goal of *punishment*." *Bajakajian*, 524 U.S. at 329 (emphasis added). So the forfeiture here "passes" the first test.

Excessiveness: "The touchstone … is the principle of proportionality." *Bajakajian*, 524 U.S. at 334. Under this principle, "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.* [2] The proportionality test includes five

[2] Before *Bajakajian*, the Court of Appeals announced a test for excessiveness based on "instrumentality and proportionality factors." *Tellevik v. Real Prop. Known as 6717 100th St. S.W.*, 83 Wn. App. 366, 374, 921 P.2d 1088 (1996).

factors: "(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation … (4) the extent of the harm caused," *State v. Grocery Mfrs. Ass'n ("GMA")*, 195 Wn.2d 442, 476, 461 P.3d 334 (2020) (quotation omitted), and (5) "a person's ability to pay," *Long*, 198 Wn.2d at 173.

Factors one, three, and four show the fine was excessive. The maximum criminal fine was $10,000. *See* RCW 69.50.401(2)(c); RCW 9A.20.020(1)(c). Given that low amount, the forfeiture of a home worth between $488,000 and $602,000 was grossly disproportionate to the other monetary penalties that the Legislature imposed. CP 658. Federal courts have found forfeiture of a home excessive when similarly disproportionate. *See Clark*, 124 Wn.2d at 104 (collecting cases). Perhaps the criminal activity alleged here—illegal cannabis manufacturing—could have been found more harmful to the public in the past. But since this state's legalization of cannabis, the gravity of the offense is much less. The crime is now more about evading

regulation than about creating supply of a drug (there is already ample supply in the legal market).

The revenue-raising function of drug forfeitures confirms that the loss of an entire house is grossly disproportionate in these circumstances. "[T]his court has recognized that punitive fines should not be sought or imposed as 'a source of revenue.'" *Long*, 198 Wn.2d at 172 (quoting *GMA*, 195 Wn.2d at 476) (internal quotations omitted). But the forfeiture of real property under RCW 69.50.505 is meant to do just that. *See* Laws of 1989, ch. 271, § 211 (finding that "the forfeiture of real assets … will provide a revenue source"). Of course, in *Clark*, this Court upheld forfeiture of a house and a motorhome when the owner's equity was $30,921 and the cost of the criminal prosecution and investigation was $26,000. 124 Wn.2d at 103. But here, the trial court made no finding of a similarly proportionate remedial purpose of the substantial forfeiture in this case. CP 658–59.

The forfeiture was unconstitutional.

(b) The Excessive Fines Clause's Protections Against Civil Forfeitures Are of Statewide Concern

This Court has an important responsibility under RAP 13.4(b)(4) to oversee the conduct of the executive and legislative branches' exploitation of RCW 69.50.505. *See Timbs*, 139 S. Ct. at 689 ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit." (emphasis added)). That is especially true because the Excessive Fines Clause has a proud history of guarding against "draconian fines" used to enforce "racial hierarchy." *Id.* at 688. The disproportionate impact of the war on drugs suggests that this Court should scrutinize law-enforcement agencies' executions of disproportionate fines in the guise of civil forfeiture. And the decriminalization of cannabis manufacturing raises an important statewide question about the proportionality of seizing an entire house for forfeiture.

(c) Division I Erroneously Held that Huang Inadequately Briefed this Argument

Division I criticized Huang's briefing on the excessive-

fines issue, asserting that "she neither cites, much less applies, the test [*Long*] pronounced." Op. at 17. That criticism is unfair because *Long* did not "pronounce[]" a new test that was relevant here. Op. at 17. It mostly said that it would apply the same test as the U.S. Supreme Court's cases under the Eighth Amendment, the most recent of which was *Timbs*, 139 S. Ct. 682. The only new ground in *Long* was its concern with the person's ability to pay, *Long*, 198 Wn.2d at 173, which was a defense that Huang did not raise. So Huang can hardly be blamed for relying on a federal precedent. *See* Br. of Appellant at 37–40 (discussing and applying *Timbs*). The Sheriff briefed the issue too, and the trial court's opinion was detailed (though wrong). *See* Br. of Resp't at 32–35; CP 656–59. All that was enough, and Division I violated RAP 1.2(a) in ruling otherwise.

Either way, this Court should review this issue because it is an important constitutional question that is likely to recur but evade review because most forfeitures occur administratively outside of court oversight. *See* RCW 69.50.505(5).

G. CONCLUSION

For these reasons, this Court should grant review.

This document contains 5,764 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 23rd day of May 2022.

Respectfully submitted,

/s/ Gary W. Manca
Gary W. Manca, WSBA #42798
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Billie R. Morelli, WSBA #36105
Billie R. Morelli, PLLC
9805 Sauk Connection Road
Concrete, WA 98237
(360) 853-8368

Attorneys for Petitioner
Mei Xia Huang

APPENDIX

FILED
3/21/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PAUL J. PASTOR, JR., PIERCE COUNTY SHERIFF, Respondent/Cross-Appellant, v. REAL PROPERTY COMMONLY DESCRIBED AS 713 SW 353RD PLACE, FEDERAL WAY, KING COUNTY, WASHINGTON, and all appurtenances and improvements thereon, Defendant In Rem, Interested Party: MEI XIA HUANG, Appellant/Cross-Respondent.	No. 82262-4-I DIVISION ONE PUBLISHED OPINION

HAZELRIGG, J. — The Pierce County Sheriff moved to seize the Defendant Real Property, commonly described as 713 SW 353rd Place, Federal Way, Washington, after his department served a search warrant there and discovered a sophisticated illegal marijuana grow operation. Mei Xia Huang intervened as an interested party in the civil forfeiture proceedings and claimed ownership of the Defendant Real Property. After Huang backed out of a settlement offer she had proposed, the trial court ultimately granted summary judgment for the Pierce County Sheriff and ordered forfeiture. Huang raises numerous constitutional challenges in her appeal and the Pierce County Sheriff cross-appeals the trial

court's denial of its motion to enforce Huang's settlement agreement under CR 2A. Finding no merit in Huang's various claims, we affirm the summary judgment and forfeiture order. Accordingly, we need not reach the cross-appeal.

FACTS

Officers from the Pierce County Sheriff Department (PCS) executed a search warrant on May 20, 2019 at the Defendant Real Property in Federal Way, commonly described as 713 SW 353rd Place, where law enforcement discovered that the home there had been converted to support and contain a sophisticated marijuana grow operation. Mei Xia Huang was on the property at the time the warrant was executed and had in her possession $20,400 in cash and her Washington State Identification Card with the address of the Defendant Real Property listed on it.

On June 3, 2019 PCS sent a "Notice of Seizure and Intended Forfeiture" of personal property to Huang by "regular and certified U.S. Mail" at the Defendant Real Property address. On June 8, 2019, Huang responded through her attorney and asserted "ownership of all" the items "seized from our client's residence." On July 25, 2019, PCS commenced an in rem action by filing its "Summons and Notice of Intended Seizure and Forfeiture" and "Complaint of Forfeiture in Rem" and moved "For Issuance of Warrant for Arrest in Rem." PCS filed a lis pendens on the Defendant Real Property on July 30, 2019, naming Huang as "Grantor" whose "right, title and interest is intended to be affected."

On August 9, 2019, the trial court issued a "Warrant of Arrest in Rem Authorizing Seizure of Real Property" and then five days later on August 14, the

Warrant, Summons, Complaint, Lis Pendens and other documents were posted "in a conspicuous place" on Defendant Real Property. Two days following the posting of the documents, Huang's attorney entered a notice of appearance on her behalf. A "Declaration of Due Diligence" was filed by PCS on August 22, 2019, which indicated Huang could not be located for purpose of personal service. On September 5, 2019, a PCS deputy went to the Defendant Real Property and, finding no person in possession at that time, taped a copy of the warrant for arrest in rem to the front door.

On September 17, 2019, PCS moved the trial court to authorize service by publication under RCW 4.28.100(6), which was granted the following day. Less than a week later, Huang filed an "Answer and Affirmative Defenses," which argued Huang, as defendant in rem and interested party, had not been served properly under the law. At the end of September, PCS moved to continue the trial date and other litigation deadlines. On October 8th, Huang filed written opposition to the continuance, but it was granted over her objection on October 17, 2019. A little over a week after the continuance was granted, PCS served Huang's counsel with its first set of interrogatories and requests for production, some of which went to Huang's affirmative defense that she had not been properly served under the relevant law. Though a CR 26(i) conference was required due to Huang's repeated delay in responding, she did eventually file her responses on January 10, 2020. However, Huang failed to provide any information regarding her assertions as to lack of service; noting only that she found some of the interrogatories and requests for production that went to such inquiry objectionable.

On January 23, 2020, PCS sought to serve Huang at the California address listed on her vehicle registration. Then in April 2020, PCS moved for summary judgment and order of forfeiture and, on May 1, 2020, moved to compel discovery under CR 37 based on her continued avoidance of her discovery obligations. Two days after Huang responded to PCS' summary judgment motion, and the day before the hearing on its CR 37 motion[1], Huang made a settlement offer to PCS. The parties then engaged in an exchange of counteroffers over email until Huang made a settlement offer that was acceptable to PCS. PCS clearly communicated its acceptance of Huang's offer to her counsel via email that same day. The court was advised that an agreed resolution had been reached and PCS moved to strike the hearing on its motion for summary judgment, as well as the trial date. But, less than a week later, Huang reneged on the offer and refused to sign the final settlement agreement prepared by PCS.

In July 2020, PCS moved for summary judgment to enforce the settlement agreement under CR 2A, contract principles, and equitable estoppel. Huang did not dispute the records of her settlement negotiations nor the applicability of equitable estoppel to the issue before the court, but claimed that no contract existed and further asserted that the agreement was unenforceable as an impermissible excessive fine under the Eighth Amendment to the United States Constitution. Huang's declaration regarding the matter admitted that she voluntarily authorized her attorney to make the counteroffer, but then

[1] PCS' motion to compel was granted over Huang's opposition on May 11, 2020.

acknowledged that after her offer was accepted by PCS, she simply "decided I did not want to do it" and refused to sign.

In August 2020, citing the negotiation emails, the trial court "determine[d] that on June 3, 2020, Plaintiff and interested party Mei Xia Huang entered into a settlement agreement that is binding under contract law and CR 2A," and that the "terms of that agreement are stated in the email sent by [PCS' counsel] on June 3, 2020, at 4:08 p.m." and "[n]o reasonable fact finder could find that Plaintiff and Huang did not enter into that agreement." But the trial court also denied enforcement of the agreement based on Huang's argument that the agreement violated her rights under the Eighth Amendment and because PCS had not established Huang knowingly, voluntarily and intelligently waived those rights.

PCS sought discretionary review of that ruling in this court and while that motion was pending here, PCS renoted the hearing in the trial court on its summary judgment motion on the merits which it had previously stricken in light of the settlement agreement. The motion for summary judgment was granted in December 2020 and awarded PCS a final order of forfeiture because "Huang's brief denial of knowledge is thoroughly contradicted by the objective, circumstantial evidence that demonstrates her knowledge" that the property was being used for drug purposes and because she had "not carried her burden to demonstrate an Eighth Amendment violation."

Huang timely appealed.

ANALYSIS

I. Overview of Jurisdiction

We begin our analysis with a cursory overview of types of jurisdiction in light of the framing of some of Huang's challenges on appeal and the parties' conflation of terminology in briefing. "'Jurisdiction is the power and authority of the court to act.'" ZDI Gaming Inc. v. State ex rel. Wash. State Gambling Comm'n, 173 Wn.2d 608, 617, 268 P.3d 929 (2012) (internal quotation marks omitted) (quoting Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 315, 76 P.3d 1183 (2003).

A. Subject Matter Jurisdiction

Subject matter jurisdiction is the authority of a court to hear and decide the type of controversy at issue. Banowsky v. Guy Backstrom, DC, 193 Wn.2d 724, 731, 445 P.3d 543 (2019). If a tribunal lacks subject matter jurisdiction, the implication is that it does not have authority to decide the claim at all or order any type of relief. Id.

> Because the absence of subject matter jurisdiction is a defense that can never be waived, judgments entered by courts acting without subject matter jurisdiction must be vacated even if neither party initially objected to the court's exercise of subject matter jurisdiction and even if the controversy was settled years prior.

In re Marriage of McDermott, 175 Wn. App. 467, 479, 307 P.3d 717 (2013). When a court acts without subject matter jurisdiction the consequences of that action are "draconian and absolute." Cole v. Harveyland, LLC, 163 Wn. App. 199, 205, 258 P.3d 70 (2011). We review the question of whether a court had subject matter jurisdiction de novo. McDermott, 175 Wn. App. at 479. The trial court had subject matter jurisdiction to hear the civil forfeiture proceedings.

B. Original Jurisdiction

Original jurisdiction is related to subject matter jurisdiction. Original jurisdiction means an action may be filed in a particular court. Ledgerwood v. Lansdowne, 120 Wn. App. 414, 420, 85 P.3d 950 (2004). Our state constitution vests the superior court with original jurisdiction "in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court." WASH. CONST. art IV, § 6. "The constitution thus gives the superior courts universal original jurisdiction, from which the legislature is empowered to 'carve out' the limited jurisdiction of inferior courts." Ledgerwood, 120 Wn. App. at 419 (quoting Young v. Clark, 149 Wn.2d 130, 134, 65 P.3d 1192 (2003)). RCW 2.08.010 grants original jurisdiction to the superior courts in all cases in which the value of the property in controversy is in excess of three hundred dollars. This statute is intended to codify article IV, section 6 of the Washington Constitution. City of Walla Walla v. $401, 333.44, 164 Wn. App. 236, 248, 262 P.3d 1239 (2011). Original jurisdiction to hear this civil forfeiture matter was properly with the superior court.

C. Personal Jurisdiction

Most relevant to this case is personal jurisdiction, also known as specific jurisdiction or general jurisdiction. See State v. LG Elec's, Inc., 185 Wn. App. 394, 411, 341 P.3d 346 (2015). A challenge on this basis is waived if not timely asserted. Modumetal, Inc. v. Xtalic Corp., 4 Wn. App. 2d 810, 836, 425 P.3d 871 (2018). "Specific jurisdiction, which since 'has become the centerpiece of modern jurisdictional theory,' requires that suit arise out of or relate to the defendant's

contacts with the forum." LG Elec's, Inc., 185 Wn. App. at 411 (internal quotation marks omitted) (quoting Daimler AG v. Bauman, 571 U.S. 117, 127–28, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014)).

> General jurisdiction, which since "[has played] a reduced role," permits the exercise of personal jurisdiction over a nonresident defendant where the defendant's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities."

Id. (alterations in original) (internal quotation marks omitted) (quoting Daimler, 571 U.S. at 128). We review claims with regard to personal jurisdiction de novo. Failla v. FixtureOne Corp., 181 Wn.2d 642, 649, 336 P.3d 1112 (2014). Huang's assignment of error as to personal jurisdiction will be analyzed in detail below.

D. In rem Jurisdiction

"In rem jurisdiction is far more analogous to personal jurisdiction than to subject matter jurisdiction." City of Walla Walla, 164 Wn. App. at 249 (internal quotation marks omitted). "[S]eizure of the res is a prerequisite to the initiation of [in rem] forfeiture proceedings [because] that property must be seized to fix and preserve in rem jurisdiction." Id. at 250. This is particularly true with movable personal goods since it would be impossible to determine the competent forum until seizure of such property is achieved. Id. Here, in rem jurisdiction was obtained when PCS posted the seizure notice on the Defendant Real Property on June 3, 2019.

II. Challenges to Jurisdiction and Due Process

A. Notice Provisions of RCW 69.50.505

Huang argues that because PCS failed to personally serve her within fifteen days of the seizure of the property, the trial court lacked jurisdiction to render judgment on the matter. This is incorrect. The relevant notice provision is set out in RCW 69.50.505(3), which states in relevant part:

> The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(Emphasis added). This statute explicitly contemplates either personal service or substitute service of the interested party.

Further, RCW 69.50.505(3) is not focused on jurisdiction as Huang posits, which would essentially function as a statute of limitations. Instead, RCW 69.50.505(3) serves to establish a framework for two purposes: timely notice and resolution of the question of forfeiture. First, the 15-day notice is aimed at providing

notice to the person at risk of losing the property at issue, expressly including by means of substitute service. Second, RCW 69.50.505, when read as a whole, also seeks to ensure timely disposition of forfeiture matters so that the seizing agency is not able to encumber the property in question longer than necessary for judicial review.

Here, Huang seeks to use RCW 69.50.505(3) to argue the trial court could not adjudicate the matter at hand because she was not personally served within 15 days of the seizure of her property such that the court did not have jurisdiction to hear the civil forfeiture action. We reject this claim as a mischaracterization of the statute. After the seizure on August 9, PCS repeatedly attempted personal service. A "Declaration of Due Diligence" was filed by PCS on August 22, 2019, which indicated Huang could not be located for purpose of personal service. On September 18, 2019, PCS received approval from the court[2] to proceed with substitute service by publication as authorized by the rules of civil procedure. CR 4(d)(3); RCW 69.50.505(3) ("Service of notice of seizure of real property shall be made according to the rules of civil procedure"). Substitute service encompasses service by publication pursuant to RCW 4.28.100. CR(4)(d)(3). The statute contemplates service by weekly publication in a newspaper for six consecutive weeks. RCW 4.28.110. It could never be completed within 15 days. Clearly, the legislature was not treating service to be completed within 15 days as jurisdictional,

[2] In her Notice of Appeal, Huang includes the September 18, 2019 Order Granting Motion for Service by Publication. She asserts error as to this order based on PCS' failure to comply with King County Local Court Rule 7(b)(7). While the record does demonstrate that PCS failed to comply with this rule by not appraising the judicial officer who signed the September 18 order of the fact that the same motion had been denied by another judge on September 12, this error is harmless in light of the other methods of service completed by PCS and, as discussed in Section C below, Huang's affirmative conduct which constitutes waiver.

when the party to be served could not be found within the state and publication was required. PCS complied with the notice provision of RCW 69.50.505(3).

B. Due Process

Huang argues on numerous grounds that she was denied due process and ultimately weaves that assertion into her claim that the trial court did not have jurisdiction to render judgment. All of her arguments as to due process are rooted in her assertion that she was not provided proper notice under the statutory procedures for forfeiture. However, as explained above, service here was proper under the statute. "[D]ue process generally affords an individual notice and an opportunity to be heard when the government deprives the individual of a life, liberty, or property interest." Tellevik v. Real Prop. Known as 31641 W. Rutherford St. Located in City of Carnation, Wash, 125 Wn.2d 364, 370–71, 884 P.2d 1319 (1994).

We adopt our reasoning in two recent unpublished cases involving almost identical arguments to those Huang now presents.[3] The two cases which provide us sound reasoning on the matter before us are City of Seattle v. $43,697.18 in United States Currency, No. 79902-9-I (Wash Ct. App. March 9, 2020) (unpublished) https://www.courts.wa.gov/opinions/pdf/799029.pdf; and City of Seattle v. $19, 560.48 in United States Currency, No. 79002-1-I (Wash Ct. App. March 9, 2020) (unpublished) https://www.courts.wa.gov/opinions/pdf/790021.pdf. In each of these forfeiture cases, we rejected similar argument regarding

[3] While we generally do not cite unpublished cases, under GR 14.1(c), we may do so when "necessary for a reasoned decision."

challenges to service. We reinforced that under RCW 69.50.505(3) notice of seizure of personal property "may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested." $19, 560.48, slip op. at 11; $43, 697.18, slip op. at 16 (emphasis added). Most fundamentally, we reinforced that due process generally includes notice and opportunity to be heard, and minor errors in procedure do not necessarily rise to the level of a violation of due process. $19, 560.48, slip op. at 11; $43, 697.18, slip op. at 5–6.

PCS sent a "Notice of Seizure and Intended Forfeiture" of personal property to Huang on June 3, 2019 by "regular and certified U.S. Mail" at the Defendant Real Property address, which she used as her home address in various contexts including her Washington State Identification Card and her son's childcare enrollment records. Her attorney asserted a claim of ownership on behalf of Huang five days later. On August 14, 2019, the Warrant, Summons, Complaint, Lis Pendens and other documents were posted "in a conspicuous place" on Defendant Real Property. Two days later, Huang's counsel entered a notice of appearance.

The procedural history of this case demonstrates that service was effectuated as anticipated under RCW 69. 50.505(3), "by any method authorized by law or court rule," consistent with our holding in $19, 560.48, slip op. at 11–12. Accordingly, we reject Huang's claims of due process violations.[4]

[4] Huang attempts to frame her challenge to two separate continuances granted by the trial court as additional violations of due process. While she objected to PCS' September 30, 2019 motion for continuance, thus preserving the issue for appeal, the record does not demonstrate that she objected to the second continuance that the trial court granted on November 23, 2020.

First, we review rulings on requests for continuance for abuse of discretion. City of Bellevue v. Vigil, 66 Wn. App. 891, 892, 833 P.2d 445 (1992). Huang fails to engage in the proper, and more deferential, standard of appellate review on these assignments of error. Next, despite her failure to

C. Waiver

As an additional matter, any arguments with regard to personal jurisdiction and in rem jurisdiction over the Defendant Real Property have been waived as Huang clearly appeared through counsel, availed herself of the litigation and substantively engaged throughout the entire case. While Huang did assert failure of service of process as an affirmative defense in her September 24, 2019 Interested Party's Answer and Affirmative Defenses, she neglected to provide any discovery to opposing counsel as to this issue, such that PCS sought a discovery conference under CR 26(i). When she finally did respond to PCS' interrogatories and requests for production, she alternately objected and failed to provide complete responses. After several more months of avoidance and evasiveness by Huang, PCS filed a motion to compel on May 1, 2020, which was granted on May 11. If, after having appeared via counsel, a party raises an affirmative defense, it is more than reasonable to expect that they will comply with the applicable discovery rules so that the litigation may proceed.

Huang attempts to hide behind the shield of a claim of failure of service of process, but the record demonstrates that the trial court found that she was the true owner of the Defendant Real Property and that she listed that address as her home. The record strongly suggests that she evaded service, much as she evaded answering any questions as to her affirmative defense on that issue. To now raise

---

object in the trial court and preserve the issue for appeal, she invites us to reach the ruling on the November continuance as a manifest constitutional error under RAP 2.5(a). However, she again fails to engage with the proper test under the RAP for demonstrating that this was, in fact, a manifest error affecting a constitutional right. Finally, it is not lost on this panel that the November continuance was necessitated by Huang's last minute decision to back out of the settlement offer that she voluntarily proposed to PCS. Because she fails to engage with the proper appellate standard of review for these assignments of error, we decline to reach them.

such argument and claim it as reversible error, despite the fact that she both appeared through counsel and proceeded throughout the case in its entirety to the point that she even proposed and nearly entered a CR 2A settlement, is somewhat incredible as it is precisely her continued litigation that undercuts her ability to claim prejudice in any form. By Huang's own actions, we can conclude that all of her service of process arguments are waived as a matter of law. See Lybbert v. Grant County, 141 Wn.2d 29, 38–39, 1 P.3d 1124 (2000) (waiver can occur "if the defendant's assertion of the defense is inconsistent with the defendant's previous behavior.").[5]

III. Equal Protection

Huang next argues that the civil forfeiture statute, RCW 69.50.505, violates the equal protection clause in so far as it allows forfeiture of property for marijuana related violations despite her assertion that "the substance is not so dangerous that it can't be safely manufactured, sold, possess and consumed by adults in Washington." As PCS correctly points out in its response brief, Huang's argument is based on a flawed premise:

> The law [RCW 69.50.505,] however does not deem marijuana as too "dangerous" to be "safely manufactured, sold, possessed, and consumed"—it instead requires such manufacture, sale, possession and consumption to be regulated. The classification at issue is the regulation of production, possession and sale of marijuana in certain

[5] Again, as to Huang's appeal of the September 18, 2019 Order Granting Motion for Service by Publication and assertion of error based on PCS' failure to comply with King County Local Court Rule 7(b)(7), this error does not impact our determination that Huang waived the affirmative defense of failure of service, either personal or substitute, by way of appearance through counsel and her extensive engagement with the litigation, including her tactical avoidance of compliance with discovery. Even if we accepted her contention that the order granting PCS' Motion for Service by Publication should be reversed based on this error, it would have no practical impact on our ultimate conclusions on her various challenges.

> instances and its discouragement in others. See e.g. RCW 69.50.325 (requiring licensing to avoid illegality).

(Emphasis in original).

Huang properly acknowledges that the correct constitutional standard for the case at hand is rational basis. "Under the rational basis test the challenged law must be rationally related to a legitimate state interest. The legislation will be upheld unless the classification rests on grounds wholly irrelevant to the achievement of a legitimate state objective." Seeley v. State, 132 Wn.2d 776, 795, 940 P.2d 604 (1997). We presume legislative acts to be constitutional and do not find otherwise unless established as such beyond a reasonable doubt. Id. "The rational basis test requires only that the means employed by the statute be rationally related to legitimate state goals, and not that the means be the best way of achieving that goal." Id. In reviewing whether a rational relationship exists, we may assume any set of facts necessary which may be reasonably assumed. Id. "In order to defeat the legislation, the [challenger] must show, beyond a reasonable doubt, that no state of facts exists or can be conceived sufficient to justify the challenged classification, or that the facts have so far changed as to render the classification arbitrary and obsolete." State v. Smith, 93 Wn.2d 329, 337, 610 P.2d 869 (1980).

Here, Huang fails to even engage with this standard such that she can meet her burden. As PCS points out, there are numerous reasons the State may have for the continued designation of marijuana as illegal under RCW 69.50. In particular, valid State concerns exist as to the process of cultivation and manufacture of marijuana, including regulation of the chemicals utilized which

could harm an individual. This is of critical concern here in light of the fact that preliminary evidence gathered by PCS upon execution of the search warrant demonstrated that two chemicals it alleges are banned in marijuana cultivation in our state were used in the grow operation on the Defendant Real Property. As Huang fails to meet her burden, we need not assume any set of facts beyond those presented to the trial court to conclude that the State may have legitimate goals in enacting the statute at issue.

IV. Excessive Fines

Huang next broadly asserts that the forfeiture of her property violates the Eighth Amendment to the United States Constitution. However, as with her other constitutional claims on appeal, and as the trial court expressly determined in the summary judgment proceedings, Huang does not carry her burden in mounting this constitutional challenge.

In order to consider a challenge based on the Eighth Amendment's excessive fines clause, a reviewing court must first determine whether the sanction at issue is a "fine," only then moving to examination of excessiveness. City of Seattle v. Long, 198 Wn.2d 136, 163, 493 P.3d 94 (2021). "If a sanction is partially punitive, it falls within the excessive fines clause." Id. While Huang fails to engage with this threshold inquiry, we recently relied upon Long and cases from the United State Supreme Court to conclude that civil asset forfeitures are punitive for purposes of excessive fines analysis. See Jacobo Hernandez v. City of Kent, 19 Wn. App. 2d 709, 718, 497 P.3d 871 (2021).

Huang only presents a cursory argument in her opening brief that appears to suggest that the seizure of the Defendant Real Property was excessive based on the comparative value of Huang's equity in the property in relation to the value of the illegal marijuana grow and the maximum fine that can be imposed pursuant to a conviction for a class C felony under Chapter 69.50 RCW. Our Supreme Court's opinion in Long, clarifying the test for excessive fines in Washington, was issued in August 2021 roughly two months before Huang filed her reply brief in this case, but she neither cites, much less applies, the test it pronounced. While she does provide some discussion of the facts in Timbs v. Indiana, __ U.S. __, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019), she neither sets out the test the court utilized in that case, nor applies it to the facts of her own. In the absence of any engagement by Huang with the proper legal standard, our inquiry as to this issue ends here. See Prostov v. Dept. of Licensing, 186 Wn. App. 795, 823, 349 P.3d 874 (2015) ("The failure of an appellant to provide argument and citation of authority in support of an assignment of error precludes appellate consideration of an alleged error.").

V. Challenge to Decision Explaining Order Granting Summary Judgment and Order of Forfeiture

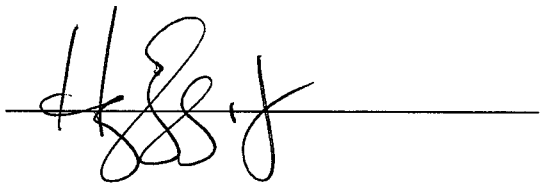
Finally, Huang expressly includes in her Notice of Appeal a separate decision that accompanied the trial court's Order Granting Summary Judgment and Order of Forfeiture and, in her opening brief, assigns error to a number of the trial court's reasons set out in that decision. Though Huang claims these are findings of fact, under the posture of summary judgment such is not the case. We construe these explanations as legal conclusions underlying the trial court's

ultimate ruling. Here again, Huang fails to engage in the proper standard of review for her challenges on appeal, rather indicating that these assignments of error are captured in her general assertion that "the forfeiture of Huang's property in it's [sic] entirety is an excessive fine that violates the Eighth Amendment." As with her attacks on the continuances which she sought to cloak in a higher constitutional standard, Huang's failure to properly frame her arguments on appeal or apply the relevant standard of review is fatal to her claim as to these assignments of error.

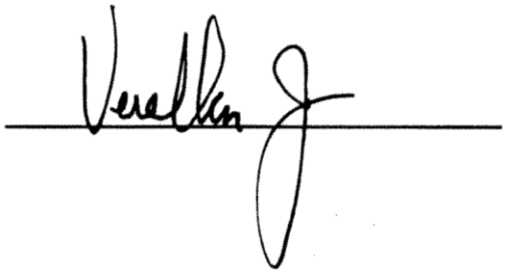
VI. Cross-Appeal & Attorney Fees

Because we find no error in the various trial court rulings challenged in Huang's direct appeal[6] and affirm them, we need not reach PCS' cross-appeal of the court's denial of its motion to enforce the settlement agreement. Further, Huang requests fees on appeal under RCW 69.50.505(6), but given that she has not prevailed in her appeal, we decline to award fees.

Affirmed.



WE CONCUR:



[6] In her Notice of Appeal, Huang specifically lists the August 8, 2019 Warrant of Arrest in rem Authorizing Seizure of Real Property as one of the challenged orders. However, because she does not assign error in her opening brief to the issuance of this warrant by the trial court, we decline to review it.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PAUL J. PASTOR, JR., PIERCE COUNTY SHERIFF, Respondent/Cross-Appellant, v. REAL PROPERTY COMMONLY DESCRIBED AS 713 SW 353RD PLACE, FEDERAL WAY, KING COUNTY, WASHINGTON, and all appurtenances and improvements thereon, Defendant In Rem, Interested Party: MEI XIA HUANG, Appellant/Cross-Respondent.	No. 82262-4-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Mei Xia Huang, filed a motion for reconsideration of the opinion filed on March 21, 2022. A majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

For the Court:

Judge

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the ***Petition for Review*** in Court of Appeals, Division I Cause No. 82262-4-I to the following:

Daniel R. Hamilton
Deputy Prosecuting Attorney
955 Tacoma Avenue S., Suite 301
Tacoma, WA 98402

Billie R. Morelli, WSBA #36105
Billie R. Morelli, PLLC
9805 Sauk Connection Road
Concrete, WA 98237

Original E-filed via appellate portal:
Court of Appeals, Division I
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 23, 2022 at Seattle, Washington.

/s/ Matt J. Albers
Matt J. Albers, Paralegal
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

May 23, 2022 - 2:17 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	82262-4
Appellate Court Case Title:	Paul J. Pastor, Jr., et ano., Resp/X-App v. Real Prop 713 SW 353RD Pl.., Mei Xia Huang, App/X-Resp

The following documents have been uploaded:

- 822624_Motion_20220523135248D1648563_0103.pdf
  This File Contains:
  Motion 1 - Waive - Page Limitation
  The Original File Name was Motion for Overlength PFR.pdf
- 822624_Other_20220523135248D1648563_3567.pdf
  This File Contains:
  Other - Notice of Association
  The Original File Name was Notice of Association.pdf
- 822624_Petition_for_Review_20220523135248D1648563_3642.pdf
  This File Contains:
  Petition for Review
  The Original File Name was PFR.pdf

A copy of the uploaded files will be sent to:

- Billie@LawyerfortheLittleGuy.com
- brad@tal-fitzlaw.com
- dhamilt@co.pierce.wa.us
- matt@tal-fitzlaw.com
- pcpatvecf@piercecountywa.gov

Comments:

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com
Filing on Behalf of: Gary Manca - Email: gary@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:
2775 Harbor Avenue SW
Third Floor Ste C
Seattle, WA, 98126
Phone: (206) 574-6661

Note: The Filing Id is 20220523135248D1648563