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Division III  
State of Washington  
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WASHINGTON STATE  
SUPREME COURT

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THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON  
Division III

CASE # 34986-1

SCOTT SHUPE, an individual

Appellant,

v.

CITY OF SPOKANE, a Washington municipality

Respondent.

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APPELLANT'S PETITION FOR REVIEW TO THE SUPREME COURT

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SCOTT SHUPE

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**A. IDENTITY OF PETITIONER**

Scott Shupe asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

**B. COURT OF APPEALS DECISION**

The Court of Appeals wrongfully affirmed the Trial Court's order dismissing Scott Shupe's claims regarding the wrongful taking of property without payment of just compensation. A copy of the decision is in the Appendix at pages A – 001 through 005.

**C. ISSUES PRESENTED FOR REVIEW**

1. Did the Trial Court err by dismissing Shupe's Inverse Condemnation claim by applying a statute of limitations to his constitutional right?

**D. STATEMENT OF THE CASE**

On or about September 10, 2009, police officers acting within the course and scope of their employment with the Defendant City of Spokane entered Shupe's property. See Complaint.<sup>1</sup>

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<sup>1</sup> The Summons and Complaint are found at Clerks Papers 1-7

On or about September 10, 2009, officers acting within the course and scope of their employment with the Defendant City of Spokane seized and destroyed Shupe's property. Id.

The police officers entered Shupe's property because they believed the property, marijuana, possessed by Shupe was an illegal substance and that he did not have a lawful right to possess it. Id.

On June 13, 2013, the Court of Appeals, Division III of the State of Washington entered a mandate confirming that the Defendant City of Spokane wrongfully entered Shupe's property, wrongfully searched his property, and wrongfully seized his property. The ruling confirmed for the first time, Shupe's lawful right to possession and that the taking and destruction of the property was wrongful. Id.

Shupe was not entitled to assert a claim of inverse condemnation until the Court of Appeals determined possession of the property was legal, the City's actions were wrongful, and that Shupe possessed a legal right to the property. As a direct result of Defendant City of Spokane's wrongful conduct, Plaintiff timely filed his claim for inverse condemnation.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

**1. STANDARD OF REVIEW**

Pursuant to RAP 13.4(b), review is appropriate if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court, raises a significant issue of law under the Constitution of the State of Washington, or involves an issue of substantial public interest that should be determined by the Supreme Court. As explained below, the Court of Appeals decision implicates all three by depriving Shupe of the rights protected by the Washington State Constitution.

**2. THERE IS NO STATUTE OF LIMITATIONS ASSOCIATED WITH AN INVERSE CONDEMNATION CLAIM**

The dismissal of Shupe's Inverse Condemnation Claim is unsupported by Washington law. The Court of Appeals decision is directly contrary to Washington law. A constitutional claim for just compensation is not affected by the passage of time. See Petersen v. Port of Seattle, 94 Wn.2d 479, 485 (1980). As a result, it was improper to dismiss the Inverse Condemnation Claim by applying a three-year statute of limitations.

The ruling is also contrary to the Washington Constitution which protects Washington Citizens from having their property illegally taken by the Government without the payment of just compensation. "*No private*

*property shall be taken or damaged for public or private use without just compensation having been first made.”* Wash. St. Const. Art. 1 §16. This protection applies to personal property. See e.g. Government liability under inverse condemnation actions extends to both real and personal property. See Patrick v. Riley, 209 Cal. 350, 287 P. 455 (1930) (just compensation clause applied to the destruction of diseased cattle); Sutfin v. State, 261 Cal. App. 2d 50, 67 Cal. Rptr. 665 (3d Dist. 1968) (just compensation clause applied to the destruction of automobile).

Neither the City nor the Court of Appeals has pointed to any legal authority that places a statute of limitations on the right of a citizen to seek compensation for the wrongful taking of their property without the payment of just compensation. If the legislature had intended to provide a statute of limitations on this constitutional right it would have done so. It did not, and the Court of Appeals has exceeded its authority by creating a statute of limitations where one does not exist.

**3. THE INVERSE CONDEMNATION CLAIM WAS BROUGHT WITHIN THREE YEARS.**

The Court of Appeals failed to address the fact that the inverse condemnation claim could not have been brought until there was a taking. A taking could not have occurred until it was established that the property

was not validly seized under the Government's police powers. Shupe brought his inverse condemnation action within three years of that date.

**F. CONCLUSION**

Shupe respectfully requests review be granted with regard to this important Constitutional issue which presents an issue of substantial public interest. Namely, whether a statute of limitations exists under Washington law for citizens to pursue constitutional rights and when the required elements for an inverse condemnation action have been established.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of July, 2018.

ROBERTS | FREEBOURN, PLLC

s/ Kevin W. Roberts  
KEVIN W. ROBERTS, WSBA #29473  
Attorney for Appellant



CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the state of Washington that on the 26<sup>th</sup> day of July, 2018, a true and correct copy of the foregoing document was served by the method indicated below and addressed to the following:

Salvatore J. Faggiano	COA Notification	<input checked="" type="checkbox"/>
Assistant City Attorney	U.S. Mail	<input type="checkbox"/>
5 <sup>th</sup> Floor Municipal Building	Facsimile	<input type="checkbox"/>
Spokane, WA 99201	Email	<input type="checkbox"/>

DATED this 26<sup>th</sup> day of July, 2018 at Spokane, Washington.

s/ Kevin W. Roberts  
Kevin W. Roberts, WSBA #29473

# APPENDIX

**FILED**  
**JUNE 26, 2018**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

SCOTT SHUPE,	)	No. 34986-1-III
	)	
Appellant,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
CITY OF SPOKANE, a Washington	)	
municipality,	)	
	)	
Respondent.	)	

PENNELL, J. — Scott Shupe appeals a trial court order dismissing his claims regarding seizure of personal property based on expiration of the statute of limitations.

We affirm.

FACTS

This is the third time our court has addressed the circumstances stemming from execution of a search warrant at Mr. Shupe's home on September 10, 2009. The first

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appeal pertained to Mr. Shupe's criminal prosecution for various felony marijuana offenses. In that appeal, we held that the search of Mr. Shupe's home was unlawful and that Mr. Shupe had made out a prima facie case to support a medical marijuana defense. *State v. Shupe*, 172 Wn. App. 341, 289 P.3d 741 (2012). As part of our ruling, Mr. Shupe's felony marijuana convictions were reversed and his case was dismissed. *Id.* at 348-63. A mandate on that decision was issued by this court on June 4, 2013, and filed in the trial court on June 14, 2013.

Mr. Shupe's second appeal concerned civil forfeiture proceedings regarding the property seized on September 10, 2009. An initial forfeiture hearing was held during the pendency of Mr. Shupe's criminal prosecution. However, no final order of forfeiture was ever entered and the city of Spokane ultimately returned Mr. Shupe's property voluntarily. Despite the return of his property, Mr. Shupe sought an administrative order from the City's hearing examiner, declaring him the prevailing party and awarding attorney fees. The hearing examiner denied Mr. Shupe's request, explaining that it lacked factual and legal support. We affirmed the hearing examiner's decision on appeal. *Shupe v. Spokane Police Dep't*, No. 33283-7-III, slip op. at 1-2 (Wash. Ct. App. Aug. 4, 2016) (unpublished), <https://www.courts.wa.gov/opinions/pdf/332837.unp.pdf>.

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On August 19, 2016—less than two weeks after our resolution of Mr. Shupe’s second appeal—Mr. Shupe filed a civil complaint against the City that forms the basis of the current appeal. In his complaint, Mr. Shupe asserted various claims for monetary damages stemming from the September 10, 2009, search and seizure. The City moved to dismiss, arguing the statute of limitations barred Mr. Shupe’s claims. The trial court granted the City’s motion and Mr. Shupe appeals.

#### ANALYSIS

We review the parties’ statute of limitations arguments and the trial court’s dismissal order de novo. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007); *Ellis v. Barto*, 82 Wn. App. 454, 457, 918 P.2d 540 (1996).

With the exception of Mr. Shupe’s inverse condemnation claim, there is no dispute that Mr. Shupe’s claims are, at best, governed by a three-year statute of limitations. Mr. Shupe argues this three-year period did not begin until the mandate was issued after his first appeal. According to Mr. Shupe, it was only after his appeal was final that he had a basis to assert lawful possession of the marijuana seized from his property. Mr. Shupe’s argument is creative, but unpersuasive. Our resolution of Mr. Shupe’s initial appeal was not based on a novel theory of law unavailable back in 2009. We simply interpreted the applicable statute and issued a ruling in Mr. Shupe’s favor. Just as Mr. Shupe was able to

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file challenges in his criminal case prior to his initial appeal, so too was he able to file a claim for civil damages. Mr. Shupe's 2016 complaint for damages fell well outside the three-year statute of limitations.

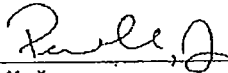
Perhaps recognizing he has no viable path toward meeting a three-year statute of limitations, Mr. Shupe argues that no such limitations period applies to his inverse condemnation claim. Mr. Shupe's arguments might have weight if his complaint pertained to real property. Our courts have recognized that a landowner's right to compensation for a taking of his or her land "may not be barred merely by the passage of time." *Petersen v. Port of Seattle*, 94 Wn.2d 479, 483, 618 P.2d 67 (1980). When it comes to real property, the impetus driving a plaintiff to press his or her claim is not a three-year statute of limitations, but instead the risk of a 10-year period of adverse possession. *Id.*; *See also* RCW 4.16.020(1). But Mr. Shupe's case does not involve real property. He claims the City illegally seized his personal property. Adverse possession therefore is inapplicable. Rather, when it comes to personal property, a governmental appropriation is immediately apparent and a claim for wrongdoing is governed by a three-year statute of limitations. RCW 4.16.080. Given the continued applicability of the three-year statute of limitations period, Mr. Shupe's inverse condemnation claim fails as well.

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CONCLUSION

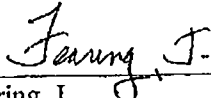
The order of dismissal is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Pennell, J.

WE CONCUR:

  
\_\_\_\_\_  
Lawrence-Berrey, C.J.

  
\_\_\_\_\_  
Fearing, J.

**ROBERTS FREEBOURN**

**July 26, 2018 - 3:32 PM**

**Transmittal Information**

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