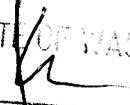


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DIVISION II

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STATE OF WASHINGTON  
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DEPUTY

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

DIVISION II

COURT OF APPEALS No. 40514-8-II

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DEA/TAHOMA NARCOTICS ENFORCEMENT TEAM

PLAINTIFF/RESPONDENT

vs.

ONE (1) 2001 BMW X5,  
DEFENDANT IN REM,

and

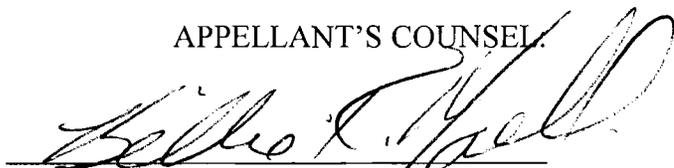
ANGELA FINLEY,  
CLAIMANT/APPELLANT

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APPELLANT'S BRIEF

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I. TABLE OF CONTENTS

Table of Contents.....	ii-iii
Table of Authorities.....	iv
Assignments of Error.....	1-2
Statement of the Case.....	2-5
Issues.....	5-6
Standard of Review.....	6-7
Argument.....	7-21
A. <i>Hearing Examiner Minturn erred when forfeiting the defendant vehicle to DEA/TNET, and Judge Lee erred when affirming that ruling because neither found that DEA/TNET had met its burden by a preponderance of the evidence that the vehicle was used to facilitate a drug crime or was purchased with proceeds traceable to a drug crime.</i>	
B. <i>DEA/TNET failed to follow required procedures mandated by RCW 69.50.50, and thus no Washington Court has jurisdiction to lawfully order forfeiture of Angela’s vehicle.</i>	
C. <i>The “Waiver of Hearing and Consent to Forfeiture” document used by DEA/TNET is unenforceable because, on its face, it violates a potential claimant’s right to Due Process.</i>	
D. <i>Angela’s Due Process and statutory rights are not waived because she notified DEA/TNET of her claim of a property interest in the seized vehicle, DEA/TNET acknowledged the claim by setting a hearing date, and Hearing Examiner Minturn afforded her a full evidentiary hearing under RCW 69.50.505.</i>	
E. <i>The forfeiture of Angela’s vehicle constitutes an excessive fine under the 8<sup>th</sup> Amendment of the United State Constitution.</i>	
Request for Attorney Fees.....	21-22

**Conclusion.....**  
**22-23**

## II. TABLE OF AUTHORITIES

### Washington Supreme Court Cases

<u>Guillen v. Contreras, Docket #82531-9 (2010)</u>	22
<u>Merriman v. Cokeley, 168 Wn.2d 627 (2010)</u>	6, 8
<u>Pasco v. Pub. Employment Relations Comm'n, 119 Wn.2d 504 (1992)</u>	6
<u>State v. Walsh, 143 Wn.2d 1 (2001)</u>	17

### Washington Court of Appeals Cases

<u>State v. Alaway, 64 Wn. App. 796 (1992)</u>	9
<u>Cruz v. Grant County Sheriff's Office, 74 Wn. App. 490 (1994)</u>	8
<u>Escamilla v. Tri-City Metro Drug Task Force, 100 Wn. App. 742 (2000)</u>	7
<u>Tellevik v. 6717 100<sup>th</sup> St. S.W., 83 Wn. App. 366 (1996)</u>	19, 20
<u>William Dickson Co. v. Puget Sound Air Pollution Control Agency, 81 Wn. App. 403 (1996)</u>	6

### United States Supreme Court Cases

<u>United States v. Bajakajian, 524 U.S. 321 (1998)</u>	19
<u>Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123 (1952)</u>	16
<u>Mathews v. Eldridge, 424 U.S. 319 (1952)</u>	12, 13, 16
<u>Miranda v. Arizona, 384 U.S. 436 (1966)</u>	14
<u>United States v. One 1936 Model Ford V-8 De Luxe Coach, 307 U.S. 219 (1939)</u>	7
<u>One 1958 Plymouth Sedan v. Pa., 380 U.S. 693 (1965)</u>	17

### Washington Statutes and Jury Instructions

<u>RCW 34.05</u>	6
<u>RCW 60.50.505</u>	6, 7, 8, 9, 10, 11, 13, 15, 21, 23
<u>6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 21.01 (5th ed.)</u>	8

### United States Constitutional Provisions

<u>Fourth Amendment</u>	9, 10
<u>Fifth Amendment</u>	12
<u>Eighth Amendment</u>	19
<u>Fourteenth Amendment</u>	12

### III. ASSIGNMENTS OF ERROR

1. Pierce County Sheriff's Hearing Examiner Minturn (hereinafter Hearing Examiner Minturn) erred in concluding that "during the course of the investigation certain items of property to include the 2001 BMW were seized pursuant to RCW 69.50.505." AR 4-5.
2. Hearing Examiner Minturn erred in concluding that he had "jurisdiction over the matter as set forth in RCW 69.50.505." AR 4-5.
3. Hearing Examiner Minturn erred in concluding that "the Claimant executed a signed waiver of hearing and consent to forfeiture." AR 4-5.
4. Hearing Examiner Minturn erred in concluding "based upon the foregoing, the Hearings Examiner FINDS FOR THE TACOMA DEA ENFORCEMENT TEAM and hereby orders all interest of Angela Finley in the seized property be forfeited and be utilized or disposed of in accordance with the mandates of RCW 69.50.505." AR 4-5.
5. Pierce County Superior Court Judge Lee (Hereinafter Judge Lee) erred in concluding that "Angela Finley waived her rights under RCW 69.50.505 and consented to the forfeiture of the vehicle in question." CP 37-40.
6. Judge Lee erred in concluding that "the order of the Hearing Examiner is supported by substantial evidence from the record which includes the Findings of Fact and Conclusion of Law made by the Hearing Examiner, the handwritten notes of the Hearing Examiner, the briefing submitted by both parties to the Hearing Examiner, Exhibits 1-5 presented to the Hearing Examiner and the Request for Forfeiture Hearing and Response." CP 37-40.
7. Judge Lee erred in concluding that "the Waiver of Hearing and Consent to Forfeiture was voluntarily executed by Claimant Angela Finley and she has no further interest in the vehicle the subject thereof." CP 37-40.
8. Judge Lee erred in concluding that "the vehicle is forfeited and Claimant, Angela Finley has no further claim thereto." CP 37-40.

9. Judge Lee erred in affirming those Findings of Fact and Conclusions of Law entered by Hearing Examiner Minturn and to which Claimant has assigned error in this present appeal. CP 37-40.

#### **IV. STATEMENT OF THE CASE**

##### **Short Summary of this Case:**

On or about November 8, 2006, DEA Agent Steve VerDow seized the defendant vehicle from Claimant Angela Finley. At the time of the seizure Agent Verdow induced Claimant Angela Finley to sign a form titled "Waiver and Consent to Forfeiture," the contents of which purport to waive all Due Process rights to contest a seizure and forfeiture of property under RCW 69.60.505.

The vehicle was forfeited to DEA/TNET seizing agency after administrative hearing. The administrative ruling was upheld upon petition for review to Superior Court.

Claimant Angela Finley asserts that the defendant vehicle must be returned to her because after a hearing on the matter, neither Hearing Examiner Minturn nor Judge Lee found that DEA/TNET met its burden to show by a preponderance of the evidence that the vehicle was forfeitable under RCW 69.50.505.

Claimant Angela Finley also asserts that the defendant vehicle must be returned to her because DEA/TNET's use of the "Waiver and Consent to Forfeiture" form violates her right to Due Process under our

State and Federal Constitutions as well as RCW 69.50.505.

**Facts Relevant to this Appeal:**

On May 26, 2005, Angela Finley (hereinafter Angela) purchased her BMW-X5 from Exotic Motors in Redmond, WA. AR 35. This vehicle is the in rem defendant in this case. AR 36.

Angela lives with Kenneth Cage (hereinafter Mr. Cage). Mr. Cage has admitted that on September 30, 2005, he conspired to distribute 3,4-methylenedioxymethamphetamine (MDNA), commonly known as “Ecstasy”, via a plea of guilty in United States District Court for the Western District of Washington, and Angela stipulated to that fact at the administrative hearing. AR 8.

On or about November 8, 2006, DEA Agent Steve VerDow (hereinafter Agent Verdow) seized the defendant vehicle. AR 36. At the time of the seizure Agent Verdow induced Angela to sign a form titled “Waiver and Consent to Forfeiture,” the contents of which purport to waive all of Angela’s Due Process and statutory rights to contest the seizure and forfeiture of her vehicle AR 33.

Angela contacted counsel after the seizure of her vehicle and that counsel provided to the seizing agency, DEA/Tahoma Narcotics Task Force (hereinafter DEA/TNET) a claim on Angela’s behalf and request for hearing as required in RCW 69.50.505. AR 66.

After much negotiation between Angela's counsel and counsel for DEA/TNET, Angela's requested hearing in this matter was held on May 12, 2009, in front of Hearing Examiner Minturn. AR 1-66.

At that hearing, Agent Verdow testified that when working as a member of the DEA/Tahoma Narcotics Task Force, he has potential property claimants sign a "Waiver and Consent to Forfeiture" at every opportunity that presents itself. AR 9. Agent Verdow further testified that he never includes a copy of or so much as a reference to the form in his police reports (including the reports related to the present case). Id.

Angela testified that her purchase of the defendant vehicle was funded with her own funds as well as the funds of Mr. Cage in a 50/50 split. AR 12. She entered into evidence a copy of the check-stub of the cashier's check she provided to the seller, as well as a copy of the bank receipt tracing the purchase of the same cashier's check via funds from her personal bank account. AR 34-35.

Mr. Cage testified that he is the owner of Cage Construction, a licensed and bonded general contracting firm specializing in new construction of residential homes, and that in the four fiscal quarters prior to Angela's purchase of the vehicle, he earned and paid taxes on \$58,016.72 in the course of his business. AR 15. Mr. Cage presented as evidence a printout from the Washington Secretary of State website listing

his ownership, licenser, and bonding of Cage Construction, as well as his Washington Combined Excise / Business and Occupation Tax quarterly returns. AR 37-51.

Hearing Examiner Minturn found that the evidence presented by DEA/TNET at the administrative hearing rose only to the level of probable cause, not the greater preponderance of the evidence standard required to find property forfeitable under RCW 69.50.505, but then ordered the vehicle forfeited to DEA/TNET . AR 4-5.

Angela filed a Petition for Review in Pierce County Superior Court. CP 1-6. Judge Linda Lee also failed to find that DEA/TNET met its burden to show by a preponderance of the evidence that the vehicle was forfeitable under RCW 69.50.505, and then affirmed Hearing Examiner Mintern's Order of Forfeiture. CP 37-40.

Angela then filed this present appeal seeking the return of her vehicle. CP 41-46.

## V. ISSUES

- A. *Hearing Examiner Minturn erred when forfeiting the defendant vehicle to DEA/TNET, and Judge Lee erred when affirming that ruling because neither found that DEA/TNET had met its burden by a preponderance of the evidence that the vehicle was used to facilitate a drug crime or was purchased with proceeds traceable to a drug crime.*
- B. *DEA/TNET failed to follow required procedures mandated by RCW 69.50.50, and thus no Washington Court has jurisdiction to lawfully order forfeiture of Angela's vehicle.*

- a. *DEA/TNET's document fails to follow the procedures of subsection 2 of the statute.*
- b. *DEA/TNET's document fails to follow the procedures of subsections 3 and 4 of the statute.*
- C. *The "Waiver of Hearing and Consent to Forfeiture" document used by DEA/TNET is unenforceable because, on its face, it violates a potential claimant's right to Due Process.*
- D. *Angela's Due Process and statutory rights are not waived because she notified DEA/TNET of her claim of a property interest in the seized vehicle, DEA/TNET acknowledged the claim by setting a hearing date, and Hearing Examiner Minturn afforded her a full evidentiary hearing under RCW 69.50.505.*
- E. *8<sup>th</sup> Amendment.*

## VI. STANDARD OF REVIEW

The Washington Administrative Procedure Act (APA), chapter 34.05 RCW, is applied directly to appeals from administrative hearings under RCW 69.50.505. RCW 69.50.505(5); William Dickson Co. v. Puget Sound Air Pollution Control Agency, 81 Wn. App. 403, 407, 914 P.2d 750 (1996).

Statutory construction is a question of law reviewed de novo. City of Pasco v. Pub. Employment Relations Comm'n, 119 Wn.2d 504, 507, 833 P.2d 381 (1992).

Angela has assigned error only to conclusions of law and to no findings of facts from the either of the records below; thus those findings of fact are verities on appeal. Merriman v. Cokeley, 168 Wn.2d 627, 631, 230 P.3d 162 (2010).

Angela has assigned error to several conclusions of law, including conclusions of law erroneously referred to as a “finding” in the records below. These questions of law are reviewed de novo on appeal.

Escamilla v. Tri-City Metro Drug Task Force, 100 Wn. App. 742, 747, 999 P.2d 625 (2000), *abrogated on other grounds by* In re Forfeiture of One 1970 Chevrolet Chevelle, 166 Wn.2d 834, 840 n.1, 215 P.3d 166 (2009).

## VII. CLAIMANT’S ARGUMENT

“Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law.” United States v. One 1936 Model Ford V-8 De Luxe Coach, 307 U.S. 219, 226 (1939).

***A. Hearing Examiner Minturn erred when forfeiting the defendant vehicle to DEA/TNET, and Judge Lee erred when affirming that ruling because neither found that DEA/TNET had met its burden by a preponderance of the evidence that the vehicle was used to facilitate a drug crime or was purchased with proceeds traceable to a drug crime.***

In all proceedings under RCW 69.505, the burden of proof is upon the seizing law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture under RCW 69.50.505(1). RCW 69.50.505(5).

In this case, DEA/TNET failed to meet its burden.

In his May 20, 2009, Order, Hearing Examiner Minturn found that

DEA/TNET had only provided “probable cause to believe that this property is subject to forfeiture in accordance with RCW 69.50.505.” AR 4-5. Judge Lee concluded this finding to be supported by “substantial evidence.” CP 37-40.

Angela has not assigned error to this finding and thus it is a verity in this present appeal. Merriman v. Cokeley, 168 Wn.2d 627, 631, 230 P.3d 162 (2010).

“Probable cause” is defined as the existence of reasonable grounds for suspicion supported by circumstances sufficiently strong to warrant a person of ordinary caution to believe the property is subject to forfeiture. Cruz v. Grant County Sheriff's Office, 74 Wn. App. 490, 873 P.2d 1211, review denied, 125 Wn.2d 1013, 889 P.2d 499 (1994).

However, the “preponderance of evidence” standard requires more: “‘Preponderance of the evidence’ means that it is ‘more probably true than not true’ that the property is subject to forfeiture.” 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 21.01 (5th ed.).

Hearing Examiner Minturn’s finding of “probable cause to believe that this property is subject to forfeiture” cannot be the basis of an Order of Forfeiture in this case because probable cause is a lesser quantum of evidence than that of preponderance – the burden of proof placed on DEA/TNET under RCW 69.50.505(1).

Because DEA/TNET failed to meet its initial burden of proof to show Angela's vehicle was subject to forfeiture, the Order of forfeiture and the Order affirming the forfeiture must be reversed, and the vehicle returned.

***B. DEA/TNET failed to follow required procedures mandated by RCW 69.50.50 and the Fourth Amendment to the US Constitution, and thus no Washington Court has jurisdiction to lawfully order forfeiture of Angela's vehicle.***

RCW 69.50.505 is exclusive and no Washington court can order forfeiture of property where the procedures of that statute are not followed; there is no common law forfeiture. State v. Alaway, 64 Wn. App. 796, 828 P.2d 591, review denied, 119 Wn.2d 1016, 833 P.2d 1390 (1992).

***a. DEA/TNET's document fails to follow the procedures of subsection 2 of the statute and the Fourth Amendment of the US Constitution.***

One procedural requirement of RCW 69.50.505 mandates that personal property may be seized only after certain process, such as an *in rem* arrest warrant, is issued by the Superior Court having jurisdiction over the subject property, unless the seizure falls within several exceptions not relevant here. RCW 69.50.505(2).

In Angela's case, the required process was never issued. AR 7-16.

No exceptions to the process requirement exist in this case. The

seizure of Angela's vehicle was not pursuant to an arrest or search warrant; no prior judgment existed against the vehicle; the vehicle did not pose a danger to the public health or safety; and not even an allegation has been made that the vehicle was used in violation of the Uniform Controlled Substances Act. *Id.*

Additionally, process was required prior to seizure of the vehicle under the Fourth Amendment of the US Constitution, which states in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause."

The seizure of Angela's vehicle was unlawful because DEA/TNET failed to perfect the procedural requirements of the statute by obtaining pre-seizure process from the Superior Court. Therefore, Hearing Examiner Minturn had no jurisdiction to Order forfeiture of Angela's vehicle and it must now be returned.

b. ***DEA/TNET's document fails to follow the procedures of subsections 3 and 4 of the statute.***

Another procedural requirement of RCW 69.50.505 mandates that all potential claimants are provided 45 days to contemplate whether or not to file a claim. RCW 69.50.505(4). Intrinsic in this requirement is the that the notice required to be provided to each potential claimant under

subsection (3) of the statute contain language alerting the potential claimant of his or her right mandated in subsection (4).

In Angela's case, no such notice was provided. AR 7-16.

Instead, Angela was induced to sign a document titled "Waiver of Hearing and Consent to Forfeiture." AR .33. This document recites that the signer has been "advised" that certain property has been seized by law enforcement under RCW 69.50.505 and states that the signer is "aware" of the following:

- i. The right to have the law enforcement/police agency formally file a forfeiture notice and proceed to hearing;
- ii. The right to be provided notice of the action;
- iii. The right to file a claim and contest the taking of this property;
- iv. The right to have a hearing before the chief law enforcement officer;

AR 33.

Nowhere in this document is the signer advised of his or her right to 45 days time to decide whether or not to file a claim. Id. In fact, the document purports take away this statutory requirement, thus misleading the signer. Id.

In this case, DEA/TNET's document is the only information provided to Angela regarding the seizure and intended forfeiture of her

vehicle. AR 7-16.

The seizure of Angela's vehicle was unlawful because DEA/TNET failed to perfect the procedural requirements of the statute by providing Angela with notice that she was entitled 45 days to decide whether or not to choose to file a claim. Therefore, Hearing Examiner Minturn had no jurisdiction to Order forfeiture of Angela's vehicle and it must now be returned.

***C. The "Waiver of Hearing and Consent to Forfeiture" document used by DEA/TNET is unenforceable because, on its face, it violates a potential claimant's right to Constitutional Due Process.***

The "Waiver of Hearing and Consent to Forfeiture" document used by DEA/TNET fails to satisfy the requirements of Due Process under the Fifth and Fourteenth Amendments of the United States Constitution.

Whether the document signed by Angela provided sufficient notice to satisfy Due Process requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of a property interest through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. Mathews v. Eldridge, 424 U.S. 319, 333 (1952).

Regarding the first factor, in all forfeiture cases the private interest affected is whatever property interest a potential claimant may have in the seized property. The property and the interest changes from case to case – potentially anything - from a few hundred dollars out of a wallet to real estate worth millions of dollars. In Angela’s case, at issue is her possession and continued ownership of her personal vehicle, the in rem defendant in this case.

The third factor has two parts. Regarding part one of the third factor, the administrative burdens caused by RCW 69.50.505 forfeiture actions are statutorily required and thus do not vary much from case to case. Fiscal burdens that might vary may include the cost of storing seized property. Where a government entity already owns a storage lot to store evidence and seized items, this burden is arguably minimal.

Regarding part two of the third factor, the government interest in seizing property under RCW 69.50.505 is stated by the legislature as deterring drug related crimes as well as providing a revenue source for law enforcement to defray their expenses related to enforcing the drug laws. Use or disuse of DEA/TNET’s “Waiver of Hearing and Consent to Forfeiture” document when seizing property under the statute does not affect those goals in either direction.

The critical Mathews factor in this case is the second factor: the

risk of an erroneous deprivation of a property interest through use of DEA/TNET's "Waiver of Hearing and Consent to Forfeiture" document, and probable value of disallowing its use.

In any instance where DEA/TNET, especially during the course of an interrogation at DEA offices, tells a property owner to sign a so-called "Waiver of Hearing and Consent to Forfeiture" document, the risk of an erroneous deprivation of an owner's property is HUGE. Feelings of fear and intimidation are inherent during the course of any federal interrogation, thus the average citizen without legal training is probably worrying about potential negative consequences of NOT signing a document pushed in front of them by federal agents – regardless of whether or not the resultant deprivation of property has a basis in law. See Miranda v. Arizona, 384 U.S. 436, 437-51; 86 S. Ct. 1602; 16 L. Ed. 2d 694 (1966), quoting from several Police Interrogation Manuals<sup>1</sup>.

Further, after signing such a document, the average citizen without legal training might assume all hope is lost, and thus not bother to file a

---

<sup>1</sup> In this case Angela was approached at her home in the presence of her Mother and child and convinced to be interrogated at the Tacoma, Washington DEA office. AR 10-12. It would seem the agents were practicing the following particular technique described in Miranda v. Arizona: "If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more reluctant to tell of his indiscretions or criminal behavior within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his own office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law." Id at 449.

claim – even though the statute specifically entitles all potential claimants 45 days to make that decision. RCW 69.50.505.

One of the implicit policy reasons for providing a potential claimant 45 days to make their decision is so they may seek the aid of counsel. There are several exceptions and defenses available to claimants under RCW 69.50.505 – none of which are mentioned in DEA/TNET’s “Waiver of Hearing and Consent to Forfeiture” document and all of which may prevent the government from forfeiting the seized property.

At hearing, Agent Verdow testified that when working as a member of the DEA/Tahoma Narcotics Task Force he has potential property claimants sign this “Waiver and Consent to Forfeiture” at every opportunity that presents itself. AR 9. Agent Verdow further testified that he never includes a copy of or so much as a reference to the form in his police reports (including the reports related to the present case)! Id. Thus, anyone wishing to follow up on the seizure of property or exercise their rights could have a very hard time even proving the seizure occurred!

Consequently, DEA/TNET’s use of the “Waiver of Hearing and Consent to Forfeiture” document has likely erroneously deprived countless individuals of their rightful property interests – in direct violation of their Constitutional Right to Due Process.

Simply disallowing use of the form will eliminate the hugely

increased risk the form causes.

“In a government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done.” Joint Anti-Fascist Comm. v. McGrath, 341 U.S.123, at172 n 19 (1952) citing 5 The Writings and Speeches of Daniel Webster, 163.

DEA/TNET’s “Waiver of Hearing and Consent to Forfeiture” document fails to “satisfy the community that right is done.” *Id.*

DEA/TNET’s “Waiver of Hearing and Consent to Forfeiture” document fails to satisfy factor 2) of the Mathews test. Its use fails to provide potential claimants sufficient notice to satisfy their Constitutional right to Due Process because its use causes a high likelihood of erroneous deprivation of a potential claimant’s property interest and its disuse will eliminate such potential. Mathews, 424 U.S. at 333 (1952).

Because Angela’s Due Process rights have been violated, and the use of DEA/TNET’s form causes a high likelihood of erroneous deprivation of a potential claimant’s property, Angela’s vehicle must be returned.

***D. Angela’s Due Process and statutory rights are not waived because her alleged waiver was not knowing, intelligent, and voluntary.***

Angela has not waived her rights.

When proceedings are introduced for the purpose of declaring the forfeiture of property by reason of criminal activity, those proceedings are “quasi-criminal” in nature. One 1958 Plymouth Sedan v. Pa., 380 U.S. 693, 697-98 (1965). In a criminal case, due process requires that a waiver of one’s fundamental rights be knowing, intelligent, and voluntary. State v. Walsh, 143 Wn.2d 1, 7 (2001). Thus, when a waiver of one’s rights in such a case is not knowing, intelligent, and voluntary, the waiver is voidable. Id.

In this case, Angela’s signature on the “Waiver of Hearing and Consent to Forfeiture” document does not constitute a knowing, intelligent, and voluntary waiver of her Due Process and statutory rights because she was not informed of all the rights she was giving up (for example her right to take 45 days to decide whether to make a claim), she was not counsel by an attorney prior to signing the document, and she was in an inherently coercive atmosphere of the DEA office while being interrogated by DEA agents.

Also, Angela did not believe she had waived her rights because she provided DEA/TNET with notice of her claimed interest in the property. AR 66. Nor Did DEA/TNET believe she had waived her rights, as evidenced by their arranging for the administrative hearing to hear her claim.

Hearing Examiner Minturn also believed Angela had not waived her rights. DEA/TNET filed a memorandum asserting that Angela's signature on the "Waiver of Hearing and Consent to Forfeiture" document forced the Hearing Examiners hand and that, due to Angela's alleged waiver, he must forfeit the vehicle. AR 27-30. Hearing Examiner Minturn could have summarily Ordered Angela's interest forfeited based on his conclusion that her signature constituted a valid waiver. But he did not follow DEA/TNET's urging, and instead chose to preside over a full evidentiary hearing on the issue of whether the vehicle is subject to forfeiture and whether any exceptions or defenses applied.

Had DEA/TNET believed Angela had waived her rights, no hearing would have been set – her request for a hearing would have simply been ignored. Had Hearing Examiner Minturn believed Angela had waived her rights, no evidentiary hearing would have been held – He would have summarily Ordered Angela's interest forfeited without the need to hear other evidence.

Thus, DEA/TNET has in fact waived its right to now argue that Angela waived her rights.

***E. The forfeiture of Angela's vehicle constitutes an excessive fine under the 8<sup>th</sup> Amendment of the United State Constitution.***

The *Eighth Amendment of the United States Constitution* states, in pertinent part, that, "Excessive fines [shall not be] imposed, nor cruel and

unusual punishments inflicted.” It restricts punishment, which can include civil in rem forfeitures. Tellevik v. 6717 100th St. S.W., 83 Wn. App. 366, 372, 921 P.2d 1088 (1996). Forfeiture may be constitutionally precluded if the value of the forfeited property is grossly disproportionate to the criminal activity forming the basis of the forfeiture. United States v. Bajakajian, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998).

In this case, the record discloses the value of Angela’s vehicle (over \$22,000.00) and that Mr. Cage provided the 50% of the funds with which Angela made her purchase, but does not disclose details of the underlying criminal activity beyond the charge under which Mr. Cage plead guilty.

To perform an excessive fines analysis, Washington courts must examine two factors to determine whether a specific forfeiture is so excessive as to violate the Constitution: (1) instrumentality, or the relationship of the property to the offense; and (2) proportionality, or the extent of the criminal activity compared to the severity of the effects of the forfeiture on the claimant. Tellevik, 83 Wn. App. at 371-76.

Instrumentality factors include the role the property played in the crime, the role and culpability of the property owner, whether the use of the property was planned or fortuitous, and whether the offending property can be readily separated from innocent property. Id. at 374.

In this case, DEA/TNET has not alleged that Angela’s vehicle was involved in Mr. Cage’s criminal endeavors. Nor has DEA/TNET, or any other law enforcement agency, alleged that Angela is in any way culpable for any crime.

Thus, ordering the forfeiture of Angela’s vehicle is an excessive fine under the instrumentality factor.

Proportionality factors include the nature and value of the

property; the effect of the forfeiture on the owner and gravity of the type of crime; the duration and extent of the criminal activity; and the effect of the criminal activity on the community, including the costs of prosecution. *Id.* at 374-75.

In this case, the seized property was purchased for \$22,000.00, which is quite a lot of money to lose when one hasn't been accused of any crimes. The effect on Angela of the intended forfeiture was immediate and detrimental – she was left alone without a ride home with her tiny daughter on a rainy night. *AR 11-13*. Again, no law enforcement agency has accused Angela of any crimes, thus Angela has not negatively affected her community and no agency prosecuted her.

Thus, ordering the forfeiture of Angela's vehicle is an excessive fine under the proportionality factor.

#### VIII. **REQUEST FOR ATTORNEY FEES**

RCW 69.50.505(6) states that "[i]n any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant."

Our State Supreme Court recently interpreted this attorney fee provision, holding that because the subsection was adopted to protect individuals such as Angela from having their property wrongfully seized by law enforcement, a claimant is entitled to his or her reasonable attorney

fees when any property is recovered. Guillen v. Contreras, Wn.2<sup>nd</sup>, Docket #82531-9, filed Sept. 9, 2010.

In other words, Angela need not be the “prevailing party,” she need only recover some property under the statute to be entitled to all her reasonable attorney fees incurred to recover that property. Id.

Presently, Angela does not know the full extent of the attorney fees she has incurred, as this case is not yet complete. However, Angela’s counsel can attest that her contractual hourly fee in this case is \$300.00 and she has spent no less than 60 hours on this case to date.

Thus, Angela seeks attorney fees in this case of no less than \$18,000.00, with an allowance for all reasonable hours that will be described in a future detailed accounting to be provided at the conclusion of the case.

#### **IX. CONCLUSION**

Angela seeks the reversal of Judge Lee’s affirmation of Hearing Examiner Minturn’s forfeiture of the defendant property to DEA/TNET, the reversal of Hearing Examiner Minturn’s Order forfeiting the defendant property, and an Order directing the immediate return of the vehicle to Angela.

Angela further seeks attorney fees as authorized by RCW 69.50.505 and RAP 18.

RESPECTFULLY SUBMITTED this September 13, 2010.



Billie R. Morelli, WSBA #36105  
Attorney for Claimant/Appellant Angela Finley

DECLARATION OF SERVICE

10 SEP 13 PM 3:50

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

I, Billie R. Morell, declare  
under penalty of perjury  
under the laws of the  
State of Washington that  
I personally delivered a copy  
of Appellant's Opening Brief  
to the Pierce County Sheriff's  
Office for Craig Adams, opposing  
Counsel in this case. A  
copy of the face sheet, which  
shows proof of service, is  
attached.

Signed 9/13/2010 

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SEP 13 2010

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
CLERK OF COURT OF APPEALS  
STATE OF WASHINGTON

DIVISION II

COURT OF APPEALS No. 40514-8-II

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DEA/TAHOMA NARCOTICS ENFORCEMENT TEAM

PLAINTIFF/RESPONDENT

vs.

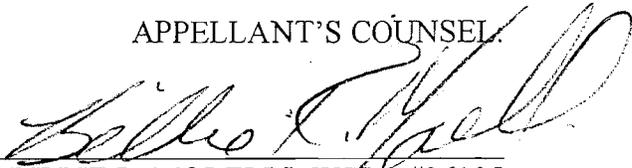
ONE (1) 2001 BMW X5,  
DEFENDANT IN REM,  
and  
ANGELA FINLEY,  
CLAIMANT/APPELLANT

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APPELLANT'S BRIEF

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APPELLANT'S COUNSEL

  
BILLIE R. MORELLI, WSBA #36105  
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Rec'd of 459  
9-13-10