

In the District Court
of
Johnson County, Kansas
Civil Division

State of Kansas, *ex rel.*
Kansas Highway Patrol,

Plaintiff,

v.

1959 Chevrolet Corvette,
VIN#J59S103191, *et al.*,

Defendants.

Case No. 17 CV 2347

Brief of *Amicus Curiae* Kansas Justice
Institute; Certificate of Service.

Brief of *Amicus Curiae* Kansas Justice Institute

Kansas Justice Institute submits the following *amicus* brief.

1. Identity and Interest of *Amicus Curiae*.

Kansas Justice Institute (KJI) is a non-profit, public-interest litigation firm committed to defending against government overreach and abuse. KJI directly litigates and files *amicus* briefs.

KJI believes the government's ability and propensity to seize and forfeit an innocent person's property without a criminal conviction poses a serious risk to our constitutional rights.

2. Asset Forfeiture: A Broad Overview.

Civil forfeiture "proceedings often enable the government to seize the property ... even when the owner is personally innocent." *Leonard v. Texas*, 137 S. Ct. 847 (2017) (Thomas, J., respecting denial of certiorari). The forfeiture system "has led to egregious and well-chronicled abuses." *Id.* at 848. The "numerous horror stories of property owners caught in the web of government's enormous forfeiture power has spawned distrust of the government's aggressive use of broad civil forfeiture statutes." Brief of *Amicus Curiae Institute for Justice in Support of Petitioner* at 12, *Bennis v. Michigan*, 516 U.S. 442 (1996) (No. 94-8729) 1995 WL 782840, at *6 (cleaned up).

Former United States Representative Henry Hyde warned Congress “our civil asset-forfeiture laws are being used in terribly unjust ways.” Alexandra D. Rogin, *Dollars for Collars: Civil Asset Forfeiture and the Breakdown of Constitutional Rights*, 7 Drexel L. Rev. 45, 52 (2014). Representative Deborah Pryce of Ohio “recognized that civil asset forfeiture laws, at their core, deny basic due process, and the American people have reason to be offended and concerned by the abuse[.]” *Id.* at 61 (cleaned up).

In recent decades, civil forfeiture has “become widespread and highly profitable.” *Leonard*, 137 S. Ct. at 848. The government’s forfeiture “practice has become a veritable addiction for federal, state, and local officials across the country[.]” Roger Pilon & Trevor Burrus, *Cato Handbook for Policymakers* 116 (8th ed. 2017). There are even “reports of police departments creating wish lists of assets they want and choosing raid targets accordingly.” David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 Harv. L. & Pol’y Rev. 541, 550 (2017). The United States Supreme Court has recognized the government has “a direct pecuniary interest in the outcome” of forfeiture proceedings. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 56 (1993).

Criticism is not limited to the federal system. Scholars are highly critical of Kansas’ forfeiture system too. *See, e.g.,* Amelia Selph, *Kansas Standard Asset Seizure and Forfeiture Act: An Ancient and Failing Approach*, 66 Kan. Law. R. 717, 718 (2018) (Kansas’ forfeiture act “disregards a property owner’s constitutional rights and allows for substantial governmental abuse and overreach.”)

3. Kansas Has Spent Years Litigating to Destroy an Innocent Person’s Car: A Background.

In 2016, Richard Martinez bought a 1959 Corvette from Jabaay Motors, an Indiana used car dealer, for \$50,000. (Doc. 46, page 2.) Mr. Martinez took his Corvette to a Kansas Highway Patrol (KHP) station for an inspection, as required by KSA § 8-116a(b). The KHP seized Mr. Martinez’s car under KSA § 8-116(d) because of vehicle identification number issues (Doc. 5, Ex. A, ¶ c)—including an issue with a VIN plate that was located in a non-public, “secret” location (Doc. 46,

page 4). To access the secret location, the KHP had to look under Mr. Martinez's car with a mirror. (*Id.*) Mr. Martinez's car had been restored long before he bought it (*See* Doc. 46, page 4), and it had been painted perhaps "forty years" earlier (*id.*)

The government concedes Mr. Martinez did nothing wrong (Doc. 5, Ex. A, ¶ h), that he was "not aware of the [VIN] issues and defects," (*id.*) and there is "no question" he is "an innocent owner" (Doc. 11). Instead of returning the car though, the government has spent years trying to destroy it.

In Kansas, "[e]very motor vehicle" that has a VIN which has "been destroyed, removed, altered or defaced" is automatically deemed "contraband." KSA § 8-116(e). The "contraband" designation triggers the application of KSA § 22-2512. KSA § 8-116(e).

The government seized Mr. Martinez's car in April 2017 (Doc. 46, page 2), filed a "*Notice of Pending Forfeiture*" (Doc. 1) under the Kansas Standard Asset Seizure and Forfeiture Act—a civil procedure statute—and a "*Petition for Forfeiture in Rem*" (Doc. 5) under KSA § 22-2512—a criminal procedure statute.

The Forfeiture Act provides for *in rem* forfeiture proceedings. KSA § 60-4113. Highly summarized, a law enforcement officer may seize a person's property without a warrant, if the law enforcement officer has probable cause to believe the property is subject to forfeiture. KSA § 60-4107. The government has 90 days to then file a forfeiture notice. KSA § 60-4109. The property owner has 60 days to respond. KSA § 60-4111. The government files a petition for forfeiture. KSA § 60-4109(a)(1),(2); *see also* KSA § 60-4113. The property owner has 21 days to answer the government's petition. KSA § 60-4113(g).

At trial, the government must prove the property is subject to forfeiture. KSA § 60-4113(h). The burden shifts to the property owner to prove an interest in the property which is not subject to forfeiture. KSA § 60-4113(h). Trial is before a court instead of a jury. KSA § 60-4113(h).

The trial began on July 21, 2021. (Doc. 46, page 1.) This Court issued its "*Preliminary Findings and Notice to the Kansas Attorney General*" and invited this brief. (Doc. 46.)

4. Analysis

4.1 Due Process of Law Issues

This Court considers whether due process of law protects against the confiscation of private property “based upon secret VIN discrepancies in normally inaccessible locations of which they are purposely kept unaware[.]” (Doc. 46, “Fifth Concern.”)¹

Kansans are protected by two due process of law provisions: the Fourteenth Amendment to the United States Constitution, which provides that “[n]o State shall ... deprive any person of life, liberty, or property without due process of law[;]” and Section 18 of the Kansas Constitution Bill of Rights which provides that “All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.” Section 18 is Kansas’ due process clause. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 627 (2019) (“The Kansas Constitution does include a due process provision, however: section 18 of the Bill of Rights.”); *Creecy v. Kansas Dep’t of Revenue*, 310 Kan. 454, 462 (2019).

The “due process of law guarantee is an effort—one with deep roots in the history of western civilization—to reduce the power of the state to a comprehensible, rational, and principled order, and to ensure that citizens are not deprived of life, liberty, or property except for *good reason*.” Timothy Sandefur, *In Defense of Substantive Due Process, Or the Promise of Lawful Rule*, 35 Harv. J.L. & Pub. Pol’y, 283, 285 (2012) (emphasis in original).

A VIN-contraband statute can violate the Fourteenth Amendment’s due process of law clause. Take, for instance, *People v. One 1979 Pontiac Grand Prix Auto.*, 424 N.E.2d 973 (1981) (*Grand Prix I*), *aff’d*, 433 N.E.2d 1301 (1982) (“*Grand Prix II*”). There, Allison Bridegroom purchased a 1979 Pontiac Grand Prix, obtained title, and it was later determined that the “confidential VIN had been mutilated.” *Grand Prix I*, 424 N.E.2d at 974-75. The police department “confiscated the car as contraband per se.” *Id.* Mr. Bridegroom argued the contraband statute violated his due process of law rights, as applied to him. *Id.*

¹ “Section 4.1 Due Process of Law Issues” addresses some of the issues raised in this Court’s Sixth and Seventh Concerns.

The appellate court agreed. First, although the statute's objective was "to put a damper on the stolen vehicle industry," the court did "not believe that the statute serves to achieve that objective." *Id.* "Where the VIN has been destroyed and there is no way of determining to whom the car properly belongs, we see no advantage accruing to society by stripping an innocent owner of his property. Such an action will not deter thieves nor lead to their discovery. Once it has been determined that the buyer of the car is unaware that it was stolen, discovering the thieves will better be accomplished by questioning the vendor as to how he gained possession of the car." *Id.* at 975.

The appellate court also declared unconstitutional the "statute's classification" that "any automobile without an identifiable VIN" is "contraband per se." *Id.* The appellate court reasoned that Mr. "Bridegroom is completely innocent of any wrongdoing." Mr. Bridegroom "not only was unaware that the VIN was wrong and the car was stolen, he had no means of discovering this information. Thus the statute results in Bridegroom's property being classified as contraband despite the fact that he has not been charged with committing an offense, was in no way associated with the commission of an offense, and had no way of knowing that the car was stolen. The true owner of the auto is unascertainable and so no one else's rights are abridged. To strip Bridegroom of all his rights to the property by declaring the auto to be contraband per se where he is completely innocent of any wrongdoing, has no way of discovering any wrongdoing, and no one else's rights are interfered with is a violation of his right to due process. The statute is therefore unconstitutional." *Id.* at 975-76.

The appellate court's decision was affirmed in *Grand Prix II*. There, the Supreme Court of Illinois held that "[w]hile no one can deny that the twin goals of catching car thieves and deterring thefts are highly desirable, it does not appear that depriving the innocent purchaser of his property will further either purpose." *Grand Prix II*, 433 N.E.2d at 1303. "Placing a number at some concealed or confidential place on the vehicle undoubtedly has its value for purposes of identification, but such a number cannot be used for the purpose of declaring this vehicle in this case, under these facts, contraband per se. Such a declaration constitutes a due process violation." *Id.* at 1304.

There are solid reasons Kansas' VIN statutes violate due process of law as well. First, in the instant matter, the government concedes Mr. Martinez did nothing wrong (Doc. 5, Ex. A, ¶ h), that he was “not aware of the [VIN] issues and defects,” (*id.*) and that he is “an innocent owner” (Doc. 11.) At trial, this Court took uncontroverted evidence that the KHP trooper was “required to refer to a secret list documenting placement locations for VIN stamps on different vehicles” (Doc. 46, page 10); that the trooper had to use a mirror underneath the car to look for the secret VIN location (Doc. 46, page 4); that the car was restored years before Mr. Martinez purchased it (*See* Doc. 46, page 4); and that it was painted perhaps forty years ago (*id.*).

Next, the police power is not absolute, as correctly stated in *Grand Prix I* and *II*. Kansas courts have, throughout their history, refused to blindly rubber-stamp government action as well. *See, e.g., Delight Wholesale Co. v. City of Overland Park*, 203 Kan. 99, 103 (1969) (government cannot “under the guise of the police power enact unreasonable and oppressive legislation”); *Gilbert v. Mathews*, 186 Kan. 672 (1960) (striking down a public auction law because it was “oppressive and unreasonable”); *Delight Wholesale Co. v. City of Prairie Vill.*, 208 Kan. 246 (1971) (court—after trial—strikes down city ban on selling goods from vehicles); *Strehlow v. Kansas State Bd. of Agr.*, 232 Kan. 589 (1983) (court refuses to uphold Kansas' filled dairy product law on police powers grounds); *City of Junction City v. Mevis*, 226 Kan. 526, Syl. ¶ 1 (1979) (affirming the dismissal of conviction for firearm possession under overbroad ordinance that criminalized innocent conduct because a “city cannot enact unreasonable and oppressive legislation under the guise of the police power”); *City of Baxter Springs v. Bryant*, 226 Kan. 383, 391 (1979) (“legislative body cannot, under the guise of the police power, enact unequal, unreasonable, and oppressive legislation” and the court openly questioned blind deference to the police power doctrine).

Third, forfeiture statutes are strictly construed against the government. *State v. One Bally Coney Island No. 21011 Gaming Table*, 174 Kan. 757, 760 (1953); *Games Mgmt., Inc. v. Owens*, 233 Kan. 444, 447 (1983); *State v. Durst*, 235 Kan. 62, 66, 69 (1984) (applying rule and holding “it would be a violation of the right to due process of law to apply the forfeiture provisions of K.S.A. 22-2512(4) in the manner requested by the State”); *United States v. One 1936 Model Ford V-8 De*

Luxe Coach, Motor No. 18-3306511, 307 U.S. 219, 226 (1939) (“Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law.”)

Based upon the evidence presented at trial, *Grand Prix I and II*, Kansas’ refusal to blindly rubberstamp government action, and that Kansas’ forfeiture statutes must be strictly construed against the government, this Court should find Kansas’ VIN statutes unconstitutional.

4.2 Vagueness and Overbreadth Issues

This Court considers whether the VIN statutes are vague, overly broad, or both. (Doc. 46, “Sixth and Seventh Concerns.”)

Vague statutes are unconstitutional under either the Fourteenth Amendment or the separation of powers doctrines. *State v. Harris*, 311 Kan. 816, 821 (2020). A statute that uses “terms so vague” that it forces ordinarily intelligent people to “necessarily guess at its meaning and differ as to its application” violates the Fourteenth Amendment. *Harris*, 311 Kan. at 821 (cleaned up). On the other hand, under the federal and state separation of powers doctrines, laws that do not provide explicit standards for those who apply them amounts to an “impermissible delegation of basic policy matters by the legislative branch to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis.” *Id.*

“The primary problem with a law that fails to provide explicit standards for enforcement is that such laws invite arbitrary power. That is, these laws threaten to transfer legislative power to police, prosecutors, judges, and juries, which leaves them the job of shaping a vague statute’s contours through their enforcement decisions.” *Harris*, 311 Kan. at 822 (cleaned up).

“Because an impermissible delegation of legislative power will often lead to arbitrary enforcement based on subjective or even prejudicial criteria, the United States Supreme Court has indicated that the more important prong of the vagueness doctrine is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement. Without these, a criminal statute may permit a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections. It is the very overbreadth of such laws that renders them impermissibly vague. It is not necessarily because they are ambiguous on their face—an overbroad law can be very clear. The problem, in fact, may be amplified

by clarity. If a law makes everyone a violator, then prosecutors and the police will both define the law on the street and decide who has violated it.” *Harris* at 822-823 (cleaned up).

Kansas provides a mechanism for the assignment of a new or existing vehicle identification number under KSA § 8-116a(a) if the “highway patrol *is satisfied* that the vehicle contains no stolen parts and complies with K.S.A. 8-116[.]” (Emphasis added). How is the phrase “*is satisfied*” statutorily defined? The statute does not say.

Mr. Martinez plausibly argues this means the KHP *could* assign a new VIN (*See, e.g.*, Doc. 3, ¶ 7), as does Jabaay Motors (*See, e.g.*, Doc. 18, ¶ 22.) But the government disagrees— “[t]here is no way for the Patrol to assign a new number to the vehicle ... because there is no way to determine that the vehicle contains no stolen parts.” (Doc. 40, page 8.)

The parties stipulated that no KHP trooper—or anyone else for that matter—“has determined that there are any stolen parts on or in the vehicle.” (Doc. 46, page 2.) The KHP had four years to investigate whether Mr. Martinez’s car contained stolen parts, yet the government *still* maintains that it is not *satisfied* that the car does not contain stolen parts, and thus cannot assign a VIN. (*See* Doc. 40, page 8.) Under the government’s reading of the statute, *satisfaction* is based solely on its whim. Whether the government’s position is supported by evidence or not makes no difference. The government, and the government alone, decides the meaning of “*is satisfied*.”

The statute fails to provide *any* standard—let alone an “explicit” one—for those who apply it. The statute is *so* vague it can be interpreted in any manner the government sees fit—the very definition of unconstitutionally vague. *Harris*, 311 Kan. at 822 (legislature must establish guidelines so police, prosecutors, judges and juries do not impermissibly shape the statute’s contours through their enforcement decisions) (cleaned up).

Thus, the phrase “*is satisfied*” is a clear violation of the principles elucidated in *Harris*, and is unconstitutionally vague.

4.3 Interstate Commerce Issues

This Court considers whether “K.S.A. 8-116 and 8-116a, and/or their application” “impact interstate commerce.” (Doc. 46, “First Concern.”)²

Congress has the power to “regulate commerce ... among the several States.” U.S. Const. art. I, § 8. The Commerce Clause’s offshoot—the dormant Commerce Clause—prohibits states from discriminating or placing excessive burdens on interstate commerce. Braden H. Boucek, *That’s Why I Hang My Hat in Tennessee: Alcohol and The Commerce Clause*, 2018-2019 Cato Sup. Ct. Rev. 119, 124 (2019); *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2459 (2019) (“This negative aspect of the Commerce Clause prevents the States from adopting protectionist measures and thus preserves a national market for goods and services.”) (Cleaned up).

Courts “examine laws challenged under the dormant Commerce Clause using a two-tiered analysis.” *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*, No. 21-22492-CIV, 2021 WL 3471585, at *17 (S.D. Fla. Aug. 8, 2021).

Under the first tier, laws that facially discriminate against out-of-state businesses or regulate extraterritorial conduct “can be sustained only on a showing that it is narrowly tailored to advance a legitimate local purpose.” *Tennessee Wine*, 139 S. Ct. at 2461. Facially discriminatory laws are virtually per se unconstitutional. Boucek at 125; *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*, No. 21-22492-CIV, 2021 WL 3471585, at *17 (S.D. Fla. Aug. 8, 2021) (“When a state statutory scheme directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, courts have generally struck down the statute without further inquiry.”) (Cleaned up).

² This Court raised other issues in its “First Concern” not addressed here, except to say the “[Fourteenth Amendment’s Privileges or Immunities] clause provides ‘No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.’ In contrast to the Privileges *and* Immunities Clause found in Article IV ... which protects the privileges and immunities of state citizenship from interference by other states, the Privileges *or* Immunities Clause protects privileges and immunities of national citizenship from interference by other states. Simply stated, Article IV (Privileges and Immunities) protects citizens of other states from the actions of a state in which they do not reside, and the Fourteenth Amendment (Privileges or Immunities) protects citizens from their own state. What precisely those privileges or immunities consist of has been a frequent topic of controversy.” Boucek, 128-129 (emphasis and parentheticals in original).

A facially neutral law that has the “effect of actually discriminating against out-of-state business,” is judged under the same standard as a facially discriminatory law. Boucek at 128. On the other hand, under tier two, laws that incidentally burden interstate commerce are reviewed under the balancing approach announced in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Boucek at 128.

The *Pike* test is “more permissive, but a statute that imposes burdens on commerce that clearly outweigh the local benefits will fail.” *Norwegian Cruise Line* at *18 (cleaned up). It is not enough for the government to “simply invoke a legitimate state interest under a statute.” *Id.*

The *Pike* inquiry is a “fact-sensitive” one, and courts must “consider whether the states could have implemented alternatives that impose smaller, less substantial burdens on interstate commerce.” *Norwegian Cruise Line Holdings* at *18.

In *R.B. Enterprises, Inc. v. State*, 242 Kan. 241 (1987), a Kansas used car dealer made a Commerce Clause challenge to KSA § 8-116a(b). The Kansas Supreme Court and the trial court agreed the statute was “facially discriminatory against out-of-state used vehicles.” *R.B. Enterprises*, 242 Kan. at 246. This should have ended the inquiry. *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 579 (1986) (“When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry.”); Boucek at 129 (*Pike* balancing test “would not be used on something that facially discriminates.”).

But the Kansas Supreme Court held the statute did not violate the Commerce Clause because “[t]he State’s evidence was that the purpose of the statute is to prevent consumer fraud and that automobile theft and false titling of vehicles is a potent area for such illegal endeavors. We hold there is a legitimate state interest in preventing consumer fraud. We further hold the State met its burden of proof in showing K.S.A. 1986 Supp. 8-116a(b) effective in accomplishing the State’s purpose. Thus, we conclude the burden on interstate commerce created by the act is merely incidental to the reasonable exercise of Kansas police power in preventing theft and fraud.” *R.B. Enterprises*, 242 Kan. at 247.

Kansas' VIN statute was upheld in *R.B. Enterprises* because of the government's interest in preventing "consumer fraud." 242 Kan. at 247. But here, the situation is altogether different. Mr. Martinez is *not* a used car dealer—he is the very consumer the statute was apparently intended to protect. Destroying *his* car, for which he paid valuable consideration, is not in the state's legitimate interest, or a "reasonable exercise" of Kansas' police powers in preventing theft and fraud. In *Tennessee Wine*, the court "provided strong guidance, both on what constituted a legitimate exercise of the police powers and how courts were to evaluate those claims." Boucek at 149. For example: "The police powers were not understood to authorize purely protectionist measures with no bona fide relation to the public health or safety; an exercise of the police powers must have a bona fide relation to the public's health, morals, or safety; mere pretenses could not sustain a law and neither could speculation, or unsupported assertions; a statute purporting to protect the public health, safety, or morals must have a real or substantial relation to those objects; and the court's police-power precedents required an examination of the actual purpose and effect of a challenged law." Boucek at 149 (cleaned up). "*Tennessee Wine* thus refines the analysis for what a court is supposed to do when offered a police-powers justification." Boucek at 151. And it "reaffirms that a state's police powers are limited to those which actually protect the public, something the courts are competent to judge. Protectionism of in-state interests alone failed to protect the public in [the *Tennessee Wine*] case. Moreover, the courts do not uncritically accept the government's proffered justifications. Instead, the courts examine those justifications to determine whether they are bona fide and whether the challenged regulation has a real or substantial tendency to promote the public health, safety, or moral well-being." *Id.*

All that is to say, based upon the evidence presented at trial, this Court is in the best position to decide which Commerce Clause tier should apply—the first or second—and *if* the *Pike* balancing test applies, whether the government has proven a legitimate local purpose, to what extent the statutes burden interstate commerce, and whether there are less-restrictive alternatives that impose lesser burdens on interstate commerce. This is, of course, to be considered against the backdrop of the government's repeated admission that Mr. Martinez did nothing wrong.

4.4 Forfeiture of Estate Issues

This Court considers to what extent Kansas Constitution Bill of Rights Section 12 applies to the instant matter. (Doc. 46, “Fourth Concern.”)

Section 12 provides that “No conviction within the state shall work a forfeiture of estate.” In *Matter of Shields' Est.*, 224 Kan. 604, 605 (1978), Justice McFarland—in dissent—describes in detail the origins of Section 12. And in *City of Hoisington v. \$2,044 in U.S. Currency*, 27 Kan. App. 2d 825, 830 (2000), the Kansas Court of Appeals appeared to reject the forfeiture of estate argument.

5. Conclusion

Mr. Martinez paid good money for a classic car that turned out to have vehicle identification number issues, the likes of which he was completely and utterly unaware. The government has a legitimate interest in deterring vehicle fraud, but not at the expense of those who have been defrauded; and certainly not at the expense of those the government believes are—beyond question—innocent. The government has police powers sure enough, but it cannot wield those powers oppressively, unfairly, or arbitrarily, nor allow its agents to do the same—to do so violates due process *of law*—which is precisely what is happening here.

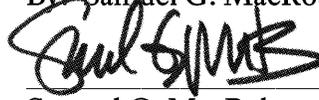
The United States and Kansas Constitutions do not permit the government to acknowledge a person’s innocence, on the one hand, and then with the other, declare the innocent person’s property “contraband” and take it. If *that* were the standard, there would be few limits on the government’s ability to seize and destroy nearly *anything* it so desired.

Innocence matters—the government should not get to destroy Mr. Martinez’s car for a wrong he did not commit. That is unconstitutional.

Dated: August 18, 2021

Kansas Justice Institute

By: Samuel G. MacRoberts, 22781

A handwritten signature in black ink, appearing to read "Samuel G. MacRoberts", written over a horizontal line.

Samuel G. MacRoberts

12980 Metcalf Avenue, Suite 130

Overland Park, Kansas 66213

Sam.MacRoberts@KansasJusticeInstitute.org

(913) 213-5018

Attorney for *Amicus Curiae*

Certificate of Service

I hereby certify that on the below date, I caused to be delivered *via* electronic mail and/or through the court's electronic filing system, a true copy of the above document,

To: Sarah E. Washburn
Legal Counsel
Kansas Highway Patrol
Sarah.Washburn@ks.gov
Attorney for Plaintiff Kansas Highway Patrol

Richard W. Martin
Law Firm of Martin & Wallentine, LLC
rmartin@kc-attorney.com
Attorney for Richard Martinez

Phillip A. Brooks
PBrooks@BrooksLawKC.com
Attorney for Jabaay Motors

Scott A. Reed
Kansas Department of Revenue
Scott.Reed@ks.gov
Attorney for 3rd Party Defendant Department of Revenue

Copy provided to the Kansas Attorney General by e-mail:
ksagappealsoffice@ag.ks.gov
brant.laue@ag.ks.gov
Office of Attorney General Derek Schmidt
Memorial Hall, 2nd Floor
120 SW 10th Avenue
Topeka, KS 66612

With a bench copy to the administrative assistant for the Honorable James Vano,
via email

Dated: August 18, 2021

/s/ Samuel G. MacRoberts
Samuel G. MacRoberts