



August 20, 2020

Kevin S. Krejci
Deputy County Attorney
Pima County Attorney
Civil Division
32 North Stone Ave. Suite 2100
Tucson, AZ 85701
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VIA ELECTRONIC MAIL AND FEDEX DELIVERY

RE: Seizure and attempted forfeiture of one:
2000 Jeep Wrangler
VIN: 1J4FA49S5YP742975
AZ License: 425SWV

Dear Mr. Krejci:

I am counsel for Kevin McBride, owner of the above-referenced Jeep Wrangler, which was seized by the Tucson Counter Narcotic Alliance on or around May 22, 2020. This letter is in response to your letter of August 11, 2020, in which you made Mr. McBride an offer of “mitigation of forfeiture” of his Jeep Wrangler. Without explanation, you informed Mr. McBride that “[a]n outright return of the vehicle is inappropriate in this case,” despite the fact that Mr. McBride informed you that he is an innocent owner, and despite the fact that the charges against his girlfriend—who was driving the Jeep at the time of the seizure—were dropped. Instead, and without any explanation of how you arrived at such an offer, you offered to return the Jeep if Mr. McBride paid your office \$1,900.

The purpose of this letter is to reject your offer of mitigation and demand the immediate return of Mr. McBride’s Jeep and all property contained inside it.

On the day in question, Mr. McBride’s girlfriend, Sarah Michelle Tuccitto, borrowed the Jeep to travel to a nearby Circle K. Mr. McBride thought she had borrowed it in order to purchase soda and gasoline. This was the first time she had borrowed the Jeep. He had no idea that she was allegedly using the Jeep to allegedly sell three grams of marijuana, which is the alleged crime that gave rise to the seizure. When his girlfriend did not return with the Jeep after approximately 20 minutes, Mr. McBride got a ride to the Circle K and found his Jeep being loaded onto a wrecker by the Tucson Counter Narcotic Alliance. Upon speaking with officers at the scene, Mr. McBride learned for the first time that his girlfriend had allegedly driven the Jeep to the Circle K for the purpose of selling the three grams of marijuana. He is completely innocent of any involvement with, or knowledge of, any crime.

Should your office proceed with the forfeiture—rather than promptly and properly returning the Jeep and all property inside it to Mr. McBride—we will assert all available statutory and constitutional claims to contest the forfeiture.

Mr. McBride is an innocent owner pursuant to A.R.S. § 13-4304(4), the Arizona innocent-owner statute, because he satisfies all three criteria contained therein: Mr. McBride established his ownership of the Jeep long before the events giving rise to the seizure occurred. Mr. McBride did not convey to any other person the equitable power to convey the Jeep. And Mr. McBride did not know and could not reasonably have known of the act giving rise to the seizure, nor that it was likely to occur. Mr. McBride reasonably believed that his girlfriend was borrowing the Jeep to buy soda and gas.

In addition to meeting the statutory definition of an innocent owner, Mr. McBride will also seek to have A.R.S. § 13-4304 declared unconstitutional because it places the burden of proof on him, to prove a negative, rather than the state, to prove his complicity in the alleged crime. *See, e.g., State v. Flores*, 263 Ariz. 33, 37 ¶ 11, n.6 (App. 2014) (the burden of proving a negative is “near impossible” or “arguably impossible”). This violates the due process clause of the Arizona Constitution, which provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.” Ariz. Const. art. II, § 4.

Finally, Mr. McBride intends to challenge the seizure and attempted forfeiture of his Jeep as a violation of the excessive-fines clauses of both the U.S. and Arizona Constitutions. Mr. McBride’s girlfriend allegedly used the Jeep to facilitate the sale of three grams of marijuana, a recreational-use amount worth approximately \$25. The seizure and forfeiture of the Jeep—a vehicle worth approximately \$15,000—not to mention the valuable property contained inside it, is grossly disproportionate to the alleged crime committed. As the U.S. Supreme Court recently observed, “the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties.” *Timbs v. Indiana*, 139 S. Ct. 682, 689 (2019).

For the above reasons, Mr. McBride declines your offer of mitigation and requests that you return the Jeep and all property inside it immediately and at no cost to him.

Please contact me at your convenience to arrange the return of Mr. McBride’s property.

Sincerely,



Matt Miller
Senior Attorney
Goldwater Institute