

IN THE SUPREME COURT OF
THE STATE OF THE UNITED STATES

No. 27S04-1702-MI-70

TYSON TIMBS (Petitioner)

Vs.

STATE OF INDIANA (Respondent)

Brief for Petitioner

QUESTION PRESENTED

Whether the Eighth Amendment's Excessive Fines Clause should be incorporated through the Due Process Clause of the Fourteenth Amendment or the Privileges or Immunities Clause of the 14th Amendment?

Brian Kang

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Second Amendment (1791)

Eighth Amendment (1791)

Fourteenth Amendment (1868)

Austin v. United States 509 U.S. 602, 607 (1993)

McDonald v. City of Chicago 561 U.S. 742, 767 (2010)

Timbs v Indiana (Docket #17-1091) (2018)

Statement of the facts

On January 13th, Tyson Timbs purchased a Land Rover for \$42,058.30 with the money he inherited from his father’s life insurance policy. When he bought the Land Rover it had 1,237 miles on its odometer. Over the next five months he drove more than 16,000 miles in the vehicle. He then regularly drove this vehicle between Marion and Richmond, Indiana to buy and transport Heroin. A confidential police informant later learned of Timbs’s drug trafficking. The police then decided to set up a drug purchase and on their 3rd buy, the police apprehended Timbs during a traffic stop. On June 2013, the state charged Timbs with two counts of dealing a controlled substance and one count of conspiracy to commit theft. In 2015 Timbs pleaded guilty to one count of felony and dealing and one count of felony conspiracy to commit theft. The trial court accepted the plea and sentenced Timbs to 6 years, 1 year in home detention with his aunt

and 5 years on probation. Timbs also paid a total of \$1203 for his actions. Several months after, a private law firm filed a civil case against Timbs to forfeit his vehicle, on behalf of the state. This fell against the 8th amendment of excessive fines because his car was worth more than \$42,058.30 which went beyond his maximum statutory fine of \$10,000 for his Class B felony.

Statement of argument

The Eighth Amendment Excessive Fines Clause, the Fourteenth Amendment's Privileges and Immunities Clause applies to the States and should be incorporated against the States due to the facts presented in *McDonald v. City of Chicago* 561 U.S. 742, 767 (2010) and *Austin v. United States* 509 U.S. 602, 607 (1993), referring to the using of Amendments to their full extent in State governments.

Argument

In 1993, a case very similar to the case before the court occurred involving forfeiture of property by the State. In *Austin v. United States* (509 U.S. 602, 607), Richard Austin was arrested for his possession and intent to sell cocaine in South Dakota. The United States filed an *in rem* action and seized his property relating it to his drug activity, however, the forfeiture of his property created an Eighth Amendment conflict by violating the Excessive Fines Clause. The Supreme Court's holding was that the forfeiture was "a monetary punishment" and because of this "is subject to the limitations of the Excessive Fines Clause."

The *in rem* jurisdiction called by the United States in *Austin v. United States* (509 U.S. 602, 607) placed this issue at the Federal level. This issue in *Timbs v Indiana* (Docket #17-1091) is the incorporation of Amendments at the State level, specifically the Eighth Amendment Excessive Fines Clause. The State of Indiana called a civil forfeiture against Tyson Timbs, claiming his Land Rover and creating a disadvantage for him in having to borrow his neighbor's

car to drive to work. Timbs, in response, claimed a violation of his rights due to the State creating an excessive fine in the cost of having his vehicle returned. The burden Timbs places on his neighbor by having to borrow their car to commute to work and the difficulties of paying \$40,000 for the value of his Land Rover creates a monetary punishment, one that is \$30,000 over the maximum fine Timbs should have to pay. The fact that this is not seen as an issue by the State of Indiana is a very serious problem that should be addressed in the Supreme Court and the Eighth Amendment Excessive Fines Clause should apply in the State level as it is in the Federal level.

The Incorporation Clause of the Fourteenth Amendment appears in its first section, stating “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,” a statement the State of Indiana ignores by enforcing its civil forfeiture of Timbs’ Land Rover and taking away a portion of his Eighth Amendment rights. If anything should be incorporated by the States, priority should be given to the Bill of Rights, the original Ten Amendments written by the framers of the Constitution and enforced from the very beginning.

Another example occurred in 2008 when Otis McDonald wished to purchase a handgun for his own protection in his neighborhood. The city of Chicago, however, refuses any applications for handguns after 1982 to help reduce their crime rate. This requirement was questioned when the courts realized that a Second Amendment issue was occurring as the regulation to handguns hinders the right to bear arms to any residents who wish to purchase handguns after 1982. Eventually, the case reached the Supreme Court and it was ruled that the right to bear arms was protected by the Second Amendment and the city of Chicago’s decision to

deny this right violates the Incorporation Clause of the Fourteenth Amendment by undermining what the Constitution has decided as basic rights through its Bill of Rights.

McDonald v. City of Chicago (561 U.S. 742, 767) is a clear example of the Incorporation Clause being ignored in jurisdictions lower than the Federal level, in this case, at the local level. The Incorporation Clause should extend to all jurisdictions, allowing the Amendments to be the supreme superseding law of the land, especially the Bill of Rights. In the case before the court, the Eighth Amendment is being ignored by the State government and the fines applied to Timbs indirectly are clearly excessive and, in turn, a violation of the Excessive Fines Clause of its respective Amendment.

CONCLUSION

In conclusion, following the precedents set by the Supreme Court in *Austin v. United States* (509 U.S. 602, 607) and *McDonald v. City of Chicago* (561 U.S. 742, 767), this court should find that the Eighth Amendment, specifically the Excessive Fines Clause should be incorporated against the States due to its importance in establishing Federal groundwork in State laws. Therefore, we pray this court rule in favor of Timbs and reverse the ruling of the Supreme Court of Indiana, creating a standard for all States to follow in the future.

PRAYER

We pray that the court of Appeals rules in favor of the petitioner, Mr. Tyson Timbs, in today's case.