

## JSH ATTORNEYS OBTAIN ARIZONA COURT OF APPEALS OPINION AFFIRMING DISMISSAL FOR CITY OF YUMA IN SECTION 1983 CASE

March 30, 2021 | Case Summaries, News



*Angulo-Murrieta v. City of Yuma, et al.*

Arizona Court of Appeals, Division One | March 30, 2021

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Division One of the Arizona Court of Appeals held that the Maricopa County Superior Court correctly applied Arizona's civil asset forfeiture statutes in dismissing Jesus Angulo-Murrieta's 42 U.S.C. § 1983 claim against the City of Yuma and others. The Court held that Arizona's civil asset forfeiture statutes apply if the criminal defendant's act is punishable by more than a year in prison and involves one of the enumerated acts committed for financial gain.

Yuma police officers had arrested Angulo-Murrieta and another person after the two allegedly entered a victim's fenced backyard, stole property worth \$500, and caused about \$100 in damage. As Angulo-Murrieta left the scene, officers stopped his car, found the stolen property, and seized the car as evidence. The State charged Angulo-Murrieta with misdemeanor theft, misdemeanor criminal damage, and third-degree felony burglary. After receiving an affidavit from the Yuma police department alleging there was probable cause to forfeit the vehicle, the Yuma County Attorney's Office moved to seize Angulo-Murrieta's car for forfeiture and served him with a copy. Angulo-Murrieta did not file a claim in the forfeiture action, however, and the superior court granted the forfeiture application. Meanwhile, in the criminal case, Angulo-Murrieta pled no contest to solicitation to commit third-degree burglary, a class 6 felony, with intent to "commit theft of scrap wire."

Angulo-Murrieta then filed a § 1983 claim alleging the Yuma defendants violated his constitutional rights by unlawfully seizing his car for forfeiture. The superior court granted the Yuma defendants' motion to dismiss, which argued Arizona law authorized the car's seizure because Angulo-Murrieta's conduct met the definition of "racketeering." The appellate court affirmed. In discussing the relevant statutory language, the court observed (as Angulo-Murrieta conceded) that the § 1983 claim lacked merit if the forfeiture statute's definition of racketeering encompasses Angulo-Murrieta's conduct. The court concluded that the term "racketeering" did in fact encompass Angulo-Murrieta's conduct because the alleged burglary was chargeable or indictable and punishable by more than one year in prison and involved theft, an enumerated act.

In reaching its holding, the court of appeals rejected Angulo-Murrieta's argument that probable cause could not give rise to a forfeiture because, according to him, (a) third-degree felony burglary is not one of the enumerated acts under the statute, and (b) misdemeanor theft, though an enumerated act, is not punishable by imprisonment for more than one year. The court noted that Angulo-Murrieta's argument was based on cases applying an outdated version of the statute. The court clarified that, under the statute's current version, the enumerated act need not be punishable by more than one year in prison. The racketeering statute applies if the act is punishable by more than a year in prison and involves one of the enumerated acts committed for financial gain. The enumerated act itself need not be punishable by more than a year in prison, and the act punishable by more than a year in prison need not be enumerated.

[Michele Molinario](#) has dedicated her 20-year legal career to defending employers and public entities and their employees, including police officers, detention officers, emergency responders, public works directors, building inspectors and traffic engineers. She has tried both state and federal jury and bench trials and administrative law hearings.

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