2002

State of Utah v. One 1983 Pontiac : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff/Appellant,	:	Case No. 20575
vs.	:	
ONE (1) 1983 PONTIAC, (JOE ARAVE),	:	
Defendant/Respondent.	:	

BRIEF OF RESPONDENT

Appeal from the Judgment of the First Judicial District Court in and for Cache County, State of Utah, the Honorable VeNoy Christoffersen presiding.

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STATEMENT OF THE CASE

The State of Utah sought a forfeiture of a 1983 Pontiac on the basis that it had been used in the transportation of narcotics, pursuant to Utah Code Annotated §58-37-13, 1953 (as amended). The District Court denied that forfeiture. Whether the lower court abused it's discretion in disallowing the forfeiture of the vehicle.

DISPOSITION OF THE LOWER COURT

The lower court heard argument and evidence on the State's petition. In a memorandum decision dated February 14, 1985, the Honorable VeNoy Christofferson, District Court Judge, ruled that the vehicle should not be forfeited.

RELIEF SOUGHT ON APPEAL

The respondent desires that the lower court's decision be affirmed.

STATEMENT OF THE FACTS

In August of 1984, Joe Arave was the owner of a 1983 black Pontiac Firebird automobile, whose value was approximately $10,000. On two occasions, in August and September of 1984,

Arave was approached by undercover narcotics officers. These officers had befriended Arave who was using cocaine and he gave them a small quantity thinking they were his friends. (T.p. 20-25) There was evidence that any profit motive was involved and it was questionable whether the cocaine was for sale or merely possession for Mr. Arave's own use and for the use of someone that he thought was his friend. (See Record on Appeal, Findings of Fact and Conclusions of Law.)

The State filed a complaint for forfeiture pursuant to Utah Code Annotated §58-37-13 on September 20, 1984, and an answer to said complaint was filed on October 18, 1984. The matter was not set for a hearing until February 8, 1985. The hearing on the forfeiture was held before any criminal trial resulting in a conviction or plea of guilty in the criminal case which arose from the alleged sale of cocaine. (See Record on Appeal) The hearing included testimony from the two undercover narcotics officers, Scott Crawford and Fred Olson, and Joe Arave. Uncontroverted evidence was also received, that Arave had taken a loan at Zion's First National Bank to repair and rebuild the 1983 Pontiac. Although the bank did not take a security interest therein, Mr. Arave was indebted to the bank pursuant to an agreement where they would loan him the money to rebuild various vehicles which he would then sell and repay loans. This has been his standard business practice. (T.p.30-48)

Joe Arave's father made a down payment of $1,900 when the car was first purchased for repair and claimed an equitable lien

thereon. Following the receipt of testimony, the Honorable VeNoy Christofferson entered his memorandum decision in which he found that under the totality of circumstances the forfeiture of this vehicle would be disproportionate to the actual activity which took place. The court took four things into consideration: the jurisdictional problem, the use of the car, the equitable interest by either the father or the bank, and also the question of penalty, and determined that this was not a situation that that Legislature had in mind to discourage the illegal transportation of contraband. (See memorandum decision page 3) The court ruled that the car would not be forfeited. The state appealed from that decision.

SUMMARY OF THE ARGUMENT

Decisions of the trial court will not be disturbed on appeal unless totally unsupported by facts or clearly arbitrary and capricious. The trial court's ruling in this case is both supported by the facts and the law as it is presently constituted in the State of Utah and was not arbitrary and capricious and, therefore, should be sustained on appeal.

ARGUMENT

It is important for this Court to note that the forfeiture sections, §58-37-1 et seq, and §58-36-1 et seq, have been on the books for sometime. The law has not been legislatively altered or amended since 1971. This Court has reviewed the statute in only one case, State of Utah v. One Porsche Two Door, ID number 9112111026, title number PP10026F, bearing Kansas license plate number JOR1652, 522 P.2d 917 (1974). In that case, Justice

Henroid, in his own inimitable style, attempted to discern the legislative intent in adopting the statute. In that case, the facts clearer than they are in the instant case. The only evidence against the respondent was that he was in his vehicle using a controlled substance. There was no evidence that he intended to transport it for sale other than the fact that he was using it in the car while the car was moving. The Court held that in this type of situation, the statute did not intend to provide the ultimate penalty of forfeiture.

The State, in it's brief, seems to suggest that had the instant case been before Judge Henroid, he would have found that it was the type of case in which the Legislature intended forfeiture. Respondent takes issue with that proposition. It is important to read the actual language of the Porsche case to get the real flavor of what Judge Henroid was saying, to-wit: "This section, referring to the forfeiture, as applied to this case leads to an unusually harsh result, constituting an additional fine or penalty in connection with the misdemeanor. This whole case leads to an unconscionable forfeiture and that the trial court was correct in concluding that the enormity of the forfeiture hardly fit the $299 misdemeanors". Id. at 918 "That forfeitures are frowned upon needs no citation of but few authorities, since the cases supporting such an elementary principle are legion...

(Quoting from Moran v. Knights), it matters not whether the action is one of equity or one of law. The rules of equity must prevail. It is no answer for appellant to urge the court's

interpretation of the statute was erroneous (as the State is alleging here) as the decision of the court is supported by good and sufficient reason or reasons. Id at 918 "The statute can obviously can lead to the most absurd results a reason this Court consistently is pointed up as a valid reason for invalidation of a statute or refusal to apply it under particular facts, making such application ridiculous." Id at 919

It is clear that in the instant case Judge Christofferson had read the Porsche decision and, in fact, found from the totality of the circumtances the same kinds of difficulties that Justice Henroid found in that case. It is clear that the court believed this to be an unconscionable forfeiture for a variety of reasons, one of which the State did not even address in it's brief, the jurisdictional question of whether the State met the requirements of Utah Code Annotated §58-36-13, 1953, which requires a hearing within twenty (20) days of the filing of an answer to the State's Complaint for forfeiture.

In this case, an answer was timely filed on October 18, 1984, and through no fault or negligence of the respondent, the hearing was not held until February 8, 1985, substantially beyond the twenty day period. Although the court did not enforce a jurisdictional bar to the case, it did find that there was non-compliance by the State and the court with that paragraph. Secondly, the court found that in effect it was questionable whether the activities described by the undercover agents in this case were a sale for profit but was only possession by the

respondent, on his own, of a controlled substance and possession to turn it over to someone he thought was his friend. Thirdly, the court found that there was a question of an equitable interest in the car by others other than Mr. Arave, who was the owner. The court made reference to the guarantee and down payment by the respondent's father and the business relationship that the respondent had with the Bank in terms of rebuilding cars, making loans, selling the cars and paying the loans off as factor which had to be weighed in light of the over-all necessity to forfeit.

The court also found that the quantity of the substance, and the extent to which the car had been utilized in the transportation of that substance, was disproportionate to the $10,000.00 value of the vehicle. In fact, it is interesting that the Judge's opening comments in his Memorandum Decision are similar to the entire tenor of those made by Justice Henroid, eleven (11) years earlier in the Porsche case, when he says "It sometimes seems a little bit odd that generally the cars involved, as far as the State seeking a forfeiture, involve $10,000.00 Pontiac's or Porsche's and $15,000.00 Trans Ams, but no $250.00 1970 Chevy's."

The respondent believes that the court by this somewhat tongue-in-cheek statement, has validated Justice Henroid's earlier comments. No forfeiture statute is inviolate and the trial court, as a court of equity, must look at the entire totality of the circumstances to determine if the forfeiture is warranted.

The court in this case, found that there were a number of factors, which made forfeiture, an unconscionable act.

The respondent agrees with the citation of the case State v. Chambers, 533 P.2d 586 (1975) as the basic standard for review in this case. If discretion is reasonably used and is not shown to have been abused or arbitrary or capricious, then judgment of the trial court should not be disturbed.

The state argues basically four (4) points in support of its position that the Judge's decision was arbitrary and capricious. The first is whether or not Arave's action constituted distribution or mere possession. Respondent concedes that there was some evidence that the car was used by Arave while possessing cocaine and at various times, Arave transferred that cocaine to an individual who he thought was his friend. The state seems to suggest that the statute is a per-se statute, to-wit: That if in fact the state makes out a case for distribution by the use of the vehicle, that no other evidence needs to be considered and the vehicle would be forfeited. Under Justice Henroid's language in the Porsche case however, this case is still a case of equity and the court can consider other factors, even if it found there was a distribution to determine whether or not forfeiture would still be allowed. In addition, the Judge in effect, found that the evidence was not clear as to whether this was a straight distribution or mere possession for ones own use, similar to the circumstances in the Porsche case. As such, the state did not sustain its burden in this particular instance and the court was

justified in using this as one of the reasons for disallowing forfeiture.

With respect to the state's claim that the amount of controlled substance makes no difference, certainly it made some difference to Justice Henroid in the Porsche case when he commented on the small amount of value of substance versus the worth of the vehicle. If in fact it made no difference, why was it was even discussed. Again, the state fails to look at this statute as one which must be examined in the light of equity and if that is done, then these considerations are valid.

The state further argues that neither the father or Zion's First National Bank had an equitable interest. It is clear that the Bank had a relationship with Joe Arave, in which he would borrow money to rebuild vehicle then sell them to repay the loans. It is true that in this specific instance, the state did not have a specific lien against the vehicle for a loan, but it is also true that the evidence is clear that money was borrowed for the purpose of rebuilding this vehicle and the only way Arave had to repay the money to the Bank, was by selling the vehicle.

In addition, the father had paid a down payment on the vehicle and had an equitable interest in the property. The fact is, the real victims in a forfeiture of this vehicle would be the Bank and the father, at least from the evidence presented, because Arave would not have the ability to repay the loan or repay the money owed to his father.

The state for some reason, cites §58-37-13(1)(e)(iii), as

dispositive of the fact that Mr. Arave's father did not have an interest in the vehicle by saying that there was no evidence that Joe Arave's father could have known, in the exercise of reasonable diligence that a violation would take place in use of the conveyance. This is the specific language which would bring him within the statute and would not allow him to maintain his lien. The record is void of any evidence that the father, or for that matter, the Bank knew that any violation which involved the use of the vehicle was taking place and therefore, arguably, he falls within the statute and therefore, the vehicle could not be forfeited under that provision. The Judge obviously considered this in making his decision.

The State's last point concerns whether or not the value of the vehicle should have any bearing on the decision. Certainly in a manner of equity, the value of the vehicle has some bearing on the ultimate disposition. The state again, refuses to apply principles of equity to this statute, which this Court has very clearly, said must be done. The value of the vehicle versus the value of the substance used and the value of the transaction in a court of equity certainly has some bearing on the ultimate decision.

What is important here, is that the trial court did not stress one of these factors as being predominant but, that a combination of all of the factors present in this case, satisfied the court the forfeiture was not appropriate. This is certainly a sustainable decision under the presently existing interpretation of the statute set forth in the Porsche case.

CONCLUSION

Respondent respectfully submits Utah Code Annotated §58-37 et seq/. is a statute which must be viewed in equitable term. The trial court in viewing the matter as one of equity and taking the totality of the circumstances into consideration, did not abuse its discretion by failing to forfeit the vehicle. The state has not sustained it burden on appeal by showing abuse of that discretion and therefore, the decision of the lower court should be affirmed.

RESPECTFULLY SUBMITTED this 26th day of August, 1985.

JOHN T. CAINE
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the above and foregoing brief to the David L. Wilkinson, Attorney General, Jeffrey "R" Burbank, Deputy Cache County Attorney, Cache County Courthouse, Logan, Utah 84321, postage prepaid, this 26th day of August, 1985.