

1988

Joan E. Davis v. The State of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

JOAN E. DAVIS, et al.,	:	
880282	:	
Appellant,	:	
vs.	:	No. 880282
STATE OF UTAH,	:	Priority 14(b)
Respondent.	:	

BRIEF OF APPELLANT

Appeal from the final judgment and order of the Third
Judicial District Court in and for Salt Lake County, State of
Utah, the Honorable J. Dennis Frederick presiding.

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JURISDICTION

The jurisdiction of this Court is found in Utah Code Annotated Section 78-2-2(3)(j)(1988 cum. supp.) whereby the Supreme Court has appellate jurisdiction over orders, judgments, and decrees of any court of record over which the Utah Court of Appeals does not have original appellate jurisdiction. In this case final judgment was rendered by the Honorable Dennis Frederick, Third Judicial District Court, in and for Salt Lake County, State of Utah on the 12th day of April, 1988.

NATURE OF PROCEEDINGS BELOW

The lower court heard argument and evidence on the State's petition. In a memorandum decision dated April 12, 1988, the Honorable J. Dennis Frederick, District Court Judge, ruled that the 1987 Dodge Caravan should be forfeited. (The Memorandum Decision is attached as Addendum A). There are two volumes of transcripts of the record below. Volume I is referred to with an "R" and volume II is referred to with an R.II. The transcripts also make reference to the testimony of Officer Steven Olson given at the preliminary hearings of Mike Davis and Joan Davis. These are attached as Addendum F (Mike Davis) and Addendum G (Joan Davis).

QUESTIONS PRESENTED FOR REVIEW

1. Is the statute on takings, Utah Code Annotated Section 58-37-13 (1953 as amended) as applied to this case unconstitutional under both the State and Federal Constitutions because the results are grossly disproportionate to the crime?
2. Is the taking and subsequent sale of the 1987 Dodge Caravan supported by the facts of this case and the plain intent of Utah Code Ann. 58-37-13?
3. Is there a security interest that prohibits forfeiture in this case?
4. May Officer William McCarthy's testimony be given in civil proceedings if the State relies on statements made during criminal custody but before a Miranda warning was issued?
5. Does the warrantless seizure of the 1987 Dodge Caravan invalidate the proceedings below?

TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Eighth Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article I, Section 7 of the Utah Constitution:

[Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Article I, Section 9 of the Utah Constitution:

[Excessive bail and fines--Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Person arrested or imprisoned shall not be treated with unnecessary rigor.

Article I, Section 14 of the Utah Constitution:

[Unreasonable searches forbidden--Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

Utah Code Annotated Section 58-37-13 (1987)

Utah Code Ann. Section 58-37-13 reads in pertinent part:

(1)(e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, simple possession, or concealment of property described in Subsections (1)(a) or (1)(b), except that:

(i) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it

appears that the owner or other person in charge of the conveyance was a consenting party or privy to violation of this act;

(ii) a conveyance may not be forfeited under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent; and

(iii) any forfeiture of a conveyance subject to a bona fide security interest is subject to the interest of a secured party who could not have known in the exercise of reasonable diligence that a violation would or did take place in the use of the conveyance;

.

(2) Property subject to forfeiture under this act may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this act;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property has been used or intended to be used in violation of this act. . . .

The complete text of Utah Code Ann. 58-37-13 (1988 Cum. Supp) is attached as Addendum B.

IN THE SUPREME COURT OF THE STATE OF UTAH

JOAN E. DAVIS, et al.,	:	
Appellant,	:	
vs.	:	No. 88-282
STATE OF UTAH,	:	Priority 14(b)
Respondent.	:	

STATEMENT OF THE CASE

This is an appeal from a judgment rendered by the Third District Court in and for Salt Lake County, the Honorable Dennis Frederick presiding. The State of Utah sought the forfeiture of a 1987 Dodge Caravan on the basis that it had been used in the transportation of one quarter (1/4) ounce of marijuana, pursuant to Utah Code Annotated Section 58-37-13 (1953 as amended). The District Court allowed that forfeiture. This appeal is to determine whether the lower court abused its discretion in allowing the forfeiture of the vehicle.

RELIEF SOUGHT ON APPEAL

The Appellant desires that the lower court's decision be reversed, that Appellants' property (or its approximate value) be ordered returned, and that this case be remanded with instructions either to dismiss the case or provide appellant with a new hearing.

STATEMENT OF THE FACTS

On the evening of January 19, 1988, Salt Lake City Police Officers entered the residence of Joan E. Davis and Gerald Davis at 140 West Gregson Ave., Salt Lake City, Salt Lake County, State

of Utah. At that time said Police Officers arrested Joan E. Davis and took possession of a 1987 Dodge Van, License # Utah 720BHT, VIN 2B4FK51G5HR179096. The 1987 Dodge van was in the driveway of the Davis' residence. The van was purchased in May of 1987 from Hinckley Dodge in Salt Lake City, Utah for approximately \$15,500 (R. 56-57).

The taking of the vehicle was carried out without a valid search warrant (R.II. 54-55 and Preliminary Hearing Transcript of Joan Davis, Officer Olson's testimony at 14). Moreover, the seizure of the vehicle occurred on January 19, 1988, over five months after the alleged marijuana transaction involving the van took place on August 4, 1987.¹ The facts involving the purchase of the marijuana transaction are in dispute and are developed in detail in Point II, infra. Not in dispute, however, is that Appellant Joan Davis did not sell, purchase, exchange money, or volunteer to get marijuana (R.II. 20-23). At the most, Joan Davis was only present to purchase marijuana for her own consumption (R.II. 5-6).

In purchasing the vehicle, Appellant's husband, Gerald Davis borrowed \$10,500 from Rosalee Hansen (R. 7, 35-36, 57). On May 9, 1987, Gerald Davis signed a contract with Rosalee Hansen for the loan of \$10,500 and agreed to pay her \$250 per month at 5% interest until the loan was paid in full (R. 36-37, 57) (See

¹ The information and affidavit of Officer Olson states that the alleged transaction took place on August 8, 1987. (See Addendum D). Testimony of Officer Olson supports that the alleged transaction occurred on August 4, 1987, not August 8.

Addendum C). Gerald Davis further agreed to give the title of the vehicle to Rosalee Hansen as security for the payment of the loan (R. 58). Gerald Davis had made the monthly payments noted since May 1987 to April 1988 (R.58).

Gerald Davis has an ownership interest in the van even though his name does not appear on the title. Furthermore, Gerald Davis had no knowledge nor did he consent to any controlled substance violation as contemplated by Utah Code Ann. Section 58-37-13 (1953 as amended) (R. 60).

Rosalee Hansen has a bona fide security interest in the Dodge Van vehicle identified above. This security interest came about when Rosalee Hansen loaned \$10,500 to Gerald Davis to purchase said vehicle. The loan was made on or about May 9, 1987 and Rosalee Hansen and Gerald Davis signed a Security Agreement attesting this (R. 36, 57) (Addendum C). Gerald Davis deposited \$9,000 of the \$10,500 in his bank account (R. 73) (the other \$1,500 was used to purchase a used truck).

On or about June 16, 1987 the title to the vehicle identified above was signed over to Rosalee Hansen by Appellant Joan Davis (R. 8-9). This was done as part of the Security Agreement and the duly executed title was given to Rosalee Hansen to hold pending full payment of the \$10,500 loan. Rosalee Hansen claims an interest in the vehicle identified above to the extent of her unpaid loan in the amount of \$8,663.50 (R. 38). Rosalee Hansen had no knowledge nor did she consent to any alleged controlled substances violation or involvement as contemplated by

Utah Code Ann. Section 58-37-13 (R. 39).

Joan E. Davis had no knowledge nor did she consent to any alleged controlled substance violation or involvement as contemplated by Section 58-37-13 (R. 13-14, 20).

SUMMARY OF THE ARGUMENT

Forfeiture proceedings must be reviewed on a case by case basis. There are instances where the result of forfeiture may be so great that the punishment is grossly disproportionate to crime charged violating both the United States and Utah Constitutions. Assuming, arguendo, that Joan Davis did participate in the transportation and distribution of marijuana as contemplated by Utah Code Ann. Section 58-37-13 (1953 as amended), the result of forfeiture exceeds the constitutional bounds of permissible fines.

Further, forfeiture is not supported by the facts of this case. The State of Utah's key witness, Officer Olson, contradicted himself on the witness stand and in his written reports. Joan Davis' testimony is supported by the testimony of two other individuals. Joan Davis had no part or knowledge of the drug transaction that occurred on August 4, 1987 which is the subject of this appeal.

Even should this Court find Officer Olson's testimony more credible and convincing than Ms. Davis', Mike Davis', and Kevin Canham's, Officer Olson's testimony clearly indicates that Ms. Davis' alleged participation did not rise to the level of transportation to accomplish possession, but rather only to

transportation with possession. Utah Code Ann. Section 58-37-13 is intended to strike at individuals involved in the trafficking of drugs. At most, Ms. Davis' alleged activity is one of a purchaser, agent, or one making an "accommodation call." Utah's forfeiture statute is not intended to strike at such individuals.

The result of forfeiture also violates the rights of Gerald Davis and Rosalee Hansen. Gerald Davis and Rosalee Hansen both had a bona fide security interest in the 1987 Dodge Van. Utah's forfeiture statute protects such individuals and nowhere requires that the security interest be perfected.

Further, a statement Joan Davis made while in custody without a Miranda warning was used during the forfeiture proceeding as proof that Joan Davis was the sole owner of the 1987 Dodge Van and was relied on in the district court's final ruling. This statement was incomplete as was the questioning which prompted the response and should not have been allowed since evidence which is obtained in violation of the fourth amendment may not be relied on to sustain a forfeiture.

Finally, the seizure of the 1987 Dodge Van occurred on January 19, 1988 over five months after the alleged August 4, 1987 transaction. Police officers seized the van without a warrant. Utah's forfeiture statute requires a warrant to accomplish seizure of a vehicle with limited exceptions that are not applicable in this case. A warrantless seizure is in violation of Ms. Davis' rights under both the Utah and United States Constitutions.

ARGUMENT

I. THE RESULT OF FORFEITURE IN THIS CASE UNDER UTAH CODE ANNOTATED SECTION 58-37-13 (1953 AS AMENDED) IS UNCONSTITUTIONAL AS UNDER THE CIRCUMSTANCES IT IS GROSSLY DISPROPORTIONATE TO THE CRIME CHARGED.

A. THE PENALTY OF FORFEITURE IS UNCONSTITUTIONAL AND DISPROPORTIONATE IN THIS CASE.

The eighth amendment to the United States Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Similarly, Article I, Section 9 of the Utah Constitution provides, "Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor."

Forfeiture under Utah Code Annotated Section 58-37-13 (1988 Cum. Supp) is clearly "punishment" as that term is used in the eighth amendment. Additionally, forfeiture, although punishment, has been upheld in Utah as proper civil punishment regardless of the amount involved in a drug transaction or the profit motive. See State v. One 1983 Pontiac (Joe Arave), 717 P.2d 1338 (Utah 1986) (overruling in part State v. One (1) Porsche 2-Door, 526 P.2d 917 (Utah 1974)); State v. One 1982 Silver Honda Motorcycle, 735 P.2d 392 (Utah 1987). The United States Supreme Court has held that the eighth amendment "prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed." See U.S. v. Busher, 817 F.2d 1409, 1414 (9th Cir. 1987) (citing Solem v. Helm, 463 U.S. 277 (1983)).

This Court has previously stated that "As for the small amount of drugs involved, '[t]he courts have uniformly held that a vehicle is subject to forfeiture no matter how small the quantity of contraband found.'" State v. One 1983 Pontiac (Joe Arave), 717 P.2d 1338, 1340 (Utah 1986) (citations omitted). Arguments have been proposed and upheld, however, that forfeiture may exceed constitutional bounds and courts must look at the results of forfeiture to determine if forfeiture is violative of the eighth amendment.² The time is ripe for the Utah Supreme Court to make such a consideration and determine if in this case the fine of forfeiture exceeds constitutional bounds.

In U.S. v. Busher, 817 F.2d 1409 (9th Cir. 1987) the defendant was convicted of federal racketeering provisions and his business interests were ordered forfeited. The 9th Circuit determined that even though the forfeiture statute provided no discretion, "the district court must avoid unconstitutional results by fashioning forfeiture orders that stay within constitutional bounds." Busher 817 F.2d at 1415 (emphasis added).

In determining whether a forfeiture order is so disproportionate as to violate the eighth amendment, the 9th Circuit stated a district court must, consistent with Solem, "consider (1) the harshness of the penalty in light of the gravity of the offense; (2) sentences imposed for other offenses

² One such court is the Ninth Circuit. The Utah Supreme Court cited One 1976 Porsche 911 S, 670 F.2d 810 (9th Cir. 1979) in reaching its decision in One 1983 Pontiac, 717 P.2d 1338.

in the federal system; and (3) sentences imposed for the same or similar offenses in other jurisdictions. Id. (citing Solem, 463 U.S. at 292). The 9th Circuit has added that a court is not limited to the factors specifically mentioned in Busher, but may take into account other relevant considerations. U.S. v. Littlefield, 821 F.2d 1365 (9th Cir. 1987) (determining that in forfeiture of property used to cultivate marijuana a court may consider the value of the illegal drugs cultivated on the property, and the nexus between the portion of the property actually used to grow the marijuana plants and the rest of the land).

This case is appropriate for this Court to determine if similar discretion is to be given to forfeiture proceedings under Utah Code Ann. 58-37-13. Assuming, arguendo, a \$35.00 marijuana purchase did take place in appellant's van, forfeiture of the van went beyond constitutional bounds. The State's chief witness, Officer Steve Olson (the involved undercover narcotics agent) testified that Appellant Joan Davis drove them to a home where Appellant, Olson, Appellant's son Mike and his two friends Walt King and Kevin Canham could acquire marijuana. Olson testified that Joan Davis' son, Mike, left the van and entered an apartment where he purchased marijuana (Olson has given different accounts of the transaction itself, see Point II and defense counsel's closing argument at R. 79-81), and that upon Mike Davis' return to the van, Appellant divided 1/4 an ounce of marijuana into two 1/8 ounce portions while all parties were sitting in the van

(Appellant denies these allegations) (R.II. 9). Upon calling Appellant at her home on a later occasion and stating he wanted to buy marijuana from her son, Appellant informed Officer Olson that her son didn't sell marijuana (R. 14).

The harshness of the penalty in light of the gravity of the offense in this case is severe and in violation of both the eighth amendment of the United States Constitution and Article I, Section 9 of the Utah Constitution. Appellant (at time of appeal) is still awaiting a criminal prosecution carrying a potential penalty of five years in prison and a \$5,000 fine. In addition to this penalty, Appellant has forfeited her van recently purchased at the time of the arrest for approximately \$15,500.

B. THE ACTIVITY OF MS. DAVIS AND THE 1987 DODGE VAN IS NOT OF THE TYPE CONSIDERED BY THE UTAH FORFEITURE STATUTE; UNDER THE CIRCUMSTANCES OF THIS CASE FORFEITURE IS EXCESSIVE AND VIOLATES THE UTAH AND UNITED STATES CONSTITUTIONS.

Appellant's activity, as alleged by Officer Olson, does not rise to the level of transportation and distribution as required by Utah Code Ann. Section 58-37-13 (1953 as amended). Although Officer Olson's police report alleges that he purchased marijuana from the "defendant," when questioned about this at the forfeiture proceedings, Officer Olson clarified that "defendant" meant the parties involved. Officer Olson testified that when he asked Mike Davis what his mother was doing with him, Mike Davis told him that she was there to buy some marijuana for herself. Officer Olson did not purchase marijuana from Joan Davis. (R.II

20-23). Officer Olson never asked Joan Davis if she would get the marijuana (R.II. 20). Joan Davis never volunteered to get the marijuana (R.II. 21). Joan Davis never paid Olson for the marijuana and Officer Olson never gave Joan Davis money to get marijuana (R.II. 21). Joan Davis' alleged involvement and the alleged involvement of her van never went beyond that of personal purchase. Neither Joan Davis nor her van were involved in the distribution and transportation of marijuana within the intent and purposes of Utah Code Ann. Section 58-37-13. (See also Point II infra.)

As the activity did not rise to the level of distribution and transportation for purposes of the statute, the sentence imposed does not fit the purpose of the Utah Forfeiture Statute. The alleged activity of Joan Davis does not meet the imposed sentence under the Utah statute and fails to meet forfeiture statutes in other federal or state jurisdictions because distribution and transportation are threshold elements to forfeiture. Joan Davis, if involved, was nothing more than a consumer. Neither she nor the 1987 van were necessary to the key transaction all of which took place outside the van.

These facts do not support that Appellant was aware of and supporting her son in drug dealing activities. The evidence is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt. State v. One 1982 Silver Honda Motorcycle, 735 P.2d 392 (Utah 1987) (upholding forfeiture because evidence was not sufficiently

inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt). Consequently, the penalty of forfeiture is harsh and unduly disproportionate and should be reversed since it is an excessive fine in violation of the Utah and United States constitutions.

Appellant has been criminally charged with a single violation of Utah Code Annotated 58-37-8(i)(a)(ii) (1953 as amended), a third degree felony carrying a potential penalty of five years imprisonment and a \$5,000 fine. Under the circumstances of this case, to permit a civil fine to exceed the criminal penalty by 300 per cent is disproportionate and unduly harsh and exceeds the bounds of the Utah and United States Constitution. "Forfeitures are not favored and should be enforced only when within both the letter and the spirit of the law." United States v. One 1976 Buick Skylark, Etc., 453 F.Supp. 639, 643 (D.Colo. 1978). This case does not fall within the purpose of the forfeiture statute.

Assuming arguendo that Appellant did divide marijuana into two bags, the State's evidence indicates that the one eighth an ounce of marijuana that Joan Davis received was strictly for personal consumption and was not for distribution for erstwhile law merchant principles. Appellant was led to believe that Officer Olson was her son's friend. Upon being contacted by Olson later, Appellant answered his request for marijuana by stating that her son did not sell marijuana (R. 14). The facts as presented by the State are inconsistent with the proposition

that Appellant and the 1987 Dodge van were involved in the transportation and distribution of drugs beyond the personal consumption of Appellant's son and his friends. To hold that the 1987 Dodge Van is subject to forfeiture is to subject any vehicle that contains marijuana, with no de minimis exception, to forfeiture.

Further, the ruling in this case is unduly harsh to Gerald Davis. Gerald Davis relied on a personal loan from Rosalee Hansen to purchase the van. To seize the van is to ultimately punish Gerald Davis. (See Point III, infra.) Gerald Davis has an ownership interest in the van even though his name does not appear on the title. Furthermore, Gerald Davis had no knowledge nor did he consent to any controlled substance violation as contemplated by Utah Code Ann. Section 58-37-13 (1953 as amended) (R. 60). (See also Point III infra.)

Appellant requests that Utah Code Annotated Section 58-37-13 be applied in principles of equity together with constitutional results. Forfeiture in this case is grossly disproportionate in consideration of the factual circumstances surrounding this case and is a fine that exceeds constitutional bounds.

The activity in this case does not merit forfeiture under Utah Code Ann. Section 58-37-13 since the facts do not rise to the required level of activity and to uphold forfeiture is unduly harsh to Joan and Gerald Davis and to Rosalee Hansen. Consequently, Joan Davis asks that this Court reverse the ruling of the lower court and remand this case for dismissal.

II. FORFEITURE IS NOT SUPPORTED BY THE FACTS OF THIS CASE AND VIOLATES THE PLAIN INTENT OF THE UTAH FORFEITURE STATUTE, UTAH CODE ANNOTATED 58-37-13.

In State v. One Porsche 2-Dr., I.D. No. 911211026, T.PP10026F, Etc., 526 P.2d 917, 918-19 (Utah 1974) (overruled on other grounds by State v. One 1983 Pontiac (Joe Arave), 717 P.2d 1338 (Utah 1986) to extent that profit motive is not a consideration in a forfeiture proceeding) this Court declared:

It appears obvious that the primary and sole purpose of the statute and the intent of the legislature were directed exclusively toward the transportation of a controlled substance for distribution according to erstwhile law merchant principles, and not for personal possession and consumption.

.
The statute is transportation to accomplish possession, not simply transportation "with" possession,--where the obvious purpose of the statute is an interdiction against transportation for the accomplishment of distribution through pushers, pimps or pirates,--not to accomplish a forfeiture because one has a marijuana cigarette in his pocket or mouth, headed for Disneyland,--or Arches National Monument.

One 1983 Pontiac, 717 P.2d at 1340 affirmed this principle:

We affirm that the major thrust of the statute is to strike at those involved in the trafficking of drugs, rather than at the individual whose possession is solely for his own consumption.

Assuming, arguendo, that Joan Davis and the 1987 Dodge Van were involved in a drug transaction the facts of this case as supported by the testimony of Officer Steven Olson and the individuals that were in the van establish that any action that involved Joan Davis did not go beyond personal possession and consumption, nor did such actions go beyond transportation "with" possession. Joan Davis' activities were not for the trafficking of drugs, but rather, as Officer Olson testified, Joan Davis was

there to purchase marijuana for her own consumption (R.II. 5-6). The facts in this case do not support that Joan Davis was transporting drugs with an intent to distribute according to erstwhile law merchant principles. See State v. One 1982 Silver Honda Motorcycle, 735 P.2d 392, 395 (Utah App. 1987) (upholding forfeiture because there was transportation with an intent to distribute "according to erstwhile law merchant principles."). Consequently, the decision of the lower court approving forfeiture should be reversed.

Joan Davis testified that she had stopped by Mr. Randy Bachman's home to find out when her son Mike was coming home for dinner.³ She was showing off her van to Mike, Walt King, and Kevin Canham when they asked for a ride (R. 12).

Joan Davis testified that her son, Mike, and his friend, Walt King, got out of the van at what Officer Olson stated was approximately Second East and 2800 South in Salt Lake City (R.II. 8). Joan Davis had no idea what they were doing (R. 13). Joan stated that the two came back to the van and Joan took them back to Mr. Bachman's house. The van never stopped, Joan had no knowledge of marijuana and knew of no marijuana being split or smoked in the van (R. 13-14).

Upon being contacted by Officer Olson on a later date so that he could purchase marijuana, Joan Davis told him "I hope

³ The individual named Randy is referred to in the various transcripts as Randy Bachman, Randy Kanab, Randy McNabb, and Randy Packman. For purposes of this appeal, Appellant refers to him as Randy Bachman.

not. Mike doesn't sell that." When he called again she even told him that Mike was not at home even though he was (R. 14).

In determining whether there is sufficient evidence to support a charge of distribution of a controlled substance, the relevant concern is whether the defendant performed, consented to, offered, or arranged the actual sale of a controlled or counterfeited substance, or merely acted as an agent between the buyer and the source. "The latter action does not fall within the prohibition of distribution of a controlled substance for value." See State v. Wright, 744 P.2d 315, 320 (Utah App. 1987) (citing State v. Udell, 728 P.2d 131, 134 (Utah 1986) and State v. Ontiveros, 674 P.2d 103, 104 (Utah 1983)). Assuming, arguendo, that Ms. Davis did drive across town so that she, her son, and her son's friends could purchase one-quarter ounce (\$20.00) worth of marijuana, Ms. Davis' actions cannot be extended beyond a mere "accommodation call." See Wright, 744 P.2d at 320 (defining distribution of a controlled substance).

To hold Joan Davis in violation of 58-37-13 and subject to forfeiture is to establish that any individual that purchases marijuana in a home and drives with it in her car is subject to having her car forfeited. Joan Davis' alleged activity does not rise beyond transportation "with" possession.

Kevin Canham was with Mike Davis and Officer Olson on August 4, 1987. (R 30). Mr. Canham testified that Ms. Davis drove her van to an apartment and that he, Mike, Officer Olson and Walt King were in van. Upon arriving at the apartment, Kevin Canham

testified that Mike Davis and Walt King got out. (R. 30).

When Mike and Walt King returned to the van, Kevin Canham testified that Joan returned them all to Randy's where the young men all went in a shed behind the building to divide the marijuana (R. 30). Mr. Canham testified that there was never any discussion as to why they were going, there was no dividing of marijuana, and there was no smoking of marijuana (R. 31). Kevin Canham testified that he didn't know marijuana was going to be purchased on this occasion and that after the marijuana was not brought out to be split up until the group, absent Ms. Davis, were in Randy Bachman's backyard. There, the marijuana was divided in Mr. Canham's presence (R. 32).

Officer Olson, upon whose testimony the state relied in obtaining forfeiture of the 1987 Dodge Van, contradicted himself on numerous occasions. Joan Davis' attorney opposed and summarized these contradictions on the record (R. 79-81). They are discussed in detail here:

On August 4, 1987, Officer Steven Olson was working as an undercover officer on Metro Narcotics Strike Force. (R.II. 2). Officer Olson stated he met Joan Davis through contact with son, Mike, at Randy Bachman's, 331 South Sioux St. Salt Lake City, Utah (R.II. 4) Olson later testified that on August 4, 1987 he, Joan Davis, Mike Davis, and Walt King (Kevin Canham was not included as being in the van) drove to several places to attempt to purchase marijuana (R.II. 7). Ultimately, a marijuana purchase was made at approximately 2nd East 2800 South, Salt Lake

County. Officer Olson had given Mike \$35.00 so that Mike could purchase marijuana for Officer Olson. Officer Olson testified that Mike Davis exited the van, purchased the marijuana, returned to the van, and at that time Appellant Joan Davis drove the group out of parking lot to about 215 East 2850 South where Ms. Davis dumped marijuana out onto a round tray and divided it (R.II. 9). Officer Olson then testified that Ms. Davis had pushed Olson's marijuana into a baggie and put her's into a white sheet of paper (R.II. 10).

Olson stated that Mike Davis took the marijuana, loaded some into a pipe and that the pipe was passed around the van to Joan, Mike, Walt King and Olson. (R.II. 10-11). At another point Olson admitted he had testified to not recalling who lit the pipe (R.II. 19). The police report makes no mention of any marijuana being smoked. Officer Olson was also confused whether the marijuana was scraped onto a rounded orange tray or onto a silver tray (R.II. 20). After the marijuana was divided, Officer Olson stated that Joan Davis returned the group to Randy Bachman's house at 3331 S. Sioux St (R.II. 10).

Officer Olson also stated he was positive that Mike Davis was the only one that went in to purchase the marijuana (R.II. 12). The police report and information indicated that both Mike Davis and Walt King went into the apartment (R.II. 13, 15) (See Addendum D).

Further, Officer Olson's sworn affidavit (information) says the event took place on the 8th of August. At the hearing,

Officer Olson agreed that the alleged transaction could only have taken place on August 4th (R.II. 17).

Officer Olson also admitted that he never asked Joan Davis if she would get the marijuana (R.II. 20), that Joan Davis never volunteered to get the marijuana (R.II. 21), That Joan Davis never paid Olson for marijuana, and that he never gave Joan Davis money to get marijuana (R.II. 21).

Officer Olson had purchased marijuana from Mike Davis on two other occasions. The routine was to return to Randy Bachman's where the marijuana was divided in the shed or in the house (R.II. 22). On no occasion did Officer Olson ever purchase marijuana from Joan Davis (R.II. 23).

However, Officer Olson's affidavit and probable cause statement against Joan Davis (solely) says that he purchased marijuana from the "defendant." The court dismissed defense counsel's objection as quibbling about terms (R.II. 26). This is a relevant fact, however, because it is the only possible fact that directly links Joan Davis to distribution and transportation for purposes of Utah's forfeiture statute. Assuming, arguendo, that the remainder of the information is true, by Officer Olson's testimony Joan Davis is nothing more than one in possession of marijuana--a mother who tagged along to collect (there is no evidence that she purchased) marijuana for her own personal consumption (R.II 5-6). There is no fact to support that Joan Davis purchased, sold, distributed, or transported marijuana for purposes of the statute on forfeiture (R.II 20-23).

Mike Davis testified that he knew Officer Olson as Mike Abershell (R.II 33). Mike Davis was working at Randy Bachman's when Olson came wanting to purchase one-quarter (1/4) ounce of marijuana (R.II. 35). Mike Davis asked his mother, who had pulled up to see when Mike would be home for dinner, for a ride. Mike, Officer Olson, Walt King, and Kevin Canham got in the van (R.II. 35, 43). Walt King went in the house with Mike to purchase the marijuana. (R.II. 36). Joan Davis then dropped the group off at Randy Bachman's house (R.II. 36). Mike never told his Mother why he wanted to go (R.II. 36). Further, Mike testified that the vehicle never stopped and there was no splitting or division of marijuana in the van (R.II. 36-37). The marijuana was divided after they got out of the van (R.II. 44). Mike stated that his mother had no knowledge whatsoever of the events that occurred while Mike and Walt King were in the apartment at Second East and 2800 South in Salt Lake City (R.II. 38). Further, Mike Davis never smoked marijuana in front of his mother. (R.II. 47).

Regardless of Prosecuting Attorney Skordas' statement that it is "Hard for me to believe that the mother didn't also know what was going on" (R.II. 88), the facts as given by Joan Davis, Mike Davis, and Kevin Canham support that Joan Davis did not know what was going on when she gave her son and his friends a ride on August 4, 1987.

Even assuming the facts as reported by Officer Steven Olson, Joan Davis was not involved in the transportation of drugs for

present because she wanted to purchase marijuana. Neither Joan Davis nor the 1987 Dodge Caravan were present to assist in the distribution, transportation, or sale of marijuana and the judgment of the district court should be reversed.

III. THERE IS A SECURITY INTEREST IN THE FORFEITED VEHICLE THAT PROHIBITS FORFEITURE IN THIS CASE.

Utah Code Annotated 58-37-13 (1953 as amended) governs forfeiture procedure and dictates what rights exist in the property subject to forfeiture and reads in part as follows:

(1) The following are subject to forfeiture, and no property right exists in them: . . .

(e) All conveyances including aircraft, vehicle, or vessels used or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, simple possession, or concealment of property described in subsection (1)(a) or (1)(b), except that:

(iii) Any forfeiture of a conveyance subject to a Bona Fide Security Interest is subject to the interest of a secured party who could not have known in the exercise of reasonable diligence that a violation would or did take place in the use of the conveyance.

U.C.A. 58-37-13 (1)(e)(iii) (1987) (Emphasis added).

In discussing third parties' rights under Utah's forfeiture statute, this Court has stated:

Possible interests of others in the vehicle have been adequately protected by the legislature. . . . Any person claiming an interest in the vehicle can file a petition for release of his interest in the property. If the claimant has a valid interest that is not subject to forfeiture the Court shall order release of the property or partial release and forfeiture, in which case the property is sold and the proceeds distributed among legitimate claimants first.

State v. One 1983 Pontiac, 717 P.2d 1338, 1341 (Utah 1986).

In the instant case the State would have the Court believe

that there is more required than what is set forth in the above mentioned statute. More specifically, something more than a bona fide security interest. However, the statute is clear in that the property subject to forfeiture is itself, all other elements satisfied, subject to the rights of a Bona Fide Security Interest.

A Security Interest need not include a perfected security interest. These are two different terms under the Uniform Commercial Code. The issue is whether the security interest under Utah's forfeiture statute is required to be perfected (R. 82).

The statute in question does not require a perfected security interest. (Generally, see White & Summers, Uniform Commercial Code, Section 22-3 at 965-73 (Third Edition 1988)). The Supreme Court of Utah has explained that Bona Fide means being in or with good faith, without fraud or deceit. Combined Metals Reduction Co. et al. v. State Tax Commission et al., 176 P.2d 614 (Utah 1947).

This definition is still in harmony with the modern definition referenced in Blacks Law Dictionary (5th Edition 1979):

Bona Fide

In or with good faith; honestly, openly and sincerely; without deceit or fraud; truly; actually; without simulation or pretense, innocently; in the attitude of trust and confidence; without notice of fraud etc. real, actual, genuine, and not feigned.

Blacks Law Dictionary at 160 (5th ed. 1979).

The court in First National Bank of Arizona v. Carbajal, 645

P.2d 778, 779 (Arizona 1982), defined what a security interest is, posing the question, " We must answer the following question on appeal: (1) To what extent does the noncompliance with Arizona's Motor Vehicle Registration Code affect the rights of the parties?" As part of the answer to the above question, the Supreme Court of Arizona stated "A Security Interest is no more than the right of a creditor to attach and perfect an interest in the property superior to the interest of any other." Id. at 783. Further, the court stated "For a party seeking to perfect a Security Interest in a motor vehicle, these provisions are mandatory and failure to comply with Motor Vehicle Code results in the parties having no right to enforce under that code." (Emphasis added).

Utah Code Annotated Section 58-37-13 does not require a perfected security interest as the State may have the Court believe. Nowhere does 58-37-13 reference compliance with the Motor Vehicle Code.

To the contrary, 58-37-13 requires a Bona Fide Security Interest only. This provision of the Code allows anyone that claims an interest in the vehicle to petition the Court for a release of that interest. It does not require that a person have a perfected security interest pursuant to the Motor Vehicle Code.

This provision allows the Court the necessary latitude to review the interests of all parties to determine for itself whether or not each petitioning party has a legitimate, genuine, bona fide interest in the property in question. If the

legislature wanted the provision to be so cut and dried as the State has argued it would have been very simple to add a phrase that perfected interests pursuant to the Motor Vehicle Act are required.

The Arizona Supreme Court concluded in the Carbajal case that the automobile seller's retention of the title document was a Security Interest. This is exactly on point in the case at hand. Rosalee Hansen retained the duly executed title to the van as a security interest in the van. Gerald Davis and Rosalee Hansen both have bona fide security interests in the 1987 Dodge Caravan as contemplated in 58-37-13. Each should be allowed relief as provided for in 58-37-13.

While it's true that the state did not have a specific lien against the vehicle for a loan, it is also true that the evidence is clear that money was borrowed for the purpose of purchasing this vehicle.

Joan Davis' husband, Gerald, and Rosalee Hansen are the real victims in a forfeiture of the 1987 Dodge Van. Gerald Davis took a loan from Ms. Davis' sister, Rosalee Hansen, in the amount of \$10,500 to purchase the van which cost approximately \$15,500 (R. 7, 57). The title to the van was notarized at Brighton Bank on 3300 South in Salt Lake City (R. 8) and given to Rosalee Hansen as security on the \$10,500 loan (R. 9). The title to the van was transferred to Rosalee Hansen on June 16th (R. 9).

A security contract existed between Gerald Davis and Rosalee Hansen covering the purchase of the van (R. 35, 57). The total

amount of the loan was \$10,500 (R. 36). The security agreement was written on May 9, 1987 (R. 36) and had terms of \$250 month + 05% interest (R. 57) (See Addendum C). In turn the title went with Rosalee Hansen (R. 58). Gerald Davis had made nine payments at the time Ms. Hansen testified (R. 37). Gerald Davis still owes \$8,663.50 under the agreement (R. 38). Rosalee Hansen registered herself as a lienholder at the end of March 1988 (R. 38). Ms. Hansen had no knowledge van was used to transport or distribute controlled substances. (R. 39). Further, Ms. Hansen thought the agreement was legal and binding. (R. 44).

Mr. Gerald Davis observed Joan Davis sign the title at the bank. (R. 58). At the date of the hearing, Gerald Davis had paid \$6,938 into the vehicle (R. 58). Mr. Davis wanted the plates in his wife's name and the title in both names (R. 59). Mr. Gerald Davis had no information that the vehicle was being used in transporting or possessing or distributing controlled substances (R. 60). Mr. Davis gave a check to Hinckley Dodge for \$11,868.83. Two other checks for tax and license were written in the amounts of \$650 and \$42 (R. 62). Mr. Davis deposited \$9,000 of the \$10,500 that he had obtained from Rosalee Hansen (R. 73) (Exhibits 9 and 10). Mr. Davis used the other \$1,500 to buy a ton and a half truck (R. 73).

Alan Tibbits, Vice-President of Brighton bank testified that he notarized the signature on the Certificate of Title (R. 81) (See Addendum E--Certificate of Title). Tibbits, at the time of the proceedings below had been the vice-president and manager of

Brighton Bank for 8 years (R.II. 27-28). Tibbits has been a notary for over 18 years (R.II. 29). Tibbits was aware that a sister or relative financed the van for Gerald Davis because Davis could finance the van at a better rate (R. 27-29).

There is a difference between a security interest and a perfected security interest under Utah Code Ann. 58-37-13 (R. 83). A bona fide security interest exists when you give someone \$10,500. 58-37-13(9)(c) requires that notice be given to all parties known to have an interest on claim on the property. This requirement is not limited to listings at the Division of Motor Vehicles (R. 89). The \$10,500 was a bona fide interest. Because of the interests of Gerald Davis and Rosalee Hansen the lower court's ruling should be reversed.

IV. TESTIMONY GIVEN IN A CIVIL PROCEEDING MAY NOT RELY ON STATEMENTS TAKEN DURING CRIMINAL CUSTODY BEFORE A MIRANDA WARNING WAS ISSUED.

Certain constitutional rules apply to civil as well as criminal forfeiture proceedings. See e.g., United States v. United States Coin & Currency, 401 U.S. 715, 722 (1971) (fifth amendment privilege against self-incrimination cognizable at in rem forfeiture proceeding); One Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 702 (1965) (exclusionary rule applied to civil forfeiture proceeding).

Statements made while Joan Davis was in custody without a Miranda warning were admitted in this civil forfeiture proceeding over the objection of Davis' counsel (R.II. 49-50). Joan Davis told Officer McCarthy that the van was hers (R.II. 50).

A: THE WITNESS [Officer McCarthy]: I didn't ask her anything. Chuck Oliver asked her -- made a comment, something to the effect, "That's a nice van."

And the lady in custody, Ms. Davis, stated it was hers and it was paid for.

Q: (By Mr. Skordas:) It was hers and it was paid for?

A: Yes. Excuse me. "I own it. It's paid for," or, It's mine." Something --

(R.II. 51).

Officer William McCarthy who works with metro narcotics testified to these inconclusive statements which were made while Joan Davis was in custody without a Miranda warning. Testimony which is obtained in violation of the fourth amendment may not be relied on to sustain a forfeiture in a civil proceeding.

Plymouth Sedan, 380 U.S. 693, 702. Judge Frederick relied on Joan Davis' statement in making his final ruling. Judge Frederick stated, "Joan Davis told the seizing officers McCarthy and Lewellyn that the vehicle was hers and that it was paid for." See Ruling at 4.

Equitable considerations should also exclude Ms. Davis' testimony. Officer McCarthy never inquired whether there was a loan on the vehicle. For that matter he didn't ask any questions about the ownership (R.II. 51). Officer McCarthy works with Gerald Davis and knew that Davis had borrowed money from Davis' sister or sister-in-law (R.II. 52) However, McCarthy never inquired whether there was a loan on the vehicle. McCarthy didn't ask any further questions about the ownership of the van (R. 51). Officer McCarthy's memory of the statement is not even conclusive that Joan Davis stated that the vehicle was paid for.

For Joan Davis' statement to be admissible, the officer should have at least asked a complete set of rational and reasonable questions about the ownership of the van. Instead, the prosecution relies on one isolated statement to argue that Joan Davis owned the van. Appellant argues that neither McCarthy nor Joan Davis viewed the question or the answer as complete.

Joan Davis' statement to officer McCarthy should not have been permitted. The statement made to Officer McCarthy was not conclusive. By McCarthy's own statement, he didn't fully question Ms. Davis regarding the ownership of the van or about any liens. Nevertheless, the state relies on Joan Davis' statement that she owned the van for proof of ownership. The district court erred in admitting this testimony and Appellant asks that this court reverse the lower court's ruling and remand this case for the forfeiture proceedings to be waived, a permissible holding under Plymouth, 380 U.S. at 702.

V. THE WARRANTLESS SEIZURE OF THE 1987 DODGE CARAVAN INVALIDATES THE PROCEEDINGS BELOW.

Utah Code Ann. 58-37-13 reads in pertinent part:

(2) Property subject to forfeiture under this act may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this act;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property has been used or intended to be used in violation of this act. . . .

Evidence established at the forfeiture proceeding established that no warrant was issued for forfeiture of the 1987 Dodge Van (R.II. 54 and Preliminary Hearing Transcript of Joan Davis, Officer Olson's testimony at 14). Seizure of a vehicle can only be "upon process issued by any court having jurisdiction over the property." Utah Code Ann. 58-37-13 (1988 cum. supp.) (emphasis added).

Officer William McCarthy was not aware of any warrant to seize the vehicle. (R.II. 54). The grounds for taking the vehicle was that it's common procedure. (R.II. 55). This State action violated Joan Davis' fourth amendment rights and is in further violation of Utah Code Ann. 58-37-13.

United States v. Bush, 647 F.2d 357, 370 (3d Cir. 1981) recognized that the forfeiture exception to warrant requirement for seizures governed by the fourth amendment. In United States v. Pappas, 613 F.2d 324, 330 (1st Cir. 1980), the First Circuit read the probable cause exception to requiring a warrant for a seizure:

as justifying the warrantless seizure of an automobile only when the seizure immediately follows the occurrence that gives the federal agents probable cause to believe that the automobile is subject to forfeiture under section 881(a) and the exigencies of the surrounding circumstances make the requirement of obtaining process unreasonable or unnecessary.

Id. (involved the issue of suppression of evidence after a warrantless seizure 11 months after the facts giving rise to

probable cause).

In United States v. Spetz, 721 F.2d 1457, 1472 (9th Cir. 1983), the Ninth Circuit reiterated the principle that a "warrantless seizure of a parked car is lawful under the automobile exception only where specific exigent circumstances justify an immediate seizure." Spetz allows for warrantless seizure of automobiles when two factors are present, "probable cause to believe that the automobile contains contraband, and . . . exigent circumstances associated with the automobile." Id. n. 28 (citation omitted).

Neither of the two key factors is present here. The officers that seized the vehicle had probable cause to believe that the Dodge Van had been used in the past to transport a quarter ounce of marijuana, but when the vehicle was seized while parked in the Davis' driveway over five months after it was allegedly used in the "transportation" for purposes of distribution, the officers had no reason to believe that the vehicle contained contraband. Additionally, there were no exigent circumstances to justify a warrantless seizure of the vehicle. The facts leading to the seizure of the 1987 Dodge Van occurred on August 4, 1987. The seizure of the van took place over five months later on January 19, 1988.

Although it is unclear whether dismissal of a forfeiture action is the specific remedy when property subject to forfeiture has been illegally seized, Application of Kingsley, 802 F.2d 571, 578 (1st Cir. 1986) (citing Immigration and Naturalization

Service v. Lopez-Mendoza, 468 U.S. 1032 (1984)) (Plymouth Sedan, 380 U.S. at 702 states that a court may exercise discretion in waiving a forfeiture), should this Court determine that dismissal is improper, the property (or its approximate value since the van has already been sold) should be returned to its proper owners until proceedings may be held consistent with the arguments in this brief.

CONCLUSION

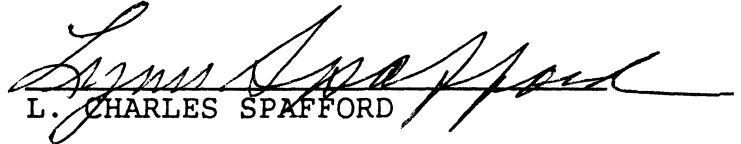
For any or all of the foregoing reasons, Appellant, Joan Davis, respectfully requests that this Court reverse the opinion of the lower court allowing for forfeiture of the 1987 Dodge Van and remand the case to the district court for either dismissal with return of the van (or its proximate value) or a new hearing.

Respectfully submitted this ²⁰~~21~~ day of March, 1989.

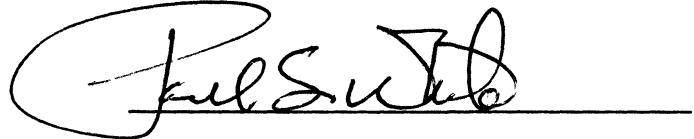

L. CHARLES SPAFFORD
Attorney for Appellant

Certificate of Delivery

I, L. CHARLES SPAFFORD, hereby certify that ten copies of the foregoing will be delivered to the Utah Supreme Court, State Capitol, Salt Lake City, Utah 84114, and four copies to the County Attorney's Office, 2001 South State, #S 3400, Salt Lake City, Utah 84114, this ²⁰21st day of March, 1989.


L. CHARLES SPAFFORD

DELIVERED by PAUL S. WHITE this ²⁰21st day of March, 1989.



ADDENDUMS

- ADDENDUM A: Judge Frederick's opinion of April 12, 1988.
- ADDENDUM B: Utah Code Ann. Section 58-37-13 (1988)
- ADDENDUM C: Security Agreement
- ADDENDUM D: Information, Warrant, and Police Report
- ADDENDUM E: Certificate of Title
- ADDENDUM F: Transcript of Mike Davis' Preliminary Hearing--
Testimony of Officer Steve Olson.
- ADDENDUM G: Transcript of Joan Davis' Preliminary Hearing--
Testimony of Officer Steve Olson.

ADDENDUM A: Judge Frederick's opinion of April 12, 1988.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
STATE OF UTAH

JOAN E. DAVIS, et al, Case No. C-88-655
Petitioners,
vs. REPORTER'S TRANSCRIPT
OF JUDGE'S RULING
THE STATE OF UTAH,
Respondent.

REPORTER'S TRANSCRIPT OF JUDGE'S RULING

THE HONORABLE J. DENNIS FREDERICK

Tuesday, April 12, 1988

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1 P R O C E E D I N G S

2 THE COURT: Counsel, let me first express my appreci-
3 ation for your willingness to come over here and listen to
4 this ruling. I had anticipated giving a little more notice
5 than what I've given you. However, I am presently in Tooele
6 County and have to go back shortly, so I thought I would rule
7 while I am ready.

8 Let me say this is the time set at the Court's request
9 for ruling in the matter of Joan E. Davis et al versus the
10 State of Utah, case number C-88-655. Counsel who tried the
11 case are present before the Court.

12 At the conclusion of the trial in this matter on the
13 8th of April, this Court took under advisement its ruling to
14 examine the authorities presented by counsel, to further
15 examine the exhibits that have been received, and is now
16 prepared to rule.

17 Title 58-37-13 sub.1(e) provides, inter alia, for the
18 forfeiture of conveyances used to transport or facilitate
19 the sale of controlled substances, except vehicles used for
20 illegal purposes not known to be so used or consented to be
21 so used by the owner, or vehicles subject to, quote, bona
22 fide security interest, end quote.

23 The state in this case argues that the term bona fide
24 security interest is synonymous with perfected security
25 interest and therefore, unless the provisions of the Motor

1 Vehicle Act, Title 41-1-1 et seq. of the Utah Code are
2 complied with, a lienholder or encumbrancer has no enforceable
3 interest against the state.

4 This Court is not persuaded that the pertinent
5 provisions of the Utah Controlled Substances Act 58-31-1 and
6 following, and specifically 58-37-13 sub.9(c)iii so requires.
7 Indeed, it is this Court's view that had the Legislature
8 intended that only perfected security interests had standing
9 to challenge seizure, it could have said so.

10 The language in the section referred to specifically,
11 it seems to this Court, allows for claimants to have standing
12 and challenge seizure, even though their alleged interests
13 are not perfected according to the Motor Vehicle Act.

14 This Court is persuaded by a preponderance of the
15 evidence, however, that Joan Davis knew and participated in
16 the use of the vehicle in question for the illegal purpose
17 of facilitating a sale of controlled substances. This Court
18 views the testimony of Officer Steve Olsen as more credible
19 than the testimony of Ms. Joan Davis and accordingly,
20 the first prong of the test is met, that being the use of
21 the conveyance in question for the transport and/or facili-
22 tation of the sale of controlled substances.

23 Therefore, this Court determines that the seizure was
24 proper and unless one or both of the pertinent exceptions
25 above referred to pertain, namely, subdivision 13-1(e)ii or

1 iii under 58-37, the petition will be denied. Specifically,
2 the issue is whether claimants Gerald Davis or his wife Joan
3 Davis was the owner of the vehicle in question and whether
4 or not the claimant Rosalee Hanson possessed a bona fide
5 security interest precluding forfeiture, at least to the
6 extent of hers, Rosalee Hansen's, claimed interests.

7 The testimony of the petitioners in this case, in this
8 Court's judgment, was not credible in certain critical
9 particulars. Joan Davis completed the application for the
10 certificate of title and the issued title was in her name
11 alone listing no lienholders. Gerald Davis stated in his
12 testimony that he knew that the vehicle was titled only in
13 his wife's name when the title was received on or about
14 June the 16th of 1987. However, he testified in his affidavit
15 before this Court, Exhibit 8, that he didn't know until the
16 vehicle was seized January the 19th of 1988 that it was
17 titled in the wife's name alone.

18 Joan Davis told the seizing officers McCarthy and
19 Lewellyn that the vehicle was hers and that it was paid for.
20 Yet she testified in court at trial that the vehicle belonged
21 to her husband and that there were sums owed on the vehicle.

22 Gerald Davis on the 20th of January of 1988, the day
23 after the seizure and some eight months after the alleged
24 date of the so-called security agreement, Exhibit 4, told
25 Lieutenant Vuyk that there was no written security agreement

1 and furthermore, all of the payments to Hanson on the alleged
2 loan were in cash, evidenced by no cancelled checks. Yet
3 Gerald Davis had an active checking account at the time in
4 question. This Court was provided with no purchase agreement
5 from Hinckley Dodge for the vehicle. The security agreement,
6 Exhibit 4, lacks a description of the vehicle in question.
7 The transaction failed to comply with Title 41-1-20 sub.D,
8 41-1-37, 41-1-82 and 85 of the Motor Vehicle Code.

9 Rosalee Hanson testified that she obtained \$9,700 in
10 cash or in a cashier's check for a diamond ring she sold to
11 someone named Morris who came to her residence to look at
12 her car. She went with Mr. Morris and cashed the check and
13 held the \$9,700 in cash for approximately one and a half
14 weeks before giving it to her brother-in-law for an invest-
15 ment which was to pay her five percent interest, without
16 getting a receipt for the cash or running the cash through
17 one of the three accounts that she maintained at the time.

18 The security agreement significantly, in this Court's
19 view, presumably written on or about the date the cash was
20 given, refers to the past tense, "agreed." That is, Rosalee
21 Hanson, quote, agreed, end quote, to loan the sums.

22 Furthermore, the so-called security agreement sets the
23 amount of the loan at \$10,500. The bank state Exhibit
24 10, produced by Mr. Gerald Davis shows a \$9,000 transfer from
25 Gerald Davis's savings account where Rosalee's money was

1 supposedly deposited to the checking account on May the 11th
2 of 1987.

3 A casual observation of the foregoing litany of events
4 would reflect, I'm sure, to the most objective observer that
5 there are too many loose ends and unexplained circumstances,
6 Mr. Larsen, to determine that the petitioner's story is
7 persuasive.

8 It is therefore this Court's judgment that the
9 transaction between the Davises and Hanson appears to be less
10 than bona fide. This Court is not persuaded that either of
11 the two exceptions in Title 58-37-13 pertain. Accordingly,
12 it is this Court's view that the petition seeking to stay
13 the forfeiture should be and is denied.

14 Mr. Skordas or Ms. Barbiero, I will ask that you please
15 prepare Findings of Facts and Conclusions of Law and
16 Judgment in accordance with what is stated here.

17 However, let me further indicate that I have touched
18 upon what I view to be highlights in the testimony and the
19 statement of the discrepancies in the testimony is by no
20 means intended to be all-inclusive.

21 Submit the Findings, Conclusions and Judgment to Mr.
22 Larsen for his approval as to form before submitting
23 them to the Court.

24 Counsel, are there any questions in this matter?

25 MR. LARSEN: Your Honor, may we ask for a stay upon the

1 execution of the order for 30 days, pending petitioner's
2 right to appeal?

3 THE COURT: Counsel, my notion would be that certainly
4 your clients are entitled to timely file their appeal. I'm
5 rather, however, of the view that their procedure to effect
6 a stay would be to post a supersedeas bond, I would expect.

7 If counsel can not agree upon a procedure to follow
8 to allow that appeal to go forward, then contact me and we'll
9 see if we can't resolve it.

10 MR. LARSEN: How did you view Mr. Tibbits' testimony,
11 your Honor, regarding the notarization of that?

12 THE COURT: Well, I didn't find Mr. Tibbits' testimony
13 to be in the least suspect, but neither did I find that it
14 was compelling on the critical points in question. Certainly
15 Mr. Tibbits' credibility, I think, was probably above
16 reproach, but it didn't really seem to me to either support
17 or detract from the theory of the state that the efforts
18 to establish a security interest were after the fact, rather
19 than before the fact.

20 There's no doubt that the parties here intended to
21 purchase a vehicle early on and in fact did purchase that
22 vehicle. The critical issue, however, is whether or not
23 that vehicle was in fact owned by or titled to Joan Davis, as
24 opposed to Gerald, and number two, whether or not Rosalee
25 Hanson had a bona fide security interest in the vehicle,

1 neither of which issues in my judgment, did Tibbits'
2 testimony bear upon.

3 MR. LARSEN: Thank you.

4 THE COURT: All right, counsel. I might say that
5 this has been a difficult case for me to rule on. I mean,
6 it is very close and that is partly a product, I'm sure, of
7 the fact that counsel on both sides of the issue presented it
8 very clearly and forcibly, so you're to be commended on your
9 presentation, but someone has to rule and that falls on me.

10 MR. SKORDAS: Your Honor, with respect to the judgment
11 in this matter, I suppose the state could take the judgment
12 one step further then to deny the petitioner's motion or
13 petition to set aside the forfeiture and to grant the state
14 its forfeiture here.

15 THE COURT: Well, yes. The effect of my ruling, of
16 course is to deny the petition to stay the forfeiture or to
17 avoid the forfeiture, which obviously means that the state
18 is entitled to proceed with the forfeiture subject,
19 however to any stay that might be imposed pursuant to the
20 petitioner's taking an appeal on this ruling.

21 MR. SKORDAS: What I'm worried about I guess, is
22 the state now having to file a petition for a forfeiture and
23 having a trial on the matter.

24 THE COURT: No. Forfeiture's granted. That's the
25 ruling. That's the procedure I'm following.

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MR. SKORDAS: I thought that was the case.

Thank you.

THE COURT: Thank you. Court will be in recess.

(Whereupon, the proceedings were concluded.)

* * *

* *

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2
3 REPORTER'S CERTIFICATE

4 STATE OF UTAH)
5) ss
6 COUNTY OF SALT LAKE)

7 I, ANNA M. BENNETT, do hereby certify:

8 That I am a Certified Shorthand Reporter, License No.
9 220, and one of the official court reporters of the State of
10 Utah; that on the 12th day of April, 1988, I attended the
11 within matter and reported in shorthand the proceedings had
12 thereat; that later I caused my said shorthand proceedings to
13 be transcribed into typewriting, and the foregoing pages,
14 numbered from 2 to 9, inclusive, constitute a full, true and
15 correct account of the same, to the best of my ability.

16 DATED at Salt Lake City, Utah, this 19th day of
17 April, 1988.

18 
19 ANNA M. BENNETT, CSR
20
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25

ADDENDUM B: Utah Code Ann. Section 58-37-13 (1988)

(c) When authorized by an administrative inspection warrant, a law enforcement officer or employee designated in Section 58-37-9 has the right:

(i) To inspect and copy records required by this act.

(ii) To inspect within reasonable limits and a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found, and except as provided in Subsection (3)(e), all other things including records, files, papers, processes, controls, and facilities subject to regulation and control by this act or by rules promulgated by the department.

(iii) To inventory and stock of any controlled substance and obtain samples of any substance.

(d) This section shall not be construed to prevent the inspection of books and records without a warrant pursuant to an administrative subpoena issued by a court or the department nor shall it be construed to prevent entries and administrative inspections including seizures of property without a warrant:

(i) With the consent of the owner, operator, or agent in charge of the controlled premises;

(ii) In situations presenting imminent danger to health or safety;

(iii) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(v) In all other situations where a warrant is not constitutionally required.

(e) No inspection authorized by this section shall extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

History: L. 1971, ch. 145, § 10; 1987, ch. 92, § 101.

Amendment Notes. — The 1987 amend-

ment corrected the statutory reference in Subsection (1) and made minor stylistic changes.

58-37-13. Property subject to forfeiture — Seizure — Procedure.

(1) The following are subject to forfeiture, and no property right exists in them:

(a) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this act;

(b) all raw materials, products, and equipment of any kind used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this act;

(c) all property used or intended for use as a container for property described in Subsections (1)(a) and (1)(b);

(d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used with health food supplements and herbs, used or intended for use to administer controlled substances in violation of this act;

(e) all conveyances including aircraft, vehicles, or vessels used or intended for use, ~~to transport, or in any manner~~ facilitate the transportation, sale, receipt, simple possession, or concealment of property described in Subsections (1)(a) or (1)(b), except that:

(i) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to violation of this act;

(ii) a conveyance may not be forfeited under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent; and

(iii) any forfeiture of a conveyance subject to a bona fide security interest is subject to the interest of a secured party who could not have known in the exercise of reasonable diligence that a violation would or did take place in the use of the conveyance;

(f) all books, records, and research, including formulas, microfilm, tapes, and data used or intended for use in violation of this act;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this act, all proceeds traceable to any violation of this act, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this act; but:

(i) An interest in property may not be forfeited under this subsection if the holder of the interest did not know of the act which made the property subject to forfeiture, or did not willingly consent to the act;

(ii) There is a rebuttable presumption that all money, coins, and currency found in proximity to forfeitable controlled substances, drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of controlled substances are forfeitable under this section; the burden of proof is upon claimants of the property to rebut this presumption;

(h) all imitation controlled substances as defined in the Imitation Controlled Substances Act; and

(i) all warehousing, housing, and storage facilities, or interest in real property of any kind used, or intended for use, in producing, cultivating, warehousing, storing, protecting, or manufacturing any controlled substances in violation of this chapter, except that:

(i) any forfeiture of a housing, warehousing, or storage facility or interest in real property is subject to the bona fide security interest of a party who could not have known in the exercise of reasonable diligence that a violation would take place on the property;

(ii) an interest in property may not be forfeited under this subsection if the holder of the interest did not know of the act which made the property subject to forfeiture, or did not willingly consent to the act;

(iii) unless the premises are used in producing, cultivating, or manufacturing controlled substances, a housing, warehousing, or storage facility or interest in real property may not be forfeited under this section unless cumulative sales of controlled substances on the

property within a two-month period total or exceed \$1,000, or the street value of any controlled substances found on the premises at any given time totals or exceeds \$1,000. A narcotics officer experienced in controlled substances law enforcement may testify to establish the street value of the controlled substances for purposes of this subsection.

(2) Property subject to forfeiture under this act may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this act;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property has been used or intended to be used in violation of this act.

(3) In the event of seizure under Subsection (2), proceedings under Subsection (4) shall be instituted promptly.

(4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this act the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) All substances listed in Schedule I that are possessed, transferred, distributed, or offered for distribution in violation of this act are contraband and shall be seized and summarily forfeited to the state. Similarly, all substances listed in Schedule I which are seized or come into the possession of the state are contraband and shall be summarily forfeited to the state if the owners are unknown.

(6) All species of plants from which controlled substances in Schedules I and II are derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or are wild growths, may be seized and summarily forfeited to the state.

(7) Failure, upon demand by the department or its authorized agent, of any person in occupancy or in control of land or premises upon which species of plants are growing or being stored, to produce an appropriate license or proof that he is the holder of a license, is authority for the seizure and forfeiture of the plants.

(8) When any property is forfeited under this act by a finding of the court that no person is entitled to recover the property, it shall be deposited in the custody of the Division of Finance. Disposition of all property is as follows:

(a) The state may include in its complaint seeking forfeiture, a request that the seizing agency be awarded the property. Upon a finding that the seizing agency is able to use the forfeited property in the enforcement of controlled substances laws, the district court having jurisdiction over the

case shall award the property to the seizing agency. The seizing agency shall pay to the prosecuting agency the legal costs incurred in filing and pursuing the forfeiture action. Property forfeited under this section may not be applied by the court to costs or fines assessed against any defendant in the case.

(b) The seizing agency, or if it makes no application, any state agency, bureau, county, or municipality, which demonstrates a need for specific property or classes of property subject to forfeiture shall be given the property for use in enforcement of controlled substances laws upon the payment of costs to the county attorney for legal costs for filing and pursuing the forfeiture and upon application for the property to the director of the Division of Finance. The application shall clearly set forth the need for the property and the use to which the property will be put.

(c) The director of the Division of Finance shall review all applications for property submitted under Subsection (8)(b) and, if the seizing agency makes no application, make a determination based on necessity and advisability as to final disposition and shall notify the designated applicant or seizing agency, where no application is made, who may obtain the property upon payment of all costs to the appropriate department. The Division of Finance shall in turn reimburse the prosecuting agency or agencies for costs of filing and pursuing the forfeiture action, not to exceed the amount of the net proceeds received for the sale of the property. Any proceeds remaining after payment shall be returned to the seizing agency or agencies.

(d) If no disposition is made upon an application under Subsection (8)(a) or (b), the director of the Division of Finance shall dispose of the property by public bidding or where deemed appropriate, by destruction. Proof of destruction shall be upon oath of two officers or employees of the department having charge of the property, and verified by the director of the department or his designated agent.

(9) When any property is subject to forfeiture, a determination for forfeiture to the state shall be made as follows:

(a) A complaint verified on oath or affirmation shall be prepared by the county attorney where the property was seized or is to be seized and filed in the district court. The complaint shall describe with reasonable particularity:

- (i) the property which is the subject matter of the proceeding;
- (ii) the date and place of seizure, if known; and
- (iii) the allegations which constitute a basis for forfeiture.

(b) Upon filing the complaint, the clerk of the district court shall forthwith issue a warrant for seizure of the property which is the subject matter of the action and deliver it to the sheriff for service, unless the property has previously been seized without a warrant, under Subsection 58-37-13(2).

(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk, and served together with a copy of the complaint, upon all persons known to the county attorney to have a claim in the property by one of the following methods:

- (i) upon each claimant whose name and address is known, at the last known address of the claimant, or upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by

mailing a copy of the notice and complaint by certified mail to the address given upon the records of the division, which service is deemed complete even though the mail is refused or cannot be forwarded; and

(ii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

(d) Except under Subsection (8)(c), any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.

(e) When property is seized under this act, any interested person or claimant of the property, prior to being served with a complaint under this section, may file a petition in the district court for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney in the county of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a complaint of forfeiture.

(f) After 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court determines. If the county attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the county attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.

(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At this hearing all interested parties may present evidence of their rights of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.

(h) Proceedings of this section are independent of any other proceedings, whether civil or criminal, under this act or the laws of this state.

(i) When the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited and direct it to be delivered to the custody of the Division of Finance. The division shall dispose of the property under Subsection (8).

(j) When the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed:

(i) first, proportionally among the legitimate claimants;

(ii) second, to defray the costs of the action, including seizure, storage of the property, legal costs of filing and pursuing the forfeiture, and costs of sale; and

(iii) third, to the Division of Finance for the General Fund.

(k) In a proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as appropriate.

History: L. 1971, ch. 145, § 13; 1982, ch. 12, § 2; 1982, ch. 32, § 9; 1987, ch. 87, § 2.
Amendment Notes. — The 1987 amend-

ment, effective July 1, 1987, rewrote this section to the extent that a detailed analysis is impracticable.

NOTES TO DECISIONS

ANALYSIS

Forfeiture of vehicle.
Grounds for denial.
—Not found.

Forfeiture of vehicle.

Forfeiture of defendant's motorcycle was not unduly harsh considering the value of the motorcycle versus the amount of contraband drugs, where the evidence demonstrated concealment and/or transportation with an intent to distribute. *State v. One 1982 Silver Honda Motorcycle*, 735 P.2d 392 (Utah Ct. App. 1987).

Grounds for denial.

—Not found.

The court's denial of a petition by the state for forfeiture of a vehicle — based on a combination of four factors: (1) The case was not set for hearing within 20 days of the filing of an answer to the petition, as directed by Subsection (9)(g); (2) the lack of indication of profit motive in the transactions and small amounts

of drugs involved; (3) the question of possible equitable interests in the vehicle by other parties; and (4) the value of the vehicle forfeited appeared to be disproportionate to the use that was made of the vehicle — was error, for the following reasons: The delay in no way prejudiced the rights of the parties involved; this section does not require a showing of a profit motive on the part of the person involved in the transportation and distribution of drugs; a vehicle is subject to forfeiture no matter how small the quantity of contraband found; this section clearly provides a method for satisfaction of the claims upon forfeiture of a vehicle; and the value of the property seized is immaterial. *State v. One 1983 Pontiac*, 717 P.2d 1338 (Utah 1986).

COLLATERAL REFERENCES

Journal of Contemporary Law. — For comment, "Whose Right to Counsel Is It?," see 13 J. Contemp. L. 161 (1987).

58-37-17. Judicial review.

(1) Any person aggrieved by a department's final order may obtain judicial review.

(2) Venue for judicial review of informal adjudicative proceedings is in the district court of Salt Lake County.

History: L. 1971, ch. 145, § 17; 1987, ch. 161, § 203.

Amendment Notes. — The 1987 amend-

ment, effective January 1, 1988, so rewrote this section as to make a detailed analysis impracticable.

ADDENDUM C: Security Agreement

Mr. & Mrs. Ernest Hansen agreed to lend Gerald
G. Davis the sum of \$10,500.00 towards a
loan for a new automobile on the condition
that I would receive \$250.00 per month with
interest of 5% until said loan is paid in full.
Now it is agreed that Ernest Hansen will
hold title until said loan is paid in full.

Lender: Ernest Hansen

Borrower: Gerald K Davis

Witness: Joan Davis

Signed this 9th day of May 1987

ADDENDUM D: Information, Warrant, and Police Report

DAVID E. YOCOM
County Attorney
GREGORY G. SKORDAS
Deputy County Attorney
Courtside Office Building
231 East 400 South, 3rd Floor
Salt Lake City, Utah 84111
Phone: (801) 363-7900

IN THE FIFTH CIRCUIT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,)	Screened by: G. Skordas
)	Assigned to: Drug Team
Plaintiff,)	
)	BAIL \$1,500.00
v.)	
)	INFORMATION
JOAN DAVIS)	
DOB 02/29/49,)	Criminal No.
)	
Defendant(s).)	

The undersigned S. Olson - Metro Narcotics under oath states on information and belief that the defendant(s) committed the crimes of:

COUNT 1

UNLAWFUL DISTRIBUTION, OFFERING, AGREEING, CONSENTING OR ARRANGING TO DISTRIBUTE A CONTROLLED OR COUNTERFEIT SUBSTANCE, a Third Degree Felony, at 2850 South 215 East, in Salt Lake County, State of Utah, on or about August 8, 1987, in violation of Title 58, Chapter 37, Section 8(1)(a)(ii), Utah Code Annotated 1953, as amended, in that the defendant, JOAN DAVIS, a party to the offense, did knowingly and intentionally distribute, offer, agree, consent or arrange to distribute a controlled or counterfeit substance, to-wit: Marijuana, a Controlled Substance:

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

S. Olson G. Paquette J. Hodson David S. Murdock

(Continued on page Two)

INFORMATION
STATE v. JOAN DAVIS
County Attorney #88-1-74369/01
Page Two

PROBABLE CAUSE STATEMENT:

Count I:

On August 8, 1987 at approximately 2130 hours at 2850 South 215 East, in Salt Lake County, affiant purchased from the defendant for \$35.00 in cash a substance which has been analyzed and found to be marijuana.

Affiant

Subscribed and sworn to before me
this ____ day of January, 1988.

Judge

Authorized for presentment and
filing:

DAVID E. YOCOM, County Attorney

[Signature], Deputy
mrf/2612c

88-1-7436901

Circuit Court, State of Utah
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

Before Eleanor VanSciver
Judge of the Circuit Court

THE STATE OF UTAH

JOAN DAVIS vs DOB 02/29/49

Warrant of Arrest

Criminal No _____

Defendant(s)
(Address DOB)

THE STATE OF UTAH.

To any Peace Officer in the State of Utah. Greeting

Any Information, upon oath, having been this day made before me by _____
S. Olson - Metro Narc #87-63185

_____ and it appears from the information or affidavit
filed with the information, that there is probable cause to believe that the public offense of _____
Dist. C/S, 3°

_____ has been committed and that

Joan Davis _____ has committed it

YOU ARE THEREFORE COMMANDED to arrest the above-named defendant forthwith & bring the
defendant before this Court or before the nearest or most accessible magistrate for setting bail. If the defendant has fled
justice, you shall pursue the defendant into any other county of this state and there arrest the defendant. The Court finds
reasonable grounds to believe defendant will not appear upon a summons.

Bail is set in the amount of \$ \$1,500.00.

Dated this _____ day of January, A D 19 88

This warrant may be served day or night

Circuit Judge

FIELD NOTES

METRO NARC./FELONY

SUPPLEMENTARY REPORT-SR

POLICE DEPARTMENT

IC CODE 3560	PRIMARY OFFENSE DIST CLS-VALUE	ICIC CODE	SECONDARY OFFENSE	DATE REPORTED 8-4-87	CASE NUMBER 87-63185
CLASSIFICATION CHANGE YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	FELONY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	OCCURRED: DATE 8-4-87 TIME: 2130 DAY: TUES		ADDRESS OF OCCURRENCE APPROX 2850 SO. 215 E.	

VEHICLE REPORT - VC

ADDRESS OF RECOVERED STOLEN VEHICLE					
OWNER (LAST, FIRST)		ADDRESS		ZIP	RESIDENCE PHONE
FIDAVIT FILED? YES <input type="checkbox"/> NO <input type="checkbox"/>		IMPOUNDED? YES <input type="checkbox"/> NO <input type="checkbox"/>		REASON FOR IMPOUND	
WRECKER COMPANY		WHERE IMPOUNDED: CITY <input type="checkbox"/> 2150 W. 600 SO. <input type="checkbox"/> STATE <input type="checkbox"/> OTHER		VEHICLE CONDITION <input type="checkbox"/> GOOD <input type="checkbox"/> POOR <input type="checkbox"/> FAIR	
IGNITION LOCKED? YES <input type="checkbox"/> NO <input type="checkbox"/>	KEYS IN IGNITION? YES <input type="checkbox"/> NO <input type="checkbox"/>	WINDOWS LOCKED? YES <input type="checkbox"/> NO <input type="checkbox"/>	DOORS LOCKED? YES <input type="checkbox"/> NO <input type="checkbox"/>	PROPERLY PARKED? YES <input type="checkbox"/> NO <input type="checkbox"/>	SCENE PROCESSED? YES <input type="checkbox"/> NO <input type="checkbox"/>

VEHICLE FIELD - 10

REASON SUSPECT	COLOR #1 BRN	COLOR #2	YEAR 87	MAKE PLUM	MODEL ?	BODY STYLE VAN	LICENSE NUMBER 720 BHT
JC. YR. 88	JC. STATE UT	VALUE	VIN NUMBER	UNUSUAL FEATURES/DAMAGE NEW CONDITION			

COMPLAINANT FIELD - 9C

COMPLAINANT IS ALSO: VICTIM ☐ WITNESS ☐ PERSON LAST SECURING ☐

DO NOT FILL IN 9V, 9P or 9W, IF BOXES MARKED YES.

NAME (LAST, FIRST) S OLSON G26V			ADDRESS SLOPD - METRO			ZIP
RESIDENCE PHONE	NO PHONE	BUSINESS PHONE	SEX	RACE	AGE DOB 11	CAN IDENTIFY? YES <input type="checkbox"/> NO <input type="checkbox"/>
						WITNESS FORM? YES <input type="checkbox"/> NO <input type="checkbox"/>

VICTIM FIELD - 9V

NAME (LAST, FIRST)			ADDRESS			ZIP
RESIDENCE PHONE	NO PHONE	BUSINESS PHONE	SEX	RACE	AGE DOB 11	CAN IDENTIFY? YES <input type="checkbox"/> NO <input type="checkbox"/>
						WITNESS FORM? YES <input type="checkbox"/> NO <input type="checkbox"/>

WITNESS FIELD - 9W

NAME (LAST, FIRST)			ADDRESS			ZIP
RESIDENCE PHONE	NO PHONE	BUSINESS PHONE	SEX	RACE	AGE DOB 11	CAN IDENTIFY? YES <input type="checkbox"/> NO <input type="checkbox"/>
						WITNESS FORM? YES <input type="checkbox"/> NO <input type="checkbox"/>

SS CHECK ONE: (SUSP. ☐ (PERS. RESP. ☐ (WANTED ☐ (CANCEL) (MISSING ☐ (CANCEL) (WALKAWAY ☐ (CANCEL)

NAME (LAST, FIRST) DAVIS JOAN / MIKE DAVIS	SEX F	RACE W	AGE 30	DATE OF BIRTH	HEIGHT 5' 3"	WEIGHT 125 LBS
HAIR <input type="checkbox"/> SHORT <input type="checkbox"/> LONG		EYES <input type="checkbox"/> BLUE <input type="checkbox"/> BROWN		TATTOOS <input type="checkbox"/> YES <input type="checkbox"/> NO		SCARS <input type="checkbox"/> YES <input type="checkbox"/> NO
SIGNATURE OF SUSPECT DAVIS JOAN						

CONTINUATION REPORT

JOAN DROVE INTO AN APT. COMPLEX AT APPROX 2800SO 200E. MIKE AND WALT WENT TO ONE OF THE APTS. R/O HAD GIVEN MIKE \$35.00 TO PURCHASE 1/8 OZ. MIKE WAS TO PAY R/O \$15.00 BACK, AFTER THE BUY.

THEY RETURNED APPROX 5 MINS. LATER, WITH A 1/4 OZ OF MARIJUANA.

JOAN DROVE US TO A CURB AT (APPROX 2850SO. 215E.) SHE WAS GIVEN THE MARIJUANA BY MIKE AND SHE PROCEEDED TO DIVIDE IT INTO 2, 1/8 OZ APPROX. PILES. Residual

SHE THEN HAD R/O HOLD THE PLASTIC BAGGY UP TO THE PLASTIC TRAY CONT. THE MARIJ. SHE SCRAPED ONE OF THE PILES INTO R/O'S BAG, SCRAPED THE OTHER ONTO A PIECE OF PAPER.

R/O RETAINED THE BAG, SHE KEPT THE PAPER. R/O WAS DROPPED BACK OFF AT RANDY'S (3331 SUE AND TOOK MIKE TO HIS RESIDENCE.

MIKE GAVE R/O \$10.00 OF THE \$15.00 HE OWED R/O. R/O LEFT, NO OTHER TRANSACTIONS. R/O DID DROP MIKE AT AN ADDRESS OF A RELATIVE (170 E. GORDON LANE).

4501 SOUTH 700 WEST, #223 - SALT LAKE CITY, UTAH 84119
Phone (801) 965-4487

Name (Last, First, Middle) AVIS, Joan	D.O.B.	(Filled out by laboratory) Laboratory No. 87-2635
Name (Last, First, Middle)	D.O.B.	Agency Case Number 87-63185
Name (Last, First, Middle)	D.O.B.	Type of Report Dist. c/s f/v
Requesting Analysis Olson	Requesting Agency & Address Salt Lake Metro	
Name (Last, First, Middle)	Agency Phone # 535-7252	
Date & Time of Occurrence 08/04/87 2130 hrs.		Date & Time of Request
Conclusion of the analysis the evidence will be: Turned up by agency <input type="checkbox"/> Mailed to agency <input type="checkbox"/> Other <input type="checkbox"/>		Date & Time of Request
Requested and Special Instructions approx. 1/8 oz. marijuana <input type="checkbox"/> Fingerprints <input type="checkbox"/> Handwriting <input type="checkbox"/> Other <input type="checkbox"/>		

DO NOT WRITE BELOW THIS LINE

I, Robert J. Hodson, 19 87 day 13th of August, 19 87 obtain from Hodson at lab evidence of: ☐ Evidence as per property invoice ☐ Other

I will make an examination and analysis of this evidence and in his opinion:

The plastic bag was found to contain 3.3 grams of crushed marijuana.

Conclusion of the analysis the evidence on the 20 day of AUG, 19 87
☒ Released to ☐ Mailed to
Analyst [Signature] PM [Signature]
Date & Time Typed [Signature] [Signature]

ADDENDUM E: Certificate of Title

UTAH CERTIFICATE OF TITLE

(SEE REVERSE SIDE FOR INSTRUCTIONS AND INFORMATION)
THIS CERTIFIES THAT THE PERSON NAMED BELOW, AS OWNER, HAS BEEN DULY REGISTERED
IN THE OFFICE OF THE UTAH STATE TAX COMMISSION AND THAT APPLICATION FOR CERTIFICATE
OF TITLE SHOWS SUCH LIENS ENUMERATED BELOW AND NO OTHERS.



OWNER INFORMATION SECTION

NAME **DAVIS JOHN E**
ADDRESS **140 W GREGSON**
CITY-STATE-ZIP **SALT LAKE CITY UT 84115**

TITLE NUMBER
3292113

LIC # 720BHT

IDENTIFICATION SECTION

TITLE NOT VALID WITHOUT SECURITY FILM STRIP OVER THIS AREA

YEAR-87 MAKE-DODG MODEL-CAR
BODY-TYPE-SV CYL-4 FUEL-G
VIN-2D4PES1G5HR179096
DATE ISSUED-06/08/87 CODORETER

VEHICLE TITLE

FIRST LIEN-HOLDER SECTION

NAME **NONE**
ADDRESS
CITY-STATE-ZIP

SECOND LIEN-HOLDER SECTION

NAME
ADDRESS
CITY-STATE-ZIP

FIRST LIEN RELEASE SECTION

SIGNATURE OF LIEN-HOLDER RELEASING INTEREST
DATE

SECOND LIEN RELEASE SECTION

SIGNATURE OF LIEN-HOLDER RELEASING INTEREST
DATE

OWNERS TRANSFER AND ODOMETER DISCLOSURE SECTION

I (we) the undersigned owner(s) do hereby convey, transfer and assign all rights, title and interest in the new owner as shown in Section 8 hereunder, and warrant the title to be free and clear of any liens or encumbrances whatsoever, except as to which may be in favor of the person shown as new lien holder, Section 9 hereunder.

I further, certify the vehicle odometer reading is _____ and the reading reflects the actual mileage of the vehicle, unless one of the following statements is checked:

☐ 1. The amount of mileage stated is in excess of 99,999 miles, or

☒ 2. The odometer reading is not actual mileage.

SIGNATURE OF TRANSFEROR (IN THE MUST BE NOTARIZED) IF TWO OR MORE NAMES APPEAR ON TITLE WITH A "V" OR "JV" AND EACH PERSON MUST SIGN

SUBSCRIBED AND SWORN TO THIS _____ DAY OF _____

SIGNATURE OF NOTARY PUBLIC

NEW OWNER'S SECTION

NAME
ADDRESS
CITY-STATE-ZIP

NEW LIEN-HOLDER SECTION

NAME
ADDRESS
CITY-STATE-ZIP

IMPORTANT

THE TAX COMMISSION WILL NOT BE RESPONSIBLE FOR LOSS OR FRAUDULENT ODOMETER STATEMENTS MADE IN THE ASSIGNMENT OF THE CERTIFICATE OF TITLE OR FOR ANY LOSS IN SPOOFING.

THIS CERTIFICATE IS EVIDENCE OF OWNERSHIP. WHEN THE VEHICLE IS SOLD OR TRANSFERRED, THIS INSTRUMENT, PROPERLY ENDORSED, MUST BE PRESENTED TO THE STATE TAX COMMISSION-MOTOR VEHICLE DIVISION BEFORE TRANSFER CAN BE MADE.

3337892

ALTERATIONS, ERASURES OR OBLITERATIONS VOID THIS CERTIFICATE

ADDENDUM F: Transcript of Mike Davis'
Preliminary Hearing--Testimony of Officer Steve Olson.

Sworn In

State: You are employed with the Metro Narcotics Strike Force?

Olson: Yes.

State: And aside from that are you a police officer for Salt Lake City.

Olson: Yes.

State: How long have you been a police officer, sir?

Olson: Eight years in April.

State: How long have you been working with Metro Narcotics?

Olson: Eight months.

State: Were you with Metro back in Aug. and July of Last year sir?

Olson: Yes, sir

State: What were your duties at that time.

Olson: At the first part of June, I entered Metro narcotics to go into a undercover narcotic.

State: What were your duties?

Olson: To work undercover and attempt to fight drugs at street level and try to gain a little more information to go a little bit higher than just narcotics.

State: Did you during the course of your work there become acquainted with one known as Mike Davis.

Olson: Yes, I did.

State: Would you recognize him if you saw him again?

Olson: Yes

State: Is he seated here in the Court?

Olson: Yes, I see him at the Defense table.

Def: We will stipulate this as Mr. Davis, your Honor

Judge: The stipulation is received.

State: Did these events you are going to describe occur in Salt Lake County, Sir?

Olson: Yes.

State: When did you first meet Mike Davis?

Olson: I'm not sure of the exact date, I met him in the summer another acquaintance where I was purchasing drugs from at 3331 South on Sue Street.

State: At some time did you have some discussion with Mr. Davis on purchasing drugs.

Olson: Yes.

State: Did you have contact with him on August 4th.

Olson: I don't have a copy of what happened on August 4. I don't know if it is a mixed case or what. The case numbers I have pulled from the booking sheet that I understand he was charged with.

State: Do you have an independant recollection of what occurred on Aug. 4.?

Olson: No, not really.

State: May I have just a moment please, your honor.
Have you had chance to review that, sir.
This is the report we just finished. The one on Aug 4.

Def: Objection to that Your honor, he said he had no independent recollection of what occurred on Aug. 4. The prosecutor trying to refresh his recollection and hasn't been able to do that.

State: Have you had a chance to review the report dated Aug 4?

Olson: Yes, I have.

State: Does it refresh your memory as to what happened on that date?

Olson: Yes.

State: Can you testify without the use of the report?

Olson: I believe I can?

State: To the best of your recollection, what happened on that day, please?

Olson: In the evening of that date I went to Mike's residence on Gregson Ave. and inquired about purchasing some marijuana. He told me to meet him at Randy's house on Sue Street so I went back to 3331 Sue Street and waited. A Van, Plymouth Van, pulled up. I learned that it was Mike's mother driving. He was in the Van.

State: Who was in the Van?

Olson: Mike was in the Van also. I walked up to Mike and asked him if he was going to get me some Marijuana. He said Yes, he and his mother were both going to get

some. At that point another person that was there that I was also acquainted with, a seventeen year old juvenile named Walt decided that he wanted to come along with us. So at that point, we all got into his mothers Van. She was driving. She drove to an apartment complex on 215 East about 2850 South, that is an estimate address and we went into a parking lot to the apartment complex and waited. Mike took some of the \$35 that I had given him and went into the apartment. He came out maybe 10 minutes later. He told his mother to leave the area. We drove out of the apartment complex onto I beleive it was 200 East and went to the next cross street South and turned and went East bound about 1/2 block. His mother pulled aside the rode . At that point Mike handed her a bag of Marijuana. I beleive 1/2 ounce. She proceeded to dump it out onto a tray and proceed to divide it up. I held a baggy out, a small plastic bag and she put my portion that I had purchased into the baggy. I believe, I don't remember who did it, someone in the Van, either Walt or Mike or his mother pulled a pipe out and loaded it and was passing a pipe around in the Van smoking marijuana. I simulated taking one hit off the pipe and told them I didn't want anymore. We then went to the Sue Street address. I was dropped off there. Mike got out of the Van. I took Mike back to Gregson and he

paid me back \$10. We agreed that I would give him \$35 and he said he would pay me back \$15. When we got back to his house he gave me \$10 of that \$15 and went back into his house and I left with my marijuana.

State: Did you have contact with him on July 14, Sir?

Olson: Yes, I did.

State: Did this occur at or about 3331 South Sue Street?

Olson: Yes it did, I am referring to my notes.

State: Can you tell us what occurred on that date?

Olson: Yes, I went to the Sue Street address, contacted him. He was there with Randy, the owner of the house. I asked if I could purchase 1/4 gram of cocaine. I asked him if he knew where I could get some. He told me he knew of a hooker who sold cocaine and he could get some for me. At that point, we got in my vehicle and drove approximately 521 East on 800 South in SLC. A female white came out to our car, spoke to him briefly. She got into my vehicle with us. We drove at her direction to 800 South 200 East. a 7-11 there to a pay phone. She got out of my car and made a phone call, I assume, and we waited for several minutes and a vehicle with a female black and a male black pulled up in a small compact car. The male black got out and she was out of my vehicle at that point. They spoke to each other and he, the male black, became pretty agitated and he

bounded on the hood of my car a little bit and he accused both Mike and me of being Narc. At that point the female white that was with us she got frightened and came back to my car and told us to drive out of the area that something was wrong. I backed out and she instructed me to drive back to her home at 521 East on 800 South. I did so. She instructed us to park up the street. We let her out in front of her house and we were instructed to park up the street a little ways which we did. She had money that I had given Mike to purchase the cocaine so we were attempting to purchase 1/2 gram of cocaine. Approximately 5 minutes went by and the same vehicle with the male black and the female black that was at the 7-11 had come to the house at 521 East 8th South. Pulled up the female white that had been with us ran out to the car and ran back into the residence. Mike told me, I think something is wrong, I think they are trying to rip us off, we pulled up forward to the house, he jumped out and knocked on the door of the house. There was some exchange of words between him and someone in the house. He came back to the car and stood by the car. I was sitting in it. A male black, not the one driving the car previously, but another male black came out of the house, backed him up against the car. Made some threats that he was going to beat him up, or something. He handed a paper

bindle. He took the bindle and jumped into my car and told me lets get out of here. At that point we did. He showed me the bindle and told be to drive back to 3331 South Sue Street.

State: What happened there?

Olson: Well, we reached Sue Street. We went into the shed that was located behind the house. Randy had a shed back there that he stored minor things in. Mike opened the bindle. Showed the cocaine to me. Gave me a flake of cocaine. Told me you should put in on your tongue to taste it. At that point the flake was on my finger. I took my finger, flipped it off and pretended to stick it into my tongue acting like I was tasting it. He told me it was suppose to numb my tongue and I said it did. At that point, he told Randy who was also present to make anew bindle. He cut a square piece of paper, folded it up and Mike took the cocaine and divided it into semi-equal portions. Mike divided it up, put it in my bindle and at that point He and Randy proceeded to shoot the cocaine up with sryinges and as they were doing that I just took my cocaine and left.

State: I have no further questions.

Def. I wish to cross. Mr. Olson, in regard to this last thing that you are testifying about, are you saying that you saw Mr. Davis shoot the cocaine with a

syringe.

Olson: What I believe. I saw him draw water up and heat up a spoon.

Def. Did you see him shoot anything into his arm?

Olson: I saw him take the syringe and point it in and he went out of the shed by the shed and hung on the side of the house. I thought he was going to have a heart attack.

Def. Hung on the side of the house?

Olson: Yes,

Def. And this was all in front of Randy McNabb?

Olson: Yes.

Def. Is Randy McNabb charged with this particular charge also?

Olson: I believe he is. I'm not sure.

Def Well, you would have been the one who would have wrote out a complaint against him to the prosecutor. Do you remember doing that?

State: What difference does it make? I object

Judge Objection sustained

Def Your honor in terms of the right to cross examine the witness, it seems like I have a right to know who was present during these transactions. I can ask him whether he went down and complained about him.

State: she is now

Judge: you can ask

Def Do you recall filing any complaint with the county

attorneys office about Randy McNabb?

Olson: He has numerous charges, I don't know if this is one of them.

Def Is it possible that you got this mixed up with Mr.Davis's charges during your investigations?

Olson: No.

Def Was anyone else present during the shooting of the cocaine.

O. No, just myself, Mike and Randy.

Def And you are sure that occurred on July 14, in Randy's shed.

O. Yes

Def Now, as to the charge occurring as to Mr. Davis's mother's Van. You initially said that you could not remember the charge.

O. He gave me a specific date. There are approximately 10 charges on Mike and only 5 were filed. That's why I didn't have specific recollection until I looked at the report.

DEf Why were the others not filed.

O. I guess overkill. I have no idea. It's at the county attorney agent.

def In you report, in your regard to that charge, you reported that you left Mike off at some location. Was it a Gordan lane location?

O. A what?

def Do you still have that report? What was the original amount of money that Mike had given you?

Judge: Are you talking about a specific time?

def On August 4th in connection with his mother's van.

O. I gave him, he didn't give me any money. I gave him \$35.

def \$35 and then he gave you \$10 back.?

O. Yes.

def So the actual purchase price was not \$35 as you swore to in your complaint but actually \$25.

def I don't know. I didn't know whether they wanted that price or not. I guess it doesn't really matter. I guess it was \$20. Actually it would have been \$20 because he should have given me \$15 back. So the purchase price would have been \$20 for the 1/4 gram.

def In your complaint, well I guess you don't have a copy of that either. The original cash amount \$35. He gave you \$15 so the original sale price was \$20.

O. Well it was \$25 since he didn't give me the other \$5 back. It would have been

def So that was actually your fault.?

O. I took the number off the complaint.

def You forgot about the change that was made?

O. Yes.

def But in that report it indicated that Mike gave you \$10 of the \$15 that he owed and you left, no other

transactions and you did drop Mike at the address of a relative. Do you recall that?

O. I don't recall where or what relative it is.

def. Well you indicate 170 East Gården Lane.

O. Then that is where I dropped him.

def. Do you recall what relative that was?

O. No

def. Do you remember that address?

O. 170 Gården Lane. No, I don't have an independant recollection because of the amount of times that I drove Mike. The report was written that I went directly to our undercover pad.

def. Did you keep anyother reports concerning your relationship with Mike Davis independant of these 4 or 5 days that you cahrged him of selling the drugs.

O. I have a ledger that I kept.

def. And do you have a ledger of when you met him.

O. It is in the ledger and I would have to look.

def. Did he ever call you on the phone?

O. I don't recall. It might be in those notes. I don't recall.

def. Do you have his phøne number.

O. I gave him a phone number of our undercover pad. I believe, I am not sure.

def. At any time did he ask you if he could get you some drugs.

o. If he could get me some? He didn't ask me.

def You didn't ask him. You always asked him. right? It was always your initiative. He never brought it up

o. In the course of conversation. He would come over and say

def But you would bring it up. Did he ever bring it up?

o. I don't recall.

def But you don't recall that he ever did.

o. no

def You made some testimony as to one address. I believe it was the 2929 South 200 East address that you testified to. You later found out to be 183 Gården Street. That is the same address

o. Yes

def and who is at that address

o. No one now. It is a vacant apartment.

def Well who lived there at the time

o. It was a kid I identified as Jimmy Williams

def And that is the person who you think Mr. Davis was buying the drugs from.

o. He is the one who was with us the night I purchased drugs. All three of us were in my vehicle. The ounce on marijuana the we divided.

def. How about Kevin? Did you run into a person named Kevin?

o. Kevin was originally when Mike got into my vehicle

I thought he said this guys name is Kevin and it turned out to be Jimmy.

def. So there wasn't a Kevin

O. No.

def. Walt, was there ever a Walt?

O. Yes.

def And when was Walt present.

O. He was present when we went in Mike's mothers van

def Who else was present other than Walt, Mike's mother, Mike and you.

O. No other in the van.

def And you quite sure Kevin wasn't present I mean Jimmy

O. No, he wasn't. We went to a different location that time. We went up the street from Jimmy's house. There was another apartment complex we went into the back of that apartment complex.

def But they weren't in the Van.

O. No Jimmy was never with us.

def Are you denying that a guy named Kevin was present at the time that Mike and his mother participated in a drug transaction with you.

O. I was never acquainted with a man named Kevin that was acquainted with Mike. Kevin when they brought him out the first time turned out to be Jimmy.

def Well what do you mean by that. You thought his name was Kevin. Maybe his name was Kevin. How did he turn out

to be Jimmy.

o. I have identified him since. I have a warrent out for his arrest.

def. And your warrent is for Jimmy Williams who may in fact be Kevin.

o. I spoke to his mother. She said his name was Jimmy.

def. Does he have a middle name.

o. Well I don't know.

def Where did you speak to his mother?

O. At her home.

def These other addresses that you have indicated. We got Gården Street 2929 South. The 3000 South St. Street address that you alledged that a buy took place. Whose address is that?

O. No that wasn't the 30th State. That was the one by the canal. Is that the one your referring to?

def I am referring to the one that you swore under oath that a man had unlawfully, agreed or consented to distribute drugs to you at 3000 South State Street. And I am asking you what address that is? What is located at that address? What events took place?

O. I don't have a map of the city. I don't have any idea what is located at that address.

def Well you swore that something happened there. In regard to violation to the drug laws.

O. I would have to know what date. I have 5 cases.

def You said it occurred July 17.

O. o k

def I believe it was one of the first things which you testified.

O. On July 17, it states in my notes on 2929 So. 2nd East.

def So you have no knowledge of a 3000 South St.

O I imagine that was an approximate

def Maybe if I could refresh your recollection. Here is a copy of that account 4 on July 17 at that address that the defendant Mike Davis offered or distributed marijuana and here is your signature swearing to it. Correct?

O. Yes, it is a typographical error.

def And you have no knowledge of that. Well here it is again on July 17, approximately 1946 hrs. at 3000 south st. purchased from Mike Davis \$40 of marijuana.

O. It should be 2929 South 200 East.

def Do you remember what Mr. Davis was wearing on these occasions?

O. No I don't.

def Do you remember whether or not he had a mustache?

O. He might have had a slight one in the summertime.

def Do you remember when it was that you met him?

O. Like I say. It may be in my notebook.

def Do you have it with you.

O. No, I do not have it with me.

def Do you remember how many conversations you had with him
before you first sold him drugs.

O. No, not off hand

def Do you remember the subject of those conversations?

O. They were just small talk at Randy's house because I
remember I had already purchases marijuana

def Do you remember how many minutes of conversation you
had with Mr. Davis?

O. No, I don't

def Prior to him first selling you drugs. Could you tell
me if it was an hours worth or 10 hours worth.

O. Well it was less than 10 hours worth.

def Closer to an hour.

O. I can't guess. I would just estimate an hour total at
the time.

def Did you keep any record of those conversations?

O. Minor notes like I say at the time

def Do you have those notes

O. I do not have them with me

def They are available

O. Yes.

def Is there anything else you want me to ask? No further
questions, your honor.

It was then amended that 3000 so State should be changed to 2929
South 200 East

Judge: I will grant to motion to make the amendment

def. One further question, your honor. Didn't you say 2929 South 200 East didn't turn out to be an address.

O. Well that was an estimate.

def So that turned out to not be correct

O. 183 East Gården Street.

def Amended 2nd time

Judge The address on account 4 would read 183 East on Gården Street. The proable cause statement

def. I would just like to ask him one more question in view of these amendments. Mr. Olson, you were aware of this 183 East Gården Street address on the day that you swore out this warrant were you not?

O. I don't recall when that was

def Well If I could refresh your recollection. Here is a copy of the warrant that you swore to under oath and there is the address listed, right? So in terms of confusion of the address of 2929 it didn't seem to exist in your mind at the time.

O. It was just taken from the original report that's all.

def Those notes that you have in front of you. Is this a version of your typed written notes.

O. Yes.

def Your honor, I would request a copy of tnose. I haven't been provided with a copy of those.

Judge Granted.

def That will be all

Judge You may step down. We will have the defendant bound over to the district court for there is probable cause that the defendant engaged in selling and distributing drugs to the undercover agent on Aug 4 at 2850 South 215 East. Aug 7 187 Gârdan Street. One July 25 on 3331 Sue Street and July 17 on 183 EAst Gardan Street. and on July 14 at 331 Sue Street.

Def We still want a hearing on this.

ADDENDUM G: Transcript of Joan Davis'
Preliminary Hearing--Testimony of Officer Steve Olson.

STATE vs. Joan Davis

Steve Olson's Testimony

Judge: Officer if you will come up and be sworn

State: Officer, will you state your full name and spell your last name, please

Olson: Yes, it's Steven Olson

State: And where are you employed?

Olson: Salt Lake City Police Department

State: And in what capacity?

Olson: Patrol officer

State: In August on 1987 were you still employed?

Olson: Yes, I was.

State: And in what capacity were you working on August 4, 1987.?

Olson: I was assigned to Metro Narcotics strike force.

State: Prior to that time did you have training in the area of drug enforcement?

Olson: Yes, on the street.

State: Were you ever made the acquaintance of a lady by the name of Joan Davis?

Olson: Yes, I did.

State: Is she in the court today?

Olson: Yes , I do.

State: Would you identify her, please?

Olson: She is seated in the defense table in gray and black.

Larsen: Stipulate that he has identified the defendant, your

honor.

State: Where did you first meet Joan Davis?

Olson: On Aug. 4.

State: How?

Olson: I had been acquainted with her son, who I had met approximately one month earlier,

State: And his name?

Olson: Mike Davis.

State: Did he introduce the two of you?

Olson: Yes, in a way. Not formally.

State: Did you see her or was with her on Aug 4.

Olson: Yes, I was.

State: What did you do with her that day.

Olson: I met with her with her son which was at her residence which is 140 Gregson.

State: Is that is Salt Lake County?

Olson: Yes.

State: Was anyone else with you or present?

Olson: Yes, we were outside and Mike and Mrs. Davis and I were the only ones that I could see around. And at that point when I talked to Mike, I asked if I could purchase some Marijuana from him. I had in the past. He told me to go to a friends house.

Larsen: I am going to object to anything he says as heresay, your honor.

Judge: Objection sustained

State: Without indicating what Mike said, what did you do?

Olson: I went to a friends house on 3331 So. on Sue Street

State: With who?

Olson: To wait for Mike.

State: Who did you go there with?

Olson: Just my vehicle.

State: Did Mike appear there?

Olson: Yes.

State: Did anyone else appear there?

Olson: Yes, his mother. She was driving a Van.

State: Would you describe the Van.

Olson: A stripped Van. Dark brown Plymouth Voyager Van. Brand new from what I understood at that time.

State: What happened at this residence at 3331 Sue Street

Olson: I spoke with Mike again concerning about obtaining some Marjuana and he directed me to get into the Van. At that point I got into the Van with another juvenile that was also at the residence by the name of Walt.

State: Was the Defendant still driving the van at that time?

Olson: Yes.

State: Where did she drive you to?

Olson: We went to an apartment complex located approximaty 2800 So 200 East in that area.

State: What happened there?

Olson: We went into the rear parking lot. At that point I waited in the Van, Mrs. Davis waited in the Van and so

did Walt. I had given Mike \$35 to purchase some Marijuana for me. He left and went into an unknown

apartment and after about 5 min later he got into the Van.

State: Alright, what happened.

Olson: He informed me that he had the Marijuana. Showed it to me. Mrs. Davis drove us all in the Van out of the apartment complex.

State: Was there a conversation about Marijuana?

Olson: Yes.

State: Prior to that time?

Olson: Yes.

State: Was Mrs. Davis a part of that conversation?

Olson: Yes she was.

State: Go ahead.

Olson: We went approximately

State: I guess what I am asking is was there any question where you were going when you got to 2800 South 2nd? East.

Olson: No, we were leaving to divide up Marijuana. We had purchased a quarter, I believe and we were each going to purchase an 1/8 or have 1/8.

State: Who is each.?

Olson. Mrs. Davis and I. At that point we went about 1/2 block east and a little south of the apartment complex.

which I put down as 2850 So on 215 Eas. She pulled the Van, Mrs. Davis pulled the Van over to the curb. At that time, she turned on the interior light and was handed the marijuana bag by her son. She had a round metal tray and poured the mar on to the tray and divided it up into two separate piles. When she finished she asked me if the portions she divided were fair and I said that was fine and she had me hold the baggy up, a small plastic bag and she dumped my portion of the marijuana into the bag.

State: What did she do with the other portion?

Olson: She kept that on the tray because she had no other baggy. And during the time she was dividing it up she handed a small portion to her son to load a marijuana pipe with.

State: And did he?

Olson: Yes, he did.

State: Was that pipe smoked by any one?

Olson: Yes that pipe was passed around the Van to everyone in the Van. I symalated and all three of them smoked marijuana.

State: Where did you go from there?

Olson: We drove back to 3331 Sue Street where my vehicle was. Myself and Mike Davis got out of the Van. I had my portion of the marijuana. I drove him to some relatives on Gordan lane

State: What did you do with the marijuana you acquired?

Olson: I went immediately after dropping Mike off to our undercover narcotics pad, the apartment, and wrote a report, sealed the evidence in an envelope, taped it, initialed it and put it into a safe.

State: Did all the incident and all your driving occur in Salt Lake County.?

Olson: Yes it did.

Judge: Mr. Larsen do you want to cross examine?

Larsen: Thank you your honor.

Larsen: You say you created a report on this matter, Is that correct?

Olson: Yes, I did.

Larsen: May I approach the witness? Would you look at the documents that have been supplied to me by the County Attorney's office particularly these pages here. Would that be your report that you handled? Would you look at them?

Olson: Yes, that is a copy of it.

Larsen: Was that the only that you created as a report on this incident?

Olson: Yes.

Larsen: There was no other notes that you have on this incident? Is that correct?

Olson: I had a ledger that I kept on listing contacts that I kept. So I could identify them later on.

Larsen: Do you have that ledger with you.

Olson: No, I don't.

Larsen: Do you have that in your possession somewhere?

Olson: Yes, I do.

Larsen: In your report, do you put things that are significant relating to the incident.

Olson: I put all the facts that occurred

Larsen: This fact about loading the pipe up and passing it around is a significant thing?

Olson: Yes.

Larsen: And yet you didn't bother to put that in your report, did you? Is there anything else that you left out of the report.

Olson: No.

Larsen: No?

Olson: Not that I am aware of.

Larsen: Wasn't Kevin present in the Van?

Olson: Who?

Larsen: Kevin, do you know a guy by the name of Kevin?

Olson: No.

Larsen: On Aug 4, you didn't have anything to do with a guy named Kevin?

Olson: No.

Larsen: Have you looked at your ledger of contacts recently that relate back to that period of time?

Olson: If you are referring to a man that I understood to be

Kevin and it turned out to be Jimmy Williams.

Larsen: Was Jimmy Williams in the Van?

Olson: No, he was not.

Larsen: Was there anybody that may have been called Kevin in the Van?

Olson: No there was not. The only persons in the Van were myself, Mrs. Davis, her son and a guy named Walt.

Larsen: What was Walt's last name?

Olson: I have no idea. We have not identified that yet.

Larsen: Do you know where Walt lives.?

Olson: I did. His family has since moved.

Larsen: This took place on Aug. 4. Is that correct.?

Olson: Yes.

Larsen: At any other time did you have any other contact with Mrs. Davis?

Olson: I spoke to her once in a while at the house trying to contact her son. But other than that, no.

Larsen: Your main contact was with her son?

Olson: Yes.

Larsen: And you said you have done deals with him on prior occasions?

Olson: Yes, I have.

Larsen: Is it a fact on this occasion that your communication was with Mike and Walt didn't you talk with them about this deal?

Olson: Yes.

Larsen: Was it your understanding that Mrs. Davis was going to drive you over to this apartment complex?

Olson: She would drive us all over. That is what I understood from her son.

Larsen: Is it a fact that Mrs. Davis didn't give you any money?

Olson: No, she didn't give me any money, no.

Larsen: Did you ever ask her for money?

Olson: No.

Larsen: Did you ask her to obtain marijuana for you?

Olson: No.

Larsen: Did she ask you to obtain marijuana for her?

Olson: No.

Larsen: So Mike Davis gave you the money. You gave the money to Mike Davis?

Olson: Yes.

Larsen: \$35.00?

Olson: Yes.

Larsen: When you went over to the apartment complex, you testified that Mike went into the apartment complex. Your sure that Walt didn't go into the apartment complex?

Olson: No, he stayed in the Van with us.

Larsen: Did Walt have anything to do with the exchanging of money?

Olson: No.

Larsen: He didn't give you any money or receive any money from

you?

Olson: No.

Larsen: Was your pattern of dealing with Mike Davis was that primarily on the weekends?

Olson: No, I was under cover, all the way under cover so just whenever I could get ahold of him.

Larsen: Aug 4, what day was that on?

Olson: I will have to refer to my planner, I have no idea. Lists Tues. here.

Larsen: What was the conversation with Mrs. Davis when you were in the VAn?

Olson: We were speaking about Marijuana. Her and Walt and I were talking about Marijuana.

Larsen: Wasn't her communication with Walt that he should straighten out his life and get away from that stuff

Olson: At one point she said he should get off speed and that he should get off speed and all she did was smoke mar once in a while and that would be good enough for him but that he should get off the hard stuff.

Larsen: She didn't mention to him to get off the Marijuana as well?

Olson: No.

Larsen: Is it a fact that after you came back from the apartment complex that you drove to a Randy Kanab's place?

Olson: Yes, at 3331 Sue Street.

Larsen: And at that time you and Walt and Mike exited the vehicle?

Olson: Yes.

Larsen: Was Randy home at that time?

Olson: I think he was, but he did not accompany us?

Larsen: Did you go into Randy's place?

Olson: Before hand I was in his yard but we didn't go into his place.

Larsen: Did Mike and You and Walt go into Randy's place ?

Olsen: No, because I took Mike to his relatives where he wanted to go.

Larsen: Your sure?

Olson: Yes.

Larsen: There was nothing that was distributed with Randy that night?

Olson: No, none whatsoever.

Larsen: Your testimony was that Randy McNabb was not in the Van as well?

Olson: No, he wasn't.

Larsen: When did you find out about this new Van and Mrs. Davis's interest in this new Van?

Olson: Pardon, I do not understand the question.

Larsen: Did you talk to Mrs. Davis about her vehicle, her Van?

Olson: Did I ask her about it?

State: Your honor, I am going to object to this being irrelevant.

Olson: I don't understand.

Judge: I don't quite know where we are going.

Larsen: I am trying to find out about the incident and it was my understanding that there was conversation about the Van and her ownership of the Van and I am trying to see if he remembers that conversation.

Judge: You may continue.

Larsen: Do you recall any conversation between you and Mrs. Davis regarding the Van.

Olson: She said that this was a brand new Van that she had just bought.

Larsen: Did you ask her about it? How she made the purchase?

Olson: No, not that. I wouldn't ask that type of thing. I asked her what she paid for it and things like that. I was just trying to make small talk. She said it was brand new and she was telling us about it. Kinda showing it off to us.

Larsen: What did she tell you about the finances and how she paid for it?

Olson: She didn't say. I think she said it cost \$17,000. We saved up a long time, or something.

Larsen: That's all you recall on the conversation of the Van?

Olson: Yes.

Larsen: Describe this round tray.

Olson: It was painted. It looked like something out of the house. A serving tray.

Larsen: How big?

Olson: It was round about that big.

Judge: Witness shows about 17 or 18" in diameter.

Larsen: Who resides at 140 Gregson Ave.?

Olson: Mrs. Davis and her son.

Larsen: Who resides at the 3331 Sue Street?

Olson: Randy McNabb.

Larsen: At what point in time did Walt exit the vehicle.

Olson: When we reached 3331 South Sue Street again.

Larsen: And that is Randy McNabb's place.

Olson: Yes.

Larsen: Who resides at 2850 South 215 East?

Olson: That's where we stopped. That is where the Marijuana was divided up.

Larsen: Are there any buildings?

Olson: It's a residential area. We just pulled up to the curb.

Larsen: At the time that you describe the marijuana being divided what did Mrs. Davis state at the time.?

Olson: During the time that she was actually dividing. Mike was talking how good she could divide weed without scales. Saying that she could do a good job and she was just splitting it up on the tray.

Larsen: Who ask her to divide it?

Olson: Mike did.

Larsen: Was there any conversation as to how much Mrs. Davis should have.

Olson: Yes, it was to be split down the middle. I give them \$35. My portion was only to be \$20. I was actually giving him a loan of \$15 which he was to give back to me when we reached his house when the transaction was over. When it was finished, he gave me \$10 out of the \$15 and that's the last I saw of it.

Larsen: Do you know if Mike had any?

Olson: Had any? You mean of the marijuana. She gave him a small amount to load a pipe with.

Larsen. Do you recall any other communication with Mrs. Davis and yourself?

Olson: On this occasion?

Larsen: Yes.

Olson: No.

Larsen: Do you recall anyother time you were in her Van?

Olson: Only when it was seized to search it.

Larsen: And this was on what day?

Olson: I think it was the 19th. The 19th of Jan. 1988.

Larsen: Did you have a search warrant for the Van at that time

Olson: No.

State: Objection, your honor, it's not relevant.

Judge. He has already answered

Larsen: Can I just have one minute your honor.?

Larsen: Your honor, at this time, I don't have any further questions.

Judge. Any other questions.

State: I have no further questions, your honor.

Judge. Thank you, you may step down.

Other: The state had three other witnesses subpoenaed. I talked with Mr. Larsen and we agreed to stipulate to their testimony. The first would have been _____ and this testimony would have been stricken because of the chain of evidence second, John Hobson and his testimony was the same and I understand that this doesn't lock us into their testimony as far as a Trial goes. The third was Dave Murdock from the State Crime lab and he has provided us with an analysis of the substance that he identified as Marijuana and I have given Mr. Larsen a copy of that analysis.

Larsen: The purposes of this hearing, your Honor, we agreed of the change as per stipulation.

Judge: State rests then

State: Yes sir.

Any witnesses for the defendant

Larsen: None your honor

Judge: Have you advised Mrs. Davis of her rights

Larsen: Yes, we have talked about that your honor and she chose not to testify at this time.

Judge. That is your desire, Mrs. Davis.

Mrs. Davis. Yes

Judge: The records will so show. Both sides submitted.

It will be the order of this court that Mrs. Davis will be bound over to stand Trial in the Third District Court Case No 88-10087.

Mr. Larsen will be notified by the court of your appearance there. He in turn will notify you. Therefore, it is very important that you keep in touch with him.