

1987

State of Utah v. One 1979 Pontiac Trans Am : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Willard R. Bishop; Bishop & Ronnow, P.C.; Attorney for Appellant.

Scott M. Burns; Iron County Attorney; Keith F. Oehler; Chief Deputy Iron County Attorney; David L. Wilkinson; Attorney General; Creighton C. Horton; Assistant Attorney General; Attorneys for Respondent.

Recommended Citation

Brief of Respondent, *Utah v. Pontiac Trans Am*, No. 870494 (Utah Court of Appeals, 1987).
https://digitalcommons.law.byu.edu/byu_ca1/686

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU
50

.A10
DOCKET NO. 870494 IN THE UTAH SUPREME COURT

STATE OF UTAH,	:	
	:	
	:	
Plaintiff/Appellant/ Respondent,	:	Case No. 870494
	:	Case No. 870500
	:	(Consolidated)
vs.	:	
	:	
ONE 1979 PONTIAC TRANS AM,	:	Priority 14(b)
	:	
Defendant/Respondent/ Appellant.	:	

BRIEF OF RESPONDENT STATE OF UTAH

APPEAL FROM A JUDGMENT AND ORDER OF FORFEITURE OF A MOTOR VEHICLE PURSUANT TO UTAH CODE SECTION 58-37-13(1987) IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR IRON COUNTY, STATE OF UTAH, THE HONORABLE J. PHILIP EVES, PRESIDING.

SCOTT M. BURNS
Iron County Attorney
KEITH F. OEHLER
Chief Deputy Iron County Attorney
95 North Main, Suite 22
P.O. Box 428
Cedar City, Utah 84720
DAVID L. WILKINSON
Attorney General
CREIGHTON C. HORTON, II
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorneys for Respondent State of Utah

WILLARD R. BISHOP
Bishop & Ronnow, P. C.
36 North 300 West
P.O. Box 279
Cedar City, Utah 84720
Attorney for Appellant Hall

APR 1 1988

COURT OF APPEALS

IN THE UTAH SUPREME COURT

STATE OF UTAH,	:	
	:	
Plaintiff/Appellant/ Respondent,	:	Case No. 870494
	:	Case No. 870500
	:	(Consolidated)
vs.	:	
	:	
ONE 1979 PONTIAC TRANS AM,	:	Priority 14(b)
	:	
Defendant/Respondent/ Appellant.	:	

BRIEF OF RESPONDENT STATE OF UTAH

APPEAL FROM A JUDGMENT AND ORDER OF FORFEITURE OF A MOTOR VEHICLE PURSUANT TO UTAH CODE SECTION 58-37-13(1987) IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR IRON COUNTY, STATE OF UTAH, THE HONORABLE J. PHILIP EVES, PRESIDING.

SCOTT M. BURNS
Iron County Attorney
KEITH F. OEHLER
Chief Deputy Iron County Attorney
95 North Main, Suite 22
P.O. Box 428
Cedar City, Utah 84720
DAVID L. WILKINSON
Attorney General
CREIGHTON C. HORTON, II
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorneys for Respondent State of
Utah

WILLARD R. BISHOP
Bishop & Ronnow, P. C.
36 North 300 West
P.O. Box 279
Cedar City, Utah 84720
Attorney for Appellant Hall

LIST OF ALL PARTIES

STATE OF UTAH	(Forfeiting Party)
ONE 1979 PONTIAC TRANS AM	(Property Forfeited)
WAYNE T. HALL	(Owner of Forfeited Property)
FRED J. AND BERTHA LAURITO	(Claimants)
STATE BANK OF SOUTHERN UTAH	(Claimant)

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iv
JURISDICTION AND NATURE OF PROCEEDINGS	1
STATEMENT OF ISSUE	1
STATEMENT OF NATURE OF CASE	1
STATEMENT OF THE FACTS	2
SUMMARY OF ARGUMENTS	3
ARGUMENTS	3
POINT I	
THIS COURT SHOUD NOT ADDRESS ISSUES FIRST RAISED ON APPEAL	
POINT II	
THE DISTRICT COURT PROPERLY AWARDED THE VEHILCE TO THE SEIZING AGENCY	
CONCLUSION	7

TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Page</u>
<u>Wisden v. City of Salina</u> , 709 P.2d 371, 21 Utah Adv. Rep. 20, 21 (1985)	3
<u>State v. One Porsche 2-Door</u> , 526 P.2d 917 (Utah 1974)	5
<u>State v. One 1983 Pontiac</u> , 717 P.2d 1338, Utah Adv. Rep. 18 (1986)	5
<u>State v. One 1982 Silver Honda</u> , 735 P.2d 392, Utah Adv. Rep. 46 (Ct. App. 1987).	5

<u>Statutes and Rules</u>	<u>Page</u>
Utah Code Annotated Section 58-37-13	1, 2, 4, 5, 6
Utah Code Annotated Section 58-37-13(8)(a)	4, 5, 6
Utah Code Annotated Section 58-37-13(1)(e)(iii)	4, 5, 6
Utah Code Annotated Section 58-37-13(9)(j)	4, 5, 6
Utah Code Annotated Section 78-2-2(3)(i)	1

IN THE UTAH SUPREME COURT

STATE OF UTAH,	:	
	:	
Plaintiff/Appellant/ Respondent,	:	Case No. 870494
	:	Case No. 870500
	:	(Consolidated)
vs.	:	
	:	
ONE 1979 PONTIAC TRANS AM,	:	Priority 14(b)
	:	
Defendant/Respondent/ Appellant.	:	

BRIEF OF RESPONDENT STATE OF UTAH

JURISDICTION AND NATURE OF PROCEEDINGS

The subject Trans Am vehicle was seized and forfeited pursuant to the Utah Controlled Substances Act, Utah Code Section 58-37-13 (1987). This Court has jurisdiction to hear the appeal under Utah Code Section 78-2-2(3)(i) (1986).

STATEMENT OF THE ISSUE

1. Can an issue, not raised at trial, be raised for the first time on appeal?
2. Must the subject vehicle be ordered sold, or can it be awarded to the seizing agency for drug enforcement purposes, subject to that agency's payment of the valid lien(s)?

STATEMENT OF THE NATURE OF THE CASE

The State seized the subject car following the arrest of its owner and driver for possession of cocaine with intent to distribute. A petition for forfeiture was filed in the Fifth District Court before Judge J. Philip Eves, pursuant to Utah Code

Section 58-37-13 (1987). After a hearing, Judge Eves ordered the forfeiture of the Trans Am and awarded it to the seizing agency, subject to an uncontested first lien in favor of State Bank of Southern Utah and a second and disputed lien in favor of Fred J. and Bertha Laurito.

STATEMENT OF FACTS

On September 11, 1987, the subject vehicle was seized following the arrest of its owner/operator, Wayne T. Hall. During a consent search of the vehicle, the Utah Highway Patrol Trooper who made the traffic stop and obtained the consent to search found a cocaine grinder, scales, several packages of cocaine, and some other items of drug paraphernalia (P. 52,55).

A petition for forfeiture was filed. A hearing was held on November 2, 1987 (P. 65) at which the owner/operator Wayne T. Hall was present (P. 71). Mr. Hall had, however, failed to answer the allegations of the petition and his default was entered (P. 71). Mr. Hall did not object to the Court's Findings of Fact and Conclusions of Law or to the Court's Judgment and Order of Forfeiture, although he had actual notice thereof. He was present at the hearing and copies of the Findings and Judgment were duly served on him (P. 68, 75).

The Court found the allegations of the Petition to be true, fixed the amounts and nature of the interests of claimants State Bank and Mr. and Mrs. Laurito, and determined that the seizing agencies could use the vehicle in enforcing the controlled substances laws, and ordered the property forfeited to those

agencies for those purposes, subject, however, to the payment of said claimants' interests.

SUMMARY OF ARGUMENT

1. Mr. Hall raises for the first time an issue in this appeal which he failed to raise in the lower court, and this Court should not address it.

2. The lower court did not abuse its discretion, and correctly applied the law by awarding the vehicle to the seizing agency, subject to payment of lien interests.

ARGUMENT

POINT I

THIS COURT SHOULD NOT ADDRESS ISSUES FIRST
RAISED ON APPEAL

Mr. Hall was personally served with the petition seeking forfeiture and notice of the State's intent to forfeit his vehicle. He never answered the petition and his default was entered. He was, however, present in the District Court during the hearing on the State's petition. He voiced no objection to the State's petition and raised no issues with respect thereto.

Mr. Hall was also served a copy of the State's proposed Findings of Fact and Conclusions of Law, and Judgment and Order of Forfeiture. Mr. Hall did not object thereto.

Since Mr. Hall has raised the issue presented by his appeal now for the first time, this Court should not address it. Wisden v. City of Salina, 709 P.2d 371, 21 Utah Adv. Rep. 20, 21 (1985).

POINT II

THE DISTRICT COURT PROPERLY AWARDED THE
VEHICLE TO THE SEIZING AGENCY

In 1987 the Legislature amended the Controlled Substances Act [Utah Code Section 58-37-13(8)(a)] to provide:

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 Legislature has also provided in Section 58-37-13(1)(e)(iii) that:

any forfeiture of a conveyance subject to a bona fide security interest is subject to the interest of a secured party . . .

Mr. Hall, the owner/operator of the subject vehicle, argues that since the District Court determined that State Bank and Mr. and Mrs. Laurito had security interests in the vehicle the Court should have released the vehicle to them pursuant to Section 58-37-13(9)(j), which provides:

(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.

Mr. Hall misconstrues the forfeiture statutes. Those statutes provide that persons interested in forfeitable property by reason of a security interest therein are protected by

subsection 13(1)(e)(iii). The statute clearly provides that the forfeiture is "subject to" the secured party's interest. The District Court properly awarded the car to the seizing agency upon specific findings that the agency could use the car in the enforcement of the drug laws [as provided in subsection 13(8)(a)], "subject to" the security interests of State Bank and Mr. and Mrs. Laurito.

Mr. Hall incorrectly assumes that subsection 13(9)(j) addresses lien holders. That subsection, properly construed, refers to co-owners of the forfeitable property.

If the Court adopted Mr. Hall's interpretation of subsection 13(j), only property "free and clear" of security interests would be forfeitable. One of the main purposes of the forfeiture statute is to help interdict drug traffickers by subjecting them to the loss of their property used to facilitate drug trafficking. State v. One Porsche 2-Door, 526 P.2d 917 (Utah 1974); State v. One 1983 Pontiac, 717 P.2d 1338; 32 Utah Adv. Rep. 18 (1986). State v. One 1982 Silver Honda, 735 P.2d 392; 55 Utah Adv. Rep. 46 (Ct. App. 1987). If only cars without liens could be forfeited, less prosperous drug dealers would be rewarded. Also, drug dealers could readily circumvent the law merely by maintaining a lien against the car. That is not what was intended by the Legislature.

Subsection 13(9)(j) was intended to apply to circumstances where the claimant's interest is proprietary. If Mr. Hall was a joint or co-owner of the car with another, and that other co-owner's interest were not forfeitable (such as where he had no

reasons to know Mr. Hall was transporting cocaine in the vehicle), then, under subsection 13(9)(j), the District Court would have to determine whether the several proprietary interests could be severed. If not, the car would be sold and the proceeds distributed as provided in the subsection.

Inasmuch as Mr. Hall was the sole owner of the car, it was entirely forfeitable. There were no other proprietary claimants and, therefore, subsection 13(9)(j) is not applicable.

The District Court properly awarded the car to the seizing agency under subsection 13(8)(a) and properly protected the interests of the secured parties under subsection 13(1)(e)(iii) by awarding the car "subject to" said security interests.

[The State continues to maintain that the District Court erred in awarding the car to the agency subject to the security interest of Mr. and Mrs. Laurito. See the State's briefs in the related appeal, No. 870494.]

This case illustrates the effectiveness of the forfeiture statute: to discourage drug trafficking by allowing the forfeiture of the trafficker's vehicle used to transport the contraband. Mr. Hall's brief clearly shows his personal interest and attachment to the vehicle. (See page 6 of Appellant's Brief.) The loss of a desired car used by Mr. Hall to transport contraband for distribution is significantly unpleasing to him, and hopefully, will have the rehabilitative effect intended by the Legislature.

Mr. Hall also claims a "right" to require a sale of the car, "Thus giving him the opportunity to have his obligations to State

Bank and Lauritos paid from proceeds of the sale . . ." (page 6 of Appellant's Brief). The argument is specious. Even assuming the Lauritos are entitled to a lien claim against the car, the District Court ordered the forfeiture "subject to" the security interests of the bank and the Lauritos. Consequently, they will be paid and Mr. Hall's obligations satisfied without the sale. Moreover, under the present order, the secured parties do not run any risk that the car may not sell for a sufficiently large amount to satisfy their liens. Mr. Hall's claim to a right to require a sale of the car so that the liens will be paid is, therefore, without merit.

CONCLUSION

The District Court understood the law applicable to this forfeiture and properly applied it to the facts of this case. The secured parties were holders of security interests which were statutorily and adequately protected by the court's order awarding the property to the seizing agency subject to the continuing lien interests of the secured parties (assuming the validity of the Lauritos' lien which the State contests). Since the bank and the Lauritos were secured parties and not co-owners or otherwise claimants of a proprietary interest in the vehicle, they were not entitled to an order of nonforfeiture or release. That part of the court's order awarding the property to the seizing agency without public sale or release to the secured parties should be affirmed.

DATED this 1st day of April, 1988

SCOTT M. BURNS
Iron County Attorney

By:



KEITH F. OEHLER
Chief Deputy Iron County Attorney
for Respondent

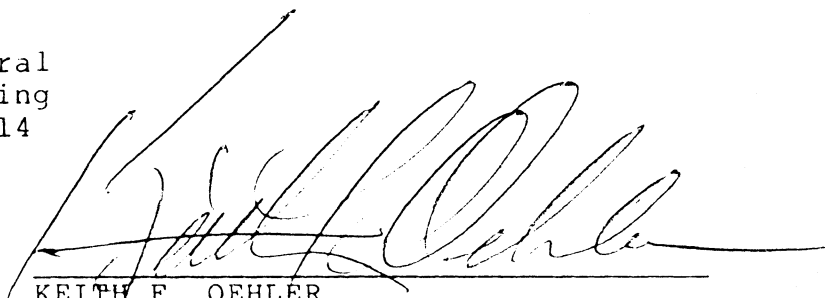
MAILING CERTIFICATE

I hereby certify that on the 4th day of April, 1988, I caused to be mailed, postage prepaid, four (4) true copies of the above Brief of Respondent State of Utah to each of the following:

Willard R. Bishop, Esq.
Attorney for Appellant
P.O. Box 279
Cedar City, UT 84720

Alan A. Jones, Esq.
Attorney for State Bank of
Southern Utah
P.O. Box 1745
Cedar City, UT 84720

Creighton C. Horton, II
Assistant Attorney General
236 State Capitol Building
Salt Lake City, UT 84114



KEITH F. OEHLER
Chief Deputy Iron County Attorney
for Respondent