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1997 Survey of Rhode Island Law: Cases: Constitutional Law

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Constitutional Law. *State v. Jeremiah,* 696 A.2d 1220 (R.I. 1997). A search warrant which fails to describe the place to be searched "as nearly as may be" violates a person's constitutional right to be free from unreasonable search and seizures, and requires suppression of the evidence gathered under the warrant.

Article 1, section 6 of the Rhode Island Constitution provides in part that "no warrant shall issue but on complaint in writing, upon probable cause, supported by oath or affirmation, and *describing as nearly as may be, the place to be searched.*"[1] In *State v. Jeremiah,*[2] the Rhode Island Supreme Court held that a search warrant authorizing the search of a "sprawling"[3] commercial park consisting of eighteen multistory buildings. The court held that the warrant did not describe the target of the search "as nearly as may be," thereby violating article 1, section 6 of the Rhode Island Constitution.[4] Consequently, the trial court should have suppressed the evidence seized under the warrant.[5]

FACTS AND TRAVEL

Silver Spring Center is a commercial park located in Providence, Rhode Island.[6] The park consists of at least eighteen multistory buildings and ten warehouses across twelve acres of land, all addressed at 387-389 Charles Street.[7] The park was divided into forty-four units, which were rented to thirty-three different tenants.[8]

A confidential informant notified police that Andrew Jeremiah and others were storing 500 pounds of marijuana in two crates at 387 Charles Street as part of a drug-trafficking operation.[9] Police surveillance subsequently witnessed the suspects driving into a ga-

1. R.I. Const. art. 1, § 6 (emphasis added).
2. 696 A.2d 1220 (R.I. 1997).
3. *Id.* at 1221.
4. *Id.*
5. *See id.* at 1225.
6. *See id.* at 1221.
7. *See id.*
8. *See id.* at 1224. The entire Silver Spring Center was owned by the two defendants. *See* Paul Davis, *Brothers Keep Costs Down at Silver Spring,* Prov. J. Bull., Dec. 24, 1989, at G1. This fact was not mentioned in the court's opinion.
9. *See Jeremiah,* 696 A.2d at 1221. In a twist of fate, Andrew Jeremiah and his brother Bruce, a codefendant, played a significant role in a previous search and seizure decision. *See* State v. Ricci, 472 A.2d 291, 293-94 (R.I. 1984) (noting that

rage located in "Building 5" of the complex.[10] Police submitted a complaint requesting authorization to search a "four story red brick factory complex with a loading dock and a large garage overhead door" located at 387 Charles Street.[11] The warrant was issued authorizing the search of the "387-389 Charles Street Jeremiah Silver Ctr. Complex."[12]

An officer, posing as a fire inspector, was eventually allowed to tour Building No. 4, which fit the description in the complaint, and Building No. 5, a three-story building without a loading dock.[13] In Building No. 5, the officer noticed two large crates, showed the warrant and opened the crates. The crates contained 425 pounds of marijuana. A subsequent search of Building No. 4 uncovered several additional bags of marijuana.[14]

At trial, the defendants challenged the constitutionality of the warrant and moved to suppress the evidence seized during the search.[15] The trial judge denied the motion.[16] A jury convicted the defendants of possession of marijuana with the intent to distribute.[17]

BACKGROUND

Article 1, section 6 of the Rhode Island Constitution is analogous to the Fourth Amendment of the United States Constitution.[18] However, the Rhode Island Supreme Court reserves the right to provide citizens of the state with additional protections against governmental intrusions under the state constitution than those afforded by the United States Constitution.[19] This reserva-

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the Jeremiahs had been the victims of a robbery, and Andrew had aided in the execution of a challenged search warrant).

10. *Id.*
11. *Id.*
12. *Id.*
13. *See id.*
14. *See id.*
15. *See id.* at 1222.
16. *See id.*
17. *See id.* Three of the defendants were sentenced to 25 years, with varying years to serve. *See* Dawn Ang, *2 Cranston Brothers, Man From Toronto Receive Jail Terms*, Prov. J. Bull., July 30, 1995, at B3. A fourth defendant did not appear for trial. *See id.* Andrew Jeremiah was later indicted for perjury in connection with the trial. *See Convicted Global Drug Dealer Indicted for Perjury at Trial*, Prov. J. Bull., February 2, 1996, at D3.
18. *See* State v. Berker, 391 A.2d 107, 111 (R.I. 1978).
19. *See* Duquette v. Godbout, 471 A.2d 1359, 1361 (R.I. 1984).

tion is to be used sparingly, as the Fourth Amendment generally offers ample protection.[20]

The court had previously held in *State v. Costakos*[21] that the requirements of article 1, section 6 are not satisfied when the warrant description is so indefinite as to allow an officer to use selective discrimination in determining where to search.[22] Additionally, the warrant is unconstitutionally broad if the description contained therein is so general as to permit the officer to invade the property of strangers to the process.[23]

The United States Supreme Court discussed the problem of overbroad descriptions of the place to be searched in *Maryland v. Garrison*.[24] In *Garrison*, the warrant described the search area as the "third floor apartment."[25] Unknown to the police officers, however, the building contained two third-floor apartments.[26] The Supreme Court held that the validity of the warrant must be judged on the knowledge available to the officers at the time they acted.[27] The facts of the case showed that the officers had taken extensive efforts to describe the area to be searched, and therefore the factual mistake did not invalidate the warrant.[28]

ANALYSIS AND HOLDING

Using the language of *State v. Costakos*,[29] the Rhode Island Supreme Court found that the warrant in question did not differentiate the targeted area of the search from all other places in the complex.[30] Consequently, the warrant authorized the police officers to search "the entire twelve-acre, eighteen-building, ten-warehouse, eighty-three-separate-unit Silver Center compound."[31] The court held that this amounted to "a modern-day version of the

20. *See id.*
21. 226 A.2d 695 (R.I. 1967).
22. *See id.* at 697.
23. *See id.*
24. 480 U.S. 79 (1987).
25. *Id.* at 80.
26. *See id.*
27. *See id.* at 85.
28. *See id.*
29. 226 A.2d 695 (R.I. 1967).
30. *See Jeremiah*, 696 A.2d at 1224.
31. *Id.*

dreaded writ of assistance"[32] and a violation of the defendants' constitutional rights to be free from unreasonable searches and seizures.[33]

The Rhode Island Supreme Court distinguished *Maryland v. Garrison*[34] on the grounds that the officers had not exhausted all reasonably available means to describe the area "as nearly as may be."[35] The court noted that the confidential informant had seen the crates in the building, but neither the application nor the warrant reflected where the crates were last observed.[36] Furthermore, the State did not disclose to the court what, if any, additional knowledge the officers possessed about the layout of the complex before applying for the warrant.[37] The supreme court suppressed the evidence gathered pursuant to the warrant and remanded the case to the superior court.[38]

CONCLUSION

In *Jeremiah*, the Rhode Island Supreme Court served notice to law-enforcement officials that an application for a search warrant must describe the place to be searched "as nearly as may be" under article 1, section 6 of the Rhode Island Constitution. The court endeavored to eliminate search warrants that are so broad that they invade the rights of parties who are strangers to the proceedings. Officers must exhaust all available means to ensure that warrants are drawn as narrowly as possible to avoid this intrusion. Failing to use all possible sources to narrow the warrant subjects it to a finding of generality and unconstitutionality. Where the court finds the description of the area to be searched indefinite, effectively allowing law enforcement officers to exercise wide discretion and search the property of non-suspects, the warrant will be found

32. *Id.* at 1225. The court's opinion was long on historical references to the evils of British "writs of assistance." These writs were used before the Revolutionary War to allow agents of the Crown to search for smuggled goods without limitations. *See* Black's Law Dictionary 1609 (6th ed. 1990).

33. *See Jeremiah*, 696 A.2d at 1225.

34. 480 U.S. 79 (1987).

35. *Jeremiah*, 696 A.2d at 1224.

36. *See id.* at 1225.

37. *See id.*

38. *See id.*

to be unconstitutional and the evidence gathered will be suppressed.

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Constitutional Law. *State v. One 1990 Chevrolet Corvette*, 695 A.2d 502 (R.I. 1997). Section 21-28-5.04.2(j)(1) of the Rhode Island General Laws allows the State to appeal from an adverse judgement in a civil in rem forfeiture proceeding. The State's appeal does not violate the Double Jeopardy Clause of either the Rhode Island or federal Constitutions.

FACTS AND TRAVEL

On March 20, 1992, police executed a search warrant at the home of Oscar Caba (Caba).[1] Pursuant to the search, the police found heroin and money. The police also found original purchase records, in Caba's name, for a 1990 Chevrolet Corvette.[2] On April 2, 1992, the State seized the Corvette. On November 5, 1992, the State proceeded against the Corvette by filing a civil in rem complaint in district court pursuant to section 21-28-5.04.2 of the Rhode Island General Laws.[3]

The State claimed that Caba purchased the Corvette with proceeds from "illegal sales of controlled substances."[4] Therefore, under section 21-28-5.04.2, the Corvette was subject to civil forfeiture.[5] Caba's sister, Jacqueline Francisco (Francisco), answered the State's complaint.[6] In her answer, Francisco claimed that "she was the innocent owner of the Corvette and that it had not been purchased with drug proceeds."[7]

At a district court hearing, the State offered evidence to show that Caba was the owner of the Corvette. First, three months before the police executed the search warrant, the Corvette was kept at Caba's home.[8] Second, Caba negotiated the price of the car and paid for the Corvette.[9] Third, Caba "had attempted to obtain a

1. State v. One 1990 Chevrolet Corvette, 695 A.2d 502, 503 (R.I. 1997).
2. *See id.*
3. *See id.*
4. *Id.*
5. *See id.* Rhode Island General Laws § 21-28-5.04(a) states in part that "[a]ny property, real or personal, including but not limited to . . . any property constituting, or derived from any proceeds, furnished or intended to be furnished by any person for the transportation of or in exchange for a controlled substance . . . shall be seized and forfeited . . . ." R.I. Gen. Laws § 21-28-5.04(a) (1997).
6. *See One 1990 Chevrolet Corvette*, 695 A.2d at 503.
7. *Id.*
8. *See id.* (stating that Francisco and Caba did not reside together).
9. *See id.* (stating that he paid $19,500 in cash for the automobile).

Florida registration for the vehicle in the name 'Jackeline Francisco' through an accomplice of Caba's in the heroin trafficking enterprise alleged against Caba."[10]

Francisco testified that she had borrowed the money and had given it to Caba to purchase the Corvette.[11] She claimed that she asked Caba to purchase the car for her because of her inexperience in buying cars.[12] The district court judge entered judgment in favor of Francisco, finding that "the state has not established probable cause to show that the Corvette had been purchased with drug proceeds."[13] The district court judge ordered the State to return the car to Francisco.[14]

The State filed a notice of appeal to the Rhode Island Superior Court, pursuant to section 21-28-5.04.2(j)(1) of the Rhode Island General Laws.[15] That section states, in part, that "[a]n appeal may be claimed by either party from any judgment of forfeiture rendered by the district court, to be taken in like manner as by defendants in criminal cases within the jurisdiction of the district court to try and determine."[16]

Francisco moved to dismiss the appeal.[17] She argued that the State was prohibited from appealing the district court's decision for two reasons. First, the civil in rem forfeiture statute did not provide the State with a right to appeal.[18] Second, the Double Jeopardy Clauses of both the Rhode Island and federal Constitutions prohibited the appeal.[19] The Rhode Island Superior Court dismissed the State's appeal. The court found the statute "did not grant the state a right of appeal and that the state and federal double jeopardy clauses prohibited such an appeal."[20] The State appealed from that decision.[21]

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10. *Id.*
11. *See id.*
12. *See id.*
13. *Id.*
14. *See id.*
15. *See id.* at 504.
16. R.I. Gen. Laws § 21-28-5.04.2(j)(1) (1956) (1989 Reenactment).
17. *See One 1990 Chevrolet Corvette*, 695 A.2d at 504.
18. *See id.*
19. *See id.*
20. *Id.*
21. *See id.* at 503.

BACKGROUND

The Rhode Island Supreme Court's opinion relied on the recent case of *United States v. Ursery*.[22] In *Ursery*, the United States Supreme Court addressed the issue of double jeopardy in civil forfeitures. The Court said that it has "consistently conclud[ed] that the [Double Jeopardy] Clause does not apply to such actions because they do not impose punishment."[23]

The *Ursery* Court also discussed the case of *United States v. Halper*,[24] where the Court considered "whether and under what circumstances a civil penalty may constitute 'punishment' for the purposes of double jeopardy analysis."[25] In *Halper*, the defendant overcharged the Government $585 through Medicare claims.[26] The Government brought a civil action against Halper in district court.[27] The district court found Halper liable to the Government. Under the civil False Claims Act, specifically 31 U.S.C. § 3729, Halper would have been subject to a penalty of more than $130,000.[28] The district court found the full penalty would constitute a second punishment. Therefore, it reduced Halper's fine to $16,000, which was the full penalty on eight of the sixty-five counts.[29]

On the United States's motion for reconsideration, the district court admitted error by only calculating damages on eight of the claims, but still felt $130,000 would constitute a second punishment.[30] Finding the full penalty would violate double jeopardy,

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22. 116 S. Ct. 2135 (1996).

23. *Id.* at 2140. In an earlier case, *Various Items of Personal Property v. United States*, 282 U.S. 577 (1931), the Court discussed the relationship between the Double Jeopardy Clause and civil forfeiture. In a civil in rem forfeiture proceeding, "[i]t is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient." *Id.* at 581. Therefore, the Double Jeopardy Clause did not apply. *See id.*; *see also* United States v. One Assortment of 89 Firearms, 465 U.S. 354 (1984) (holding that the Double Jeopardy Clause does not apply to civil in rem forfeiture proceedings).

24. 490 U.S. 435 (1989).

25. *Id.* at 436.

26. *Id.* at 437.

27. *See id.* at 438. Halper had already been criminally convicted and sentenced to two years in prison and a fine. *See id.* at 437.

28. *See id.* at 438.

29. *See id.* at 438-39.

30. *See id.* at 439-40.

the district court amended its judgment and lowered the fine to double the Government's damages and its cost of the suit.[31]

The United States Government appealed directly to the United States Supreme Court.[32] The Supreme Court held that "a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution."[33] Courts must look to the civil penalty and the amount necessary to compensate the Government to determine if a rational relationship exists.[34] If the penalty appears to be more a punishment than a compensation, "then the defendant is entitled to an accounting of the Government's damages and costs to determine if the penalty sought in fact constitutes a second punishment."[35] Therefore, a civil penalty will be considered punishment "when the sanction as applied in the individual case serves the goals of punishment."[36]

In *Ursery*, the Court noted the difference between a civil penalty and a civil forfeiture. *Halper* involved a civil penalty, not a civil forfeiture.[37] Civil penalties are intended to compensate the Government for the harm it suffered and often consist of a fine.[38] A civil forfeiture serves to "confiscate property used in violation of the law, and to require disgorgement of the fruits of illegal conduct."[39] There is difficulty in measuring the nonpunitive purposes served by a civil forfeiture.[40] As such, it is "difficult to determine whether a particular forfeiture bears no rational relationship to the nonpunitive purposes of that forfeiture."[41]

The Court held that "the case-by-case balancing test set forth in *Halper*, in which a court must compare the harm suffered by the Government against the size of the penalty imposed, is inapplicable to civil forfeiture."[42] Instead, the Court set forth a two-part

31. *See id.* at 440.
32. *See id.*
33. *Id.* at 448-49.
34. *See id.* at 449.
35. *Id.*
36. *Id.* at 448.
37. *Ursery*, 116 S. Ct. at 2144.
38. *See id.* at 2145.
39. *Id.*
40. *See id.*
41. *Id.*
42. *Id.*

test created in earlier cases, to determine if a forfeiture proceeding is criminal and punitive rather than civil and remedial.[43]

The first step examines the legislature's intent: Is the forfeiture statute intended to be criminal or civil?[44] If the intent is criminal, then the penalty constitutes double jeopardy. If civil, then the Court looks at the proceedings to determine "whether the proceedings are so punitive in fact as to 'persuade us that the forfeiture proceeding[s] may not legitimately be viewed as civil in nature' despite Congress's intent."[45]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court addressed two issues on appeal. The first was whether the statute granted the State a right of appeal. Secondly, would the State's appeal violate the Double Jeopardy Clause of both the Rhode Island and federal Constitutions?[46]

The court held that the general assembly intended to give the State a right to appeal from an adverse ruling under the statute.[47] The court's analysis in interpreting section 21-28-5.04 focused on the phrase "either party."[48] In a civil in rem forfeiture case, the only two parties are the State and a claimant.[49] Therefore, the court determined that the phrase "either party" means the State and/or a claimant.[50]

The court found this to be true although the statute allows an appeal from "any judgment of forfeiture."[51] This language suggests that only an aggrieved claimant whose property the court has deemed subject to forfeiture can appeal. However, the court recog-

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43. *See Ursery*, 116 S. Ct. 2142; *see also* United States v. One Assortment of 89 Firearms, 465 U.S. 354 (1984) (holding that Congress intended such forfeitures to be civil and remedial, rather than criminal and punitive).

44. *See Ursery*, 116 S. Ct. at 2147.

45. *Id.* (citing *89 Firearms*, 465 U.S. at 366).

46. *See* State v. One 1990 Chevrolet Corvette, 695 A.2d 502 (R.I. 1997). The United States Constitution provides that "nor shall any person be subject for the same offence to be twice in jeopardy of life or limb." U.S. Const. amend. V. The Rhode Island Constitution's Double Jeopardy Clause reads that "[n]o person shall be subject for the same offense to be twice put in jeopardy." R.I. Const. art. I, § 7.

47. *See One 1990 Chevrolet Corvette*, 695 A.2d at 504.

48. *Id.*

49. *See id.*

50. *See id.*

51. *Id.*

nized that "such an interpretation would render the words 'either party' mere surplusage."[52]

Francisco also argued that the phrase "to be taken in like manner as by defendants in criminal case" means the State does not have a right to an appeal.[53] As the State does not have a right of appeal in a criminal case, the State should not be allowed the right of appeal in a civil-forfeiture proceeding.[54] The court found this to be an awkward reading of the statute and "that the word 'manner' is more properly understood as speaking to the *procedure* to be followed in taking an appeal."[55]

Section 21-28-5.04.2(o) requires that the State return the property to the claimant after an unfavorable judgment against the State.[56] Francisco argued that the General Assembly intended the proceedings would end at that point.[57] The court rejected this argument, stating "that the General Assembly did not intend the property to be returned until after the appellate process had been concluded, knowing that the state's appeal would serve to stay the District Court's order."[58]

The court next addressed the issue of double jeopardy.[59] "[I]n this case, unless there is state action amounting to a criminal prosecution, there is no proceeding to which double jeopardy would attach."[60] The court used *Ursery's* two-part test to determine if the civil-forfeiture statute violated double jeopardy.[61]

First, the court determined whether the legislature intended the proceeding to be criminal or civil in nature.[62] The court looked to the statute's language. First, the title of the statute, "Civil forfeiture proceeding," distinguished it from section 21-28-5.04.1,

52. *Id.*
53. *Id.*
54. *See id.*
55. *Id.*.
56. R.I. Gen. Laws § 21-28-5.04.2(o) (1956) (1989 Reenactment).
57. *See One 1990 Chevrolet Corvette*, 695 A.2d at 504-05.
58. *Id.* at 505; *see also* R.I. Dist. Ct. R. Civ. P. 62, 73 (1997).
59. The court noted it had "interpreted our state constitutional prohibition against double jeopardy in a manner consistent with the Federal Constitution . . . so that our inquiry is ultimately the same under either clause." *One 1990 Chevrolet Corvette*, 695 A.2d at 505.
60. *Id.* at 506.
61. *See id.*
62. *See id.*

which is entitled "Criminal forfeiture procedures."[63] Additionally, the statute clearly states that the "proceedings shall be in the nature of an action in rem and shall be governed by the civil rules for in rem proceedings."[64] The court found that "the statutory language signals the clear legislative intent that these forfeiture proceedings are to be civil in nature rather than criminal."[65]

The court next looked to see whether the effect of the proceeding was "so punitive as to be criminal despite the legislative intent."[66] Focusing on what is done with the forfeited property, the court found that the statute was not punitive, but that it served remedial goals.[67] For example, under section 21-28-5.04(b)(3)(A)(ii) of the Rhode Island General Laws, the law enforcement agencies share in the property that is subject to forfeiture.[68] This serves the purpose of reimbursing the public for the money spent "in apprehending the property and the criminal."[69] It also insures that the criminal does not profit from his crime.[70] The court held that the proceeding was civil in nature and did not violate the Double Jeopardy Clause.[71] The court remanded the case for a trial de novo on the issue of the State's appeal.[72]

CONCLUSION

The Rhode Island Supreme Court's holding in *One 1990 Corvette* makes it clear that the State may appeal an adverse ruling in a civil in rem forfeiture proceeding. This appeal does not violate the Double Jeopardy Clause of either the state or federal Constitution because the proceeding is characterized as civil rather than criminal. In addition, the court overruled its prior decision of *State*

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63. *Id.*

64. R.I. Gen. Laws §21-28-5.04.2(a) (1989).

65. *One 1990 Chevrolet Corvette*, 695 A.2d at 506. The Rhode Island Supreme Court noted that the superior court, in deciding the issue, "characterized the civil in rem forfeiture proceeding as quasi-criminal and thus concluded that the state was not allowed to appeal from an adverse ruling." *Id.* at 504.

66. *Id.* at 506.

67. *See id.*

68. *See id.* at 507; *see also* R.I. Gen. Laws §21-28-5.04.2(b)(3)(A)(ii) (1956) (1989 Reenactment).

69. *One 1990 Chevrolet Corvette*, 695 A.2d at 507.

70. *See id.*

71. *See id.*

72. *See id.* at 508.

v. One Lot of $8,560 in U.S. Currency,[73] which held that the analysis in *Halper* controlled civil in rem forfeiture proceedings.[74] The United States Supreme Court in *Ursery* said that a civil in rem forfeiture proceeding is unique and must be analyzed to see if it is a criminal sanction. The Rhode Island Supreme Court held that "[t]o the extent *One Lot* held that *Halper* guides our double jeopardy analysis for civil in rem forfeiture proceedings, it is no longer controlling."[75]

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73. 670 A.2d 772 (R.I. 1996).
74. *See id.* at 775.
75. *One 1990 Chevrolet Corvette*, 695 A.2d at 507-08.