

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals:
Markey, P.J. and Fitzgerald and Owens, JJ.

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

vs.

\$180,975.00 IN US CURRENCY,
Defendant

and

TAMIKA SHANTE SMITH,
Claimant-Appellant

and

TODD FITZGERALD FLETCHER,
Claimant.

Supreme Court
No. 127983

Lower Court No. 02-500459-CF
COA No. 249699

BRIEF OF THE PROSECUTING ATTORNEYS
ASSOCIATION OF MICHIGAN AS AMICUS CURIAE
IN SUPPORT OF THE PEOPLE OF THE STATE OF MICHIGAN

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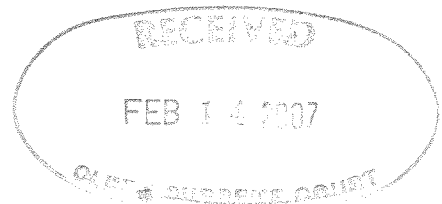


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Statement of Jurisdiction

Amicus accepts and adopts the claimant's statement of jurisdiction.

Statement of Issues Presented

I.

The United States Supreme Court has never applied the exclusionary rule to a civil proceeding because the deterrent effect of the rule is accomplished by excluding evidence in the criminal trial. Here, forfeiture under MCL 333.7521 is a civil sanction, not a criminal penalty; therefore, forfeiture under the statute serves only remedial aims, not penal ones. Should the exclusionary rule be expanded to encompass civil proceedings that are intended not to punish past transgressions, but to prevent their continuance or renewal?

The People answer, "No."

The Claimant answers, "Yes."

Amicus answers, "No."

Statement of Facts

Amicus accepts and adopts the statement of facts set forth by the People.

Argument

I.

The United States Supreme Court has never applied the exclusionary rule to a civil proceeding because the deterrent effect of the rule is accomplished by excluding evidence in the criminal trial. Here, forfeiture under MCL 333.7521 is a civil sanction, not a criminal penalty; therefore, forfeiture under the statute serves only remedial aims, not penal ones. The exclusionary rule should not be expanded to encompass civil proceedings that are intended not to punish past transgressions, but to prevent their continuance or renewal.

Standard of Review

The proper application and scope of the exclusionary rule is a question of law reviewed de novo.¹

Discussion

Amicus agrees with the People's analysis in its entirety and will not repeat that analysis here. Rather, amicus seeks only to provide additional support for the People's argument.

As explained in the People's brief, there is a distinction between civil and criminal forfeiture proceedings, and the United States Supreme Court has never applied the exclusionary rule to any civil proceeding.² Although most state courts have wrongly assumed that *One Plymouth Sedan*³ applies to all forfeiture proceedings without engaging in any analysis of the distinction between criminal and civil forfeiture, those same courts still recognize that the exclusionary rule does not

¹*People v Fletcher*, 260 Mich App 531, 546 (2004).

²*United States v Janis*, 428 US 433, 447, 96 S Ct 3021, 49 L Ed 2d 1046 (1976).

³*One 1958 Plymouth Sedan v Pennsylvania*, 380 US 693, 85 S Ct 1246, 14 L Ed 2d 170 (1965).

operate to bar forfeiture of an item illegally seized.⁴ Indeed, amicus could find no state court decision holding that an item illegally seized could never be forfeited.

The few states who have considered the distinction between criminal and civil forfeiture, however, have held that the exclusionary rule does not apply to civil forfeiture.⁵ The rationale is twofold: (1) applying the exclusionary rule will not have a deterrent effect when the action is outside the offending officer's zone of primary interest (i.e., obtaining a criminal conviction), and (2) civil forfeitures are not punitive.

Regarding the first rationale, the Supreme Court has repeatedly emphasized that the exclusionary rule will not be applied when the proceedings involved fall outside the offending officer's primary focus.⁶ Perhaps most telling, the Court held in *Pennsylvania Board of Parole v Scott* that the exclusionary rule did not apply to parole revocation proceedings, even if the parole officer was the offending officer.⁷ The Court rejected the argument that failing to apply the

⁴In *One 1995 Corvette v Mayor of Baltimore*, 724 A 2d 680, 684-685 n 6 (Md 1999), the court noted that "courts in thirty-four states have interpreted *Plymouth Sedan*. . . as applying the exclusionary rule to civil *in rem* forfeiture proceedings" yet still allow the forfeiture of an illegally-seized item if there is untainted evidence to support the forfeiture proceeding.

⁵See *People v \$17,522.08 United States Currency*, 48 Cal Rptr 3d 519, 522-524 (2006) (court refused to apply the exclusionary rule to civil forfeiture proceedings, distinguishing *One Plymouth Sedan* as a criminal forfeiture proceeding); *Indiana Dept of Revenue v Adams*, 762 NE2d 728 (Ind 2002) (exclusionary rule does not apply to tax assessment proceedings even if the item sought to be assessed is seized illegally); *People v \$241,600 United States Currency*, 79 Cal Rptr 2d 588, 594-595 (1998) (refusing to apply the exclusionary rule to civil forfeiture proceedings using the civil/criminal distinction.

⁶See *Janis, supra*, 428 US at 458; *INS v Lopez-Mendoza*, 468 US 1032, 1041-1042, 104 S Ct 3479, 82 L ed 2d 778 (1984); *Pennsylvania Board of Parole v Scott*, 524 US 357, 366-367, 118 S Ct 2014, 141 L Ed 2d 344 (1998).

⁷*Scott, supra*, 524 US at 364.

exclusionary rule meant that officers would routinely subject parolees to illegal searches, holding that “[e]ven when the officer performing the search is a parole officer, the deterrence benefits of the exclusionary rule remain limited” because parole agents’ primary zone of interest is determining whether parolees should remain free on parole, which is a supervisory, rather than adversarial, interest.⁸ The harsh deterrent of exclusion is therefore unwarranted, as other deterrents such as departmental training, discipline, and damages actions exist.⁹ Further, even if the person conducting the search is a police officer, that officer’s primary zone of interest is not upon ensuring compliance with parole conditions or obtaining evidence for administrative proceedings—it is to obtain convictions of those who commit crimes.¹⁰ The application of the exclusionary rule to the criminal trial provides sufficient deterrence.¹¹

The same rationale applies to the civil forfeiture at issue here. Forfeiture proceedings under the administrative section of the public health code fall outside the police officer’s zone of primary interest: obtaining convictions of those who commit crimes. As the Court stated in *Scott*, the officer conducting the search is not interested in obtaining evidence for administrative proceedings—he seeks evidence that will result in a criminal conviction. The exclusionary rule already operates in the criminal trial; expanding it to include civil administrative forfeiture proceedings would constitute an unwarranted and unprecedented expansion of the exclusionary rule.

⁸*Scott, supra*, 524 US at 368.

⁹*Scott, supra*, 524 US at 369.

¹⁰*Scott, supra*, 524 US at 368.

¹¹*Scott, supra*, 524 US at 368.

Regarding the second prong, that civil forfeitures are not punitive, the vast majority of statutory forfeiture proceedings provide that the items may be forfeited regardless of the innocence of the owner. In *Calero-Toledo v Pearson Yacht Leasing Co.*,¹² the Court held that “[t]o the extent that such forfeiture provisions are applied to lessors, bailors, or secured creditors who are innocent of any wrongdoing, confiscation may have the desirable effect of inducing them to exercise greater care in transferring possession of their property.” Further, the Court has held that an owner’s interest in property may be forfeited even if the owner had no idea that the property was being put to a prohibited use.¹³ If even innocent owners can have property forfeited under the statute, it follows that the forfeiture is not meant to punish the owner for any crime. In fact, in those cases, the forfeiture does not even punish the person who used the item in connection with a crime, as that person has already passed on the item or does not have an ownership interest in it. Because forfeiture can occur regardless of the innocence of the owner, it cannot be said that *all* forfeitures are punitive and quasi-criminal in nature; therefore, applying the rationale of *One Plymouth Sedan* to all forfeiture proceedings expands the case beyond its analytical moorings.

One ignores the criminal/ civil distinction at one’s peril. Time and again, the United States Supreme Court has emphasized that civil forfeiture proceedings are not to be confused with criminal proceedings or penalties: “Since at least *Various Items [of Personal Property v United States]*,^[14] , we have distinguished civil penalties such as fines from civil forfeiture proceedings that are in rem.

¹²*Calero-Toledo v Pearson Yacht Leasing Co.*, 416 US 663, 687-688, 94 S Ct 2080, 40 L Ed 2d 452 (1974).

¹³*Bennis v Michigan*, 516 US 442, 116 S Ct 994, 134 L Ed 2d 68 (1996).

¹⁴*Various Items of Personal Property v United States*, 282 US 577, 580-581, 51 S Ct 282, 75 L Ed 558 (1931).

While a ‘civil action to recover. . . penaltie[s], is punitive in character,’ and much like a criminal prosecution in that ‘[i]t is the wrongdoer in person who is proceeded against . . . and punished,’ in an in rem forfeiture proceeding, ‘it is the property which is proceeded against, and by resort to a legal fiction, held guilty and condemned.’”¹⁵ It is this crucial distinction that has led the Court to proclaim, for example, that civil forfeiture proceedings are not “punishment” for double jeopardy purposes.¹⁶ If civil forfeiture proceedings are not “criminal” for double jeopardy purposes, it would be anomalous to hold them “criminal” for Fourth Amendment purposes. Simply put, the exclusionary rule has no role outside the criminal context.

In sum, amicus agrees with the People that, at most, the exclusionary rule applies only to criminal forfeiture proceedings. The proceedings here, however, are civil in nature; therefore, the exclusionary rule does not apply.

¹⁵*United States v Usery*, 518 US 267, 283, 116 S Ct 2135, 135 L Ed 2d 549 (1996).

¹⁶*Usery, supra*, 518 US at 287.

Relief

WHEREFORE, amicus requests that the result of the Court of Appeals be affirmed.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Lori Baughman Palmer", written over the printed name.

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