

Casenotes

***Bennis v. Michigan*: The Supreme Court Clings to Precedent and Denies Innocent Owners a Defense to Forfeiture**

In *Bennis v. Michigan*,¹ the Supreme Court decided the constitutionality of a Michigan statute² authorizing the forfeiture of an innocent owner's interest in property under the guise of a statutory nuisance abatement scheme.³

I. FACTUAL BACKGROUND

After convicting petitioner's husband of gross indecency, the State of Michigan then sued both petitioner and her husband to have their car declared a public nuisance and abated as such, because the crime was committed in a neighborhood known for prostitution.⁴ The Wayne County Circuit Court judge rejected petitioner's argument that her interest in the car should not be forfeited because she did not know that her husband would use the car illegally when she entrusted it to him.⁵

1. 116 S. Ct. 994 (1996).

2. See MICH. COMP. LAWS § 600.3815(2) (1987).

3. 116 S. Ct. at 998.

4. *Id.*

5. *Id.* at 997.

The circuit judge declared the car a public nuisance and ordered its abatement by forfeiture, instead of ordering a sale and division of the proceeds, because of the car's minimal value.⁶

Ignoring the language of the Michigan statute authorizing the forfeiture,⁷ the Michigan Court of Appeals reversed on the grounds that Michigan Supreme Court precedent interpreting the abatement statute prevented the State from abating petitioner's interest in the car unless she knew her husband's intentions when she entrusted the car to him.⁸ The Michigan Supreme Court reversed the court of appeals and reinstated the abatement in its entirety by concluding that the State does not need to prove that the owner knew of or had agreed to allow the illegal use of the entrusted vehicle.⁹

Based upon the United States Supreme Court rulings in *Van Oster v. Kansas*¹⁰ and *Calero-Toledo v. Pearson Yacht Leasing Co.*,¹¹ the Michigan Supreme Court found that the State's failure to provide an innocent-owner defense was "without constitutional consequence."¹² The United States Supreme Court granted certiorari and affirmed.¹³ The Court held that the forfeiture order did not offend the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment.¹⁴

II. LEGAL BACKGROUND

Judicial consideration of an innocent-owner defense has a long history in this country. In 1827, the Supreme Court first considered the constitutionality of a forfeiture proceeding involving an innocent owner in *The Palmyra*.¹⁵ There, a vessel was used in acts of piracy on the open seas and the Court held that the shipowner's conviction was not necessary to enforce the forfeiture of the vessel.¹⁶ The Court created a fiction that the vessel itself was guilty of the acts and that the forfeiture proceeded against the vessel stating, "[T]he thing here is

6. *Id.*

7. See MICH. COMP. LAWS § 600.3815(2) (1987).

8. *Bennis*, 116 S. Ct. at 997.

9. *Id.*

10. 272 U.S. 465 (1926).

11. 416 U.S. 663 (1974).

12. *Bennis*, 116 S. Ct. at 997.

13. *Id.* at 998.

14. *Id.* at 997-1001.

15. 25 U.S. 1 (1827).

16. *Id.* at 14.

primarily considered as the offender, or rather the offence is attached primarily to the thing"¹⁷

Fifty years later, the Court was confronted with the same issue in *Dobbins's Distillery v. United States*,¹⁸ in which a leased premises was used as a distillery.¹⁹ Using the same reasoning employed in *The Palmyra*, the Court concluded that the forfeiture was claimed against the distillery and the real and personal property used in connection with it.²⁰ However, the Court stated it would not consider the guilt of the owner "beyond what necessarily arises from the fact that he leased the property to the distiller, and suffered it to be occupied and used by the lessee as a distillery."²¹

In *J.W. Goldsmith, Jr.-Grant Co. v. United States*,²² an automobile owned by the Grant Company was used to transport distilled spirits, in violation of the revenue statutes.²³ The Court again employed the fiction that the thing was the offender and held that the forfeiture did not violate the Fifth Amendment.²⁴ Only five years later in 1926, the Court in *Van Oster v. Kansas*²⁵ considered the constitutionality of a Kansas statute²⁶ that had been used in the forfeiture of an automobile.²⁷ In that case, the car had been used to transport distilled liquor and was declared a common nuisance, and forfeited.²⁸ Adhering to precedent, the Court again held that "[i]t has long been settled that statutory forfeitures of property entrusted by the innocent owner or lienor to another who uses it in violation of the revenue laws of the United States is not a violation of the Due Process Clause of the Fifth Amendment."²⁹ Further, the Court noted that some uses of property are "so undesirable that the owner surrenders his control at his peril."³⁰

Nearly fifty years later in *Calero-Toledo v. Pearson Yacht Leasing Co.*,³¹ the Court ruled that forfeitures are not unconstitutional because

17. *Id.*

18. 96 U.S. 395 (1877).

19. *Id.* at 396-97.

20. *Id.* at 399.

21. *Id.* at 401.

22. 254 U.S. 505 (1921).

23. *Id.* at 508-09.

24. *Id.* at 511-13.

25. 272 U.S. 465 (1926).

26. See 1919 KAN. SESS. LAWS §§ 1-5, 21-2162 to 2167.

27. 272 U.S. at 466.

28. *Id.*

29. *Id.* at 468.

30. *Id.* at 467.

31. 416 U.S. 663 (1974).

of their application to innocent owners of property.³² The Court specifically noted that "confiscation may have the desirable effect of inducing [owners] to exercise greater care in transferring possession of their property."³³ However, the Court quickly pointed out that innocent owners who proved that they had done all that could reasonably be expected to prevent the illegal use of their property would be able to successfully challenge such a forfeiture.³⁴ In his dissenting opinion, Justice Douglas advocated the recognition of a common-law defense that required owners only to prove that they, in fact, were innocent.³⁵

Recently, in *Austin v. United States*,³⁶ the Court considered the innocent-owner defense to forfeiture in a constitutional challenge grounded on the notion that all forfeitures were subject to the Excessive Fines Clause of the Eighth Amendment.³⁷ In holding that forfeitures are subject to Eighth Amendment limitations, the Court noted that the guilty-property fiction used initially in *The Palmyra* had never been applied when an innocent owner had done everything reasonably possible to prevent the illegal use of his property.³⁸ Further, the Court specifically stated that "forfeiture serves, at least in part, to punish the owner."³⁹ Thus, the Court laid a logical foundation to overrule nearly a hundred and seventy years worth of precedent upon the next opportunity and create an innocent-owner defense to all forfeitures.

III. RATIONALE OF THE COURT

The decision in *Bennis* adhered to precedent despite the Court's inclination in *Austin* that it might overrule previous decisions.⁴⁰ The Court initially reviewed the *Palmyra* line of decisions that affirmed the proposition that an owner's innocence is not a defense to forfeiture because the property itself is the subject of the proceeding, not the owner.⁴¹

Turning to its most recent decision directly on point, *Calero-Toledo*, the Court rejected petitioner's argument based on a passage in *Calero-*

32. *Id.* at 690.

33. *Id.* at 688.

34. *Id.* at 689-90.

35. *Id.* at 694 (Douglas, J., dissenting).

36. 509 U.S. 602 (1993).

37. *Id.* at 604. The Excessive Fines Clause reads as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII.

38. 509 U.S. at 615-16.

39. *Id.* at 618.

40. 116 S. Ct. at 994.

41. *Id.* at 998-99.

Toledo that suggested a constitutional attack may be successful if the owner had done everything reasonably possible to prevent the illegal use of the property.⁴² The Court stated that because the statement was mere dictum in that opinion, it had no binding authority on the Court's decision.⁴³ The Court then rejected the argument that an innocent owner, much like a criminal defendant, may not be punished for a crime for which he has not been found guilty.⁴⁴ The Court pointed out that the case which was used in support of this argument "did not discuss, let alone overrule, the *Palmyra* line of cases."⁴⁵

In response to language in its most recent decision discussing the innocent-owner defense, the Court discussed *Austin*.⁴⁶ The Court said that *Austin* did not deal with the validity of the innocent-owner defense, but instead pointed out that the owner's innocence was further evidence of a statute's punitive character.⁴⁷

In addressing the main assertions of the dissent, the Court majority adhered to binding precedent. The dissent first asserted that the earlier decisions treated contraband and instrumentalities used to convey contraband differently, because of the more guilty nature of the contraband.⁴⁸ The majority dismissed this notion stating, "[t]his Court's precedent has never made the due process inquiry depend on whether the use for which the instrumentality was forfeited was the principal use."⁴⁹ The dissent also argued that the *Palmyra* line of cases would allow the forfeiture of "an ocean liner just because one of its passengers sinned while on board."⁵⁰ Addressing this contention, the Court majority refused to place limits on its decision and ruled that "when such application shall be made it will be time enough to pronounce upon it."⁵¹ The dissent also argued that such a forfeiture serves no deterrent purpose because petitioner, or any wife, would likely entrust her car to her husband without a second thought.⁵² The Court majority found that forfeiture serves two distinct purposes: (1) to prevent further illicit use of the property and (2) to render illegal

42. *Bennis*, 116 S. Ct. at 999 (citing *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689 (1974)).

43. *Id.*

44. *Id.* at 1000.

45. *Id.* (discussing *Foucha v. Louisiana*, 504 U.S. 71 (1992)).

46. *Id.*

47. *Id.*

48. *Id.* at 1004-06 (Stevens, J., dissenting).

49. *Id.* at 999-1000.

50. *Id.* at 1005 (Stevens, J., dissenting).

51. *Id.* at 1000 (quoting *Goldsmith*, 254 U.S. at 512).

52. *Id.* at 1009 (Stevens, J., dissenting).

behavior unprofitable by imposing an economic penalty.⁵³ Therefore, the Court held that petitioner was not denied due process in violation of the Fourteenth Amendment because she was not able to use an innocent-owner defense.⁵⁴ Addressing petitioner's next argument that the forfeiture in this case was a taking of private property in violation of the Fifth Amendment, the Court simply held that when a forfeiture did not violate the Fourteenth Amendment, the government is not required to compensate an owner for property which it has already lawfully acquired.⁵⁵

Of particular interest to the concurring opinions was the fact that the trial court exercised its lawful discretion in an equitable proceeding.⁵⁶ The concurring opinions noted that had the judge agreed to a sale and division of the proceeds, petitioner would likely not have recovered any money because of the minimal value of the car.⁵⁷ Thus, the concurring opinions argued, petitioner is in no worse position than if the judge had done otherwise.⁵⁸

IV. IMPLICATIONS

Despite one hundred and seventy years of social, economic, and industrial change, this decision clearly adheres to precedent rooted in early, nineteenth-century admiralty law cases such as *The Palmyra*. By holding that a state need not allow innocent owners a defense against forfeiture, the Court's ruling allows states to pass aggressive forfeiture statutes, specifically nuisance-abatement statutes, to accomplish the legitimate state interest of preventing crime.⁵⁹ Further, the rationale that petitioner is in no worse position because of the minimal value of the car seems to advance the position that where an owner's interest in property is of little monetary value, as opposed to sentimental or personal value, the interest is so insignificant that it does not deserve due process protection.⁶⁰

However, the Court specifically refused to answer how it would rule in a specific factual instance in which the illegal act was of little significance but the property to be forfeited was of great value.⁶¹ By doing so, the Court has left citizens in a state of limbo over what

53. *Id.* at 1000 (citing *Calero-Toledo*, 416 U.S. at 687).

54. *Id.* at 1001.

55. *Id.*

56. *Id.* at 1003 (Ginsburg, J., concurring).

57. *Id.* (Thomas, J. & Ginsburg, J., concurring).

58. *Id.* at 1003.

59. *Id.* at 1001.

60. *Id.* at 1011.

61. *Id.* at 1000.

property might be subjected to forfeiture in various circumstances. For example, suppose a tenant solicited a prostitute for sex in a large apartment complex owned by three individuals. Although each is truly an innocent owner, perhaps the Court would uphold the sale of the apartment complex and the division of the proceeds, thus confiscating a portion of the money received from the sale as well as the future potential profits of the owners.⁶²

Following this decision, in *United States v. Ursery*,⁶³ the Court distinguished *Austin* and held that not all forfeitures serve a punitive purpose for purposes of double jeopardy analysis (effectively prohibiting the arguments advanced by petitioner in *Bennis* in support of an innocent-owner defense).⁶⁴ If the Court's reluctance to abandon precedent over the past one hundred and seventy years is any indication of the lasting effect of this decision, then *Bennis* is here to stay.

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62. See 116 S. Ct. at 1003.

63. 116 S. Ct. 2135 (1996).

64. *Id.* at 2149. Because *Ursery* holds that not all forfeitures serve a punitive purpose, the statement in *Austin* that "forfeiture serves, at least in part, to punish the owner" is negated.

