



1994

Recent Developments: One 1988 Jeep Cherokee v. City of Salisbury: Court of Special Appeals Upholds Innocent Owner Defense to Forfeiture under Art. 27 § 297

Lisa M. Parkinson

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Recommended Citation

Parkinson, Lisa M. (1994) "Recent Developments: One 1988 Jeep Cherokee v. City of Salisbury: Court of Special Appeals Upholds Innocent Owner Defense to Forfeiture under Art. 27 § 297," *University of Baltimore Law Forum*: Vol. 24 : No. 3 , Article 8.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol24/iss3/8>

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***One 1988 Jeep Cherokee
v. City of Salisbury:***

***COURT OF SPECIAL
APPEALS UPHOLDS
INNOCENT OWNER
DEFENSE TO
FORFEITURE UNDER
ART. 27 § 297.***

The Court of Special Appeals of Maryland in *One 1988 Jeep Cherokee v. City of Salisbury*, 98 Md. App. 676, 635 A.2d 21 (1994), interpreted the "innocent owner" defense of Maryland Code Ann. art. 27 § 297 (1989). The court recognized that by creating this defense, the Maryland General Assembly intended to protect the interests of owners whose property is used, without their knowledge, in violation of Maryland's narcotics laws. Under *One 1988 Jeep Cherokee*, an innocent owner need only prove lack of actual knowledge that his or her property was being used in violation of Section 297 in order to avoid forfeiture.

Kevin Long, while driving his father's Jeep Cherokee, was stopped by a Maryland state trooper. Upon searching the vehicle, the trooper found various drugs, including two partially burned marijuana cigarettes and a pill crusher containing a residue of white powder. Kevin was arrested for possession of controlled dangerous substances. The City of Salisbury filed a petition for forfeiture of the jeep under Article 27 § 297(a)(9), on the basis that the vehicle was used to facilitate a violation of the narcotics laws. Dr. Long, Kevin's father and the owner of the jeep, opposed the petition, and a hearing was held on February 8, 1992 before the Circuit Court of Maryland for Wicomico County.

At the hearing, Dr. Long testified that the jeep was primarily used for his veterinary practice and that it held various drugs and instruments used in his profession. He had loaned the jeep to Kevin to use in driving to work. Although Dr. Long admitted that he knew Kevin had been convicted of driving under the influence of alcohol

in 1990 and that he suspected his son of taking drugs from the veterinary clinic, Dr. Long denied any knowledge that Kevin was using his jeep to transport controlled dangerous substances. Nevertheless, the trial court ordered forfeiture, and Dr. Long appealed.

The issue before the Court of Special Appeals of Maryland was whether the trial court erred in ordering forfeiture when the registered owner of the vehicle had no actual knowledge that the vehicle was to be used in violation of Article 27 § 297. The court began its analysis by discussing Maryland's forfeiture statute and the significance of recent modifications made by the legislature. Prior to 1989, the innocent owner defense was contained in section 297 (a)(4)(iii), and only denied forfeiture if the owner could prove that he "neither knew nor should have known that the conveyance was used or was to be used in violation of this subtitle." *One 1988 Jeep Cherokee*, 98 Md. App. at 680, 635 A.2d at 23. The court noted that the revisions regarding the burden of proof for using the innocent owner defense may have been prompted by its explanation of the use of the defense in *State v. One 1985 Ford*, 72 Md. App. 144, 527 A.2d 1311 (1987), which concluded that property used in an illicit manner is presumptively subject to forfeiture so that the burden of denying knowledge of the illegal use is on the owner. *One 1988 Jeep Cherokee*, 98 Md. App. at 680, 635 A.2d at 23. The new statute contains a separate section for the innocent owner defense and requires the owner to prove that a violation of the narcotics law was done without his or her knowledge. *Id.* at 682, 635 A.2d at 24.

The court opined that despite

the revisions, the forfeiture statute left open the question of what evidence an owner must present to prove that he or she lacked actual knowledge. The court stated that “[a]ctual knowledge’ is a subjective standard, requiring specific awareness...” and that it is a “less burdensome task than proving that the owner ‘neither knew or should have known.’” *Id.* In concluding that this eased burden was intended by the legislature to provide for innocent owners, the court found support for its opinion in section 297(s). The court stated that this new section, which empowers the court to grant remission of forfeiture where justice so requires, is significant because it gives the court discretion to avoid harsh results that previously occurred under the forfeiture statute. *Id.*

The court of special appeals continued by reviewing the Circuit Court for Wicomico County’s application of Article 27 § 297. It accepted the trial court’s findings of fact, that Kevin had exclusive

possession of the jeep *inter alia*, but “fail[ed] to see how they led him to conclude that Dr. Long had failed to establish that Kevin had illegally used the Cherokee without the doctor’s actual knowledge.” *Id.* at 684, 635 A.2d at 25. Thus, the court of special appeals held that the trial court erred. It noted, however, that if the previous forfeiture statute were still in effect, the order of forfeiture would have been correct because Dr. Long’s testimony that he suspected his son’s drug problem did not meet the more burdensome “neither knew nor should have known” standard. *Id.* Under the revised statute, however, the court of special appeals held that Dr. Long’s testimony that he did not actually know that Kevin was using the jeep to transport illegal drugs satisfied his burden of proving lack of actual knowledge. *Id.* In a footnote, the court of special appeals stated that it was not deciding “when and under what circumstances courts should find that persons claiming

innocent ownership have failed to meet their burden of showing lack of actual knowledge,” it found that “circumstances suggesting ‘willful blindness’ or ‘deliberate ignorance’ may indeed defeat an owner’s claim of innocence.” *Id.* at 685, 635 A.2d at 25, n.5.

In *One 1988 Jeep Cherokee*, the court of special appeals interpreted the revised forfeiture statute as providing added protection for owners whose property is used without their knowledge to facilitate a violation of Article 27 § 297. The innocent owner defense allows owners to avoid forfeiture upon proving lack of actual knowledge and empowers the courts with discretion to avoid the harsh results imposed under the previous statute. This case acknowledges a distinct trend of the legislature and the courts in moving away from confiscating the property used in drug violations and upholding property rights of innocent owners.

- Lisa M. Parkinson

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