



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 201
July 10, 1996

CIVIL FORFEITURES DO NOT CONSTITUTE DOUBLE JEOPARDY

Reference: United States
v.
Guy Jerome Ursery

United States Supreme Court
Opinion No. 95-345
June 24, 1996

United States
v.
\$405,089.23 et al

United States Supreme Court
Opinion No. 95-346
June 24, 1996

FACTS:

In the two referenced cases, the United States Courts of Appeals for the Sixth and the Ninth Circuits held that the Double Jeopardy Clause of the Fifth Amendment prohibits the Government from both punishing a defendant for a criminal offense and forfeiting the defendant's property for that same offense in a separate civil proceeding.

In Ursery, the United States instituted civil forfeiture proceedings against his house under 84.1276 and 21 U.S.C. 881(a)(7). Ursery had been found guilty of manufacturing marijuana and was sentenced to 63 months in prison.

In \$405,089.23 et al, Charles Wesley Arlt and James Wren were convicted of numerous counts of money laundering and conspiracy to manufacture methamphetamine; they received life sentences. Before their criminal trial, the United States filed an "in rem" civil forfeiture against various property and cash owned or controlled by Arlt and Wren.

The United States appealed the Sixth and Ninth Circuit Court of Appeals' decisions that the forfeiture constituted Double Jeopardy under the Fifth Amendment.

ISSUE:

Do civil forfeitures constitute punishment for purposes of the Double Jeopardy Clause? (emphasis added)

HELD: No.

REASONING:

1. Since the earliest years of this Nation, Congress has authorized the Government to seek parallel "in rem" civil forfeiture actions and criminal prosecutions based upon the same underlying events.

2. In a criminal prosecution, it is the wrongdoer in person who is proceeded against, convicted and punished. The forfeiture is no part of the punishment for the criminal offense.

3. Civil forfeiture does not constitute punishment for the purpose of the Double Jeopardy Clause of the Fifth Amendment.

NOTES:

Review of the following cases and issues is recommended, since they are not addressed in this case:

Johnson v. Johnson, Legal Bulletin No. 176--forfeiture proceeding based on illegal search.

Austin v. U.S., Legal Bulletin No. 179--forfeiture violates "excessive fines" clause of Eighth Amendment.

Libretti v. U.S., Legal Bulletin No. 195--forfeiture regarding a negotiated plea.

Bennis v. Michigan, Legal Bulletin No. 200--the innocent owner defense.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section Q, "Miscellaneous Cases of Interest," of your Contents and Text. File Legal Bulletin No. 201 numerically under Section R of the manual.