

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 18, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-2932
STATE OF WISCONSIN**

Cir. Ct. No. 03CV001515

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

**ONE 1995 JEEP GRAND CHEROKEE
ID#1J4GZ58S6SC7744269 AND
LINDA HAMELIN,**

DEFENDANTS-APPELLANTS,

**RICHARD L. DISHROOM,
A/K/A RICHARD L. JONES,**

DEFENDANT.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL D. GUOLEE, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Linda Hamelin, *pro se*, appeals the trial court's order authorizing the forfeiture of a 1995 Jeep Grand Cherokee titled in her name,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

pursuant to WIS. STAT. § 961.55 (2001-02).² Hamelin contends that she is the innocent owner of the vehicle in question, as defined in WIS. STAT. § 961.55(1)(d)(2), and the trial court erred in concluding otherwise. Because there is adequate circumstantial evidence in the record that negates Hamelin's contention that she was an innocent owner, this court affirms.

I. BACKGROUND.

¶2 On January 16, 2003, an undercover Milwaukee police officer, along with other police officers, were investigating a complaint of drug trafficking. The officers testified that they observed a single male occupant in a Jeep, which later turned out to be registered to Hamelin, engaged in drug dealing. Some of the transactions involved purchasers approaching the Jeep and receiving what appeared to be drugs directly from the suspect, who later was identified as Richard Dishroom. In other instances, the purchasers were directed by the Jeep's occupant to various spots on the ground nearby where the purchasers would pick up objects the size of packaged drugs and leave.

¶3 The undercover officer approached the Jeep in an attempt to purchase drugs, but Dishroom exited, shaking his head as if to say "no," and directed the officer to go down the block. The undercover officer walked down the block, where he encountered James Wilson. He asked Wilson to purchase drugs from Dishroom for him, and after the officer gave Wilson some money, Wilson approached Dishroom. Dishroom got out of the car and the two men walked into a nearby alley, where Dishroom retrieved a small object and gave it to

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Wilson. Wilson then returned to where the undercover officer was waiting and handed him the small object, which later tested positive for cocaine. Both Dishroom and Wilson were arrested and charged with delivery of cocaine.

¶4 Following the arrest, the State commenced a forfeiture action pursuant to WIS. STAT. § 961.55.³ Both Dishroom and Hamelin were personally served with a summons, complaint and affidavits concerning the forfeiture. Eventually, the trial court held a hearing on the State's request. Hamelin apparently was not present in the courtroom, as there is a reference to her being outside the courtroom in the record, but she was represented by counsel.

¶5 Several of the officers involved in the surveillance and arrests testified regarding their observations of the drug transactions. One officer testified, over Hamelin's attorney's objection, that Dishroom confessed that the car belonged to him, but that he had it titled in his girlfriend's name. Another officer testified that in an encounter with Hamelin, she admitted to living with Dishroom. At the close of the testimony, the trial court stated:

The State has presented sufficient evidence by the greater weight of the credible evidence that the vehicle was used in this drug transaction as a vehicle subject to forfeiture, and that the owner very likely and undoubtedly did know or should have known that the vehicle was going to be used that way. That she has no defense. There is no evidence to contradict that from anybody, and that evidence is sufficient for this Court to forfeit, to authorize to continue the forfeiture of this vehicle.

³ WISCONSIN STAT. § 961.555(2)(c) permits either the district attorney or corporation counsel in counties having a population over 500,000 to commence forfeiture proceedings. Here, the corporation counsel brought the action.

II. ANALYSIS.

¶6 WISCONSIN STAT. § 961.555 sets out the parameters for forfeiture proceedings. WISCONSIN STAT. § 961.555(3) states that the burden of proof to be satisfied is “a reasonable certainty by the greater weight of the credible evidence[.]” Additionally, WIS. STAT. § 961.56(1) specifies: “It is not necessary for the state to negate any exemption or exception in this chapter.... The burden of proof of any exemption or exception is upon the person claiming it.”

¶7 A review of the record supports the trial court’s decision. The State established that Dishroom was driving the car while dealing drugs. The testimony of the officers clearly proved that Dishroom was using the vehicle in a manner that aided his drug transactions. Although several of the observed drug deals were completed while the illicit drugs were not actually in the car, several of the other transactions involved Dishroom selling the drugs through the window. The drug transactions Dishroom committed were felonies, as is required under WIS. STAT. § 961.55(1)(d), for a forfeiture to be commenced.

¶8 Far less proof was presented concerning Hamelin’s involvement, but certainly enough proof to meet the State’s burden. Hamelin knew that Dishroom was using her car. In fact, Dishroom claimed that it was actually his car, but he kept it titled in his girlfriend’s name. Also, testimony established that Hamelin was living with Dishroom at the time. These facts strongly suggest that Dishroom’s drug dealing was not entirely unknown to Hamelin. Further, these facts suggest that she had not withheld her consent for Dishroom to use her car while he conducted his transactions.

¶9 Had Hamelin testified that she actually purchased the car, she was unaware that Dishroom was using her car for drug dealing, and she had never

consented to the car's involvement with Dishroom's criminal activities, the trial court would have had to weigh her credibility against the other evidence. However, Hamelin elected not to testify. As a consequence, the trial court was entitled to conclude, as it did, that "she has no defense." No evidence was presented to contradict the conclusion that she "very likely and undoubtedly did know or should have known that the vehicle was going to be used that way." Consequently, the State met its burden of proof. Accordingly, the trial court's decision is affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

