

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1997 SESSION

<p><b>FILED</b></p> <p>September 17, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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<b>STATE OF TENNESSEE,</b>	)
	) C.C.A. No. 03C01-9609-CR-00348
Appellee,	)
	) Sullivan County
V.	)
	) Honorable R. Jerry Beck, Judge
	)
<b>TOMMY A. BACON,</b>	) (Double Jeopardy -
	) Forfeiture Proceedings)
Appellant.	)

FOR THE APPELLANT:

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District Public Defender

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FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
Judge

## OPINION

The appellant, Tommy A. Bacon, was indicted for selling over .5 ounces of marijuana, possession of over .5 ounces of marijuana with intent to sell, and possession of drug paraphernalia. Following a summary administrative forfeiture, the appellant moved to dismiss his criminal charges. He argued that the double jeopardy clause prohibited criminal prosecution. The trial judge denied the appellant's motion. He pled guilty to all three charges, appealing a certified question of law regarding the double jeopardy issue to this Court. Upon review, we affirm the judgment of the trial court.

### FACTS

The appellant was arrested for selling marijuana. The arresting officer confiscated \$667.31 from the appellant pursuant to Tenn. Code Ann. § 53-11-451. The appellant was informed that he had a right to a hearing to challenge the seizure. However, the appellant never exercised this right. The \$667.31 was, therefore, summarily forfeited to the Tennessee Department of Safety.

### ANALYSIS

The appellant concedes that he was provided notice of the right to challenge the forfeiture. He, however, elected to neither file a claim nor enter an appearance to contest the forfeiture. It is well settled that a party asserting double jeopardy must have been a party to a prior proceeding. United States v. Schinnell, 80 F.3d 1064, 1068 (5th Cir. 1996); United States v. Torres, 28 F.3d 1463, 1465 (7th Cir 1994). To attain party status in a civil forfeiture, one must, at the very least, file a claim in response to the notice of seizure. See United States v. Walsh, 873 F. Supp. 334, 336-37 (D. Ariz. 1994) (citing Torres for the proposition that jeopardy did not attach to a forfeiture where defendant did not make any claim in civil forfeiture proceeding).

The appellant elected not to file a claim. Having made this election, he was neither a party to nor was punished by the nontrial forfeiture.<sup>1</sup> Albeit a legal fiction, unclaimed property is technically abandoned or unowned. Forfeiture of unowned or abandoned property punishes no one. United States v. Schinnell, 80 F.3d 1064, 1068 (5th Cir. 1996). Jeopardy cannot attach in the absence of either a party or a punishment. The trial court's denial of the appellant's motion to dismiss the indictment is affirmed.

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PAUL G. SUMMERS, Judge

CONCUR:

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<sup>1</sup>This is not to say that had the appellant filed a proper claim, the state would have been barred from bringing subsequent criminal prosecution. See U.S. v. Ursery, 64 U.S.L.W 4565 (1996) (holding in rem civil forfeitures not punishment for purposes of double jeopardy). We merely hold that in the absence of standing, we do not reach the substantive issue.

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GARY R. WADE, Judge

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WILLIAM M. BARKER, Judge