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**Civil Forfeiture - New Mexico Restricts the Use of Civil Forfeiture:
State v. One 1990 Chevrolet Pickup**

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CIVIL FORFEITURE—New Mexico Restricts the Use of Civil Forfeiture: *State v. One 1990 Chevrolet Pickup*

I. INTRODUCTION

In *State v. One 1990 Chevrolet Pickup*, the New Mexico Court of Appeals held that forfeiture of a vehicle is not allowed when controlled substances found in the vehicle are possessed for personal use.¹ Forfeiture is allowed only when possession is for the purpose of sale.² *1990 Chevrolet Pickup* sets clear guidelines for trial courts to follow absent an express legislative amendment to allow forfeiture when drugs are possessed solely for personal use. The decision replaced a previous New Mexico Supreme Court decision, *State v. Stevens*, which held that an earlier version of section 30-31-34(D) of the New Mexico Statutes allowed forfeiture when a vehicle was used to transport an illegal substance, regardless of whether the transportation was for the purpose of sale.³ *Stevens* itself had overturned a previous court of appeals decision allowing forfeiture only when transportation of the illegal substance was for the purpose of sale.⁴ This Note will examine the court's statutory interpretation of section 30-31-34(D), discuss the intent of the legislature in enacting and later amending the statute, and analyze the effect this holding will have on civil in rem proceedings in New Mexico. Furthermore, this Note will explore the trend in State and Federal law regarding the use of forfeiture statutes when possession of an illegal substance is for personal use only.

II. STATEMENT OF THE CASE

Three district court cases were consolidated into *1990 Chevrolet Pickup*.⁵ Each case hinged on a determination of whether section 30-31-34(D)

1. 115 N.M. 644, 857 P.2d 44 (Ct. App.), *cert. denied*, 115 N.M. 602, 856 P.2d 250 (1993) (citing N.M. STAT. ANN. § 30-31-34(D) (Repl. Pamph. 1989)). The property subject to forfeiture includes: "all conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property . . .").

2. *Id.*

3. 100 N.M. 577, 673 P.2d 1310 (1983). The latest amendment to § 30-31-34(D) occurred in 1981, but the court in *Stevens* interpreted an earlier version of the statute that was no longer in effect when the case was decided. The court did not explain why it utilized the older version of the statute.

4. *Id.* at 579, 673 P.2d at 1312 (1983) (overruling *State of New Mexico v. Barela*, 93 N.M. 700, 604 P.2d 838 (Ct. App. 1979), *cert. denied*, 94 N.M. 674, 615 P.2d 991 (1980)).

5. *1990 Chevrolet Pickup*, 115 N.M. at 645, 857 P.2d at 45 (1993). Two of the cases involved the State's appeal of two orders granting motions which relied on the same factual occurrence ("The Spencer case"). One order granted Fernando Spencer's motion for summary judgment disallowing forfeiture, and the other order granted Spencer's motion allowing him to use his pickup pending the final decision on appeal. *1990 Chevrolet Pickup* (Nos. 13,728 and 14,242). The other case was *Forfeiture of One 1990 Ford Ranger Pickup v. Ortega* (No. 13,731) ("The Ortega case").

allows for the forfeiture of a vehicle when the owner is in possession of illegal substances which are for personal use only. The trial courts in these cases came to opposite conclusions.

A. *The Spencer Case*

In the Spencer case, the vehicle was stopped at a border patrol checkpoint on February 24, 1991.⁶ The border patrol agent asked Spencer to proceed to an inspection area, where the agent then asked him to empty his pockets. White flakes came out of Spencer's pockets, and a search of Spencer and his truck uncovered a total amount of cocaine of approximately two grams.⁷

The State initiated forfeiture proceedings against Spencer's 1990 Chevrolet pickup two days after his arrest. Both parties stipulated that the truck was not used for the purpose of sale. At trial, the court granted summary judgment in favor of Spencer. The State appealed the orders of the trial court, but the court of appeals affirmed the trial court, holding that section 30-31-34(D) curbs forfeiture when the drugs possessed were for personal use and not for the purpose of sale.⁸

B. *The Ortega Case*

The Ortega case reached a different result. Thomas Ortega was stopped in Luna County and arrested for driving while intoxicated.⁹ During the booking process, a small quantity of cocaine was found in Ortega's wallet inside a folded \$100.00 bill. Ortega pleaded guilty in municipal court to the DWI charge, and the City of Deming then brought a forfeiture action against Ortega's truck.¹⁰

Ortega's motion for summary judgment disallowing forfeiture was dismissed, and the trial court ordered that the truck be forfeited. Ortega appealed the trial court's order, and the trial court stayed the forfeiture order pending the outcome of the appeal.¹¹ The court of appeals reversed the trial court's order of forfeiture, after finding that section 30-31-34(D) was intended to combat drug trafficking and does not permit forfeiture of property when drugs are possessed solely for personal use.¹²

6. *1990 Chevrolet Pickup*, 115 N.M. at 645, 857 P.2d at 45.

7. *Id.* Spencer was indicted for possession of cocaine with intent to distribute, but pled guilty to possession of cocaine (a fourth degree felony). New Mexico's forfeiture statute is a civil in rem proceeding, so the State could have brought a forfeiture action against Spencer's vehicle regardless of whether criminal charges were ever filed against him. *Id.* at 646, 857 P.2d at 46.

8. *Id.* at 646, 857 P.2d at 46.

9. *1990 Chevrolet Pickup*, 115 N.M. at 646, 857 P.2d at 46.

10. As in the Spencer case, the parties stipulated that the controlled substance in Ortega's wallet was for his personal use only.

11. *1990 Chevrolet Pickup*, 115 N.M. at 646, 857 P.2d at 46.

12. *Id.* at 648-49, 857 P.2d at 48-49.

III. HISTORICAL DEVELOPMENT OF CIVIL FORFEITURE

The parties and amici¹³ in this case raised a number of statutory construction issues designed to ascertain legislative intent; however, the court's decision was also based on policy grounds. A firm grasp of civil forfeiture's history is crucial to understanding the court's analysis.

The earliest form of civil forfeiture in the United States can be traced back to admiralty law and the heyday of pirates.¹⁴ Civil statutory forfeiture was enacted to deal with the escalating number of ships involved in piracy, and the fact that the owners of the vessels rarely made themselves available for normal criminal proceedings.¹⁵ Civil forfeiture was later used to forfeit real property and to stop the flow of alcohol during the prohibition era.¹⁶ History shows that civil forfeiture is "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced."¹⁷

A. Federal Civil Forfeiture and the UCSA

The enactment of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (the Controlled Substances Act)¹⁸ initiated the increased use of civil in rem forfeiture as a tool to combat the growing problem of drug abuse.¹⁹ Its broad scope makes allowances for "personal use" of drugs; however, federal prosecutors practiced a policy of not seeking forfeiture of vehicles for simple possession of a small quantity of drugs.²⁰ This policy changed with the advent of the Reagan Administration's "zero tolerance" policy towards drug users.²¹ While zero tolerance seizures are no longer used as often, "random infliction of senselessly harsh punishment on drug users" still occurs.²²

Enacted after the Controlled Substances Act, the Uniform Controlled Substances Act (UCSA) does not target the personal drug user.²³ The

13. The New Mexico Trial Lawyers Association and the New Mexico Criminal Defense Lawyers Association both filed amicus curiae briefs in the Ortega case. *Id.* at 645, 857 P.2d at 45.

14. Walter J. Van Eck, *The New Oregon Civil Forfeiture Law*, 26 WILLAMETTE L. REV. 449, 450-53 (1990) ("A pirate vessel was forfeitable by virtue of its illegal use alone; no proof that the owner was implicated needed to be adduced.").

15. *Id.*

16. *Id.* at 453-54.

17. *Id.*

18. Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-565, 84 Stat. 1236 (codified as amended at 21 U.S.C.A. §§ 801-971 (West 1982 & Supp. 1994)).

19. T.J. Hiles, *Civil Forfeiture of Property for Drug Offenders under Illinois and Federal Statute: Zero Tolerance, Zero Exceptions*, 25 J. MARSHALL L. REV. 389, 390-92 (1992). The Act allows for the forfeiture of: "[a]ll conveyances, including aircraft, vehicles, or vessels, which are used or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment . . ." 21 U.S.C.A. § 881(a)(4) (West Supp. 1994).

20. DAVID C. SMITH, PROSECUTION AND DEFENSE OF FORFEITURE CASES ¶ 4.02 (12th ed. 1993).

21. This new policy often resulted in inequitable results. For instance, boats and cars were seized by the Customs Service and Coast Guard whenever even minuscule amounts of drugs were found—regardless of whether the owner had knowledge of the presence of drugs. *Id.*; see also Hiles, *supra* note 19, at 390-94.

22. *Id.*

23. *Id.* at 4-18. The federal statute allows forfeiture merely for "possession or concealment" while the UCSA requires illegal substances to be held "for the purpose of sale or receipt of property."

UCSA was "designed to complement the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem."²⁴ In particular, the UCSA was designed to combat drug traffickers, and to contain the flow of drugs across state and international lines.²⁵

The UCSA was originally approved by the National Conference of Commissioners of Uniform State Laws in 1970, in order to achieve uniformity among the states in the application of their forfeiture provisions.²⁶ The provisions were designed to allow states to bring forfeiture proceedings against property that previously was either forfeited to the federal government or was not being forfeited at all.²⁷ While New Mexico and other states have amended and modified the UCSA, the varied state forfeiture provisions were established based on section 505 of the UCSA.²⁸

A recent United States Supreme Court decision reveals a trend limiting the use of civil forfeiture in some instances, partially as a response to law enforcement's increasing reliance on forfeiture to "punish" the property owner. In *Austin v. United States*,²⁹ the Court held that since forfeitures can be considered punishment, the excessive fines clause of the Eighth Amendment should be used to limit the reach of civil in rem forfeiture.³⁰ *Austin* provides a helpful defense for property owners who face forfeiture for simple possession of drugs.

B. State Civil Forfeiture: Allowed or Disallowed?

States have varied in their interpretation of state forfeiture acts, and the results they want accomplished through the forfeiture provisions. Those states disallowing forfeiture in personal use drug cases have often focused on the similarity of the state statute to section 505 of the UCSA

24. UNIF. CONTROLLED SUBSTANCES ACT prefatory note, 9 U.L.A. 2. Compare 21 U.S.C.A. § 881 (West 1981 & Supp. 1994).

25. UNIF. CONTROLLED SUBSTANCES ACT § 505 cmt.: "[T]his section is designed to provide forfeiture provisions [for] . . . confiscating the vehicles . . . used by drug traffickers . . ." 9 U.L.A. 835 (1970). The mobility of traffickers requires a uniform approach over local, state, national and international levels. *Id.* at 2.

26. See UNIF. CONTROLLED SUBSTANCES ACT (prefatory notes), 9 U.L.A. 2 (1970). The UCSA is designed to replace the Uniform Narcotic Drug Act of 1933, and the Model State Drug Abuse Control Act of 1966. *Id.*

27. UNIF. CONTROLLED SUBSTANCES ACT § 505 & cmt., 9 U.L.A. 835 (1970).

28. See *id.* § 505(4) (stating that all "conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use to transport, or in any manner to facilitate the transportation for the purpose of sale or receipt of property" are subject to forfeiture). The section covers all controlled substances and all raw materials which are in violation of the act. *Id.* § 505(1)-(2); see also ARK. CODE ANN. §§ 36-2501 to 36-2553 (Michie 1987); DEL. CODE ANN. tit. 16 §§ 21a-240 to 21a-308 (1972); GA. CODE ANN. §§ 16-13-20 to 16-13-56 (1974). The court in 1990 *Chevrolet Pickup* relied extensively on the history of the UCSA. See 1990 *Chevrolet Pickup*, 115 N.M. at 648-49, 857 P.2d at 48-49.

29. 113 S. Ct. 2801 (1993).

30. *Id.* at 2804-06 (citing 21 U.S.C.A. § 881(a)(4) (West Supp. 1994)).

and the intent of the state legislature to allow forfeiture in drug trafficking cases only.³¹

For example, Florida and South Dakota originally disallowed forfeiture in personal use cases. In *Griffis v. State*, the Florida Supreme Court held that express legislative intent made it clear that the state forfeiture statute should be read in conformity with the UCSA, and the UCSA only allowed forfeiture when the vehicle was utilized for drug trafficking.³² Indeed, the Florida court noted that even though the Uniform Act's forfeiture provisions were reworded when adopted by Florida, "the forfeiture statutes proscribe substantially the same conduct as § 505 of the [UCSA]."³³

Similarly, in *State v. One 1972 Pontiac Grand Prix*,³⁴ the South Dakota court held that the legislature did not intend for forfeiture to apply to misdemeanor amounts of marijuana.³⁵ The court noted that the South Dakota statute was based on the UCSA and should be construed identically.³⁶

On the other hand, those states allowing forfeiture of vehicles in personal use cases typically focus on legislative intent and changes made by state legislatures to forfeiture statutes after courts originally disallowed forfeiture. For example, the holdings in *One 1972 Pontiac Grand Prix* and in *Griffis* were superseded by newly amended statutes which specifically allowed forfeiture even when the drugs were for personal consumption.³⁷ Other states that allowed forfeiture in personal use cases focused on the state acts' similarity to the federal forfeiture statute, rather than to the UCSA, and reasoned that since the federal act potentially allowed forfeiture in personal consumption cases, so should the state act.³⁸

31. See *State v. One 1983 Pontiac*, 717 P.2d 1338 (Utah 1986) (forfeiture statute strikes at drug traffickers, not individuals whose possession is solely for personal consumption); *State v. One 1972 Pontiac Grand Prix*, 242 N.W.2d 660 (S.D. 1976) (vehicle forfeiture used to combat narcotics peddler and drug trafficker); *State v. Fouse*, 355 N.W.2d 366 (Wis. Ct. App. 1984) (purpose of forfeiture provision is to deter drug trafficking).

32. 356 So. 2d 297, 302 (Fla. 1978).

33. *Id.* at 301.

34. 242 N.W.2d 660 (S.D. 1976).

35. *Id.* at 662-63.

36. *Id.* at 662. The court indicated that the state forfeiture statute was changed slightly when adopted by the legislature, but was "substantially the same" as § 505 of the UCSA. *Id.* at 661.

37. See *State v. One 1983 Black Toyota Pickup*, 415 N.W.2d 511 (S.D. 1987) (the court could no longer find an intent to disallow forfeiture of a conveyance when the drugs conveyed are for the personal possession and consumption of the owner of the vehicle under amended 1985 statute); *In re Forfeiture of the Following v. Small*, 426 So. 2d 72 (Fla. Dist. Ct. App. 1983) (statute construed in *Griffis* was revised in 1980 to allow forfeiture of any felony amount of drugs, regardless of whether vehicle was used to "facilitate" the commission of a crime); see also *In re One 1965 Ford Econoline Van*, 591 P.2d 569 (Ariz. Ct. App. 1979) (statute's legislative intent indicated forfeiture not limited to trafficking alone); *State v. One 1988 Chevrolet Camaro*, 813 P.2d 1186 (Utah 1991) (amendment of the word "possession" to "simple possession" indicated legislative intent to allow forfeiture even if drugs possessed only for vehicle owner's personal use).

38. See *Hughes v. State Dep't of Safety*, 776 S.W.2d 111 (Tenn. Ct. App. 1989) (legislature intended to make state law same as federal forfeiture statute, and 21 U.S.C. § 881(a)(4) allows forfeiture regardless of quantity of illegal substance) (called into doubt by amended statute, *Hill v. Lawson*, 851 S.W.2d 822 (Tenn. Ct. App. 1992)).

Regardless, states which do allow forfeiture when drugs are possessed for personal use typically do not rely on a state act which is in substantial conformity with the UCSA.³⁹

C. *Civil in Rem Forfeiture in New Mexico*

Like most other states, the New Mexico forfeiture statute has its origins in the UCSA. New Mexico's original forfeiture statute was enacted in 1972, two years after the UCSA was drafted.⁴⁰ The legislature adopted section 505 of the UCSA verbatim.⁴¹

The first amendment of the act occurred in 1975 when the words "or receipt" were deleted after "for purpose of sale."⁴² In 1979, the court of appeals had its first opportunity to interpret the amended statute in *State v. Barela*.⁴³ While the defendant in *Barela* used his truck to drive the undercover officer to and from the point of sale, the actual sale was at a physically different location. The state sought forfeiture of the defendant's truck, but the trial court granted summary judgment to the defendant and the state appealed.⁴⁴ Affirming the trial court's order, the court of appeals interpreted the statute narrowly, requiring that the "transportation aspect of the statute must be transportation . . . for the purpose of sale."⁴⁵ The court reasoned that its strict approach was necessary because forfeiture is quasi-criminal in nature and was used to penalize defendants for an offense against the law.⁴⁶

In construing the statute this narrowly, the supreme court declined to follow broader federal forfeiture statutes.⁴⁷ The court noted that removal of "or receipt" indicated a clear legislative intent to restrict the applicability of the New Mexico forfeiture statute.⁴⁸

39. See *In re 1965 Ford Econoline Van*, 591 P.2d 569 (Ariz. Ct. App. 1979) (statute allows forfeiture of vehicle when illegal substance found in vehicle, regardless of amount of drugs or whether intended only for personal consumption); *State v. Connelly*, 483 A.2d 1085 (Conn. 1984) (owner of vehicle stipulated that .18 ounces of cocaine was for own use); *State v. One 1967 Ford Mustang*, 292 A.2d 64 (Md. 1972); *State v. One Motor Vehicle*, 507 A.2d 633 (Md. 1986) (use of a vehicle for possession of drugs is enough to invoke forfeiture; no commercial aspect is required); *Commonwealth v. One 1983 Toyota Corolla*, 578 A.2d 90 (Pa. Commw. Ct. 1990) (forfeiture proceedings are civil in form, and de minimis statute does not require the state to prove possession of any minimum amount of cocaine, regardless of how small the amount); *Hughes*, 776 S.W.2d 111 (use of a vehicle to drive to an illegal sale will subject vehicle to forfeiture regardless of purpose for which controlled substance was purchased); *One 1988 Chevrolet Camaro*, 813 P.2d 1186 (amendment of forfeiture act indicated legislative intent to allow forfeiture when possession is for own use and owner of vehicle has no intent to distribute).

40. 1972 N.M. Laws ch. 84, § 33.

41. 1972 N.M. Laws ch. 84, § 33. The applicable subsection of the forfeiture statute read: "D. all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in Subsections A or B."

42. 1975 N.M. Laws ch. 231, § 31.

43. 93 N.M. 700, 701, 604 P.2d 838, 839 (Ct. App. 1979).

44. *Id.*

45. *Id.* at 702, 604 P.2d at 840.

46. *Id.* at 703, 604 P.2d at 841.

47. *Id.* at 702, 604 P.2d at 840 (citing 21 U.S.C. § 881(a)(4)).

48. *Id.* at 702-03, 604 P.2d at 840-41.

Despite facts indicating the defendant was a drug trafficker, the court's concern with the potential misuse of the forfeiture provision prevailed.⁴⁹ Specifically, the court pointed to the holdings in *State v. Ozarek*⁵⁰ as support for its ruling that forfeiture statutes are penal in nature and should be measured by the same standards relevant in a criminal proceeding.⁵¹

The dissent in *Barela* sharply criticized the majority's reasoning.⁵² The dissent asserted that the primary target of forfeiture provisions is the narcotic peddler and drug trafficker, and the purpose of forfeiture is to deny traffickers of mobility; the dissent inferred that the defendant was such a trafficker.⁵³

The legislature amended section 30-31-34(D) most recently in 1981 by removing three commas which separated the restrictive clause "for the purpose of sale" from the preceding clauses.⁵⁴ However, when the court next looked at section 30-31-34(D) in *State v. Stevens*, it interpreted the older version of the statute that had existed at the time of the *Barela* decision.⁵⁵

The court in *Stevens* broadened the applicability of section 30-31-34(D) by permitting forfeiture of vehicles used to transport drugs, even if the transportation was not for the purpose of sale.⁵⁶ *Stevens* argued that the sale was completed before transporting the marijuana in the vehicle, and therefore his vehicle was not subject to forfeiture.⁵⁷ The supreme court dismissed *Stevens*' argument and held that *Barela*'s interpretation of 30-31-34(D) was contrary to the meaning of the statute.⁵⁸ However, the facts in *Stevens* did not warrant such a broad holding because the owner of the vehicle was a drug trafficker who was trying to avoid forfeiture by arguing that the sale had taken place before the transportation of the drugs, as opposed to after the sale of drugs.⁵⁹ *

49. *Id.*

50. 91 N.M. 275, 573 P.2d 209 (1978).

51. *Barela*, 93 N.M. at 702-03, 604 P.2d at 840-41 (citing *Ozarek*, 91 N.M. 275, 573 P.2d 209).

52. *Barela*, 93 N.M. at 703, 604 P.2d at 841 (Sutin, J., dissenting).

53. *Id.*

54. 1981 N.M. Laws ch. 31, § 3 (codified as amended at N.M. STAT. ANN. § 30-31-34(D) (Repl. Pamp. 1989)). The new subsection reads:

"(D) all conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property described in Subsection A or B of this section." The relevant part of the older version stated: "all conveyances . . . which are used, or intended for use, to transport, or in any manner to facilitate the transportation for the purpose of sale of property described in subsection a or b"

1975 N.M. LAWS ch. 231, § 1.

55. 100 N.M. 577, 673 P.2d 1310 (1983) (overruling *Barela*). The facts of *Stevens* arose in 1982, but the court did not explain its rationale for interpreting the older version of the statute. *See id.*

56. *Id.* at 579, 673 P.2d at 1312.

57. *Id.*

58. *Id.*

59. *Id.* at 578, 673 P.2d at 1311. In *Stevens*, the court held that the appellant actually used the vehicle to transport marijuana for the purpose of sale. *Id.* There was no indication that the illegal substance had ever been in *Barela*'s vehicle prior to the completion of the sale. *See Barela*, 93 N.M. at 701, 604 P.2d at 839.

The court in *Stevens* read the old section 30-31-34(D) according to its "grammatical sense."⁶⁰ Thus, the court relied heavily on the rule that "a restrictive clause only applies to the words or phrase immediately preceding it and not to others more remote."⁶¹ In addition, the court noted that a comma could not be placed between a restrictive clause and what it is trying to restrict.⁶² Applying these rules of statutory construction to section 30-31-34(D), the court argued that the phrase "for the purpose of sale" restricted only the immediate preceding phrase "or in any manner to facilitate transportation" and not the phrase "to transport."⁶³ Therefore, the court concluded that a vehicle is subject to forfeiture if used to transport an illegal substance *and* the transportation does not have to be for the purpose of sale.

Under *Barela*, drug traffickers could beat the forfeiture provisions by simply completing a sale before transporting the illegal substances in the vehicle. Under the standard in *Stevens*, however, any vehicle could be subject to forfeiture, as long as illegal substances are transported in the vehicle—including when the drugs are for personal use only.

IV. DISCUSSION OF 1990 CHEVROLET PICKUP

In *1990 Chevrolet Pickup*, the court of appeals addressed the issue of whether section 30-31-34(D) permits forfeiture of a vehicle whose owner is in possession of drugs which are solely for the owner's personal use.⁶⁴ Effectively overruling *Stevens* on the basis that the statute interpreted in *Stevens* was no longer in effect, the court of appeals held that in order for a vehicle to be forfeited under section 30-31-34(D), possession of drugs must be for the purpose of sale.⁶⁵ The court in *1990 Chevrolet Pickup* took the favorable facts from the consolidated cases and narrowed the scope of the forfeiture provision in New Mexico. Importantly, unlike the defendants in *Stevens* and *Barela*, who the facts indicated were drug traffickers, the defendants in the consolidated cases in *1990 Chevrolet Pickup* were *not* traffickers.⁶⁶ In addition, the court noted that states which allowed forfeiture where simple possession of drugs was involved did not rely on a "technical grammatical analysis of a statute."⁶⁷ Rather, these states relied on specific legislative changes to a statute which provided for forfeiture when a controlled substance was possessed for personal use or when possession of the controlled substance constituted a felony.⁶⁸

60. *Stevens*, 100 N.M. at 579, 673 P.2d at 1312 (citing *Aetna Fin. Co. v. Gutierrez*, 96 N.M. 538, 541, 632 P.2d 1176 (1981)).

61. *Id.* The restrictive clause in § 30-31-34 is "for purposes of sale."

62. *Id.*

63. *Id.*; see also *supra* note 60.

64. *1990 Chevrolet Pickup*, 115 N.M. at 645, 857 P.2d at 45.

65. *Id.* at 647, 857 P.2d at 47. The 1981 amendment of § 30-31-34(D) removed three commas. 1981 N.M. LAWS ch. 31, § 3. See *supra* note 54.

66. The parties in the Spencer and Ortega cases stipulated that the illegal substances in question were for "personal use" only. *1990 Chevrolet Pickup*, 115 N.M. at 645-46, 857 P.2d at 45-46.

67. *Id.*

68. *Id.* at 648-49, 857 P.2d at 48-49 (citing *State v. Crenshaw*, 548 So. 2d 223 (Fla 1989); *State v. One 1983 Black Toyota Pickup*, 415 N.W.2d 511 (S.D. 1987)).

Finally, the court discussed the similarity between the UCSA and section 30-31-34(D), and noted that the UCSA supports the contention that the purpose of the New Mexico act is to "disrupt drug trafficking."⁶⁹

A. *Statutory Construction: Means to an End?*

The *1990 Chevrolet Pickup* court made it clear that its interpretation of the forfeiture statute would not rest solely on the rules of statutory construction. The court recognized the "last antecedent rule"⁷⁰ upon which the court in *Stevens* had relied so heavily as a valid method of statutory construction.⁷¹ However, the court noted that the rule is "not an end in itself."⁷² The court rejected *Stevens'* "formalistic approach" in favor of a "less technical version of the 'last antecedent rule'" in order to accomplish the cardinal rule of statutory construction, which is to determine legislative intent.⁷³

Thus, the court concluded that the phrase "for the purpose of sale" modifies the three clauses connected by "or":

- (1) conveyances which are used to transport controlled substances; (2) conveyances which are intended for use to transport controlled substances; or (3) conveyances which are used in any manner to facilitate the transportation of controlled substances.⁷⁴

The court then held that section 30-31-34(D) allows forfeiture only in cases where an individual possesses a controlled substance for the purpose of selling it.

The court bolstered its statutory construction by examining the UCSA and cases interpreting that act.⁷⁵ In addition, the court's rationale in holding that forfeiture is allowed only when drugs are transported for

69. *1990 Chevrolet Pickup*, 115 N.M. at 649, 857 P.2d at 49 (citing UNIF. CONTROLLED SUBSTANCES ACT § 505(a)(4) & cmt., 9 U.L.A. 835 (1970)). The court specifically rejected the City of Deming's argument that the court could not rely on the UCSA for guidance. *Id.*

70. *1990 Chevrolet Pickup*, 115 N.M. at 648, 857 P.2d at 48.

One definition of the last antecedent rule is "the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence." 2A NORMAN J. SINGER, SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 47.33 (5th ed. 1992). Therefore, a restrictive clause (such as "for purpose of sale") would only apply to the provision or clause *immediately preceding it* (in our case "in any manner to facilitate the transportation"). *Id.* However,

[w]here the sense of the entire act requires that a qualifying word or phrase apply to several preceding . . . sections, the word or phrase *will not* be restricted to its immediate antecedent.

Id. (emphasis added).

71. *1990 Chevrolet Pickup*, 115 N.M. at 648, 857 P.2d at 48 (citing *Hale v. Basin Motor Co.*, 110 N.M. 314, 795 P.2d 1006 (1990)).

72. *1990 Chevrolet Pickup*, 115 at 648, 857 P.2d at 48 (citing SINGER, *supra* note 70).

73. *1990 Chevrolet Pickup*, 115 N.M. at 647, 857 P.2d at 47 (citing *D'avignon v. Graham*, 113 N.M. 129, 131, 823 P.2d 929, 931 (Ct. App. 1991) ("legislative intent is first sought by reference to the plain meaning found in the language of the legislature," and "formalistic and mechanistic interpretation of statutory language" must be rejected)).

74. *Id.*

75. *1990 Chevrolet Pickup*, 115 N.M. at 648-49, 857 P.2d at 48-49; *see also supra* notes 31-36 and accompanying text.

the purpose of sale was guided by the decisions in other jurisdictions.⁷⁶ One other factor which the court considered in disallowing forfeiture in personal use cases was the reticence of the state legislature to affirmatively adopt language indicating that simple possession permitted forfeiture.⁷⁷ Finally, the court noted that in quasi-criminal proceedings, it "must construe any ambiguity in the statutory scheme against the state."⁷⁸

The court also faced the issue of whether the legislature wanted section 30-31-34(D) read in conjunction with section 30-31-34(G)(3)⁷⁹ to permit forfeiture in all cases where a felony drug crime was involved.⁸⁰ The court construed section 30-31-34(D) and section 30-31-34(G)(3) as allowing forfeiture only in *trafficking* cases where the crime involves a felony.⁸¹ Therefore, the purpose of section 30-31-34(G)(3) is to exclude misdemeanor trafficking offenses instead of permitting all felony drug crimes.⁸² The court applied this rationale because some trafficking/distributing offenses within the New Mexico Controlled Substances Act are misdemeanors, and reading section 30-31-34(G)(3) and (D) otherwise would make these sections unnecessary.⁸³

V. CONCLUSION

The New Mexico Court of Appeals' holding, preventing forfeiture of vehicles in personal use cases, clearly meets the problem presented by a civil forfeiture statute. On the one hand, the civil narcotics forfeiture statute should be broad enough to allow the act to reach the goal stated in the UCSA of combatting drug traffickers. The decision in *1990 Chevrolet Pickup* has not made it any more difficult to carry out the intent of the state legislature to "deprive drug traffickers of needed mobility."⁸⁴

Indeed, the court has interpreted section 30-31-34(D) narrowly so that private citizens have a clear understanding of the law and will not be subject to needlessly random enforcement of a vague statute. *1990 Chev-*

76. *1990 Chevrolet Pickup*, 115 N.M. at 648-49, 857 P.2d 48-49; see also *supra* notes 37-43 and accompanying text.

77. *1990 Chevrolet Pickup*, 115 N.M. at 649, 857 P.2d at 49.

78. *Id.* (citing *State v. Ozarek*, 91 N.M. 275, 573 P.2d 209 (1978)).

79. N.M. STAT. ANN. § 30-31-34(G)(3) (Repl. Pamp. 1989). The section states that notwithstanding subsection D: "a conveyance is not subject to forfeiture for a violation of law the penalty for which is a misdemeanor"

80. *1990 Chevrolet Pickup*, 115 N.M. at 649, 857 P.2d at 49. The distinction is between all felony drug crimes and those felony drug crimes which involve trafficking or distributing (drug dealing).

81. *Id.*

82. *Id.* The State and City's interpretation would permit forfeiture whenever a felony was charged, regardless of whether it involved drug dealing (trafficking/distributing) or another type of drug offense.

83. See SINGER, *supra* note 70, § 51.02. The court also rejected the argument that *Alexander v. Delgado*, 84 N.M. 717, 507 P.2d 778 (1973) compelled the court of appeals to follow the holding in *Stevens* on the grounds that the court was not bound to follow the superseded statute. *1990 Chevrolet Pickup*, 115 N.M. at 649, 857 P.2d at 49.

84. *1990 Chevrolet Pickup*, 115 N.M. at 648, 857 P.2d at 48.

rolet Pickup accomplishes this goal by setting a clear standard which permits forfeiture only in cases where drug dealing/trafficking is involved.

The court's holding has important ramifications for government entities in New Mexico. By eliminating personal consumption of drugs from the harsh effects of forfeiture, it enables government entities to focus time and energy on thwarting the drug dealer. The court's adoption of a less technical version of the "last antecedent rule" avoids the problem of statutory analysis which may be technically correct but which erroneously interprets the legislatures intent in adopting the statute.

The court is on firm ground in assuming that since the New Mexico Legislature has not enacted any specific legislation to allow forfeiture in personal consumption cases, the legislature does not intend the general forfeiture statute to allow it.⁸⁵ The court of appeals has sent a clear message to the state legislature that if it wants to allow forfeiture in personal use cases, it needs to enact a specific provision that provides for forfeiture when drugs are possessed for personal use.⁸⁶

The decision in *1990 Chevrolet Pickup* is a timely response to an issue that has received increased attention in other state jurisdictions as well as the federal courts. The ruling in this case follows on the heels of a United States Supreme Court case that is redefining and narrowing the constitutionality of civil forfeiture provisions, as well as opening a door to discussion of whether forfeiture has gone too far as a method of punishment.⁸⁷ Forfeiture statutes should not be used as a tool to sweeten local enforcement agencies coffers at the expense of private citizens.⁸⁸ The court's ruling will prevent abuses of this type in New Mexico.

The law in New Mexico concerning civil in rem forfeiture in drug cases is now clear and predictable. For the drug users who are contemplating becoming drug dealers, and for those who are already trafficking in drugs, *1990 Chevrolet Pickup* establishes a line that they cross at their own risk.

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85. *Id.* at 649, 857 P.2d at 49.

86. *Id.*

87. *See* Austin v. United States, 113 S. Ct. 2801 (1993).

88. *See, e.g.,* State v. Fouse, 355 N.W.2d 366 (Wis. Ct. App. 1984) (purpose of forfeiture statute is not to profit enforcement agencies at expense of innocent third parties).