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COURT TO RULE ON FORFEITURE PROVISION IN WILDLIFE LAW

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SPRINGFIELD -- The Illinois Supreme Court will determine the validity of a law that would allow the state to confiscate a Highland Park resident's car because an occupant of the vehicle was shooting geese.

The court is scheduled to hear oral arguments next month on the state's appeal from a Lake County judge's decision invalidating the forfeiture provision of the Illinois Wildlife Code.

Defendant Vincent Puccio, who pleaded guilty to unlawful use of a weapon and to violations of the Wildlife Code, filed a motion to have Section 1.25 of the code ruled unconstitutional, court records show.

Puccio's 1990 Ford Bronco and three weapons had been seized under the statute on Oct. 31, 1992, in connection with his arrest.

Lake County Assistant State's Attorney Michael E. Simmons said Thursday that Robert Davis was shooting at wild geese from Puccio's car in a residential area.

But Puccio's attorney, Robert J. Fox of Waukegan, said the geese had been in a large field, and the shooting had not endangered residents.

Two dead geese were in the Bronco at the time it was seized, Fox said.

The vehicle subsequently was returned to Puccio, pending the outcome of the forfeiture proceedings.

The forfeiture statute ([520 ILCS 5/1.25](#), formerly [Ill. Rev. Stat. ch. 61, par. 1.25](#)) provides that

any vehicle or weapon is subject to seizure if it is used in the illegal hunting or transportation of wild game.

The Section further provides that once such property has been seized, the Illinois Department of Conservation shall file a complaint "forthwith," and a summons shall be issued requiring the person who illegally used the property and its owner "to appear in court and show cause why the property seized should not be forfeited to the state."

And if a court or jury determines that the seized property was used illegally, "an order may be entered providing for the forfeiture of such property to the Department of Conservation...."

Through his attorney, Puccio argued that the statute was unconstitutionally vague.

Lake County Associate Judge John G. Radosevich granted the defendant's motion on April 26, 1993, finding that the statute improperly placed the burden on the defendant to show why the seized property should not be forfeited.

The trial court further found that Section 1.25 "requires the trier of fact to employ discretion but fails to give effective standards by which such trier of fact could determine when it should forfeit a vehicle after a determination that the vehicle was used illegally, thereby rendering the statute unconstitutionally vague."

The state appealed the ruling directly to the high court under [Supreme Court Rule 302\(a\)](#), because a statute had been ruled unconstitutional.

In a brief filed Sept. 13, the state said it was abandoning its prior contention that the statute did not give the judge discretion as to whether to impose a forfeiture.

But the state said that despite the discretion allowed the judge, the statute was not void for vagueness, because it provided adequate notice as to the type of conduct that was forbidden.

"Nothing in this provision encourages arbitrary enforcement or abuse of discretion," the brief continued.

And the state said that in view of the importance of the issue, the court should rule that the state had not waived its argument by failing to present it in the trial court.

But Puccio's brief argues that the trial court's decision was correct, because the statute fails to set "objective standards" to guide the trial judge in deciding whether to impose forfeiture.

And the defendant contends that such standards are necessary to prevent arbitrary enforcement of the statute.

Puccio's brief was submitted by Fox and by **Marc W. Martin**, an attorney with Genson, Steinback, Gillespie & Martin in Chicago.

Fox, a lawyer with Ori, Fox, Lunardi & Zeit, said Puccio received 18 months of court supervision for unlawful use of a weapon and 18 months' conditional discharge for violations of the wildlife code.

The defendant also paid fines totaling \$650 and forfeited two of the weapons seized, a shotgun and a pistol, Fox said. But the third weapon, an antique rifle, has been returned to Puccio.

The state's brief was filed by Mary Beth Burns, a staff attorney with the state's attorneys appellate prosecutor in Elgin.

The Supreme Court case, *People ex rel. Lake County State's Attorney Michael J. Waller v. 1990 Ford Bronco* (Vincent Puccio, Defendant-Appellee), No. 75810, is scheduled for oral argument at 9 a.m. on Wednesday, Jan. 26.

---- INDEX REFERENCES ---

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