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Asset seizure law challenged

High court hears case of Chicago woman who waited 3 years to get car back

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BY [DAVE NEWBART](#) Staff Reporter

It took three years for Tyhesha Brunston to get her 2004 Chevy Impala back — even though it was wrongly seized by Chicago Police who claimed they found a marijuana cigarette in the car while a friend of hers was driving it.

The charges against the friend were dropped earlier this year, and authorities finally returned the car to Brunston, 30, of Lawndale, in July.

But the long wait Brunston was forced to endure — even though she was never accused of wrongdoing — was at the center of a case argued by Chicago attorneys before the U.S. Supreme Court Wednesday.

The question the high court considered in taking on a case originally brought by Brunston and five other Chicagoans was answer whether the innocent owner of seized property is entitled to a prompt hearing to consider returning the property.

The case has united some strange bedfellows, including the ACLU and libertarian Cato Institute, which argue a quick hearing should take place, as well as a number of cities, counties and states across the country, which say asset forfeiture is crucial to fighting drug crimes.

As it stands, the Illinois Drug Asset Forfeiture Procedure Act doesn't provide for a hearing after property is seized for more than six months, lawyers for Brunston say, even if the owner of the property is innocent. But in many cases it can take a year or longer for a hearing as the related criminal case winds its way through the judicial system.

That violates the Fourth Amendment of the U.S. Constitution, which protects against unreasonable searches and seizure, argues Craig Futterman, a clinical professor at the University of Chicago Law School who is co-counsel on the case along with Thomas Peters.

"When the government takes your property, it is required to provide owners prompt hearing before a neutral judge," Futterman said Wednesday after the Supreme Court hearing. "Even two weeks, let alone six months, without your primary means of transportation can impose an incredible hardship. You may have lost a job by then."

Futterman and Peters argued that law enforcement has an interest in delaying the hearing because the law allows them and other agencies to keep forfeited assets used by criminals. Chicago police seized \$13.5 million in cash from asset forfeitures last year, nearly double from the year before.

Brunston won her case before Chicago's Seventh Circuit Court of Appeals, which said the state needs to put in a place "some sort of mechanism" to independently test whether the property can be held. The hearing "should be prompt but need not be formal," the court ruled.

But that decision was appealed by Cook County State's Attorney Anita Alvarez to the U.S. Supreme Court.

Assistant State's Attorney Paul Castiglione said Wednesday that holding a forfeiture hearing within 10 or 14 days — as Brunston's attorneys sought — doesn't give authorities enough time to gather evidence and could possibly interfere with the criminal case. He also noted that since 85 percent of property seized is actually cash, it wouldn't be practical to allow people to post a cash bond — as some states allow — for the property while the case winds its way through the system. He argued there were already other ways to attempt to get property back.

"There are remedies to ask the court to tell the state to fish or cut bait," he said.

Neither side was willing to predict how the high court will rule.

Newest justice Sonia Sotomayor, while a federal appeals court judge, struck down New York City's forfeiture system, ruling that it didn't give owners a prompt enough opportunity to challenge seizures. On Wednesday, she immediately cut off Castiglione, asking, "Is there any other area of law where we permit ... seizure of property without" a prompt review of why the seizure was necessary?

Justice John Paul Stevens even suggested the case should be dismissed, and questioned whether the state would argue a car could be seized for 10 years without a hearing.

But other questioned whether there was even a claim, since Brunston and others had already gotten their cars back.

And Justice Samuel Alito told Peters, "I don't see how you can expect the state to come into court with such a short period . . . without compromising a criminal investigation."

Brunston said she hopes others don't have to endure what she did. She said Wednesday "it was ridiculous" she had to wait for her car so long and that she didn't have an earlier chance to argue to get it back. She had just bought her car the month before it was seized and had to pay another \$2,000 for it — while it was impounded.

"I'm excited to have it back," she said. "I felt like I was the criminal when they wouldn't give it back."

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