

CITY OF ALBUQUERQUE V. ONE 1989 CHRYSLER

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**CITY OF ALBUQUERQUE,
Plaintiff-Appellee,
v.
ONE 1989 CHRYSLER,
Defendant,
and
RALPH N. LESTER,
Claimant-Appellant.**

No. 33,261

COURT OF APPEALS OF NEW MEXICO

January 29, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alan M. Malott,
District Judge

COUNSEL

Jenica L. Jacobi, Interim City Attorney, David Tourek, Assistant City Attorney,
Albuquerque, NM, for Appellee

Ralph N. Lester, Albuquerque, NM, Pro Se Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, LINDA
M. VANZI, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Claimant appeals the district court's judgment granting forfeiture of Claimant's vehicle. We issued a notice of proposed disposition proposing to affirm, and Claimant has filed a memorandum in opposition to the proposed affirmance.

{2} We have reviewed the arguments made in the memorandum in opposition, but are not convinced by those arguments. In particular, we point out that as we stated in the notice, we are bound by Supreme Court precedent approving of the City's forfeiture process; this is true even though there may be factual differences between this case and the Supreme Court cases cited in the notice. We also point out that with respect to the issue concerning the City's late disclosure of evidence, Claimant's argument is misplaced. He states that it is obvious that the belatedly disclosed evidence prejudiced him; however, the question to be determined is not whether the evidence itself was prejudicial, but whether Claimant was somehow prejudiced by the late disclosure of that evidence. *See, e.g., Tartaglia v. Hodges*, 2000-NMCA-080, ¶¶ 31-33, 129 N.M. 497, 10 P.3d 176. In other words, it was up to Claimant to show that he did not have a fair opportunity to respond to the evidence for some reason connected to the late disclosure. Claimant did not make such a showing and affirmance is therefore warranted on that issue. As to all the other issues, we rely on the discussion contained in the notice of proposed disposition, and we affirm for the reasons stated in that notice.

{3} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

LINDA M. VANZI, Judge