

2023

## State v. O'Malley 2022-Ohio-3207

Taylor Sienerth

Follow this and additional works at: [https://digitalcommons.onu.edu/onu\\_law\\_review](https://digitalcommons.onu.edu/onu_law_review)



Part of the [Law Commons](#)

---

### Recommended Citation

Sienerth, Taylor (2023) "State v. O'Malley 2022-Ohio-3207," *Ohio Northern University Law Review*. Vol. 49: Iss. 2, Article 8.

Available at: [https://digitalcommons.onu.edu/onu\\_law\\_review/vol49/iss2/8](https://digitalcommons.onu.edu/onu_law_review/vol49/iss2/8)

This Article is brought to you for free and open access by the ONU Journals and Publications at DigitalCommons@ONU. It has been accepted for inclusion in Ohio Northern University Law Review by an authorized editor of DigitalCommons@ONU. For more information, please contact [digitalcommons@onu.edu](mailto:digitalcommons@onu.edu).

**State v. O'Malley**  
**2022-Ohio-3207**

I. INTRODUCTION

“Don’t do the crime[,] if you can’t do the time.”<sup>1</sup> Most everyone has heard this saying uttered at some point in their life. The proverb has a long-standing history in American culture, thought to have been popularized by the theme song in the 1970’s TV show “Baretta.”<sup>2</sup> There is some truth to the adage—do not commit a crime if you are not willing to accept the consequence prescribed by the law.<sup>3</sup> But what if the punishment established by law is disproportionate to the crime itself? The Founding Fathers pondered this same question, memorializing prohibitions against excessive fines and “cruel and unusual” punishments in the Eighth Amendment to the United States Constitution.<sup>4</sup> What is excessive may seem fairly arbitrary, as this case “demonstrate[s] a lack of development in state constitutional law on similar issues.”<sup>5</sup> What exactly constitutes excessive punishment under the Constitution?

In a recent case before the Supreme Court of Ohio, the court endeavored to answer that question. In that case, James O’Malley challenged the outer bounds of the Eighth Amendment’s prohibition against excessive fines.<sup>6</sup> When Mr. O’Malley was ordered by a trial court to forfeit his 2014 Chevrolet Silverado under a state forfeiture statute as a consequence of operating a vehicle while impaired (OVI) conviction, he appealed his case to the Ohio Supreme Court arguing that the forfeiture of his truck constituted an excessive fine in violation of the Eighth Amendment.<sup>7</sup>

The majority of the Ohio Supreme Court held that vehicle forfeiture in OVI cases does not violate the Eighth Amendment because it is “not grossly disproportional to the gravity” of the offense of driving under the influence.<sup>8</sup>

---

1. SAMMY DAVIS JR., *Keep Your Eye on the Sparrow (Baretta’s Theme)*, on BEST OF SAMMY DAVIS, JR. AND THE MIKE CURB CONGREGATION (Curb Records 1991) [hereinafter *Keep Your Eye on the Sparrow*].

2. *Baretta*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Baretta> (last visited Jan. 25, 2023).

3. *If You Can’t Do the Time, Don’t Do the Crime*, FREE DICTIONARY, <https://idioms.thefreedictionary.com/if+you+can%27t+do+the+time%2C+don%27t+do+the+crime> (last visited Jan. 25, 2023).

4. U.S. CONST. amend. VIII.

5. Anthony Sanders, *State Docket Watch: State v. O’Malley*, FED. SOC’Y (Dec. 16, 2022), <https://fedsoc.org/commentary/publications/state-court-docket-watch-ohio-v-o-malley>.

6. *State v. O’Malley*, 169 Ohio St.3d 479, 2022-Ohio-3207, 206 N.E.3d 662, at ¶¶ 17, 20.

7. *Id.* at ¶¶ 3-5, 20.

8. *Id.* at ¶ 103.

However, Justice Donnelly dissented, explaining that under the specific facts of the case, the vehicle forfeiture was grossly disproportional to the offense.<sup>9</sup>

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On July 4, 2018, Mr. O'Malley was pulled over by an Ohio State Highway Patrol officer who suspected he was operating a vehicle under the influence of alcohol.<sup>10</sup> During the traffic stop, Mr. O'Malley was unable to perform basic orders given by the officer.<sup>11</sup> When asked for his driver's license, he produced a credit card, and when asked to provide his home address, he was unable to do so.<sup>12</sup> Mr. O'Malley was subsequently arrested for an OVI.<sup>13</sup> He was charged with "one count of OVI for operating his vehicle in violation of R.C. 4511.19(A)(1)(a), one count of refusing to submit to chemical testing in violation of R.C. 4511.19(A)(2), and one count of failing to drive within marked lanes in violation of R.C. 4511.33."<sup>14</sup> Mr. O'Malley pleaded no contest to the OVI charge, and the trial court found him guilty.<sup>15</sup> This was not Mr. O'Malley's first OVI; it was in fact his third in the last 10 years.<sup>16</sup> Because of this fact, Mr. O'Malley's truck, a 2014 Chevrolet Silverado, was eligible for forfeiture under section 4503.234 of the Ohio Revised Code.<sup>17</sup> His truck was seized, and a forfeiture proceeding was arranged.<sup>18</sup> The truck was given to Mr. O'Malley as a gift and accounted for his entire net worth.<sup>19</sup>

At his forfeiture hearing, the trial court noted that Mr. O'Malley had not injured anyone while operating his vehicle while intoxicated.<sup>20</sup> However, for repeat offenders, the potential for such harm "remains great."<sup>21</sup> The trial court admonished Mr. O'Malley's high level of intoxication while operating a vehicle, which "placed the driving public at grave risk."<sup>22</sup> The trial court also made note that while Mr. O'Malley did drive the truck to and from work, he was currently unemployed and not actively seeking employment.<sup>23</sup> Mr. O'Malley also had no obligations to a spouse, children, or any other person

---

9. *Id.* at ¶ 104 (J. Donnelly, dissenting).

10. *Id.* at ¶ 2.

11. *O'Malley* at ¶ 2.

12. *Id.*

13. *Id.*

14. *Id.* at ¶ 3.

15. *Id.* at ¶ 4.

16. *O'Malley* at ¶ 3.

17. *Id.*

18. *Id.*

19. *Id.* at ¶¶ 9, 113.

20. *Id.* at ¶ 11.

21. *O'Malley* at ¶ 11.

22. *Id.*

23. *Id.* at ¶ 10.

and was living without notable living expenses.”<sup>24</sup> As punishment for the offense,

[T]he trial court imposed the maximum 365-day jail term[] suspending 335 days [of the sentence] so that O'Malley would serve only the mandatory 30-day jail term. . . . O'Malley was also placed on probation for one year[] . . . and [the trial court] suspended his license for four years[.] . . . The court [also] ordered O'Malley to pay the minimum monetary fine of \$850, . . . plus court costs.<sup>25</sup>

Mr. O'Malley asserted the forfeiture of his vehicle violated the Constitution on two grounds: (1) the vehicle forfeiture scheme in section 4503.234 of the Ohio Revised Code violated the Equal Protection Clauses in the state and federal constitutions by treating owners and nonowners differently; and (2) that the forfeiture of his truck constituted an excessive fine under the federal Constitution's Eighth Amendment.<sup>26</sup> The trial court rejected both of Mr. O'Malley's arguments.<sup>27</sup>

Following this proceeding, Mr. O'Malley appealed his case to the Ninth District Court of Appeals of Ohio.<sup>28</sup> While the Ninth District affirmed the trial court's judgement, it rendered a split decision.<sup>29</sup> The lead opinion found both of Mr. O'Malley's arguments insufficient.<sup>30</sup> In a separate opinion, one judge disagreed with the lead opinion and explained that Mr. O'Malley had developed an Excessive Fines Clause argument, but agreed with the lead opinion that the forfeiture did not violate the Equal Protection Clause.<sup>31</sup> One judge on the panel, Judge Carr, dissented, finding that the forfeiture was excessive, and further explained that “the trial court had not considered ‘the drastic impact that [the] forfeiture of O'Malley's truck would have on his personal financial condition.’”<sup>32</sup> Mr. O'Malley then appealed his case to the Supreme Court of Ohio.<sup>33</sup>

### III. THE COURT'S DECISION AND RATIONALE

Justice Fischer delivered the majority opinion of the court, joined by Chief Justice O'Connor, Justice DeWine, and Justice Stewart.<sup>34</sup> Justice

---

24. *Id.*  
 25. *Id.* at ¶ 15.  
 26. *O'Malley* at ¶ 5.  
 27. *Id.*  
 28. *Id.* at ¶ 16.  
 29. *Id.* at ¶ 16-18.  
 30. *Id.* at ¶ 16.  
 31. *O'Malley* at ¶ 17.  
 32. *Id.* at ¶ 18.  
 33. *Id.* at ¶ 19.  
 34. *Id.* at ¶ 103.

Kennedy filed a concurring opinion.<sup>35</sup> Justice Donnelly filed a separate dissenting opinion.<sup>36</sup>

*A. Majority Opinion by Justice Fischer*

The majority held that the forfeiture was not an excessive fine, and therefore Mr. O'Malley's constitutional rights had not been violated.<sup>37</sup> This decision upheld the decisions of both the trial and appellate courts.<sup>38</sup> Mr. O'Malley raised two issues before the Ohio Supreme Court.<sup>39</sup> First, that the forfeiture was a violation of his equal protection right, and second, that the forfeiture was an excessive fine and therefore violated his Eighth Amendment rights.<sup>40</sup> Both issues were addressed by the Ohio Supreme Court.<sup>41</sup>

In the majority opinion, Justice Fischer struck down both of Mr. O'Malley's arguments.<sup>42</sup> Regarding the equal protection argument, Justice Fischer noted that to uphold a state law the court needed only to perform a rational basis review.<sup>43</sup> To achieve this, the court looked to whether the government presented a rational basis for enacting the statute.<sup>44</sup> Justice Fischer emphasized that the government's rational basis for enacting the statute was to deter drunk driving, a legitimate state interest.<sup>45</sup> Continuing along with rationale of dissecting the legislative intent behind the forfeiture law, Justice Fischer discussed both the system of repeat offenses and similarly situated laws.<sup>46</sup> Justice Fischer explained that Ohio has a system for repeat offenders such that the punishment escalates every offense as to deter repeat offenses of this type of undesirable behavior.<sup>47</sup> Justice Fischer also explained that this forfeiture law was not one that was unique to OVI offenders who owned vehicles.<sup>48</sup> The punishment of forfeiture could also be extended to "owners who on more than two occasions lent their vehicles to individuals who they knew or had reasonable cause to believe would engage in impaired driving."<sup>49</sup> Justice Fischer's examples further illustrated the notion that the legislature is keen on prohibiting this type of behavior and the

---

35. *Id.*  
36. *O'Malley* at ¶ 103.  
37. *Id.*  
38. *Id.*  
39. *Id.* at ¶ 19.  
40. *Id.*  
41. *O'Malley* at ¶ 19.  
42. *Id.* at ¶ 103.  
43. *Id.* at ¶ 23.  
44. *Id.* at ¶ 24.  
45. *Id.* at ¶ 27.  
46. *O'Malley* at ¶ 27.  
47. *Id.* at ¶ 55.  
48. *Id.* at ¶ 27.  
49. *Id.*

“clear goal of the legislature was to protect Ohioans and their property from an out-of-control vehicle driven by an impaired driver, and the best way to do that is to prevent a drunk person from accessing a vehicle in the first place.”<sup>50</sup>

Regarding the excessive fine argument, Justice Fischer explained that Mr. O'Malley would need to “prove by clear and convincing evidence that the statute’s application to his particular set of facts is unconstitutional.”<sup>51</sup> In the majority opinion Justice Fischer reviewed multiple methods that have been adopted to determine whether a forfeiture is excessive.<sup>52</sup> The majority opinion began this review of methods with a 1994 test that was established in *State v. Hill*, an Ohio case.<sup>53</sup> In *Hill*, the United States Supreme Court established a series of factors that should be considered to determine whether a fine is excessive.<sup>54</sup> These *Hill* factors included, “‘the moral gravity of the crime’ . . . ‘personal benefit reaped by the defendant’ . . . [and] ‘whether the defendant caused, threatened, or risked physical harm’” among others.<sup>55</sup>

Following the *Hill* decision in 1998, the Supreme Court released a series of factors in their *United States v. Bajakajian* decision that included: the type of crime committed, a comparison between the fine imposed and the amount of forfeiture, and whether the defendant fits into the class of persons against whom the statute was designed to target.<sup>56</sup>

Justice Fischer explained that the method used to “conduct[] a gross-disproportionality analysis is not well settled.”<sup>57</sup> Justice Fischer further explained that the judges are not able to “separate the monetary fine imposed from the forfeiture of the vehicle.”<sup>58</sup> He further expressed that a subjective ratio-based analysis is difficult to employ, so the court looked to the penalty as a whole.<sup>59</sup> Ultimately the court found that the forfeiture of Mr. O'Malley’s truck was not an excessive fine, holding that “a comparison between the fine amount and the value of the forfeiture [is] . . . of limited relevance in the gross-disproportionality analysis.”<sup>60</sup>

---

50. *Id.* at ¶ 28.

51. *O'Malley* at ¶ 32.

52. *Id.* at ¶ 36.

53. *Id.* at ¶¶ 38, 41.

54. *Id.* at ¶ 42 (citing *State v. Hill*, 70 Ohio St. 3d 25, 1994-Ohio-12, 635 N.E.2d 1248, at ¶¶ 33-34).

55. *Id.* at ¶ 42.

56. *O'Malley* at ¶¶ 43-44 (citing *United States v. Bajakajian*, 524 U.S. 321, 337-38, 340 (1998)).

57. *Id.* at ¶ 40.

58. *Id.* at ¶ 101.

59. *Id.*

60. *Id.*

*B. Dissenting Opinion by Justice Donnelly*

Justice Donnelly penned a powerful dissent in *State v. O'Malley*.<sup>61</sup> Justice Donnelly explained that the majority was “of two minds when weighing the hardship of high-value forfeitures on the poor as opposed to the wealthy.”<sup>62</sup> In the determination of whether the forfeiture was excessive, Justice Donnelly went beyond the mere facts of the case and examined the effects of the forfeiture on Mr. O'Malley's personal life.<sup>63</sup> Justice Donnelly highlighted that Mr. O'Malley was unemployed and not seeking employment not because he did not want to work, rather, following his grandfather's death, he had the responsibility to care for his grandmother.<sup>64</sup>

Justice Donnelly put simply what the majority opinion failed to recognize: “[a] forfeiture is a fine.”<sup>65</sup> While not excusing the act of drunk driving, Justice Donnelly maintained that the confiscation of Mr. O'Malley's sole asset when faced with a misdemeanor crime is a violation of the Eighth Amendment.<sup>66</sup> Justice Donnelly demonstrated that the attempt to shield the public from this very sort of disproportionate consequence has been in place since William Blackstone and the Magna Carta.<sup>67</sup> Justice Donnelly noted that, “[s]urely, if the Excessive Fines Clause means anything, it means that the government cannot confiscate a defendant's entire net worth when the maximum fine set by the legislature is less than one-tenth of the value of the forfeited asset.”<sup>68</sup> Further, Justice Donnelly cited statistics that show that higher fines do not deter crime.<sup>69</sup> Rather, steep fines, such as the one imposed on Mr. O'Malley, are linked to an increase in recidivism as fines lead to financial hardships and financial hardships lead to more crime.<sup>70</sup> The dissent found that the forfeiture in this case was not only grossly disproportionate in nature, but by its very nature, counterproductive.<sup>71</sup>

---

61. *O'Malley* at ¶ 104.

62. *Id.* at ¶ 114.

63. *Id.* at ¶ 105.

64. *Id.*

65. *Id.* at ¶ 107.

66. *O'Malley* at ¶ 111.

67. *Id.* at ¶ 113.

68. *Id.*

69. *Id.* at ¶ 116.

70. *Id.*

71. *O'Malley* at ¶ 117.

## IV. ANALYSIS

## A. Introduction

The holding of *State v. O'Malley* not only affects the life of Mr. O'Malley, but the life of every citizen of the state of Ohio.<sup>72</sup> This decision “severely weakens the protective power of the Excessive Fines Clause.”<sup>73</sup> Although the adage “[d]on’t do the crime[,] if you can’t do the time” may still ring true, everyone makes mistakes in their lives, and that does not mean that the person deserves to lose their entire net worth for being convicted of a misdemeanor.<sup>74</sup> This decision creates cause for concern that states can now skirt the prohibitions against excessive fines established in the Eighth Amendment through forfeiture statutes.<sup>75</sup> If confiscating a person’s entire net worth is not an excessive fine under the Eighth Amendment, what is an excessive fine?

## B. Discussion

In Ohio, the maximum fine for a third time OVI offender is \$2,750.<sup>76</sup> Mr. O'Malley's truck was valued at approximately \$31,000.<sup>77</sup> Mr. O'Malley's actual fine was \$850, the minimum required amount.<sup>78</sup> This meant that when his truck was seized, it was approximately eleven times the maximum fine that can be imposed, and approximately thirty-six times the fine imposed upon him.<sup>79</sup> Based on the excess between the value of the truck and the maximum fine a court of law can impose for an OVI, the difference is approximately \$28,250.<sup>80</sup> Under this rationale, there were about \$28,000 more worth of fines imposed on Mr. O'Malley than a court of law is able to impose.<sup>81</sup> Mr. O'Malley argued that this disparity was a clear violation of his

---

72. Nick Sibilla, *Ohio Supreme Court Upholds Confiscating Man's Entire Net Worth Over a Misdemeanor*, FORBES (Sept. 26, 2022, 7:45 PM), <https://www.forbes.com/sites/nicksibilla/2022/09/26/ohio-supreme-court-upholds-confiscating-mans-entire-net-worth-over-a-misdemeanor/?sh=15fa3951b951>.

73. *Id.*

74. *Keep Your Eye on the Sparrow*, *supra* note 1; Sibilla, *supra* note 72.

75. Sibilla, *supra* note 72.

76. *Id.*

77. *Id.*

78. Dan Trevas, *Court-Ordered Truck Forfeiture for Third Drunk-Driving Offense Found Constitutional*, COURT NEWS OHIO (Sept. 15, 2022), <https://www.courtnewsOhio.gov/cases/2022/SCO/0915/200859.asp#.Y7hm9uzMLFo>.

79. Sibilla, *supra* note 72.

80. Trevas, *supra* note 78; Sibilla, *supra* note 72.

81. Trevas, *supra* note 78; Sibilla, *supra* note 72.



Eighth Amendment prohibitions on excessive fines.<sup>82</sup> However, the Ohio Supreme Court did not agree with Mr. O'Malley.<sup>83</sup>

This is not the first time that a court has had to handle the complexities involving excessive fines.<sup>84</sup> As recently as 2019, the Supreme Court of the United States heard a case on excessive fines and handed down a landmark decision.<sup>85</sup> In *Timbs v. Indiana*, “Tyson Timbs was convicted on drug charges.”<sup>86</sup> The authorities had attempted to confiscate Mr. Timbs’ most valuable asset – his Land Rover.<sup>87</sup> Mr. Timbs’ court costs and fees totaled around \$1,200 while his vehicle was purchased for approximately \$42,000.<sup>88</sup> The Supreme Court unanimously held that “cities and states must abide by the Excessive Fines Clause[,]” then remanded the case back to the Indiana Court to determine whether the fine was in fact excessive or not.<sup>89</sup> How state supreme courts have chosen to interpret this decision has varied significantly.<sup>90</sup>

Following this decision, the Indiana Supreme Court issued two rulings that both sided with Mr. Timbs.<sup>91</sup> In the first holding, the Indiana Supreme Court held that “judges must consider ‘the owner’s economic means—relative to the property’s value.’”<sup>92</sup> Based on this rationale, the court further held that the forfeiture of Timbs’s Land Rover would “impose an unconstitutionally excessive fine on Timbs.”<sup>93</sup> Other courts such as Indiana, Colorado, Montana, Pennsylvania, Tennessee, and Louisiana have all utilized the Supreme Court’s decision in *Timbs* to require courts in their states to look at an individual’s financial hardship when determining if a fine is excessive under the Eighth Amendment.<sup>94</sup>

While Mr. O'Malley’s case seems analogous to the *Timbs* case in Indiana, the Ohio Supreme Court adopted a much different reasoning than the Indiana Supreme Court.<sup>95</sup> The Ohio Supreme Court determined that not only was the forfeiture “not grossly disproportional[,]” the Ohio Supreme Court also found

---

82. *State v. O'Malley*, 169 Ohio St.3d 479, 2022-Ohio-3207, 206 N.E.3d 662, at ¶ 19.

83. *Id.* at ¶ 103.

84. Sibilla, *supra* note 72; see *Timbs v. Indiana*, 139 S. Ct. 682 (2019).

85. *Timbs* 139 S. Ct. at 686; Sibilla, *supra* note 72.

86. Sibilla, *supra* note 72.

87. *Timbs* 139 S. Ct. at 686; Sibilla, *supra* note 72.

88. *Timbs* 139 S. Ct. at 686.

89. Sibilla, *supra* note 72.

90. *Id.*

91. *Id.*

92. *Id.*

93. Sibilla, *supra* note 72; *Timbs v. Indiana*, 169 N.E.3d 361, 377 (Ind. 2021).

94. Marianna Brown Bettman, *Oral Argument Preview: Does Ohio’s Criminal Vehicle Forfeiture Statute Constitute an Excessive Fine? State of Ohio v. James O’Malley*, LEGALLY SPEAKING OHIO (May 4, 2021), <https://legallyspeakingohio.com/2021/05/oral-argument-preview-does-ohios-criminal-vehicle-forfeiture-statute-constitute-an-excessive-fine-state-ofohio-v-james-omalley/>.

95. Sibilla, *supra* note 72.

“‘limited relevance’ in comparing a fine to the value of a forfeited property.”<sup>96</sup>

Despite the fact that the Silverado was Mr. O’Malley’s only mode of transportation, the Ohio Supreme Court determined that it would not significantly affect Mr. O’Malley because he was unemployed.<sup>97</sup> Regardless of whether this is a logical conclusion, it is an odd concept that the protections of the law should only be granted to one who is fortunate enough to have gainful employment at the time they commit a misdemeanor.<sup>98</sup> The disparate effects amongst the wealthy compared to the poor created by this holding do not comport with the idea of equal justice, which is a foundational principle in our legal system.<sup>99</sup> Justice Donnelly said it best: “to confiscate a poor man’s entire fortune, such as it is—a fate not even remotely threatening the wealthy.”<sup>100</sup>

## V. CONCLUSION

In *O’Malley* the Ohio Supreme Court held that the forfeiture of Mr. O’Malley’s vehicle was not an excessive fine and did not violate his Eighth Amendment protections.<sup>101</sup> The court used a series of factors to determine that the action was equivalent to punish Mr. O’Malley for his actions.<sup>102</sup> Justice Donnelly dissented with vigor, finding that this forfeiture of Mr. O’Malley’s entire net worth was excessive.<sup>103</sup>

This case may seem to be an ideal representation of the phrase “[d]on’t do the crime if you can’t do the time.”<sup>104</sup> But is it fair, or even effective, to provide a punishment that is disproportionately severe? This is not to take a stand that criminals should not be punished. Punishing society’s unwanted behavior has been foundational in providing a sound structure of the American legal system.<sup>105</sup> Perhaps the reason we agree to this ideal, that when one commits a crime, they must be punished for it, is that we feel that we are protected from excessive fines under the Eighth Amendment. What does it entail for future legislation when states are able to find ways to pierce the shield of this Eighth Amendment protection by classifying an excessive fine as a forfeiture? When a misdemeanor is worthy of reaping someone’s

---

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. State v. O’Malley, 169 Ohio St.3d 479, 2022-Ohio-3207, 206 N.E.3d 662, at ¶ 114.

101. *Id.* at ¶ 103.

102. *Id.* at ¶¶ 101-02.

103. *Id.* at ¶ 104.

104. *Keep Your Eye on the Sparrow*, *supra* note 1.

105. F.B Raymond, *Reasons We Punish*, 7 J. HUMANICS 65 (1979).

526            *OHIO NORTHERN UNIVERSITY LAW REVIEW*            [Vol. 49]

entire net worth, it makes one wonder when a fine would ever be held to be excessive.

TAYLOR SIENERTH