

O/A 2-11-86

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,080

IN RE:

FORFEITURE OF ONE 1978
CHEVROLET VAN V.I.N.
CGD1584167858, APPROXIMATELY
\$4,478.00 IN U.S. CURRENCY
AND ONE .45 CALIBER AUTOMATIC
STAR HANDGUN, SERIAL NO. 1481675.

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By: 
Chief Deputy Clerk

REPLY BRIEF OF CLAIMANT

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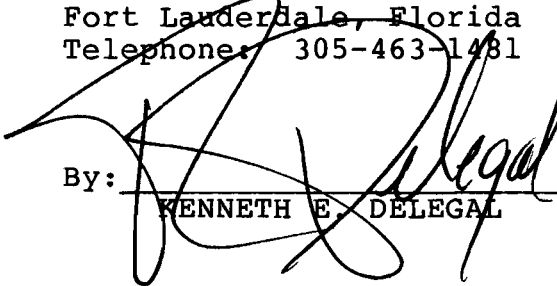
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TABLE OF CONTENTS

Table of Citations ii

Preface 1

Statement of the Case 2

Issue Presented 3

Statement of Facts 4-5

Argument

ISSUE

COMMON LAW RIGHT TO TRIAL BY JURY AS
SECURED BY FLORIDA CONSTITUTION
ARTICLE I, SECTION 22 APPLIES TO CIVIL
FORFEITURE PROCEEDINGS AUTHORIZED UNDER
CHAPTER 932 FLORIDA STATUTES (1983) 6-12

Conclusion 13

Certificate of Service 14

TABLE OF CITATIONS

	<u>Page</u>
<u>Blackburn v. Blackburn</u> , 393 So.2d 51 (2nd DCA, Fla. 1981)	11
<u>Dudley v. Harrison, McCready & Co.</u> , 173 So. 774 779 (Fla. 1979)	7,8,9
<u>Hollywood Inc. v. City of Hollywood</u> , 321 So.2d 65 (Fla. 1975)	9,10,11
<u>In Re Forfeiture of Approximately Forty-Eight Thousand Nine Hundred Dollars in U.S. Currency</u> , 432 So.2d 1382 (Fla. 4th DCA, 1983)	6,7
<u>Lamar v. Universal Supply Company</u> , 452 So.2d 627 (Fla. App. 5th Dist. 1984)	11
<u>Pomponio v. Claridge of Pompano Condominium, Inc.</u> , 378 So.774, 779 (Fla. 1979)	9
<u>Smith v. Hindery</u> , 454 So.2d 663 (Fla. 1st DCA, 1984).	6,8
<u>United States v. One 1976 Mercedes Benz 280S</u> , 618 F.2d 453 (7th Cir. 1980)	7,8,9,10
<u>Wiggins v. Williams</u> , 18 So. 859 (Fla. 1896)	8,9,10

PREFACE

In this Brief the Appellant, LLOYD ANTHONY GREEN, is referred to as "Claimant" and "Mr. Green". The Appellee is referred to as "Plaintiff" and "The Sheriff".

Citations to the original Record on Appeal will be preceded by the letter "R". Citations to the Appendix will be preceded by the letter "A".

STATEMENT OF THE CASE

For purposes of this Brief the Claimant, LLOYD ANTHONY GREEN, stipulates to the Plaintiff's statement of the case.

ISSUE PRESENTED

The Claimant, LLOYD ANTHONY GREEN, devotes his Argument to the following point:

ISSUE

COMMON LAW RIGHT TO TRIAL BY JURY
AS SECURED BY FLORIDA CONSTITUTION
ARTICLE 1, SECTION 22 APPLIES TO
CIVIL FORFEITURE PROCEEDINGS AUTHORIZED
UNDER CHAPTER 932 FLORIDA STATUTES (1983)

STATEMENT OF FACTS

The Sheriff of Broward County began forfeiture proceedings following the arrest of Claimant, arising from a controlled buy arranged by two undercover deputies. The total amount of marijuana involved in the transaction was 22.4 grams. The deputies went to a construction site where Claimant was employed as an electrician. At the construction site the deputies in their undercover capacity approached the Claimant and asked to buy some marijuana. At this time, the Claimant sold the deputies ten dollars (\$10.00) worth of marijuana. The deputies were not satisfied with this small amount and told Claimant that they wanted more, to which they were told to come back after lunch. The deputies came back to the construction site after lunch and again approached Claimant seeking to buy marijuana. During this transaction Claimant went to his van and arranged to sell two twenty dollar bags of marijuana to the undercover deputies. After the sale was completed the deputies arrested Claimant and subsequently began these forfeiture proceedings.

At the outset of the forfeiture proceeding the Claimant, in his Answer to Complaint for Rule to Show Cause demanded a jury trial as of right. The trial court heard argument on this issue the day of trial. The Plaintiff's position at the trial was that Claimant was not entitled to a jury trial in a forfeiture proceeding pursuant to Chapter 932 Florida Statutes (1983). The

Claimant on the other hand contended before the trial court that the Claimant did in fact have a right to jury in the forfeiture action.

After hearing argument from both sides concerning the demand for jury trial, the trial court in denying Claimant demand for jury trial stated:

"...Well, we'll give Judge Hurley and Judge Dell and Judge Walden an opportunity to apply the Van Oster case to the State cases."

Trial Transcript "R" pages 73 and 74 at lines 23, 24, 25 and 1.

Claimant appealed from that denial to the Fourth District Court of Appeal. The Fourth District Court of Appeal ruled in favor of the Claimant.

ARGUMENT

ISSUE

COMMON LAW RIGHT TO TRIAL BY JURY
AS SECURED BY FLORIDA CONSTITUTION
ARTICLE 1, SECTION 22 APPLIES TO
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In Smith v. Hindery, 454 So.2d 663 (Fla 1st DCA, 1984) the claimants in a civil forfeiture assigned as error the trial court's denial of a jury trial in violation of Article I, Section 22 of the Florida Constitution. In resolving this issue the court stated:

"...The Contention is without merit. The right to jury trial is guaranteed by the Florida Constitution only in cases where that right existed at common law, not where a right and remedy were thereafter created by statute...The Florida Contraband Forfeiture Act did not exist at common law, and there is therefore no right to a jury trial in a forfeiture proceeding under that act."

Smith, 454 So. 2d 663.

Since the court in Smith did not elaborate on how it reached it's conclusion the strength of the ruling is without legal reasoning.

In the case of In Re Forfeiture of Approximately Forty-Eight Thousand Nine Hundred Dollars in U.S. Currency, 432 So.2d 1382 (Fla. 4th DCA, 1983) the Fourth District Court recognized that the issue of right to jury in civil forfeiture had yet to be

ruled on by the court. In a footnote to the case Judge Hurley recognized that:

"Florida has yet to decide whether the parties in a forfeiture action are entitled to a trial by jury on the issue of independent untainted evidence to establish probable cause, or upon such other issues sought by the claimant to be proved by a preponderance of the evidence."

In Re Forfeiture of Approximately Forty-Eight Thousand Nine Hundred Dollars in U.S. Currency, 432 So.2d 1382 at 1386.

Other than the conclusion reached by the court in Smith without any citations, and without any sound legal reasoning, there appears to be no Florida cases to dispose of the issue of trial by jury in forfeiture proceedings. It appears that the Smith court did not even consider the United States v. One 1976 Mercedes Benz 280S case.

The question simply is whether "forfeiture" was the type of proceeding for which the Constitution secured inviolate the right for jury to decide the question of fact. The court in Smith as previously quoted recognized this principle and erroneously used it to decide that a jury was not available in civil forfeiture. Smith, 454 So.2d 663. The court in Smith held that since there was no similar right in the common law prior to adoption of the Florida Constitution there could be no such right secured by the Constitution. Smith, 454 So.2d 663. See also Dudley v.

Harrison, McCready & Co., 173 So. 820 (Fla. 1937); Wiggins v. Williams, 18 So. 859 (Fla. 1896).

In United States v. One 1976 Mercedes Benz 280S, 618 F.2d 453 (7th Cir. 1980). Senior District Judge Dumbauld in a well thought out and reasoned opinion traces the history of the federal forfeiture statute in relation to the Seventh Amendment and determines that "forfeiture" was the type of action in which the common law recognized a right to jury trial. United States v. One 1976 Mercedes Benz 280S, 618 F.2d at 469. The court concluded that in civil forfeiture proceedings a right existed, prior to 1791, which was secured by the Seventh Amendment entitling a claimant of forfeited property to have issues of fact decided by a jury of his peers. The court reasoned "...even as a matter of policy, weight must be given to the time honored tradition of American commitment to jury trial, extending back to the Continental Congress..." United States v. One 1976 Mercedes Benz 280S, 618 F.2d at 468.

The Seventh Amendment to the United States Constitution is similar to Article 1, Section 22 of the Florida Constitution in that both provisions secure rights that existed prior to adoption of those respective provisions. United States v. One 1976 Mercedes Benz 280S, 618 F.2d 453 (7th Cir. 1980); Smith v. Hindrey, 454 So.2d 663 (Fla. 1st DCA, 1984); Dudley v. Harrison,

McCready & Co., 173 So. 820 (Fla. 1937); Wiggins v. Williams, 18 So. 859 (Fla. 1896). In determining whether the right to jury trial in the case sub judice the reasoning of the federal Judge in United States v. One 1976 Mercedes Benz 280S, should be persuasive. In Dudley v. Harrison, McCready & Co., 173 So. 820 (Fla. 1937) the court stated:

"The Seventh Amendment to the Constitution of the United States, which guarantees the right of trial by jury, is, of course, only binding upon the federal courts. Yet the federal decisions construing it have been frequently helpful and persuasive in construing state constitutional provisions of like import."

Dudley v. Harrison, McCready & Co., 173 So. 820, 825. See also Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 774, 779 (Fla. 1979).

The issue of whether to allow a jury trial is a very valued right in our American heritage, as pointed out in United States v. One 1976 Mercedes Benz 280S, 618 F.2d 453 (7th Cir. 1980). The courts of Florida also recognize the importance of the jury to our system of jurisprudence. In Hollywood Inc. v. City of Hollywood, 321 So.2d 65 (Fla. 1975) was a case involving title to land which the city claimed by adverse possession, the Court reasoned, that "[Q]uestions as to the right to a jury trial

should be resolved, if at all possible, in favor of the party seeking the jury trial, for that right is fundamentally guaranteed by the United States and Florida Constitutions."

Hollywood Inc. v. City of Hollywood, 321 So.2d at 71.

Furthermore, the legislature can not bypass this constitutional guarantee by simply changing the form of the right while the substance remains the same. In Wiggins v. Williams, 18 So. 859 (Fla. 1896) the Supreme Court quoting from another case reasoned:

"the constitution was intended to provide for the future as well as the past, to protect the rights of the people by every safeguard which their wisdom and experience then approved, whether those rights then existed by rules of the common law, or might from time to time arise out of subsequent legislation."

Wiggins v. Williams, 18 So. at 864.

In light of the well reasoned and highly persuasive case of United States v. One 1976 Mercedes Benz 280S, 618 F.2d 453 (7th Cir. 1980) which establishes a right to jury trial in a very similar federal action coupled with the fact that the legislature did not expressly preclude a jury trial by the wording of Chapter 932 of Florida Statutes (1983), it seems that the legislature deferred to the courts to determine, as did the federal courts, that parties in a civil forfeiture action are indeed entitled to

a jury trial. To further strengthen this conclusion, the Florida cases encourage the State courts to look to the federal cases for guidance when state decisions are lacking. Finally, the position set forth by the court in Hollywood Inc. v. City of Hollywood, 321 So.2d 65 (Fla. 1975) which shows a clear preference for granting a jury trial when there is doubt.

Although there was no claim for replevin in the instant action, an argument could be raised if a Claimant were to either beat the governmental entity to court with a replevin action or to file a counterclaim for replevin in the same action, asserting that the Claimant had a right to a jury trial. Clearly, a person has a right to a jury trial in a replevin action. Blackburn v. Blackburn, 393 So.2d 51 (2nd DCA, Fla. 1981).

The case of Lamar v. Universal Supply Company, 452 So.2d 627 (Fla. App. 5th Dist. 1984) held unconstitutional the provision of the Florida Contraband Forfeiture Act prohibiting a claimant from bringing his own action to recover seized property. The Court stated:

"The issue at trial of the replevin action will be whether or not the sheriff is entitled to forfeiture pursuant to Chapter 932, provided that issue is raised as an affirmative defense and counterclaim by the sheriff."

The Petitioner even concedes this point in his brief. Of course, in the instant cause the issue is not raised by the pleadings,

but common sense would seem to dictate that a claimant could secure a trial by jury by simply asserting a replevin action.

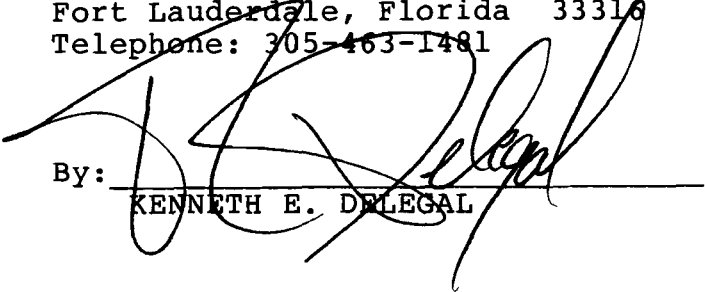
All of the foregoing lead to a conclusion that the parties in a civil forfeiture are entitled to a jury trial as guaranteed by the United States and Florida Constitutions.

CONCLUSION

The denial by the trial court of the Claimant's demand for jury trial should be reversed and the forfeiture action dismissed. In this age of vanishing individual rights and freedom, the Claimant urges this court to affirm his and all other persons right to a trial by jury in a "forfeiture" proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail delivery to Bruce W. Jolly, Esquire, Shailer, Purdy & Jolly, Attorneys for Petitioner, at 1322 Southeast Third Avenue, Fort Lauderdale, Florida 33316, and the original hereof filed with the Clerk of the Court, by mail delivery, this 19th day of November, 1985.

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