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IN THE SUPREME COURT OF FLORIDA

CASE NO.: 89,032

FIRST DISTRICT COURT OF APPEAL CASE NO. 95-3971
THIRD JUDICIAL CIRCUIT CASE NO. 90-314-CA

THOMAS S. TRAMEL, III,
as Sheriff of Columbia County,

Petitioner,

vs.

CHARLES STEWART, JR.,
and BEVERLY J. STEWART,

Respondents.

BRIEF OF AMICUS CURIAE
STATE OF FLORIDA
IN SUPPORT OF PETITIONER

Respectfully submitted,

JACQUELINE H. DOWD
Assistant Attorney General
Florida Bar No. 7714410
Department of Legal Affairs
28 West Central Boulevard, Suite 310
Orlando, Florida 32801
(407) 245-0833

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CERTIFICATE OF INTEREST

Amicus curiae STATE OF FLORIDA files this brief in support of Petitioner Thomas S. Tramel, III, as Sheriff of Columbia County.

The Attorney General, as the chief legal officer of the state, has the duty to ensure that laws are properly applied and enforced. The Florida Contraband Forfeiture Act is an important tool which the Attorney General -- and other law enforcement officers throughout the state -- employ in an effort to reduce criminal activity in the state by assessing significant economic penalties against wrong-doers.

Attorney General Butterworth was one of the parties in *Butterworth v. Caggiano*, 605 So. 2d 56 (Fla. 1992), the case which forms the foundation of the arguments presented in the case at bar. The Attorney General has a valuable perspective on the development of the Florida Contraband Forfeiture Act, the arguments presented in *Caggiano*, and the court decisions that have led to the current status of forfeiture law in Florida.

The case at bar presents a critical issue which will affect law enforcement efforts throughout the state and which could determine whether Florida will become a "safe harbor" for drug dealers and other criminals or whether the state's law

enforcement officers will continue to be able to use a broad array of statutory weapons in an effort to make Florida a safer environment for all its citizens.

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STATEMENT OF THE CASE

1. Nature of the case. This civil forfeiture case, brought pursuant to the Florida Contraband Forfeiture Act, involves the forfeiture of 6.38 acres of land containing a house and barn in Columbia County.

The facts are discussed in great detail in Petitioner's Initial Brief, and the State will not repeat those facts here.

2. Course of Proceedings. On September 29, 1995, the jury below returned its verdict. Its findings included a determination that 100 percent of the real property was purchased with proceeds of illegal drug transactions conducted by the owners of the property.

The case was then appealed to the First District Court of Appeal, which reversed the trial court's judgment on the grounds that the Florida Constitution protects all homestead properties from forfeiture -- even those acquired with proceeds of criminal activity.

3. Certification of a Question of Great Public Importance. The First District Court of Appeal certified to this Court the question of whether the Florida Constitution prohibits civil forfeiture of homestead property, under the Florida Contraband

Forfeiture Act, when the proceeds of illegal activity were used to purchase the property.

SUMMARY OF ARGUMENT

One never acquires a property right to illegal proceeds, and the forfeiture of criminal proceeds deprives a drug dealer of nothing to which he is legally entitled. Therefore, a drug dealer who purchased a home with proceeds of criminal activity never had any legal right to ownership of the property and the homestead protections of the Florida Constitution never attached to the property.

The Florida courts have repeatedly held that the homestead exemption does not protect a home which has been used as an instrument of fraud or other reprehensible conduct. As a logical counterpart to that lengthy line of cases, the homestead exemption should not be applied to protect a home that has been purchased with illegal proceeds.

If the First District Court of Appeal's decision is upheld, drug dealers and other possessors of illegal proceeds will have a reasonable expectation that the State of Florida will protect, condone, and even allow, their continued possession of illegal proceeds.

For these reasons, this Court should answer the certified question by holding that there can be no constitutional protection under the homestead provisions of the Florida Constitution for drug dealers who purchase real property with the proceeds of illegal drugs sales.

ARGUMENT

I. ONE WHO OBTAINS PROPERTY WITH PROCEEDS OF CRIMINAL ACTIVITY DOES NOT ACQUIRE LEGAL OWNERSHIP

One never acquires a property right to illegal proceeds, and the forfeiture of criminal proceeds deprives a drug dealer of nothing to which he is legally entitled.

When ... the property taken by the government was not derived from lawful activities, the forfeiting party loses nothing to which the law ever entitled him ... [T]he forfeiture of ... illegal proceeds ... exacts no price in liberty or lawfully derived property from him. The possessor of proceeds from illegal drug sales never invested honest labor or other lawfully derived property to obtain the subsequently forfeited proceeds. Consequently he has no reasonable expectation that the law will protect, condone, or even allow, his continued possession of such proceeds because they have their very genesis in illegal activity.

United States v. Tilley, 18 F.3d 295, 300 (5th Cir.), cert. denied, ___ U.S. ___, 115 S. Ct. 574 (1994).¹

¹ The Florida Legislature intended the Florida Contraband Forfeiture Act to "facilitate 'uniformity between the laws of Florida and the laws of the United States' which was 'necessary and desirable for the effective drug abuse prevention and control' Accordingly, it is most appropriate that we consider the federal cases construing the uniform act as well as our own Florida cases." *Mosley v. State ex rel. Broward County*, 363 So.2d 172, 173 (Fla. 4th DCA 1978) (footnotes omitted); see

Numerous courts have followed the *Tilley* court's rationale in allowing the forfeiture of illegal proceeds. For example, in *United States v. Doyer*, 907 F. Supp. 1519 (M.D.Fla. 1995), the court "fully embrace[d]" the *Tilley* court's analysis. *Id.* at 1523. In the context of determining whether the forfeiture of illegal proceeds was punishment for within the meaning of the Double Jeopardy Clause, the *Doyer* court stated that "the crucial, initial determination [is] whether the property to be forfeited ever lawfully belonged to the defendant in the first instance." *Id.* The court observed that "the long-standing maxim of commercial law, *nemo dat qui non habet* (he who hath not cannot give), also guides this common-sense approach. The government cannot take, and thereby punish, what an individual defendant does not legally have." *Id.* at 1523. In *Santiago-Fraticelli v. United States*, 916 F. Supp. 86 (D. Puerto Rico 1996), the court found that the petitioner had no legally protected entitlement to the illegal proceeds of criminal drug-related activities. "Having illegally obtained the proceeds, petitioner could not expect any continued possession of the proceeds. As a result, petitioner was never deprived of property he was legally entitled to possess." *Id.* at 90-91 (citing *Tilley*, 18

also *In re Forfeiture of 1979 Toyota Corolla Auto. VIN No. KE30619534*, 424 So.2d 922, 924 (Fla. 4th DCA 1982).

F.3d at 300); see also *United States v. Various Computers and Computer Equipment*, 82 F.3d 582, 588 (3d Cir. 1996) (adopting *Tilley's* rationale); *United States v. \$184,505.01 in U.S. Currency*, 72 F.3d 1160, 1168 (3d Cir. 1995) (finding the *Tilley* court's reasoning to be sound); *United States v. Levine*, 905 F. Supp. 1025, 1031 n.7 (M.D.Fla. 1995) (forfeiture of \$5,965,240 in illegal drug proceeds "exact[s] no price in liberty or lawfully derived property"); *United States v. Perez*, 902 F.Supp. 1318, 1321 (D.Colo. 1995) (same); *Dawkins v. United States*, 883 F. Supp. 83, 89 (E.D.Va. 1995) ("forfeiture of drug proceeds deprives a forfeiting party of nothing to which he is legally entitled"); *United States v. \$288,930.00 In U.S. Currency*, 838 F. Supp. 367, 370 (N.D. Ill. 1993) (claimant does not rightfully own proceeds of narcotics trafficking); cf. *Securities and Exchange Comm'n v. Bilzerian*, 29 F.3d 689, 696 (D.C. Cir. 1994) (disgorgement of "ill-gotten gains" from unlawful transactions in securities).

In *Valona v. United States*, 919 F. Supp. 1260 (E.D. Wis. 1996), the court held that no property right exists in jewelry and money intended to be used to purchase cocaine and allowed forfeiture of that property. "Frankly, it makes little sense to

this court to allow a drug dealer to acquire a property right in the proceeds of unlawful, socially destructive activity ..." *Id.* at 1271.

The United States Supreme Court has recognized that one cannot own contraband. In *Trupiano v. United States*, 334 U.S. 699, 710 (1948), overruled on other grounds by *United States v. Rabinowitz*, 339 U.S. 56 (1950), the Court held that illegally seized contraband need not be returned to defendants because they had no right to it.

Similarly, the Florida courts have recognized that, under basic principles of property law, a person who acquires possession of property by theft cannot convey good title to another person, even to a *bona fide* purchaser. *Battles v. State*, 602 So.2d 1287, 1288 (Fla. 1992); *Brown & Root, Inc. v. Ring Power Corp.*, 450 So.2d 1245, 1246 (Fla. 5th DCA 1984).

The *Tilley* court further noted that "the forfeiture of illegal proceeds, much like the confiscation of stolen money from a bank robber, merely places that party in the lawfully protected financial status quo that he enjoyed prior to launching his illegal scheme." *Tilley*, 18 F.3d at 300; see also *United States v. Schinnell*, 80 F.3d 1064, 1069 (5th Cir. 1996) (applying *Tilley's* reasoning to forfeiture of property purchased with proceeds of wire fraud); *United States v. Alexander*, 32 F.3d 1231, 1236 (8th Cir.

1994) (“[f]orfeiture of proceeds ... simply parts the owner from the fruits of the criminal activity”).

If the First District Court of Appeal’s decision is upheld, drug dealers and other possessors of illegal proceeds will have a reasonable expectation that the State of Florida will protect, condone, and even allow, their continued possession of illegal proceeds. All they will have to do is buy a home in this state and live in it, and the State will shelter the proceeds of their criminal activity.

The power of the Florida courts should never be invoked to allow violators of the law to obtain the fruits of their criminal activity. If those who completely disregard the law are permitted to make a mockery of it and to use the courts to accomplish their ends, justice will not be administered. In short, no right can arise from one's own wrong.

A. “Proceeds” cases are significantly different from “use” cases

Contrary to the statement of the First District Court of Appeal,² there is a very significant and fundamental distinction between the forfeiture of property which was merely used in the

²21 Fla. L.W. at D2051 (“We see no significant distinction, in terms of public policy, between ‘use’ and ‘proceeds’ cases.”).

commission of a crime and the forfeiture of the proceeds of criminal activity.

This distinction was recognized by the Florida Supreme Court in *Butterworth v. Caggiano*, 605 So. 2d 56 (Fla. 1992), when it noted that "no illicit proceeds were used to purchase, acquire, or improve Caggiano's property." *Id.* at 60 n.5. Caggiano was convicted of one count of racketeering in violation of the Florida RICO Act and fifteen counts of bookmaking. Three of the bookmaking incidents occurred at Caggiano's personal residence. The State sought forfeiture of the home on the grounds that the property had been used in the course of racketeering activity. *Id.* at 57.

This distinction also was recognized in *Dawkins v. United States*, 883 F. Supp. 83 (E.D. Va. 1995), which held that the forfeiture of drug proceeds, "by extracting the fruits of a drug dealer's illegal enterprise, ensures that he is not unjustly enriched at the expense of the Government and society as a whole. Indeed, unlike a forfeiture of real or personal property used to facilitate drug activity, which a defendant may have owned prior to his illegal scheme, a forfeiture of proceeds, by definition, leaves the drug dealer no worse off than when he embarked upon his criminal undertaking." *Id.* at 89.

The real property which is the subject of this civil forfeiture action represents the proceeds of illegal drug sales and forfeiture of this property will leave Respondents no worse off than they were when they embarked upon their criminal undertaking. Respondents should not be unjustly enriched at the expense of the State of Florida and its citizens.

**B. Real property is subject to forfeiture
when it is acquired with illegal proceeds**

It is unlawful to acquire real property by the use of proceeds³ obtained in violation of the Florida Contraband Forfeiture Act. FLA. STAT. § 932.702(5).

In addition, real property which is acquired with proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act is itself contraband.⁴ FLA. STAT. § 932.701(2)(a)(6). Also falling within the definition of contraband is the marijuana

³ Illegal proceeds "include not only cash but also property secured with the proceeds of illegal activity." *United States v. Salinas*, 65 F.3d 551, 554 (6th Cir. 1995).

⁴ Pursuant to the definition of "contraband article" in FLA. STAT. § 932.701(2)(a), the marijuana would have to be a "controlled substance" as defined in FLA. STAT. ch. 893. A "controlled substance" is defined to mean "any substance named or described in Schedules I through V of s. 893.03." FLA. STAT. § 893.02(4). Schedule I of FLA. STAT. § 893.03 (1)(c)(4) lists "cannabis." See FLA. STAT. § 893.02(3) for a definition of cannabis.

which was produced on, and distributed from, the property at issue in the case at bar. FLA. STAT. § 932.701(2)(a)(1).

The money which Respondents obtained from selling marijuana -- and subsequently used to acquire and improve the property at issue -- also qualifies as contraband under FLA. STAT. § 932.701(2)(a)(1). Further, that subsection's definition includes "other means of exchange," which would include the value of services which Respondents paid for with marijuana. (T. 225-26).

It is unlawful, and a violation of the Florida Contraband Forfeiture Act, to "use any ... real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange or giving away of any contraband article." FLA. STAT. § 932.702(3). It also is unlawful, and a violation of the Florida Contraband Forfeiture Act, to "conceal, or possess, or use any contraband article as an instrumentality in the commission of ... any felony or violation of the Florida Contraband Forfeiture Act." FLA. STAT. § 932.702(4).

Thus, under Florida's statutory scheme, real property is subject to civil forfeiture when it is acquired with illegal proceeds. *cf.* FLA. STAT. § 932.703(4) ("In any incident in which

possession of any contraband article ... constitutes a felony, the ... real property in or on which such contraband is located ... shall be contraband subject to forfeiture.").

II. BECAUSE THE HOMESTEAD EXEMPTION DOES NOT PROTECT A HOME WHICH HAS BEEN USED AS AN INSTRUMENT OF FRAUD, IT SHOULD NOT BE APPLIED TO PROTECT A HOME THAT WAS PURCHASED WITH ILLEGAL PROCEEDS

The Florida courts have refused to allow the homestead exemption to shield property where there is fraud or other reprehensible conduct. *See, e.g., Bessemer v. Gersten*, 381 So.2d 1344 (Fla. 1980); *Jones v. Carpenter*, 90 Fla. 407, 106 So. 127 (Fla. 1925); *Jetton Lumber Co. v. Hall*, 67 Fla. 61, 64 So. 440 (1914); *Milton v. Milton*, 63 Fla. 533, 58 So. 718 (1912); *Gepfrich v. Gepfrich*, 582 So.2d 743 (Fla. 4th DCA 1991). In *La Mar v. Lechluder*, 135 Fla. 703, 185 So. 833 (1939), this Court reasoned: "To say that a lien could not be decreed against the homestead under the facts in this case would be to make the homestead an instrument of fraud." 135 Fla. 711, 185 So. 837.

This line of cases reflects concepts of property law that have existed for centuries. "[P]roperty was a right derived from society which one lost [through forfeiture] by violating society's laws."

1 WILLIAM BLACKSTONE, COMMENTARIES *229, 4 *id* at *382.

In *Caggiano*, this Court found the line of cases refusing to protect homestead where there is fraud or other reprehensible conduct to be either factually or legally inapposite, as most of them involved equitable liens that were imposed where proceeds from fraud or reprehensible conduct were used to invest in, purchase, or improve the homestead. *Butterworth v. Caggiano*, 605 So.2d at 60 n.5. But those cases are *not* factually or legally inapposite to the case at bar, where illegal proceeds were used to purchase and improve the property at issue.

The proper reading of this Court's decision in *Caggiano* is *not*, as the First District Court of Appeal stated, that "article X, section 4 of the Florida Constitution prohibits civil or criminal forfeiture of homestead property." 21 Fla. L.W. at D2020 (citing *Caggiano*, 605 So. 2d at 61). To the contrary, the *Caggiano* decision should be read to stand for the proposition that homestead property cannot be forfeited because it was *used* in the course of criminal activity.

In construing a constitutional provision, the words should be given reasonable meanings according to the subject matter, but in the framework of contemporary societal needs and structure. Such light may be gained from historical precedent, from present facts, or from common sense. *In re Advisory Opinion to Governor*, 276

So.2d 25, 29 (Fla. 1973); *State ex rel. West v. Gray*, 74 So.2d 114, 116 (Fla. 1954).

All three of these sources of illumination cast light on the situation in the case at bar. First, there is historical precedent⁵ that the homestead exemption does not protect a home which has been used as an instrument of fraud or other reprehensible conduct. This precedent would support a ruling that the homestead exemption should not be applied to protect a home that has been purchased with illegal proceeds.

Second, the present-day problems with drugs in our society were not even imaginable when the drafters of the Florida Constitution first enacted the homestead exemption in 1868. As the *Tilley* court pointed out, various sources estimate that illegal drug sales produce approximately \$80 billion to \$100 billion per year while exacting \$60 billion to \$120 billion per year in costs to the government and society. *Tilley*, 18 F.3d at 299.

Third, common sense demands that Florida refuse to provide constitutional protection to drug dealers who purchase real

⁵ In addition, as Justice Grimes pointed out in *Caggiano*, "While the majority refers to the 'historical prejudice against forfeiture,' I suggest that there is an even greater historical prejudice against crime." *Caggiano*, 605 So.2d at 62 (Grimes, J., dissenting).

property with the proceeds of illegal drugs sales. The *Doyer* court applied a common-sense approach when it stated that "the crucial, initial determination [is] whether the property to be forfeited ever lawfully belonged to the defendant in the first instance." *Doyer*, 907 F. Supp. 1523. This Court should do the same.

As the historical precedent against crime, the present-day problems with drugs in our society, and common sense all support a ruling that real property which has been acquired with illegal proceeds is subject to forfeiture. Thus, this Court should construe the constitutional provision protecting Florida homesteads to allow forfeiture when that property has been acquired with the proceeds of criminal activity.

CONCLUSION

When the homestead provisions of the Florida Constitution were first enacted in 1868, the drafters could not have imagined that a century later drug dealers would be able to purchase property with the proceeds of illegal drug sales and then seek protection under the constitution when their crimes are discovered.

Homestead laws are founded upon considerations of public policy. Their purpose is to promote the stability and welfare of the state by encouraging property ownership and independence on part of the citizens and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune. *Bigelow v. Dunphe*, 143 Fla. 603, 197 So. 328 (Fla.), rehearing denied, 144 Fla. 330, 198 So. 13 (Fla. 1940); see also *Public Health Trust of Dade County v. Lopez*, 531 So. 2d 946, 948 (Fla. 1988).

The Florida courts have repeatedly held that the homestead exemption does not protect a home which has been used as an instrument of fraud. As a logical counterpart to that lengthy line of cases, the homestead exemption should not be applied to protect a home that has been purchased with illegal proceeds.

For these reasons, this Court should answer the certified question by holding that there can be no constitutional protection under the homestead provisions of the Florida Constitution for drug dealers who purchase real property with the proceeds of illegal drug sales. Amicus curiae STATE OF FLORIDA respectfully requests this Court to reverse the decision of the First District Court of Appeal.

Respectfully submitted,

JACQUELINE H. DOWD
Assistant Attorney General
Florida Bar No. 7714410
Department of Legal Affairs
28 West Central Boulevard, Suite 310
Orlando, Florida 32801
(407) 245-0833

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail this 21st day of October, 1996, to: ROD BOWDOIN, ESQUIRE, 327 North Hernando Street, Lake City, Florida 32056-1707; and STEPHEN N. BERSTEIN, ESQUIRE, Post Office Box 1642, Gainesville, Florida 32601.

A large, stylized handwritten signature in black ink, appearing to read "Jacqueline H. Dowd". The signature is written over a horizontal line.

JACQUELINE H. DOWD
Assistant Attorney General
Florida Bar No.: 0714410
Department of Legal Affairs
28 West Central Boulevard, Suite 310
Orlando, Florida 32801
(407) 245-0833