SUPREME COURT OF FLORIDA

THOMAS S. TRAMEL, III, as
SHERIFF OF COLUMBIA COUNTY,

Petitioner,

v.

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

Respondents.

CASE NO.: 89,032

First District Court of
Appeal Case No.: 95-3971

Third Judicial Circuit
Case No.: 90-314-CA

INITIAL BRIEF

Appeal from the District Court of Appeal,
First District

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PRELIMINARY STATEMENT

In this brief, citations to the record on appeal will be referred to by the letter "R" followed by the page number in the record. Citations to the trial transcript shall be referred to by the letter "T" followed by the page number in the transcript.

Petitioner shall be referred to as such or as "Sheriff Tramel" or "the sheriff." Charles Stewart and Beverly Stewart dissolved their marriage after these proceedings were initiated and the former Mrs. Stewart is, at times, referred to in the transcript as "Beverly Hall." However, to avoid confusion in this brief, Respondent Beverly Hall will continue to be referred to as "Beverly Stewart," or "Mrs. Stewart," and Respondents will be referred to as "the Stewarts" or "Respondents."

STATEMENT OF THE CASE AND FACTS

On September 29, 1995, the jury returned its verdict in this forfeiture proceeding. The verdict reflected the jury's determination that numerous items of personal property seized from Mr. and Mrs. Stewart after their arrest were illegal contraband that the Stewarts possessed in violation of the Florida Contraband Forfeiture Act (T. 850-853). Such items included $4,140.00 in cash, indoor plant-growing equipment, marijuana plants, materials used in the marijuana-growing operation, an intercom system that connected the barn where marijuana was grown to the kitchen of the Stewarts' residence, and other equipment related to the Stewarts' marijuana-growing operation (R. 528).

The verdict also reflected the jury's determinations regarding the Stewarts' real property, which consisted of a house, a large barn that was a separate structure from the house, and approximately 6.38 acres of land (T. 6; Plaintiff's Exhibit 1). The jury determined that money or proceeds obtained in violation of the Florida Contraband Forfeiture Act was used to acquire, build, or improve this property (T. 854), and that 100% of this property was acquired, built, or improved with such illegally obtained proceeds (R. 528).

This case began in early 1990 when a young man named Chris Lutsko was arrested for illegal drug activity. Mr. Lutsko admitted to purchasing drugs from the Stewarts, and agreed to assist the

Columbia County Sheriff's Department in establishing that illegal sales were being made from the Stewarts' property by wearing a hidden microphone and allowing officers to record transactions between himself and both Mr. and Mrs. Stewart.

At trial, Sheriff Tramel established that Mr. Lutsko began obtaining marijuana from the Stewarts and selling it during his sophomore year in high school (T. 224). At that time, Mr. Lutsko lived with an Episcopal minister who thought the Stewarts were helping Mr. Lutsko by providing him with part-time work (T. 236). When Mr. Lutsko worked for the Stewarts, they often paid him with marijuana (T. 225-226). Later, they recruited him to work as a seller in their drug enterprise. Mr. Lutsko's testimony made clear that the Stewarts provided him with the means and enticement to become a drug dealer (T. 248-249, 324). The Stewarts gave him marijuana during the early days of their relationship (T. 225), and on one occasion Mrs. Stewart took him to a hotel in Gainesville, Florida, and seduced him (T. 326).

Mr. Lutsko began buying marijuana from the Stewarts while they lived at a prior location and before they began building the house at issue in this case (T. 227-228). Mr. Lutsko testified that he had purchased marijuana from the Stewarts at least 300 times, with approximately 200 of the purchases being made from Mr. Stewart and 100 from Mrs. Stewart (T. 238).[1] He testified that he purchased

[1] Assistant State Attorney Robert Dekle testified that the 300 sales of marijuana Mr. and Mrs. Stewart made to Chris Lutsko

marijuana from the Stewarts two to three times a week or, depending upon customer demand, as often as two to three times per day (T. 237). Mr. Lutsko confirmed that at times there would be two or three marijuana dealers or buyers present at the Stewart home, and that the Stewarts would weigh the requested amount of marijuana on scales (T. 231-232, 249). The purchases of marijuana were in varying amounts, and the price of a quarter-pound was approximately $400.00 (T. 235, 241). Various other dealers who made such purchases were named at trial (T. 325, 249, 284).

The Columbia County Sheriff's Department followed rigorous procedures in its attempt to establish, without question, that it had probable cause to arrest the Stewarts and search their property. (T. 124-126). The Sheriff's Department tape recorded Mr. Lutsko make separate purchases of marijuana from both Mr. Stewart and Mrs. Stewart. During Mr. Lutsko's purchase from Mrs. Stewart, she advised him that the marijuana was of good quality, referring to it in the drug vernacular as "bad shit." (T. 134, 257, 348; Plaintiff's Exhibit 30). She also advised Mr. Lutsko not to go within a certain proximity of schools due to the enhanced penalties for possession or sale of drugs near schools in the state of Florida (T. 257-258). After the controlled purchases of marijuana were completed, the sheriff's office obtained a search

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constituted 600 felonies (T. 353), as each transaction constituted both an illegal possession and an illegal sale. Not counted within these 600 felonies were the additional drug sales to other dealers established at trial.

warrant. Subsequently, they arrested both Mr. and Mrs. Stewart and searched their property to determine the extent of their drug sales operation.

Inside the Stewarts' house, the officers located a large bag of marijuana, a jar of marijuana, scales for weighing marijuana, plastic bags, numerous books with sophisticated instructions on the growing of marijuana, a metal box with marijuana paraphernalia and photographs, $4,140.00 in cash, and other items including a posted credit policy (T. 16-33, 34-38; Plaintiff's Exhibits 6, 9-27). They also located one end of an intercom system that connected the house to the barn (Plaintiff's Exhibit 7). The large amount of cash they located included most of the money used to make the four tape-recorded purchases of marijuana, and this money was commingled with other money in a money pouch (T. 143, 147; Plaintiff's Exhibits 23, 32, 33). The posted credit policy explained that cash was expected and that no credit would be extended (T. 201). The photographs that were located inside the metal box corroborated Sheriff Tramel's case against the Stewarts as they depicted Mr. Stewart, at various ages and at various times, standing in a large outdoor marijuana-growing operation next to plants that were taller than him (T. 42-46; Plaintiff's Exhibit 12). The photographs showed Mr. Stewart with hairstyles and clothing from the '70's and '80's (T. 715-716). Several of the Stewarts' personal photographs also depicted large quantities of processed marijuana bricks (Plaintiff's Exhibit 12B; T. 718-719).

The officers continued the search in the barn, which the residence concealed from sight from the roadway. While the barn obviously was a two-story structure, there were no windows on the second floor and there was no apparent means of access to the second floor (T. 8, 187). Mr. Stewart ultimately showed the officers that entrance to the second floor was gained by climbing shelves in the back corner of the first floor of the barn and moving a plywood trap door that was concealed by the floor joists on the second floor.[2]

A sophisticated marijuana-growing operation was set up on the second floor of the barn. Ray Byrne, an expert with regard to the production and sale of marijuana for the Florida Department of Law Enforcement, testified that this marijuana-growing operation would have been expected to produce $45,000.00 per year (T. 84), with the marijuana being produced being worth $1,800.00 per pound (T. 107). The Stewarts apparently had recently purchased additional equipment for the growing of marijuana, and this equipment would have increased the production capabilities of their operation (T. 93-95).

Testimony indicated that the barn was obviously constructed for the purpose of housing the indoor growing operation (T. 8). Water pipes and wiring ran throughout the second floor of the barn

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[2] The entrance is depicted in the video taken at the premises (T. 216; Plaintiff's Exhibit 40) as well as in several photographs (Plaintiff's Exhibit 38).

where the marijuana was produced. The water system was obviously used to water the plants, and the electrical system was used to operate all of the electric controls, growing lights, temperature regulators, air conditioners, and other such equipment used in the sophisticated growing operation (T. 95-103).

While searching the second floor of the barn, the officers located the other end of the intercom system (T. 198). This system allowed a person in the second story of the barn to talk to another person inside the house (T. 202). The officers also found multiple holes drilled in the second floor of the barn that were used as peep holes. Through the holes, one could observe the driveway approaching the barn and other surrounding areas (T. 215).

At trial, Mr. Stewart admitted his involvement in the drug manufacturing operation[3] (T. 712, 737-742). Mrs. Stewart, however, maintained that she was innocent of any criminal activity and that she had no knowledge of the drug manufacturing operation. By adopting this position, the Stewarts hoped to shield their real property from forfeiture by arguing that section 932.703(6)(c), Florida Statutes, which provided that property jointly titled between husband and wife could not be forfeited if one of the co-owners could establish that he or she neither knew nor had reason

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[3] Mr. Stewart had admitted in his pre-trial deposition that he was involved in the drug manufacturing operation, but at such time had undertaken to conspire with Mrs. Stewart to accept total blame for the drug operation so that she could argue that she was an innocent party and the real property could be shielded from forfeiture pursuant to section 932.703(6)(c).

to know that the property was employed or was likely to be employed in criminal activity, prohibited forfeiture of their real property because it was jointly titled.

Although case law appears to provide that proof of knowledge is not necessary when property is purchased with illegal proceeds, Sheriff Tramel nevertheless was put to the burden of contending with Mrs. Stewart's innocent owner position. Ultimately, however, Mrs. Stewart's counsel[4] opened the door to the admission of substantial evidence that established, beyond question, that she was not an innocent party with no knowledge of the pervasive drug activity within her residence (T. 354-362). With this fact irrefutably established, counsel for both Mr. and Mrs. Stewart stipulated during the charge conference that their clients knew of the criminal activity at their residence, and thereby removed "innocent co-owner" issue from the jury's determination (T. 816).

To meet the requirements necessary to obtain forfeiture of Mr. and Mrs. Stewart's personal property, Sheriff Tramel was required to prove that the items of personal property constituted illegal contraband in the form of money or of property that was either used in the production of marijuana, was itself the illegal drug, or was derived from the sale of marijuana. The verdict reflects that the jury was convinced that all of the items of personal property except two were subject to forfeiture under the

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[4] Mr. and Mrs. Stewart were represented by separate counsel at trial.

court's instructions (R. 528).

After the admissions corroborating Mrs. Stewart's guilt, the legal issue remaining for the jury's determination with regard to the real property was whether the real property was purchased or improved, wholly or partially, with illegal proceeds from the sale of drugs. Mrs. Stewart's innocent co-owner defense had evaporated, and Sheriff Tramel did not seek to forfeit the properties of the Stewarts based upon the illegal use of their property as such was prohibited by the decision in Butterworth v. Caggiano, 605 So. 2d 56 (Fla. 1992). Rather, the sheriff sought forfeiture of the real property on the basis that any property which was acquired, built, or improved with illegal drug proceeds should be subject to forfeiture.

The sheriff anticipated that the Stewarts would raise the issue of whether an entire parcel of real property would be forfeitable if only a portion of the property were acquired, built, or improved with illegal proceeds. Accordingly, he requested, and the Stewarts agreed to, a jury verdict form that asked two interrogatory form questions allowing the jury first to determine whether illegal proceeds were used to acquire, build, or improve the real property and whether such should be forfeited, and second to determine what percentage of the real property was acquired, built, or improved by the use of illegal proceeds in the event the court only allowed such percentage to be forfeited (T. 854). As

stated above, the jury determined that 100% of the real property[5] in question was acquired, built, or improved with illegal proceeds (R. 528).

The evidence supporting the jury's determination in this regard was substantial. It presented a detailed picture to the jury of the amount of money that had to have been invested in the purchase and improvement of the real property at issue, and reflected the Stewarts' complete lack of evidence of any legitimate payments for such purchase and improvement. Consistent with the use of illegally obtained monies, the evidence showed that Stewarts did not pay for any significant part of the real property or improvements thereon by check or any other traceable method[6] (T. 399). Rather, these payments were made almost completely in cash, with the majority of the payments being made between March 18, 1985, when the down payment on the property was made (T. 368), and 1989 when the barn was completed (T. 370). The evidence showed that after paying their normal and customary living expenses, the Stewarts could not possibly have had legitimately obtained monies with which to pay for the real property and improvements.

Testimony and legal documents show that the land cost $18,000.00 (T. 368). Assuming the Stewarts' testimony to be

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[5] The property consisted of 6.38 acres, a house, a barn, and a long, paved driveway (Plaintiff's Exhibits 1, 38).

[6] Sheriff Tramel established that the land and improvements cost between $120,916.00 and $139,463.00.

truthful, $3,000.00 in cash was paid for the down payment, with the remaining $15,000.00 being paid in cash in 1988, four years before such was due (T. 369, 727-728). Construction of the house was begun on or about March 1986 (T. 369).

Two expert witnesses were called regarding the cost of the improvements to the property. George Brannon, a real estate appraiser, established the square footage of the house and barn to be 4,454 square feet, with wood decks comprising an additional 989 square feet (T. 499). Don Barnes, an expert in the construction of residential structures (T. 466-467), confirmed that the square footage of the house and barn together was 4,454 square feet (T. 469) and that the driveway contained 8,600 square feet of surface (T. 470). Mr. Brannon testified that the cost to build the improvements would have been $111,916.00, and that the materials alone, with no labor, would have cost $75,543.00 (T. 498). Mr. Barnes testified that the cost of improvements would have been $121,463.00, and the cost of materials, without labor, would have been $81,380.00.

These figures were important to the jury's determination because the Stewarts admitted to paying various laborers in connection with construction of the house and barn, but still claimed that the total monies paid for labor and materials for the house was $44,000.00, and for the barn was $7,000.00 (T. 371-372). Apparently, the Stewarts were stuck in a position in which they could not prove legitimate sources of income to support their

arguments that they had sufficient cash to pay for the real property and improvements over a period of three to four years or less and, therefore, they attempted to persuade the jury that the house, barn, and extensive driveway could have been constructed for $51,000.00. The Stewarts also had to deal with the evidence that conclusively established that they sometimes paid for labor with marijuana (T. 225-226).

The experts were asked if there was any possibility that the house and barn were constructed for $11.45 per square foot, which would have been the cost of the structures if all labor had been performed by the owner (T. 500). Their response, obviously, was no (T. 500).

The Stewarts argued that a division of the real property between portions of the 6.38-acre parcel where drug sales did not occur and other portions where sales took place should be made. The testimony of George Brannon, a real estate appraiser, conclusively rebutted this argument. He testified that the property was zoned A-1, which was a residential zoning that allowed only one house per four acres and, therefore, under the Columbia County zoning ordinances, only one home site on the 6.38-acre parcel was allowed (T. 500-501). In light of this testimony, the Stewarts were unable to make any viable argument that the real property was divisible.

David Brewer, a certified public accountant, testified that he reviewed and audited extensive documents obtained during discovery

so that he could provide expert opinions regarding the Stewarts' financial abilities (T. 393). Mr. Brewer was asked to confirm information regarding the total legal sources of the Stewarts' income. The purpose of such inquiry was to determine whether the Stewarts would have had sufficient large sums of cash remaining after paying normal living expenses with which to buy land and build a house, barn, and extensive driveway in a period of three to four years.

Although Mr. Brewer was asked to determine the total legal sources of income for 1985 through 1989, and even though such numbers did not provide an amount of income that would allow a family of four to have any excess remaining funds, it should be noted that the building permit on the house was drawn in March 1986 (T. 723), and the Stewarts moved into the home in approximately July 1986, which would indicate that the home was substantially completed at that time (T. 723). In such case, the cash payments for the house and land would have been made over a two-year period. The barn was constructed in 1989 (T. 370). These matters are pointed out to emphasize the discrepancy between available excess income and the substantial monies that were required to buy the land and build the improvements thereon.

Mr. Brewer pointed out that the legal income available for Mr. and Mrs. Stewart and their family of four was $18,612.33 in 1985, the year before the construction of the home was begun (T. 397). The income in 1986, when the house was substantially completed, was

only $21,991.93 (T. 397). In 1986 through 1989, the income available averaged $26,922.00 per year (T. 397). Mr. Brewer also pointed out a conspicuous irregularity in the handling of money by Mr. and Mrs. Stewart in that paychecks went into a bank account, but alleged payments for the house and barn were made substantially in cash, rather than by check (T. 399). Although Mr. and Mrs. Stewart claim that they built their barn for only $7,000.00 (T. 400), which supposedly coincided with a bank loan, the certified public accountant's review turned up cash receipts for the barn of $16,700.00, which indicated payments in cash far above the alleged cost of the barn (T. 400). When asked about the Stewarts' financial ability to build the house and barn and pay the costs associated therewith, the accountant stated:

> Based upon my experience, to be able to pay that you'd have to have vastly more income. The information I reviewed indicated that savings habits and the amount of income left over after normal monthly expenses, based on their actual records, did not allow them to be able to pay that with after-tax income.

(T. 402). After discussing his audit and the Stewarts' expenditures, the accountant was asked what the Stewarts' expenditures revealed to him. He replied:

> That would indicate that the money had to come from another source, be it loans, illegal income, money laundering, something of that nature.

(T. 402). Mr. Brewer also reviewed the property settlement agreement that Mr. and Mrs. Stewart entered into when they dissolved their marriage after their arrests (T. 403-406; Plaintiff's Exhibit 46). The list of items owned by the parties

was presented to the jury to illustrate the extravagant lifestyle the Stewarts led for people of modest income. The items divided in the dissolution proceeding included numerous expensive items of personal property including five television sets (T. 403-404). Photographs of the home show two satellite dishes (Plaintiff's Exhibits 39, 40 and 36), and interrogatory answers of Mr. Stewart showed the purchase of a truck and three automobiles from 1984 through 1987 (T. 375). Mr. Brewer's final opinion was that it was not possible for the Stewarts to pay their living expenses, to pay for all of the land and improvements in question, and to accumulate all of the items of personal property with legal sources of income (T. 406)

During trial, the Stewarts argued that they had additional, legitimate sources of income. However, all testimony presented by the Stewarts regarding alleged sources of legal proceeds for buying or improving real property was contested and the credibility of such testimony was effectively challenged. For example, the Stewarts' counsel refers to Mr. Stewart receiving money from a motorcycle accident. The small settlement was shown to have been received in 1977, nine years before the construction of the house was completed (T. 407, 648), and it was established that Mr. Stewart only received $6,500.00 (T. 648). The Stewarts' counsel also argued that Mr. Stewart obtained funds from working on motorcycles. However, in pretrial proceedings it was established that the motorcycle repair activity was a hobby and Mr. Stewart

provided a sworn statement, which was read to the jury, in which he stated that, with regard to the alleged motorcycle repair business, he

> considered it a hobby. The work was not consistent enough to be considered as additional income, and the respondent's main interest was high performance work on motorcycles.

(T. 373).

The specific question was asked whether any earnings from the motorcycle repair business were used to pay for the construction of or for any debt on the house or barn in question and to state the approximate amount of such proceeds so used. Mr. Stewart's sworn response was "not to any significant extent." (T. 373).

In their brief to the district court of appeal, the Stewarts argued that another legitimate source of income was loans made by Mrs. Stewart's father. However, in answering interrogatories regarding alleged sources of income, Mr. Stewart did not mention any alleged loan from his former father-in-law (T. 374). Not surprisingly, a note and a mortgage relating to the alleged loan from the father-in-law were executed several months after the arrests of the Stewarts and filing of the forfeiture proceedings (R. 26-39). Mr. Cleveland Johnson, Mrs. Stewart's father, obtained the note and mortgage from Mr. and Mrs. Stewart in an attempt to place an impediment in front of the forfeiture proceeding. The Stewarts were arrested and forfeiture proceedings were begun in April 1990 (R. 1). The note and mortgage are dated May 8, 1990

(R. 26-39). Sheriff Tom Tramel testified that, prior to initiating the forfeiture proceedings, he contacted Mr. Johnson, as he had known him for a number of years, to ask him if he had any interest in the property of Mr. and Mrs. Stewart and whether he had loaned them any money which was used in building the house (T. 771). Mr. Johnson advised him that he had no interest in the property (T. 771).

Other interesting points about Mr. Johnson's testimony and reasons why the jury apparently did not find his testimony credible were that there were no checks, receipts, or any other kind of documents supporting his claim (T. 586-587). Mr. Johnson's testimony was impeached further when he testified that he had cashed a certificate of deposit for most of the proceeds he claimed to have loaned the Stewarts. However, he was tied down by earlier deposition testimony to claims that he had given the money to his daughter and son-in-law in a piecemeal fashion over several years (T. 584-585). His testimony at trial, therefore, became that he had cashed the certificate of deposit and, rather than reinvesting the money, he kept the cash from it for several years from which he made unscheduled loans to his daughter and son-in-law at their request (T. 584-585).

Mr. and Mrs. Stewart put various witnesses on the stand to argue their position that friends helped them build their house and, therefore, there were no receipts for payments for labor. The actual contribution of such witnesses was shown to be nominal when

considered in relation to the labor required to build the a house and barn (T. 603, 621-626). Interestingly, the only labor payments to which the Stewarts admitted were paid in cash. The various witnesses who were friends who allegedly helped build the house did not improve the Stewarts' position at trial, as several of them admitted to using marijuana with Mr. and Mrs. Stewart or obtaining such from them (T. 565, 625, 636, and 709-710). One of these witnesses was present when Mr. Stewart sold marijuana (T. 711). The witness who had supposedly bought a motorcycle from Mr. Stewart which was supposed to have been a source of legitimate income testified on cross-examination that he paid cash for the motorcycle but he could not remember the specific amount (T. 595). Testimony at trial also indicated that the Stewarts sometimes paid for work with marijuana (T. 225-226).

The only proceeds allegedly received by Mr. and Mrs. Stewart remotely close in time to the purchase of the land and construction of the home and barn were alleged proceeds received from the sale of a prior residence. Although this money was allegedly deposited in a bank, in discovery and at trial no records could be produced regarding such deposit (T. 663) and the funds were not traceable from such alleged sale to any of the later purchases of land or the improvements. There are no certificates of deposit directly relating to such proceeds, no checks indicating payments made from such proceeds and, as stated above, virtually all transactions relating to the land and improvements were in cash with the records

of the Stewarts failing to establish any connection between any deposits from a prior sale and payments of such proceeds for later purchases or improvements. In short, Sheriff Tramel contested the truth and credibility of the testimony presented by the Stewarts regarding all claimed legal sources of income.

In proving that the Stewarts could not have lived their lifestyle, a relevantly extravagant one, solely on limited legal income they were proven to have, Sheriff Tramel called Michael Wright, an economist, to testify at trial. Mr. Wright was questioned regarding the Stewart's cost of living and their ability to save any money, above what was required for their living expenses, from their legal sources of income. Mr. Wright testified that Mr. and Mrs. Stewart would not have had any money remaining after what they would normally have used for living expenses (T. 446). Testimony of the economist and the certified public accountant, together, established factually that the Stewarts could not possibly have paid their normal living expenses, much less the expenses for the relatively extravagant lifestyle established by them, and still have had monies left to pay for the real property and improvements, in cash, over a period of three or four years (T. 406, 446).

Prior to the jury's deliberations, the judge charged it with appropriate instructions, including an instruction on the burden of proof. The jury was instructed that Sheriff Tramel was required to prove his case by clear and convincing evidence (T. 829). The

definition of clear and convincing evidence given to the jury was an instruction specifically requested by the Stewarts' counsel (T. 810-812, 830).

The jury verdict form presented was drafted so that the jury would have an opportunity to forfeit less than the entire real property at issue if it determined that any part of the real property was paid for with legally obtained proceeds. During the charge conference, counsel for all parties agreed to the verdict form with the provision providing for the possibility of forfeiture of less than the entire property (T. 817-819). Although Sheriff Tramel's position was that an entire parcel of property would be forfeitable if illegal proceeds were used, either partially or wholly, to acquire or improve such property, counsel for the parties wanted to avoid the necessity of another trial in the event an appellate court disagreed and determined that only the percentage of the property that was equal to the percentage of illegal proceeds used to acquire or improve the property could be forfeited (T. 817-819). However, the jury rendered such concerns moot when it determined that 100% of the real property and improvements were purchased with illegally obtained proceeds (R. 528).

SUMMARY OF ARGUMENT

The First District Court of Appeal's decision in this case allows drug dealers to protect their illegally obtained drug sale

proceeds by investing such proceeds in the real property on which they reside. Petitioner asserts that this Court should recognize the distinction between cases in which a legally purchased homestead is used to facilitate a crime, such as was the case in Butterworth v. Caggiano, 605 So. 2d 56 (Fla. 1992), and cases in which drug dealers actually pay for real property, on which they then live, with illegally obtained drug sales proceeds. In the latter cases, this Court should hold that the real property is forfeitable. To hold otherwise permits drug dealers to obtain an unintended windfall.

The basis for Petitioner's position that Respondents' real property should be forfeited is that because the property was purchased with illegally obtained drug sales proceeds, Respondents have no indefeasible or legal right of ownership or title to such property. Florida law provides that monies obtained by selling drugs are illegal contraband, that real properties purchased with such monies are illegal contraband, and that is unlawful to acquire real property by the use of illegally obtained drug sale proceeds. §§ 932.701, 932.702, Fla. Stat. (1995). One who illegally purchases real property with illegally obtained drug sales proceeds has no better right of ownership to such property than a thief or one who has taken possession of such property by fraudulent means. Such a possessor has no legal title or ownership to such property, Battles v. State, 602 So. 2d 1287 (Fla. 1992), and cannot claim a better title than they, in fact, received. Dicks v. Colonial

Finance Corp., 85 So. 2d 874 (Fla. 1956).

Courts of other states, like this Court in Caggiano, have refused to allow the forfeiture of a homestead that is illegally used, but have implied that the homestead could be forfeited if it was not legitimately acquired. See Oklahoma ex rel. McCoy v. 1844 Burnt Oak Drive, 831 P.2d 1008, 1010 (Okla. Ct. App. 1992). Furthermore, federal circuit courts throughout the United States have taken a strong position that possessors of properties purchased with monies from illegal drug sales do not have any ownership rights therein. For example, the Fifth Circuit Court of Appeals held in United States v. Tilley, 18 F.3d 295, 300 (5th Cir. 1994), cert. denied, 115 S. Ct. 574 (1994), as follows:

> 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 . . . . In short, the wrongdoer has nothing, at least nothing to which the law entitles him, to lose from the possible confiscation of the proceeds from his criminal trade. Thus, we believe the forfeiture of proceeds from illegal drug sales is more closely akin to the seizure of the proceeds from the robbery of a federal bank than the seizure of lawfully derived real property.

See also United States v. Salinas, 65 F.3d 551, 554 (6th Cir. 1995).

The courts of this state have recognized that actions may be enforced against a homestead property, even though such are not included in the constitutional provision regarding forced sales in

specific terms. La Mar v. Lechlider, 185 So. 833, 836 (Fla. 1939). Florida courts have also recognized various theories under which homestead properties could be subject to forced sale including cases of fraud, unclean hands, or reprehensible conduct. Jones v. Carpenter, 106 So. 127 (Fla. 1925); Gepfrich v. Gepfrich, 582 So. 2d 743 (Fla. 4th DCA 1991); Isaacson v. Isaacson, 504 So. 2d 1309 (Fla. 1st DCA 1987); Clutter Construction Corp. v. Clutter, 173 So. 2d 761 (Fla. 3d DCA 1965). Of course, the distinction in this case is that the previous cases allowing for the sales of homesteads recognized good title in the owners but allowed forced sales based upon reprehensible conduct or other improper activity. Although Petitioner's case could certainly rest upon an allegation of reprehensible conduct as a legitimate basis for forfeiture of Respondents' property, his case is even stronger as he seeks to forfeit property to which the Respondents never obtained any legal or legitimate right of ownership. Obviously, Article X, Section 4 of the Constitution of the State of Florida requires one asserting homestead exemption of property from forced sale to be the legal owner of such property.

Although Petitioner's research revealed no cases relating specifically to whether a homestead can be forfeited when bought with drug sales proceeds, there is ample authority that the courts of the various states of this country will not allow a party to claim ownership of property purchased with illegally obtained monies. The Supreme Court of Iowa has specifically stated that

Iowa's state constitution never contemplated or intended that a homestead interest could be created or maintained with wrongfully appropriated property, and

> [w]here wrongfully obtained funds are used to purchase property, the property does not belong to the purchasers, and therefore, to the extent of the illegal funds used, they never acquire a homestead interest.

Cox v. Waudby, 433 N.W.2d 716, 719 (Iowa 1988).

Such cases as Cox v. Waudby, Oklahoma ex rel. McCoy, and Caggiano clearly indicate that courts view the issue of property in the nature of a homestead differently when that property is merely used for illegal purposes as opposed to when that property is actually purchased or acquired with illegal drug sales proceeds.

Caggiano is easily distinguishable from the case at hand. This court specifically identified Caggiano as a "use" case in which forfeiture had been sought on the theory that the property was "used" in the course of racketeering activity. Butterworth v. Caggiano, 605 So. 2d 56, 57 (Fla. 1992). This Court made clear that the ruling was limited only to use cases and that it was not ruling that homesteads purchased with illegal proceeds would be protected when it stated:

> It is undisputed that no illicit proceeds were used to purchase, acquire, or improve Caggiano's property.

Butterworth v. Caggiano, 605 So. 2d 56, 61 n.5 (Fla. 1992).

This Court has determined the Florida Contraband Forfeiture Act, which makes it illegal for drug dealers to use the proceeds from illegal drug sales to purchase real property, to be

constitutional. Dep't of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991). The jury in this case determined that the real property at issue was acquired or purchased 100% with illegal drug sales proceeds. The Stewarts, therefore, had no legitimate or legal claim of ownership to the real property in question, and such property should be subject for forfeiture.

Although it appears that the courts of other states would not allow a drug dealer who uses illegally obtained proceeds to purchase real property, which he then makes his residence, to use constitutional homestead provisions to protect such property from forfeiture, there has been no definitive Florida court ruling on that issue. Caggiano spoke only to the issue of the homestead protection in cases of illegal use of legitimately obtained real property. The established facts of this case provide this Court with an excellent opportunity to distinguish use cases from proceeds cases by definitively ruling that real properties on which drug dealers reside, but which such dealers purchased 100% with illegal drug sales proceeds, will not be entitled to constitutional protection from forfeiture. This Court should hold that persons who purchase real property with illegally obtained proceeds have no legal ownership rights to such property and cannot invoke homestead protection to prevent the forfeiture thereof.

ARGUMENT

I. USE OF TERM "HOMESTEAD"

The term "homestead" is often referred to as Florida's "legal chameleon" because it takes on different meanings and definitions depending upon the circumstances of each particular case. Subtle differences become major points of contention when property in the nature of a homestead is considered for various applications, such as taxes, forced sale, or devise and descent. However, the common and generic definition of homestead in Black's Law Dictionary is:

> The home, the house, and the adjoining land where the head of the family dwells; the home farm. The fixed residence of a head of a family, with the land and buildings surrounding the main house.

Black's Law Dictionary 866 (rev. 4th ed. 1968). It is in this generic sense that Petitioner used the term "homestead" in its argument to the First District Court of Appeal. By using this term, Petitioner did not intend, in any way, to acknowledge that the real property at issue is cloaked with constitutional protection; rather, Petitioner's intent was simply to recognize the fact that Mr. and Mrs. Stewart lived on the real property at issue and had received a deed to such property.

Both Mr. and Mrs. Stewart had abandoned the property at various times after they were arrested,[7] and the issue arose in the

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[7] Mrs. Stewart had moved to Jacksonville, Florida, and remarried (T. 761). Mr. Stewart resided with his father for a period of time after he was arrested (T. 760).

trial court proceedings as to whether by abandoning the property, they lost their right to claim the property as their homestead. Petitioner agreed only that Respondents had not abandoned their "homestead," as that term is used in the generic sense. The First District Court of Appeal mistakenly misconstrued this statement to mean that Petitioner agreed the real property was Mr. and Mrs. Stewart's constitutionally protected "homestead." To the contrary, the entire point and focus of Petitioner's brief was that Respondents had no right of ownership which could be protected from forfeiture by the homestead protection from forced sale of Florida's constitution. In the briefs Petitioner filed with the First District Court of Appeal, he made clear that the basis for seeking forfeiture of the real property was that Respondents had obtained the property through illegal means with illegal proceeds and thus they had no legal ownership or right to claim the property. Petitioner cited United States v. Tilley, 18 F.3d 295, 300 (5th Cir. 1994), cert. denied, 115 S. Ct. 574 (1994); United States v. Salinas, 65 F.3d 551 (6th Cir. 1995), and other cases discussed below to underscore this point.

Just as Black's Law Dictionary uses the term homestead in a generic sense, courts which have considered the issue of homesteads purchased with illegal proceeds have referred to property, about which it is determined that the possessors have no legal ownership, as "homestead" and "property in the nature of homestead." The Supreme Court of Iowa in Cox v. Waudby, 433 N.W. 2d 716 (Iowa

1988), indicated that there are times when property is acquired or paid for with wrongfully appropriated money such that a homestead interest cannot be created or maintained to the extent that illegal funds are used. Id at 719. That court implied that the property, otherwise, was homestead.

In this brief, Petitioner will once again stipulate that the property in question was not abandoned and was homestead as that term is defined in Black's Law Dictionary, in that Mr. and Mrs. Stewart resided on the property and had received a deed thereto. Petitioner again emphasizes, however, that the homestead protection of the Constitution of the State of Florida should not protect the property at issue from forfeiture, because Respondents had no right of ownership to the property as it had been purchased with illegal drug sales proceeds.

Although this court has plenary jurisdiction and may determine this entire case to the extent permitted by substantive law, Rule 9.040(a), Florida Rules of Appellate Procedure (1996), Petitioner makes this preliminary statement so that there will be no misunderstanding as to his position in these proceedings. The pure issue for this Court's determination is whether "homestead property," as that term is used in the generic sense, can be forfeited on the ground that it was purchased with illegally obtained drug sale proceeds.

II. HISTORICAL PERSPECTIVE OF HOMESTEAD AND PETITIONER'S POSITION REGARDING ILLEGALLY OBTAINED PROPERTY

A cocaine dealer with a highly profitable crack cocaine operation in Miami that produces thousands of dollars of income per week is under pressure from the Florida Department of Law Enforcement. That state agency and the Dade County police have interviewed witnesses and have arrested several lieutenants in the drug dealer's crack cocaine operation. The drug dealer has five million dollars deposited in various banks throughout south Florida and owns a highly profitable night club business. He knows that his arrest is imminent. He also knows that the government agencies will seek to confiscate and have forfeited all of the drug money he has deposited in the various banks and invested in his business. He knows that he will have to spend several years in prison, but wants to protect the millions of dollars he has accumulated. He seeks legal advice to determine how he can protect his assets. He is advised that, under the present state of the law in Florida, he should sell his business, withdraw all of his money from the various banks, and buy an expensive waterfront home. He follows the legal advice, sells his business, and uses all of the proceeds from the sale, as well as all of the money he deposited in various banks, to buy the waterfront home. He moves into the home, where he lives alone, except for several bodyguards and other servants. He is arrested and the state begins forfeiture proceedings wherein it attempts to obtain the illegal drug proceeds by selling the

drug dealer's waterfront home. Is the drug dealer's home protected under Florida law? The answer at this time is yes. If the First District Court of Appeal's decision in this case is allowed to stand as the law of the State of Florida, drug dealers will be able to convert their illegally obtained monies into assets protected by the constitution of the State of Florida.

When the homestead provisions of the Constitution of the State of Florida were first enacted in 1868, the drafters of such provisions could not have imagined that a century later a drug dealer would be able to produce illegal drugs on property that has been purchased with illegal drug sale proceeds and on which he lives, and then, when his illegal enterprise is discovered, seek to protect such property from forfeiture under the state's constitution. Those were the days after the civil war when carpetbaggers and unscrupulous businessmen routinely loaned money or extended credit to poor farmers and landowners and then collected the debts by obtaining judgments and forced sales of the unfortunate landowners' homesteads. Florida adopted the homestead provisions of its constitution to protect such landowners and their families from these carpetbaggers' and old-time loan sharks' despicable schemes to loan money to persons and then foreclose on their properties. Courts of that era confirmed the original purpose of the constitutional provision:

> The object of exemption laws is to protect people of limited means and their families in the enjoyment of so much property as may be necessary to prevent absolute

> pauperism and want, and against the consequence of ill advised promises which their lack of judgment and discretion may have led them to make, or which they may have been induced to enter into by the persuasion of others.

Carter's Administrators v. Carter, 20 Fla. 558, 569 (1884); Patterson v. Taylor, 15 Fla. 336, 345-347 (1875).

III. ONE CANNOT ACQUIRE LEGAL OWNERSHIP OR GOOD TITLE TO PROPERTY ILLEGALLY OBTAINED

The Florida Contraband Forfeiture Act, sections 932.701-932.704, Florida Statutes, was adopted in 1974 and this Court has determined it to be constitutional. Dep't of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991). Contraband can generally be described as illegal property, and includes drug-related personalty, properties related to illegal gambling, properties involved and used in violation of alcoholic beverage and tobacco laws, fuels upon which the owner has illegally failed to pay taxes, and all personal property that is used in the commission of felonies. § 932.701 Fla. Stat. The Florida legislature has specifically provided that any real property that is used in drug activities or is acquired by proceeds obtained from drug sales in violation of the Florida Contraband Forfeiture Act is contraband and is subject to forfeiture. § 932.701(2)(a)(6), Fla. Stat. Section 932.702(5) provides that acquiring real property by the use of illegal drug sales proceeds is unlawful. In this case, Petitioner does not seek to forfeit the real property in question due to the illegal use of such property, as this Court prohibited

such forfeitures in Butterworth v. Caggiano, 605 So. 2d 56 (Fla. 1992). Forfeiture is sought in this proceeding as a result of the real property being acquired or paid for 100% with illegally obtained drug proceeds.

As will be discussed below, this is a "proceeds" case and not a "use" case. This distinction is important because it is well established in Florida and every state in the country that a thief or one who has illegally or fraudulently obtained possession of property cannot claim to have a legal right to ownership and good title in that property. Rather, such possessors of property have void or, at best, voidable, title to the property they illegally acquired. As monies obtained from the sale of drugs constitutes illegal contraband under Florida law, and as properties purchased with such illegal proceeds also are illegal contraband under Florida law, a drug dealer who purchases real property with proceeds from illegal drug sales is no different than one who obtains property through theft or fraudulent means. All such methods of obtaining possession are illegal.

The courts of this state have always followed the common law principle that one who illegally obtains property does not have legal ownership, title, or any right to such property. For example, in Houston v. Foreman, 109 So. 297 (Fla. 1926), a deed was obtained from escrow by fraudulent means. This Court held that one who obtains a deed by fraudulent means acquires no title to the property reflected on such deed. As far back as 1884, this Court,

in a replevin case for the possession of a horse that was procured by fraud, stated that lawful possession is not acquired when the possession is tainted by fraud and that possession by the holder of the property gives him no title thereto. Likewise, in cases involving stolen property, the courts of this state have consistently held that a person who acquires possession of property by theft has no title thereto and cannot convey good title. See Battles v. State, 602 So. 2d 1287 (Fla. 1992); Alamo Rent-A-Car, Inc. v. Williamson Cadillac Co., 613 So. 2d 517 (Fla. 3d DCA 1993). As an extension of the same premise that one who illegally obtains property has no good title thereto, the courts of this state have made it clear that such persons cannot claim a better title than they, in fact, received. See Dicks vs. Colonial Finance Corp., 85 So. 2d 874 (Fla. 1956); Trumball Chevrolet Sales Co. v. Seawright, 134 So. 2d 829 (Fla. 1st DCA 1961). In this case, the Stewarts' lack of ownership or legal right to the real property at issue cannot be transformed into legal ownership by virtue of their claiming it to be homestead.

There is ample authority that the ownership interest necessary to create a homestead cannot be created or maintained with improperly obtained proceeds. In Cox v. Waudby, 433 N.W.2d 716 (Iowa 1988), the Supreme Court of Iowa allowed the tracing of fraudulently obtained proceeds to a homestead property and held:

> We conclude the legislature never contemplated or intended that a homestead interest could be created or maintained with wrongfully appropriated property . . . .

> Where wrongfully obtained funds are used to purchase property, the property does not belong to the purchasers, and therefore, to the extent of the illegal funds used, they never acquire a homestead interest.

Id. at 719. See also Long v. Earle, 277 Mich. 505, 520, 269 N.W. 577, 582 (1936); Maryland Casualty Co. v. Schroeder, 446 S.W.2d 117, 121 (Tex. Civ. App. 1969); Baucum v. Texam Oil Corp., 423 S.W.2d 434, 442 (Tex. Civ. App. 1968). The same principle has been applied where funds used to retire a debt against homestead were wrongfully obtained. See Boroughs v. Whitley, 363 P.2d 150, 152 (Okla. 1961); Tabish v. Smith, 572 P.2d 378, 380 (Utah 1977).

All of the cases that Respondent will cite for the proposition that a homestead cannot be forfeited are cases that involve the use of such properties for illegal activity and are not cases in which the homestead properties have been purchased with illegally obtained monies. It is interesting to note that the Court of Appeals of Oklahoma, like this Court in Caggiano refused to allow the forfeiture of a homestead in a use case in which the homestead was used to facilitate a $60.00 drug sale. However, also like this court in Caggiano, the Oklahoma court made clear that it was not ruling that illegally acquired homestead property would be protected by its ruling. It stated,

> [t]he state is not permitted to forfeit a legitimately acquired homestead, even though the homestead was used by its owner to facilitate the commission of a criminal offense.

Oklahoma ex rel. McCoy v. 1844 Burnt Oak Drive, Okla., 831 P.2d 1008, 1010 (Okla. Ct. App. 1992) (emphasis added).

The Supreme Court of Iowa, in the case of In re Bly, 456 N.W.2d 195 (Iowa 1990), considered a case in which a forfeiture action had been initiated against homestead property of Mr. Bly and his wife for drug trafficking activities. However, there was no proof that the property was bought with drug sale proceeds and the case proceeded as a forfeiture of homestead property which was only used in connection with illegal activity. The Supreme Court of Iowa, like this court in Caggiano and the Supreme Court of Oklahoma, held that Iowa law did not permit the state to forfeit "a legitimately acquired homestead." Id at 200 (emphasis added). As the Supreme Court of Iowa issued both the decisions in Bly and Cox v. Waudby, it is clear that the Supreme Court of Iowa would allow the forfeiture of property purchased with drug sales proceeds, despite the homestead nature thereof, on the basis that the possessors never legally acquired ownership or title.

In Caggiano, this Court recognized that there can be instances in which equitable liens, not specifically provided for in the constitutional provisions regarding homestead, can be imposed on homestead properties where proceeds obtained by fraud or reprehensible conduct are used to invest in, purchase, or improve the homestead. Butterworth v. Caggiano, 605 So. 2d 56, 61 n.5 (Fla. 1992). This Court has long recognized that every issue that may arise that pertains to homesteads is not covered in the constitution of the State of Florida and that certain actions may be enforced against the homestead, even though such are not

included in the constitutional provision regarding forced sales in specific terms. La Mar v. Lechlider, 185 So. 833, 836 (Fla. 1939). This Court and the courts of this state have allowed forced sales of homestead properties in cases where fraudulently obtained proceeds have been invested in homestead properties, Jones v. Carpenter, 106 So. 127 (Fla. 1925), and where a former husband legally invested his money in a new homestead under circumstances that allowed him to use the homestead exemption law as an instrument to defraud his former wife and escape his honest debt to her. Gepfrich v. Gepfrich, 582 So. 2d 743 (Fla. 4th DCA 1991). It should be noted that Gepfrich was not a case involving an equitable lien, but was a case in which there was a forced sale of the homestead to prohibit an unacceptable result which would have arisen if the husband's improper conduct were allowed to go unchecked. The concurring opinion in Gepfrich further clarifies that the court did not base its ruling upon fraud or reprehensible conduct although the trial court held that the offending former husband had a complete lack of clean hands which was the equivalent of fraud or reprehensible conduct. Surely the purchase of property with illegal proceeds obtained from the sale of drugs to high school children would place the Respondents in this case in a much worse posture than Mr. Gepfrich, with even dirtier hands resulting from much more reprehensible conduct. Other holdings of the courts of this state indicate that homestead status cannot shield the homestead property of an owner from forced sale, even though not

provided for in the constitution of the state, where the owner's conduct is reprehensible. Isaacson v. Isaacson, 504 So. 2d 1309 (Fla. 1st DCA 1987); Clutter Construction Corp. v. Clutter, 173 So. 2d 761 (Fla. 3d DCA 1965).

The theory that the state, on behalf of the people of Florida, has the right to deprive a criminal of illegally obtained proceeds is based upon the same logic as the imposition of equitable liens and refusal of the courts to allow persons guilty of reprehensible conduct from hiding behind the constitutional homestead protection provisions. All such theories grow out of the well-recognized common law theory that one who illegally obtains property has no legal right or title thereto. This premise has been recognized in numerous recent drug forfeiture cases. In United States v. Tilley, 18 F.3d 295, 300 (5th Cir. 1994), cert. denied, 115 S. Ct. 574 (1994), the Fifth Circuit Court of Appeals stated the matter succinctly:

> When, however, 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 does not punish the defendant because it 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. . . . In short, the wrongdoer has nothing, at least nothing to which the law entitles him, to lose from the possible confiscation of the proceeds from his criminal trade. Thus, we believe the forfeiture of proceeds from illegal drug sales is more closely akin to

> the seizure of the proceeds from the robbery of a federal bank than the seizure of lawfully derived real property. . . . Consequently, instead of punishing the forfeiting party, 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.

Id. at 300.

In United States v. Salinas, 65 F.3d 551 (6th Cir. 1995), the government proved that the Defendant, Salinas, did not have a legitimate source of income with which to purchase an automobile and, therefore, the automobile must have been purchased with drug proceeds. The Sixth Circuit Court of Appeals agreed with the holdings of Tilley and held that:

> [t]he forfeiture of drug proceeds, however, is different. Not only are drug proceeds inherently proportional to the damages caused by the illegal activity, as stated above, but also one never acquires a property right to proceeds, which include not only cash but also property secured with the proceeds of illegal activity. We therefore adopt the view in Tilley that forfeiture of drug proceeds is not punishment, but is remedial in nature.

Id. at 554.

Thus, the law is well settled that one who obtains property illegally or through the use of illegally obtained proceeds cannot acquire an indefeasible property right or legal ownership in such property. The question, therefore, is why is there confusion as to whether property that has been established to have been purchased 100% with illegal proceeds can be forfeited. The undersigned believe that the confusion has arisen out of statements made in cases involving forfeitures for the use of real properties in

illegal activities and that such cases have not been properly distinguished from cases in which properties acquired or bought with illegal proceeds are forfeited. This Court made it clear in Caggiano that the facts of that case were such that it was a "use" case. In fact, the opinion in Caggiano specifically states that the forfeiture of the residence was sought upon the ground that the property was "used" in racketeering activity. Id. at 57. This Court made clear by way of footnote 5 in Caggiano that it was undisputed that "no illicit proceeds were used to purchase, acquire, or improve Caggiano's property," and that such circumstances were not considered when the Caggiano decision was rendered. Id. at 61.

IV. CAGGIANO AND THE DISTINCTION BETWEEN USE AND PROCEEDS THEORIES OF FORFEITURE

In considering forfeiture cases, one must distinguish between whether the forfeitures are based upon the use of the property in an illegal fashion to facilitate a crime, or whether the property was purchased with illegally obtained proceeds. Dawkins v. United States, 883 F. Supp. 83 (E.D. Va. 1995), aff'd, 67 F.3d 297 (4th Cir. 1995). Trial counsel routinely refer to a case involving the theories as being either a "use case" or a "proceeds case." For example, if a drug dealer purchased property with the proceeds from illegal drug sales, such property would be subject to forfeiture under a proceeds theory. Conversely, if the drug dealer inherited the property from his father and was then arrested for making sales

of drugs from such property, the property would be subject to forfeiture under a use theory, but would not be forfeitable under a proceeds theory.[8]

After the Stewarts were arrested, they dissolved their marriage. Mrs. Stewart moved to Jacksonville, Florida, and remarried (T. 761). During the post-arrest period, Mr. Stewart resided for a period of time with his father (T. 760). Even though an argument could be made that the parties abandoned their homestead status prior to the forfeiture proceeding and therefore the property could be forfeited under a "use" theory, Sheriff Tramel proved at trial that the property was forfeitable under a proceeds theory. As stated above, for purposes of this brief, the sheriff has considered the real property in question to be homestead property (in the generic sense), as there should be no distinction between the forfeiture of homestead and non-homestead property when the property is established to have been purchased with illegal drug sales proceeds. Legal right of ownership cannot indefeasibly vest in parties who acquire such properties with illegally obtained proceeds.

As stated above, Sheriff Tramel presented competent,

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[8] It is clear from the admissions in the case and determinations of the jury that the items of personal property seized in this case were established to be contraband subject to forfeiture and such appears to be conceded by the Stewarts as they have not raised any issue regarding the personal property in these proceedings. Accordingly, this discussion will relate only to the real property at issue in this case which consisted of 6.38 acres with the improvements of a house and barn.

substantial evidence to the jury that the real property, consisting of land and improvements, was acquired or built by the Stewarts with proceeds that were 100% derived from illegal drug sales (R. 528). The evidence was not limited to proof of the four sales of marijuana by the Stewarts from their residence, but consisted of proof of hundreds of purchases of marijuana by multiple buyers and dealers, coupled with proof of the financial inability of the Stewarts to pay large sums of cash for land and improvements in a short period time while still paying all of their normal living expenses and living in a relatively extravagant manner. No other reported Florida case addresses the issue of whether homestead property may be forfeited where 100% of the proceeds used to purchase and improve such property came from illegal drug sales proceeds.

The Stewarts misstated the holding of Butterworth v. Caggiano, 605 So. 2d 56 (Fla. 1992), in arguments made below, as they argued that Caggiano applied to cases in which property sought to be forfeited was bought with illegal drug sales monies. Caggiano was strictly a "use" case. In Caggiano, the state attempted to forfeit the home of Mr. Caggiano under the Florida RICO Act when only three bookmaking incidents occurred at Mr. Caggiano's personal residence. The Caggiano decision specifically indicates that the state sought forfeiture on a use theory as the property was "used" in the course of racketeering activity. Id. at 57.

In his brief and at oral argument in Caggiano, Attorney General Robert A. Butterworth argued that there are exceptions to the constitutional homestead exemption and that the courts of Florida have refused to allow homeowners to shield their property from forced sales when reprehensible conduct was involved. Id. at 60-61. This Court discussed the attorney general's position and pointed out that cases allowing the sales of homestead property involved liens that were imposed where proceeds from fraud or reprehensible conduct were used to invest in, purchase, or improve the homestead. Id. at 61 n.5. After such discussion, this court clarified that its ruling in Caggiano was limited to use cases and that it was not ruling that homesteads purchased with illegal proceeds would be protected:

> It is undisputed that no illicit proceeds were used to purchase, acquire, or improve Caggiano's property.

Id. at 61 n.5. The clear implication of that statement is that homestead property purchased with illegal proceeds was not held to be protected by Article X, Section 4, of the Florida Constitution under the ruling in Caggiano. The rationale for the forfeiture of real property purchased with illegal proceeds, even if it is claimed to be homestead property, is obvious. As discussed above, the Fifth Circuit of the United States Court of Appeals stated the matter concisely:

> 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. . . . In short, the wrongdoer has nothing, at least nothing to which the law entitles him, to lose from the possible confiscation of the proceeds from his criminal trade. Thus, we believe the forfeiture of proceeds from illegal drug sales is more closely akin to the seizure of the proceeds from the robbery of a federal bank than the seizure of lawfully derived real property.

United States v. Tilley, 18 F.3d 295, 300 (5th Cir. 1994), cert. denied, 115 S. Ct. 574 (1994). As described above, the Supreme Court of Iowa also summarized concisely the rationale for the forfeiture of real property which would otherwise be protected homestead property when it stated that property purchased with illegal funds does not belong to the purchasers thereof and they cannot acquire a true homestead interest therein, to the extent of the illegal funds used. Cox v. Waudby, 433 N.W.2d 716, 719 (Iowa 1988).

No Florida case or case from any other state in the United States has been found which provides that homestead property purchased 100% with illegal drug sale proceeds is protected from forfeiture by the state due solely to the classification of such property as otherwise being homestead. The record title holder of real property purchased with illegal drug sales proceeds, including a homestead, has no legal right or ownership in the property.

Under our law such persons could not acquire good title. The legal theory supporting the right of the state to forfeit the property in this case can be stated in two alternative manners. The first is that the parties never took good title, never had a right of ownership, and the property was never legally "homestead." The second is that the drug dealers had a voidable title and that when it is proven that the property was illegally acquired, the title is set aside and rendered void as of the time the property or deed thereto was illegally obtained. Regardless of the semantics used, the result is the same: drug dealers who acquire real property with illegal drug sale money have no more right to the real property than they had to the money obtained from the drug sales. The real property should be subject to forfeiture regardless of whether the drug dealers live on the illegally obtained property or live elsewhere.

V. COMMINGLED PROCEEDS

Only a brief statement is required to address the Stewarts' anticipated assertion that, even if the court allows the forfeiture of the house, the surrounding land should not be forfeited. The Stewarts' position is based entirely upon an erroneous statement of fact. The Stewarts claim that there was no contention at trial that the land surrounding the house and barn was purchased with illegal proceeds. At trial it was argued from opening statement through closing statement and by the presentation of the sheriff's

witnesses that the Stewarts had no legitimate resources to pay for the land, house, and barn. The verdict form specifically referred to the land and improvements by legal description (R. 525). Opinions were expressed by experts who had reviewed all financial records of the Stewarts as to whether there was any possible way the Stewarts could have paid for the land, barn, and house with legitimate proceeds (T. 402-406, 445-446). Furthermore, it was established through Mr. George Brannon, a real estate appraisal expert, that the land on which the house was built was not divisible from the house and barn, as the land was zoned so that only one house could be built thereon (T. 500-501). In addition, the jury was instructed that real property acquired with illegal proceeds was forfeitable. (T. 826, 827, 828). The Court specifically instructed the jury that the property sought to be forfeited included "lands, buildings, and improvements." (T. 828).

Even if the Stewarts' contention regarding the forfeiture of the land was correct, which it was not, the Stewarts would have faced another insurmountable hurdle. The Stewarts have argued that while the house and barn may have been purchased with illegal proceeds, the land upon which they sit should not be forfeited. In other words, the Stewarts would argue that when illegally obtained proceeds are commingled with legitimate proceeds by building structures using money obtained from drug sales on land allegedly legitimately purchased, the land which was, in effect, commingled with the structures built with illegal proceeds should somehow be

separated from the illegally obtained improvements. Not only would such a process be an impossibility in a case such as this, the public policy throughout the United States has been that legitimately obtained proceeds, whether cash or land, are forfeitable with illegally obtained proceeds when such proceeds are commingled by owners who have knowledge of the illegal source of the land or cash into which, or with which, legitimate proceeds are commingled. United State,s v $33,836 in U.S. Currency, 899 F. Supp. 574 (M.D. Ala. 1995); United States v. 6640 S.W. 48th Street, 41 F.3d 1448 (11th Cir. 1995); United States v. 15603 85th Avenue North, 933 F.2d 976 (11th Cir. 1991); United States v. 116 Villa Rella Drive, 675 F. Supp. 645 (S.D. Fla. 1987).

CONCLUSION

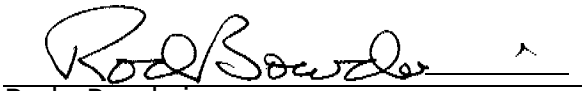
The First District Court of Appeal has certified to this Court the question of whether the Constitution of the State of Florida prohibits civil forfeiture of homestead property pursuant to the Florida Contraband Forfeiture Act when the proceeds of illegal activity are used to purchase such property.

While the Stewarts' property was homestead in the generic sense, in that they resided upon the property and had received a deed thereto, the property was not homestead for purposes of exemption from forced sale as they had no legal right of ownership to the property because it was illegally purchased with illegally obtained drug sales proceeds. Accordingly, forfeiture of this property does not require a finding that the acquisition of the property involved reprehensible conduct, fraud, or unclean hands. Rather, as stated in Tilley, forfeiture of this property would take "nothing to which the law entitles" them. The Stewarts never had any legal right to ownership of the property, therefore, the homestead protections of the Constitution of the State of Florida never attached.

This Court should answer the certified question by holding that there can be no constitutional protection under the homestead provisions of our state's constitution for drug dealers who purchase real property with monies obtained from illegal drug sales, reverse the decision of the First District Court of Appeal, and issue a Mandate to the trial court allowing Petitioner to

continue with the forfeiture proceeding.

Respectfully submitted,
DARBY, PEELE, BOWDOIN & PAYNE



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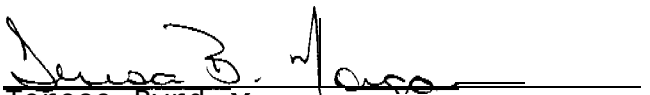

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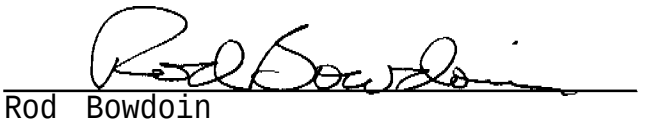
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been furnished to Stephen N. Berstein, Esquire, Counsel for Respondent, Charles Stewart, Jr., and Beverly J. Stewart, Post Office Box 1642, Gainesville, Florida 32602, by regular United States Mail this 22nd day of October, 1996.

DARBY, PEELE, BOWDOIN & PAYNE



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