

In the Supreme Court of Florida

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Case no.95,506

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**Cedric Fraser,**

Petitioner,

vs.

**Department of Highway Safety and Motor Vehicles,**

Respondent.

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**Amicus Brief of  
The Office of the State Attorney  
in and for the Eleventh Judicial Circuit of Florida,  
on behalf of the members of the  
South Florida Impact Task Force**

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On discretionary review  
from the Fourth District Court of Appeal

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## **INTEREST OF AMICUS**

The South Florida Impact Task Force is a group of governmental entities which have joined together to combat money laundering, including the proceeds from the sale of drugs. The members of the task force include the Office of the State Attorney in and for the Eleventh Judicial Circuit, the City of Coral Gables, the City of Miami, the City of Miami Beach, the City of North Miami, the City of North Miami Beach, the City of Homestead, the Monroe County Sheriff's Office, and the State of Florida.

## **STATEMENT OF THE CASE AND FACTS**

We rely upon the opinion of the district court, and the briefs of the parties.

## SUMMARY OF THE ARGUMENT

The Court lacks jurisdiction over this case, since there is no conflict. Contary to Fraser's suggestion, no Florida court has held that a claimant may establish standing to contest a forfeiture merely by stating that the money belongs to him.

If the Court addresses the merits, it should reject Fraser's argument. The law does not give effect to conclusory affidavits, and there is no reason to do so in a forfeiture proceeding. To the contrary, courts require a claimant to give *proof* of his or her ownership interest. This protects against the very real threat of fraudulent claims.

The self-incrimination issue raised by Fraser should not be addressed, as it premature and has not yet been decided by any Florida court.

## ARGUMENT

### I. The Court lacks jurisdiction over the case, since the decision of the district court is not in conflict with the opinion of any other court

The Court should dismiss this case, as there is no jurisdiction. The Fourth District held that a claimant cannot establish standing merely by making a sworn statement that the money belongs to him. There is no Florida case which conflicts with this principle, and there is thus no conflict jurisdiction.

The holding of the Fourth District was modest. It held that a claimant to forfeited currency has the burden of establishing standing, and that this burden could not be met by "[t]he mere assertion, sworn or otherwise, that 'the money is mine.'" *Fraser v. Department of Highway Safety and Motor Vehicles*, 727 So. 2d 1021 (Fla. 4th DCA 1999). The court explained that the burden of establishing bona fide ownership could be met in various ways, but not by making a conclusory statement that the money belonged to the claimant. The court then remanded the case for a determination by the trial court of whether the claimant could satisfy the standing requirement.



Petitioner Fraser bases his claim of conflict on *Munoz v. City of Coral Gables*, 695 So. 2d 1283 (Fla. 3d DCA 1997). Fraser suggests that *Munoz* "would only require a sworn statement of ownership in order to contest forfeiture proceedings." (Initial brief, at 5). In *Munoz*, however, the Third District held that a claimant had *not* established standing based his unsworn statement that "the money was his." 695 So. 2d at 1285. The holding of *Munoz* is thus in accord with the holding of the Fourth District, not in conflict.

Fraser notes that the *Munoz* court spoke in general terms that "At a bare minimum, we conclude that a claimant to seized currency must come forward with sworn proof of a possessory and/or ownership interest in the same to acquire standing to contest the forfeiture proceeding." 695 So. 2d at 1288. But this does not establish conflict jurisdiction.

The Third DCA spoke of sworn *proof* of a possessory or ownership interest. By its plain language, the court required proof, not a conclusory statement. Nothing in the *Munoz* opinion—or in any other Florida

opinion—suggests that a claimant can establish standing merely by submitting a conclusory affidavit stating that the person is the owner of the seized cash.

Indeed, since *Munoz* the Third District has required that a claimant state more than “the money is mine” to establish standing. The court stated that “Unexplained naked possession of a cash hoard . . . does not rise to the level of the possessory interest requisite for standing to attack the forfeiture proceeding.” *Morales v. In re Forfeiture of \$220,000.00*, 739 So. 2d 709, 710 (Fla. 3d DCA 1999) (quoting *United States v. \$321,470.00 in U.S. Currency*, 874 F.2d 298, 304 (5th Cir. 1989)).

Fraser also claims conflict with *Department of Law Enforcement v. Real Property*, 588 So. 2d 957 (Fla. 1991). But that case does not discuss the standing requirement.

There is no conflict among the decisions, and therefore no conflict jurisdiction.

**II. On the merits, a claimant cannot establish standing merely by stating that the seized currency belongs to him**

If the Court addresses the merits, it should reject

Fraser's argument that a claimant can establish standing merely by submitting a conclusory affidavit which states that the person is the owner of the currency.

A fundamental principle of law compels the conclusion that a claimant to seized currency cannot establish standing merely by stating that the money belongs to him: A conclusory statement, without explanation or proof, does not establish the matter asserted. For example, a plaintiff cannot defeat a motion for summary judgment merely by stating that the defendant was negligent. *Gimenez v. Barry*, 572 So. 2d 35 (Fla. 3d DCA 1991). See generally *Lenhal Realty v. TransAmerica Commercial Finance Corp.*, 615 So. 2d 207 (Fla. 4th DCA 1993). A person is not entitled to an evidentiary hearing on a 3.850 motion merely by filing a conclusory affidavit. *Johnson v. State*, 649 So. 2d 948 (Fla. 3d DCA 1995). In a criminal case, the State can defeat a sworn motion to dismiss only if its traverse sets forth facts with specificity, "just as a non-movant would have to do in a counter-affidavit in order to defeat a motion for summary judgment." *State v. Kalogeropolous*, 25 Fla. L. Weekly S360 (Fla. May 11,

2000). Indeed, the Fourth DCA has previously rejected reliance on a conclusory document in a forfeiture action. *In re the Forfeiture of 1979 Mercedes*, 484 So. 2d 642, 645 (Fla. 4th DCA 1986).

Fraser's suggestion that the law should be different in forfeiture—that a claimant should be able to establish standing through the use of a conclusory affidavit—should be rejected.

**A. The circumstances in which these cases arise**

We believe that the Court would benefit from understanding the circumstances surrounding the seizure of currency.

"Miami is a center for both drug smuggling and money laundering." *In re Forfeiture of \$171,900*, 711 So. 2d 1269, 1275 (Fla. 3d DCA 1998). It is the "Wall Street of drug smuggling for the entire United States." Lisa Gibbs, *The Peso Trap*, Florida Trend, May 1999, at 70. Drug trafficking is a cash business, and those selling drugs accumulate large amounts of cash. *Id.* Traffickers cannot deposit the money into U.S. banks without triggering

scrutiny from the government. *Id.* "Somehow, they have to channel it through legitimate sources to be able to spend it worry-free." *Id.*

In recent years Colombian drug traffickers have used the "Black Market Peso Exchange" to launder cash. *Id.* The Exchange operates through brokers who purchase narcotics proceeds in the United States from the cartels and transfer pesos to the cartels from within Colombia. FinCen Advisory Issue No. 12, at 1 (June 1999) (issued by U.S. Department of the Treasury, Financial Crimes Enforcement Network). "The dollars are placed—that is, 'laundered'—into the United States financial system by the peso broker without attracting attention." *Id.*

An essential part of the laundering process is the use of low-level employees in the United States to quietly place the cash in the economy. *Id.* These employees—known as "smurfs"—pick up the cash from the drug dealer in Florida. Lisa Gibbs, *supra*. The smurfs are told what to do with the money. *Id.* Often they are told to "run around town depositing small amounts of money

into various accounts." *Id.* The peso brokers then write checks off the accounts to pay bills, or give the checks to importers to pay for their U.S. purchases. *Id.* See generally Israel Reyes, *Florida's Money Laundering Statutes*, Fla.BarJ., July/Aug. 1999, at 66.

The South Florida Impact Task Force has had considerable success in seizing the laundered money when it is still in the hands of the smurfs—that is, before the money is placed back into the United States financial system. The Task Force focuses on seizing large amounts of money which are part of the Black Market Peso Exchange. The size of the seizures of currency—taken from the homes of individuals—can be seen from the names of recent Task Force cases on appeal. See *Morales v. In re Forfeiture of \$220,000.00*, 739 So. 2d 709, 710 (Fla. 3d DCA 1999); *Arango v. In re Forfeiture of \$477,000.00*, 731 So. 2d 847 (Fla. 3d DCA 1999); *Salazar v. In re Forfeiture of \$182,289.00 in U.S. Currency*, 728 So. 2d 276 (Fla. 3d DCA 1999); *In re Forfeiture of \$86,981.00 in U.S. Currency*, 2000 WL 561674 (Fla. 3d DCA May 10, 2000).

These large amounts of cash are generally seized from people who appear to be of very modest means, and who have no plausible explanation for the presence of the money. See *Arango v. In re Forfeiture of \$477,000.00*, 731 So. 2d 847. Our experience is that these persons found with hundreds of thousands of dollars in cash often have tax returns indicating incomes of less than ten thousand dollars a year. Sometimes these people, at the time of seizure, execute forms affirming that the cash does not belong to them. See *Arango v. In re Forfeiture of \$477,000.00*, 731 So. 2d 847; *Salazar v. In re Forfeiture of \$182,289.00 in U.S. Currency*, 728 So. 2d 276. Nevertheless, a few days later the person, through counsel, files a claim in the forfeiture proceeding, asserting that the money belongs to him. *Id.*

**B. A claimant is not permitted to establish standing merely by stating that the seized currency belongs to him**

Courts have generally refused to allow a person to establish standing merely by claiming that the cash belongs to him.

Standing is a prerequisite for participation in a forfeiture proceeding. “[T]o contest a forfeiture action, a party must first demonstrate an interest in the seized property sufficient to satisfy the court of the party’s standing as a claimant.” *Munoz v. City of Coral Gables*, 695 So. 2d 1283, 1286 (Fla. 3d DCA 1997). The burden of establishing standing in a forfeiture proceeding “rests squarely with the claimant.” *Id.*

There is a standing requirement in any lawsuit. But the standing requirement plays a particularly important role in forfeiture proceedings, which often involve proceeds from drug trafficking. The owner of the cash may want to be able to litigate the forfeiture case through his bailee—the money courier who got caught—and avoid the scrutiny that comes with appearing in a lawsuit as a claimant or at least as a witness. David B. Smith, *Prosecution and Defense of Forfeiture Cases* § 9.04, at 9-68.4 (1999). *See United States v. One 1988 36 Foot Cigarette Ocean Racer*, 624 F. Supp. 290 (S.D. Fla. 1985). In this situation, the standing requirement serves the admirable purpose of “frustrat[ing] the efforts of drug traffickers to recover money seized from one of their couriers (the bailee) without revealing their own identity or their ownership interest in the seized cash.” David B. Smith, *supra*, § 9.04, at 9-68.4.

Courts have accordingly held that a person who was in possession of the currency does not automatically have standing. The Third District has held that a claimant’s “mere possession of the currency” was not “legally determinative of his possessory and/or ownership interest in the same.” *Munoz*, 695 So. 2d at 1288. *See also Morales v. In*



*re Forfeiture of \$220,000.00*, 739 So. 2d 709, 710 (Fla. 3d DCA 1999).

A federal court of appeal also rejected the notion that a person has “possession” of currency where he has a large amount of cash in his house, and provides no explanation of how it came to be there. “Possession, as generally construed, means more than mere custody.” *Mercado v. U.S. Customs Service*, 873 F.2d 641, 644 (2d Cir. 1989). The court explained that “a naked claim of possession, as in the instant case, is not enough. There must be some indication that the claimant is in fact a possessor, some indicia of reliability or substance to reduce the likelihood of a false or frivolous claim.” *Id.* A “conclusory and factually unsupported statement of [the] attorney that [the claimant] was ‘in possession’ of the money does not suffice to give [the claimant] standing.” *Id.* Similarly, a claimant’s bare allegation that the money “belongs to him” is insufficient to establish standing. *United States v. \$600,000.00 in United States Currency*, 871 F. Supp. 1397, 1398 (D. Kan. 1994). The leading forfeiture scholar explains the point: “Unless a claimant can first establish standing, he or she has no right to put the government to its proof. Thus, property may be forfeited without any showing by the government that it is subject to forfeiture if the only claimant is unable or unwilling to provide evidence supporting the assertion of an interest in the property.” David B. Smith, *supra*, § 9.04, at 9-68.8.

### C. Responses to Fraser's arguments

Fraser at times suggests that if he merely states under oath that the seized money belongs to him, then he should be deemed to have established standing. As explained, courts have rejected this position, because it too easily allows fraudulent claims.

But Fraser subtly acknowledges this. He suggests that a person should be able to establish standing by signing "a sworn affidavit alleging to be the *lawful* owner of the currency in question." (Initial brief, at 7, emphasis added). Fraser thus acknowledges that his standing is dependent upon his being the lawful owner. He simply wants the courts to take his word for it, without his providing any proof.

Fraser's arguments would essentially eviscerate the standing requirement in forfeiture cases. First, he argues that a claimant can establish standing merely by submitting a conclusory affidavit. Second, he argues that when asked about the basis for the conclusory affidavit, the claimant can invoke the Fifth Amendment, without any penalty. These two positions, if accepted, would guarantee standing to a claimant. The claimant would be able to easily establish standing, and the government and courts would be powerless to discern the basis of the claimant's standing.

The Fourth DCA properly held that Fraser could not establish standing merely by filing a conclusory affidavit asserting that the seized cash belonged to him.

### **III. The self-incrimination issue raised by Fraser is not properly before the Court**

Fraser raises an argument in his brief concerning his right against self-incrimination. We urge the Court to not address the issue, as it was never addressed by the district court, and is not yet at issue.

The interplay between the privilege against self-incrimination and civil forfeiture actions has not been addressed by any Florida court.<sup>1</sup> The Fourth DCA did not address the issue in its opinion. Furthermore, it is not ripe for resolution in this case. The issue will not be ripe until Fraser again invokes the Fifth Amendment, and the trial court finds that he does not have standing. If Fraser does not invoke the privilege, or if the trial

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<sup>1</sup>There are a variety of views on this difficult issue. Some courts have held that the Fifth Amendment does not excuse a claimant from meeting his or her burden of establishing standing. *Mercado v. U.S. Customs Service*, 873 F.2d 641 (2d Cir. 1989). On the other hand, a state court has held that a claimant may invoke the Fifth Amendment in a civil forfeiture proceeding, without any penalty. *Woblstrom v. Buchanan*, 884 P.2d 687 (Ariz. 1994). A third position is that a claimant can be required to provide information in the forfeiture proceeding, despite the privilege, but that the claimant's assertion of ownership cannot be used against the claimant in a subsequent criminal case. *United States v. Cretacci*, 62 F.3d 307, 310 (9th Cir. 1995). *But see United States v. Scrivner*, 189 F.3d 825 (9th Cir. 1999) (stating that conclusion was dicta). A leading commentator has described this last position as "highly persuasive." David B. Smith, *supra* § 9.04, at 9-68.8 n. 16.1 (1999).

court finds that he has standing, then the issue is moot.

The self-incrimination issue should be addressed by the state's highest court only after the issue has percolated up through the district courts of appeal, and then only in a case in which is it squarely presented. The Court should not address the issue in this case.<sup>2</sup>

### CONCLUSION

We request that the Court find that it has no jurisdiction over this case. Alternatively, the Court should affirm the decision of the district court.

Respectfully submitted,

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<sup>2</sup>We note that there does appear to be conflict between the Third and Fourth DCAs on an issue relating to standing, but that Fraser has not briefed the issue. Simply stated, the Fourth DCA has held that there are two different standing requirements for different stages of a civil forfeiture proceeding. *City of Fort Lauderdale v. Baruch*, 718 So. 2d 843 (Fla. 4th DCA 1998). The Third DCA, on the other hand, has held that there is only one standing requirement, which controls throughout the forfeiture proceeding. *Munoz v. City of Coral Gables*, 695 So. 2d 1283 (Fla. 3d DCA 1997). Because Fraser has not briefed the issue, the Court should not address it.

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**CERTIFICATE OF SERVICE AND TYPE SIZE**

WE HEREBY CERTIFY that true and correct copies of the foregoing were mailed this 30th of May, 2000, to: Carl H. Lida, Esq., Law Offices of Carl H. Lida, P.A., 8751 W. Broward Boulevard, Suite 305, Plantation, FL 33324; and Charles M. Fahlbusch, Esq., Assistant Attorney General, Office of the Attorney General, 110 S.E. Sixth Street, 10th Floor, Fort Lauderdale, FL 33301.

We certify that this brief is in Adobe Caslon, 14 point, proportional type.

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