IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC95506

FOURTH DISTRICT CASE NO. 97-2256

CEDRIC FRASER,

Petitioner/Appellant

v.

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,

Respondent/Appellee.
_____/

BRIEF ON THE MERITS AND APPENDIX

ON REVIEW FROM A DECISION OF

THE FOURTH DISTRICT COURT OF APPEAL

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CERTIFICATE OF TYPE SIZE AND STYLE

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STATEMENT OF THE CASE AND OF THE FACTS

This litigation began on June 15, 1993 when O.K. Murph McNaughton, who is the stepson of Cedric Fraser, was stopped for speeding by Trooper Van Leer of the Florida Highway Patrol for speeding (R5-17). After arousing Trooper Van Leer's suspicion, a drug dog was brought in to search Murph McNaughton's car. The dog alerted the trooper to money hidden in the bumper of the car. Pursuant to the alert, Trooper Van Leer seized $41,500 from the car. After the seizure of this money, but before any notice was sent to any person involved in this case, and before any publication, Cedric Fraser, through counsel, made a claim for this money (R18).

Cedric Fraser, the claimant in this case, demanded through counsel an adversary preliminary hearing and received one on July 16, 1993. Fraser filed his affidavit claiming the money seized belonged to him[1] (R18 and R48-50). At that time, no motion was filed by the state to strike Cedric Fraser's claim for the money nor was an objection raised about his standing.

A hearing was held before the Honorable Marvin Mounts based on Trooper Van Leer's affidavit of probable cause (R13-17). Judge Mounts found probable cause for the litigation to continue, but wrote on the order "This is a very close case

[1] Although the Florida forfeiture statute outlines no procedure for claimants to follow in making a claim.

and needs another hearing." (R48-50)

During the next year, the parties engaged in discovery and no new evidence was turned up. At the deposition, the claimant initially denied knowledge as to how the money got into the bumper of the car and then testified under oath that he put the money in the right front bumper of the car (R220-264). During the course of Mr. Fraser's deposition he exercised his right to decline to answer certain questions of the Department by invoking his Fifth Amendment privilege.[2]

On December 21, 1994, the claimant moved for summary judgment (R126-145). The Florida Highway Patrol never moved for summary judgment nor did they contest the claimant's standing in the case. The claimant's motion was granted on February 13, 1995 (R147-151). The Florida Highway Patrol appealed the granting of the motion. The Fourth District Court reversed the granting of summary judgment and remanded the case back to the trial court for further proceedings.[3] At all times pertinent to this litigation, Cedric Fraser has maintained he was the lawful owner of the seized currency. Not until the pretrial stipulation of the parties was the issue of standing raised by the Florida Highway Patrol. In their pleadings they contended this issue was

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[2] See the Fourth District Opinion for a discussion of these facts.

[3] (Fraser One) State of Florida, Department of Highway Safety and Motor Vehicles v. Cedric Fraser, 673 So.2d 570 (Fla. 4th DCA 1996).

an issue of fact to be decided at trial (R205-215). At no time has the Department ever filed a motion for summary judgment or have they moved to strike Cedric Fraser's claim.

On the eve of trial, after pretrial stipulations had been entered the court issued a ruling denying Claimant Cedric Fraser standing to go forward (R216-219). This resulted in Fraser appealing to the Fourth District (Fraser Two). The Fourth District Court of Appeal issued its Opinion on February 17, 1999 remanding back to the trial court for what they determined was a standing hearing. This court then granted discretionary *certiorari* on March 6, 2000, and these briefs follow.

SUMMARY OF THE ARGUMENT

It is the appellant's position in this case that the Florida Supreme Court should set down a rule of law governing standing in currency forfeiture cases to allow liberal access to the courts. These rules should be in accordance with the principals of due process and the Florida Constitution.

This court should allow claimants in currency forfeiture cases to have liberal access to the courts by allowing claimants to have standing to litigate these cases upon a colorable claim of ownership. To do otherwise would effectively shift the burden of proof from the state of Florida to the claimants.

By adopting this rule of standing, the court would align itself with the Arizona Supreme Court, the Illinois Supreme Court, and the federal Fifth Circuit Court of Appeals.

This would achieve the objective of allowing liberal access to the courts of this state by injured parties and at the same time prevent frivolous claims.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE RADICALLY ALTERS THE JURISPRUDENCE OF FORFEITURE BY SHIFTING THE BURDEN OF PROOF TO THE CLAIMANT THROUGH AN UNWARRANTED EXPANSION OF THE REQUIREMENTS OF STANDING

Prior to the decision of the Fourth District in the instant case, it had been the law of this state that the burden of proving property seized for forfeiture had been derived from or involved in unlawful activity was squarely upon the state. Prior to the decision of the Fourth District in the instant case, it had been the law of this state that a demonstration of standing was required solely to insure only aggrieved parties, that is persons who had suffered a genuine injury, be afforded access to the courts to remedy an injury or make them whole. Sweetwater Country Club Homeowners Association, Inc. v. The Huskey Company, 613 So.2d 936 (Fla. 5th DCA 1993) and Brasfield and Gorrie General Contractor, Inc. v. Ajax Construction Company, Inc. of Tallahassee, 627 So.2d 1200 (Fla. 1st DCA 1993). But the decision of the Fourth District in this case has changed all that.

Under the decision in Fraser, it is no longer sufficient for a claimant to demonstrate he is the owner of certain property to contest its seizure by the state. Now, in order to be entitled to contest the seizure of his property, he must first **"prove his**

bona fide interest" in the property which requires the claimant to provide evidence proving the **"sources from which the money or other intangible property may have originated, such as employment, business ventures, loans, gifts, and the like."** Cedric Fraser v. Department of Highway Safety and Motor Vehicles, 727 So.2d 1021 (Fla. 4th DCA 1999).

The Fourth District's opinion impermissibly shifts the burden of proof from the state of Florida to the claimant and is contrary to this court's decision in Department of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991), and the decision of the Third District Court of Appeal in Alonzo Munoz v. The City of Coral Gables, 695 So.2d 1283 (Fla. 3rd DCA 1997). In Department of Law Enforcement, this court stated forfeitures are "considered harsh extractions and are not favored at either law or equity. Thus forfeiture statutes must be strictly construed." Id. Munoz v. City of Coral Gables, Id., would only require a sworn statement of ownership in order to contest forfeiture proceedings.[4]

Moreover, placing this burden on a claimant to establish standing to litigate the government's taking of his or her property runs contrary to due process considerations of both the United States Constitution and the Florida Constitution. The basic due

[4] This approach would overrule the Fourth District decision in City of Fort Lauderdale v. Baruch, 718 So.2d 843 (Fla. 4th DCA 1998), which required different levels of proof of standing at the various stages of the proceeding.

process guarantee of the Florida Constitution provides "[n]o person shall be deprived of life, liberty or property without due process of law" Article 1, Section 9, Florida Constitution. Forfeiture proceedings have been held by this court and by federal courts to include constitutional protections, such as Fourth Amendment protection, One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania, 85 S.Ct. 1246, 14 L.Ed.2d 170, 380 U.S. 693 (1965); Eighth Amendment, excessive fines and penalties, Austin v. United States, 113 S.Ct. 2801, 125 L.Ed.2d 488, 61 U.S. LW 4811 (1993); Fifth Amendment protection, United States v. United States Coin and Currency, 91 S.Ct. 1041, 28 L.Ed. 2d 434, 401 U.S. 715 (1971).

The very issue before this court was discussed by the federal Fifth Circuit Court of Appeal, wherein the court observed;

> The court in United States v. One 18th Century Colombian Monstrance, 797 F.2d 1370 (5th Cir. 1986), *cert. denied sub nom.,* Newton v. United States, 481 U.S. 1014 (1987), states: Standing ... is literally a threshold question for entry into a federal court.... A claimant need not prove the merit of his underlying claim, but he must be able to show at least a facially colorable interest in the proceedings to satisfy the case-or-controversy requirement...Id. At 1374 (quoting Warth v. Seldin, 422 U.S. 490, 518 (1975)) (footnotes omitted) (emphasis added).[5]

Because claimants in currency forfeiture cases still have the ultimate burden to

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[5] United States v. $321,470.00, 874 F.2d 298 (5th Cir. 1989).

establish their innocent ownership provided the state meets their burden of proof by clear and convincing evidence. There is no reason to accelerate this issue and add it to the claimants' initial burden to establish their standing. To do so would effectively shift the burden of proof from the state of Florida to the claimant. United States v. One Hundred and Thirty-Four Thousand, Seven Hundred and Fifty-Two Dollars United States Currency, 706 F.Supp. 1075 (S.D.N.Y. 1989).

The claimant respectfully suggests the threshold issue of standing should follow the approach outlined in Munoz v. The City of Coral Gables, Id., by requiring a claimant to sign a sworn affidavit alleging to be the lawful owner of the currency in question.

In cases where a person has possession of the money, or the money is found in a person's home, the attending facts and circumstances would support a colorable claim to the currency if the claimant signed a sworn affidavit making claim to the money.

In the case before the court, the surrounding and attendant circumstances were Cedric Fraser's stepson had the money seized from a car he had been driving that had previously been in Fraser's garage. Fraser immediately signed a sworn affidavit claiming the money was lawfully his before any notice of seizure was published by the Department. These facts support Fraser's standing in the case before the court.

Since forfeitures are not favored at law or equity it can be said the government,

whether state or federal, has virtually no interest in the property seized. Only the legislature has afforded the government an interest if, and only if, the appropriate standard of proof can be met in the respective jurisdiction.[6]

The state of Florida and the courts below took issue with Fraser's invocation of the Fifth Amendment as to where he had obtained the funds and how he obtained the funds. Where Fraser obtained the funds and how he obtained the funds had nothing to do with the issue of standing. In Wohlstrom v. Buchanan, 884 P.2d 687 (Nov. 1994), the Supreme Court of Arizona in a case remarkably similar to this, upheld a claimant's right to contest the litigation when the claimant filed a sworn affidavit indicating the money was his and he had acquired possession of the money earlier in the day in Philadelphia, Pennsylvania.

In reversing the trial court, the Arizona Supreme Court ruled a party claiming the Fifth Amendment privilege should suffer no penalty for his silence. The court went on to rule Wohlstrom should be given standing to litigate his claim and proper safeguards to avoid frivolous claims had been met.

Ultimately, if the Florida Highway Patrol meets its burden of proof in this case to get past a directed verdict by clear and convincing evidence, the burden will be on

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[6] The standard in the federal court is probable cause and the standard in our state court is clear and convincing evidence.

Fraser to establish his innocent ownership of said funds, if he chooses to do so.

If this court were to adopt the Fourth District's approach to standing, the state of Florida could take a person's currency from his or her pocket (assuming a dog alerted to the currency)[7] and say to them, unless you tell us where and how you got this money, we are not going to give you standing to try and get it back. This runs contrary to the purpose of forfeiture statutes, to basic constitutional due process, and to the constitutional protections afforded to claimants in forfeiture matters. This clearly shifts the burden of proof from the state to the claimant merely to establish his standing, thus, denying free and liberal access to the courts to claimants in this situation.

If the state feels a claimant is filing a frivolous claim, the burden should be on the state of Florida to come forward with sufficient facts and circumstances to show the court the claim should be stricken. Otherwise, the litigation should go forward and the state of Florida should be put to its burden of proof; to hold otherwise would lead to absurd results.

This court can follow the procedure established by the Supreme Court of Illinois

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[7] See United States v. $53,082, 985 F.2d 245 (6th Cir. 1993). The appellate panel cited a 1989 study by Lee Hern, Chief Toxicologist of Dade County, Florida, finding 97% of larger denomination bills tested positive for cocaine. Also see, United States v. $30,060, 39 F.3d 1039 (9th Cir. 1994) where the Ninth Circuit indicated 75% of all currency in the Los Angeles area is tainted with residue of cocaine or some other controlled substance.

when faced with an identical issue now before the court, and rule that the state could not strike the claimant's claim merely because he relied on his Fifth Amendment privilege, and it is the state's burden to challenge the claimant's standing to contest the forfeiture. The People of the State of Illinois v. $1,124,905 U.S. Currency and One 1988 Chevrolet Astro Van, 685 N.E.2d 1370 (1997). Thus, if the state feels a frivolous claim is being made, they can attack it by a motion for summary judgment or motions to dismiss or strike at an early stage of the proceedings.[8]

The Florida Highway Patrol, by way of its pretrial stipulation, contended to the trial court that whether or not Cedric Fraser had a "proprietary interest" in the funds sought to be forfeited was an issue of fact for a jury's determination. (R216-219)

The issue of Fraser's proprietary interest, to wit, his innocent ownership, is one of the ultimate issues of fact before the court in a forfeiture proceeding.[9] The Department is correct in asserting innocent ownership is an issue for the finder of fact. However, it is not necessary for the claimant to prove his innocent ownership to establish standing. See In re: Forfeiture of Approximately $19,050.00 in U.S.

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[8] It should be noted, no motion for summary judgment was ever made by the state of Florida or was any motion ever filed by the state of Florida contesting the claimant's standing in this case.

[9] The other, of course, is whether or not the state has met its burden of proof by clear and convincing evidence.

Currency, 519 So.2d 1134 (Fla. 5th DCA 1988), wherein the Fifth District ruled that even if the trial court did not believe the claimant's story, she was entitled to have it heard at trial. "While the trial court may not have believed her story, or disbelieved that she was the owner of the currency, these were issues to be decided at trial, see Williams v. Miller, 433 So. 2d 33 (Fla. 5th DCA 1983)."

To summarize, the claimant is suggesting to this court that it adopt a procedure for establishing standing in currency forfeiture cases that allows liberal access to the courts of this state in keeping with the principals of due process. Claimant should be required to state under oath the money is his and he is entitled to its return. The court could then look to the surrounding facts and circumstances of each case to determine under a broad view of standing whether or not the claimant has made a "colorable" claim to the currency or whether or not the state has filed motions to dismiss the claim as being frivolous for lack of standing under these circumstances. If the claimant has made a colorable claim, the litigation should go forward.

Innocent ownership of currency is different than standing to make a claim. One involves proof at trial, the other only gives access to the courts of this state.

CONCLUSION

Wherefore, the claimant respectfully submits to this honorable court he has

standing. The standard this court should adopt for standing in currency forfeiture cases is one of only a colorable claim to the funds at issue. This should be broadly construed in accordance with the principals of due process and Florida's Constitution. This would allow free access to the courts of Florida without accelerating the burden of proof to be placed on claimants just to allow them access to Florida courts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been mailed on May 5, 2000, to: Charles Fahlbusch, Assistant Attorney General, 110 S.E. Sixth Street, 10th Floor, Fort Lauderdale, FL 33301.

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APPENDIX

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