

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 95,506

FOURTH DISTRICT CASE NO. 97-2256

FILED

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MAY 13 1999

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CEDRIC FRASER,

Petitioner/Appellant

v.

**DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,**

Respondent/Appellee.

**BRIEF ON JURISDICTION AND APPENDIX
ON REVIEW FROM A DECISION OF
THE FOURTH DISTRICT COURT OF APPEAL**

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CERTIFICATE OF TYPE SIZE AND STYLE

This brief is prepared with a 14 point Times New Roman font.

STATEMENT OF JURISDICTION

This is a forfeiture case wherein the Fourth District Court of Appeal ruled the claimant, Cedric Fraser, was required to present evidence of innocent ownership at a “standing hearing” in order to establish his standing to contest the forfeiture of approximately \$41,000.00.

Fraser asserts jurisdiction in this court under Fla. R. App. P. §9.030(a)(2)(A)(4), in that the decision of the court below expressly and directly conflicts with decisions of the Third District Court of Appeal and the Supreme Court of Florida on the same question of law, which concerns whether or not the claimant, Cedric Fraser, has standing to proceed, and who has the burden of proof.

Fraser contends here, as he did in the court below, that he has standing to contest the forfeiture, and the requirement that he come forward with proof of the source of funds to establish his standing prior to the seizing agency meeting their burden of proof is erroneous.

FACTS

The facts in the light most favorable to the state are as follows:

Cedric Fraser made a claim to contest the forfeiture of approximately \$41,000.00, which was seized from his stepson Murph O. K. McNaughton on June 15, 1993.

Fraser was given standing to contest the adversarial preliminary hearing in the trial court, which found probable cause to proceed. Subsequently, summary judgment was granted in Fraser's favor and the Department of Highway Safety and Motor Vehicles appealed. The Fourth District Court of Appeal reversed the order granting summary judgment and ruled there was a sufficient issue of fact to be presented to a jury. Subsequently, a new trial judge was assigned, and prior to the case getting under way for trial, Judge Fine ruled the claimant, Cedric Fraser, did not have standing to contest the forfeiture.

This ruling was made in spite of the fact that Fraser had filed a sworn affidavit stating the money was his, and provided deposition testimony.

At the deposition, Fraser first denied knowledge of how the money got into the bumper of Murph O. K. McNaughton's car, and subsequently said he put it there.

Based on this evidence, the trial court ruled he did not have standing to contest the forfeiture. The Fourth District Court of Appeal reversed that finding, but remanded for what they entitled a "standing hearing" requiring the claimant to come forth with evidence such as sources from which the money or other intangible

property may have originated, such as employment, business ventures, loans, gifts and the like.

SUMMARY OF ARGUMENT

Mere possession of currency and/or a sworn statement of colorable ownership interest is sufficient to establish standing to contest the forfeiture of said currency.

It is not necessary for a claimant to provide proof of innocent sources of currency in order to establish his standing.

Standing is distinguished from innocent ownership in a currency forfeiture case and the decision of the Fourth District Court of Appeal conflicts with the Third District Court of Appeal, Alonzo Munoz v. The City of Coral Gables, 695 So. 2d 1283 (Fla. 3rd DCA 1997), and Department of Law Enforcement v. Real Property, 588 So.2d 957 (Fla. 1991), which requires the state to come forth with clear and convincing evidence prior to the claimant having to establish his innocent ownership.

ARGUMENT

**THE FOURTH DISTRICT'S DECISION IN THIS
CASE EXPRESSLY AND DIRECTLY CONFLICTS
WITH A DECISION OF THE THIRD DISTRICT
COURT OF APPEAL AND THIS COURT.**

The decision of the Fourth District Court of Appeal in Cedric Fraser v. Department of Highway Safety and Motor Vehicles, 727 So.2d 1021 (Fla. 4th DCA 1999), conflicts with the prior decision of Alonzo Munoz v. The City of Coral Gables, 695 So.2d 1283 (Fla.. 3rd DCA 1997), on the issue of standing, and with this court's decision of Department of Law Enforcement v. Real Property, 588 So.2d 957 (Fla. 1991), in regard to who has the burden of proof in the following manner.

In Fraser, *supra.*, the Fourth District held,

We therefore hold that appellant had the burden to prove his bona fide interest in the seized monies in order to have an opportunity to be heard at the forfeiture hearing. ...Factors to be considered include, but are not limited to, physical possession of the property and sources from which the money or other intangible property may have originated, such as employment, business ventures, loans, gifts and the like. The mere assertion, sworn or otherwise, that "the money is mine" is insufficient to carry this burden.

This holding conflicts with the decision of Munoz v. City of Coral Gables, *Id.*, which held that a claimant in a seized currency case must come forward with sworn proof of a possessory and/or ownership interest in the same to acquire standing to contest the forfeiture proceeding. The holding of the Fourth District Court of Appeal

in Fraser, Id., directly conflicts with the holding of the Third District in Munoz v. City of Coral Gables, Id., in that it requires a potential claimant, not only to come forward with sworn testimony of his ownership or possessory interest in currency, but also provide proof of his “innocent ownership” of said currency.

This requirement the Fourth District has placed on the claimants in currency cases effectively shifts the burden of proof from the seizing agency to the claimant, prior to the seizing agency having to present clear and convincing evidence that the currency is subject to forfeiture, in conflict with Department of Law Enforcement v. Real Property, Id.

It is undisputed on this record, the claimant had standing in the court below to litigate the adversarial preliminary hearing and to win a summary judgment in his favor. The Fourth District now holds that for a potential claimant to achieve standing in a currency case they must do more than provide sworn testimony of their ownership interest and/or possessory interest in the currency, and must come forward with proof of legitimate source of funds.

This holding not only conflicts with Munoz, Id., but conflicts with this court’s holding in Department of Law Enforcement v. Real Property, Id. This court ruled in 1991, the burden of proof laid squarely with the seizing agency. The burden on the seizing agency is to come forward with proof of clear and convincing evidence in

order to achieve the forfeiture of property or currency. Once the seizing agency comes forth with proof of clear and convincing evidence, the property is subject to forfeiture; then, and only then, is a claimant required to come forward with proof of innocent ownership.

The decision in Fraser, Id., effectively shifts the burden of proof to the claimant prior to the seizing agency coming forward with anything other than probable cause.

The petitioner believes the proper standard for establishing standing for a claimant is best illustrated by two federal cases. First, United States v. \$321,470, 874 F.2d 298 (5th Cir. 1989).

“Standing ... is literally a threshold question for entry into a federal court”, because of the constitutional limitation of the federal court jurisdiction to cases and controversies. “ This Circuit has held that the burden of establishing standing to contest a forfeiture is on the claimant seeking to come before the 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 sufficient to satisfy the case-or- controversy requirement and ‘prudential considerations defining and limiting the role of the court’”. This principle applies to all forfeitures. See U.S. v. \$364,960.00 in U.S. Currency, 661 F.2d 319,

320 (5th Cir. 1981); U.S. v. \$48,318.08, 609 F.2d 210 (5th Cir. 1980).

The second case is United States v. \$134,752.00 U.S. Currency, 706 F.Supp. 1075 (S.D.N.Y. 1989).

The government, however, would deny Hirschhorn standing to challenge probable cause unless he proved a legal ownership interest in the *res* in addition to his possessory interest. A claimant's duty to demonstrate a legitimate source for the property seized is part of his ultimate burden if the government first shows probable cause for instituting the action; but the government's argument accelerates claimant's burden while evading its own probable cause burden.

Those cases better demonstrate the appropriate rules of law to be applied in determining standing in a currency case, then the precedent the Fourth District now seeks to set.¹

CONCLUSION


WHEREFORE, the petitioner prays this Honorable Court will grant his petition for certiorari and order briefs on the issue.

¹It should be noted, in the federal court the burden of proof for the government is only probable cause. While in our courts it is clear and convincing evidence. However, the reasoning remains the same, i.e. the Fourth District Court of Appeal should not be allowed to impermissibly shift the burden of proof from the seizing agency to the claimant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been mailed on May 12, 1999, 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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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JANUARY TERM 1999

CEDRIC FRASER,

Appellant,

v.

**DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,**

Appellee.

CASE NO. 97-2256

Opinion filed February 17, 1999

Appeal from the Circuit Court for the Fifteenth
Judicial Circuit, Palm Beach County; Edward
Fine, Judge; L.T. Case No. 93-217 CAA02A1.

Carl H. Lida of Law Offices of Carl H. Lida,
P.A., Plantation, for appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Charles M. Fahlbusch, Assistant
Attorney General, Fort Lauderdale, for appellee.

WARNER, J.

In this forfeiture proceeding, appellant made a claim to the subject money by filing an affidavit which simply stated that the seized money belonged to him. The trial court determined that standing was a preliminary issue to be decided by the court and that the appellant's affidavit, alone, was insufficient to establish standing. While we agree that standing is a preliminary issue to be decided by the court and that appellant's affidavit was insufficient to establish standing, appellant is entitled to present evidence on this issue. We therefore reverse for an evidentiary hearing on this issue.

In 1993, a highway patrol trooper stopped a

motor vehicle for a speeding violation. The vehicle was driven by and registered to Murph McNaughton, appellant's stepson. McNaughton allowed the trooper to conduct a consent search of the vehicle, during which the trooper found four large bundles of money that were secreted inside the front bumper of the vehicle. The money, totaling \$41,500, was wrapped in fabric softener sheets and fastened by multiple rubber bands. All of the occupants of the vehicle denied having any knowledge of the money. The trooper seized the currency. Prior to the institution of any forfeiture proceedings, Fraser signed and sent to the Department a sworn affidavit stating that "the entire FORTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$41,500) seized from Murph O.K. McNaughton on June 15, 1993, by Florida Highway Patrol Trooper Michael Van Leer in West Palm Beach belongs to me, CEDRIC FRASER."

The Department of Highway Safety and Motor Vehicles ("Department") instituted forfeiture proceedings by requesting that the court issue an order of probable cause. Because appellant served the Department with his affidavit, the Department in turn served him with a copy of the complaint. The court held an adversarial preliminary hearing and entered an order of probable cause finding that the Department had established sufficient facts to believe that the money was a "contraband article," as defined by section 932.701(2)(a), Florida Statutes (1993). The court also issued a rule to show cause, which ordered all claimants to serve upon the Department an answer admitting, denying, or explaining the material allegations of the complaint and asserting any affirmative defenses thereto. Fraser, the sole purported claimant, filed an answer and asserted as an affirmative defense that he was "a lawful and innocent owner."

During the discovery phase of the litigation, the Department took Fraser's deposition and inquired as to why he claimed that the \$41,500 recovered from the bumper of McNaughton's car was his money. The following colloquy took place during

the deposition:

THE WITNESS: What's he say?

MR. LIDA (Fraser's attorney): He wants to know if the \$41,000 that was found in the bumper of Murph McNaughton's car was your money.

A: Yes. It was my money.

Q (Department's attorney): How did it get in the bumper of Murph McNaughton's car, Mr. Fraser?

A: It was parked in my garbage (sic), and it was in the bumper unbeknown to me.

MR. LIDA: Can I have two minutes alone outside?

MR. FAHLBUSCH: Okay.

(Whereupon, a brief recess was taken.)

A: I put it there.

Q: Where was the car when you put it there?

A: My garage.

....

Q: Do you remember how long prior to the seizure of the money it was?

A: I put it in there -- The car was parked in there for a while. I never know (sic) [McNaughton] was going to take it out. He take (sic) it out because the key was hanging right there.

Q: How long prior to the seizure did you put it in the car?

MR. LIDA: Listen to his question. He wants to know how long prior to Murph getting stopped you put the money in the car, if you remember.

A: I don't remember.

....

Q: Do you know Murph McNaughton?

A: Yes. He's my stepson.

....

Q: Where did you get the \$41,500?

A: It was my money.

Q: Where did you get it?

A: I work for my money.

Fraser claimed that he had packaged the money with rubber bands and duct tape, but he could not recall whether he had wrapped it in fabric softener sheets, conceding that he did not "normally" engage in this practice. During the deposition, Fraser objected, through his counsel to the following questions on Fifth Amendment grounds: (1) "What led you to put \$41,500 cash in the bumper of the car?"; (2) "Where did you get the \$41,500?"; (3) "Why did you put the money in that specific car?"; (4) "What's the name of any person or corporation from whom you got the \$41,500.00 or any portion thereof?"; (5) "Does anyone other than yourself know where you got the \$41,500?"; and (6) "Other than Elegant Man [Fraser's business] or the purchase and sale of cars that we've talked about, have you had any other source of income within the last two years?"

Fraser moved for summary judgment in the forfeiture proceeding, claiming that the Department had not met its burden of showing by clear and convincing evidence that the money was being used or had been used in furtherance of a criminal enterprise. After the trial court entered summary judgment in Fraser's favor and the Department appealed, our court reversed, holding that the trial court had impermissibly weighed the evidence in granting summary judgment. See *State Dep't of Highway Safety and Motor Vehicles*

v. *Fraser*, 673 So. 2d 570 (Fla. 4th DCA 1996).

On remand, the case was set for trial, and the parties filed pretrial statements. The issue of Fraser's standing was disputed, and the court requested memoranda and argument. After hearing argument, the trial court entered an order finding:

[t]he Court finds that standing is an issue in the case and that standing is not decided by a jury but is a preliminary issue decided by the Court. *Byrom v. Gallagher*, 578 So. 2d 715 (Fla. 5th DCA 1990), *quashed on other grounds*, 609 So. 2d 24 (Fla. 1992). "Unless the standing issue is decided initially, a trial court can never determine who may argue the nexus issue. Thus, the standing issue must be addressed first." *Idem*. Lacking standing there is no case or controversy to settle. The burden of proof of standing is always on the party seeking the standing. Here the evidence is the affidavit of Cedric Fraser which says "the money belongs to me." That is not sufficient to establish standing. Therefore it is

ORDERED AND ADJUDGED that Mr. Cedric Fraser lacks standing to contest the forfeiture of \$41,500 in this action.

The trial court subsequently entered a final judgment of forfeiture premised on its prior finding that Fraser, the "only potential claimant" to the currency, had "failed to establish standing to contest the forfeiture concerned herein."¹

We are governed by the Florida Contraband Forfeiture Act, sections 932.701-.705, Florida

¹ While appellant suggests that the Department waived its right to contest the standing issue, it was raised in the parties' joint pretrial stipulation. Therefore, there was no waiver. Likewise, our prior decision in this case reversing a summary judgment did not conclusively establish any point of law under the law of the case doctrine. See *Warren v. Palm Beach County*, 528 So. 2d 413, 415-16 (Fla. 4th DCA), *rev. dismissed*, 537 So. 2d 570 (Fla. 1988).

Statutes (1997), and the decisional law interpreting it. The supreme court has recognized that the forfeiture statutes must be strictly construed and that because forfeiture actions are "harsh exactions" and involve the state's abridgement of a person's property rights, a forfeiture action must satisfy substantive and procedural due process requirements, including providing a person with notice of the seizure and an opportunity to be heard. See *Byrom v. Gallagher*, 609 So. 2d 24, 26 (Fla. 1992). However, "[i]nherent in this framework is the threshold requirement that only persons who have standing can participate in a judicial proceeding." *Id.* The burden of establishing standing in a forfeiture proceeding is on the claimant. See *In re Forfeiture of 1983 Wellcraft Scarab*, 487 So. 2d 306, 309 (Fla. 4th DCA), *rev. dismissed*, 494 So. 2d 1150 (Fla. 1986). Whether an individual has standing determines whether the individual has the opportunity to be heard in the forfeiture proceedings. See *Byrom*, 609 So. 2d at 26-27.

In *Byrom*, the court considered standing where the seized property, a plane, was subject to title and registration requirements. Noting that if reliance was placed solely on title and registration requirements to confer standing, some persons might attempt fraudulent transfers in order to avoid a forfeiture, the court gave the following guidance to the trial courts on the issue by stating:

[i]n determining whether a person has standing the trial judge should consider: 1) whether that person holds legal title at the time of the forfeiture hearing or has complied with the requirements for receiving title; and 2) whether that person is in fact a bona fide purchaser. The trial judge should consider the facts surrounding the sale to determine whether the transfer is in fact a bona fide purchase. The relationship of the parties, the date the instruments were executed, the value of the property, the sale price, and cancelled checks or bank deposits to show actual payment and receipt of money are all factors which the trial court should consider in determining whether the transfer is a bona fide purchase. This list is not intended to be

exhaustive but rather illustrative of the consideration to be made by the trial judge. In making the determination whether a title holder is also a bona fide purchaser, the trial judge should be able to sift the wheat from the chaff.³

³ We note that this decision is limited to property which the State has required that a person have a title or compliance with title requirements to show ownership. Thus, a party would only have to show that he or she is a bona fide purchaser where the seized property is not subject to the State's title laws.

Byrom, 576 So. 2d at 26-27. (italicized emphasis in original) (underlined emphasis supplied.)

We glean from *Byrom* that in order to have standing to be heard in a forfeiture proceeding, the alleged claimant has the burden of proving bona fide ownership of the seized property. The bona fide nature of the ownership is a factual matter for the trial judge to determine before the person is given the opportunity to be heard at the forfeiture hearing. While *Byrom* dealt with tangible property, we see no reason why a person claiming ownership of intangible property, such as the currency claimed here, should not also be required to show a bona fide claim to the money. Proof of the bona fide nature of the claim is required to prevent fraudulent statements of ownership, just as proof of bona fide purchaser status in *Byrom* would prevent fraudulent transfers of titled property in order to defeat forfeiture actions.

We therefore hold that appellant had the burden to prove his bona fide interest in the seized monies in order to have an opportunity to be heard at the forfeiture hearing. *Cf. United States v. \$280,505*, 655 F. Supp. 1487 (S.D. Fla. 1986)(mother, whose name appeared on title, and who claimed that she gave her son money to purchase car in which the forfeited currency was found, had no standing to contest forfeiture of vehicle where she could not offer any proof as to how she had obtained the money or the manner in which she could afford to give her son such a substantial sum). Factors to be considered include, but are not limited to, physical possession of the property and sources from which the money or other intangible property may have originated, such as employment, business ventures, loans, gifts and the like. The mere assertion, sworn or

otherwise, that "the money is mine" is insufficient to carry this burden.²

Nevertheless, because this is a factual determination to be made by the trial judge, the claimant ought to have the opportunity to present his evidence on the issue to convince the court of the bona fide nature of his claim. Indeed, Fraser's proprietary claim to the money was listed as a disputed issue in the pretrial stipulation. In this case, appellant's right to prove the nature of his interest was truncated by the court's determination based upon the affidavit alone that appellant lacked standing. Relying on *Byrom*, in which the supreme court reversed for a factual determination of the bona fide nature of the claim of ownership, we reverse and remand to afford appellant a hearing before the trial court in which he can present evidence of his claim of ownership. If the facts as presented convince the court that appellant has a bona fide claim of ownership to the money, then appellant should be given the opportunity to be heard on the forfeiture. On the other hand, if the trial court finds that appellant has not carried his burden to prove his claim of ownership, then the trial court may dismiss appellant's claim for lack of standing.

Reversed and remanded.

SHAHOOD, J., and BRYAN, BEN L., Associate Judge, concur.

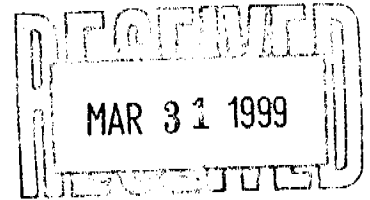
NOT FINAL UNTIL THE DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.

² We distinguish *Munoz v. City of Coral Gables*, 695 So. 2d 1283 (Fla. 3d DCA 1997). While *Munoz* stated that "[a]t 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," the case involved the standing requirement at an adversarial preliminary hearing, not the actual forfeiture proceeding. See *City of Fort Lauderdale v. Baruch*, 718 So. 2d 843, 846 (Fla. 4th DCA 1998)(discussing *Munoz*).

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

CEDRIC FRASER
Appellant(s),

CASE NO. 97-02256



vs.

FORFEITURE OF FORTY-ONE
THOUSAND, etc.
Appellee(s).

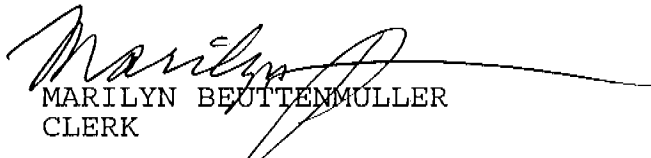
L.T. CASE NO. 93-217 CAA02AI
PALM BEACH

March 30, 1999

BY ORDER OF THE COURT:

ORDERED that appellant's petition filed March 4, 1999,
for re-hearing or in the alternative suggestion for certiorari
is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.


MARILYN BEUTTENMULLER
CLERK

cc: Carl H. Lida
Atty. General-Ft. Lauderdale

/CH

