IN THE SUPREME COURT OF FLORIDA

CASE NO. SC04-1944

WALTER VELEZ,

Petitioner

v.

MIAMI-DADE POLICE DEPARTMENT,

Respondent.

ON REVIEW FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

RESPONDENT'S ANSWER BRIEF

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Respondent will use an appendix in support of its answer brief. In the brief, the appendix will be referred to as "App." and the corresponding page number.

STATEMENT OF THE CASE AND FACTS

On December 12, 2002, a vehicle driven by Walter Velez (hereinafter "Petitioner") was stopped by an officer of the Miami-Dade Police Department for a traffic infraction. (R. 1-9). Petitioner presented a Florida drivers license and registration in the name of Walter Velez. A records check, however, revealed that Velez actually had another Florida drivers license in the name of Walter Dario Agudelo, which was suspended. Id. A suitcase was observed in plain view on the rear seat of the vehicle. Id. Petitioner stated that the suitcase merely contained clothing. Id. Petitioner gave verbal and written consent to search the vehicle. Id. The suitcase was found to contain a large amount of U.S. currency (later determined to total $489,880.00), mostly in twenty dollar bills, secured in stacks with rubber bands in what law enforcement refers to as "quick count bundles". Id. **Petitioner stated that the money did not belong to him and that it had been given to him by a person he did not know.** Id. The sole passenger in the vehicle, identified as Juan Fernando Agudelo, also denied any relationship to the money, stating that he was only going to dinner with the driver and did not even know that the suitcase was in the car. Id. A records check revealed that neither Petitioner nor the passenger were licensed as money transmitters, as required by the Florida Department of Banking and Finance for "funds transmitters", which includes money couriers. Id. A records check also failed to reveal the filing of any federal Currency Transaction Report or Report of Cash

Payments (Forms 104 and 8300, respectively); nor was any paperwork located within the vehicle or with the currency which would be necessary to file any of the aforementioned reports. Id. Petitioner Walter Velez, aka Walter Dario Agudelo, was arrested for unlawful possession of a drivers license and driving while license suspended. The money was seized for forfeiture by the Miami-Dade Police Department. Id.

On December 27, 2002, Petitioner requested an adversarial preliminary hearing pursuant to section 932.703(2)(a) of the Florida Contraband Forfeiture Act, which was originally set for January 2, 2003. Petitioner filed an objection and the hearing was reset and held on January 6, 2003. (App. 1-11). Petitioner was not present at the hearing, but appeared through counsel. Id. Petitioner offered no evidence to support an ownership or possessory interest in the seized currency. Id. Petitioner argued that because the currency was seized from his possession that he was a "person entitled to notice" as defined by §932.701(9)(e), Fla. Stat., and therefore did not need to demonstrate standing in order to be entitled to a hearing. Id. **Contrary** to Petitioner's argument throughout his brief, Respondent Miami-Dade Police Department never argued that the Petitioner was required to prove an ownership interest in the seized currency **in order to request** an adversarial preliminary hearing, only that the Petitioner was required to demonstrate standing in order to contest probable cause at such a hearing. Id. Although Petitioner also argues that an adversarial preliminary hearing was never held, the trial court most

certainly did conduct the hearing, finding that under the applicable case law, Petitioner had not established the requisite standing and that probable cause had been established based on the sworn complaint.[1] Id. At the conclusion of the adversarial preliminary hearing, Petitioner requested an evidentiary hearing, which was denied. Id.

On January 6, 2003, the trial court issued a written order finding probable cause and directing claimant(s) to respond to the complaint. (R. 11). Petitioner filed an answer to the complaint on January 30, 2003. (R. 13-15). On February 13, 2004, Respondent filed a motion to dismiss Petitioner's claim, which was denied without prejudice on February 27, 2003. (R. 16-21). On April 1, 2003, Respondent deposed Petitioner, and thereupon, on April 15, 2003, Respondent filed a motion to strike Petitioner's pleadings and dismiss his claim.[2] (R. 22-28).

[1] The trial court relied upon the Third District's decision in Vasquez v. State, 777 So.2d 1200, 1202 (Fla. 3d DCA 2001), quoting that "Under controlling precedent in this district, 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." (App. 1-11).

[2] Contrary to Petitioner's assertions, when Petitioner was asked in his deposition "And whose money is that?", he simply answered "Mine", and that it was packaged "In bundles of one hundred pesos." Those answers and Petitioner's invocation of his Fifth Amendment privilege against self incrimination to a whole series of other questions relating to the currency formed the basis of Respondent's renewed motion to strike the pleadings and dismiss Petitioner's claim, which the trial court granted on May 6, 2003. (R. 22-28). Moreover, it should be noted for clarity that Petitioner made no such statement and presented no evidence at the adversarial preliminary hearing, but merely relied on Respondent's complaint. It is that hearing and the order thereupon which the Third DCA ruled upon below. Velez, *infra*.

On April 8, 2003, Petitioner filed but never set for hearing a motion to dismiss the complaint alleging a failure to afford him an adversarial preliminary hearing. (R. 29-41). On May 6, 2003, Respondent's motion to strike Petitioner's pleadings and dismiss his claim was heard and granted by the trial court. (R. 47). On May 8, 2003, the trial court entered final judgment against the defendant currency. (R. 47). On June 2, 2003, Petitioner filed a notice of appeal with the Third District Court of Appeal. (R. 48). On September 15, 2004, the Third District affirmed the trial court's order entered at the adversarial preliminary hearing held on January 6, 2003. Velez v. Miami-Dade Police Department, 881 So.2d 1190 (Fla. 3d DCA 2004).

The Third District found that where standing is at issue at the outset of an adversarial preliminary hearing, the claimant may not simply fall back on the allegations of the seizing authority, and held that because Petitioner had not come forward with any sworn proof on the question of standing, the trial court properly denied him the opportunity to participate at the adversarial preliminary hearing. Id. This discretionary review arises from the certification of conflict by the Third District with decisions of the Fourth District Court of Appeal in City of Ft. Lauderdale v. Baruch, 718 So.2d 843 (Fla. 4th DCA 1998) and Jean-Luis v. Forfeiture of $203,595.00 in U.S. Currency, 767 So.2d 595 (Fla. 4th DCA 2000), as follows:

> In so holding, however, we recognize that our decision directly conflicts with our sister court's holdings in City of Fort Lauderdale v. Baruch, 718 So.2d 843 (Fla. 4th DCA 1998)("A 'person entitled to notice' need not demonstrate a proprietary interest in the property at issue, but only that he was 'in possession' of the property when it was seized") and Jean-Luis v. Forfeiture of $203,595.00 in U.S. Currency, 767 So.2d 595 (Fla. 4th DCA 2000)(holding that "appellants have standing in the preliminary hearing, as at the very least, they were in possession of the money at the time of its seizure"). Accordingly, pursuant to Art. 5, § 3(b)(4) of the Florida Constitution, we certify conflict between the Third District and Fourth District Courts of Appeal on the following: **DOES A PERSON IN MERE POSSESSION OF PROPERTY AT THE TIME OF SEIZURE HAVE STANDING AT AN ADVERSARIAL PRELIMINARY HEARING TO CHALLENGE THE SEIZURE WITHOUT SHOWING A PROPRIETARY INTEREST IN THE PROPERTY?** We affirm and certify the above conflict.

Velez v. Miami-Dade Police Department, 881 So.2d 1190, 1191 (Fla 3d DCA 2004).

SUMMARY OF ARGUMENT

At the adversarial preliminary hearing held below, the trial court properly found that the Petitioner had not established the requisite standing to participate in the hearing, where the Petitioner presented no proof whatsoever of standing, the property was located in the backseat of Petitioner's vehicle and the vehicle was occupied by another person, Petitioner was utilizing two identities, and Petitioner denied knowledge and ownership of the property. The plain and unambiguous language of the Florida Contraband Forfeiture Act defines a "person entitled to notice" as "any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry." Clearly, a "person entitled to notice" is just that, entitled to notice. However, such a person would not necessarily have standing to participate in an adversarial preliminary hearing. Only a claimant would.

A "claimant" is defined in the Act as "any party who has proprietary interest in property subject to forfeiture and the standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and title holders." A "forfeiture proceeding" is defined in the Act as **"a hearing** or trial in which the court or jury determines whether the subject property shall be forfeited." It is axiomatic that standing to participate in a judicial proceeding is a threshold issue. To require a less stringent standing requirement at the adversarial preliminary hearing than at other stages of a forfeiture

proceeding would defy the plain language of the statute and allow for competing, conflicting, and fraudulent claims, and would eviscerate the intent of the notice requirement to “cast a wide net for persons entitled to notice”.

ARGUMENT

THE PLAIN LANGUAGE OF THE FLORIDA CONTRABAND FORFEITURE ACT DOES NOT AUTOMATICALLY CONFER STANDING ON A PERSON IN POSSESSION OF PROPERTY WHEN SEIZED IN ORDER FOR THAT PERSON TO PARTICIPATE IN AN ADVERSARIAL PRELIMINARY HEARING, WITHOUT THAT PERSON FIRST DEMONSTRATING SWORN PROOF OF AN OWNERSHIP INTEREST IN THE PROPERTY.

In Florida Convalescent Centers, etc., V. Somberg, 840 So.2d 998, 1000 (Fla. 2003) this Court held, "It is well settled that legislative intent is the polestar that guides a court's statutory construction analysis. When the court construes a statute, 'we look first to the statute's plain meaning.' Furthermore, '[w]hen the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.'" Id. In the case at bar, the statute's plain meaning is clear, unambiguous and conveys a clear and definite meaning regarding a "person entitled to notice" and a "claimant".

The Florida Contraband Forfeiture Act defines two categories of individuals in relation to the responsibilities of the seizing agency in giving notice of the seizure, and providing that an adversarial preliminary hearing be scheduled upon request. §§932.701-707, Fla. Stat. (2003). Section 932.701(2)(e) defines a 'person entitled to notice' as "any owner, entity, bona fide lienholder, or person in possession of

the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry." The plain language of that section is clear, unambiguous and conveys a clear and definite meaning as to who and what is a "person entitled to notice". There is no mention that a "person entitled to notice" has standing to contest probable cause at an adversarial preliminary hearing.

Section 932.701(2)(h), defines a 'claimant' as "any party who has proprietary interest in the property subject to forfeiture and has standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and titleholders." Again, the plain language of the statute is clear, unambiguous and conveys a clear and definite meaning as to who is a "claimant". Id. The statute makes it clear that only a "claimant" has standing to challenge a forfeiture.

Additionally, there is further support in the statute that a "person entitled to notice" is just that, entitled to notice, and not entitled to automatic standing to contest probable cause at the adversarial preliminary hearing. Section 932.703(2)(a) establishes the procedural scheme regarding the notice of seizure, stating that "personal property may be seized at the time of the violation or subsequent to the violation , if the **person entitled to notice** is notified at the time of the seizure or by certified mail, return receipt requested, that **there is a right** to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been or is being used in violation of the Florida

Contraband Forfeiture Act (emphasis added)." The wording of that section clearly states "there is a right" to an adversarial preliminary hearing. It does not state that the "person entitled to notice" **has** a right to an adversarial preliminary hearing. Had the legislature intended so, it most certainly could have and would have inserted the wording exactly at that point in the statute. It did not.

Petitioner cites to the case of Department of Law Enforcement v. Real Property, 588 So. 2d 957, 962 (Fla. 1991), for the proposition that standing at an adversarial preliminary hearing is automatically bestowed on a "person entitled to notice". The cited passage refers to the two major "components" involved in the process of forfeiture actions, and speaks first of the initial restraint on property, and secondly, on the forfeiture itself. Id. However, not mentioned is the last line of the section entitled *Initial Restraint on Property*, which states "Under no circumstances may the state continue its restraint on the property pending final disposition unless notice and an opportunity to be heard in an adversarial proceeding are provided to all potential **claimants**." Id. at 966 (emphasis added). Clearly this Court did not intend to allow any person other than a "claimant" to participate in an adversarial preliminary hearing.

The statute again supports a single standing requirement when it defines "forfeiture proceeding" as "a hearing or trial in which the court or jury determines whether the subject property shall be forfeited." §932.701(2)(g), Fla. Stat.

(2003). Black's Law Dictionary, defines a "proceeding" as follows; "In the general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly process in form of law, **including all possible steps in an action from its commencement to execution of judgment**." Joseph R. Nolan, Jacqueline Nolan-Haley, et al, Black's Law Dictionary, (6th ed. 1990)(emphasis added). An adversarial preliminary hearing is certainly a step in the action and requires the same standing requirement throughout.

Analogizing the standing requirement of the statute to the requirements of intervention is also instructive. Since a forfeiture action is *in rem*, a "claimant" is essentially an intervener entering the lawsuit. In Union Century Life Ins. Inc. V. Carlisle, 593 So.2d 505 (Fla. 1992), this Court discussed the interest required to intervene in an action. This Court held "First, the trial court must determine that the interest asserted is appropriate to support intervention. Once the trial court determines that the requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention. In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts and new issues, and any other relevant circumstance. Second, the court must determine the parameters of the intervention. As the drafters of Rule 1.230 noted: Under this rule, the court has full control over

intervention, including the extent thereof; although intervention under the rule is classified as of right, there must be an application made to the court, and the court in its sound discretion, considering the time of application as well as other factors, may deny the intervention or allow it upon conditions." Id. Clearly, a party intervening in a lawsuit, analogous to a claimant in a forfeiture action, must establish a requisite "standing" as a threshold issue in order for the court to allow the intervener's challenge.

As a rule of general statutory construction, provisions of an act are to be read as consistent with one another rather than in conflict, if there is any reasonable basis for consistency. In State v. Putnam County Dev. Auth., 249 So.2d 6 (Fla. 1971), this Court held, "It is our duty to read the several provisions of the Act as consistent with one another rather than in conflict, if there is any reasonable basis for consistency." Id. at 10. To read the statute as establishing two levels of standing would clearly violate this axiom and create a conflict within the statute that does not exist in its plain and unambiguous language.

Additionally, all statutes must be construed to avoid an unreasonable or absurd result. In City of Boca Raton v. Gidman,440 So.2d 1277, 1281 (Fla. 1983), this Court held, "No literal interpretation should be given that leads to an unreasonable or ridiculous conclusion or to a purpose not designated by the lawmakers." Id. at 1281. An illustrative example in demonstrating the unreasonableness of a two level

standing requirement would involve the subject of a money laundering investigation, who is carrying a briefcase with $100,000 in narcotics proceeds and is being followed by the police. Suspecting such, the subject discards the briefcase and flees from the police. A Good Samaritan sees the subject put down the briefcase, and retrieves it in the hopes of returning it to the subject. The police, who have observed all this activity but were unable to arrive before the Good Samaritan picked up the briefcase, approach the Good Samaritan and seize the briefcase. Under the Baruch reading, the Good Samaritan would be entitled to participate in an adversarial preliminary hearing. Such a result would clearly be unreasonable.

Moreover, allowing standing to any "person entitled to notice" would certainly lead to fraudulent claims. An unscrupulous non-owner passenger could easily claim money seized from another's vehicle, especially in a case like this where the property seized amounted to $489,880.00 in U.S. currency. What if both passengers in a vehicle claimed the same property? Fraudulent, conflicting, and inconsistent claims can only be avoided by necessitating the requirement that a claimant demonstrate "sworn proof of an ownership interest" in order to be permitted standing to participate in an adversarial preliminary hearing, and that if a conflict appears upon such presentation, that an evidentiary hearing be held.[3]

[3] The Third District Court of Appeal has just reinforced this rule in an *en banc* decision filed on December 15, 2004 (decision not final until time expires to file rehearing). In the case of Wayne Chuck and John Toney v. City of Homestead Police

Lastly, to bestow automatic standing on any "person entitled to notice" would effectively eviscerate the well-grounded axiom "to cast a wide net for persons entitled to notice". Baruch at 846. Seizing agencies could legitimately refrain from "casting a wide net" so as not to improvidently confer standing on multiple or improper parties. In the instant case, the seizing agency did in fact send notice to both the driver and the passenger in the vehicle in which the currency was discovered. In so doing, the seizing agency never contemplated that such notice would give both persons standing, but acting with due diligence was only attempting to cast a wide net in order that the true owner be notified of the seizure.

CONCLUSION

The plain and unambiguous language of the statute does not automatically give a "person entitled to notice" standing to participate in an adversarial preliminary hearing. In order to be permitted standing to participate in an adversarial preliminary hearing, a claimant must first demonstrate "sworn proof of an ownership interest". The trial court was correct in

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Department and Village of Pinecrest, 2004 WL 2885902, Case Nos. 3D02-233 and 3D01-2768, the Third Distrcict held that at an adversarial preliminary hearing, a "person entitled to notice", whose **sworn** and uncontradicted testimony establishes **ownership** of the subject currency and who has never disavowed such ownership, demonstrates a sufficient property interest to confer standing. The court also ruled that if a claim of ownership is contradicted at the adversarial preliminary hearing, the correct procedure would be to hold an evidentiary hearing. The Third District specifically reaffirmed its decision in Munoz, *supra*, and relied heavily on its previous reasoning in Gonzalez v. City of Homestead, 825 So.2d 1050 (Fla 3d DCA 2002).

refusing to confer standing on Petitioner to participate in the adversarial preliminary hearing, where Petitioner disclaimed knowledge and ownership of the seized currency on the scene, Petitioner was utilizing two identities, Petitioner was traveling with a passenger, and Petitioner did not present any "sworn proof of ownership" at the adversarial preliminary hearing", notwithstanding Petitioner's argument that he was a person in possession of the property and therefore entitled to automatic standing. The decision of the Third District should be affirmed and the certified question answered in the negative.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Paul Morris, Esquire, 9130 S. Dadeland Blvd., Suite 1528, Miami, Florida 33156, and Robert A. Rosenblatt, Esquire, 7695 S.W. 104th Street, Second Floor, Pinecrest, Florida 33156, by U.S. mail on December _____, 2004.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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