

CIVIL FORFEITURE PURSUANT TO THE FLORIDA CONTRABAND FORFEITURE ACT

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- A. INTRODUCTION
- 2. PROCEDURE
 - 1. General
 - 2. Adversarial Preliminary Hearing / Probable Cause
- 3. EVIDENCE
- D. ISSUES
 - 1. Standing
 - 2. Innocent Owner
 - 3. Search and Seizure
 - 4. Double Jeopardy
 - 5. Eighth Amendment / Excessive Fines

1. INTRODUCTION

The Florida Contraband Forfeiture Act, §§ 932.701-932.707 is the statutory authority for state asset forfeiture. Unlike the federal system, there is no provision for criminal forfeiture of real or personal property, and all forfeiture proceedings must be held in the civil division before a circuit court judge. Additionally, under the procedures articulated in § 932.704, the statute requires that Florida Rules of Civil Procedure apply unless otherwise specified in the Act.

It is Constitutionally required that the government: (1) send notice of the forfeiture action to all persons with an interest in the property advising the potential claimants that they have a right to request a preliminary adversarial hearing; and (2) prove by clear and convincing evidence that the property is subject to forfeiture.

Notwithstanding that Florida asset forfeiture proceedings are civil actions, asset forfeiture is sometimes considered to be “quasi-criminal” in nature because forfeiture cases are based upon proof of the relationship between the seized property and criminal activities. As a result, certain Constitutional principles apply to forfeiture actions, such as the Exclusionary Rule which may require the exclusion of evidence when there has been a Fourth Amendment violation. Significantly, Article I, § 12, of the Florida Constitution requires Florida courts to follow the United States Supreme Court’s interpretations of the Fourth Amendment, and to provide no greater protection than those interpretations.

The cases below, provide a general overview of how the courts have interpreted the Contraband Forfeiture Act, concentrating on major areas in which the most litigation has arisen. Federal cases have been included where they have been relied on by the Florida courts.

B. PROCEDURE

1. General

Florida Department of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991)

Forfeiture cases should proceed in the civil circuit court, applying civil rules of procedure: the government files a notice of seizure; an adversarial preliminary hearing for the purpose of finding probable cause is held or an ex parte finding of probable cause is entered by the court; At trial, the government must establishment a nexus between the seized property and criminal activity by clear and convincing evidence.

Constitutional requirements by the government include: (1) sending notice of the forfeiture action to all persons with an interest in the property advising the potential claimants that they have a right to request a preliminary adversarial hearing; and (2) proving by clear and convincing evidence that the property is subject to forfeiture.

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

Article X, § 4 of the Florida Constitution prohibits the forfeiture of real property which is homestead property. The definition of homestead property is to be liberally construed.

2. Adversarial Preliminary Hearing / Probable Cause

In Re: Forfeiture of 1983 Wellcraft Scarab, 487 So. 2d 306 (Fla. 4th DCA 1986)

The government may use hearsay testimony to establish probable cause at the adversarial preliminary hearing. However, hearsay can not serve as the basis for final forfeiture.

Lobo v. Metro Dade Police, 505 So. 2d 621 (Fla. 3d DCA 1987),

The seizing agency must establish probable cause to seize the property. Probable cause is the reasonable belief that the property was used or intended to be used in violation of the Contraband Forfeiture Act. "This belief must be more than a mere suspicion, but less than prima facie proof."

A nexus between the seized cash and illegal activity can be established by circumstantial evidence. The court should consider "the totality of the circumstances". Here the evidence showed the money was packaged in a manner unique to drug dealers, carried in a duffle bag, a narcotic detection dog alerted to the money, and the claimant could not establish details of a legitimate source of the \$142,795. The large amount of currency itself was a factor in determining probable cause.

Florida Department of Law Enforcement v. Lazzara, 580 So. 2d 855 (Fla. 2d CA 1991)

Probable cause for forfeiture is the civil standard and not the criminal standard, and the evidence to be considered is that which is available at the time of the hearing, not only that which was available the time the seizure occurred.

Indianatlantic Police Department v. Zimmerman, 677 So. 2d 1307 (Fla. 5th DCA.1996)

Fourth Amendment issues were properly raised in the forfeiture proceeding. If no probable cause exists to stop or search a vehicle, and the search leads to the discovery of contraband, then that seized evidence should not be considered, and cannot form the basis for the probable cause determination."

Florida Department of Highway Safety and Motor Vehicles v. Metiver, 684 So. 2d 204 (Fla. 4th DCA 1996)

Based upon a violation of the statutory requirement that the hearing be set within 10 days or as soon as practicable thereafter, the Department was ordered to return property where the probable cause hearing was not set until 15 days after the claimant's request for a hearing was received. The request itself was not presented to the court until 10 days after it was received. The "as soon as practicable" exception was added as a provision to give the courts some flexibility on scheduling these hearings, and not intended to allow the seizing agency to wait 10 days after the request to attempt to schedule it.

In Re: Forfeiture of One Hundred Seventy-One Thousand, Nine Hundred Dollars(\$171,900.00) in United.States.Currency, 711 So.2d 1269 (Fla. 3d DCA 1998)

In upholding the lower court's finding of probable cause, the question answered in the affirmative was whether there was sufficient probability to warrant a reasonable belief that currency was connected to criminal activity, not whether in fact the currency or property was in fact used in or proceeds of criminal activity.

Golon v. Jenne, 739 So. 2d 659 (Fla. 4th DCA 1999)

A claimant may assert an oral motion to suppress alleging Fourth Amendment violations at a probable cause hearing. Although a written motion and a notice to the government is not required, it is preferable, and the court should permit a continuance if the government requests it, when there is no notice of the motion.

Crepage v. City of Lauderhill, 774 So. 2d 61 (Fla. 4th DCA 2000)

Twenty-four hour notice of the adversarial preliminary hearing was insufficient notice to the Claimant.

*Chuck v. Forfeiture of \$380, 015.00, 27 Fla. L. Weekly D2140 (Fla. 3d DCA 2002)

The case states in pertinent part that:

Because the ten-day frame is integral to the Florida Constitution's provision of due process, any exception to the rule must logically be limited to extraordinary circumstances...The statute does not contemplate that judges' busy schedules will obviate the need to comply with the timing requirement of the statute...A forfeiture statute must be strictly construed.

The forfeiture proceeding was dismissed where the police department delivered the emergency request to the court the same day as it was received, and asked that the hearing be set within 10 day period. The court set the hearing 7 days after the 10 day period because the judge was involved in a complex jury trial.

* This case remains on appeal at this time.

City of Coral Springs v. Forfeiture of 1997 Ford Ranger Pick-up, 803 So.2d 847 (Fla. 4th DCA 2002)

Hearsay evidence is properly admitted to establish probable cause at an adversarial preliminary hearing, which includes the police affidavit. Probable cause for the forfeiture may be established by circumstantial evidence and the plaintiff/petitioner is not required to call witnesses to testify at the adversarial preliminary hearing.

3. EVIDENCE

Duckham v. State, 478 So. 2d 347 (Fla. 1985)

A motor vehicle used solely to transport the claimant to places where drug transactions took place is subject to forfeiture even though no drugs were in the motor vehicle and deals were not made inside of the motor vehicle.

Lobo v. Metro Dade Police, 505 So. 2d 621 (Fla. 3d DCA 1987)

A nexus between the seized cash and illegal activity can be established by circumstantial evidence. The court should consider "the totality of the circumstances". Here the evidence showed the money was packaged in a manner unique to drug dealers, carried in a duffle bag, a narcotic detection dog alerted to the money, and the claimant could not establish details of a legitimate source of the \$142,795, The large amount of currency itself was a factor in determining probable cause.

State v. Crenshaw, 548 So. 2d 233 (Fla. 1989); In re: Forfeiture of One 1972 Maroon Mercedes, 571 So. 2d 18 (Fla. 2d DCA 1990); In re: Forfeiture of One 1983 Nissan ZX Automobile, 599 So. 2d 257 (Fla. 4th DCA 1992)

Forfeiture was appropriate where the motor vehicle carried contraband. (Crenshaw - personal use felony amount of drugs, Mercedes- felony drugs, Nissan-items obtained through credit card fraud).

In Re: Forfeiture of One Hundred Seventy-One Thousand, Nine Hundred Dollars (\$171,900.00) in United States Currency, 711 So.2d 1269 (Fla. 3d DCA 1998)

In upholding the lower court's finding of probable cause, the question answered in the affirmative was whether there was sufficient probability to warrant a reasonable belief that currency was connected to criminal activity, not whether in fact the currency or property was in fact used in or proceeds of criminal activity.

In Re: Ten Thousand Seven Hundred Eighty-Eight Dollars in U.S. Currency, Florida Department of Law Enforcement v. Lazarra, 580 So. 2d 855 (Fla. 2d DCA 1991)

The seizing agency must establish a nexus between the money and the illegal activity, but it is not necessary to trace the money to a specific transaction. Although the large amount of cash was consistent with the legal operation of a lounge, the cash was found in a bag with what appeared to be promissory notes, one of which indicated payments with an annual interest rate in excess of 300 percent, which strongly suggested loan sharking activities.

4. ISSUES

1. Standing

In a case currently pending before the Third District Court of Appeal the issue is whether under the forfeiture statutes, a

person “in possession”, who is entitled to “notice”, is also automatically entitled to contest probable cause at an adversarial preliminary hearing, or whether this “person” must provide sworn proof of an ownership interest in order to acquire standing to contest probable cause. There is a conflict between the Fourth District in the Baruch case which holds that a person in “possession” is entitled to “notice” and therefore entitled to contest probable cause, and the Third District Munoz case which holds that possession alone is not determinative of an ownership interest sufficient to confer standing to contest probable cause. (Pending case- Venez. v. Miami-Dade Police Department, 3D03-1533)

Munoz v. City of Coral Gables, 695 So. 2d 1283 (Fla.3d DCA 1997)

A party does not have standing to challenge forfeiture unless it asserts ownership rights in a verified pleading.

City of Fort Lauderdale v. Baruch, 718 So. 2d 843 (Fla. 4th DCA 1998)

Persons challenging probable cause in forfeiture hearing have the burden of establishing standing. A person who did not rent safe deposit box, was not authorized on the signature card to access the box, and who made only a bare assertion of an interest in the contents of box, was not entitled to notice and had no standing to litigate the issue of probable cause.

Arango v. In Re Forfeiture of Four Hundred Seventy-seven Thousand Eight Hundred Ninety Dollars (\$477,890), 731 So.2d 847 (Fla. 3d DCA 1999)

A person who signed a sworn waiver of rights to property seized for forfeiture at the time of the seizure did not have standing to challenge probable cause in the forfeiture proceeding.

Piqueras v. State, 770 So. 2d 229 (Fla. 3d DCA 2000)

A person who signed a statement waiving any rights to currency seized for forfeiture at the time of the seizure, and swore she was not the owner, had no standing to challenge the forfeiture proceeding, notwithstanding a later claim that she was coerced into signing the statement.

Vasquez v. State, 777 So.2d 1200 (Fla. 3d DCA 2001)

Where there are conflicting affidavits filed (from the petitioner and the claimant) relating to the ownership interest in the seized property and they cannot be reconciled, the court should hold an evidentiary hearing on the issue of standing.

Gonzalez v. City of Homestead, 825 So.2d 1050 (Fla. 3d DCA 2002)

The inquiry on standing must be confined to facts relating to the issue of ownership interest, not the ultimate merits of the case.

Office of the State Attorney v. Jiminez, 845 So. 2d 914 (Fla. 3d DCA 2003)

In order to establish standing, a claimant must demonstrate ownership, or an ownership interest in the property, with a sworn statement setting forth the factual basis of the claim. The mere assertion of ownership without more is insufficient to establish standing. The ownership interest may be evidenced for standing purposes in a number of ways including actual possession, control, title or financial stake.

2. Innocent Owner

Lamar v. Wheels Unlimited, Inc., 513 So. 2d 135 (Fla. 1987)

A claimant attempting to establish ownership must have a certificate of title to a vehicle to have standing to challenge the forfeiture.

In re: Forfeiture of 1985 Ford Ranger Pickup Truck, 5998 So. 2d 1070 (Fla. 1992)

A seizing agency can forfeit titled property that is co-owned. However, only the interest of the co-owner who participated in or permitted the criminal activity related to the co-owned property is subject to forfeiture, the interest of an innocent co-owner is not.

City of Daytona Beach v. Bush, 742 So. 2d 335 (Fla. 5th DCA 1999)

It is not necessary to show that a vehicle's owner had actual knowledge that vehicle was used for illegal purpose. Constructive knowledge was sufficient.

In re Forfeiture of 1993 Lexus ES 300, 798 So. 2d 8 (Fla. 1st DCA 2002)

Probable cause was not established where there was no showing that the owner of the motor vehicle knew or should have

known after reasonable inquiry that the motor vehicle was being employed or was likely to be employed in criminal activity. A preliminary showing of such knowledge must be made by the government.

3. Search and Seizure

Perez v. State, 620 So. 2d 1256 (Fla. 1992)

Article I, § 12, of the Florida Constitution requires Florida courts to follow the United States Supreme Court's interpretations of the Fourth Amendment, and to provide no greater protection than those interpretations

Indianatlantic Police Department v. Zimmerman, 677 So. 2d 1307 (Fla. 5th DCA.1996)

Fourth Amendment issues were properly raised in the forfeiture proceeding. If no probable cause exists to stop or search a vehicle, and the search leads to the discovery of contraband, then that seized evidence should not be considered, and cannot form the basis for the probable cause determination."

In Re: Forfeiture of One Hundred Seventy-One Thousand, Nine Hundred Dollars (\$171,900.00) in United.States.Currency, 711 So.2d 1269 (Fla. 3d DCA 1998)

Customs personnel are authorized to conduct a random border stop and search of a passenger waiting to board a flight out of the country without probable cause or mere suspicion.

Golon v. Jenne, 739 So. 2d 659 (Fla. 4th DCA 1999)

A claimant may assert an oral motion to suppress alleging Fourth Amendment violations at a probable cause hearing. Although a written motion and a notice to the government is not required, it is preferable, and the court should permit a continuance if the government requests it, when there is no notice of the motion.

State v. White, 753 So. 2d 548 (Fla. 1999)

The warrantless seizure of a motor vehicle from a public parking lot did not invade the defendant's privacy, and exigent circumstances were not required where the police officers had probable cause to believe that the motor vehicle had been used in criminal activities.

4. Double Jeopardy

United States. v. Ursery, 518 U.S.267 (1996)

Civil forfeiture of property did not constitute punishment according to the double jeopardy clause where there was a criminal prosecution based on the same facts.

Town of Jupiter v. Garcia, 698 So. 2d 871 (Fla. 4th DCA 1997);State v. Llewellyn, 682 So. 2d 1242 (Fla. 5th DCA 1997); State v. Moretti, 681 So. 2d 754 (Fla. 2d DCA 1996)

Civil forfeiture statutes do not impose punishment for the purposes of double jeopardy.

State v. Sobieck, 701 So. 2d 96 (Fla. 5th DCA 1997)

The civil penalty of forfeiture is not precluded by double jeopardy, especially where property is used in commission of crime or is proceeds of the criminal activity. A civil penalty could be deemed to be punitive if it were disproportionate to crime, which it was not in this case. Citing federal cases, the court states that a civil penalty is rarely deemed to be punitive in nature.

5. Eighth Amendment / Excessive Fines

Wojnar v. City of Tarpon Springs, 684 So. 2d 197 (Fla. 2d DCA 1996)

Civil forfeiture of a motor vehicle in which marijuana was found violated the excessive fines clause under proportionality test where amount of marijuana just exceeded that which raised offense from misdemeanor to felony, and the value of motor vehicle was double the amount of the fine that could be imposed. Perhaps more important, the connection between the motor vehicle and the criminal offense was attenuated.

In Re: 1990 Chevrolet Blazer, 684 So. 2d 197 (Fla. 2d DCA 1996)

Applying the multi factor instrumentality test, including whether the use of the property was deliberate and planned or merely incidental, the time during which the property was illegally used, whether its illegal use was an isolated event, and whether the purpose of using the property was to carry out the offense, the court found that the motor vehicle's use to carry drugs and provide a private area to smoke marijuana was insufficient to meet the instrumentality test.

In applying the second prong of the excessive fines analysis, the determination of "proportionality," the court compared the possible criminal fine with the value of the motor vehicle and determined that the fine was excessive since the value of the motor vehicle was double the amount of the fine..

Town of Jupiter v. Lazaro Garcia, 698 So. 2d 871 (Fla. 4th DCA 1997)

The case was remanded to the trial court to apply all relevant factors and to make a factual determination of the applicability of these factors to the instrumentality and proportionality tests.

State v. Sobieck, 701 So. 2d 96 (Fla. 5th DCA 1997)

A civil penalty could be deemed to be punitive if it were disproportionate to crime, which it was not in this case. Citing federal cases, the court states that a civil penalty is rarely deemed to be so disproportionate as to be punitive in nature. United States v. Halper, 490 U.S. 435 (1989) is cited for this proposition where the civil penalty was not deemed to be disproportionate although it was 220 greater than the government's damages.