POLICE

Police: Forfeiture

Chuck v. City of Homestead,
888 So. 2d 736 (Fla. 3d Dist. App. 2004)

Under Florida's Contraband Forfeiture Act, a claimant to seized funds must only establish standing at a preliminary adversarial hearing stage. The merits of whether the claimant is actually entitled to the property seized should be decided at a subsequent jury trial.

FACTS AND PROCEDURAL HISTORY

The Third District Court of Appeal reviewed two cases in an attempt to clarify what must be established at a preliminary adversarial hearing under Florida's Contraband Forfeiture Act (the Act).

In the first case, Wayne Chuck was a passenger in a car that was stopped in Homestead for a traffic violation and subsequently searched. The detective conducting the search found a large sum of money in the trunk of the car. The driver of the car and Chuck both agreed that the money belonged to Chuck. Initially, Chuck explained to the arresting officer that the money was from construction work Chuck had done, and that he was taking the money home to his native Jamaica. However, when a detective asked Chuck if the money was proceeds from an illegal activity, Chuck responded that he was delivering the money to someone he did not know, and perhaps it did result from illegal activity.

At the preliminary adversarial hearing, Chuck submitted an affidavit swearing that he was the owner of the money, and the driver of the car confirmed that information. The trial court found that Chuck had failed to establish standing to claim ownership of the money, and that Chuck had also failed to sufficiently explain its source. Chuck appealed.

In the second case, a Village of Pinecrest police officer arrested Omar Jackson for violation of a driver's license restriction after Jackson was stopped for a traffic violation. The officer searched the vehicle incident to the arrest and found a large sum of money in a lockbox in the car.

At Jackson's hearing, John Toney submitted an affidavit swearing that he was Jackson's uncle and that he owned the money. Toney indicated that he had given the money to Jackson. The trial court found Toney's affidavit to be insufficient to establish standing and required Toney's testimony. Toney stated that he conducted real estate and automobile transactions in cash. He further testified that he had given his nephew the money three weeks before the money was seized to buy real estate on Toney's behalf. Toney testified that he did not know how the money came to be in the lockbox, nor could he remember any of the addresses of the real estate transactions he had conducted, or the names of the owners of the properties he had considered purchasing. Because his explanation was not credible, the court found that Toney did not have standing. Toney appealed. Toney's appeal was set for hearing en banc with the hearing en banc for Chuck's appeal.

ANALYSIS

The Third District first noted that "forfeitures are considered harsh exactions, and as a general rule they are not favored either in law or equity." *Chuck*, 888 So. 2d at 744. Therefore, courts will construe the forfeiture statutes strictly. Under the Act, a person with standing has a constitutional right to a jury trial to determine whether the money will be forfeited. The burden to establish standing is on the claimant. In addition, only a person entitled to notice may demand an adversarial preliminary hearing to establish standing. A person entitled to notice is defined as "any owner, entity, bona fide lienholder, or person in possession" of the property seized. Fla. Stat. § 932.701(2)(e) (2000). In short, a person entitled to notice is entitled to a hearing to prove standing. If that person establishes standing, he or she is entitled to a jury trial on the merits of ownership.

The Third District next explored what proof of ownership is necessary to establish standing. The court noted that proof of ownership depends on the circumstances of the case. A claimant must, at a minimum, provide sworn proof of a possessory or ownership interest. A mere assertion of ownership or interest is not enough, and if a claimant has previously denied ownership, simply reversing his position and swearing to ownership is not

enough. If a trial court is presented with conflicting evidence of ownership, the trial court should hold an evidentiary hearing.

The confusion arises when a claimant provides evidence of the circumstances of his ownership in order to establish standing. If a trial court does not find the claimant's explanation of ownership credible, it may find that standing does not exist. However, with this result, the court effectively rules on the merits of ownership and thus deprives the claimant of his constitutional right to a jury trial on the merits of that ownership. The Third District noted that trial courts must distinguish between decisions related to the ownership of property, which conveys standing, and the issue of whether the property is the proceeds of illegal activity, which relates to the merits of the claim. Furthermore, a hearing on standing must be limited to the facts related to ownership.

Looking at Toney's case, the Third District determined that Toney had never denied ownership of the money and had provided a sworn affidavit to that effect at the hearing. In addition, the State had not offered any evidence to contradict Toney's ownership or indicate anyone else owned the money. The court concluded that Toney had sufficiently established ownership to gain standing.

Turning to Chuck's case, the court noted contradictions in Chuck's claims of ownership. Chuck initially told law enforcement officers that the money was his, then later indicated he was delivering the money to someone else. The court remanded Chuck's case for an evidentiary hearing on the ownership issue and noted that the burden was on Chuck to show by a preponderance of the evidence that he owned the money. If Chuck met that burden, the trial court should consider whether there was probable cause to seize the money. If there was probable cause, the case should have proceeded to a jury trial to determine whether the money was the proceeds of illegal activity. If the trial court found no probable cause for seizure, the case should have been dismissed and the money returned to Chuck.

SIGNIFICANCE

When a claimant's property is seized, he or she is entitled to an adversarial preliminary hearing to establish standing. At that hearing, the trial court should not consider the merits of whether the property is the proceeds of illegal activity, but should only

review whether the claimant can establish ownership of the property. If the claimant can establish ownership by a preponderance of the evidence, the claimant is then entitled to a jury trial on the propriety of the seizure.

RESEARCH REFERENCES

- 14A Fla. Jur. 2d *Criminal Law* §§ 852, 855 (2005).
- 33 Fla. Jur. 2d *Juries* § 21 (2005).

Sandy Phillips

Police: Forfeiture

Cobb v. Langworthy,
909 So. 2d 416 (Fla. 5th Dist. App. 2005)

In forfeiture proceedings, if it is determined that the seizing agency acted in bad faith, the property owner may file a motion to recover attorney's fees and costs any time before the statute of limitations runs. The time limits established in Florida Rule of Civil Procedure 1.525 will not attach and res judicata will not bar recovery, even if the issue of costs and attorney's fees is not raised during the forfeiture proceedings.

FACTS AND PROCEDURAL HISTORY

The Lake County Sheriff brought a forfeiture action against Dennis Langworthy's truck after Langworthy was involved in a "road rage" incident. Langworthy was arrested and charged with aggravated assault for waving a gun at another driver, and the Sheriff seized his truck, which was a unique vehicle, valued at $33,000.

At the forfeiture proceeding, Langworthy asserted the proportionality defense, but did not request attorney's fees or costs. The trial court ordered the return of the truck, finding that it was not an instrumentality of the crime and that its value was not proportionate to the maximum fine of $10,000 that the offense carried, making the seizure violative of the Eighth Amendment. Upon the return of the truck, Langworthy found it damaged and significantly depreciated in value.

Five months after the truck was returned, Langworthy filed a motion under Section 932.704 of the Florida Statutes, seeking statutory damages to cover the depreciation of the truck during detention, the actual damage to the vehicle's paint, attorney's fees, and costs. The court awarded damages, attorney's fees, and costs. In ruling on Langworthy's motion, the trial court expressly found that the Sheriff's attempt to maintain custody of the truck throughout the trial was an act of bad faith, as it was clear on the facts that the Sheriff could not prevail. The Sheriff appealed.

ANALYSIS

The Sheriff challenged only the court's award of attorney fees and costs, arguing that Langworthy's recovery was barred by res judicata and Florida Rule of Civil Procedure 1.525. Rule 1.525 requires that, absent a showing of good cause for an extension, motions for attorney's fees and costs must be filed within thirty days of judgment.

Collateral, mandatory claims such as attorney's fees are not required to be included in the initial pleadings and as such, are not barred by res judicata. *Rosado v. Bieluch*, 827 So. 2d 1115, 1117 (Fla. 4th Dist. App. 2002). Furthermore, when the forfeiture of property is overturned and the seizing agency is found to have acted in bad faith, the court may order reasonable attorney's fees and costs be paid to the prevailing property owner. Fla. Stat. § 932.704(10) (2004). Section 932.704(10) includes no time limit for the claim of fees and costs. The court explained that because the statute authorized recovery of fees based on facts and circumstances that might not be ascertainable until some time during, or even after the conclusion of, the trial, it would be unreasonable to require that claims for attorney's fees and costs be pled prior to trial, or even within thirty days after the trial. The court also noted that the purpose of the statute was to protect individuals from unreasonable seizures, and this goal would be frustrated by the thirty-day limit in Rule 1.525.

The order of the trial court expressly found that the Sheriff acted in bad faith when he seized Langworthy's vehicle. Because bad faith was involved, the Fifth District affirmed the trial court's award of fees and costs.

SIGNIFICANCE

Cobb v. Langworthy establishes the outer time limit for filing a motion for attorney's fees and costs for certain forfeiture cases. If a forfeiture is pursued in bad faith, a Section 932.704(10) claim for recovery of attorney's fees and costs is subject only to the statute of limitations and will not be barred based on res judicata or a failure to comply with Florida Rule of Civil Procedure 1.525.

RESEARCH REFERENCE

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 17, § 49:47 (3d ed., Westlaw database updated Jan. 2006).

Natalie Krull
Nicole Guillet

Police: Forfeiture

In re Forfeiture of Jeep Cherokee v. City of St. Petersburg,
898 So. 2d 223 (Fla. 2d Dist. App. 2005)

The losing party in a civil proceeding or action shall be ordered to pay reasonable attorney's fees to the prevailing party, pursuant to Section 57.105(1)(a) of the Florida Statutes, if the court determines that the losing party knew or should have known prior to making a claim that the material facts required to support the claim could not be established. Moreover, the party claiming attorney's fees is not required to show that the losing party acted in bad faith with respect to the existence of such material facts.

FACTS AND PROCEDURAL HISTORY

A St. Petersburg police officer stopped and later arrested Kaleshia Allen, the appellant, for allegedly committing a felony, driving with a suspended license. The officer based the probable cause determination for Allen's arrest upon his computer records, which indicated that Allen had been convicted twice of misdemeanor driving with a suspended license. The felony-grade offense of driving with a suspended license is predicated on at least two prior misdemeanor convictions of the same offense. Fla. Stat. § 322.34(2) (2002). Following Allen's arrest, the officer seized her

Jeep Cherokee under Sections 932.701–932.707 of the Florida Statutes, known as the Florida Contraband Forfeiture Act (the Forfeiture Act). The Forfeiture Act permits the seizure and forfeiture of instrumentalities used in the commission of a felony.

Believing that the vehicle had been used in the commission of a felony, the City of St. Petersburg filed a forfeiture complaint. In response, Allen filed a motion for summary judgment, alleging that she had not committed a felony on which a forfeiture action could be based under the Forfeiture Act because she had been convicted of misdemeanor driving with a suspended license only once. Upon receiving documentation of this fact, the City voluntarily dismissed the forfeiture complaint against Allen.

Subsequently, Allen filed a motion to recover attorney's fees under Section 57.105(1) of the Florida Statutes and the Forfeiture Act. The trial court denied Allen's motion for attorney's fees under both provisions. In denying Allen's motion to recover attorney's fees, the trial court explained that because the seizing agency had not grossly abused its discretion, an award of attorney's fees was contingent upon showing that the seizing agency acted in bad faith. The trial court then determined that the City had not acted in bad faith and denied Allen's motion for the recovery of attorney's fees.

ANALYSIS

A claimant may recover attorney's fees if a court finds that the losing party knew or should have known there was an absence of material facts needed to support its claim before initiating legal action. Fla. Stat. § 57.105(1) (2002). Upon review, the Second District Court of Appeal reversed the trial court and awarded Allen reasonable attorney's fees. The court ruled that it is unnecessary for a claimant to show the losing party acted in bad faith under Section 57.105. Therefore, even though the arresting officer's computer records indicated that the vehicle was used in the commission of a felony, had the City performed a cursory examination of the Pinellas County traffic records prior to filing its forfeiture claim, the City would have discovered that Allen had been convicted of driving with a suspended license only once. For these reasons, the court held that the City should have known that its forfeiture claim was not supported by the material facts.

SIGNIFICANCE

This case is significant because it clarifies that it is not necessary to show that an opposing party acted in bad faith to support an award of reasonable attorney's fees to the opposing party under Section 57.105 of the Florida Statutes. Rather, practitioners are cautioned to be aware that failure to conduct a reasonable inquiry into the material facts prior to filing a claim may result in a court's granting reasonable attorney's fees if the material facts do not support the claim.

RESEARCH REFERENCE

- 14A Fla. Jur. 2d *Criminal Law* § 885 (Westlaw database updated 2006).

Philip McCormick

Police: Probable Cause

City of St. Petersburg v. Austrino,
898 So. 2d 955 (Fla. 2d Dist. App. 2005)

When asserting the affirmative defense of probable cause in a false arrest suit, a governmental entity must establish not only the existence of probable cause, but also show that the probable cause was the result of a reasonable investigation.

FACTS AND PROCEDURAL HISTORY

Donald Austrino was arrested by a St. Petersburg police officer for prescription fraud. He allegedly altered a prescription for Vicodin. Prior to Austrino's arrest, he had been treated by an emergency room physician who prescribed him the Vicodin and took the unusual, but not unheard of, step of authorizing one refill. The notation on the prescription form authorizing the refill was written in a different-colored ink than what was used for the original prescription. The physician did not note the refill in Austrino's medical records.

Walgreen's filled the prescription, which was reviewed by the night pharmacist, who routinely reviewed all the prescriptions filled during the day. The night pharmacist suspected that the prescription had been altered because the handwriting and ink

color authorizing the refill appeared different. Her concern was also based on the fact that Vicodin was a commonly abused narcotic. The pharmacist contacted the emergency room and was told by a nurse who reviewed Austrino's records, but had not worked his case or spoken to the treating physician, that a refill had not been authorized. The pharmacist reported the incident to a police officer with whom she had a working relationship. The pharmacist had reported numerous such offenses to this particular police officer in the past and had always given accurate and reliable information.

The officer relied on the pharmacist's information to establish probable cause. He did not contact the hospital or the emergency room physician before arresting Austrino. When the officer confronted Austrino with the information he was given, Austrino denied altering the prescription and requested that the officer contact the prescribing physician. Austrino testified that the officer indicated that he had already contacted the physician and the physician denied issuing the refill. The officer declined to contact the doctor and arrested Austrino for prescription fraud based on the information the officer had already obtained from the pharmacist.

Hours later, the police contacted the physician, and when the physician confirmed Austrino's story, the police officer released Austrino. Austrino then brought suit against the City of St. Petersburg for false arrest. The City moved for summary judgment, asserting that the existence of probable cause was a complete bar to the plaintiff's recovery. The motion was denied, and Austrino obtained a $45,000.00 judgment. The City appealed.

ANALYSIS

Probable cause is an affirmative defense to a false arrest case. *Bolanos v. Metro. Dade County*, 677 So. 2d 1005, 1005 (Fla. 3d Dist. App. 1996). Because probable cause is an imprecise science, police officers are given some room for error. *Lee v. Geiger*, 419 So. 2d 717, 719 (Fla. 1st Dist. App. 1982). Mistakes, however, may not be the result of incomplete or unreasonable investigations. *Brinegar v. U.S.*, 338 U.S. 160, 176 (1949). In the instant case, the Second District Court of Appeal determined that a prudent law enforcement officer would have contacted the hospital and the treating physician directly to confirm the information

received from the pharmacist prior to determining if probable cause existed. The court found that there were no exigencies that would have prevented the arresting officer from conducting a personal investigation of the facts presented by the pharmacist.

Although the testimony of a lone credible victim can sometimes supply a sufficient basis for probable cause, the Second District noted that the pharmacist was neither credible, nor a victim. *Woods v. City of Chi.*, 234 F.3d 979, 987 (7th Cir. 2000). The court stated that the information the pharmacist passed on to the arresting officer was primarily speculative on her part, and noted that "[b]ecause of the hearsay nature of the information provided by the pharmacist, it was incumbent upon the police officer to further investigate whether there was probable cause to believe a crime had been committed." *Austrino*, 898 So. 2d at 960. The court also noted that a phone call to the emergency room physician could have provided the officer with all of the information he needed.

The Second District affirmed the original judgment, holding that the officer did not conduct a reasonable investigation because the officer failed to contact the doctor or hospital personally. The court commented that if the officer had obtained the same information firsthand, probable cause may have existed, but his failure to verify the information was unreasonable.

SIGNIFICANCE

Austrino emphasizes the need for a reasonable investigation by an arresting officer in order to establish probable cause.

RESEARCH REFERENCES

- Fla. Stat. Ann. § 768.28 (West 2005).
- Michael Finch, *Florida Governmental Litigation: Integrating Claims under 42 U.S.C. § 1983 and Florida Statutes § 768.28*, 29 Stetson L. Rev. 531 (2000).
- 44 Am. Jur. Proof of Facts 2d *Lack of Probable Cause for Warrantless Arrest* § 229 (Supp. 2005).

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