
CIVIL FORFEITURE — DUE PROCESS PROTECTIONS AND ATTORNEY FEES

Filed by the Iowa Supreme Court

May 25, 2018

In the Matter of Property Seized from Jean Carlos Herrera and Fernando Rodriguez

No. 16-0440

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Factual and Procedural Background. Claimant Jean Carlos Herrera was the driver of a vehicle that was seized and claimant Fernando Rodriguez was the owner of a vehicle that was seized. On September 12, 2015, Herrera was pulled over for speeding and on suspicion of transporting narcotics and currency. The officer asked Herrera for consent to search the vehicle for narcotics and money; Herrera refused. The officer indicated that he had reasonable articulable suspicion to conduct a “K-9 free air sniff.”

Prior to the start of the search, Herrera and his passenger collectively claimed \$2,800 in cash. The search revealed no additional money or narcotics other than remnants of marijuana in a Pelican case. The vehicle was towed to a state maintenance garage. An additional search of the vehicle was performed but no narcotics or money was found. The officer informed Herrera that he was seizing the vehicle and the items found within the vehicle. Herrera and his passenger were allowed to leave with the \$2,800 they claimed and without any criminal charges being filed against them.

On September 18, 2015, Rodriguez’s attorney contacted the county attorney, and asserted an innocent owner defense and entitlement to attorney fees should Rodriguez prevail. The officer learned of this communication, researched the Kelly Blue Book value of the vehicle, and learned that the value of the vehicle was only \$2,132. On this basis, the officer applied for a search warrant for the vehicle to look for narcotics or money. In the search warrant, he stated that he missed three possible areas of concealment in the vehicle in the earlier search. The court issued a search warrant. In the subsequent search, the officer discovered \$44,990 in a false compartment inside the vehicle.

On October 1, 2015, the State filed an *in rem* forfeiture complaint seeking to forfeit the vehicle, items within the vehicle, and the money found in the vehicle on the basis that “the property was forfeitable as ‘drug proceeds’ or property ‘used in the transport of drugs.’” On November 5, 2015, Herrera and Rodriguez filed a combined answer. In their answer, they asserted that the vehicle stop, the subsequent detention and seizure of the vehicle, and the search of the vehicle violated the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Iowa Constitution (prohibitions against unreasonable searches and seizures). They also asserted that the Exclusionary Rule under the Fourth Amendment and the Iowa Constitution applied in forfeiture proceedings and argued that by virtue of the application of the Exclusionary Rule, further statements concerning the vehicle and its contents would constitute derivative evidence subject to the Exclusionary Rule. Herrera and Rodriguez argued that until there is a determination on the motion to suppress, they objected to providing further information as such information would be the product of the original search and seizure that they believe violated their constitutional rights.

In mid-November, Herrera filed a motion to suppress the evidence and return the property, arguing that the stop and the subsequent detention, search, and seizure violated the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Iowa Constitution. On December 10, the district court held a hearing on Herrera’s motion to suppress. The State argued that the hearing should not go forward because the claimant had not complied with the statutory requirements for filing an an-

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swer to the forfeiture proceeding, specifically, the claimant did not state “the nature and extent of the claimant’s interest in the property” or “the date, the identity of the transferor, and the circumstances of the claimant’s acquisition of the interest in the property.” Herrera and Rodriguez’s attorney argued that the answer should be deemed sufficient until the motion to suppress was decided. Rodriguez filed a claim for return of the vehicle on the basis that it did not meet the definition of property under Iowa Code section 809A.4 and that the vehicle was exempt from forfeiture as Rodriguez was an innocent owner under Iowa Code section 809.5(1)(a).

On February 9, 2016, the district court issued an order stating that Herrera was not entitled to a forfeiture hearing because he had not met the threshold procedural requirements of Iowa Code section 809A.13(4), and the property claimed to be owned by Herrera was forfeited to the State. The district court also denied Herrera’s motion to suppress on the basis that it was moot because he had not filed a proper answer and had no standing to challenge the forfeiture. Herrera appealed.

The February 9 order provided Rodriguez’s claim for return of his vehicle be scheduled for a hearing. Subsequently, Rodriguez filed a motion to suppress. On February 23, 2016, upon a finding that there was no objection by the State, the Court granted Rodriguez’s claim for return of the vehicle and canceled the hearing on the matter. Subsequent to this order, Rodriguez moved, pursuant to Iowa Code section 809A.12(7), for attorney fees and expenses, arguing that he was a prevailing party. Following arguments, the district court denied Rodriguez’s motion for attorney fees, concluding that Rodriguez was not a prevailing party within the meaning of the statute and stating that the attorney fees requested were attributable to the representation of Herrera because the attorney fee affidavit did not distinguish between the attorney’s work done for Herrera and the attorney’s work done for Rodriguez. Rodriguez appealed.

The Court granted Rodriguez’s motion to consolidate his appeal with Herrera’s appeal. The consolidated case was transferred to the Iowa Court of Appeals (Court of Appeals). The Court of Appeals held that Herrera did not file a proper answer; as such, the district court correctly did not address the constitutional challenge of the stop and search. The Court of Appeals also held that the district court “‘failed to determine the State’s application established facts sufficient to show probable cause for forfeiture’ as required” by Iowa Code section 809A.16(3). The Court of Appeals remanded the case to the district court to determine probable cause. Finally, the Court of Appeals affirmed the district court’s denial of Rodriguez’s motion for attorney fees. The Iowa Supreme Court (Court) granted further review.

Issues. The appeal presented three issues. First, whether invocation of the privilege against self-incrimination found in the Fifth Amendment of the United States Constitution excuses compliance with Iowa Code section 809A.13(4)(d) pleading requirements to establish ownership of cash seized by the State, including providing the source of the funds. Second, whether the district court must decide motions to suppress before adjudicating forfeiture claims. Third, whether a claimant is entitled to attorney fees as a prevailing party under Iowa Code chapter 809A when the State first files for a claim for forfeiture of property and engages in months of contested litigation but ultimately consents to the return of the property resulting in a lack of adjudication on the merits.

Analysis. The Court considered whether invoking the Fifth Amendment privilege against self-incrimination excuses compliance with the pleading requirements of Iowa Code section 809A.13(4)(d). In considering the issue, the Court distinguished this case from a prior case where the claimants did not claim a possessory interest. The Court held that where a claimant is claiming a possessory interest as in this case, the district court must rule on any motion to suppress before adjudicating forfeiture claims.

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If the claimant prevails on the motion to suppress, the suppressed evidence cannot be used as evidence of probable cause in the forfeiture proceeding.

Where a forfeiture statute contains disclosure requirements, the Court considered whether a claimant should be required to simply refrain from demanding the return of disputed property or risk incriminating oneself. The Court surveyed state cases and stated “it is not unconstitutionally coercive to force a defendant to make difficult choices.” However, the Court distinguished those cases from this case because in the other cases “the defendant had already pled guilty or been convicted of a crime,” whereas in this case, Herrera was neither charged with nor convicted of a crime. Additionally, the Court found the reasoning of the Arizona Supreme Court in *Wohlstrom v. Buchanan*, 884 P.2d 687, 689 (Arizona 1994) persuasive. The *Wohlstrom* Court held that the district court posed an impermissible choice to the petitioner: either exercise the right against self-incrimination and forfeit property or forgo the right against self-incrimination and keep one’s property. The *Wohlstrom* Court held that the petitioner who asserted a possessory interest in the property had standing to challenge the forfeiture without disclosing information the petitioner considered potentially incriminating. Like the *Wohlstrom* case, the Court held that Herrera should not be required to comply with the pleading requirements of the forfeiture statute because he claimed a possessory interest and invoked his Fifth Amendment privilege against self-incrimination.

Next, the Court decided whether Rodriguez was a prevailing party under Iowa Code section 809A.12(7). Rodriguez relied on the innocent owner defense codified in Iowa Code section 809A.5(1)(a). The Court stressed that Rodriguez received his desired relief without a favorable court adjudication after five months of contested litigation when the State stopped resisting the litigation. The Court reasoned that the State’s return of the vehicle after months of litigation was equivalent to a voluntary dismissal which has been held to be sufficient to support a fee award in other contexts. Specifically, the Court stated that a recent United States Supreme Court case held that it is not whether the party is the prevailing party on the merits, but rather whether the party has fulfilled its primary objective that matters with regard to whether a party is entitled to attorney fees. Applying that reasoning, the Court held Rodriguez had fulfilled his primary objective of getting his vehicle back after five months of contested litigation and, accordingly, was a prevailing party entitled to attorney fees.

Holdings. The Court issued a 6-0 opinion. The Court held that invocation of the Fifth Amendment privilege against self-incrimination excuses compliance with forfeiture threshold pleading requirements in Iowa Code section 809A.13(4)(d), including by providing the source of the cash. The Court held that the district court erred by failing to rule on the claimants’ motions to suppress evidence prior to adjudicating the forfeiture claims and erred by overruling objections to the pleading requirements based on the Fifth Amendment. Finally, the Court held Rodriguez was a prevailing party entitled to recover his reasonable attorney fees under Iowa Code chapter 809A when the State ultimately consented to the return of his property after five months of contested litigation without a complete adjudication on the merits.

Disposition. The Court vacated the Court of Appeals decision and reversed the district court judgment forfeiting Herrera’s personal property and denying the attorney fee award to Rodriguez. The Court remanded the case to the district court to rule on the motion to suppress, and then resumed the forfeiture proceeding consistent with the ruling. On remand, the Court indicated Rodriguez may submit a new, independent application for attorney fees, including appellate fees, detailing all attorney fees he incurred attempting to recover his vehicle.



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