

10-04: Cash Subject to the Florida Contraband Forfeiture Act

Case: Carbajal v. Forfeiture of: U.S. Currency \$75,781.00: Miami-Dade Police Department, 35 FLW D900b (Fla. 3d DCA 4/21/10)

Date: April 21, 2010

Subject: Failure to disclose and report the importation of \$75,781 into the country did not make the currency forfeitable as an instrumentality of a violation of the Financial Structuring statute; the cash in question did not qualify as "contraband" under the Florida Contraband Forfeiture Act

FACTS: The state seized a total of \$75,781 in U.S. currency from Carbajal as she entered the United States, and pursued forfeiture of the currency based on the theory that her failure to report the importation of currency in excess of \$10,000 constituted a violation of Section 896.104(3), Florida Statutes (Financial Structuring by Evading Reporting Requirements.) At the adversarial probable cause hearing, it was determined that the claimant had first reported that she possessed \$5,000. During a second inspection, she stated she had \$8,000. Thereafter, she wrote on the back of the form that she was carrying \$40,000. Upon further search, Customs discovered two additional envelopes containing over \$34,000, for a total of \$75,781. Carbajal stated that she acquired the money from her savings and the sale of property in Venezuela. She admitted that she failed to report the currency out of stupidity, and fear that she would get in trouble. The agency argued that the currency constituted an instrumentality of the commission of the felony offense of "failure to report" under 896.104(3). The trial court agreed, finding probable cause for the seizure. The claimant appealed.

RULING: The Third District Court of Appeal reversed the trial court, and held that insufficient evidence was presented which would qualify the currency as contraband under Florida law.

DISCUSSION: The appellate court stated that the record was devoid of any evidence that the subject funds were used or were attempted to be used as an instrumentality in the commission of any felony. The court explained that the currency did not qualify as an "instrumentality" because it did not facilitate the commission of the suspected crime; rather, it is merely the subject of the crime of "failure to report." Since there is no Florida statutory or case law which provides that undeclared money constitutes an "instrumentality" in violation of the Contraband Forfeiture Act, no probable cause existed to support the seizure. Referring to *United States v. Bajakajian*, 524 U.S. 321 (1998), the DCA noted "instrumentality" means property that is the actual means by which an offense is committed.

NOTE: The facts provided in this case do not indicate that Carbajal was suspected of committing any other criminal offense. However, this case reminds us that the mere possession of a large amount of currency, even if it were from a known criminal, does not automatically make the money forfeitable under Florida law. Investigators must establish a legal nexus establishing that the seized currency "was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony...or which is acquired by proceeds obtained as a result of a violation of the...Act" in order to proceed under Florida's very strict forfeiture statute.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.