# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SINGLE FAMILY DWELLING, et. al.,

Defendants,

and

ROBERT J. DARCY,

Claimant-Appellant.

UNPUBLISHED
September 6, 1996

No. 176817
LC No. 90-382227

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Before: Corrigan, P.J., and MacKenzie and P.J. Clulo,* JJ.

PER CURIAM.

Claimant appeals by leave granted the circuit court's judgment of forfeiture under MCL 333.7521(1)(c),(f); MSA 14.15(7521)(1)(c),(f). Claimant challenges the forfeiture of over $577,000 in cash, which was inside two suitcases that police seized at his arrest for drug trafficking.[1] We affirm.

On December 21, 1989, a police officer saw three people, including claimant Robert Darcy, crouching in a snow-covered field outside a motel at 1:00 a.m. Two suitcases were nearby on the ground. When claimant moved toward the squad car as ordered, he did not retrieve the suitcases. Another officer picked up the suitcases; claimant then attempted to flee, but was apprehended. Claimant denied that the suitcases were his property. The police later opened the suitcases and discovered over $577,000 in cash, jewelry, guns and other valuables.[2]

Authorities charged claimant with conspiracy to deliver and possession with intent to deliver more than 650 grams of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), MCL

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* Circuit judge, sitting on the Court of Appeals by assignment.

750.157a; MSA 28.354(1). Before his jury trial, claimant moved to suppress the evidence seized at his arrest. The trial court denied the motion to suppress, ruling that claimant lacked standing to challenge the search and seizure of the suitcases because he had abandoned them. In February 1993, the jury convicted claimant of the charged offense, and the trial court sentenced claimant to a term of life imprisonment.

In an earlier appeal to this Court, claimant asserted in part that the trial court committed error requiring reversal by refusing to suppress the seized evidence. In *People v Darcy*, unpublished opinion per curiam of the Court of Appeals, issued July 11, 1995 (Docket No. 162150), this Court upheld the trial court's denial of claimant's motion to suppress, stating:

> Here, as in *People v Sanders*, 193 Mich App 128, 129; 483 NW2d 439 (1992), the property was abandoned before the police did anything to restrain [claimant's] liberty. The police had not even observed [claimant], Jessmon, and Smith when the suitcases were thrown ten to fifteen feet away to avoid police detection. The trial court did not clearly err in finding that the suitcases were abandoned. [*People v*] *Armendarez*, [188 Mich App 61, 65; 468 NW2d 893 (1991)]. [Claimant] did not have standing to challenge the seizure of the suitcases. [*People v*] *Rasmussen*, [191 Mich App 721, 725; 478 NW2d 752 (1991)].

The forfeiture proceedings against claimant in circuit court, which are at issue in claimant's instant appeal, began in January, 1990. Claimant again challenged the seizure of the suitcases. In February, 1994, the circuit court ruled that the money and property were to be forfeited to the appropriate police agencies. The court, however, did not decide whether the police illegally seized the suitcases. Claimant appeals the forfeiture of the cash.

Claimant first argues that, because police illegally seized the suitcases, the circuit court should not have ordered forfeiture of the money. The doctrine of law of the case bars our consideration of this issue. The doctrine of law of the case provides that this Court may not differently decide issues that we have previously decided. *People v Fisher*, 449 Mich 441, 444-445; 537 NW2d 577 (1995). A prior ruling by this Court on a legal question binds this Court and all lower tribunals. *Hawkins v State Treasurer*, 200 Mich App 453, 455; 505 NW2d 10 (1993). Claimant acknowledges that he also raised the issue regarding seizure of the suitcases in his earlier criminal appeal. This Court upheld the trial court's ruling in claimant's criminal case. Accordingly, the doctrine of law of the case precludes our further review of whether the police illegally seized the suitcases.

Claimant next argues that the court-ordered forfeiture violated his right not to twice be placed in jeopardy under US Const, Am V; Const 1963, art 1, § 15. Claimant argues that he was placed in jeopardy when the jury convicted him of conspiracy to possess with intent to deliver over 650 grams of cocaine. He claims he again was placed in jeopardy for the same offense when the circuit court ordered the forfeiture of his money and property. We disagree.

In *US v Ursery*, ___ US ___; ___ S Ct ___; ___ L Ed 2d ___ (Docket Nos. 95-345, 95-346, issued June 24, 1996),[3] the Supreme Court resolved this issue.[4] The *Ursery* Court first stated that "[f]orfeitures serve a variety of purposes, but are designed primarily to confiscate property used in violation of the law, and to require disgorgement of the fruits of illegal conduct." *Id.* In analyzing the federal statute[5] that orders forfeiture of proceeds from illegal drug activity, the Court added that forfeiture ensures that persons do not profit from their illegal acts.

The Supreme Court then held that "[i]n rem civil forfeitures are neither 'punishment' nor criminal for purposes of the Double Jeopardy Clause." *Id.* Rather, civil forfeitures are remedial in nature and do not constitute punishment. The Court added that forfeitures are not exempt completely from the scope of the Double Jeopardy Clause. Rather, a forfeiture presumptively is exempt from double jeopardy when it is designated as a civil remedy and when it proceeds in rem, which is true in the instant case. Nonetheless, where the "clearest proof" shows that an in rem civil forfeiture is so punitive as to equate to a criminal proceeding, then it may be subject to double jeopardy. *Id.* On the facts of this case, proof does not exist that the forfeiture was so punitive as to equal a criminal proceeding. Moreover, claimant should not be permitted to profit from his narcotics trafficking.

Additionally, claimant argues that the forfeiture was disproportionate punishment. For this proposition, claimant relies on *People v Hellis*, 211 Mich App 634; 536 NW2d 587 (1995), which in turn relied on three cases from the Supreme Court.[6] The Supreme Court in *Ursery*, however, distinguished those three cases, stating that the balancing test, in which a court compares the harm to the Government against the size of the penalty imposed, does not apply to civil forfeiture. Accordingly, claimant's arguments under *Hellis* fail.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo

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[1] This forfeiture caused a dispute between Oakland and Macomb Counties that this Court addressed in *In re Forfeiture of Suitcases*, 193 Mich App 132; 403 NW2d 650 (1992), and our Supreme Court addressed in *In re Forfeiture of Property*, 441 Mich 77; 490 NW2d 322 (1991).

[2] Claimant challenges the forfeiture of the cash only.

[3] *Ursery* was consolidated with *US v $405,089.23 in United States Currency, et al*, 33 F3d 1210 (CA 9, 1995).

[4] This decision reverses the Sixth Circuit Court of Appeals' holding in *US v Ursery*, 59 F3d 568 (CA 6, 1995), upon which claimant relies on appeal.

[5] 21 USC § 881(a)(6).

[6] *Montana Dept of Revenue v Kurth Ranch*, 511 US 767; 114 S Ct 1937; 128 L Ed 2d 767 (1994), *Austin v US*, 509 US 602; 113 S Ct 2801, 125 L Ed 2d 488 (1993), *US v Halper*, 490 US 435; 109 S Ct 1892; 104 L Ed 2d 487 (1989).