

IN THE IOWA SUPREME COURT

NO. 16-0440
CIVIL

**IN THE MATTER OF PROPERTY SEIZED
FROM JEAN CARLOS HERRERA AND
FERNANDO RODRIGUEZ**

**JEAN CARLOS HERRERA AND
FERNANDO RODRIGUEZ**

CLAIMANTS-APPELLANTS.

APPEAL FROM THE IOWA DISTRICT COURT OF POTTAWATTAMIE
COUNTY
HONORABLE MARK J. EVELOFF AND HONORABLE GREG W.
STEENSLAND

APPELLANTS' REPLY BRIEF

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STATEMENT OF THE ISSUES

- I. CLAIMANT HERRERA HAD STANDING ON THE FACE OF THE PLEADINGS AND UNDER THE FACTS OF RECORD.

In re Aronson, 440 N.W. 2d 394 (Iowa 1989)

- II. OWNERSHIP.

In re Aronson, 440 N.W. 2d 394 (Iowa 1989)

ARGUMENT

I. CLAIMANT HERRERA HAD STANDING ON THE FACE OF THE PLEADINGS AND UNDER THE FACTS OF RECORD.

The State makes a number of assertions in their brief about what they assert is Herrera's alleged lack of "standing." Herrera asserted he possessed and owned the currency and had an interest in it, and the hearing record showed those facts to be true. No more is required to have "standing" to be heard in opposition to a forfeiture action under Chapter 809A. In fact, only an owner or interest holder may be heard in opposition to forfeiture. See Iowa Code 809A.11(1); 809A.13(3). Perhaps ironically, the requirement of 809A.13(3) that an owner must file a claim to be able to file an answer has been struck as unconstitutional because it did not allow owners and interest holders to be heard when forfeitures were initiated by verified in rem forfeiture complaints. In re Young, 780 N.W.2d 726, 729 (Iowa 2010). It is clear that an owner or interest holder is a person who has standing to contest forfeiture of their property because of their interest in the matter. It is absurd to suggest that a property owner cannot be heard to contest forfeiture of their own property.

The Iowa Supreme Court has said that standing means "a party must have sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." Citizens for Responsible Choices v. City of Shenandoah, 686 N.W.2d 470, 475 (Iowa 2004). Under Iowa law, this means "that a complaining

party must (1) have a specific personal or legal interest the litigation, and (2) be injuriously affected. Id. To satisfy the first element, courts require the litigant to allege some type of injury different from the population in general. Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp., 812 N.W.2d 600, 606 (Iowa 2012). To satisfy the second element, “the injury cannot be ‘conjectural’ or ‘hypothetical,’ but must be ‘concrete’ and ‘actual or imminent.’” Id.

The focus of standing is on the party, not on the claim. Alons v. Iowa Dist. Court for Woodbury County, at 865, (citing 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3531, at 339 (1984)). See also: Citizens for Responsible Choices v. City of Shenandoah, at 475 (“Whether litigants have standing does not depend on the legal merit of their claims, but rather whether, if the wrong alleged produces a legally cognizable injury, they are among those who have sustained it.”).

The federal test for standing is based in part upon constitutional strictures and prudential considerations while the Iowa rule on standing is self-imposed. Alons, at 869. Nevertheless, the federal test for standing is not dissimilar from the Iowa test. Id. Courts therefore consider the federal authority persuasive on the standing issue. Id.

At the initial stage, the requirements for a claimant to demonstrate constitutional standing are very forgiving at the federal level. Chuck v. City of

Homestead Police Dept., 888 So.2d 736, 752 (2004); United States v. Preston, 123 F.Supp.3d 117, 123 (2015). In general, any colorable claim on the defendant property is sufficient. Chuck v. City of Homestead Police Dept., 888 So.2d 736, 752 (2004). The burden to meet the requirements for Article III standing is not rigorous. United States v. \$244,320 in U.S. Currency, 295 F.Supp. 2d 1050, 1058 (S.D. Iowa 2003). See also: United States v. One Lincoln Navigator, 328 F.3d 1011, 1013 (8th Cir. 2003).

Article III requires that an individual suffer a cognizable injury in fact before he or she can have constitutional standing. United States v. \$148,840.00 in U.S. Currency, 521 F.3d 1268, 1276 (10th Cir. 2008). According to the 10th Circuit:

Article III standing in a forfeiture case turns on whether the claimant has a sufficient ownership interest in the property to create a case or controversy. U.S. v \$746,198 in U.S. Currency, more or less, 299 F. Supp. 2d 923, 927 (2004). See also: United States v. One Lincoln Navigator, 328 F.3d 1011, 1013 (8th Cir. 2003).

“At the outset, a claimant must be able to show a **facially colorable interest** in the proceedings...otherwise, no constitutional case or controversy exists capable of federal court adjudication.” Id.

An individual claiming standing need not prove the underlying merits of the claim. U.S. v \$746,198 in U.S. Currency, more or less, 299 F. Supp. 2d 923, 928 (S.D. Iowa 2004); United States v. \$244,320.00 in U.S. Currency, 295 F. Supp. 2d 1050, 1058 (S.D. Iowa 2003); United States v. Premises Known as 7725 Unity

Ave. N., Brooklyn Park, Minnesota, 294 F.3d 954, 957 (8th Cir. 2002); United States v. One Lincoln Navigator, 328 F.3d 1011, 1013 (8th Cir. 2003); United States v. \$515,060.42 in U.S. Currency, 152 F.3d 491 (6th Cir. 1998).

“...[T]he only question that the courts need assess regarding a claimant's standing is whether he or she has shown the required “**facially colorable interest**,” Torres, 25 F.3d at 1158, not whether he ultimately proves the existence of that interest.” United States v. \$557,933.89, More or Less, in U.S. Funds, 287 F.3d 66, 79 (2d Cir. 2002). “Federal cases acknowledge that courts should not confuse the constitutional standing inquiry with the merits determination that comes later.” Chuck v. City of Homestead Police Dept., 888 So.2d 736 (2004). See also: United States v. 5 S 351 Tuthill Rd., 233 F.3d 1017, 1023-24 (7th Cir. 2000).

“The ultimate issue in a forfeiture proceeding is to establish the source of the property or money. But this cannot be the issue to be decided at a hearing on standing or at the preliminary adversarial hearing stage.” Chuck v. City of Homestead Police Dept., 888 So.2d 736, 753 (2004).

To have standing, a claimant need not establish that a right of his has been infringed; that would conflate the issue of standing with the merits of the suit. United States v. \$304,980.00 in U.S. Currency, 732 F.3d 812, 818 (7th Cir. 2013). See also: Aurora Loan Servs., Inc. v. Craddieth, 442 F.3d 1018, 1024 (7th Cir.2006).

Rather, **the claimant need only a show a colorable interest in the property**, redressable, at least in part, by a return of the property. \$746,198 in U.S. Currency, at 927. United States v. \$244,320.00 in U.S. Currency, 295 F. Supp. 2d 1050, 1058 (S.D. Iowa 2003); United States v. \$304,980.00 in U.S. Currency, 732 F.3d 812, 818 (7th Cir. 2013).

II. OWNERSHIP.

In cases in which a person has asserted an ownership interest, federal courts have held that **an allegation of ownership and some evidence of ownership are together sufficient to establish standing to contest a civil forfeiture.** U.S. v. \$148,840 in U.S. Currency, 521 F.3d 1268, 1275-1276 (10th Cir. 2008). See also: United States v. U.S. Currency \$81,000, etc., 189 F.3d 28, 35 (1st Cir. 1999).

In United States v. \$148,840.00 in U.S. Currency, the Tenth Circuit wrote:

“The government cannot prevent every person unwilling to completely explain his relationship to property that he claims to *own*, and that is found in his possession and control, from merely *contesting* a forfeiture of that property in court. It may well be that forfeiture ultimately will prove appropriate, but we find it obvious that such a claimant risks injury within the meaning of Article III and thus may have his day in court. We thus hold that when a claimant has asserted an ownership interest in the res at issue and has provided some evidence tending to support the existence of that ownership interest, the claimant has standing to challenge the forfeiture.”

United States v. \$148,840.00 in U.S. Currency, 521 F.3d 1268, 1276 (10th Cir. 2008).

A colorable ownership interest may be evidenced in a number of ways, including showings of actual possession, control, title, and financial stake. U.S. v \$746,198 in U.S. Currency, more or less, 299 F. Supp. 2d 923, 927 (S.D. Iowa 2004). See also: One Lincoln Navigator 1998, 328 F.3d 1011, 1013 (8th Cir. 2003); United States v. \$38,570 U.S. Currency, 950 F.2d 1108, 1113 (5th Cir. 1992)(“We recognize that ownership can be evidenced in a variety of ways. Courts generally look to indicia of dominion and control such as possession, title, and financial stake.”); United States v. 1998 BMW “I” Convertible, 235 F.3d 397, 399 (8th Cir. 2000); United States v. \$244,320.00 in U.S. Currency, 295 F.Supp. 2d 1050, 1058-59 (S.D. Iowa 2003); U.S. v. \$148,840 in U.S. Currency, 521 F.3d 1268, 1275 (10th Cir. 2008).

However, “[t]he possession of bare legal title to the res may be insufficient to establish ownership.” United States v. \$244,320.00 in U.S. Currency, 295 F.Supp. 2d 1050, 1058-59 (S.D. Iowa 2003). See also: United States v. One 1945 Douglas C-54 (DC-4) Aircraft, 604 F.2d 27, 28-29 (8th Cir.1979) (“*Douglas I*”); One Lincoln Navigator, 328 F.3d at 1013 (finding claimant had Article III standing even though there was evidence that she had only bare legal title, concluding “that is sufficient to confer Article III standing to contest the forfeiture”).

“Broadly speaking, ownership may be defined as having a possessory interest in the res, *with its attendant characteristics of dominion and control.*”

United States v. \$244,320.00 in U.S. Currency, 295 F.Supp. 2d 1050, 1058-59 (S.D. Iowa 2003)(quoting United States v. One 1945 Douglas C-54 (DC-4) Aircraft, 604 F.2d 27, 28-29 (8th Cir.1979).

A claim of ownership of money in the claimant's possession at the time of the seizure is sufficient to confer Article III standing. United States v. \$304,980.00 in U.S. Currency, 732 F.3d 812, 818 (7th Cir. 2013)(a claim of ownership of money coupled with possession at time of seizure was sufficient to establish standing even though the claimant invoked the Fifth Amendment and refused to explain his ownership interest); United States v. \$148,840.00 in U.S. Currency, 521 F.3d 1268, 1273-78 (10th Cir.2008) (a claim of ownership coupled with possession at time of seizure was sufficient to establish standing even though the claimant invoked the Fifth Amendment and refused to explain his ownership interest); United States v. \$38,570 U.S. Currency, 950 F.2d 1108, 1113 (5th Cir. 1992)(claim of ownership of money coupled with facts that money was in possession at time of seizure, and claimant exercised dominion and/or control over it, was enough to confer standing); United States v. \$557,933.89, More or Less, in U.S. Funds, 287 F.3d 66, 79 (2d Cir. 2002) (a verified claim of ownership coupled with possession at time of seizure was sufficient to confer standing even though claimant invoked the Fifth Amendment and refused to explain his ownership interest); United States v. \$191,910.00 in U.S. Currency, 16 F.3d 1051 (9th Cir.

1994)(claimant found in possession of currency, and who asserted ownership interest had Article III standing to challenge forfeiture).

It must be remembered, however, that in a civil forfeiture action the *government* is the plaintiff, and it is the government's right to forfeiture that is the sole cause of action adjudicated. If the government fails to meet its burden of proof (formerly probable cause, now preponderance), the claimant need not produce any evidence at all—i.e., the claimant has no “case” that he must present or “elements” to which he bears the burden of proof. The function of standing in a forfeiture action is therefore truly threshold only—to ensure that the government is put to its proof only where someone with a legitimate interest contests the forfeiture.⁹ Thus, the only question that the courts need assess regarding a claimant's standing is whether he or she has shown the required “facially colorable interest,” Torres, 25 F.3d at 1158, not whether he ultimately proves the existence of that interest. United States v. \$557,933.89, More or Less, in U.S. Funds, 287 F.3d 66, 79 (2d Cir. 2002).

The State relies on In re Aronson, 440 N.W.2d 394 (Iowa 1989) for much of its standing argument. While Appellants believe they addressed Aronson in their opening brief, the State seems not to have replied to defendant’s argument. In Aronson, the claimants did not claim any property interest in the property to be forfeited and asserted that such a claim itself would be incriminating. Aronson at

397. The Court looked to caselaw from the United States Court of Appeals for the Ninth Circuit in determining that the claimants in Aronson did not have standing because they claimed no interest whatsoever in the property. The Aronson case, in reciting the Ninth Circuit caselaw, clearly holds that to have standing one needs to assert an ownership, possessory, or other property interest in the property.

Aronson at 397-98. Aronson is a case where the claimants made no claim of ownership, possession, or other interest in the property. It is not precedent of any kind for the notion that the claims here were insufficient; rather, Aronson fully supports the sufficiency of the claim here for purposes of standing.

In this case, the Claimants asserted an ownership and possessory interest in the currency and there was no genuine issue concerning the truthfulness of those assertions that was raised by the State. Once they had asserted enough to have standing, they had every right to be heard in resistance to forfeiture and on their claim that the evidence the State wished to use to meet its burden of proof was obtained through an unlawful search and seizure.

If the rule were otherwise, the State would essentially be able to convert a case wherein they have the burden to prove forfeiture after vaguely pleading grounds in conclusory fashion into a case where their burden was only to scare off claimants and evade review of their unlawful search and seizure interdiction activities perpetrated with great regularity against out of State motorists. The fact

is that the State has the burden to prove grounds for forfeiture through lawfully obtained and admissible evidence, and only if they fail, the property is to be returned to the claimant.¹ The State seems to think a claimant must submit to furnishing an interrogatory style answer that gets into subjects addressed to the State's burden of proof (under the disingenuous assertion that the claimant must do so to establish "standing")² while the state need only plead in conclusory fashion using no more than statutory language that the property is believed forfeitable.

¹ "On entry of judgment in favor of a person claiming an interest in the property that is subject to forfeiture proceedings under this chapter, the court shall enter an order that the property or interest in property shall be released or delivered promptly to that person..." Iowa Code 809A.16(7).

² The reality is that the State in Pottawattamie County has been using the interrogatory style claim provisions as a means to forfeit property with virtually no showing by scaring off claimants who do not wish to go through such an examination to receive the return of their own property. If the police burst into the Iowa Supreme Court building without a warrant and search a Judge's pockets and their chambers and seize all currency located without a warrant or probable cause, the judge from whom the currency was seized would have to somehow "prove" the currency was their property before being heard to complain, and would have to establish how and when the currency was acquired and be prepared to support that claim with documents such as bank statements, withdrawal slips, or tax returns under the theory of the State. Failure to support the claim accordingly would result in the Judge not "establishing" standing and the Judge could not be heard to complain about the circumstances of the seizure and the property would be summarily forfeited. That result cannot be allowed.

CONCLUSION

For the reasons argued in this and the initial brief, appellants request the trial court be reversed.

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CERTIFICATE OF FILING

The undersigned does hereby certify that she electronically filed Appellant's Reply Brief with the Clerk of the Iowa Supreme Court by using the EDMS filing system on the 2nd day of November, 2016.

CERTIFICATE OF SERVICE

On the 2nd day of November, 2016, the undersigned party served Appellant's Reply Brief on all other parties to this appeal by using the EDMS filing system.

Bridget Chambers

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 2,614 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in Times New Roman in 14 point font size.

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