IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. 65,551

LAWSON L. LAMAR, SHERIFF OF
ORANGE COUNTY, FLORIDA,

Appellant,

vs.

UNIVERSAL SUPPLY COMPANY,
INC.,

Appellee.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
OF THE STATE OF FLORIDA

REPLY BRIEF FOR THE APPELLANT

Peggy M. Morris
Attorney for the Appellant
Sheriff of Orange County
2400 West 33rd Street
Orlando, Florida 32809
(305)420-3062

TABLE OF CONTENTS

TABLE OF CITATIONS AND AUTHORITIES

ARGUMENT

The United States Supreme Court, in Calero-Toledo v. Pearson Yacht Leasing Co., 416 US 663 (1974), held that seizures of property pursuant to a forfeiture statute constitute extraordinary situations in which postponement of notice and hearing until after seizure does not violate a property owner's due process rights.

The Appellee has presented a very emotional argument to this Honorable Court as to what the Appellee "feels" should and should not be permitted during the course of a forfeiture proceeding and what should or should not be permitted within the realm of due process. However, the Appellee seems to have glossed over the established principles of law, as set forth by the United States Supreme Court above, that pre-notice and pre-hearing seizures for forfeiture are constitutionally permissible.

The Appellee does cite United States v. Eight Thousand Eight Hundred Fifty Dollars, _____ US _____, 76 L.Ed 2d 143, 103 S Ct 2005 (1983), to suggest that the United States Supreme Court agrees with Appellee that the owner should retain possession of the property while the government investigates the factual circumstances surrounding the seizure.

A thorough reading of United States v. Eight Thousand Eight Hundred Fifty Dollars, supra, however, reveals that the Court's comments, as quoted by the Appellee, are taken slightly out of

context. The issue before the Court in United States v. Eight Thousand Eight Hundred Fifty Dollars, supra, was whether an 18-month delay between seizure and filing the forfeiture action with the Court violated the claimant's due process right to a prompt hearing. Such determinations are typically decided on a case-by-case basis by reviewing the particular facts of a given case. See also Sandidge v. State ex rel. City of Oviedo, 424 So.2d 152 (Fla. 5th DCA 1982).

The United States Supreme Court did not recede from its opinion in Calero-Toledo v. Pearson Yacht Leasing Co., supra, as the Appellee has insinuated. In fact, the Court specifically cited to their Calero opinion stating, again, that seizure of property without a prior judicial determination, pursuant to a forfeiture statute, does not violate due process. United States v. Eight Thousand Eight Hundred Fifty Dollars, supra, at n. 12.

The Appellee idealistically suggests that a property owner should be entitled to retain possession of the property during the government's investigative/administrative processing of the forfeiture action. Such a proposition goes to the very core of why the United States Supreme Court found that seizures of property subject to forfeiture constitute extraordinary situations in which pre-notice and pre-hearing seizures do not deny due process. The Supreme Court recognized that the property can too easily be concealed or destroyed by the owner if advance warning of confiscation is given. Calero-Toledo v. Pearson Yacht Leasing Co., supra, at 679. The Court also noted

that such seizures are permissible since they are initiated by the government, rather than self-interested private parties. Id., at 679. Contrary to what the Appellee asks this Court to believe, the government is not entitled to dispose of property seized for forfeiture until a final judicial determination is made. See Florida Statute 932.704. No such safeguards exist against a private owner in possession of the property during the pendency of the forfeiture action.

Furthermore, as raised in Appellant's Initial Brief, a claimant is not entitled to a Writ of Replevin since, pursuant to Florida Statute 932.703(1), he can no longer prove that he is the owner and, consequently, the rightful possessor of the property as required by Florida Statute 78.055(2). The Appellee merely scoffed at this notion, accusing the Appellant of illogical reasoning. The Fifth District Court of Appeal, in its opinion below, seems to have disregarded the argument without discussion.

Yet, the Fifth District Court of Appeal, in a more recent opinion than the opinion below, held that a claimant lacked standing to challenge a forfeiture as the claimant was not an owner on the date of seizure. "Under the applicable statute, title to the plane immediately vested in the state upon its seizure" subject only to perfection in accordance with the Act. Lauderdale Investments, Inc. v. Miller, Case No. 83-1331 (Fla. 5th DCA, September 20, 1984) [9 FLW 2001]. The finding of the Fifth District Court of Appeal can logically be extended to the

question of whether a person whose property has been seized pursuant to the Florida Contraband Forfeiture Act can bring an action in replevin as the rightful possessor of the property.

The facts of the case sub judice present a perfect illustration of these related theories. The deputy sheriff responsible for seizing the subject vehicle had probable cause to believe that the vehicle was used to facilitate the commission of an aggravated assault. Consequently, pursuant to Florida Statute 932.703(1), the vehicle was seized and title vested in the state subject to perfection. At that point, pursuant to Lauderdale Investments, Inc. v. Miller, supra, any attempts of the owner to transfer his rights and interest in the vehicle would be unenforceable against the Sheriff. Only one with a perfected interest prior to seizure has standing to challenge the forfeiture since the state was vested with title upon seizure.

It follows, then, that the Appellee's standing to challenge the subsequent forfeiture action vested from its ownership interest at the moment prior to seizure. However, the replevin action was not initiated until after seizure and after title vested in an entity other than the Appellee. Therefore, by the Fifth District Court of Appeal's own opinion, the Appellee could not allege ownership for purposes of Florida Statute 78.055(2).

The Appellee questions the logic of how title can vest in the state when the government attorney has not yet made a reasoned decision to forfeit. The subject vehicle was titled in

the name of a corporation. Therefore, although the deputy properly seized the vehicle pursuant to Florida Statute 932.703(1), the reasoned decision to file the forfeiture action and the swiftness of the administrative process were dependent upon obtaining certified copies of the Articles of Incorporation and the vehicle title from Tallahassee. Furthermore, it was necessary to determine, through research, the effect a corporate owner would have on an otherwise valid seizure pursuant to Florida Statutes 932.701-704. The Appellee's accusation that the Sheriff needed time to justify the seizure is totally unfounded.

The Court, in United States v. One Motor Yacht Named Mercury, 527 F.2d 1112 (1st Cir. 1975) held that a reasonable time for investigation and processing before initiating the forfeiture action is constitutionally permissible. In view of the foregoing facts, seven days (from seizure to filing the replevin action) is not unreasonable. Based upon the foregoing and the arguments presented in Appellant's Initial Brief, this Honorable Court should reverse the lower Court's decision and uphold the constitutionality of Florida Statute 932.703(1).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 5th day of October, 1984, to Hal Roen, Esquire, 512 East Washington Street, Orlando, Florida 32801.

Peggy M. Morris

Peggy M. Morris,
Attorney for the Appellant
Sheriff of Orange County
2400 West 33rd Street
Orlando, Florida 32809
(305)420-3062