

IN THE SUPREME COURT OF FLORIDA

FILED

S'D J. WHITE

NOV 19 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

JEFF C. DUCKHAM, CLAIMANT
TO ONE (1) VOLKSWAGEN,
VIN/1773229365, FLORIDA
LICENSE "KTV-062",

Petitioner,

v.

Case No. 66,017
DCA Case No: AV-364

STATE OF FLORIDA,

Respondent.

On Petition For Discretionary Review
From the District Court of Appeal
of Florida, First District.

ANSWER BRIEF OF THE RESPONDENT
ON JURISDICTION

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PRELIMINARY STATEMENT

As a participant in a drug transaction, the buyer knows that, pursuant to Sections 932.701, et seq., Florida Statutes, any vehicle he uses that "facilitates" the consumation of the illegal transaction is subject to forfeiture to the State. However, will a forfeiture be permitted of a middleman's vehicle that he used to facilitate his role in the illegal transaction in bringing the buyer and seller together? The State contends that a forfeiture is authorized under law.

Because the law authorizes the forfeiture of a middleman's vehicle used to facilitate a drug transaction, the July 24, 1984 decision of the First District Court of Appeal in this case is not in express and direct conflict with any decision of this Court or any of the other district courts of appeal.

STATEMENT OF THE CASE AND FACTS

The Respondent adopts the Statement of the Case and Facts as set out in the Petitioner's Jurisdictional Brief.

ARGUMENT

THE DECISION OF THE FIRST DISTRICT COURT
OF APPEAL IN THIS CASE IS NOT IN EXPRESS
AND DIRECT CONFLICT WITH ANY DECISION OF
THE SUPREME COURT OF FLORIDA OR ANOTHER
DISTRICT COURT OF APPEAL.

A.

Standard for this Court to grant
jurisdiction.

The Petitioner seeks the discretionary jurisdiction of this Court pursuant to Rule 9.030, Florida Rules of Appellate Procedure. In particular he seeks to invoke Rule 9.030(a)(2)(A)(iv) so that this Court will review the First District Court of Appeals' decision of July 24, 1984 which the Petitioner claims "expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law". Rule 9.030.

Therefore, before this Court can review the decision of the First District Court of Appeal it must be shown that that courts' decision "expressly and directly" conflicts with a decision of another district court of appeal or this Court on the "same question of law." If there is no such conflict with any court on the same point of law, this Court is without jurisdiction to review the decision below.

B.

There is no express or direct conflict with another court on the same point of law.

The Respondent contends that the decision of the First District Court of Appeal is not in express and direct conflict with a decision of this Court or another district court of appeal on the same question of law. The decision below, in fact, parallels closely other decisions in this State.

The question of law here is that constitutes "facilitation" under Florida's vehicle forfeiture statutes, §932.701, et seq., Florida Statutes.

The Petitioner begins by stating that the First District Court of Appeal's decision is in conflict with this Court's decision in Griffis v. State, 356 So.2d 297 (Fla. 1978). This Court in Griffis said that before a vehicle could be forfeited under §943.41, et seq., Florida Statutes (1975) (the predecessor to §932.701, et seq.) the State was required to show "that the seized vehicle [was] involved in a drug trafficking operation". id. at 299. The act did not permit the forfeiture of all vehicles in which a drug was found. Furthermore, after reviewing the legislative history of the act, including its comparison with its Federal counterpart, 49 U.S.C. §§781-82, this Court found that the

express intent of the Legislature was that the Florida forfeiture statute be in uniformity with its federal counterpart.

id. at 299. Since Congress authorized forfeiture of a vehicle only if it was engaged in drug trafficking, the Florida statute was to be read in the same way. Therefore, if a vehicle was used as part of a "drug operation",¹ it was subject to forfeiture.

In reviewing the facts, the District Court of Appeal determined that the Petitioner used his car to "facilitate" the sale of the controlled substance. The court found that Petitioner used his car to drive to a restaurant to meet a drug buyer, discuss the consummation of the deal and then drove to the location where the drugs were actually purchased. The State proved that a drug transaction took place, that the Petitioner was part of that drug operation by being the middleman in the deal and that the car was used to assist Petitioner in meeting the buyer.

This decision is not in conflict with the Griffis decision. The Griffis Court wanted to ensure that only vehicles used in drug operations were subject to forfeiture. Here the car of the middleman was seized, a man who was part of a drug operation; in

¹ A drug operation or trafficking in drugs is the conscious intent to transport, sell, transfer, receive, possess or conceal a controlled substance for personal monetary or non-monetary gain.

fact, the man who brought the buyer and seller together. The District Court of Appeal confirmed that the vehicle seized was used in a drug operation and only then permitted its forfeiture. That court did not violate any rule or law set down by this Court.

Petitioner next claims that the decision below is also in conflict with the Fourth District Court of Appeal's decision in In Re Forfeiture of 1979 Toyota Corolla, 424 So.2d 922 (Fla. 4th DCA 1982). In that case the forfeited vehicle was driven to the site of a drug transaction by its owner but no drugs were transported in the car and no transaction took place in the vehicle. But the Fourth District Court of Appeal determined that "a drug deal was made; Mora was a key figure in the deal; the deal was to be consummated in a parking lot; [and] Mora drove the car in question to the parking lot to consummate the criminal transaction." id. at 924. Therefore, the court held

"[b]y using his car to transport himself to the site of a drug transaction, Mora used the car to facilitate the consummation of the transaction."

id. at 924. Furthermore, after repeating the words of this Court that the intent of the Florida law was to be uniform with the federal law, the court went on to cite two federal cases, United States v. One 1974 Cadillac Eldorado Sedan, etc., 548 F.2d 421 (2nd Cir. 1974) and United States v. One 1977 Cadillac, etc., 644 F.2d 500 (5th Cir. 1979), that held that

"transportation by automobile of a key figure to the site of a drug transaction constitutes sufficient nexus to justify the forfeiture of the car".
(citations omitted)

id. at 924.

Contrary to being in express and direct conflict with that case, the facts of this case reveal that the two cases are nearly identical. Like Mora, Petitioner:

- (a) was involved in a drug deal;
- (b) was, as the State always asserted, a key figure in the deal as the catalyst between the buyer and seller; and
- (c) Drove to the location where the negotiations for the drug deal were consummated and then drove to the site where the drugs were transferred.

Like the Fourth, the First District Court of Appeal found by using his car to transport himself to the site of the negotiations and then to the transfer site, Petitioner used his car to facilitate the drug deal. Transportation in the Volkswagen by the Petitioner to the transaction sites was a sufficient nexus to justify the forfeiture of the car. There is no conflict between these two decisions.

Finally, the Petitioner claims that the decision below is in conflict with the Second District Court of Appeals decision in City of Clearwater v. One 1980 Porsche 911 SC, 426 So.2d 1260 (Fla. 2nd DCA 1983). In fact, the Petitioner claims the decision below is most in conflict with this decision of the Second

District Court of Appeal. However, a close reading of that case will show there is also no conflict with this decision.

The Porsche case concerned the seizure by the City of Clearwater of an automobile subsequent to the arrest of its apparent owner for a drug transaction that, while negotiated from Florida, took place in North Dakota. The car was seized by the authorities because it was used to transport the drug seller from his Clearwater residence to the Tampa airport where the seller caught a flight that ended in North Dakota. The issue before the court of appeal was "whether the Porsche was in fact used to facilitate or aid and abet the sale of the marijuana." id. at 1261. In answering that question, the court made two findings. First they found that the use of the Porsche to drive the seller to the airport was "only remotely incidental to the sale of the marijuana". id. at 262. They also found that the "criminal activity was not proved to have dependance upon the use of the Porsche". id. at 1262. Because of these two findings, that court reached the result that the car was not used to aid or abet the sale of the drug and was distinguishable from the Toyota case. 424 So.2d 922.

The case here is distinguishable from the Porsche case as the vehicle did aid and abet the sale of the drugs. The vehicle was intimately involved in the sale and the middleman depended upon its use in his activity. As can be seen from the stipulated

facts, the Volkswagen was used to transport the Petitioner to the restaurant where he met and finalized the drug deal with the buyer. He then used the car to drive himself from the negotiation site to the place where the drugs were paid for and received. Far from being remote or incidental, the automobile was intimately involved in the illegal transaction. It was used to get the middleman from one location to another.²

The drug deal also had a dependence on the use of the vehicle because the entire transaction depended upon the Petitioner joining together the buyer and the seller. The Petitioner's use of the car made it easier for him to meet the buyer and then take the buyer to the seller. Without the car, the Petitioner would have had a more difficult time getting to the meeting location, consummating the deal and then taking the buyer to the seller.

It is the Respondent's position that both the First and Second District Courts of Appeal are in agreement on when a

² While one could argue that the car was mere transportation and the Petitioner could have walked to all the locations, that is begging the point. The intent of the legislation was to make drug deals more difficult to occur and to subject to forfeiture all vehicles which would directly make the sale and transfer easier to consummate. The use of the automobile here did make the sale easier to consummate. In addition, federal law authorizes the forfeiture of a vehicle used to merely transport the important persons to the site of the illegal transaction. As Florida law is to mirror federal law, Florida law would also authorize forfeiture.


vehicle can be forfeited. The differences in their decisions is not over the rule of law but over the separate and different set of facts each court had to apply to the same rule of law. One court found direct involvement, the other remote. But there is no direct and express conflict between the two courts on the same question of law. A difference in the results of the application of facts to law will not give jurisdiction to this Court. Rule 9.030, Florida Rules of Appellate Procedure.

CONCLUSION

Based upon reasons set out above, showing that there is no "direct and express conflict" between the decision of the First District Court of Appeal in this case below and any decision of this Court or any district court of appeal on the "same question of law", this Court has no jurisdiction to review the July 24, 1984 decision of the First District Court of Appeal under Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to LARRY G. TURNER, ROBERT S. GRISTI, and THOMAS W. KURRUS, ESQUIRES, Counsel for Petitioner, Post Office Box 508, Gainesville, Florida 32602, this 16th day of November, 1984.



ERIC J. TAYLOR