

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,080

FILED

SID J. WHITE

JUN 21 1988

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

GEORGE A. BRESCHER,
Sheriff of Broward County, Florida

Petitioner,

vs.

LLOYD ANTHONY GREEN,

Respondent.

PETITION FOR DISCRETIONARY REVIEW
PURSUANT TO RULE 9.030(a)(2)(A)(iv)

JURISDICTIONAL REPLY BRIEF OF THE RESPONDENT

LAW OFFICE OF KENNETH E. DELEGAL
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PREFACE

Petitioner, GEORGE A. BRESCHER, was the Sheriff of Broward County, Florida, during the trial court proceedings of this contraband forfeiture action initiated pursuant to the Florida Contraband Forfeiture Act.

Respondent, LLOYD ANTHONY GREEN, was the Claimant below.

The parties will be referred to herein as they stood in the trial court, i.e., Petitioner and Claimant.

Citations to the original Record on Appeal will be preceded by the letter "R".

STATEMENT OF THE CASE

The Respondent, LLOYD ANTHONY GREEN, for purposes of this instant brief adopts the Statement of the Case of the Petitioner.

STATEMENT OF THE FACTS

The Respondent, LLOYD ANTHONY GREEN, for purposes of the Jurisdictional Reply Brief, adopts the Statement of Facts of the Petitioner.

ISSUE

WHETHER THE OPINION OF THE FOURTH DISTRICT
COURT OF APPEAL IN THE PRESENT CASE CONFLICTS
WITH THAT OF THE FIRST DISTRICT COURT OF APPEAL
AND SMITH vs. HINDERY, 454 So.2d 663 (1st DCA 1984)
The key issue in this case is whether or not

Smith vs. Hindery, 454 So.2d 663 (1st DCA 1984), First District Court of Appeal case is in express as well as direct conflict with this instant cause. The Respondent would respectfully submit that although the Fourth District Court of Appeal in rendering it's decision in this instant case, stated as the Petitioner has pointed out that they are in conflict. There are important distinguishing characteristics in the two decisions.

In Smith vs. Hindery, 454 So.2d 663 (1st DCA 1984) apparently the court did not consider the authority of United States vs. One 1976 Mercedes Benz 280S, 618 F.2d 453 (7th Cir. 1980). It is impossible to determine what factors were considered in the Hindery decision inasmuch as the first district seems to come out of nowhere with a one paragraph conclusion that a claimant in a forfeiture action is not entitled to have a jury trial. As the court so astutely pointed out in this present cause, the question is not whether or not this specific act existed at that the, but whether forfeiture proceedings were known to common law.

It is the Respondent's contention that the court in this instant cause has distinguished this opinion from the reasoning

in Smith vs. Hindery. For the foregoing reasons, the Respondent requests this instant court to deny the Petitioner's Petition for Discretionary Review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail delivery to Bruce W. Jolly, Esquire, Shailer, Purdy & Jolly, Attorneys for Petitioner, at 1322 Southeast Third Avenue, Fort Lauderdale, Florida 33316, this 21st day of June, 1985.

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