OA 11-2-88

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, *

Appellant, *

-vs- * CASE NO. 72,181

RICHARD CRENSHAW, *

Appellee *

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Appellant was the prosecuting authority in the trial court and the Appellee in the First District Court of Appeal. Richard Crenshaw was the defendant in the trial court, Appellant in the District Court, and is the Appellee before this Court. The parties will be referred to as they appear before this Court. Any citations to the record will be made by use of the symbol "R", with additional descriptive reference as necessary. All emphasis is supplied by Appellant unless otherwise noted.

STATEMENT OF THE CASE AND FACTS

On October 30, 1985, acting upon the alert of a confidential informant that the driver of a 1984 Volvo was carrying cocaine, officers of the Pensacola Police Department stopped the Appellee, who was driving his

1984 Volvo, and subsequently arrested him for the unlawful possession of a vial of cocaine. This illegal substance, less than 1 gram, was taken from the Appellee's person.

Following Appellee's arrest, his Volvo was taken into custody. Appellant filed a timely petition for the forfeiture of the vehicle, to which the Appellee and his counsel objected at hearing before the Honorable M. C. Blanchard, Circuit Judge in and for Escambia County, Florida. At hearing, Appellee admitted possession of the cocaine, admitted a prior federal conviction and prison sentence for possession of illegal drugs with intent to distribute, and denied any intent to distribute the cocaine involved in the instant case.

By order dated March 13, 1986, Judge Blanchard ordered the Appellee's Volvo forfeited, from which Order the Appellee took appeal to the First District Court of Appeal. On January 19, 1988, the District Court reversed the forfeiture, remanding it to the trial court for further proceedings. Appellant's Motion for Rehearing/Rehearing En Banc was denied. Appellant has appealed to this Court, seeking reinstatement of Judge Blanchard's Order forfeiting Appellee's 1984 Volvo.

SUMMARY OF ARGUMENT

Throughout the past decade, Florida's legislative efforts to combat a growing crime problem in this state have included providing for the forfeiture of property associated with contraband. The intent of these provisions has been to hit the law violator where it hurts -- in the pocketbook.

During this period of time, whenever courts have restricted the application of forfeiture provisions, the legislature has responded by making them broader, tougher, and mandatory. The only discretion provided rests with the seizing law enforcement agency. Since these matters of public policy are inherently the province of the legislature, most courts have given recognition to the strict requirements of the "Florida Contraband Forfeiture Act," without concern for the harshness of the result in any particular case.

Included in the requirements of the Forfeiture Act are provisions mandating the forfeiture of any motor vehicle in, or upon, which a felony amount of controlled substance is located. There are also provisions which require forfeiture if any amount of controlled substance is transported or possessed in, upon, or by means of a motor vehicle.

In the case now before this Court, the Appellee possessed a felony controlled substance -- cocaine -- within his 1984 Volvo automobile and transported himself and the cocaine by means of that vehicle. The fact that the Appellee had less than a gram in his possession is no more relevant than is, according to the First District Court of Appeal, his prior conviction for possession of illegal drugs with intent to distribute.

Despite the clear meaning of the language in the Forfeiture Act requiring that Appellee's Volvo be forfeited under the facts of this case, the First District Court has ruled that the trial court erred in entering its order of forfeiture. In doing so, the First District has disregarded legislative history and intent, has misconstrued the meaning of the language of the statute, and has failed to recognize the direct application of the holdings of three sister District Courts in practically-identical cases. The result has been to set forth a new standard for forfeiture cases that is clearly outside of the statutory scheme. For these reasons, Appellant seeks reversal of the First District Court and reinstatement of the order of forfeiture by the trial court.

ARGUMENT

I

THE PROVISIONS OF SECTIONS 932.702 AND 932.703(1) OF THE "FLORIDA CONTRABAND FORFEITURE ACT" ARE CLEAR IN THEIR MEANING AND EFFECTUATE BOTH LEGISLATIVE INTENT AND PUBLIC POLICY

The provisions of Sections 932.701 - 932.704, known as the "Florida Contraband Forfeiture Act," clearly provide for the seizure and forfeiture of two types of material items -- (1) "contraband articles'' as defined in Section 932.701(2) and (2) contraband property, as set forth in Section 932.703(1). Since Appellee's cocaine is inarguably a "contraband article," and since Section 932.704 deals exclusively with the procedure of bringing a forfeiture action, the issues in the instant case are limited to an examination of the provisions of Sections 932.702 and 932.703 (1) and the status of the Appellee's 1984 Volvo as contraband property.

In Section 932.702, the Florida Legislature has declared the following acts unlawful with respect to Appellee's cocaine, or any other contraband article:

> (1) To transport...[it]...in upon, or by means of any... motor vehicle.
>
> (2) To conceal or possess [it] in or upon any...motor vehicle.
>
> (3) To use any...motor vehicle...to

facilitate the transportation... concealment...[or] possession... of [it].

(4) To conceal or possess [it].

Since the prohibitions against the transportation, concealment, or possession of cocaine ~~in a~~ motor vehicle are not specifically included in Chapter 893.13, Florida Statutes (1987), it is important to bear in mind that the conduct forbidden in Section 932.702 is supplemental ~~to~~ general criminal prohibitions against the possession, delivery, sale, distribution, importation, or trafficking of illegal drugs. It is clear that with Section 932.702, the legislature has not merely repeated what is generally contained in Chapter 893; it has, rather, specifically and clearly forbidden the acts of possession, concealment, or transportation of cocaine "in, upon or by means of" a motor vehicle, and the use a motor vehicle to facilitate any specified unlawful act.

From the stipulated facts in the instant case, there can be no doubt that the Appellee violated at least one, if not all, of subsections (1) through (4) in Section 932.702, listed above.

Subsection (1) makes it unlawful ~~to~~ transport cocaine in, upon, or by means of a motor vehicle. When this language was adopted in 1980 (Chapter 80-68, Laws

of Florida), "to transport" meant "to carry from one place to another; convey" The American Heritage Dictionary of the English Language, New College Edition, 1979. While the Appellee would prefer that this Court view that he was merely transporting himself in his Volvo, it is inescapable that he was also transporting, or carrying, cocaine from one place to another in, upon, or by means of the Volvo. By the clear language of subsection (1), given its ordinary meaning, this is unlawful conduct.

Likewise, under subsection (2), if "conceal" and "possess" are given their ordinary and legal meanings, the Appellee indisputably both possessed and concealed cocaine while driving "in or upon" his 1984 Volvo. From the language of both this subsection and subsection (1), the only statutory connection required between the cocaine and the vehicle is that the cocaine be carried, concealed, or possessed in the vehicle, upon the vehicle, or by means of the vehicle.

Subsection (3) does two things, not done in subsections (1) and (2), which have apparently contributed to a misconception by the First District Court of the overall statutory scheme of the Forfeiture Act. One, it expands the spectrum of unlawful acts from the mere transportation, concealment or possession of contraband to include additionally the "receipt...

purchase, sale, barter, exchange or giving away" of contraband articles. Two, it establishes that in any of these expanded instances a motor vehicle must be used to facilitate these unlawful acts, regardless of whether any prohibited act occurs in, upon or by means of a motor vehicle. Clearly, the "use...to facilitate" standard established in Subsection (3), by its application to those cases in which a vehicle need not directly transport or provide a location for concealment or possession of contraband, does not serve to enhance the "location" or "means" requirements of subsections (1) and (2).

Under the facts of the instant case, Appellant suggests that the use of the Volvo by Appellee did in fact enhance or "facilitate" his ability to carry his cocaine from one place to another -- as well as to possess it, conceal it, or even receive it or purchase it. However, since there is no "use to facilitate" requirement in Subsections (1) or (2), Appellant does not view the application of Subsection (3) as essential to a resolution of the instant case in his favor, nor in any case in which felonious contraband is carried, concealed or possessed within a motor vehicle.

While relying primarily upon the statutory "in, upon, or by means of" relationship in Subsections (1) and (2), Appellant views the provisions of Subsection

(4) as important to the ultimate resolution of this case in his favor. In 1980, following this Court's decision in Griffis v. State, 356 So.2d 297 (1978), the Florida Legislature specifically added Subsection (4) to the provisions of Section 932.702, providing that it is unlawful simply:

> (4) To conceal or possess any contraband article.

In terms of viewing the present status of legislative intent concerning the Florida Contraband Forfeiture Act, it is essential to recognize that this Court decided Griffis based upon its view of the legislative intent in its predecessor statute in 1978. This Court stated:

> Although a literal reading of the language contained in Section 943.42, Florida Statutes (1975), would support the trial court's finding that the statute does not require that a vehicle be used in an illegal drug "operation," this literal reading must give way to the legislative intent in enacting the statute which is plainly to the contrary. To effect the legislative intent, we must construe Sections 943.41, et seq., Florida Statutes, as requiring a showing by the State that the seized vehicle is involved in a drug trafficking operation before forfeiture can be ordered. Supra at 299

This Court reasoned that the introductory language in Chapter 943 bound that forfeiture statute

to federal forfeiture provisions, which, when adopted by Congress in their 1950 amendment of 49 USC Section 781, and 782 authorized forfeiture "only when the vehicle was engaged in drug trafficking...not to permit forfeiture for mere possession of a controlled substance..." Griffis, supra @ 300. Although this Court's view was accurate in March of 1978, when Griffis was decided, legislative intent and public policy in Florida, and in the United States, have changed drastically in the past decade with regard to our war against drugs and drug violators.

In 1980, following Griffis, the Legislature removed the provisions at issue in Griffis from Chapter 943, thereby severing contraband forfeiture provisions from the introductory language in that statute, which called for uniformity with federal forfeiture law. The legislative intent to achieve "uniformity" had been the crux of this Court's decision in Griffis. At the same time, the Legislature added Subsection (4) to Section 932.702, making it unlawful "to conceal or possess any contraband article."

This action has been recognized by various courts in Florida as legislatively abrogating this Court's decision in Griffis. See City of Clearwater v. Malick, 429 So.2d 718 (2 DCA 1983): Naples Police Department v. Small, 426 So.2d 72 (2 DCA 1983): State

v. Peters, 401 So.2d 838 (2 DCA 1981); Department of Highway Safety and M.V. v. Pollack, 462 So.2d 1199 (3 DCA 1985); In re Forfeiture of a 1977 Datsun 280 Z Automobile, 448 So.2d 78 (4 DCA 1984), review denied 453 So.2d 78 (Fla. 1984).

Each of those decisions found essentially that in 1980 the Florida Legislature provided for the forfeiture of a motor vehicle based upon a felony possession of contraband within it and that

> While the penalty is admittedly harsh, the legislature has apparently decided that the forfeiture of vehicles for mere felony possession will be helpful in the fight against the trafficking, transportation, sale, use, and possession of drugs. It is within their province to have so decided. Department of Highway Safety & M.V., supra @ 1201

This evolving view of legislative intent was soon accepted by this Court in Duckham v. State, 478 So.2d 347 (Fla. 1985).

Although the Duckham case was a "facilitation" case, under subsection (3) of Section 932.702, while the instant case is primarily a "transportation" or "possession" case, under subsections (1) and (2), that difference should be no difference at all, since, as this Court noted in Duckham.

> It appears ...that the legislature intended a more literal reading of the [forfeiture] statute [than was given in Griffis].

> After Griffis, the legislature amended Sections 932.701 - 704 heavily. Chapter 80-68 Laws of Fla. Section 1 of Chapter 80-68, among other things amended the acts title...Section 2 added paragraph (4) to Section 932.702, making it unlawful to conceal or possess any contraband article." (Emphasis Supplied.) Sections 3 and 4 of Chapter 80-68 set out extensive amendments to Sections 932.703 and 932.704. Due to these amendments, Griffis is now of dubious value, and we recede from Griffis to the extent of conflict with this opinion and with Sections 932.701 - .704. Supra @ 349

Since the holding in Griffis was that forfeiture was limited to trafficking or significant drug operations, the extent of its conflict with Sections 932.701 - .704 is extreme. Thus, it appears, that this Court's recession from Griffis is effectively a complete one. Appellant notes that the literal reading of the statute suggested by this Court in Duckham, includes a literal reading of the provisions in Section 932.702 (1) (2) and (4) which clearly prohibit the acts of Appellee in the instant case.

According to the provisions of Section 932.703 (1), if a motor vehicle is involved in any of the specified unlawful acts described in Section 932.702, it shall be forfeited upon any one of the three following factual situations:

1. If the vehicle was "used" to violate any of the provisions

of Section 932.702.

2. If any of the unlawful acts in Section 932.702 occurs "in, upon, or by means of" the vehicle, or

3. If a felonious possession of a contraband article is located "in or on" the vehicle.

This section further provides that if at the time of seizing a contraband article is located "in or on" a motor vehicle, there is a rebuttable factual presumption that it was being used, or was intended to be used, to facilitate the unlawful acts described in subsection (3) of Section 932.702. However, as previously noted, Appellant relies primarily upon subsections (1) and (2), as well as the legislative intent expressed by the adoption of subsection (4) in 1985. Because Appellant does not necessarily depend upon the "use" of the Appellee's 1984 Volvo to facilitate any of the unlawful acts described in Section 932.702 (3) in order to require forfeiture in the instant case, Appellant does not substantially rely upon the statutory presumption, and therefore declines what would be a purely academic discussion of that presumption herein.

Appellant maintains that Appellee's Volvo must be forfeited by either of the remaining two methods provided for in Section 932.703 (1). They are:

1. That the unlawful acts described in Subsections (1), (2), and (4) of Section 932.702 occurred "in, upon or by means of" Appellee's 1984 Volvo, and

2. The Appellee was in felonious possession of a contraband article which had been located "in or on" his Volvo.

Both of these bases for forfeiture, neither of which requires any "use" or "facilitation" from the vehicle, are set forth clearly in the language of Section 932.703 (1), and do not require statutory construction, for they leave no doubt as to their meaning and intent. As this Court has previously noted,

> ...rules of statutory construction "are useful only in case of doubt and should never be used to create doubt, only to remove it." State v. Egan 287 So.2d 1, 4 (Fla. 1973). The courts never resort to rules of construction where the legislative intent is plain and ambiguous. (citations omitted). Carawan v. State, 525 So.2d 161 (Fla. 1987).

In view of the plain meaning of the language in the Florida Contraband Forfeiture Act, and in view of its legislative and judicial history, who other than a Rip Van Winkle could submit that the legislature has not intended, and does not continue to intend, that the Act be used as a weapon in an ever-expanding battle against both illegal drug operations and drug possession and abuse. It is now, as it has become

during the past decade, a sound public policy to hit both the dealer and the user in the pocketbook, where it hurts, as part of an overall effort to bring the drug problem in this State under control. Judicial recognition should continue to be given to this legislative effort.

11.

THE PROVISIONS OF SECTION 932.703 (1), PERTAINING TO THE FORFEITURE OF CONTRABAND, ARE MANDATORY

An issue in the instant case is whether the provisions for the forfeiture of contraband in Section 932.703 (1) are mandatory or discretionary. This question was not before this Court in Duckham v. State, supra, but was considered by the First District Court of Appeal in Smith v. Hindery, 454 So.2d 663 (1 DCA 1984).

In its July, 1984, opinion, the District Court held that the Forfeiture Act was discretionary, found that the trial court below had abused its discretion and remanded the matter for entry of an order denying forfeiture. As in the instant case, the basis for forfeiture was the seizure of contraband (stolen cattle) from the pickup truck in which it was possessed and transported.

Within the year following this opinion, the 1985 Florida Legislature responded by amending Section 932.703 (1) to read, in pertinent part:

> any...motor vehicle...in, upon, or by means of which, any violation of [Section 932.7021 has taken... place...may be seized and shall be forfeited subject to the provision of this act.

It was this underlined language that was added to the statute, following the First District Court's holding that courts had discretion in Forfeiture Act proceedings.

In spite of this specific addition of clear mandatory language to Section 932.703 (1), the First District Court has continued with its perception that this forfeiture provision is discretionary. In an opinion filed March 1, 1988, the District Court distinguishes the forfeiture provisions in Section 932.703 (1) from those in Section 372.9901, F.S. (1985) as follows:

> The forfeiture provisions under the Florida Contraband Forfeiture Act state that any property involved in a violation of the act, 'may be seized and shall be forfeited subject to the provisions of this act.' S. 932.703 (1), Fla. Stat. (1985). In Section 932.704 (1), the verbs 'may' and 'shall' are juxtaposed in a similar manner. [Emphasis supplied by Court]

> By contrast, the Chapter 372 wildlife forfeiture provisions do not yield to a similar interpretation. There is no juxtaposition of the verbs 'shall' and 'may.' In fact, 'may' does not appear in the wildlife forfeiture provisions. Florida Game and Fresh Water Fish Commission v. Georae Stet Blanchett and James Ray Dumas, Sr., 13 FLW 546 @ 548.

Appellant cannot find the sense, common or legal, in this labored distinction by the First District Court. Surely, if the legislature chooses to make a provision for seizure of contraband permissive and chooses to make the provision for forfeiture of that contraband mandatory, once it is seized, it may do so. It certainly seems to make no real difference whether or not those provisions are in the same subsection. Nor does it appear that the proximity of the words "may" and "shall," or any similar words used to denote the permissive and the mandatory, should have any effect whatsoever upon their respective meanings, which are clear.

This Court itself has recognized that it is a fundamental principle of statutory construction that the ordinary meaning of language is preferred, Neal v. Bryant 149 So.2d 529 (Fla. 1962); that the use of "shall" in a statute carries with it the presumption that it is used in the imperative rather than in the directory sense, Drury v. Harding, 461 So.2d 104, 107

(Fla. 1984); and that rules of construction should only be used to resolve doubt, not to create it, State v. Egan 287 So.2d 1, 4 (Fla. 1973).

The reasons for the statutory use of the words "may" and "shall" in Section 932.703 (1) are obvious to Appellant. The Florida Legislature added "shall be forfeited..." in 1985 in response to the First District Court's 1984 ruling in Smith, that the provisions were discretionary. At that same time they changed the language from "shall be seized" to "may be seized" to provide the seizing agency with the discretion to decide what contraband property is worth seizing.

As with Appellee's 1984 Volvo, there are many occasions when contraband vehicles are subject to recorded liens of innocent third parties. In cases where the lien is close to or in excess of the value of the contraband property, the agency is able to decide to forego seizure. This ability under the statue makes good sense in the use of time and resources of law enforcement agencies and State Attorney Offices throughout the State of Florida. If it were not sound public policy, the legislative could change this section back to read "shall be seized."

In considering the legislative amendments to the language of Section 932.703 (1) in 1985, and in light of fundamental rules of statutory construction,

the provisions for forfeiture of contraband articles and contraband property are clearly mandatory. The presence of a discretionary provision for the seizure of such items is simply a matter of public policy and economical use of resources. In its holdings in Smith and in the instant case, the First District Court is creating a doubt that does not arise naturally from the language of the Forfeiture Act.

III.

IN ITS OPINION BELOW IN THE INSTANT CASE, THE FIKST DISTRICT COURT OF APPEAL HAS AMENDED THE LEGISLATIVE SCHEME SET FORTH IN THE "FLORIDA CONTRABAND FORFEITURE ACT," AND HAS CREATED A NEW STANDARD DIRECTLY IN CONFLICT WITH THE HOLDINGS IN OTHER DISTRICT COURTS OF APPEAL

As indicated, the legislative scheme in Section 932.703(1) provides three types of situations mandating forfeiture of a motor vehicle. Appellant relies upon two of the three -- (1) involving felony possession of contraband in or on the vehicle and (2) involving the transportation, concealment, or possession in, upon, or by means of the vehicle. Appellant does not necessarily rely upon the third type of forfeiture situation whereby the vehicle is used to facilitate some prohibited activity in Section 932.702.

A number of cases have been decided upon a "use" or "facilitation" basis for forfeiture of a motor vehicle. These opinions employ words and phrases in their rationale, such as "nexus," "instrumentality," and "aiding and abetting," as well as "use" and "facilitation." Duckham v. State 478 So.2d 347 (Fla. 1985); State v. One (1) 1977 Volkswagen, 455 So.2d 434 (1 DCA 1984); State v. Baglioni 453 So.2d 144 (1 DCA 1984); Martinez v. Heimrick 521 So.2d 167 (2 DCA 1988); Smith v. Caggiano 496 So.2d 853 (2 DCA 1986) City of Clearwater v. One 1980 Porsche 911 sc 426 So.2d 1260 (2 DCA 1983); State v. Peters 401 So.2d 838 (2 DCA 1981); and In re Forfeiture of One 1983 Lincoln, 497 So.2d 1254 (4 DCA 1986). Since Appellant does not need to rely upon this type of basis for forfeiture in the instant case, an analysis of these cases is unnecessary herein.

However, in addition to the plain meaning and intent of the Forfeiture Act itself, Appellant has found considerable judicial authority supporting his position in the following four cases, from the Second, Third, and Fourth District Courts of Appeal.

In City of Clearwater v. Malick, 429 So.2d 718 (2 DCA 1983), the Appellee and a friend were arrested while preparing to snort cocaine in a van, which became the subject of a forfeiture proceeding based upon its

use to facilitate the concealment and possession of the cocaine. The Second District Court reversed the trial court's denial of the City's petition, holding that the Florida Contraband Forfeiture Act does not require a nexus between the cocaine and the van, but instead

> ...provides for seizure and forfeiture of a vehicle when contraband is transported, concealed or possessed in it, if possession of the contraband constitutes a felony. (citations omitted). Supra at 719

The facts of that case are almost identical to the instant case; its issues, rationale, and holding are directly on point.

In Naples Police Department v. Small, 426 So.2d 72 (2 DCA 1983), the police discovered twelve methaqualone tablets in a briefcase in the trunk of Small's car. In reversing the trial court's denial of forfeiture of that car, the Second District Court noted that the legislature provided in Section 932.703 (1) that if a vehicle contained a felony amount of contraband, then the state could forfeit it. The District Court concluded that since Small's vehicle contained felony drugs, the trial court erred in failing to declare it forfeited. Based upon this reasoning, if the trial court in the instant case had denied forfeiture, despite Appellee's admission to

possessing cocaine in the vehicle, it too would have erred.

In Department of Motor Vehicles and Highway Safety v. Pollack, 462 So.2d 1199 (3 DCA 1985), a Highway Patrol trooper stopped Pollack on a traffic charge and, while searching for his car keys, found methaqualone on the seat and or the console in the vehicle. In reversing the trial court's denial of forfeiture of the vehicle, the Third District Court held that the provisions of Section 932.703 (1), F.S. abrogated this Court's decision in Griffis, supra, and that the statute requires forfeiture in cases where possession of contraband constitutes a felony. The District Court stated that "[t]he fact that a felony amount of a controlled substance was possessed and transported is sufficient to require forfeiture." Supra at 1202. The facts of the instant case fall directly within this language.

In In re Forfeiture of a 1977 Datsun 280 Z Automobile, 448 So.2d 78 (4 DCA 1984), the Fourth District court reversed a trial court order denying forfeiture of the Datsun. In that case, police officers had observed the owner of a vehicle inside it loading a cube of hashish into a pipe. They seized additional hashish and diazepam from the automobile. The District Court found that since hashish and

diazepam are contraband, the possession of either of which is a felony, the vehicle is necessarily subject to forfeiture. Additionally, that Court pointed out that there is no exception for cases involving small quantities of drugs -- such as in the instant case -- provided a felony amount is involved -- such as in the instant case.

In the instant case, the First District Court reversed the trial court's order of forfeiture, upon the following reasoning:

1. That since the forfeiture statute is highly penal in nature, it must be strictly construed in favor of the Appellee.

2. Some nexus must exist between the use of the vehicle and the prohibited criminal act, beyond a remotely incidental use.

3. Judge Schwartz's concurring opinion in Department of Highway Safety and Motor Vehicles v. Pollack, Supra, rather than the majority opinion, is applicable to the instant case.

4. Forfeiture will lie only if the vehicle is used to violate or used to facilitate the violation of the provisions of Section 932.702 (3).

5. The addition of Subsection (4) to Section 932.702 did not clearly eliminate the necessity of a nexus relationship between the contraband and the vehicle.

6. Whether the Appellee successfully rebutted the statutory presumption that his vehicle was being used as an "instrumentality" or "aiding or abetting" in the commission of a felony or had been used in violation of

Chapter 893, F.S., was a credibility question for the trial court to answer upon remand.

In so holding, the First District Court has failed to acknowledge two of the three factual bases, upon which forfeiture is mandated. The First District has ignored judicial recognition of these two factual bases by three sister District Courts in the City of Clearwater, Naples Police Department, Department of Motor Vehicles and Highway Safety, and In re Forfeiture of a 1977 Datsun 280 Z Automobile cases, cited and discussed above. All of these cases stand for the proposition that simple felony possession of drugs in a motor vehicle is, by itself, sufficient to require forfeiture of the vehicle.

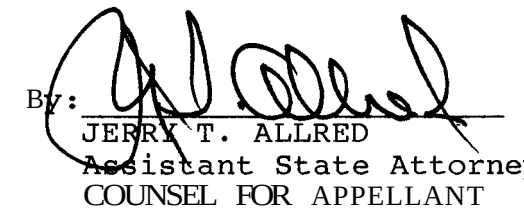
The First District Court has, in its opinion below, largely ignored what this Court has recognized in its decision in Duckham; that is, that in amending the forfeiture statue in 1980, and again in 1985, the Florida Legislature has expressed an intent that, notwithstanding the harshness of the result, vehicles shall be forfeited when they are the location for the unlawful act of transporting, concealing, or possessing contraband articles or the legal possession of a felony amount of illegal narcotics.

CONCLUSION

In light of the legislative and judicial history of the present "Florida Contraband Forfeiture Act," the language of that act clearly denotes a legislative intent and public policy that the forfeiture of a motor vehicle is required whenever that vehicle is involved with contraband articles in any one, or more, of three types of situations. Upon any one of these occurrences, forfeiture is mandatory. In its opinion below in the instant case, the First District Court stands alone in setting forth a standard which is more restrictive than the statutory scheme and stands alone and in direct conflict with the decisions of the Second, Third and Fourth District Courts of Appeal.

Consequently, the opinion of the First District Court in the instant case should be reversed; its mandate to the trial court, quashed; and the trial court's order forfeiting appellee's 1984 Volvo, reinstated.

Respectfully submitted:



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