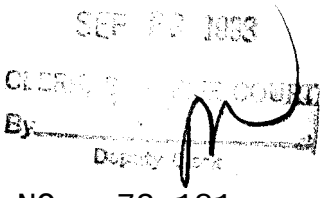
OA 11-8-88

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

REPLY BRIEF OF APPELLANT

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ARGUMENT IN RESPONSE TO REPLY BRIEF

In rebuttal to Appellee Crenshaw's Brief, the Appellant relies primarily upon the analysis presented in the initial Brief, with only the following several observations as supplement.

Although Appellee's "constitutionality" references should not be raised for the first time on appeal, Appellant contends that the Legislature has acted properly in providing for forfeiture of vehicles in cases such as this one. By declaring it unlawful to possess or conceal felony drugs in a vehicle, the Legislature is obviously attempting to restrict the flow or traffic of these contraband articles. While Florida may always contend with a drug-problem, forfeiture of vehicles is a rational means in the attempt to slow their movement to a walk.

Appellee Crenshaw reminds the Court that it is the cocaine which is contraband, not the Volvo. Appellant submits that, while the cocaine is a contraband article, upon its possession or concealment in the Volvo, the forfeiture statute declares it to be contraband property and subject to forfeiture.

Appellee, by posing only a single rhetorical question, has largely ignored Appellant's analysis of legislative intent, wherein some ten years of judicial and legislative history of the Forfeiture Act are examined. Appellant maintains that these cases and statutory amendments are important in the resolution of the instant case.

Appellee limits his discussion of the Forfeiture Act to only one of the three

bases upon which forfeiture can lie--the "use" basis. This is the only one upon which Appellant did not rely in its initial brief.

The other two:

1. the occurrence of any unlawful act described in Subsection 932.702, F.S. "in, upon, or by means of" a vehicle, and

2. the felonious possession of a contraband article "in or on" the vehicle,

not discussed at all by the Appellee, are set forth in Section I. of Appellant's Brief.

One thing that Appellee Crenshaw does mention is that he "would have possessed and concealed the cocaine whether he was in the vehicle or not." (Page 7 of Appellee-s Brief). Unfortunately for Appellee, Messers.

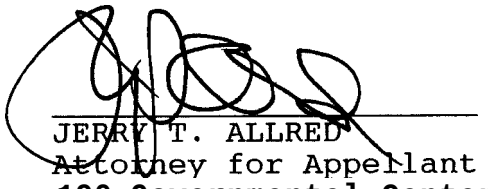
Malick, Pollack, and Small, as well as the owner of a 1977 Datsun 2802, each made similar claims in the Second, Third, and Fourth District Courts of Appeal. In those instances, even though it was unnecessary for them to possess or conceal their cocaine, methaqualone, diazepam, or hashish in their vehicles, the simple fact that each did resulted in the forfeiture o[redacted]n vehicle. (— City of Clearwater v. , Department of Hiahwav Safety and M.V. v. Pollack, Naples Police Department v. Small, and In re Forfeiture of a 1977 Datsun 280Z Automobile, all previously cited and analyzed in Appellant's initial brief.) Such must also be the fate of Appellee Crenshaw's Volvo.

Respectfully submitted,

Jerry Allred
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Argument in Response to Reply Brief has been furnished to William B. Richbourg, Esquire, 220 South Palafox Street, Pensacola, Florida 32501, this 27th day of September, 1988.



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