

D.A. 4-792

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In the
SUPREME COURT OF FLORIDA

IN RE: Forfeiture of 1985
Ford Ranger Pickup Truck
VIN # 1FTBR10S7FUB74784,
Florida License #802-DPU;
and \$453.00 U.S. Currency.

CASE NO. 78,456

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PRELIMINARY STATEMENT

Amicus Curiae the Florida Association of Criminal Defense Lawyers (hereinafter referred to as "Amicus Curiae FACDL") adopts the "Preliminary Statement" of the RESPONDENT'S ANSWER BRIEF, p. iv.

STATEMENT OF THE CASE AND OF THE FACTS

Amicus Curiae FACDL adopts the "Statement of Case and Facts" of the RESPONDENT'S ANSWER BRIEF, p. 1 and the "Statement of the Case and Facts" of the PETITIONER'S BRIEF, pp. 2-4.

SUMMARY OF ARGUMENT

At issue in this case is the First District Court of Appeal's holding that the "innocent owner" provision of the Florida Contraband Forfeiture Act (§932.703(2), Fla. Stat. (1989)) and constitutional constraints of due process and equal protection of law prevent the forfeiture of an innocent property owner's interest in personal property owned with another who has used the property illegally. In this case, the Petitioner STATE OF FLORIDA has stipulated that the Respondent ALVIN R. BARRY had no knowledge of the criminal activity of his son, with whom he owned the pickup truck that is registered in the names of both father and son, conjunctively. The Petitioner seeks to forfeit the entire vehicle; the Respondent has appeared in the proceeding to defend his interest in that property. The First District Court of Appeal's decision grants a remedy to both parties:

The State certainly should have the right to proceed against the property; however, the State is not entitled to take the property of one who did no wrong and knew of no wrong. The greatest impediment that one who owns property with another under these circumstances should suffer is the loss of the property in exchange for fair consideration or the association of a new partner.

In re: Forfeiture of 1985 Ford Ranger Pickup Truck, 582 So.2d 3, 4 (Fla. 1st DCA 1991).

Amicus Curiae FACDL urges this Court to adopt the rationale and decision of the First District Court of Appeal

as the correct statement of the law in this State on the applicability of the innocent owner defense under Section 932.703(2), Florida Statutes (1989) to the forfeiture of non-spousal, jointly-held property interests. 1985 Ford Ranger Pickup Truck is in apparent conflict with In re: Forfeiture 1978 BMW Automobile, 524 So.2d 1077 (Fla. 2d DCA 1988). Nonetheless, principles of statutory and constitutional construction and interpretation mandate the result reached by the First District Court of Appeal. Decisive law in Florida that includes recent authority from this Court, as well as judicial authority from other jurisdictions, also support the First District's conclusion. A close examination of that case law reveals that the small body of apparent contradictory Florida case law, including 1978 BMW Automobile, is distinguished or must be overruled to enforce the statutory and constitutional protections afforded innocent property owners in the State of Florida.

ARGUMENT

SECTION 932.703(2), FLORIDA STATUTES (1989) AND THE FLORIDA CONSTITUTION PROHIBIT THE FORFEITURE OF AN INNOCENT CO-OWNER'S INTEREST IN JOINTLY OWNED PROPERTY.

Legislative History and Intent

The verb "forfeit" derives from the Latin word foris-facere, which is "to transgress." WEBSTER'S UNABRIDGED DICTIONARY 719 (2d Ed. 1979). To establish entitlement to forfeiture of property under the Florida Contraband Forfeiture Act (§§932.701-.705, Fla. Stat. (1989), hereinafter referred to as the "Act"), the State must establish by adequate proof that the property in question was used in the commission of a crime. Department of Law Enforcement v. Real Property, 16 F.L.W. S497, S501 (Fla. Aug. 15, 1991). This forfeiture predicate can be established under a variety of fact situations, including proof that an individual possessed a felony amount of drugs in a vehicle. State v. Crenshaw, 548 So.2d 223 (Fla. 1989). See also, Duckham v. State, 478 So.2d 347, 3489 (Fla. 1985) (use of the vehicle to transport a middleman to the site of a drug transaction, in which the vehicle is not used to transport drugs or drug confederates and in which no conversations or meetings occur, will subject the vehicle to forfeiture).

To temper the harshness of this forfeiture remedy, the Florida Legislature consistently has incorporated in Florida's

contraband forfeiture laws a strong "innocent owner" defense to forfeiture. This defense as defined in the Florida Contraband Forfeiture Act's Section 932.703(2), which provides in relevant part:

No property shall be forfeited under the provisions of ss.932.701-932.704 if the owner of such property establishes that he neither knew, nor should have known after a reasonable inquiry, that such property was being employed or was likely to be employed in criminal activity.

The origins of this defense are found in Section 893.12, Florida Statutes (1973). That statute was enacted as part of Chapter 73-331, Laws of Florida, entitled the "Florida Comprehensive Drug Abuse Prevention and Control Act." The original Section 893.12 provided broad protection to innocent parties. See §§893.12(2),(4) and (5), Fla. Stat. (1973). Subsection 5 of that original legislation stated: "...the provisions of this section shall not apply to innocent parties"

In 1974, the Legislature enacted Chapter 74-385, §1, Laws of Florida, excising from Section 893.12, Florida Statutes (1973), those provisions which became Sections 943.41 through 943.44, Florida Statutes (1975). This new legislation was entitled the "Florida Uniform Contraband Transportation Act." It provided the same protections as the original legislation. Thereafter, Chapter 80-68, §1, Laws of Florida, amended the legislation's title to the current "Florida Contraband

Forfeiture Act." Other Sections of Chapter 80-68 made substantial revisions to the former Florida Uniform Contraband Transportation Act. Nonetheless, the innocent owner defense remained and became Subsection (2) of the renumbered Section 932.703, Florida Statutes (1981).

In 1985, Section 932.703(2) was amended in Chapter 85-316, §1, Laws of Florida to add the second sentence of the present statute:

Property titled or registered jointly between husband and wife by use of the conjunctives "and," "and/or," or "or" shall not be forfeited if the co-owner establishes that he neither knew, nor should have known after a reasonable inquiry, that such property was employed or was likely to be employed in criminal activity.

This 1985 legislation was in apparent response to Smith v. Hindery, 454 So.2d 663 (Fla. 1st DCA 1984), overruled on other grounds, In re: Forfeiture of 1978 Chevrolet Van, 493 So.2d 433 (Fla. 1986). In Smith v. Hindery, the First District Court of Appeal held that a truck titled in the disjunctive to an innocent wife and her culpable husband could not be forfeited when the pickup truck was entireties property. The First District specifically noted that its holding was not affected by Section 319.22(2) of the Florida Statutes (1979), which became effective 1 January 1980 and provided that the use of the disjunctive "or" in a certificate of title or registration for a motor vehicle creates a joint tenancy with each named owner having the absolute right to dispose of the

title and interest in the vehicle on signature of only one spouse. 454 So.2d at 664. The 1985 amendment cured any potential effect of Section 319.22(2) on property owned by the entirety, providing the innocent spouse with protection from forfeiture of the entire spousal property:

The statutory exception for husband and wife conforms the statute to the definition of property held by the entirety which ownership is singular and indivisible. The statute is definitive in eliminating the proof requirements that the owners intended to create a tenancy by the entirety and overcomes the provisions of Section 319.22(2)(a)1, Florida Statutes (1989).

1985 Ford Ranger Pickup Truck, 582 So.2d at 4.¹

The innocent ownership defense in the first sentence of Section 932.703(2), at issue in the instant case, remained intact during the 1985 amendment. It has not changed since 1980, despite the substantial broadening of the scope of

¹Unlike the facts in Smith v. Hindery, a spouse's interest in entirety property is not at issue in the instant case. Similarly, the impact of Section 319.22(2)(a)1, Florida Statutes (1989) is not at issue; rather, reference must be made to subsection (2)(a)2 (emphasis added), which provides, in relevant part:

When a vehicle or mobile home is registered in the names of two or more persons as co-owners in the conjunctive by the use of the word "and," the signature of each co-owner or his personal representative shall be required to transfer title to the vehicle or mobile home.

This provision of Section 319.22 reinforces the fact that the Respondent father has a tangible and real interest in the property sought to be forfeited in this proceeding, given the use of the conjunctive "and" in the title registration.

Chapter 932 contraband forfeiture in Chapter 89-148, Laws of Florida.

In sum, the legislative history of Section 932.703(2), Florida Statutes (1989) makes it clear that the Legislature has intended, since 1973, to provide a strong innocent ownership defense for Florida property owners. Such legislative intent has been recognized by the Florida Courts. See, e.g., Smith v. Hindery, 454 So.2d at 671 (Zehmer, J., concurring); In re: 36' Uniflite, the "Pioneer I," 398 So.2d 457, 459 (Fla. 5th DCA 1981).² Nevertheless, in the case before this Court, the State would circumvent this apparent legislative intent because to do so is essential to its argument that it is entitled to forfeiture of the entire vehicle. Principles of statutory construction and constitutional interpretation, as well as judicial precedent

²In 36' Uniflite, the Fifth District Court of Appeal notes that the "innocent owner" defense under the Florida Statutes stands in stark contrast to the absence of such a defense under that Federal legislation which served as the counterpart to the Florida Comprehensive Drug Abuse Prevention and Control Act in 1973 and the Florida Uniform Contraband Transportation Act in 1974. The former Federal act only provided a statutory innocent ownership defense in those situations where a conveyance was unlawfully in the possession of a person other than the owner. 21 U.S.C. §881(a)(4)(B). In 1988, in apparent response to the constitutional concerns expressed by the Supreme Court in Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 689-90 (1974), Congress revised the Federal contraband forfeiture act to provide a stronger innocent ownership defense to the forfeiture of conveyances. See Anti-Drug Abuse Amendments Act of 1988, 21 U.S.C. §881(a)(4)(C).

of this and other Courts, require this Court to reject the State's argument.

Statutory Construction

Guidelines for statutory construction applicable to the instant case are well-settled. First, legislative intent is the "polestar" by which this Court is guided in interpreting statutory provisions, and the best evidence of the intent of the Legislature is usually the plain meaning of the statute. See, e.g., In re: Order on Prosecution of Criminal Appeals by the 10th Judicial Circuit Public Defender, 561 So.2d 1130, 1137 (Fla. 1990); Thayer v. State, 335 So.2d 815, 816-817 (Fla. 1976). Further, it is presumed that the Legislature knows the meaning of words it uses and that the Legislature has expressed its intent by the use of the words found in a particular statute. Thayer v. State, 335 So.2d at 817. Where the language of a statute is so unambiguous and plain as to leave no room for statutory construction, this Court has not departed from that plain language used by the Legislature. State v. State Racing Commission, 112 So.2d 825, 828 (Fla. 1959). Under such circumstances, an examination of legislative intent is unnecessary. Streeter v. Sullivan, 509 So.2d 268, 271 (Fla. 1987).

Finally, forfeiture statutes are not favored and must be strictly construed in favor of the Respondent. Nash Miami Motors v. Bandel, 47 So.2d 701, 703 (Fla. 1950); General

Motors Acceptance Corporation v. State, 152 Fla. 297, 302, 11 So.2d 482, 484 (1943). This is particularly so as it pertains to the property interests of innocent persons. See, e.g., General Motors Acceptance Corporation v. State, 11 So.2d at 484-85. Courts should not broaden the scope of forfeiture legislation by permitting that remedy where it is not clearly authorized. Cabrera v. Department of Natural Resources, 478 So.2d 454, 456 (Fla. 3d DCA 1985); Coleman v. Brandon, 426 So.2d 44, 44 (Fla. 2d DCA 1982), review denied, 430 So.2d 450 (1983).

With these guidelines in mind, the Legislature's use of the language "[n]o property shall be forfeited ... if the owner of such property establishes ..." in Section 932.703(2) unequivocally states that any property owner has available to him or her the defense of innocent ownership if he or she can establish that affirmative defense. In the instant case, the Respondent is a property owner, albeit not the only owner of the property in question. The fact that he is a co-owner does not exclude him from the benefit of the innocent ownership defense under the statutory language of Section 932.703(2). The Respondent's property interest still fits within the plain meaning of the language "[n]o property." This Court need inquire no further.

The Petitioner invites that inquiry by claiming that because the Legislature provided a complete exception to

forfeiture for properties held by the entirety when one spouse is innocent, it has necessarily excluded the innocent ownership defense in a non-spousal joint ownership context such as the instant case. The maxim of statutory construction upon which the State relies is that of expressio unius est exclusio alterius. The State's theory of statutory construction is incorrect and leads to a violation of the additional principle of statutory construction found in Carawan v. State, 515 So.2d 161, 167 (Fla. 1987) that courts should avoid a statutory interpretation that achieves an absurd or unreasonable result. Examples of unreasonable results that the Petitioner's interpretation would lead to are found at the RESPONDENT'S ANSWER BRIEF, pp. 11-12.

Furthermore, the State's proposed construction would violate this Court's directive in Firestone v. News-Press Publishing Co., Inc., 538 So.2d 457, 459 (Fla. 1989); Sandlin v. Criminal Justice Standards and Training Commission, 531 So.2d 1344, 1346 (Fla. 1988); and Vildibill v. Johnson, 492 So.2d 1047, 1050 (Fla. 1986) that statutes should be construed, whenever possible, so as not to conflict with the Constitution. Examples of constitutional issues caused by the State's narrow application of Section 932.703(2) are found in the next section of this Brief and in the RESPONDENT'S ANSWER BRIEF, pp. 7-10.

The First District Court of Appeal simply has held in this case that where "the property is susceptible of division in kind or sale and division of proceeds," 582 So.2d at 4, then an innocent co-owner's interest in jointly held property is not subject to forfeiture. Perhaps the only pertinent application to this case of the Latin maxim proposed by the State is to exclude the innocent co-owner Respondent from arguing that none of the property -- his and his son's -- is subject to forfeiture. Such is not the relief requested of this Court by the Respondent or granted by the First District Court of Appeal.³

Constitutional Considerations

In its decision, the First District Court of Appeal reversed the trial Court's finding that Section 932.703(2) violates due process and equal protection guarantees by construing the statute to comport with constitutional requirements. 1985 Ford Ranger Pickup Truck, 582 So.2d at 4. By so doing, that Court avoided a finding under Article I, Section 9 of the Constitution of the State of Florida that a

³Decisions in other jurisdictions have addressed whether the ownership interest of an innocent co-owner in a non-spousal context prevents forfeiture of any portion of the property. See, e.g., Matter of 1979 Dodge Van, 150 Ariz. 25, 721 P.2d 683 (App. 1986); State v. One 1984 Toyota Truck, 311 Md. 171, 533 A.2d 659 (1987).

deprivation through forfeiture of the Respondent's property violates due process of law. Other fundamental constitutional guarantees at issue include the Respondent's right to "acquire, possess and protect property" (Art. I, §2, Fla. Const.); his right to be free of excessive punishments (Art. I, §17, Fla. Const.); his right to access to courts (Art. I, §21, Fla. Const.) and, arguably, his right to privacy (Art. I, §23, Fla. Const.).

Some or all of these constitutional rights are infringed if the property interest of the Respondent, an innocent person who knows of and has done no wrong, is forfeited to the State. To permit such forfeiture would be to allow the taking of private property without just and full compensation, in violation of Article X, Section 6(a) of the Florida Constitution, which provides:

No private property shall be taken except for a public purpose and with full compensation therefore paid to each owner

As stated by this Court in In re: Forfeiture of 1976 Kenworth Tractor Trailer Truck, 569 So.2d 1274, 1277 (Fla. 1990), this Florida constitutional provision "applies equally to real and personal property, including motor vehicles." Similarly, such a result would constitute a "taking" without due process, in violation of the Fifth and Fourteenth Amendments to the United States Constitution. See generally United States v. One Single Family Residence, 894 F.2d 1511, 1515-19 (11th Cir.

1990).

Property rights "are among the basic substantive rights expressively protected by the Florida Constitution." Department of Law Enforcement v. Real Property, etc., 16 FLW S497, S499 (Fla. Aug. 15, 1991). This Court will protect those rights of the Respondent by upholding the First District Court of Appeal and, in so doing, avoid the constitutional quagmire otherwise created by the State's argument.

Decisional Law

In affirming the First District's decision, this Court must disapprove 1978 BMW Automobile, supra. Yet this result is appropriate. Even the Second District Court of Appeal recognized the "seemingly harsh effect" of its holding on a father who is an innocent co-owner, as was the Appellant in that case. Id. at 1080. The Second District was concerned enough about the result to certify the question to this Court; however, the parties apparently did not seek review beyond the Second District.

In its decision, the 1978 BMW Automobile Court referred to the alternative or disjunctive co-ownership cases of In re: Forfeiture of One 1976 Dodge Van (City of Clearwater v. Malick), 429 So. 2d 718 (Fla. 2d DCA 1983) and In re: Forfeiture of 1979 Lincoln Continental (Brown v. City of Miami), 405 So.2d 249 (Fla. 3d DCA 1981). One 1976 Dodge Van addressed the forfeiture of a van which, according to the 1978

BMW Automobile Court, was titled in the alternative. Id. at 1080. 1979 Lincoln Continental dealt with the forfeiture of a vehicle titled in the disjunctive between husband and wife. Both of these cases are distinguished from the instant proceeding, in which the vehicle in question is titled in the conjunctive.

In reaching its conclusion, the Second District's 1978 BMW Automobile opinion did not articulate any standards of statutory construction other than the maxim expressio unius est exclusio alterius, from which the State gleans its argument in the instant case. The Second District did not consider the constitutional rights at issue. Instead, that Court adopted a theory of "imputed knowledge" which, as recognized by the First District Court of Appeal in 1985 Ford Ranger Pickup Truck, "was created by the Second District Court's decision, not the legislature." 582 So.2d at 4.

Similarly, One 1976 Dodge Van expresses little rationale for its conclusion other than recitation of the Third District's decision in 1979 Lincoln Continental. That decision, in turn, recites to judicial decisions from Delaware, Texas and Arizona.⁴ As with 1978 BMW Automobile,

⁴The three cases relied upon by the 1979 Lincoln Continental Court are readily distinguished. In the Delaware decision, State v. One 1968 Buick Electra, 301 A.2d 287 (Del. Super. Ct. 1973), joint ownership of a vehicle between husband and wife was in the alternative "and/or"; the Court applied property principles of the State of Delaware; and the Court

no reference is made in 1979 Lincoln Continental or One 1976 Dodge Van to the principles of statutory construction outlined above or to the constitutional considerations addressed by the trial Court and the First District Court of Appeal in the instant proceeding.

Judge Zehmer recognized in his specially concurring Opinion in Smith v. Hindery, 454 So.2d at 665-671, that the 1979 Lincoln Continental Court's failure to fully analyze such issues renders that precedent of little value in applying the innocent ownership defense in a Florida courtroom. Id. at 671. However, the rationale of other state jurisdictions on these issues is far more probative. State v. Jackson, 197 Ga. App. 619, 399 S.E. 2d 88 (Ct. App. 1990) and In re: Forfeiture of \$53.00, 178 Mich. App. 480, 444 N.W. 2d 182 (Ct. App. 1989) reject the simple expedient that "the language of a title to a vehicle necessarily controls the right of the owner," In re:

provided no constitutional analysis to whether the forfeiture of an innocent spouse's property would violate the Delaware or Federal Constitutions. Similarly, Amrani-Chaldi v. State, 575 S.W. 2d 667 (Tex. Civ. App. 1978) dealt with community property owned by husband and wife, interpreted a Texas statute that is not applicable to Florida, and did not address constitutional concerns in permitting the forfeiture in that case. Similar distinctions are found in In the Matter of 1976 Blue Ford Pickup, 120 Ariz. App. 432, 586 P.2d 993 (1978). That decision is expressly disapproved by the subsequent decision of In the Matter of 1979 Dodge Van, 150 Ariz. 25, 721 P.2d 683 (1986), which relied upon the Arizona Supreme Court's concern for the rights of an innocent owner as stated in In the Matter of One 1965 Ford Mustang, 105 Ariz. 293, 463 P.2d 827 (1970).

Forfeiture of \$53.00, 444 N.W. 2d at 186. Instead, these Courts adopt:

...the better reasoned approach, and the one consistent with the intention of our legislature, [which] is a construction which allows forfeiture of the property interest of the wrongdoer and those who knew or should have known of the criminal use of the property, and provides protection to innocent owners to the extent of their property interest.

State v. Jackson, 399 S.E. 2d at 91. See also Forfeiture of \$53.00, supra at 188-89.

Finally, the holding of the First District Court of Appeal in the instant case finds direct authority in Department of Law Enforcement v. Real Property, etc., supra, in which this Court stated:

Lack of knowledge of the holder of an interest in a property that the property was being employed in criminal activity is a defense to forfeiture, which, if established by a preponderance of the evidence, defeats the forfeiture action as to that property interest.

16 F.L.W. at S501. This rationale is fully supported by the legislative history and plain language of the Florida Contraband Forfeiture Act, the clear intent of the Florida Legislature to protect innocent property owners from forfeiture under the Act, established principles of statutory construction and fundamental constitutional concerns at issue in forfeiture actions in Florida. The position of the Respondent, as adopted by the First District Court of Appeal, is indeed the "better reasoned" approach which Amicus Curiae

FACDL urges this Court to confirm.

CONCLUSION

For the reasons expressed herein, this Court should adopt and affirm the decision of the First District Court of Appeal herein. By so doing, this Court will maintain the legislative intent and constitutional integrity of the Florida Contraband Forfeiture Act and will give the State its due -- forfeiture of that interest of the pickup truck that is owned by the Respondent's son -- while it returns to the innocent father his property interest in the remainder.

Respectfully submitted,

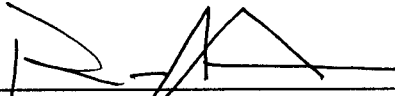
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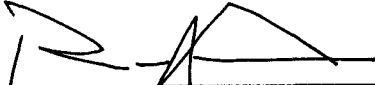
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by regular United States mail/hand delivery/facsimile to JOHN F. DANIEL, Post Office Box 2522, Panama City, Florida 32402, attorney for Respondents; CHARLES A. FINKEL, ESQ., Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050; ROBERT AUGUSTUS HARPER, Chairman, FACDL Amicus Curiae Committee, 300 West Park Avenue, Post Office Box 10132, Tallahassee, Florida 32302; JAMES T. MILLER, Co-Chairman, FACDL Amicus Curiae Committee, 520 E. Bay Street, Room 407, Jacksonville, FL 32202 and GEORGE E. TRAGOS, FACDL President, Mangrove Bay, 1755 US 19 South, Suite 333, Clearwater, FL 34624 this 6th day of January 1992.



ROBERT S. GRISCTI