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**FILED**

SID J. WHITE

IN THE SUPREME COURT OF THE STATE OF FLORIDA

SEP 12 1991

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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

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CASE NO.: 78,456

On Petition for Discretionary Review of the  
Decision of the First District Court of Appeal of  
the State of Florida

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RESPONDENT'S BRIEF ON JURISDICTION

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### SUMMARY OF THE ARGUMENT

The decision of the First District Court of Appeal does appear to conflict with a decision on the same subject rendered by the Second District Court of Appeal. However, it would be inappropriate for this Court to exercise its discretionary jurisdiction in light of the very recent and comprehensive decision rendered by this Court in Department of Law Enforcement v. Real Property, — So.2d —, 16 F.L.W. S497 (Fla. Aug. 15, 1991). The recency of that decision, and the relatively small value of the property seized in the case sub judice, render this case unsuitable for the Court's exercise of its discretionary power to assume jurisdiction.

### ARGUMENT

WHILE THE DECISION BELOW OF THE FIRST DISTRICT COURT OF APPEAL MAY APPEAR TO CONFLICT WITH THE DECISION OF ANOTHER DISTRICT, THE INSTANT CASE IS NOT AN APPROPRIATE ONE FOR THE EXERCISE OF THIS COURT'S DISCRETIONARY JURISDICTION.

Respondent does not dispute that the opinion below of the First District Court of Appeal in the case sub judice expressly and directly conflicts with the opinion of the Second District Court of Appeal in In re Forfeiture of 1978 BMW Automobile, 524 So.2d 1077 (Fla. 2d DCA 1988).

Likewise, the First District's conclusion that "the State is not entitled to take the property of one who did no wrong and knew of no wrong" is inconsistent with dicta to the contrary in the Third District's opinion in In re Forfeiture of 1979 Lincoln Continental, 405 So.2d 249, 250 (Fla. 3d DCA 1981).

Nevertheless, this is not an appropriate case for the exercise of this Court's discretionary jurisdiction. Neither of the First District's sister courts had the benefit of this Court's recent exhaustive review of the Florida law of forfeiture in Department of Law Enforcement v. Real Property, — So.2d —, 16 F.L.W. S497 (Fla. Aug. 15, 1991). The principles of Florida constitutional law set out in that opinion will likely have a substantial influence on any appellate court which is confronted by the question of an "innocent owner" in the future, as well as any future legislative action on this subject. Those principles include:

[W]hether less restrictive alternatives were available; and whether individuals are ultimately being treated in a fundamentally unfair manner in derogation of their substantive rights.

16 F.L.W. at S498.

In construing the Act, we note that forfeitures are considered harsh exactions, and as a general rule they are not favored in law or equity. Therefore, this Court has long followed a policy

that it must strictly construe forfeiture statutes.

16 F.L.W. at S498.

[A]ll doubts as to the validity of a statute are to be resolved in favor of constitutionality where possible.

16 F.L.W. at S498.

Property rights are among the basic substantive rights expressly protected by the Florida Constitution. Art. I, § 2, Fla. Const.; see Shriners Hosps. for Crippled Children v. Zrillic, 563 So.2d 64, 68 (Fla. 1990) (article I, section 2 protects all incidents of property ownership from infringement by the state unless regulations are reasonably necessary to secure the health, safety, good order, and general welfare of the public).

16 F.L.W. at S499.

This Court has consistently held that the constitution requires substantial burdens of proof where state action may deprive individuals of basic rights.

16 F.L.W. at S501.

Discretionary review in this case is therefore inappropriate until the full effect of this new emphasis on Article I, Section 3 of the Florida Constitution can be digested in the appellate courts.

Further, as the brief of the State stresses, disposition of this cause may have a substantial effect on law enforcement. Appellee is not the best qualified litigant. Unlike the property owners in Department of Law Enforcement v. Real Property, supra, his stake is minimal, viz., one 1985 Ford Ranger pickup truck.

Further, exercise of jurisdiction by this Court over that personalty may only serve to create more uncertainties than it may resolve. As this Court recently discussed in Department of Law Enforcement v. Real Property, supra, substantially different treatment may be necessary for residences or real property under the forfeiture statutes. Cf., Caggiano v. Butterworth, — So.2d —, 16 F.L.W. D1642 (Fla. 2d DCA, June 21, 1991) (homestead not subject to RICO forfeiture).

CONCLUSION

For the foregoing reasons, this Court should decline to exercise its discretionary jurisdiction and remand this cause to the trial court.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondent's Brief on Jurisdiction has been furnished by U.S. Mail to CHARLES A. FINKEL, ESQ., Assistant Attorney General, Department of Legal Affairs, The Capitol - Suite 1501, Tallahassee, Florida 32399-1050 this 11<sup>th</sup> day of September, 1991.

  
\_\_\_\_\_  
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