IN THE SUPREME COURT OF FLORIDA

TYVESSEL TYVORUS WHITE,

Petitioner,

v.

CASE NO. 88,813

STATE OF FLORIDA,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

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SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

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_____/

SUPPLEMENTAL BRIEF OF PETITIONER

PRELIMINARY STATEMENT

Pursuant to the Florida Supreme Court's Administrative Order dated July 13, 1998, this brief has been printed in Times New Roman (14 point) proportionally spaced.

STATEMENT OF THE CASE AND FACTS

In White v. State, 710 So.2d 949 (Fla. 1998), this Court concluded that under the circumstances presented in this case that the warrantless seizure of White's car was protected by the Federal and Florida Constitutions even though the seizure was made pursuant to a statutory forfeiture scheme. White at 955.

Subsequently, on May 17, 1999, the Supreme Court of the United States issued its opinion in Florida v. White, case number 98-223, wherein, in pertinent part, that Court stated:

> Based on the relevant history and our prior precedent, we therefore conclude that the Fourth Amendment did not require a

> warrant to seize Respondent's automobile in these circumstances.
>
> The judgment of the Florida Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion. [Slip op. at 7].

On June 28, 1999, by order of this Court, Petitioner was required to submit a supplemental brief on the merits.

[The pertinent facts of this case may be found at White v. State, 710 So.2d 950.]

SUMMARY OF THE ARGUMENT

Under state due process principles as found in the Florida Constitution, this Court is still free to impose the requirement of an *ex parte* pre-seizure judicial hearing to determine probable cause in a drug forfeiture case, notwithstanding the decision of the United States Supreme Court in Florida v. White.

Individual freedom finds tangible expression in property rights. This notion is woven into the fabric of Florida constitutional law, and is protected by the due process and other relevant provisions of the Florida State Constitution.

The Florida State Constitution provides important protections to the citizens of Florida above and beyond the protections afforded by the federal constitution, including expansive rights under Article I, including but not limited to the notion of expanded due process rights.

This Court, in its original opinion, noted that in addition to the Fourth Amendment requirement (absent exigent circumstances), state due process required a warrant under the circumstances of this case. State due process considerations still require a warrant under the circumstances of this case.

The decision to seize a vehicle should be made by a neutral and detached magistrate who does not have a pecuniary interest in the outcome of the seizure. Under the Florida Contraband Forfeiture Act, law enforcement agencies stand to directly and pecuniarily benefit by the seizure of the suspected property. Thus, interested parties make what should be a neutral and detached decision that probable cause exists to seize property under the Act. An *ex parte* pre-seizure judicial hearing would ensure that neutral and detached magistrates who have no interest whatsoever in the outcome of the forfeiture proceeding make the decision as to whether probable cause exists to seize property under the Act.

The benefits outweigh the costs. The only cost involved here in having a pre-seizure *ex parte* judicial hearing is to the convenience of law enforcement. Convenience of law enforcement is no reason to sacrifice precious rights granted to the citizens of Florida under the state constitution. Moreover, an *ex parte* judicial hearing prior to seizure may be the only judicial review that occurs in these cases, and as such, it serves an auditing function and weeds out marginal cases before property is seized.

Under the circumstances, this Court should affirm its decision that the State of Florida's Constitution requires an *ex parte* pre-seizure judicial hearing.

ARGUMENT

ISSUE

LAW ENFORCEMENT'S UNAUTHORIZED AND WARRANTLESS SEIZURE OF WHITE'S CAR ABSENT EXIGENT CIRCUMSTANCES NOT ESTABLISHED HERE, CLEARLY VIOLATED THE CONSTITUTIONAL DUE PROCESS REQUIREMENTS OF THE FLORIDA CONSTITUTION AS

RECOGNIZED IN DEPARTMENT OF LAW ENFORCEMENT V. REAL PROPERTY, 588 SO.2D 957 (FLA. 1991).

In Justice Stevens' dissenting opinion, footnote 1, Justice Stevens noted that:

> The Florida Supreme Court's opinion could be read to suggest that due process protections in the Florida Constitution might independently require a warrant or other judicial process before. seizure under the Florida Contraband Forfeiture Act. See, 710 So.2d, at 952 (discussing Department of Law Enforcement v. Real Property, 588 So.2d 957 (1991)) . However, the certified question put to that court referred only to the Fourth Amendment to the United States Constitution. 7 10 So.2d, at 950. Thus, a viable federal question was presented for us to decide on certiorari, but of course we have no authority to determine the limits of state constitutional or statutory safeguards.

Thus, the dissenting opinion of the United States Supreme Court recognized that whether *an ex parte* hearing and a warrant was required under the Florida Constitution (for due process purposes) was a question which only this Court can answer. Indeed, as Justice Stevens noted, this Court already has answered this question in favor of Petitioner White.

Petitioner White submits that although this Court's opinion has been reversed insofar as this Court relied upon the Fourth Amendment to the United States Constitution to require *an exparte* hearing and pre-seizure warrant prior to the lawful seizure of White's car, the remaining portion of the opinion is still valid, and that under state constitutional due process principles, *an ex parte* hearing and warrant were required prior to the seizure of Petitioner White's car.

I. The protection of private property rights is central to both our national and state heritage

A brief review of the importance of property rights, both nationally and within Florida, is indispensable to a resolution of the issues before the Court.

Throughout the history of western democratic societies, the importance of private property as a "concomitant to liberty" has been widely recognized. See, John Locke, THE SECOND TREATISE ON CIVIL GOVERNMENT, ¶¶ 123-42.[1] Indeed, the United States Supreme Court has recognized that "a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other." *Lynch v. Household Finance Corp.,* 405 U.S. 538, 552, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972). Likewise, as recently observed by the United States Supreme Court, "[i]ndividual freedom finds tangible expression in property rights." *United States v. James Daniel Good Real Property,* 510 U.S. 43, 61, 114 S.Ct. 492, 505, 126 L.Ed.2d 490 (1993).

The nature and quality of a citizen's freedom and security relates directly to his or her ability to own property and to be secure from governmental intrusion therein. "[I]n a free government almost all other rights would become worthless if the government possessed power over the private fortune of every citizen."

'The Founders understood that private property was a fundamental aspect of personal liberty and, moreover, a major goal of the Revolution itself In the Declaration of Independence, Jefferson, borrowing from John Locke, asserted that the goals of the nation were "life, liberty, and the pursuit of happiness." Locke's language, of course, had been "life, liberty, and property." Jefferson rightly understood that property was a part of both liberty and the fundamental happiness of the people. The demand for a Bill of Rights naturally included the demand for the protection of property, which the Founders regarded as "the guardian of every other right." James W. Ely, Jr., THE GUARDIAN OF EVERY OTHER RIGHT: THE CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS (1992).

Chicago, Burlington & Quincy R.R. v. Chicago, 166 U.S. 226, 236, 17 S.Ct. 581, 41 L.Ed.979 (1897); Leonard W. Levy, ORIGINAL INTENT AND THE FRAMER'S CONSTITUTION, 276-77 (1988).

These sentiments, in effect, have been adopted by this Court in In re Forfeiture of 1969 Piper Navajo, Model PA-3 1-3 10, S/N 3 1-395, U.S. Registration in 1717 G, 592 So.2d 233,236 (Fla. S.Ct. 1992), wherein this Court stated: "As we have previously noted, '[t]hese property rights are woven into the fabric of Florida history."' [Quoting from Shriners Hospital v. Zrillic, 563 So.2d 64, 67 (Fla. 1990).]

IT. The State of Florida's Constitution provides additional due process protections not otherwise found in the federal constitution.

In Traylor v. State, 596 So.2d 957 (Fla. 1992), this Court specifically recognized that the State of Florida's Constitution places more rigorous restraints on governmental intrusion than does the Federal Constitution. This Court also noted that the Florida Declaration of Rights recognizes distinct freedoms guaranteed to each Floridian against government intrusion and that each right operates in favor of the individual, against the government. Moreover, this Court noted that:

> Special vigilance is required where the fundamental rights of Florida citizens suspected of wrong-doing are concerned for here society has a strong natural inclination to relinquish incrementally the hard won and stoutly defended freedoms enumerated in our Declaration in its effort to preserve public order. [Id. at 963].

This Court went on to note that "Each right and each citizen, regardless of position, is protected with identical vigor from government overreaching, no

matter what the source." Id. at 963.

The provisions involved in this case under the state constitution are found in the Florida Declaration of Rights.

III. The constitutional due process provisions involved in this case and the Florida constitution.

In In re Forfeiture of 1969 Piper Navajo, supra, this Court noted the constitutional due process provisions contained in Article I which are relevant to the forfeiture of personal property (there, an aircraft; here, a car):

> This is particularly so because property rights are protected by a number of provisions in the Florida Constitution. Article I, Section 2 provides that '[a]ll natural persons are equal before the law and have inalienable rights, among which are the right... to acquire, possess and protect property....' Article I, Section 9, provides that '[n]o person shall be deprived of life liberty or property without due process of law....' Article I, Section 23 provides that '[e]very natural person has the right to be let alone and free from governmental intrusion into his private life....' [Id. at 236].

IV. In its initial opinion, this Court has already held that state due process considerations required an *ex parte* hearing and warrant prior to seizure of White's automobile.

In White. v. State, 710 So.2d at 952, this Court stated in pertinent part:

> In *Department of Law Enforcement*, we were able to uphold the constitutionality of Florida's forfeiture act only by imposing numerous restrictions and safeguards on the use of the act in order to protect a citizen's property from arbitrary action by the

govemment. In discussing the act we declared:

> The Act raises numerous constitutional concerns that touch upon many substantive and procedural rights protected by the Florida Constitution. In construing the Act we note that forfeitures are considered harsh exactions, and as a general rule they are not favored either in law or equity. Therefore, this Court has long followed a policy that it must strictly construe forfeiture statutes.

588 So.2d at 961. The major thrust of our holding was that in order to comply with constitutional due process requirements, the government must strictly observe a citizen's constitutional protections when invoking the drastic remedy of forfeiture of a citizen's property. In addition to expressly holding that the Fourth Amendment applies to forfeiture attempts by the government, we specifically explained:

> In those situations where the state has not yet taken possession of the personal property that it wishes to be forfeited, the state may seek an ex part preliminary hearing. At that hearing, the court shaall authonze seizure of the personal property if it finds probable cause to maintain the forfeiture action.

Id. at 965. We conclude that the government's unauthorized and warrantless seizure, absent exigent circumstances not established here, clearly violated the constitutional safeguards we recognized m *Department of Law Enforcement.*

The govemment did not seek a warrant or an "ex parte preliminary hearing" here in order to secure a neutral magistrate's determination of probable cause. The govemment just seized the property, thereby putting the property owner and any others claiming an interest in the property in the position of having to take affirmative

> action against the government in order to protect their rights. This is the very antithesis of the cautious procedure we mandated in *Department of Law Enforcement*. We simply cannot accept the government's position that it may act at anytime, anywhere, and regardless of the existence of exigent circumstances, or a change in ownership or possession, to seize a citizen's property once believed to have been used in illegal activity, without securing the authorization of a neutral magistrate.

V. Because of the potential pecuniary gain to the law enforcement agency making the seizure, state constitutional due process principles require review by a neutral magistrate prior to seizure of the property.

The Florida Contraband Forfeiture Act allows some of the revenue from the forfeited vehicle to go to the seizing agency. See Section 932.704(1), Florida Statutes, which authorizes "such law enforcement agencies to use the proceeds collected under the Florida Contraband Forfeiture Act as supplemental funding for authorized purposes." The seizing agency may keep the seized item, further injecting the self interest of the seizing agents. Section 932.7055(1)(a), Florida Statutes.

As noted by Justice Stevens, in his dissent in Florida v. White, at slip op. 6-7, "...[A] warrant application interjects the judgment of a neutral decision maker, one with no pecuniary interest in the matter, see, Connaly v. Georgia, 429 U.S. 245, 250-251 [97 S.Ct. 546, 50 L.Ed. 444] (1977) (Per Curiam), before the burden of obtaining possession of the property shifts to the individual."[2]

Both the legislature and law enforcement agencies are colored (how can

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[2]See, also, Harmelin v. Michigan, 501 U.S. 957, 979, note 9, 111 S.Ct. 2680, 2693, *note* 9, 115 L.Ed.2d 836 (1991) (opinion of Scalia, J., "[I]t makes sense to scrutinize governmental action more closely when the state stands to benefit").

they not be) by the massive amounts of money that are generated in drug forfeiture actions. See, for example,: United States v. James Daniel Good Real Property, et al, supra, 5 10 U.S. at 43, 56, footnote 2; a seminar for law enforcement agencies purporting to teach them how to learn how to avoid losing thousands of dollars through failure to properly employ the forfeiture statute (and whose course advertisement brags that: "One small case can reimburse you for the cost of this course many times over.") (Appendix, document entitled: "Drug Asset Seizure and Forfeiture Management"); June 14, 1995, Miami Herald Article entitled: "Chiles Signs Cash Confiscation Bill" wherein it was noted that the Forfeiture Act came under scrutiny after Volusia County Sheriff Bob Vogel's drug squad seized approximately eight million dollars in suspected drug money between 1989 and 1992 when stopping motorists along Interstate 95 (Appendix); the pamphlet "Forfeiture Endangers American Rights [F.E.A.R.] wherein Florida House of Representatives member Elvin Martinez comments that: "*Florida's Contraband Forfeiture Act* became a casualty of something [he calls] the 'Sheriff of Nottingham Syndrome.'" (Appendix).

At this point, the real evil of the Florida Contraband Forfeiture Act without the safeguard of a pre-seizure *ex parte* hearing is apparent. That evil, is, quite simply, that the Act declares an otherwise innocent object "contraband" and then allows a law enforcement officer in the field to make this subjective determination that a drug crime has occurred in the car which in turn makes this otherwise innocent vehicle "contraband." To the uninitiated, the car is just a car. To law enforcement, who has made the determination allowed by the Florida Contraband Forfeiture Act, the car is now "contraband." This entire process has taken place out of the purview or review of the judiciary, and is at the sole

discretion of a totally biased law enforcement official, who may have interests tied to his department's benefit at stake, and who may end up getting to ride around in the seized vehicle after it has been forfeited.

Given the state's direct and substantial pecuniary interest in civil forfeiture proceedings, the state seizure of property without a prior judicial determination of probable cause should be allowed only upon a clear showing of extraordinary circumstances. As Justice Jackson wrote a half-century ago concerning the preference for a warrant:

> [T]he point of the Fourth Amendment [or here, the due process provisions of the Florida Constitution], which often is not grasped by zealous officers, is not that it denies law enforcement the support of usual inferences which reasonable men draw from evidence. Its protection consists of requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. [Johnson v. United States, 333, 13, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948)].

The protection of a prior judicial hearing before seizure is even more important here, where the state (indeed, the individual law enforcement officer making the seizure) has a direct financial interest in the outcome of the proceeding.

VI. Costs versus benefits; it's a no-brainer that the benefits of a pre-seizure hearing outweigh the costs.

The only "costs" involved to law enforcement under the circumstances of this case were mere convenience. Surely, mere inconvenience of law enforcement is no reason to abolish state constitutional protections. As Justice Stevens noted

in the dissent of Florida v. White, slip op. at 7:

> Knowing that a neutral party will be involved before private property is seized can only help ensure that law enforcement officers will initiate forfeiture proceedings only when they are truly justified. A warrant requirement might not prevent delay and the attendant opportunity for official mischief through discretionary timing, but it surely makes delay more tolerable.
>
> Without a legitimate exception [to the warrant requirement], the presumption should prevail. Indeed, the particularly troubling aspect of this case is not that the State provides a weak excuse for failing to obtain a warrant either before or after White's arrest, but that it offers us no reason at all. The justification cannot be that the authorities feared their narcotics investigation would be exposed and hindered if a warrant had been obtained. *Ex parte* warrant applications provide neutral review of police determinations of probable cause, but such procedures are by no means public. And the officers had months to take advantage of them. On this record, one must assume that the officers who seized White's car simply preferred to avoid the hassle of seeking approval from a judicial officer. I would not permit bare convenience to overcome our established preference for the warrant process as a check against arbitrary intrusions by law enforcement agencies 'engaged in the often competitive' - and here potentially lucrative - 'enterprise of ferreting out crime.' Johnson v. United States, 333 U.S. 10, 14-15 (1948).

Stevens can't prevent it, of course, because he was in the dissent, but this Court, pursuant to the Florida State Constitutions due process protections, can prevent arbitrary intrusions by law enforcement agencies engaged in the often competitive and potentially lucrative process of drug forfeiture.

Here are just some of the benefits gained by requiring a pre-seizure *ex parte* hearing before a judicial officer:

1. While probable cause in some cases may be virtually indisputable, other situations are not so clear. Compare, e.g., City of Edgewood v. Williams, 556 So.2d 1390 (Fla. 1990) (forfeiture not allowed), with Duckham v. State, 478 So.2d 347 (Fla. 1985) (forfeiture allowed). In those close cases at least, the determination of probable cause by a judicial officer supplies protection from the non-neutral and unilateral assessment of probable cause made by law enforcement which has a pecuniary interest in the outcome of the seizure.

2. In many cases, the only judicial review that may ever occur in a drug contraband forfeiture case may be the pre-seizure *ex parte* judiciary hearing. Formal criminal charges may never be filed, and the asset seized and forfeited by law enforcement without contest by the unfortunate owner or possessor of the vehicle. This will be done under the civil standard found in the Act, and without appointment of counsel to represent the indigent. Moreover, in many cases it will not be cost effective to pursue forfeiture of a vehicle through forfeiture proceedings, notwithstanding the fact that the Act provides for attorneys' fees if the person whose vehicle is seized prevails. As a practical matter, employment of the safeguards of the Act is cumbersome, and may be impossible. Indeed, none of the statutory ""safeguards" of the Act mean anything if a person is not in a position to avail him or herself of these safeguards.

3. An *ex parte* judicial hearing provides an "auditing function." Marginal cases will eventually not be brought to a magistrate as law enforcement learns to leave marginal cases alone. A neutral and detached magistrate, without a pecuniary interest, will make the probable cause determination. In those cases

where probable cause does not exist, an individual whose car has been seized will not be placed in the affirmative position of having to initiate procedures under the Act in order to obtain his or her property back.

4. Because *this* will be an *ex parte* pre-seizure judicial hearing, "safe, effective, imaginative law enforcement" will not be impaired. Compare, Calero-Toledo v. Pearson Yacht Leasing Company, 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974), where the United States Supreme Court rejected a Due Process challenge on the basis that an adversarial hearing was not required to conform with federal notions of due process. The concern for flight that led the United States Supreme Court in Calero-Toledo to reject an adversarial hearing requirement is not present here where the Petitioner merely requests *an ex parte* pre-seizure warrant hearing. Nor, in this case, is there any concern for a continued threat to the community, in light of the 68-80 days in which the officers dallied before seizing Petitioner's car. Finally, here, the agency of the government that executed this seizure stood to gain directly from the forfeiture (unlike any generic revenue that Puerto Rico might have obtained in Calero-Toledo).

Frankly, absent exigent circumstances, there are no legitimate reasons for not requiring a pre-seizure *ex parte* warrant. On the other hand, the benefits from requiring such a hearing are obvious. Indeed, the due process requirements of the Florida State Constitution (which are greater than those found in the federal constitution, Travlor, supra) require it.

CONCLUSION

Based on the foregoing arguments and requirements, this Court should affirm that portion of its opinion based upon state due process considerations

under the Florida Constitution which require *an ex parte* judicial warrant prior to seizure in a drug forfeiture case. After all, the State of Florida does not wish to be known as the "Pirate State." [Title of May 21st, 1999, St. Petersburg Times editorial, Appendix].

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by delivery to the Office of the Attorney General, The Capitol, Plaza Level, Tallahassee, Florida, this 21st day of July, 1999.

Respectfully submitted,

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INDEX TO APPENDIX

Appendix

Drug Asset Seizure and Forfeiture Management

*(This course **qualifies for** credit towards the Criminal Investigation Management Award.)*

Duration: Two days.
Tuition: $275
Scheduled: Jun 1-2, 1999.

Are you aware of how forfeiture laws have changed, both federally and in your state? Are you documenting your cases properly? Are you following proper procedures for inventory control and disposal of seized property?

Here's a great opportunity to learn proper procedures (or to insure you are already following them). One small case can reimburse you for the cost of this course many times over. Even the smallest agency can reap significant benefits from this program. Your instructors have solved and prosecuted many forfeiture cases, and will share their first-hand experiences. Learn how to avoid losing thousands of dollars through a mere technicality--money that could be used to strengthen your agency's drug enforcement effectiveness. The class will discuss the drug asset seizure and forfeiture statutes and procedures of each participant's state.

Course Content:

- Seizure and forfeiture policy development
- State and federal forfeiture statutes
- Type of property subject to seizure
- Record-keeping and inventory control
- Property disposition
- Model forfeiture statute
- Criminal vs. civil forfeiture
- Federal seizure warrant processes
- Use of seizure as a valuable investigative tool
- Recent court decisions regarding forfeiture statutes

Go to the Alphabetical List of Courses.
Go to the Grid of Course Offerings.
Go to the Table of Contents.

Forfeiture Endangers American Rights

FEAR-List Bulletin

Summa y of news clipping:

Florida Forfeiture Reform Bill Signed Into Law

FEAR-List Bulletin posted 6-14-95

The Miami Herald published an article on June 14, 1995, entitled: "Chiles Signs Cash Confiscation Bill," Florida Gov. Lawton Chiles this week signed into law a Florida forfeiture reform bill. According to the Herald, the new law requires the police to establish the property's involvement in crime by a preponderance of the evidence before it can be seized.

"The law came under scrutiny after Volusia County Sheriff Bob Vogel's drug squad seized about $8 million in suspected drug money between 1989 and 1992 when stopping motorists along Interstate 95. In January, a federal judge dismissed a $3.5 million civil lawsuit against Vogel by minority motorists who claimed his drug squad illegal seized large amounts of cash from them."

In August of 1991, a ten month investigation published by the *Pittsburgh* launched a series of news stories across the nation revealing the enormous damage done to innocent property owners through unjust forfeiture laws. The six-day series prompted local papers around the country to investigate forfeiture cases in their own counties, where hundreds of cases of innocent victims surfaced. Headtines stated:

Presumed Guilty- *the Law's Victims in the War on Drugs;* ***Drugs contaminate nearly all the money in America.*** *Police seize money from thousands of people each year because a dog with a badge sniffs, barks or paws to show that bills are tainted with drugs.* ***Police profit by seizing homes of innocent.***
—Pittsburgh Press, Aug. 11-16, 1991

Are Seizures Legalized Theft? *Government doesn't have to prove guilt. "Robbery with a badge" in the nation's capital.*
—U.S.A. Today, May 18.1992

Where The Innocent Lose- *Civil forfeiture can put your furniture in jail.*
—Newsweek, Jan. 4, 1993

The ***Forfeiture*** *Racket: Widespread abuse taints anti-drug law. Is* ***anyone*** *immune? Sweeping law leaves poor, vulnerable with little recourse.* ***Most claimants find*** *they can't fight forfeiture.*
--San Jose Mercury News, Aug. 29-30, 1993

It finally caught the attention of Congress:

"An investigation that began with a lengthy series in *the Pittsburgh Press,* has now been replicated around the country...[T]hese stories document hundreds of cases of innocent victims caught up in a judicial nightmare [and] point to a pattern and practice of abuse. Abuse by state and local enforcement that is fostered by a built-in financial incentive that cannot help but impact law enforcement priorities."
-U.S. Rep. John Conyers, Jr.

Yet, years later, the abuse continues

F.E.A.R. is a non-profit organization dedicated to stopping the drift into tyranny that unfair forfeiture laws encourage. **F.E.A.R.** membership is $35 per year and includes a subscription to our newsletter, **F.E.A.R. Chronicles.** Because our focus is on legal reform, membership dues are not tax deductible. However, donations made to **F.E.A.R. Foundation,** which are used to educate the public about forfeiture law and assist in legal defense, are fully tax deductible. For more information please contact:

F.E.A.R.

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toll free **888-FEAR-001**
http://www.fear.org

Please feet free to copy and distribute this pamphlet.

Tell your Senators and Congressperson to support Rep. Hyde's **Manager's Amendment to H.R. 1965.** This legislation is a *vital first* step in reforming laws that have been abused for years**It will: require the government to prove its caseby** clear and convincing evidence; **provide for appointment of counsel** for those who are unable to afford **representation; abolish cost bond** requirements, an additional financial burden which contributes to the fact that over 80% of federal forfeiture victims are unable to bring their case to **court; correct ambiguous language defining an innocent owner** that is presently contained in those few forfeiture statutes that provide any protection whatsoever for real estate owners whose property was put to illegal use by mortgagors, tenants, customers or trespassers; **extend the time property owners have to contest a forfeiture** from 10 or 20 days to 30 days; **allow** owners to **sue** the **government for** negligenceresulting in damage to property held in **government** custody; **and provide for the return of property pending final** disposition of the **caseif** continued possession by the government would cause substantial damage to the property owner.

F.E.A.R. is a national organization of citizens working to end the tyranny that present asset forfeiture laws allow.

Forfeiture Endangers A merican Rights

"Forfeiture practice is inconsistent with the stated **purpose of** the law. The government spent more on our case than it will take from us."
— *David Hanson, forfeiture victim*

"The Unite-d States Marshal arrested our home on Sept. 20, 1988. We were soon to find that arresting and taking into custody a two-story house, barn, shop, fences and 60 acres was only the beginning of the legal fiction upon which civil forfeitures are based.
-Judy Osburn, Spectre of Forfeiture

"Asset forfeiture" is a polite euphemism for the government confiscation of private property.
-Brenda Grantland, Your House is Under Arrest

[Civil asset forfeiture]. has allowed police to view all of America as some giant national K-Mart, where prices are not just lower, but nonexistent-a sort of law enforcement 'pick-'n-don't pay."'
-U.S. Rep. Henry Hyde, Forfeiting Our Property Rights, Cato Institute

A3

Why do we F.E.A.R. asset forfeiture?

Incredible as it sounds, asset forfeiture laws allow the government to seize property without charging anyone with a crime, and then keep it without ever having to prove a *case. Seized* property is *presumed guilty* and may be forfeited based upon mere hearsay, or even a tip supplied by an informant who stands to gain up to 25% of the forfeited assets.

Owners are forced into the untenable situation of trying to prove a negative-that something never happened, when no proof has been offered that it did. And most owners of seized property lack the financial resources to even bring their case to court.

Rising tide of abuse has surfaced throughout the country.

Since police get to keep nearly all the forfeited property, officers often succumb to budget pressures and the temptation of bounty in the form of seized assets for their departments.

Newspaper and television stories across the nation have documented hundreds of cases of innocent citizens who were wrongfully deprived of their homes, their business and their livelihoods--even though they were never found guilty of any crime.

80% of the property forfeited in the U.S. is seized from owners who are never even charged with a crime!

Bankers, landlords, restaurant and other business owners are losing valuable property because of something their mortgagee, tenant, customer or a trespasser may have done.

Beware of contacting law enforcement if you suspect a tenant may be involved in illegal activities. Such a call may not get your tenant arrested, but could easily result in your property being forfeited. Although the criminal conviction of your tenant requires proof, hearsay or even your own reported suspicions will provide enough evidence for the government to seize your property!

Lienholders fortunate enough to be able to prove their innocence are often left holding a worthless mortgage that is not covered by tbe proceeds of the government auction. And the government is immune to countersuit.

Beyond the drug war: over 200 federaf forfeiture laws are attache&to non-drug crimes.

These outrageous precedents were set due to the government's "War on Drugs", but forfeitures are rapidly expanding into other areas of the law.

For instance, under the 1989 Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), any false information on a loan application can trigger forfeiture of the property you purchased with the loan. And this forfeiture law is retroactive! Mistakes on complicated loan forms are presumed to be intentional fraud—property owners must prove the innocence of a loan application statement they may have made many years earlier. The law was intended to target the type of fraudulent loans which led to the Savings & Loan crisis, but the government now uses this lucrative weapon against homeowners.

And, the Department of Justice is now using an "innovative" interpretation of forfeiture statutes to seize the assets of physicians suspected of "federal health care offenses." This tactic can cause physicians' entire assets to be forfeited based on a single "fraudulent" billing error, or an "unnecessary" admission of a patient to a health care facility.

Even the drafters of forfeiture laws have come to fear the Pandora's bon they have unleashed:

"Florida's *Contraband Forfeiture Act* became a casualty of something I call the 'Sheriff of Nottingham Syndrome.' The Sheriff of Nottingham, as every child knows, funded his substantial treasury primarily by squeezing the poor and using pretexts to seize the estates of the politically powerless for the benefit of himself and his friends.

"Who knows? In the beginning, he may have taken his law enforcement duties seriously, but in the end, he was corrupted by his dependence on seizures and fines. . ..I strongly believe there is nothing more dangerous to law enforcement in this nation."

—Elvin Martinez, Florida House of Representatives, Florida Dept. of Law Enforcement 1986 "honorary Special Agent"& 1990 "Crime Fighter of the Year. "

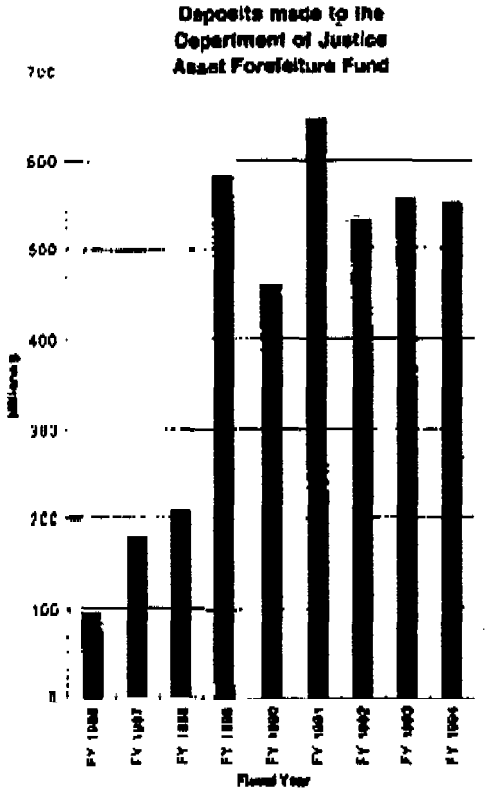
Over $5 billion forfeited since 1985.

It is going to be extremely difficult to separate our money-hungry government from its lucrative meal ticket. Until the advent of F.E.A.R., law enforcement officials promoting expanded forfeiture laws comprised the overwhelming majority of lobbyists at hearings on forfeiture legislation. Meanwhile, prosecutors complained that police are no longer available to investigate crimes that do not involve forfeitures.

F.E.A.R. is providing an organized voice defending property interests in Congress and in state legislatures.

F.E.A.R. activists achieved state-level reform in California, including abolishing forfeiture of property from people not convicted of a crime. Activists in Missouri and New Jersey have also achieved reform in their states. F.E.A.R. is working towards forfeiture reform on the federal level too. Representatives John Conyers (D., MI) and Henry Hyde (R., IL) both introduced forfeiture reform bills for the first time in 1993, but neither bill made it out of committee. Rep. Hyde tried again in 1995 but the bill went nowhere. In 1997, Rep. Hyde, with Rep. Conyers as a cosponsor, introduced H.R. 1835, which F.E.A.R. again supported. However, the Judiciary Committee reported out a new bill, H.R. 1965, which would have made forfeiture law worse, not better. This new bill foundered for lack of support and efforts are underway to replace it with the provisions contained in H.R. 1835. The reform measures now being considered by Congress would be an important first step in federal forfeiture law reform that F.E.A.R. has been working towards.

Yet, we face the enormous task of overcoming pressure from lobbyists defending their forfeiture revenue and the prevalent ambivalence of the majority of congressman. Far too many people have lost their cars, homes and life savings because of unjust forfeiture laws- but this police piracy continues. We need your support.



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Under a Supreme court ruling, if authorities think that property might have, at some time, been used in a crime, it can be seized - no warrant required.

Almost as predictably as the cycle of the tides, the U.S. Supreme Court has again ruled against the need for police to obtain a warrant before seizing property. It is not hyperbole to suggest that exceptions to the Fourth Amendment's warrant requirement may soon completely subvert the rule, stripping away the protection from arbitrary police power most valued by the nation's founders.

The most recent disappointing verdict came out of a Florida case. This week, the Supreme Court ruled that vehicles believed to have been used to commit a crime can be confiscated by police without a warrant.

Tyvessel Tyvorus White reportedly was observed by police in the summer of 1993 using his car to sell and deliver cocaine. Inexplicably, White was not arrested then, nor was his car confiscated. It wasn't until months later, after White was arrested on unrelated charges, that his car was seized without a warrant.

When the car was taken, it had been safely parked in White's employer's parking lot in Bay County. There were no emergency conditions that would have justified a warrantless seizure; the car was immobile, and its owner

was in police custody: Officers had no fear for their safety and no reason to think the car would be driven away and cause them to lose their evidence. Those are the kinds of reasons that typically justify confiscating a car without a court order.

After the car was taken, police conducted a routine search of the vehicle and found two pieces of crack cocaine in the dashboard ashtray. Florida's Supreme Court threw out White's drug possession conviction in February 1998, ruling that the car was seized illegally and, therefore, anything found in the car could not be used as evidence. The U.S. Supreme Court overturned that judgment, effectively reinstating White's conviction.

The high court justified the warrantless seizure by saying the car was itself contraband, which makes it always available for seizure. And, the justices ruled, because the car was sitting in a public place, no privacy rights were violated in taking it.

This logic vests so much discretion in the police that it virtually swallows the Fourth Amendment whole. Under the court's rationale, the stake can designate an otherwise legal product such as a car as contraband based purely on the belief that the car was used in a crime sometime in the past. The state can then take the car without any judicial oversight, even though the seizure will benefit the government financially.

This is a recipe for constitutional disaster. Police have been known to take cars, boats and cash on the basis of little if any evidence of their criminal use. Such seizures have become a lucrative augmentation of many departments' law enforcement budgets. This case will only encourage more such abuse.

In insisting police obtain a warrant before seizing White's car, the Florida Supreme Court had said that a state forfeiture statute cannot negate individual rights. ''It would, indeed, be a Pyrrhic victory for the country if the government's imaginative use of that weapon (civil forfeiture) were to leave the Constitution itself a casualty," the Florida court said, quoting a federal appeals court.

With its ruling this week, the U.S. Supreme Court has taken that dire prediction one step closer to the truth.

END OF DOCUMENT

Tyvessel Tyvorus WHITE, Petitioner,

v.

STATE of Florida, Respondent.

No. 88813.

Supreme Court of Florida.

Feb. 26, 1998.
Rehearing Denied June 1, 1998.

Defendant was convicted in the Circuit Court, Bay County, Clinton Foster, J., of possession of cocaine, which was found during inventory search of his automobile following its warrantless seizure pursuant to Florida Contraband Forfeiture Act. Defendant appealed. The District Court of Appeal, 680 So.2d 550, affirmed and certified question. The Supreme Court, Anstead, J., held that: (1) warrantless seizure of citizen's property, including automobile, absent exigent circumstances, violates Fourth Amendment; and (2) automobile exception to warrant requirement was inapplicable to seizure of defendant's automobile,

Question answered.

1. Searches and Seizures ⇐83

Warrantless seizure of citizen's property, including automobile, absent exigent circumstances, violates Fourth Amendment right to be secure against unreasonable searches and seizures, even when seizure is made pursuant to statutory forfeiture scheme. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12; West's F.S.A. §§ 932.701-932.707.

2. Drugs and Narcotics ⇐183(7)

Absence of probable cause to believe contraband was in vehicle, combined with lack of any other exigent circumstances, rendered automobile exception to warrant requirement inapplicable to seizure of defendant's automobile, where vehicle was parked safely at defendant's employment, government had keys to vehicle, and defendant was in custody on unrelated charges. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12; West's F.S.A. §§ 932.701–932.707.

3. Searches and Seizures ⇐60.1

Automobile exception to warrant requirement is predicated upon existence of exigent circumstances consisting of known presence of contraband in automobile at the time, combined with likelihood that opportunity to seize contraband will be lost- if it is not immediately seized because of mobility of automobile. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12.

4. Searches and Seizures ⇐60.1

Automobile exception to warrant requirement is narrow, situation-dependent exception which requires more than fact that automobile is object sought to be seized and searched; there must be probable cause to believe contraband is in vehicle at time of search and seizure, and there must be some legitimate concern that automobile might be removed and any evidence within it destroyed in time warrant could be obtained. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12.

5. Searches and Seizures ⇐64

Fourth Amendment mandates that absent exigent circumstances, police must secure warrant for search and seizure of automobile. U.S.C.A. Const.Amend. 4.

6. Searches and Seizures ⇐44

No amount of probable cause can justify warrantless search or seizure absent exigent circumstances. U.S.C.A. Const.Amend. 4.

Nancy A Daniels, Public Defender and David P. Gauldin, Assistant Public Defender, Second Judicial Circuit, Tallahassee, for Petitioner.

Robert A Butterworth, Attorney General; James W. Rogers, Bureau Chief, Criminal Appeals and Daniel A David, Assistant Attorney General, Tallahassee, for Respondent.

ANSTEAD, Justice.

We have for review the opinion in *White v. State*, 680 So.2d 550 (Fla. 1st DCA 1996). We accepted jurisdiction to answer the following question certified to be of great public importance:

WHETHER THE WARRANTLESS SEIZURE OF A MOTOR VEHICLE UNDER THE FLORIDA FORFEITURE ACT (ABSENT OTHER EXIGENT CIRCUMSTANCES) VIOLATES THE FOURTH AMENDMENT OF THE UNITED -STATES CONSTITUTION SO AS TO RENDER EVIDENCE SEIZED IN A SUBSEQUENT INVENTORY SEARCH OF THE VEHICLE INADMISSIBLE IN A CRIMINAL PROSECUTION.

Id at 565. We have jurisdiction. Art, V, § 3(b)(4), Fla. Const. For the reasons expressed below, we answer the certified question in the affirmative. We hold that a citizen's property is protected by the federal and Florida constitutions against warrantless seizure even when the seizure is done pursuant to a statutory scheme for forfeiture.

MATERIAL FACTS [1]

On October 14, 1993, petitioner Tyvessel Tyvorus White (White) was arrested at his place of employment on charges unrelated to this case. After taking White into custody on those unrelated charges, and securing the keys to his automobile, the arresting officers seized his automobile from the parking lot of White's employment. The police did not seize the vehicle incident to White's arrest or obtain a prior court order or warrant to authorize the seizure. Rather, the basis of the seizure was the arresting officers' belief that White's automobile had been used several months earlier to deliver illegal drugs, and therefore the vehicle was subject to forfeiture by the government.[2] After confiscation of the vehicle, a subsequent search turned up two pieces of crack cocaine in the ashtray.

Based on the discovery of the cocaine, White was charged with possession of a controlled substance. White subsequently objected to the introduction into evidence of the cocaine seized during the post-arrest search of his automobile. The trial court reserved ruling on the issue and allowed the evidence to go to a jury. White was thereafter convicted of possession of cocaine; and subsequently the trial court formally denied White's objection and motion to suppress the cocaine evidence.

On appeal, the First District affirmed White's conviction and approved the government's warrantless seizure of White's car. The majority opinion found that the government met the requirements of the Florida Contraband Forfeiture Act, sections 932.701-932.70'7, Florida Statutes (1993) (hereinafter Forfeiture Act) in that the warrantless seizure of White's automobile was based upon probable cause to believe that the vehicle had facilitated illegal drug activity at some time in the past. Further, the majority found that the warrantless seizure did not violate White's Fourth Amendment right to be secure against unreasonable searches and seizures.[3] In dissent, Judge Wolf asserted that the "warrantless seizure of an automobile absent exigent circumstances violates the Fourth Amendment of the United States Constitution even though probable cause exists to believe that the automobile is subject to forfeiture as a result of prior narcotics transactions." *White*, 680 So.2d at 557 (Wolf, J., concurring in part and dissenting in part).

1. The following facts are taken from the First District's opinion. White, 680 So.2d at 551-55.

2. The dates of the alleged prior illegal activities were July 26, 1993. and August 4 and 7, 1993. We commend the State's candor in providing these dates during oral argument. As both parties noted at oral argument, the record is unclear as to the actual dates. The State noted that these dates are contained in White's motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850.

3. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Amend. IV. U.S. Const. In 1982, article I, section I2 of the Florida Constitution was amended to add what has become known as the conformity clause because "we are bound to follow the interpretations of the United States Supreme Court with relation to the fourth amendment and provide no greater protections than those interpretations." *Bernie v. State*, 524 So.2d 988, 990-91 (Fla.1988); *see Soca v. State*, 673 So.2d 24. 27 (Fla.), *cert. denied*, — U.S. —, 117 S.Ct. 273, 136 L.Ed.2d 196 (1996).

Because the court found that neither this Court nor the United States Supreme Court had addressed the issue of whether law enforcement agencies must obtain a warrant prior to seizing a citizen's property under the Florida Contraband Forfeiture Act, the First District certified the issue as one of great public importance to this Court.

LAW AND ANALYSIS

[1] In holding that no prior court authorization was required in order to seize and search white's vehicle, the First District majority applied the "automobile exception" to the warrant requirement. While we recognize the continuing validity of the "automobile exception" to the warrant requirement, we find it inapposite here.

In hie dissent, Judge Wolf relied primarily on the opinion of the United States Court of Appeals for the Second Circuit in U.S. *v. Lasanta, 978* F.2d 1300 (2d Cir.1992).[4] He also noted this Court's opinion in *Depart-*

4. Because *Lasanta* contains a comprehensive and reasoned treatment of this issue, we quote from the Second Circuit's opinion at length:

> A threshold question presented here is whether the government's seizure of the car, without a warrant, as a civil forfeiture, was authorized. The forfeiture statute, 21 U.S.C. § 881, gives power to the attorney general to seize for forfeiture, *inter alia,* a vehicle that is used to facilitate a narcotics transaction. In carrying out such a statutorily authorized seizure, however, agents of the attorney general must also obey the constitution, particularly the fourth amendment's command that there be no unreasonable seizures.
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> ...
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> We find no language in the fourth amendment suggesting that the right of the people to be secure in their "persons. houses, papers, and effects" applies to all searches and seizures except civil-forfeiture seizures in drug cases. U.S. Const. amend. IV. We reject out of hand the government's argument that congress can conclusively determine the reasonableness of these warrantless seizures, and thereby eliminate the judiciary's role in that task of constitutional construction. *See* U.S. Const. an. VI, cl. 2. While congress may have intended civil forfeiture to be a "powerful weapon in the war on drugs", *United States v. 141st Street Corp. by Hersh,* 911 F.2d 870, 878 (2d Cir.1990) (noting statute's legislative history), *cert.* denied, 498 U.S. 1109, 111 S.Ct.1017, 112 L.Ed.2d 1099 (1991). it would, indeed, be a Pyrrhic victory for the country, if the government's relentless and imaginative use of that weapon were to leave the constitution itself a casualty.
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> To be valid, therefore, this warrantless seizure must meet one of the recognized exceptions to the fourth amendment's warrant requirement. Coolidge *v. New Hampshire,* 403 U.S. 443. 454–55, 91 S.Ct. 2022. 2032, 29 L.Ed.2d 564 (1971). Surely the government cannot argue that the canister, tucked underneath the driver's seat, was found in the plain view of an Investigative officer In a place she was entitled to be. See. e.g., *Horton v. California,* 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990) (explaining the elements of a plain-view seizure). Nor does the government claim that the search was incident to Cardana's arrest, which occurred *on* the doorstep of Cardona's home. *See, e.g., Chimel v.* California, 395 U.S. 752, 762-63, 89 S.Ct. 2034. 2039–40, 23 L.Ed.2d 685 (1969) (police may search arrestee's person and area within his immediate control incident to arrest). The substantial distance between the site of Cardona's arrest and the vehicle in the driveway foreclosea any question of ths agents' need to search the vehicle for weapons to ensure their safety during the arrest. *Chimel,* 395 U.S. at 763. 89 S.Ct. at 2040 (noting that safety animates this seizure rationale).
>
> The government does not even suggest that exigent circumstances might justify its warrantless seizure of the vehicle. See. *e.g., Chambers v. Maroney, 399* U.S. 42. 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970) (outlining the automobile exception to the warrant requirement); *Carroll v. United Stares, 267* U.S. 132, 146, 45 S.Ct. 280. 282, 69 L.Ed. 543 (1925) (noting rationale of automobile exception). Investigative agents could have held no realistic concern that the car, parked not in a public thoroughfare, but in Cardona's private driveway, might be removed and any evidence within it destroyed in the time a warrant could be obtained. Cardona was not operating the vehicle, nor was he in it or even next to it; when the agents knocked on his door to arrest him, he was inside his house, asleep.
>
> Nor was it impractical for the agents to obtain a warrant to seize Cardona's *car. See, e.g., United States v. Paroutian,* 299 F.2d 486, 488 (2d Cir.1962) (search upheld when exceptional circumstances rendered it impractical to secure warrant). Previous surveillance had made agents aware of the vehicle's presence, thus enabling them to have requested and obtained a search warrant during either of their two attempts to secure a warrant to arrest Cardona. Even if the agents had been surprised by the presence of the limousine, and even if they harbored probable cause to suspect it contained evidence of narcotics-related activity, they still could have posted an agent to remain with the vehicle, and then secured a search warrant.

Id. at 1303–06. This reasoning is sound and speaks for itself.

ment of Law Enforcement v. Red Property, 588 So.2d 967, 963 n. 14 (Fla.1991), wherein we recognized that because "article I. section 12 of the Florida Conatitution expressly requires conformity with the fourth amendment of the United States Constitution, the warrant requirement of article I, section 12 also applies to seizures in forfeiture actions under Florida law." *White,* 680 So.2d at 558 (Wolf, J.. concurring in part and dissenting in part).

DEPARTMENT OF LAW ENFORCEMENT

In *Department of* Law *Enforcement, we* were able to uphold the constitutionality of Florida's forfeiture act only by imposing numerous restrictions and safeguards on the use of the act in order to protect a citizen's property from arbitrary action by the government. In discussing the act we declared:

> The Act raises numerous constitutional concerns that touch upon many substantive and procedural rights protected by the Florida Constitution. In construing the Act, we note that forfeitures are considered harsh exactions, and as a general rule they are not favored either in law or equity. Therefore, this Court has long followed a policy that it must strictly construe forfeiture statutes.

588 So.2d at 961. The major thrust of our holding was that in order to comply with constitutional due process requirements, the government must strictly observe a citizen's constitutional protections when invoking the drastic remedy of forfeiture of a citizen's property. In addition to expressly holding that the Fourth Amendment applies to forfeiture attempts by the government, we specifically explained:

> In those situations where the state has not yet taken possession of the personal property that it wishes to be forfeited, the state may seek an ex parte preliminary hearing. At that hearing, the court shall authorize seizure of the personal property if it finds probable cause to maintain the forfeiture action.

5. A young man who had just left the motor home only moments before told agents of the Drug

Id. at 966. We conclude that the government's unauthorized and warrantless seizure, absent exigent circumstances not established here, clearly violated the constitutional safeguards we recognized in *Department of Law* Enforcement.

The government did not seek a warrant or an "ex parte preliminary hearing" here in order to secure a neutral magistrate's determination of probable cause. The government just seized the property, thereby putting the property owner and any others claiming an interest in the property in the position of having to take affirmative action against the government in order to protect their rights. Thin is the very antithesis of the cautious procedure we mandated in *Department of Law Enforcement.* We simply cannot accept the government's position that it may act at anytime, anywhere, and regardless of the existence of exigent circumstances, or a change in ownership or possession, to seize a citizen's property once believed to have been used in illegal activity, without securing the authorization of a neutral magistrate.

AUTOMOBILE EXCEPTION

[2, 3] As previously noted, the *only* basis asserted for the unauthorized government seizure here is the so-called automobile exception to the warrant requirement. The district court majority cited *California v. Carney,* 471 U.S. 386, 391, 105 S.Ct. 2066, 2069, 85 L.Ed.2d 406 (1985), for the proposition that automobiles are afforded less Fourth Amendment protection against warrantless searches and seizures due to their "ready mobility" and diminished expectations of privacy due to their pervasive governmental regulation. The automobile exception is predicated upon the existence of exigent circumatancea consisting of the knows presence of contraband in the automobile at the time, combined with the likelihood that an opportunity to seize the contraband will be lost if it is not immediately seized because of the mobility of the automobile. See *Chambers v. Maroney,* 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970). For example, in *Carney,* law enforcement officers had direct evidence [5] that illegal drugs were present and

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6. *See* also *Pennsylva*
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that the suspect was distributing illegal drugs from the vehicle. Accordingly, the Court concluded that the officers "had abundant probable cause to enter and search the vehicle for evidence of a crime." *Carney*, 471 U.S. at 396, 105 S.Ct. at 2071.

Since it is conceded that the government had no probable cause to believe that contraband was present in White's car, we conclude that *Carney* and the automobile exception are inapposite as authority. There is a vast difference between permitting the immediate search of a movable automobile based on actual knowledge that it then contains contraband and that an opportunity to seize the contraband may be lost if not acted on immediately, and the altogether different proposition of permitting the discretionary seizure of a citizen's automobile based upon a belief that it may have been used at some time in the past to assist in illegal activity. The exigent circumstances implicit in the former situation are simply not present in the latter situation.

[4] The automobile exception is a narrow, dtuation-dependent exception which requires much more than the fact that an automobile is the object sought to be seized and searched. Critically, there must be probable cause to believe contraband is in the vehicle at the time of the search and seizure, *Carney*,[6] and there must be some legitimate concern that the automobile "might be removed and any evidence within it destroyed in the time a *warrant* could be obtained." *Lasanta*, 978 F.2d at 1306. The majority opinion below simply failed to address the fundamental requirement of *Carney*:

> In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate *so long as* the overriding *standard* of *probable cause [to believe contraband is* in *the vehicle] is met.*

471 U.S. at 392, 105 S.Ct. at 2070 (emphasis added).

As is vividly demonstrated in the *Lasanta* case, cited by Judge Wolf, the automobile exception does not apply to either the facts of that case or White's case. *See White*, 680 So.2d at 557 (Wolf, J., concurring in part and dissenting in part) (noting that White was arrested at his workplace, his car keys were in his pocket, and his car was parked outside in his company's parking lot). In *Lasanta*, the court could easily have been writing about this case when it described the obvious absence of exigent circumstances in the government's forfeiture seizure:

> The government does not even suggest that exigent circumstances might justify its warrantless seizure of the vehicle. *See*, e.g., *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970) (outlining the automobile exception to the warrant requirement); *Carroll v. United States*, 267 U.S. 132, 146, 45 S.Ct. 280, 262, 69 L.Ed. 543 (1926) (noting rationale of automobile exception). Investigative agents could have held no realistic concern that the car, parked not in a public thoroughfare, but *in* Cardona's private driveway, might be removed and any evidence within it destroyed in the time a warrant could be obtained. Cardona was not operating the vehicle, *nor* was he in it or even *next to* it; when the agents knocked on his door to *arrest* him, he was inside his house, asleep.

978 F.2d at 1306. Similarly, the absence of probable cause to believe contraband was in the vehicle combined with an obvious lack of any other exigent circumstances renders the automobile exception inapplicable here. The exception does not apply when no probable cause exists and the police arrest either a

Enforcement Administration that he had received marijuana from the suspect while in the motor home. *Carney*, 471 U.S. at 388, 105 S.Ct. at 2067.

6. *See* also Pennsylvania v. *Labron*, 518 U.S. 938, 940-41, 116 S.Ct. 2485, 2487, 135 L.Ed.2d 1031 (1996) (reaffirming *Carney* in reasoning that if a car "is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more"); California *v. Acevedo*, 500 U.S. 565, 580, 111 S.Ct. 1982, 1991, 114 L.Ed.2d 619 (1991) (holding that "[t]he police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained").

sleeping suspect, *Lasanta*, or a suspect at work with the keys in his pocket. *White*. There simply was no concern presented here that an opportunity to seize evidence would be missed because of the mobility of the vehicle. Indeed, the entire focus of the seizure here was to seize the vehicle itself as a prize because of its alleged prior use in illegal activities. rather than to search the vehicle for contraband known to be therein, and that might be lost if not seized immediately.

SEIZURE OF PROPERTY VS. SEIZURE OF PERSON

Finally, the reasoning of the district court majority, that since a defendant's person can be seized without a warrant his property should be no different, simply proves too much. If we were to follow that reasoning to its logical conclusion we would, in essence, amend the Fourth Amendment out of the Constitution and do away with the requirement of a warrant entirely for the search and seizure of property.' It will always be more intrusive to seize a person than it will be to seize his property. That is the nature of human values. However, such an approach would apparently have us do away with the constitutional law of search and seizure as to property entirely, simply because we have permitted the warrantless arrest of a person.

[5, 6] The United States Supreme Court has purposely subjected the Fourth Amendment to only a "few welldelineated exceptions." Coolidge v. New *Hampshire*, 403 U.S. 443, 455, 91 s.ct. 2022, 2032, 29 L.Ed.2d 564 (1971). For example, the courts have carefully restricted the law of search and seizure to permit a limited search of an arrestee and his person "incident" to a valid arrest. See *Chimel* v. *California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). However, the reasoning of the district court majority, if carried to its logical bounds, would do away with the limitations established to a search incident to a lawful arrest and now permit a search of anything, anywhere, based upon probable cause, without a warrant, since those actions involving property would obviously be less intrusive than seizing the person. Obviously, we are not willing to accept such a proposition and its implications.[8]

CONCLUSION

In the end, the maintenance of an orderly society mandates that a citizen's property should not be taken by the government. In the absence of exigent circumstances, without the intervention of a neutral magistrate.

7. As Chief Justice Kogan recently reminded us, the genius of our federal and state constitutions is that they define basic rights that neither the legislative nor executive branches can modify. *Krischer v. McIver, 697* So.2d 97, 112 (Fla.1997) (Kogan. C.J.. dissenting). These remarkable documents fenced off from the "ordinary political process" these rights guaranteed all Americans by ensuring they "could not be repealed by a mere majority vote of legislators nor alter[ed] through any profess except constitutional amendment." *Id. at I* 12–13.

8. As Judge Wolf correctly observed in his dissent below, the Fourth Amendment mandates that absent exigent circumstances, police must secure a warrant for the search and seizure of an automobile. *Coolidge v. New Hampshire, 403* U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). Indeed, *Coolidgei* holding remains good law to the extent that "no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.' " *Id.* at 468, 91 S.Ct. at 2039. Moreover, in the case that overruled *Coolidge* in part, *Horton v. California, 496* U.S. 128, 110 S.Ct. 2301, 1 IO L.Ed.2d 1 12 (1990), the Supreme Court not only reaffirmed *Coolidge's* essential holding but also noted that it had extended "the same rule to the arrest of a person in his home." *Id.* at 137 n. 7, I IO S.Ct. at 2308 n. 7. Therefore, since no exigent circumstances existed in this case, the warrantless seizure of White's car was unconstitutional. *See Coolidge*, 403 U.S. at 454–55, 91 S.Ct. at 2031–32 (reaffirming rule that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject *only to a few specifically established and well-delineated exceptions* ") (emphasis added). Even though automobiles are afforded lesser Fourth Amendment protection, there is still a strong presumption against warrantless searches and seizures of a citizen's property by the government. absent exigent circumstances. *See Coolidge,* 403 *U.S.* 468, 91 S.Ct. at 2039 (reiterating that "even where the object is contraband. this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure"). *Coolidge's* requirement that a "plain view" seizure must also he "inadvertent" was overruled in *Horton, 496* U.S. at 140, I IO S.Ct. at 2310. Minus that incidental reasoning, *Coolidge* remains good law.

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Certainly the warrant requirement would have posed no undue burden on the government here where the vehicle was parked safely at the petitioner's place of employment and the government had the keys and the petitioner in custody. Moreover, any inconvenience to the government pales in comparison to the consequence8 for our justice system and constitutional order if such abuses are left unchecked. See *Department of Law Enforcement.* As the Second Circuit poignantly observed in *Lasanta,* 9'78 F.2d at 1305, "it would, indeed, be a Pyrrhic victory for the country, if the government's imaginative use of that weapon [civil forfeiture] were to leave the constitution itself a casualty,"

In summary, we answer the certified question in the affirmative and hold that the warrantless seizure of a citizen's property is protected by the federal and Florida constitutions even when the seizure is made pursuant to a statutory forfeiture scheme. Accordingly, we quash the First District's opinion and remand this case for proceedings consistent herewith.

It is so ordered.

KOGAN, C.J., SHAW and HARDING, JJ., and GRIMES, Senior Justice, concur.

WELLS, J., dissents with an opinion in which OVERTON, J., concurs.

WELLS, Justice, dissenting.

For more than twenty-three years, Florida's forfeiture statute has been enforced by Florida courts, including this Court, as the legislature wrote. it. Today, by this decision, the majority judicially amends this twenty-three-year-old statute and places Florida in the minority of federal and state jurisdictions, which require a preseizure warrant in order to enforce forfeiture statutes. Today's decision also puts our state procedure at odds with federal forfeitures in Florida since the Eleventh Circuit is among the majority of jurisdictions which recognize that warrantless seizures pursuant to forfeiture statutes are not in violation of the Fourth Amendment to the United States Constitution.

I dissent because I agree with the majority of jurisdictions and the Eleventh Circuit and do not believe that this change in the law of Florida is suddenly required by the Fourth Amendment. The case of *United States v. Lasanta,* 9'78 F.2d 1300 (2d Cir.1992), upon which the majority opinion relies, is clearly the minority view.

The seizure in thia case was not an unusual enforcement of Florida's forfeiture law or contrary to forfeitures which the appellate courts of Florida have approved since the inception Of the statute. Clearly, the period of time between when the police eyewitnesses and the video-tape evidence showed the vehicle being used in the delivery and sale of cocaine and the seizure of the vehicle was within previous approvals by Florida courts. Soon after the forfeiture statute became effective on October 1, 1974, it was recognized that proof of past violations may be the basis for forfeiture. *State v. One* 1977 *Volkswagen,* 455 So.2d 434 (Fla. 1st DCA 1984) (police properly seized a vehicle based upon drug transaction occurring almost two months prior to seizure), *approved,* 478 So.2d 347 (Fla.1985); *Knight v. St&* 336 So.2d 385, 387 (Fla. 1st DCA 1976), *cert. denied,* 345 So.2d 424 (Fla.1977).

In 1983, the Second District directly confronted the issue of Whether a preseizure warrant needed to be obtained. The Second District held that it did not in *State v. Pomerance,* 434 So.2d 329, 330 (Fla. 2d DCA 1983), stating:

> We have found no case addressing this issue. However, section 932.703, Florida Statutes (1981), which provides for the forfeiture of motor vehicles used to transport, conceal, or facilitate the sale of contraband, in violation of section 932.793, nowhere mentions obtaining a warrant; it simply states that an offending vehicle "shall be seized." *We know of no rationale for judicially engrafting onto the statute a requirement that a warrant be obtained*

(Emphasis added.)

In 1985, in *Duckham* v. *Stats,* 478 So.2d 347 (Fla.1985), this Court did an analysis of the forfeiture statute and cases from our district courts and federal circuit courts and upheld the forfeiture of a motor vehicle seized almost two months after the vehicle had been used to facilitate a drug transac-

tion. It is important to note that this seizure of the motor vehicle was not based upon there being probable cause to believe that there was contraband in the vehicle at the time of or before its seizure. The district court's decision in *Duckham* was approved with this Court noting:

> Even though no drugs had been transported in the car, no conversations had taken place in the car, the policeman had never been in the car, and Duckham used the car solely to transport himself to the restaurant where he struck the deal and then to his apartment, the district court found that Duckham used his car to facilitate the sale of contraband within the meaning of subsection 932.702(3), Florida Statutes (1981).

478 So.2d at 348.

Also in 1935, this Court upheld the forfeiture statute against a due-process attack in *Lamar v. Universal Supply Co., Inc.*, 479 So.2d 109 (Fla.1985). This Court specifically stated:

> The seizure of property pursuant to a forfeiture statute constitutes an extraordinary situation in which postponement of notice and hearing until after seizure does not deny due process. *Calero–Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974). The due process rights of claimants are adequately protected, therefore, by the requirement that the state attorney promptly file a forfeiture action following seizure. § 932.704(1), Fla. Stat. (1983).

479 So.2d at 110.

In 1989, in an opinion written by Justice Overton, this Court did another extensive analysis of this statute in *State v. Crenshaw*, 548 So.2d 223 (Fla.1989), and strongly upheld the enforcement of this statute.

The majority here cites to this Court's 1991 analysis of the forfeiture statute in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla.1991). However, the majority's quote omits the following sentence which completes the paragraph from which the quote in the majority opinion is taken: "In those situations where a law enforcement agency already has lawfully taken possession of personal property during the course of routine police action, the state has effectively made an ex parte seizure for the purposes of initiating a forfeiture action." 588 So.2d at 966. Through the date of that opinion (in fact until today) law enforcement agencies were considered to have lawfully taken possession of personal property when possession was taken on the basis of and in conformity with the forfeiture statute. *Lamar*, 479 So.2d at 110.

When *Department of Law Enforcement* is read in full context, that decision cannot be fairly said to engraft a warrant requirement into the statute. This was the reading given to that decision by the Second District in *In re Forfeiture of 1986 Ford*, 619 So.2d 337, 338 (Fla. 2d DCA 1993), when it held that "nothing in [*Department of Law Enforcement*] or the forfeiture statute requires a warrant, consent or exigent circumstances."

Furthermore, the majority opinion here incorrectly states that "the *only* basis asserted for the unauthorized government seizure here is the so-called automobile exception to the warrant requirement" Majority op. at 952. What the district court actually said was, "We are also influenced in our holding by the fact that the property seized here was a motor vehicle. . . ." *White v. State*, [illegible] So.2d 550, 554 (Fla. 1st DCA 1996). The district court's opinion therefore correctly pointed out that privacy interests in a motor vehicle have a lesser degree of Fourth Amendment protection because of a vehicle's mobility and because the expectation of privacy is less than that relating to one's home or office, citing to *California v. Carney*, [illegible] U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d [illegible] (1985). The statement by the district court majority is indisputably correct,

However, the clear reason for the district court majority's decision is the complete development of precedent in Florida in respect to the statute, which the majority in this Court simply casts aside without mention, and the weight of authority from both federal and state jurisdictions, which the majority fails to acknowledge. One case representing the majority view is from the Eleventh Circuit: *United States v. Valdes*, [illegible] F.2d 1554 (11th Cir.1939). The district court majority followed the reasoning of the [illegible]

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enth Circuit in *Valdes*. The rejection of *Valdes* by this Court's majority places Florida in the illogical (and I believe untenable) situation of there being a warrantless seizure available to federal law enforcement pursuant to the federal forfeiture statute because it is not a violation of the Fourth Amendment to the United States Constitution and a warrantless seizure not being available to Florida law enforcement pursuant to a substantially similar state forfeiture statute because of a holding by this Court that a warrantleas seizure is in violation of the Fourth Amendment to the United States Constitution. Though we are not bound to do it, I believe this Court should apply the Fourth Amendment to the United States Constitution in accord with its application by the federal circuit court that has Florida within its jurisdiction. This is particularly so when the Eleventh Circuit's decision is in accord with the majority of other jurisdictions

I believe the Seventh Circuit clearly expressed correctly the state of the law in federal and state jurisdictions in *United States v. Pace*, 898 F.2d 1218, 1241 (7th Cir.1990), when it said:

> *The weight of authority, however, holds that police may seize a car without a warrant pursuant* to a *forfeiture statute* if *they bve probable cause to believe the car is subject to forfeiture. See, e.g., United States v. Valdes, 876* F.2d 1564, 1558–60 (11th Cir.1989); *United States v. $29,000—U.S. Currency*, 745 F.2d 853, 866 (4th Cir. 1984); *United States v. One* 1978 *Mercedes Benz*, 711 F.2d 1297, 1302 (5th Cir.1983); *United States v. One 1977 Lincoln Mark V Coupe*, 648 F.2d 154, 158 (3d Cir.1981); *United States v. One 1975 Pontiac Lemans*, 621 F.2d 444, 450 (1st Cir.1980) (citing cases). We agree with the majority approach. The federal courts' overwhelming approval of warrantless forfeiture seizures based on probable cause, along with the historical acceptance of the constitutionality of such searches, are evidence that such searches have been generally accepted as reasonable. *See United States v. Bush, 647* F.2d 357, 370 (3d Cir.1981) (citing cases). It is difficult to ignore this general acceptance. Furthermore, under a civil forfeiture statute, "the vehicle . . . is treated as being itself guilty of wrongdoing." *United Sties v. One 1976 Mercedes Benz 280S*, 618 F.2d 453, 454 (7th Cit. 1980). Thus, seizing a car from a public place based on probable cause is analogous to arresting a person outside the home based on probable cause. Such an arrest, even without a warrant, does not violate the Fourth Amendment., although it is possibly a more significant intrusion on privacy interests than seizing an unoccupied *car. See Bush, 647* F.2d at 370 (citing *United States v. Watson, 423* US. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976)); see also *Valdes, 876* F.2d at 1569; *One* 1978 *Mercedes Benz,* 711 F.2d at 1302. And the Supreme Court has approved warrantless seizures in a similar situation. In *G.M. Leasing Corp. v. United States, 429* U.S. 338, 97 S.Ct. 619, SO L.Ed.2d 530 (1977), Internal Revenue Service agents seized cars subject to tax liens without a warrant. The Court held that the seizures did not violate the Fourth Amendment; the agents had probable cause to believe that the cars were subject to seizure, and the seizures took place "on public streets, parking lots, or other open places." See id at 361-52, 97 S.Ct. at 627-28; *G.M. Leasing* provides strong support for the majority position. *See One* 1975 *Pontiac Lemans*, 621 F.2d at 450, which adopted the panel's reasoning in *United Stales v. Pappas*, 600 F.2d 300,304 (1st Cir.), *vacated* 613 F.2d 324 (1st Cir. 1979); *Bush, 647* F.2d at 369; see also 3 Wayne R. LaFave, *Search and Seizure* § 7.3(b), at 83 (2d ed.1987). For all these reasons, we conclude that it was proper for the police to seize Pace's and Besase's cars from the parking lot of Savides' condominium complex, if the police had probable cause to believe the cars were subject to forfeiture.

(Emphasis added; footnote omitted,) See *also United States v. Musa, 46* F.3d 922, 924 (5th Cir.1995). I would continue Florida's adherence to this view.

Assuming that the warrantless seizure was authorized, there is no doubt that the inventory search was appropriate. *See Caplan v.*

State, 531 So.2d 88 (Fla.1988); *Padron v. State*, 449 So.2d 811 (Fla.1984).

OVERTON, J., concurs.

Peter F. PIERPONT, et al., Petitioners,

v.

LEE COUNTY, etc., Respondent.

A & G INVESTMENTS, etc., Petitioner,

v.

LEE COUNTY, etc., Respondent.

BARNETT BANKS, INC., Petitioner,

v.

LEE COUNTY, etc., Respondent.

Nos. 90357, 90573 and 90775

Supreme Court of Florida.

March 12, 1998.

Rehearing Denied June 1, 1998.

In three separate quick taking proceedings, the Circuit Court, Lee County, R. Wallace Pack, J., awarded attorney fees. The District Court of Appeal, 693 So.2d 999, and Campbell, Acting P.J., 693 So.2d 994, reversed, and Blue, J., — So.2d -, reversed and certified question. The Supreme Court, Grimes, Senior Justice, accepted jurisdiction and held that good-faith estimate of value does not constitute written offer for calculation of attorneys fees in eminent domain proceedings.

So ordered.

Wells, J., filed a concurring opinion in which Shaw, J., joined.

1. Eminent Domain ⇐265(1)

Legislature may enact reasonable provisions to govern award of attorney's fees la condemnation actions.

2. Eminent Domain ⇐265(1)

Government's good-faith estimate of value did not constitute written "offer" for calculation of attorneys fees in eminent domain proceedings, West's F.S.A § 73.992.

3. Costa -194.50

For purposes of calculating attorney's fees, "offer" is expression by party of assent to certain definite terms, provided that other party involved in bargaining transaction will likewise express assent to same terms. West's F.S.A. § 73.092(1)(a).

See publication Words and Phrases for other judicial constructions and definitions.

4. Eminent Domain ⇐202(1), 213.1

Condemning authority is not bound by its good-faith estimate of value and is free to contest issue of full compensation by presenting testimony of lower or higher value to jury.

5. Eminent Domain ⇐188

While deposit of estimate of value into court's registry enables condemning authority to take title to land, estimate doer not establish value of property rights, and court's determination that estimate was made in good faith based upon valid appraisal is not finding of just compensation.

Robert L. Donald, Fort Myers; William M. Powell, Cape Coral; Stephen E. Dalton of Pavese, Garner, Haverfield, Dalton, Harrison & Jensen, Fort Myers; and Michael J. Ciccarone of Goldberg, Goldstein & Buckley, P.A., Fort Myers, for Petitioners.

James G. Yager, Lee County Attorney, and John J. Renner, Assistant County Attorney, Fort Myers, for Respondent.

GRIMES, Senior Justice.

We *review Lee County v. Pierpont*, 693 So.2d 994 (Fla. 2d DCA 1997), *Lee County v. A & G Investments*, 693 So.2d 999 (Fla. 2d DCA 1997), and *Lee County v. Barnett*

Banks, Inc. So.2d — (*& G* Invest were resolve *Pierpont*, a *Banks, Inc.*, great public accepted juri consolidated pursuant to a of the Florid question read WHETHEI THORITY'S OF VALUE "OFFER" OF ATTOR TION 73.0 (SUPP.1994) *Lee County v.* Weekly D1283, May 20, 1997). The pertinen forth below.

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The county *file* taking against the which there was value of $725,000. county made a wr acquire the propert was refused and th ings Continued. An tered and an amoun estimate was deposit court. Thereafter, 73.032, Florida Stat

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. *See United States v. Detroit Timber & Lumber Co., 200* U. S. 321,337.

SUPREME COURT OF THE UNITED STATES

Syllabus

FLORIDA *v.* WHITE

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 98–223. Argued March 23, 1999—Decided May 17, 1999

Two months after officers observed respondent using his car to deliver cocaine, he was arrested at his workplace on. unrelated charges. At that time, the arresting officers seized his car without securing a warrant because they believed that it was subject to forfeiture under the Florida Contraband Forfeiture Act (Act). During a subsequent inventory search, the police discovered cocaine in the car. Respondent was then charged with a state drug violation. At his trial on the drug charge, he moved to suppress the evidence discovered during the search, arguing that the car's warrantless seizure violated the Fourth Amendment, thereby making the cocaine the "fruit of the poisonous tree." After the jury returned a guilty verdict, the court denied the motion, and the Florida First District Court of Appeal affirmed. It also certified to the Florida Supreme Court the question whether, absent exigent circumstances, a warrantless seizure of an automobile under the Act violated the Fourth Amendment. The latter court answered the question in the affirmative, quashed the lower court opinion, and remanded.

Held: The Fourth Amendment does not require the police to obtain a warrant before seizing an automobile from a public place when they have probable cause to believe that it is forfeitable contraband. In deciding whether a challenged governmental action violates the Amendment, this Court inquires whether the action was regarded as an unlawful search and seizure when the Amendment was framed. *See, e.g., Carroll v. United States, 267* U. S. 132, 149. This Court has held that when federal officers have probable cause to believe that an automobile contains contraband, the Fourth Amendment does not require them to obtain a warrant prior to searching the car for and seizing the contraband. *Id.*, at 150–151. Although the police here lacked probable cause to believe that respondent's car contained contraband, they

Syllabus

had probable cause to believe that the vehicle *itself* was contraband under Florida law. A recognition of the need to seize readily movable contraband before it is spirited away undoubtedly underlies the early federal laws relied upon in Carroll. This need is equally weighty when the automobile, as opposed to its contents, is the contraband that the police seek to secure. In addition, this Court's Fourth Amendment jurisprudence has consistently accorded. officers greater latitude in exercising their duties in public places. Here, because the police seized respondent's vehicle from a public area, the warrantless seizure is virtually indistinguishable from the seizure upheld in G. ***M. Leasing Corp. v. United States, 429*** U. S. 338,351. Pp. 3-7.

710 So. 2d 949, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. SOUTER, J., fled a concurring opinion, in which BREYER, J., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 98–223

FLORIDA, PETITIONER *v.* TYVESSEL TYVORUS WHITE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[May 17, 1999]

JUSTICE THOMAS delivered the opinion of the Court.

The Florida Contraband Forfeiture Act provides that certain forms of contraband, including motor vehicles used in violation of the Act's provisions, may be seized and potentially forfeited. In this case, we must decide whether the Fourth Amendment requires the police to obtain a warrant before seizing an automobile from a public place when they have probable cause to believe that it is forfeitable contraband. We hold that it does not.

I

On three occasions in July and August 1993, police officers observed respondent Tyvessel Tyvorus White using his car to deliver cocaine, and thereby developed probable cause to believe that his car was subject to forfeiture under the Florida Contraband Forfeiture Act (Act), Fla. Stat. §932.701 et seq. (1997).[1] Several months

[1] That Act provides, in relevant part: "Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband

later, the police arrested respondent at his place of employment on charges unrelated to the drug transactions observed in July and August 1993. At the same time, the arresting officers, without securing a warrant, seized respondent's automobile in accordance with the provisions of the Act. See §932.703(2)(a).[2] They seized the vehicle solely because they believed that it was forfeitable under the Act. During a subsequent inventory search, the police found two pieces of crack cocaine in the ashtray. Based on the discovery of the cocaine, respondent was charged with possession of a controlled substance in violation of Florida law.

At his trial on the possession charge, respondent filed a motion to suppress the evidence discovered during the inventory search. He argued that the warrantless seizure of his car violated the Fourth Amendment, thereby making the cocaine the "fruit of the poisonous tree." The trial court initially reserved ruling on respondent's motion, but later denied it after the jury returned a guilty verdict. On appeal, the Florida First District Court of Appeal affirmed. 680 So. 2d 550 (1996). Adopting the position of a majority of state and federal courts to have considered the question, the court rejected respondent's argument that the Fourth Amendment required the police to secure a warrant prior to seizing his vehicle. Id.,. at 554. Because the Florida

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Forfeiture Act has taken or is taking place, may be seized and shall be forfeited." Fla. Stat. §932.703(l)(a) (1997).

[2]Nothing in the Act requires the police to obtain a warrant prior to seizing a vehicle. See State *v. Pomerance, 434 So.* 2d 329, 330 (Fla. Ct. App. 1983). Rather, the Act simply provides that "[p]ersonal property may be seized at the time of the violation or subsequent to the violation, if the person entitled to notice is notified at the time of the seizure . . . that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been or is being used in violation of the Florida Contraband Forfeiture Act." §932.703(2)(a).

Supreme Court and this Court had not directly addressed the issue, the court certified to the Florida Supreme Court the question whether, absent exigent circumstances, the warrantless seizure of an automobile under the Act violated the Fourth Amendment. *Id.*, at 555.

In a divided opinion, the Florida Supreme Court answered the certified question in the affirmative, quashed the First District Court of Appeal's opinion, and remanded. 710 So. 2d 949, 955 (1998). The majority of the court concluded that, absent exigent circumstances, the Fourth Amendment requires the police to obtain a warrant prior to seizing property that has been used in violation of the Act. *Ibid.* According to the court, the fact that the police develop probable cause to believe that such a violation occurred does not, standing alone, justify a warrantless seizure. The court expressly rejected the holding of the Eleventh Circuit, see United *States* v. *Valdes*, *876* F. 2d 1554 (1989), and the majority of other Federal Circuits to have addressed the same issue in the context of the federal civil forfeiture law, 21 U. S. C. §881, which is similar to Florida's *See United States v. Decker*, 19 F. 3d *287* (CA6 1994) *(per curiam); United States v. Pace, 898* F. 2d 1218, 1241 (CA7 1990); *United States v. One 1978 Mercedes Benz*, 711 F. 2d 1297 (CA5 1983); *United States v. Kemp*, 690 F. 2d 397 (CA4 1982); *United States v. Bush*, 647 F. 2d 357 (CA3 1981). But *see United States v. Dixon*, 1 F. 3d 1080 (CA10 1993); *United States v. Lasanta*, *978* F. 2d 1300 *(CA2* 1992); *United States v. Linn, 880* F. 2d 209 (CA9 1989). We granted certiorari, 525 U. S. ___ (1998), and now reverse.

II

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and further provides that "no Warrants shall issue, but upon

probable cause." U. S. Const., Amdt. 4. In deciding whether a challenged governmental action violates the Amendment, we have taken care to inquire whether the action was regarded as an unlawful search and seizure when the Amendment was framed. See *Wyoming v. Houghton, 526* U. S. _____ (1999); *Carroll v. United States, 267* U. S. 132, 149 (1925) (The Fourth Amendment is to be construed in light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens").

In *Carroll*, we held that when federal officers have probable cause to believe that an automobile contains contraband, the Fourth Amendment does not require them to obtain a warrant prior to searching the car for and seizing the contraband. Our holding was rooted in federal law enforcement practice at the time of the adoption of the Fourth Amendment. Specifically, we looked to laws of the First, Second, and Fourth Congresses that authorized federal officers to conduct warrantless searches of ships and to seize concealed goods subject to duties. *Id.*, at 150–151 (citing Act of July.31, 1789, §§24, 29, 1 Stat. *43;* Act of Aug. *4,* 1790, $50, 1 Stat. 170; Act of Feb. 18, 1793, §27, 1 Stat. 315; Act of Mar. *2,* 1799, §§68–70, 1 Stat. *677, 678). These* enactments led us to conclude that "contemporaneously with the adoption of the Fourth Amendment," Congress distinguished "the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant." *267* U. S., at 151.

The Florida Supreme Court recognized that under *Carroll*, the police could search respondent's car, without obtaining a warrant, if they had probable cause to believe that it contained contraband. The court, however, rejected

the argument that the warrantless seizure of respondent's vehicle *itself* also was appropriate under *Carroll* and its progeny. It reasoned that "[t]here is a vast difference between permitting the immediate search of a movable automobile based on actual knowledge that it then contains contraband [and] the discretionary seizure of a citizen's automobile based upon a belief that it may have been used at some time in the past to assist in illegal activity." 710 So. 2d, at 953. We disagree.

The principles underlying the rule in *Carroll* and the founding-era statutes upon which they are based fully support the conclusion that the warrantless seizure of respondent's car did not violate the Fourth Amendment. Although, as the Florida Supreme Court observed, the police lacked probable cause to believe that respondent's car contained contraband, see 710 So. 2d, at 953, they certainly had probable cause to believe that the vehicle itself was contraband under Florida law.[3] Recognition of the need to seize readily movable contraband before it is spirited away undoubtedly underlies the early federal laws relied upon in *Carroll*. See 267 U. S., at 150–152; see also California v. *Carney*, 471 U. S. 386, 390 (1985); South *Dakota v. Opperman*, 428 U. S. 364, 367 (1976). This need is equally weighty when the *automobile*, as opposed to its contents, is the contraband that the police seek to secure.[4]

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[3] The Act defines "contraband" to include any "vehicle of any kind, . . . which was used . . . as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony." §932.701(2)(a)(5).

[4] At oral argument, respondent contended that the delay between the time that the police developed probable cause to seize the vehicle and when the seizure actually occurred undercuts the argument that the warrantless seizure was necessary to prevent respondent from removing the car out of the jurisdiction. We express no opinion about whether excessive delay prior to a seizure could render probable cause stale, and the seizure therefore unreasonable under the Fourth Amendment.

Furthermore, the early federal statutes that we looked to in *Carroll*, like the Florida Contraband Forfeiture Act, authorized the warrantless seizure of *both* goods subject to duties *and* the ships upon. which those goods were concealed. See, e.g., 1 Stat. 43, 46; 1 Stat. 170, 174; 1 Stat. 677, 678, 692.

In addition to the special considerations recognized in the context of movable items, our Fourth Amendment jurisprudence has consistently accorded law enforcement officials greater latitude in exercising their duties in public places. For example, although a warrant presumptively is required for a felony arrest in a suspect's home, the Fourth Amendment permits warrantless arrests in public places where an officer has probable cause to believe that a felony has occurred. See *United States v. Watson*, *423* U. S. 411, 416-424 (1976). In explaining this rule, we have drawn upon the established "distinction between a warrantless seizure in an open area and such a seizure on private premises." *Puyton v. New York*, 445 U. S. 573, 587 (1980); *see also id.*, at 586-587 ("It is also well settled that objects such as weapons or contraband found in a public place may be seized by the police without a warrant"). The principle that underlies *Watson* extends to the seizure at issue in this case. Indeed, the facts of this case are nearly indistinguishable from those in G. *M. Leasing Corp. v. United States*, 429 U. S. 338 (1977). There, we considered whether federal agents violated the Fourth Amendment by failing to secure a warrant prior to seizing automobiles in partial satisfaction of income tax assessments. *Id.*, at 351. We concluded that they did not, reasoning that "[t]he seizures of the automobiles in this case took place on public streets, parking lots, or other open places, and did not involve any invasion of privacy." *Ibid.* Here, because the police seized respondent's vehicle from a public area-respondent's employer's parking lot-the warrantless seizure also did not involve any invasion

of respondent's privacy. Based on the relevant history and our prior precedent, we therefore conclude that the Fourth Amendment did not require a warrant to seize respondent's automobile in these circumstances.

The judgment of the Florida Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 98-223

FLORIDA, PETITIONER v. TYVESSEL TYVORUS WHITE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[May 17, 1999]

JUSTICE SOUTER, with whom JUSTICE BREYER joins, concurring.

I join. the Court's opinion subject to a qualification against reading our holding as a general endorsement of warrantless seizures of anything a State chooses to call "contraband," whether or not the property happens to be in public when seized. The Fourth Amendment does not concede any talismanic significance to use of the term "contraband" whenever a legislature may resort to a novel forfeiture sanction in the interest of law enforcement, as legislatures are evincing increasing ingenuity in doing, cf., ***e.g., Bennis v. Michigan,*** 516 U. S. 442, 443-446 (1996); id., at 458 (STEVENS, J., dissenting); ***United States v. James Daniel Good Real Roperty,*** 510 U. S. 43, 81-82, and n. 1 (1993) (THOMAS, J., concurring in part and dissenting in part) (expressing concern about the breadth of new forfeiture statutes). Moreover, G. ***M. Leasing Corp. v. United*** States, 429 U. S. 338 (1977), (upon which we rely today) endorsed the public character of a warrantless seizure scheme by reference to traditional enforcement of government revenue laws, ***id.,*** at 351-352, and n. 18 (citing, e.g., ***Murray's Lessee v. Hoboken Lund & Improvement Co.,*** 18 How. 272 (1856)), and the -legality of seizing abandoned contraband in public view, 429 U. ***S.,*** at 352 (citing ***Hester v. United States, 265*** U. S. 57 (1924)).

SUPREME COURT OF THE UNITED STATES

No. 98–223

FLORIDA, PETITIONER *v.* TYVESSEL TYVORUS WHITE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[May 17, 1999]

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, dissenting.

During the summer of 1993, Florida police obtained evidence that Tyvessel White was engaged in the sale and delivery of narcotics, and that he was using his car to facilitate the enterprise. For reasons unexplained, the police neither arrested White at that point nor seized his automobile as an instrumentality of his alleged narcotics offenses. Most important to the resolution of this case, the police did not seek to obtain a warrant before seizing White's car that fall-over two months after the last event that justified the seizure. Instead, after arresting White at work on an unrelated matter and obtaining his car keys, the officers seized White's automobile without a warrant from his employer's parking lot and performed an inventory search. The Florida Supreme Court concluded that the seizure, which took place absent exigent circumstances or probable cause to believe that narcotics were present, was invalid. 710 So. 2d 949 (1998).[1]

[1] The Florida Supreme Court's opinion could be read to suggest that due process protections in the Florida Constitution might independently require a warrant or other judicial process before seizure under the Florida Contraband Forfeiture Act. See 710 So. 2d, at 952 (discussing *Department of Law Enforcement v. Real Property*, 588 So. 2d

In 1971, after advising us that "we must not lose sight of the Fourth Amendment's fundamental guarantee," Justice Stewart made this comment on what was then settled law:

> "[T]he most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per* se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions.' The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative.' '[T]he burden is on those seeking the exemption to show the need for it.' " *Coolidge v. New Hampshire, 403* U. S. 443, 453, 454–455 (footnotes omitted).

Because the Fourth Amendment plainly "protects property as well as privacy" and seizures as well as searches, *Soldal v.* Cook County, *506* U. S. 56, 62–64 (1992), I would apply to the present case our longstanding warrant presumption.[2] In the context of property seizures by law

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957 (1991)). However, the certified question put to that court referred only to the Fourth Amendment to the United States Constitution. 710 So. 2d, at 950. Thus, a viable federal question was presented for us to decide on certiorari, but of course we have no authority to determine the limits of state constitutional or statutory safeguards.

[2] *E.g., United States v. United States Dist. Court for Eastern Dist. of Mich.*, 407 U. S. 297, 315–318 (1972) ("Though the Fourth Amendment speaks broadly of 'unreasonable searches and seizures,' the definition of 'reasonableness' turns, at least in part, on the more specific commands of *the* warrant clause"); Coolidge *v. New Hampshire, 403* U. S. 443, 454–455 (1971); Katz *v. United States, 389* U. S. 347,357 (1967); *Johnson v. United States, 333* U. S. 10, 13–14 (1946); *Harris v. United States,* 331 U. S. 145, 162 (1947) (Frankfurter, J., dissenting) ("[W]ith minor and severely confined exceptions, inferentially a part of the Amendment, every search and seizure is unreasonable when made without a magistrate's authority expressed through a validly issued warrant"), overruled in

enforcement authorities, the presumption might be overcome more easily in the absence of an accompanying privacy or liberty interest. Nevertheless, I would lock to the warrant clause-as a measure of reasonableness in such cases, *United States v. United States Dist. Court for Eastern Dist. of Mich.*, 407 U. S. 297, 315 (1972), and the circumstances of this case do not convince me that the role of a neutral magistrate was dispensable.

The Court does not expressly disavow the warrant presumption urged by White and followed by the Florida Supreme Court, but its decision suggests that the exceptions have all but swallowed the general rule. To defend the officers' warrantless seizure, the State points to cases establishing an "automobile exception" to our ordinary demand for a warrant before a lawful search may be conducted. Each of those cases, however, involved searches of automobiles for contraband or temporary seizures of automobiles to effect such searches.[3] Such intrusions comport with the practice of federal customs officers dur-

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part by *Chimel v. California*, 395 U. S. 752 (1969); see also *Shadwick v. Tampa*, 407 U. S. 345, 348 (1972) (noting "the now accepted fact that someone independent of the police and prosecution must determine probable cause"); *Wong Sun v. United States*, 371 U. S. 471, 481-482 (1963).

[3] See, *e.g.*, *Carroll v. United States*, 267 U. S. 132,153 (1925) (where the police have probable cause, "contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant"); *United States v. Ross*, 456 U. S. 798, 820, n. 26, 825 (1982) ("During virtually the entire history of our country--whether contraband was transported in a horse-drawn carriage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search"); *Wyoming v. Houghton*, 526 U. S. ___, ___ (1999) (slip op., at 3–5); *Pennsylvania v. Labron*, 518 U. S. 938,940 (1996) (per *curium*) ("If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more").

ing the Nation's early history on which the majority relies, as well as the practicalities of modern life. But those traditions and realities are weak support for a warrantless seizure of the vehicle itself, -months after the property was proverbially tainted by its physical proximity to the drug trade, and while the owner is safely in police custody.

The stated' purposes for allowing warrantless vehicle searches are likewise insufficient to validate the seizure at issue, whether one emphasizes the ready mobility of automobiles or the pervasive regulation that diminishes the owner's privacy interests in such property. No one seriously suggests that the State's regulatory regime for road safety makes acceptable such unchecked and potentially permanent seizures of automobiles under the State's criminal laws. And, as the Florida Supreme Court cogently explained, an exigent circumstance rationale is not available when the seizure is based upon a belief that the automobile may have been used at some time in the past to assist in illegal activity and the owner is already in custody.4 Moreover, the state court's conclusion that the warrant process is a sensible protection from abuse of government power is bolstered by the inherent risks of hindsight at post-seizure hearings and law enforcement agencies' pecuniary interest in the seizure of such property. See Fla. Stat. §932.704(1) (1997); cf. *United States v. James Daniel Good Real Property*, 510 U. S. 43, 55-56 (1993).

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4 710 So. 2d 949, 953–954 (Fla. 1998) ("There simply was no concern presented here that an opportunity to seize evidence would be missed because of the mobility of the vehicle. Indeed, the entire focus of the seizure here was to seize the vehicle itself as a prize because of its alleged prior use in illegal activities, rather than to search the vehicle for contraband known to be therein, and that might be lost if not seized immediately"). The majority notes, *ante*, at 6, n. 4, but does not con-&on& the argument that the mobility of White's vehicle was not a substantial governmental concern in light of the delay between establishing probable cause and seizure.

Were we confronted with property that Florida deemed unlawful for private citizens to possess regardless of purpose, and had the State relied on the plain-view doctrine, perhaps a warrantless seizure would have been defensible. *See Horton v. California, 496* U. S. 128 (1990); *Arizona v. Hicks,* 480 U. *S.* 321, 327 (1987) (citing *Payton v. New York,* 445 U. S. 573 (1980)). But " '[t]here is nothing even remotely criminal in possessing an automobile,' " *Austin v. United States,* 509 U. S. 602, 621 (1993) (quoting *One 1958 Plymouth Sedan v. Pennsylvania,* 380 U. S. 693, 699 (1965)); no serious fear for officer safety or loss of evidence can be asserted in this case considering the delay and circumstances of the seizure; and only the automobile exception is at issue, 710 So. 2d, at 952; Brief for Petitioner 6, 28.[5]

In any event, it seems to me that the State's treatment of certain vehicles as "contraband" based on past use provides an added reason for insisting on an appraisal of the evidence by a neutral magistrate, rather than a justification for expanding the discretionary authority of the police. Unlike a search that is contemporaneous with an officer's probable-cause determination, *Horton,* 496 U. S., at 130-131, a belated seizure may involve a serious intrusion on the rights of innocent persons with no connection to the earlier offense. Cf. *Bennis v. Michigan,* 516 U. S. 442 (1996). And a seizure supported only by the officer's conclusion that at some time in the past there was prob-

[5] There is some force to the majority's reliance *on United States v. Watson,* 423 U. S. 411 (1976), which held that no warrant is required for felony arrests made in public. *Ante,* at 6. With respect to the seizures at issue in *Watson,* however, I consider the law enforcement and public safety interests far more substantial, and the historical and legal traditions more specific and engrained, than those present on the facts of this case. See 423 U. S., at 415–424; *id.,* at 429 (Powell, J., concurring) ("[L]ogic sometimes must defer to history and experience").

able cause to believe that 'the car was then being used illegally is especially intrusive when followed by a routine and predictable inventory search-ven though there may be no basis for believing the car then contains any contraband or other evidence of wrongdoing.6

Of course, requiring police officers to obtain warrants in cases such as the one before us will not allay every concern private property owners might have regarding government discretion and potentially permanent seizures of private property under the authority of a State's criminal laws. Had the officers in this case obtained a warrant in July or August, perhaps they nevertheless could or would have executed that warrant months later; and, as the Court suggests, *ante,* at 5, n. 4, delay between the basis for a seizure and its effectuation might support a Fourth Amendment objection whether or not a warrant was obtained. That said, a warrant application interjects the judgment of a neutral decisionmaker, one with no pecuni-

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[6] The Court's reliance on *G. M. Leasing Corp. v. United States, 429* U. S. 338 (1977), is misplaced. The seizure in that case was supported by an earlier tax assessment that was "given the force of a judgment." *Id.*, at 352, n. 18 (internal quotation marks omitted). We emphasized that the owner of the automobiles in question lacked a privacy interest, but he had also lost any possessory interest in the property by way of the prior judgment. In this case, despite plenty of time to obtain a warrant that would provide similar pre-seizure authority for the police, they acted entirely on their own assessment of the probative force of evidence relating to earlier events. In addition, White's property interests in his car were apparently not extinguished until, at the earliest, the seizure took place. See Fla. Stat. §§932.703(1)(c)–(d) (1997) (the State acquires rights, interest, and title in contraband articles at the time of seizure, and the seizing agency may not use the seized property until such rights, interest, and title are "perfected" in accordance with the statute); §932.704(8); *Soldal v. Cook County, 506* U. S. 56, 63–64 (1992). This statutory scheme and its aims, see Fla. Stat. §932.704(1) (1997), also distinguish more mundane and temporary vehicle seizures performed for regulatory purposes and immediate public needs, such as a tow from a no-parking zone. No one contends that a warrant is necessary in that case.

ary interest in the matter, see *Connally v. Georgia, 429* U. S. 245, 250–251 (1977) *(per curium),* before the burden of obtaining possession of the property shifts to the individual. Knowing that a neutral party will be involved before private property is seized can only help ensure that law enforcement officers will initiate forfeiture proceedings only when they are truly justified. A warrant requirement might not prevent delay and the attendant opportunity for official mischief through discretionary timing, but it surely makes delay more tolerable.

Without a legitimate exception, the presumption should prevail. Indeed, the particularly troubling aspect of this case is not that the State provides a weak excuse for failing to obtain a warrant either before or after White's arrest, but that it offers us no reason at all. The justification cannot be that the authorities feared their narcotics investigation would be exposed and hindered if a warrant had been obtained. *Ex parte* warrant applications provide neutral review of police determinations of probable cause,' but such procedures are by no means public. And the officers had months to take advantage of them. On this record, one must assume that the officers who seized White's car simply preferred to avoid the hassle of seeking approval from a judicial officer. I would not permit bare convenience to overcome our established preference for the warrant process as a check against arbitrary intrusions by law enforcement agencies "engaged in the often competitive"-and, here, potentially lucrative-"enterprise of ferreting out crime." *Johnson v. United States,* 333 U. S. 10, 14–15 (1948).

Because I agree with the Florida Supreme Court's judgment that this seizure was not reasonable without a warrant, I respectfully dissent.