

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC04-1406

CITY OF MIAMI,

Petitioner,

-vs-

JOSE A. JUAREZ and CRISTINO NIEVES,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENTS ON JURISDICTION

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BRIEF OF RESPONDENT ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Jose A. Juarez and Christino Nieves were defendants in two unrelated cases in the Eleventh Judicial Circuit who sought return of their property seized pursuant to the City of Miami's ordinance in question. The circuit court allowed the City of Miami to intervene. The circuit court granted Mr. Juarez's and Mr. Nieves' motions for return of property. The City of Miami appealed to the District Court of Appeal, Third District, which consolidated these cases. For purposes of oral argument, these cases were further consolidated with *City of Miami v. Wellman*, 875 So. 2d 635 (Fla. 3d DCA 2004). In defense of the trial court's order, the respondents raised four reasons why the city's ordinance was unconstitutional.

First, the respondents pointed out that the city's ordinance violated the exclusive jurisdiction of the criminal court judge over property inextricably related to a criminal case. *See, e.g., Garmire v. Red Lake*, 265 So. 2d 2, 4 (Fla. 1972); *Sawyer v. Gable*, 400 So. 2d 992, 994 (Fla. 3d DCA 1981). In its brief below, the city admitted that the seizures of Mr. Nieves' and Mr. Juarez's vehicles were inextricably related to their arrests on drug charges. Therefore, the criminal court judge has exclusive jurisdiction over their property. The city ordinance is void because it attempts to interfere with this exclusive jurisdiction. *See* Art. II, § 3 & Art. V, § 1, Fla. Const.

The only exception to this exclusive jurisdiction is for actions under the Florida Contraband Forfeiture Act. *See* § 932.703(3), Fla. Stat. (2003). The city's did not bring its impoundments pursuant to that act and, therefore, the exception does not apply. Nevertheless, the general characterization of the ordinance as a type of forfeiture is accurate. The way the city handles these cases and the language of the ordinance itself illustrates that the city is pursuing the vehicles as instrumentalities of crime. The city's ordinance does not, however, comport with the due process requirements for forfeitures, including a jury trial, an innocent owner defense, and proof by clear and convincing evidence. *See Department of Law Enforcement v. Real Property*, 588 So. 2d 957 (Fla. 1991). Therefore, this violation of due process was the respondent's second reason the city's ordinance violates the constitution.

The third reason is a violation of Article I, section 18 of the Florida Constitution prohibiting the city from imposing any penalty not authorized by law. Neither Part I nor Part II of Chapter 162 nor any other statute authorizes the penalty in the city's ordinance.

Finally, the city's ordinance creates police courts purporting to determine probable cause and to make nonquantifiable monetary awards. The constitution exclusively vests judges in courts of law with the power to make such determinations. Thus, the city's ordinance violates the constitutional separation of powers. *See* Art.

V, § 1, Fla. Const.

The Third District Court of Appeal affirmed the circuit court in a “PCA” opinion citing its decision in *Wellman* and the Fourth District Court of Appeal’s decision in *Mulligan v. City of Hollywood*, 871 So. 2d 249 (Fla. 4th DCA 2003), involving an almost identical ordinance from Hollywood, Florida. Both District Courts of Appeal correctly ruled the ordinance illegal on statutory grounds—it conflicts with the Florida Forfeiture Act—and did not decide the constitutional issues. *See, e.g., Singletary v. State*, 322 So. 2d 551, 552 (Fla. 1975) (“we adhere to the settled principle of constitutional law that courts should not pass upon the constitutionality of statutes if the case in which the question arises may be effectively disposed of on other grounds.”).

The City of Miami is now seeking discretionary review in this Court.

SUMMARY OF THE ARGUMENT

The lower court's opinion cites a decision that is now pending review in this Court. Therefore, this Court has discretionary jurisdiction to hear this case. This Court should accept discretionary jurisdiction so that this Court can hear the significant constitutional issues raised by the ordinance.

ARGUMENT

THIS COURT HAS DISCRETIONARY JURISDICTION TO HEAR THIS CASE AND SHOULD EXERCISE ITS JURISDICTION TO ENSURE THAT IT CONSIDERS ALL OF THE CONSTITUTIONAL ISSUES RAISED BY THE CITY'S ORDINANCE.

The opinion below is a “PCA” decision citing *Mulligan v. City of Hollywood*, 871 So. 2d 249 (Fla. 4th DCA 2003). This Court has accepted jurisdiction to review that case. *See City of Hollywood v. Mulligan*, SC04-990. Thus, this Court has discretionary jurisdiction to review this case. *See, e.g., Jollie v. State*, 405 So. 2d 418 (Fla. 1981).

This Court should exercise its jurisdiction because this case presents significant constitutional issues beyond the issue that the ordinances conflict with the state statute. If this Court agrees with both lower courts on the statutory issue, this Court need go further in its opinion. Nevertheless, this Court should at least hear all of the issues raised by these ordinances. The alternative is to risk the possibility of a needless waste of judicial resources hearing this case a second time.

Therefore, this Court should accept jurisdiction over this case and consolidate it with *Mulligan* and *Wellman* for purposes of oral argument. Such an argument will be manageable because the attorneys in these *Mulligan* and *Wellman* are the same: Robert S. Glazier, Esq., on behalf of both the City of Miami and the City of Hollywood, and Ronald S. Guralnick, Esq. on behalf of the plaintiffs in both cases.

CONCLUSION

This Court has jurisdiction because the lower court's "PCA" decision cites a case pending review in this Court. This Court should exercise its discretion to ensure that it considers all of the constitutional issues raised by the city's ordinance.

Respectfully submitted,

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CERTIFICATES

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to Warren Bittner, Assistant City Attorney, 945 Riverside Center, 444 S.W. 2nd Avenue, Miami, Florida 33130-1910, and to Robert S. Glazier, Esq., 540 Brickell Key Drive, Suite C-1, Miami, Florida 33131, this ____ day of August 2004.

I HEREBY CERTIFY that this brief is printed in 14 point Times New Roman.

JOHN EDDY MORRISON
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