

SUPREME COURT OF FLORIDA

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Case No. SC04-  
L.T. Case No. 3D01-3050

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**CITY OF MIAMI**

Petitioner

vs.

**SIDNEY S. WELLMAN, ET AL.**

Respondents

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**RESPONDENTS' ANSWER BRIEF  
TO PETITIONER'S BRIEF ON JURISDICTION**

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**ON DISCRETIONARY REVIEW  
FROM THE THIRD DISTRICT COURT OF APPEAL**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
I. STATEMENT OF THE CASE AND FACTS.....	1
II. SUMMARY OF ARGUMENT.....	1
III. ARGUMENT.....	2
I. THE DISTRICT COURT DID NOT RELY SOLELY UPON THE RULING OF A DECISION PENDING BEFORE THIS COURT AS CONTROLLING AND THEREFORE THIS COURT DOES NOT HAVE JURISDICTION .....	2
II. THE DECISION OF THE DISTRICT COURT DOES NOT EXPRESSLY OR DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL .....	3
IV. CONCLUSION.....	5
V. CERTIFICATE OF SERVICE .....	5
VI. CERTIFICATE OF COMPLIANCE .....	6



## TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Pages</u>
<i>Edwards v. State</i> , 422 So.2d 84 (Fla. 2 <sup>nd</sup> DCA 1982).....	3
<i>Harrison v. Hyster Company</i> , 515 So.2d 1279 (Fla. 1987) .....	2
<i>Jollie v. State</i> , 405 So.2d 418 (Fla. 1981) .....	2
<i>Mulligan v. City of Hollywood</i> , 871 So.2d 249 (Fla. 4 <sup>th</sup> DCA 2003) .....	1, 2, 4
<i>City of Miami v. Sidney S. Wellman, et al. and Nadine Theodore, et al.</i> , 29 Fla. L. Weekly D328 (Fla. 3d DCA Feb. 4, 2004) .....	1
 <u>Statutes:</u>	
§§932.701-932.707, Fla. Stat. (2000) .....	1
§932.704(1), Fla. Stat. (2000) .....	3



## **STATEMENT OF THE CASE AND FACTS**

The Third District Court of Appeal held that the City of Miami Vehicle Impoundment Ordinance was preempted by the Florida Contraband Forfeiture Act ("FCFA"). §§932.701-932.707, Fla. Stat. (2000). The District Court specifically stated that they were not reaching any constitutional issues. *City of Miami v. Sidney S. Wellman, et al. and Nadine Theodore, et al.*, 29 Fla. L. Weekly D328 (Fla. 3d DCA Feb. 4, 2004).

The Third District Court of Appeal did not merely rely upon the decision of the Fourth District Court of Appeal in *Mulligan v. City of Hollywood*, 871 So.2d 249 (Fla. 4<sup>th</sup> DCA 2003), they conducted their own learned independent analysis and likewise came to the conclusion that the Miami Vehicle Impoundment Ordinance was preempted by the Florida Contraband Forfeiture Act ("FCFA"). The Third District merely made reference to the *City of Hollywood v. Mulligan* case in certain contexts.

## **SUMMARY OF ARGUMENT**

The District Court conducted their own independent analysis of the Miami Vehicle Impoundment Ordinance and held in a fifteen-page (15) opinion that it was preempted by the Florida Contraband Forfeiture Act ("FCFA"). This is not a so-called “piggyback” case over which the court has jurisdiction.

There is no express or direct conflict with the decision of another district court on the standard for express preemption.

## **ARGUMENT**

### **I.**

THE DISTRICT COURT DID NOT RELY SOLELY UPON THE RULING OF A DECISION PENDING BEFORE THIS COURT AND THEREFORE THIS COURT DOES NOT HAVE JURISDICTION.

The District Court conducted its own learned analysis of the issues and rendered its own fifteen (15) page opinion holding that the City of Miami Vehicle Impoundment Ordinance was preempted by the Florida Contraband Forfeiture Act ("FCFA"). The Court did not merely issue a per curiam opinion relying solely on *Mulligan v. City of Hollywood*, 871 So.2d 249 (Fla. 4<sup>th</sup> DCA 2003).

The situation in the case at bar is not as it was in *Jollie v. State*, 405 So.2d 418 (Fla. 1981), where there was a *per curiam opinion* that cited as controlling a case that was pending for review in this Court.

In the case at bar, the District Court conducted its own analysis, and did not merely rely upon *Mulligan v. City of Hollywood, supra.*, as controlling.

Further, it should be noted that this Court has *not* accepted jurisdiction in *Mulligan v. City of Hollywood, supra.*, it has *postponed* its decision on jurisdiction, therefore the reasoning of *Harrison v. Hyster Company*, 515 So.2d 1279 (Fla.

1987) applies, which required the acceptance of jurisdiction and review on the merits.

Therefore, this is *not* a so-called “piggyback” case, as Petitioner calls it, over which the Court has jurisdiction.

The Petitioner in its jurisdictional brief argues that “if the decisions of the district courts are upheld, the municipalities will lose a useful tool, and be forced to pay many millions of dollars.”

It is respectfully submitted, that the above argument of Petitioner is not a legal basis upon which this Honorable Court should exercise its discretionary jurisdiction.

## **II.**

### **THE DECISION OF THE DISTRICT COURT DOES NOT EXPRESSLY OR DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL.**

The Petitioner argues that the decision of the Third District Court of Appeal conflicts with a decision of another District Court, to wit: *Edwards v. State*, 422 So.2d 84 (Fla. 2d DCA 1982).

Specifically, they assert that the finding of preemption by the Third District Court of Appeal was based on the language of the Florida Contraband Forfeiture Act, which provides that “[i]t is the policy of this state that law enforcement agencies *shall* utilize the provisions of the Florida Contraband Forfeiture Act to



deter and prevent the continued use of contraband articles for *criminal* purposes...”  
Fla. Stat., §932.704(1). (Emphasis supplied.)

Further, Petitioner asserts that the above language conflicts with language in the *Edwards* case, supra., that “uniformity *between the Laws of Florida and the Laws of the United States* is necessary and *desirable* for effective drug abuse prevention and control, and ... it is *desirable* that the State of Florida exercise more authority over manufacture and distribution of dangerous drugs, and ... the inconsistencies in penalty provisions of current law demand amendment.” (Emphasis supplied.)

It is respectfully submitted, that the holding of the Third District Court of Appeal, that there is preemption based *in-part* upon language in the Florida Contraband Forfeiture Act that “law enforcement agencies *shall* utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for *criminal* purposes” is *not* in conflict in any way whatsoever with language expressing the *desirability* of effective drug abuse prevention and control,” and the *desirability* “that the State of Florida exercise more authority over manufacture and distribution of dangerous drugs.”

It is interesting to note, that the only other appellate case in the State of Florida on point is the case of *Mulligan v. City of Hollywood*, 871 So.2d 249 (Fla. 4<sup>th</sup> DCA 2003), that held the City of Hollywood Vehicle Impoundment Ordinance

was preempted by the Florida Contraband Forfeiture Act, a holding completely consistent with that of the Third District Court of Appeal in the case at bar.

Therefore, there is no conflict upon which to base the exercise of discretionary jurisdiction by this Honorable Court.

### **CONCLUSION**

Based on the foregoing, it is respectfully submitted, that there is no basis for the exercise of discretionary jurisdiction by this Honorable Court.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that a true and correct copy of the foregoing Respondents' Answer Brief was hand-delivered via courier this \_\_\_\_ day of July, 2004, to: Robert S. Glazier, Esquire, 540 Brickell Key Drive, Suite C-1, Miami, Florida 33131, and Warren Bittner, Assistant City Attorney, Office of City Attorney Maria J. Chiaro (Interim), 945 Miami Riverside Center, 444 S.W. 2nd Avenue, Miami, Florida 33130-1910.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY, that this Respondents' Answer Brief has been submitted in Times New Roman 14-point font in compliance with the Florida Rules of Appellate Procedure.

Respectfully submitted,

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