

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA,)

Respondent,)

vs.)

CASE NO.: 66,017
DCA CASE No.: AV-364

JEFF C. DUCKHAM, CLAIMANT)

TO ONE (1) 1977 VOLKSWAGEN,)

VIN/1773229365, FLORIDA)

LICENSE "KTV-062",)

Petitioner.)

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL,
STATE OF FLORIDA

PETITIONER DUCKHAM'S JURISDICTIONAL BRIEF

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FILED

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PRELIMINARY STATEMENT

Claimant JEFF C. DUCKHAM will be referred to in this Brief as "DUCKHAM" or the "Petitioner"; the STATE OF FLORIDA will be referred to as the "State" or the "Respondent." References to the APPENDIX TO PETITIONER DUCKHAM'S JURISDICTIONAL BRIEF will be by the designation "[APPENDIX, p.]."

STATEMENT OF GROUNDS FOR INVOKING JURISDICTION

Petitioner JEFF C. DUCKHAM respectfully invokes the discretionary jurisdiction of the Supreme Court of Florida to review a 25 July 1984 decision of the District Court of Appeal, First District, State of Florida (rehearing denied 13 September 1984) that expressly and directly conflicts with decisions of other District Courts of Appeal and of the Supreme Court of Florida with regard to interpretation and application of the "facilitation" provision of §932.702(3) of the Florida Statutes (the "Florida Contraband Forfeiture Act," or the "Act"). Jurisdiction of this Court is invoked pursuant to Article V, Section 3(b)(3), Florida Constitution (1980). See also Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.

WHY THIS COURT SHOULD EXERCISE ITS JURISDICTION

This case deals with interpretation and application of the "facilitation" requirement of §932.702(3) of the Florida Contraband Forfeiture Act. The Florida District Courts of Appeal have examined this provision of the Act on a number of occasions, particularly in recent years. See, e.g., In re: Forfeiture of One 1979 Ford, 450 So.2d 863 (Fla. 4th D.C.A. 1984); One 1976 Dodge Van v. State, 447 So.2d 984 (Fla. 1st D.C.A. 1984); In re: Forfeiture of 1977 Jeep Cherokee, 443 So.2d 1027 (Fla. 2d D.C.A. 1983); City of Clearwater v. One 1980 Porsche, 426 So.2d 1260 (Fla. 2d D.C.A. 1983); In re: Forfeiture of 1979 Toyota Corolla,

424 So.2d 922 (Fla. 4th D.C.A. 1982) jurisdiction withdrawn, 446 So.2d 97 (1984); In re: Forfeiture of 1968 Desco Shrimping Vessel, "Stargazer", 417 So.2d 279 (Fla. 1st D.C.A. 1982), petition for review denied, 424 So.2d 760 (1983); Mosley v. State, 363 So.2d 172 (Fla. 4th D.C.A. 1978). However, this Court has not addressed this narrow but important area of forfeiture law.

The decision of the First District Court of Appeal in this case applies the "facilitation" provision of the Act in direct conflict with the decision in City of Clearwater v. One 1980 Porsche, 426 So.2d 1260 (Fla. 2d D.C.A. 1983). Further, the Petitioner submits that the First District Court of Appeal's decision conflicts with other District Court of Appeal decisions insofar as the First District's implicit interpretation of the "facilitation" provision of the Florida Contraband Forfeiture Act improperly extends the scope of the forfeiture statute. These conflicts must be resolved by this Court to avoid uncertainty in this increasingly-litigated area of forfeiture case law.

STATEMENT OF THE CASE AND FACTS

In November, 1981, the Petitioner and undercover police officer Brad Joll met at Leonardo's Pizza Restaurant on West University Avenue in Gainesville, Florida. Joll had contacted DUCKHAM previously and DUCKHAM had indicated to Joll that DUCKHAM could obtain cocaine from his roommates. DUCKHAM drove alone in his vehicle to Leonardo's, arriving earlier than Joll, who also

drove alone in a separate vehicle to the restaurant.

During their meeting inside the restaurant, DUCKHAM asked Joll for personal information about Joll so that DUCKHAM could reassure his roommates of Joll's credibility. After their conversation, Joll followed DUCKHAM to DUCKHAM's residence at 2284 N. W. 19th Place in Gainesville, where both exited their respective vehicles and entered DUCKHAM's residence. There they awaited the delivery of cocaine to the residence by another individual, Shawn Parker. Parker brought Joll a quarter of an ounce, and then after an additional waiting period a half of an ounce of cocaine.

At no time was any part of the cocaine transaction, including any conversations about cocaine, conducted in or near DUCKHAM's vehicle. That vehicle, a 1977 Volkswagen, was not used to transport cocaine or any other contraband or any person other than DUCKHAM, as stated above.

Subsequent to DUCKHAM's arrest, the State initiated this forfeiture proceeding. DUCKHAM presented his MOTION TO QUASH RULE TO SHOW CAUSE AND TO DISMISS PETITION FOR RULE TO SHOW CAUSE at a hearing before the Honorable Chester B. Chance, Circuit Court Judge, in May 1983. That MOTION presented four grounds for dismissal of the State's PETITION FOR RULE TO SHOW CAUSE. Based on STIPULATED FACTS presented to the Court at the forfeiture hearing, the trial Court granted DUCKHAM's MOTION, limiting its ORDER GRANTING DEFENDANT'S MOTION TO QUASH AND DISMISS [APPENDIX,

pp. 7-9] to the Petitioner's argument that the facts of the case do not substantiate "facilitation" under the Florida Contraband Forfeiture Act.

On the State's appeal, the First District Court of Appeal reversed the trial Court's dismissal of the forfeiture action, finding "that Duckham used his vehicle to facilitate the sale of contraband within the meaning of Section 932.702(3) ..." [APPENDIX, p. 2]. Judge Barfield dissented [APPENDIX, p. 4]. Subsequently, the First District Court of Appeal denied the Petitioner's MOTION FOR REHEARING OR FOR CLARIFICATION OF DECISION AND FOR REHEARING EN BANC [APPENDIX, pp. 5-6]. The Petitioner then timely filed his NOTICE TO INVOKE DISCRETIONARY JURISDICTION PURSUANT TO RULE 9.030(a)(2)(A)(iv), FLORIDA RULES OF APPELLATE PROCEDURE.

ARGUMENT

THIS COURT IS VESTED WITH JURISDICTION UNDER ARTICLE V, SECTION 3(b)(3), FLORIDA CONSTITUTION (1980), BECAUSE THE FIRST DISTRICT COURT OF APPEAL'S DECISION INTERPRETING AND APPLYING THE "FACILITATION" PROVISION OF THE FLORIDA CONTRABAND FORFEITURE ACT CONFLICTS WITH PRECEDENT INTERPRETING AND APPLYING THAT PROVISION.

The decision of the First District Court of Appeal in this case directly conflicts with City of Clearwater v. One 1980 Porsche, 426 So.2d 1260 (Fla. 2d D.C.A. 1983). In that case, the claimant drove his automobile to Tampa International Airport, parked his Porsche at the airport and then flew from Tampa to

North Dakota. Once in North Dakota, the claimant met an undercover policeman and took him to get marijuana from another man who brought the marijuana in a rental trailer. Among various items found in the Porsche were an address book containing the name and phone number of the North Dakota undercover policeman and a note with the name and location of the store which rented the trailer used to haul the marijuana. 426 So.2d at 1261.

The Second District ruled in the Porsche case that the use of the vehicle to transport the claimant on part of his journey to North Dakota, where he consummated a sale of marijuana, was a use of the vehicle "only remotely incidental" to the sale of the marijuana. The Court continued:

The criminal activity was not proved to have dependence upon the use of the Porsche. We believe that any other ruling by the trial Court under the particular circumstances of this case would have passed beyond the outer limits of the term 'facilitate' and 'aiding or abetting.'

Id. at 1262.

Similarly, the use of DUCKHAM's Volkswagen to transport DUCKHAM to locations where he discussed a cocaine transaction and, ultimately concluded his role as middleman in an illegal transaction is almost precisely similar to the use of the vehicle in the Porsche case. As in Porsche, the criminal activity ultimately consummated was never dependent upon the use of the Volkswagen; no drugs or other contraband, including currency, were transported in DUCKHAM's vehicle; no conversations regarding

an illegal transaction took place inside the Volkswagen; and the vehicle was never used to transport anybody other than DUCKHAM for short distances.

Thus, the First District Court of Appeal's application of the "facilitation" provision of the Act has produced a different result than the Second District's decision in the Porsche case, which involves substantially the same controlling facts as the instant case. Under the rationale of Nielsen v. City of Sarasota, 117 So.2d 731, 734 (Fla. 1960), this Court has jurisdiction. See also Mystan Marine, Inc. v. Harrington, 339 So.2d 200, 201 (Fla. 1976); Kyle v. Kyle, 139 So.2d 885, 887 (Fla. 1962).¹

The instant decision also conflicts with precedent because it announces a rule of law which conflicts with a rule previously announced by other Courts. See Nielsen v. City of Sarasota, 117 So.2d at 734. The starting point for this conflict analysis is Griffis v. State, 356 So.2d 297 (Fla. 1978). The Griffis decision focused upon the nexus between illegal drugs found in a car and the furtherance of an illegal drug operation; this Court, relying upon legislative intent, interpreted the Act in a restrictive manner to require such a nexus.

The issue posed in the instant case is the nexus between a vehicle's actual use in a criminal transaction and the transaction's dependence upon its use. Absent a clear mandate from the

¹The "expressly" requirement of Article V, §3(b)(3) of the Florida Constitution (1980) does not require that the District Court's Opinion in the instant case acknowledge or recognize

Legislature that would permit forfeiture for any use of a vehicle in a transaction, a restrictive application of the forfeiture Act would not permit forfeiture under the facts of the instant case. Yet, the First District's decision clearly imparts a broad interpretation of the "facilitation" provision of the Act, beyond the decisions of other District Courts.

Thus, unlike In re: Forfeiture of 1977 Jeep Cherokee, 443 So.2d 1027 (Fla. 2d D.C.A. 1984), DUCKHAM's Volkswagen was not used to transport contraband; and unlike the vehicle in Mosley v. State, 363 So.2d 172 (Fla. 4th D.C.A. 1978), DUCKHAM's vehicle was not used to carry or conceal contraband, to carry "confederates" to a transaction, or as a negotiation or transaction site. In other words, the vehicle in this case was not intentionally used by DUCKHAM in the illegal transaction for any purpose other than incidental transportation; restated, DUCKHAM did not use the Volkswagen as an "operating tool" in the transaction.

The First District Court of Appeal, by interpreting "facilitation" to permit forfeiture under the facts of the instant case, has extended the scope of the facilitation provision of the Florida Contraband Forfeiture Act beyond legislative intent. In

conflict with the Porsche decision. See generally England & Williams, Florida Appellate Reform One Year Later, 9 Fla. S.L. Rev. 221, 236-37 (1981); England, Hunter & Williams, Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform, 32 U. Fla. L. Rev. 147, 176-81, 187-91 (1980).

so doing, the First District has created conflict with the interpretation -- and announcement -- of the same "facilitation" provision in other District Court of Appeal decisions. This point was recognized by Judge Barfield in his dissent in the instant case:

The Court has extended the application of the forfeiture statute to snare all motor vehicles owned by participants in illicit contraband transactions if the owner transports himself for any reason in the vehicle during which time he also furthers the cause of the illegal transaction. Rather than interdicting the flow of contraband, the decision appears to encourage the use of a friend's or relative's vehicle, commercial transportation or other conveyance when the use of the vehicle is not really necessary to the accomplishment of the illegal transaction.

[Appendix, p. 4(emphasis added)].

CONCLUSION

The decision of the First District Court of Appeal in this case creates two grounds of conflict for jurisdiction to vest in this Court. First, the decision squarely conflicts with that of the Second District Court of Appeal in City of Clearwater v. One 1980 Porsche, 426 So.2d 1260 (Fla. 2d D.C.A. 1983), which applied the "facilitation" provision of the Florida Contraband Forfeiture Act to substantially the same controlling facts as those in the instant case. Alternatively, the decision in this case announces a new interpretation of "facilitation" which conflicts with prior, narrower pronouncements of facilitation by other District Courts of Appeal. For these reasons, the

Petitioner respectfully prays that this Court will exercise its discretion to grant jurisdiction in this cause and to permit briefing and oral argument on the merits of the case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing APPENDIX has been furnished by regular United States Mail to Eric J. Taylor, Assistant Attorney General, Department of Legal Affairs, Civil Division, The Capitol, Suite 1502, Tallahassee, Florida 32301 this 25th day of October 1984.



LARRY G. TURNER
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