

>> THE NEXT CASE ON THE COURT'S AGENDA IS GOMEZ V. CITY OF PINECREST.

>> GOOD MORNING.

RICHARD DIAZ, COUNSEL FOR THE PETITIONER, ZENAIDA GOMEZ, WHO'S PRESENT IN THE LAVENDER SUIT IN COURT.

THE SUMMARY OF THE FACTS ARE AS FOLLOWS: IN OCTOBER OF 2007, ZENAIDA GOMEZ OWNED A PRIVATE RENTAL RESIDENCE WHICH SHE ATTEMPTED TO RENT OUT TO AN INDIVIDUAL, A THIRD PARTY --

>> I THINK WE UNDERSTAND THE FACTS.

>> YES.

>> ISN'T THE ISSUE HERE ONE PURELY OF STATUTORY CONSTRUCTION?

>> AGREED.

>> AND THE ISSUE IS WHETHER IN THE FIRST STAGE, THAT IS THE SEIZURE STAGE, WHETHER THE MUNICIPALITY OR GOVERNMENTAL ENTITY ESTABLISHED PROBABLE CAUSE IN A CRIMINAL ENTERPRISE, WHETHER THAT IS SUFFICIENT TO ALLOW FOR THE SEIZURE AND THEN KNOWLEDGE OF THE OWNER IN SOMETHING THAT IS THEN LITIGATED IN THE SECOND PHASE.

AND THE QUESTION IS REALLY WHETHER THE STATUTE PASSED BY THE LEGISLATURE INTENDED TO DO THAT.

AND ISN'T IT PRETTY CLEAR ON THE FACE OF THE STATUTE THAT THAT'S EXACTLY WHAT THE STATUTE PROVIDES?

>> THAT IS, THAT IS EXACTLY THE ISSUE, AND I DO NOT BELIEVE THAT THE STATUTE ON ITS FACE CLEARLY DOES NOT REQUIRE OWNER KNOWLEDGE.

>> BUT LET ME ASK YOU THIS QUESTION, MOST OF YOUR BRIEF IS DEVOTED TO WHETHER THE STATUTE APPLIED WOULD BE UNCONSTITUTIONAL VIOLATION OF DUE PROCESS.

IT SOUNDED TO ME IN READING THE BRIEF THAT THE ISSUE THAT KNOWLEDGE DID NOT APPEAR IN THE STATUTE WAS CONCEDED, AND YOU WERE ARGUING UNCONSTITUTIONAL APPLICATION.

IS THAT DISRUPTIVE, YOUR ARGUMENT?

>> THE THRUST OF OUR ARGUMENT IS THAT THE STATUTE SHOULD BE CONSTRUED TO REQUIRE OWNER KNOWLEDGE AT THE ADVERSARIAL PRELIMINARY HEARING BECAUSE FAILURE TO DO SO CONSTITUTES A DUE PROCESS VIOLATION WHICH IS THERE'S NO OPPORTUNITY TO BE HEARD.

>> OKAY.

NOW, SO THAT IS WHAT -- THAT -- IT DID SEEM LIKE USUAL -- YOU WERE ARGUING IT.

IT WOULD BE A DUE PROCESS ARGUMENT UNDER THE FLORIDA CONSTITUTION, WAS THAT MADE IN THE TRIAL COURT?

>> NO, THE ARGUMENT MADE AT THE TRIAL COURT, WE ARGUED THE --

>> THE WHO DECISION?
THE CAR DECISION.

>> [INAUDIBLE]

>> THE LEXUS CASE.

2001.

>> ALL RIGHT.

AND THEN WAS THE, AT THE APPELLATE LEVEL AT THE THIRD DISTRICT WAS THE CONSTITUTIONAL ARGUMENT MADE?

>> IT WASN'T MADE IN A PRECISE CONSTITUTIONAL CONTEXT.

>> NO, I MEAN, IT'S NOT A PRETTY EASY THING TO SAY, YOU KNOW, MORRISSEY OR VENICE REQUIRES THIS.

I MEAN, WE LOOKED AT THE BRIEFS. THAT DOES NOT SEEM THAT WAS AT ISSUE AT ALL.

>> IT'S THE CONCEPT BEHIND NOTICE AND OPPORTUNITY TO BE HEARD.

>> YOU DIDN'T ARGUE -- WAS THERE AN OPPORTUNITY TO DISCUSS VENICE, AND VENICE DIDN'T EVEN REQUIRE KNOWLEDGE --

>> VENICE WAS NOT ARGUED IN THE BRIEFS OR EVEN --

>> ISN'T THAT THE MOST APPLICABLE DUE PROCESS CLAIM?

>> IT IS.

>> BUT ISN'T IT THE CASE THAT YOUR INITIAL BRIEF IN THE THIRD DISTRICT DOES NOT CONTAIN THE WORDS "DUE PROCESS"?

>> CORRECT.

AND I'VE CONCEDED THAT.

IT WASN'T -- WE DID NOT ARGUE CONSTITUTIONAL PROCESS --

>> SO DID YOU, ARE YOU NOW SAYING THAT FOR YOU TO PREVAIL HERE WE WOULD HAVE TO READ SOMETHING INTO THE STATUTE THAT RIGHT NOW DOES NOT EXIST AS FAR AS KNOWLEDGE?

>> NO.

WHAT I'M SAYING IS THIS COURT IN TAKING THIS CASE UP ON REVIEW, WHAT THIS COURT, I BELIEVE, IS DOING IS LOOKING AT THE SPLITS IN THE CIRCUITS OR THE DISTRICTS.

THE THIRD, WHICH HAS RULED THAT NO OWNER KNOWLEDGE NEED BE ESTABLISHED AT THE APH VERSUS THE FIRST AND NOW THE FIFTH --

>> WELL, I UNDERSTAND WHY WE HAVE CONFLICT JURISDICTION.

I'M TRYING TO UNDERSTAND HOW IN READING THIS STATUTE THAT YOU CAN COME UP WITH ANY OTHER CONCLUSION THAT WHEN THE LEGISLATURE AMENDED THE STATUTE, THEY PLACED THE BURDEN TO PROVE KNOWLEDGE ON THE STATE AT THE FORFEITURE STAGE AND THAT

KNOWLEDGE AT THE SEIZURE STAGE WAS NOT SOMETHING THAT THEY WERE REQUIRED TO ESTABLISH, AND THAT IF THEY WRONGFULLY SEE SOMETHING THAT ULTIMATELY WAS FOUND TO BE, THAT YOU WERE AN INNOCENT OWNER, THEN THERE ARE PROVISIONS FOR DAMAGES, ATTORNEYS' FEES.

SO EVERYTHING ABOUT THE STATUTE SEEMS TO CONTEMPLATE THAT THE SEIZING AGENCY DOES SO AT ITS RISK, THAT IS THAT THEY COULD BE FOUND LIABLE FOR DAMAGES, BUT IN THAT TEN-DAY OR WHENEVER IT IS ADVERSARIAL PRELIMINARY HEARING THAT KNOWLEDGE ISN'T REQUIRED.

NOW, YOU KNOW, I MIGHT SAY I DON'T LIKE THAT STATUTE, I THINK THAT THE LEGISLATURE, YOU KNOW, THAT WAS A BAD STATUTE FOR THEM TO PASS.

THEY SHOULD REQUIRE NOTICE AT BOTH STAGES, BUT I'M NOT THE LEGISLATURE.

>> I UNDERSTAND.

AND LET ME TELL YOU WHERE EXACTLY IN THE STATUTE WE READ THAT OWNER KNOWLEDGE SHOULD BE CONSIDERED, AND I WANT TO REFLECT THE FIFTH DISTRICT COURT OF OPINION IN BREVARD V. BAGGET TO THAT CASE.

WHEN AN ADVERSARIAL PRELIMINARY HEARING IS HAD, THE COURT SHALL REVIEW THE VERIFIED AFFIDAVIT.

I'LL STOP TO SAY WHAT WE'RE

TALKING ABOUT IS GENERALLY THE POLICE REPORT THAT THE OFFICER SWEARS TO UNDER OATH. AND ANY OTHER SUPPORTING DOCUMENTS, WE HAD THE PHOTOGRAPHS OF THE HYDROPONICS OPERATION IN THE GARAGE, AND THEN IT SAYS, "AND TAKE ANY TESTIMONY TO DETERMINE WHETHER THERE IS PROBABLE CAUSE AND TAKE" --

>> PROBABLE CAUSE TO BELIEVE THE PROPERTY WAS USED, IS BEING USED, WAS ATTEMPTED TO BE USED OR INTENDED TO BE USED IN VIOLATION OF THE FLORIDA CONTRABAND FORFEITURE ACT.

>> "AND TAKE ANY TESTIMONY" PRESUMES THAT IN SOME OF THESE CASES THE CLAIMANT WILL COME FORWARD AND DEMAND AN APH AS MS. GOMEZ DID IN THIS CASE. SHE WILL APPEAR AND NOT ASSERT A FIFTH AMENDMENT RIGHT, AND SHE WILL TESTIFY, AND THE COURT WILL TAKE TESTIMONY.

IF AS A FIFTH DCA SET WHEN A CLAIMANT ASKS FOR AN APH AND WHEN THAT CLAIMANT TESTIFIES THEY HAD NO KNOWLEDGE, THE COURT MUST CONSIDER THAT IN THE PROBABLE CAUSE DETERMINATION, AND THAT IS WHAT WE'RE SAYING, AND THAT'S THE READING OF THE STATUTE THAT DOESN'T NECESSARILY REQUIRE OWNER KNOWLEDGE ACROSS

THE BOARD.

>> BUT AREN'T YOU READING OUT OF THE STATUTE WHEN YOU SAY THAT? THE VERY LANGUAGE THAT JUSTICE PARIENTE JUST CONTINUED WITH "ABOUT AND TAKE ANY OTHER TESTIMONY," THAT IS BASICALLY PERTINENT TO THE ISSUE OF PROBABLE CAUSE.

AND THE ISSUE OF PROBABLE CAUSE HAS TO DO WITH WHETHER OR NOT THIS PROPERTY WAS BEING USED TO FACILITATE A CRIME.

THAT'S THE PROBABLE CAUSE ISSUE BEFORE THE COURT, ISN'T IT?

>> IT IS.

BUT, BUT IF THE OWNER'S TESTIMONY AND "TAKE ANY TESTIMONY" IS IRRELEVANT TO THE DETERMINATION OF PROBABLE CAUSE, THE FLORIDA LEGISLATURE --

>> WELL, THE OWNER'S TESTIMONY THEN, IT SEEMS TO ME, WOULD ONLY HAVE TO GO TO WHETHER OR NOT THE PROPERTY WAS REALLY BEING USED TO FACILITATE THE CRIME.

THAT'S WHAT THE OWNER CAN COME IN EVEN AT THE SEIZURE STAGE AND SAY, NO, THIS PROPERTY WAS NOT BEING USED TO FACILITATE A CRIME SOMEHOW.

>> EXCEPT THAT YOU ALSO HAVE FURTHER LANGUAGE IN THAT SAME PROVISION OF THE STATUTE WHICH SAYS, "WAS USED, WAS ATTEMPTED TO BE USED OR WAS INTENDED TO BE

USED."

>> OKAY.

>> THE REAL QUESTION IS, THE REAL QUESTION IS USED BY WHOM? WHOSE USE, WHICH MEANS KNOWLEDGE.

BECAUSE IF YOU'RE USING A HOUSE TO DO SOMETHING ILLEGAL, YOU HAVE THE KNOWLEDGE, WHOSE USE ARE WE TALKING ABOUT?

ARE WE TALKING ABOUT USE BY THE OWNER OR USE BY A TENANT LIKE IN THE SITUATION WE HAVE HERE?

>> BUT YOU'RE ADDING -- BY SAYING THAT, IT SEEMS TO ME, YOU'RE ADDING SOMETHING IN THE STATUTE THAT'S NOT IN THE STATUTE.

ALL THE STATUTE REALLY REQUIRES IS THAT SOMEONE HAVE USED THE PROPERTY TO FACILITATE THE CRIME OR INTEND TO -- ONE OR THE OTHER OF THOSE THREE DISJUNCTIVE FACTORS.

>> ONE OF THE PROBLEMS, AND THIS IS THE DISSENT FROM JUDGE SHEPHERD IN THE THIRD DCA AND I TEND TO AGREE WITH HIM, HE SAYS WE HAVE TO READ THE FORFEITURE STATUTE AS A WHOLE, AND WE HAVE TO CONSTRUE IT NARROWLY IN FAVOR OF OR AGAINST FORFEITURE.

AND ONE OF THE THINGS JUDGE SHEPHERD SAID IN HIS DISSENT WAS THE FORFEITURE PROCEEDING, IT'S REALLY NOT A TWO-STAGE PROCESS.

IT IS ONE PROCESS THAT HAS
PROBABLE CAUSE, AND THEN IT HAS
A FINAL ADJUDICATION OF THE
MERITS.

WHAT WE ARGUE IN THE THIRD DCA
IS THAT 93727032C IS THAT VERY
HARD EXTRACTION.

THE FLORIDA FORFEITURE AND
CONTRABAND ACT AS SOON AS THE
PROBABLE CAUSE ORDER IS ENTERED,
YOU LOSE YOUR PROPERTY IN THE
STATE OF FLORIDA.

>> WELL, YOU LOSE IMMEDIATE
POSSESSION OF THE PROPERTY --
>> OWNERSHIP.

RESPECTFULLY, OWNERSHIP.

IT'S ONE THING IF YOU KICK ME
OUT OF MY HOUSE.

IT'S ANOTHER THING IF YOU DON'T
LET ME TELL YOU THAT I'M
INNOCENT, AND YOU TAKE AWAY MY
HOUSE.

>> AND WHERE IS THE TERM
"OWNERSHIP"?

>> IT SAYS ALL RIGHTS TO,
INTEREST IN, AND TITLE TO
CONTRABAND ARTICLES, IN THIS
CASE IT WOULD BE THE RESIDENCE,
USING VIOLATION OF 93727032
"SHALL IMMEDIATELY INVEST UPON
SEIZURE, NOT FORFEITURE."

SO THIS STATUTE ALLOWS IN THIS
CASE A LAW ENFORCEMENT OFFICER
TO GO TO SOMEONE'S RESIDENCE ON
A LEGITIMATE POLICE CALL,
DETERMINE IT'S A CONTRABAND

ARTICLE, SAY, "GET OUT OF HERE."
THE OWNER SHOWS UP IN COURT TEN
DAYS LATER, WAIVES HIS FIFTH
AMENDMENT RIGHTS, IS TOLD WE'RE
NOT GOING TO LISTEN TO YOU, YOU
ARE NOT TO BE HEARD, AND WE'RE
GOING TO TAKE AWAY YOUR HOUSE.
>> WELL, EXPLAIN -- WHAT DO YOU
THINK IS THE PURPOSE OF THE TWO
STEPS?

WHAT'S THE PURPOSE OF THE
SEIZURE PORTION OF THE
FORFEITURE STATUTE?

>> I THINK THE PURPOSE OF THE
SEIZURE SECTION IS TO, IS FOR
THE SEEKING AGENCY IF PROBABLE
CAUSE IS DETERMINED IS TO BE
ABLE TO TAKE CONTROL OF THE
PROPERTY --

>> SO THAT THE PROPERTY WILL NO
LONGER BE USED FOR ILLEGAL
PURPOSES PROBABLY.

>> CORRECT.

BUT THAT CAN BE ACCOMPLISHED BY
THE POLICE SIMPLY REMOVING THE
EQUIPMENT, PUTTING A --

[INAUDIBLE]

ON THE PROPERTY AND GOING TO THE
NEXT STEP IF THAT'S WHERE WE'RE
GOING TO GO.

IF YOU APPLY THIS STATUTE
STRICTLY ON IT TERMS, HERE'S
WHAT COULD HAPPEN, THIS IS
EXACTLY WHAT COULD HAPPEN.

I COULD GO AND RENT A ROOM AT
THE RITZ CARLTON HOTEL.

I CAN ENGAGE IN CRIMINAL
ACTIVITY THAT IS SUBJECT, MAKES
MY CONDUCT COME UNDER THE
FLORIDA CONTRABAND AND
FORFEITURE ACT.

I PAY MY NIGHTLY RENTAL, THE
POLICE COME INTO THE ROOM,
BREVARD COUNTY SHERIFF'S OFFICE
SAYS WE'RE GOING TO OWN THE
HOTEL.

OWNERS COME IN AND SAY, WAIT, WE
HAD NO WAY OF KNOWING THAT ONE
OF OUR GUESTS WAS GOING TO DO
THIS.

THE STATUTE SAYS FOR NOW YOU
LOSE.

FOR NOW YOU LOSE.

WE OWN IT, AND WE'LL TALK TO YOU
ONE OR TWO YEARS DOWN THE ROAD.

THAT'S THE PRACTICAL EFFECT AND
APPLICATION OF THE COURT.

THAT'S EXACTLY WHAT THIS
STATUTE --

>> NOW, THIS ONE OR TWO YEARS
THING THAT YOU'RE TALKING ABOUT,
SINCE -- LET'S JUST, LET'S TALK
ABOUT THE ACTUAL SECOND STAGE
WHICH SAYS THAT "PROPERTY MAY
NOT BE FORFEITED UNLESS THE
SEIZING AGENCY ESTABLISHES BY A
PREPONDERANCE OF THE EVIDENCE
THAT THE OWNER KNEW OR SHOULD
HAVE KNOWN THAT THE PROPERTY WAS
BEING EMPLOYED."

NOW, THAT'S AS CLEAR AS IT COULD
BE AS TO WHAT'S REQUIRED OF THE

SECOND STAGE.

>> WELL, THERE'S A SECOND PART TWO BUT, YES, THEY ALSO HAVE TO SHOW THAT THE ARTICLE WAS USED IN VIOLATION OF THE STATUTE.

>> SO EVEN A HIGHER BURDEN ON CLEAR AND CONVINCING EVIDENCE.

>> IN THE SECOND STAGE.

>> AND SO ARE YOU -- WHEN, YOU'RE TALKING ABOUT ONE, TWO, OR THREE YEARS, DOESN'T IT HAVE TO BE SCHEDULED WITHIN 45 DAYS?

>> NO.

THE ADVERSARIAL -- WELL --

>> YOU CAN'T ASK A JUDGE, SAY, JUDGE, MY CLIENT HAS NO NOTICE, NO KNOWLEDGE, I REQUEST THAT THERE BE AN EXPEDITED HEARING ON THIS SECOND STAGE SO I CAN, SO THEY CAN BE PUT TO THEIR TEST OF PROVING -- SINCE THEY HAVE TO PROVE IT, I DON'T HAVE TO SAY A THING.

ARE YOU SAYING JUDGES WON'T EXPEDITE THAT IF THERE'S AN ISSUE BEING RAISED ABOUT KNOWLEDGE?

>> WITH THE ABSOLUTE DEEPEST RESPECT TO THIS COURT, I'VE BEEN PRACTICING IN MIAMI, FLORIDA, FOR 22 YEARS.

YOU CANNOT ASK FOR AN EXPEDITED TRIAL IN DADE COUNTY TODAY AND GET A TRIAL IN CIVIL CASE IN LESS THAN --

>> SO THERE'S AN ISSUE, MAYBE A

PROBLEM WITH THE RULES AS FAR AS GETTING THINGS SCHEDULED, BUT AS FAR AS THE ACTUAL LANGUAGE OF THE STATUTE, I'M STILL HAVING A HARD TIME UNDERSTANDING THAT FORFEITURES ARE DISFAVORED, THAT A SEIZURE PROVISION THAT HAS NO REQUIREMENT OF KNOWLEDGE IS NOW WE WOULD HAVE TO REWRITE THE STATUTE TO PUT THAT IN --

>> I DON'T THINK THE STATUTE HAS TO BE REWRITTEN, I THINK THE COURT SIMPLY HAS TO RECOGNIZE THE INFIRMITY OF THE STATUTE AND READ INTO THE STATUTE AN OWNER KNOWLEDGE REQUIREMENT IF -- IT'S A LITTLE NARROW.

>> WHEN YOU SAY "INFIRMITY," NOW ARE WE GOING BACK TO THE CONSTITUTIONAL INFIRMITY?

>> IT'S NOT NECESSARILY CONSTITUTIONAL.

THE FACT THAT YOU CAN TAKE SOMEBODY'S PROPERTY AWAY FROM THEM AT AN APH WITH PROBABLE CAUSE AND WE DON'T LISTEN TO, WE DON'T LISTEN TO THE INNOCENT OWNER AT THE APH.

WE SIMPLY IGNORE THEM AND TAKE AWAY THEIR PROPERTY AT THE SAME TIME.

>> IF WE AGREE WITH YOU AND THE OWNER PUT ON EVIDENCE, WHAT IS THE, WHOSE BURDEN AND WHAT IS THE STANDARD OF PROOF THAT HAS TO BE, THAT THE JUDGE WOULD

ADJUDICATE, WHERE DO WE COME UP WITH THAT ONE?

>> WELL, IN CAR THE FIRST DISTRICT COURT OF APPEALS CAME UP WITH LANGUAGE FOR BASIS OF BELIEF THAT THE PERSON KNEW OR SHOULD HAVE KNOWN.

THE FIFTH DISTRICT COURT OF APPEALS REJECTED THAT AND SAID, NO, WE'RE GOING TO GO WITH PROBABLE CAUSE TO BELIEVE THAT THE OWNER KNEW OR SHOULD HAVE KNOWN.

THOSE ARE THE STANDARDS THAT THE FIRST AND THE FIFTH --

>> YOU'RE SAYING ONLY IF THE OWNER WAIVES THE FIFTH AMENDMENT RIGHT AND TRIES TO OFFER TESTIMONY WOULD THIS OCCUR?

>> EXACTLY.

AND THAT'S WHY I THINK BAGGET IS A LITTLE MORE NARROW --

>> AGAIN, WE'RE JUST PLAYING AROUND WITH THE WORDS.

>> IT'S NOT A QUESTION OF PLAYING AROUND WITH WORDS --

>> WELL, IT ISN'T PLAYING AROUND WORDS, IT'S ACTUALLY WRITING IN PROVISIONS THAT DON'T EXIST.

>> IT'S NOT WRITING IN A PROVISION, IT'S GIVING MEANING TO A STATUTE THAT OTHERWISE LETS A SEIZING AGENCY TAKE SOMEBODY'S PROPERTY TEN DAYS AFTER IT'S SEIZED, ESPECIALLY IN A RENTAL SITUATION WHERE YOU'RE NOT EVEN

AT THE PROPERTY, TAKE IT AWAY FROM THAT PERSON AND HOLD IT, AND WHEN THAT PERSON COMES IN AND TRIES TO MAKE A CLAIM THAT AFFECTS THE PROBABLE CAUSE DETERMINATION, YOU SAY WE ARE NOT GOING TO LISTEN.

>> SO IN ESSENCE, YOUR ARGUMENT IS THIS SHOULD BE A ONE-STEP PROCESS INSTEAD OF A SEIZURE PROCESS AND A FORFEITURE PROCESS, IT ALL SHOULD BE ONE AT THE PRELIMINARY HEARING, THE SEIZURE AND FORFEITURE ASPECT SHOULD BE TAKEN CARE OF THEN AND THERE?

>> I DON'T THINK PRACTICALLY YOU CAN DO THAT BECAUSE WE HAVE DISCOVERY ISSUES AND TRIAL PREPARATIONS AND THINGS LIKE THAT.

BUT I DO THINK THAT --

>> YOU'RE ABSOLUTELY RIGHT. THE STATE IN TEN DAYS PROBABLY DOESN'T HAVE ENOUGH INFORMATION TO DETERMINE WHETHER OR NOT THE OWNER IS AN INNOCENT OWNER OR NOT.

>> UNDERSTOOD.

BUT, AGAIN, YOU KNOW, THAT IS WHY WHAT I'M SAYING, IT DOESN'T HAVE TO BE ONE PROCEDURE PROCEEDING, BUT -- WHAT'S GOING TO HAPPEN PRACTICALLY IS THERE'S A SEIZURE NOTICE, IT GOES OUT, AND MORE TIMES THAN NOT THESE

FOLKS DON'T EVEN HAVE STANDING.
IN THOSE CASES THERE'S NO
PROBLEM WITH PROBABLE CAUSE
FINDING, IN FACT, THE STATUTE
EVEN SAYS WHERE NOBODY FILES A
CLAIM FOR AN APH, THE JUDGE GETS
THE COMPLAINT AND ENTERS
PROBABLE CAUSE.

IT'S A UNILATERAL, IT'S AN
ACADEMIC OR MINISTERIAL ACT.
THAT'S ONE THING.

AND A PERSON CAN'T BE HEARD TO
COMPLAIN LATER ON THAT THEIR
PROPERTY'S BEEN TAKEN IF THEY
DON'T HAVE STANDING.

WHAT I'M SAYING IS WHAT THIS
COURT SHOULD FOLLOW AND RESOLVE
THE CONFLICT IN FAVOR OF THE
BAGGET DECISION BECAUSE WHEN A
CLAIMANT HAS STANDING AND COMES
IN AT THE APH AND SAYS INNOCENT
OWNER STATUS, YOU HAVE TO THEN
USE THAT TO DETERMINE THE
PROBABLE CAUSE DETERMINATION.

>> I'D LIKE TO CLARIFY, I'D LIKE
TO CLARIFY WHETHER YOU HAVE
ABANDONED YOUR ARGUMENT THAT THE
STATUTE IS UNCONSTITUTIONAL.

>> I WOULDN'T SAY I'VE ABANDONED
IT.

OUR POSITION IS --

>> SO YOU'RE STILL CONTENDING
THAT THE STATUTE IS
UNCONSTITUTIONAL?

>> THE APPLICATION OF THE
STATUTE, THE APPLICATION OF THE

STATUTE WHERE A PERSON HAS
STANDING AND GOES TO AN APH AND
WAIVES THEIR FIFTH AMENDMENT
RIGHT AND ASSERTS INNOCENT OWNER
STATUS --

>> HOW DO YOU SQUARE THAT WITH
BENNETT V. MICHIGAN, THE U.S.
SUPREME COURT DECISION THAT CAME
DOWN IN 1996?

>> BECAUSE IN THIS PARTICULAR
FLORIDA STATE FORFEITURE STATUTE
UNLIKE MANY OTHER STATE STATUTES
AND CERTAINLY THE FEDERAL
FORFEITURE STATUTE, YOU LOSE
YOUR PROPERTY IMMEDIATELY.
IT'S A BIG DIFFERENCE FROM A
STATUTE THAT SAYS WE'RE GOING TO
TAKE POSSESSION AND CONTROL OVER
IT, WE HAVE THE OCCUPANCY
AGREEMENT, YOU CAN STAY THERE
AND THEN WE'LL DECIDE WHO OWNS
IT ONE OR TWO YEARS DOWN THE
ROAD.

>> WHAT'S THAT GOT TO DO WITH
VENICE?

>> I'M SORRY?

>> WHAT DOES THAT HAVE TO DO
WITH VENICE V. MICHIGAN?

>> I'M NOT CERTAIN.

>> ARE YOU FAMILIAR WITH VENICE
V. MICHIGAN?

>> YES.

>> I DON'T UNDERSTAND HOW THAT
DISTINCTION YOU'RE DRAWING HAS
ANYTHING TO DO WITH THE
RATIONALE THERE, BUT YOU'VE RUN

OUT OF TIME THERE.

>> OKAY.

>> LET ME ASK YOU ABOUT SEIZURE.
YOU LOSE POSSESSION, NOT
OWNERSHIP, RIGHT?

>> YES, SIR.

>> WHEN THE FORFEITURE ASPECT
OCCURS, HOW DOES THE TITLE GET
AFFECTED THEN?

>> HERE'S WHAT HAPPENS.

WHEN, WHEN THE CASE IS FINALLY
TRIED BY JURY AND CAN ONLY -- IF
THERE'S A CLAIMANT, THERE'S A
JURY TRIAL NORMALLY UNLESS THEY
WAIVE IT, OR THERE'S A DEFAULT.

IN EITHER CASE, THERE'S A FINAL
JUDGMENT OF FORFEITURE.

ONCE THAT FINAL JUDGMENT IS
ENTERED, THAT HAS TO GO TO THE
SHERIFF'S OR THE SEIZING
AGENCY'S NAME AT THAT POINT IN
TIME, AND THEN THE PROPERTY GOES
UP ON AUCTION BLOCK AND GETS
SOLD.

AND EVENTUALLY THERE IS A FINAL
JUDGMENT OF FORFEITURE WHICH
LEGALLY VESTS TITLE IN THE
SEIZING AGENCY'S NAME, AND THEY
EITHER DEED OR IT GOES THROUGH
THE SEIZING AGENCY'S NAME TO THE
BUYER AT THE AUCTION.

>> WELL, HOW DOES THE TITLE THEN
PASS THE SEIZURE STAGE NOT WHEN
THE FINAL JUDGMENT IS ENTERED?

>> IT REALLY DOESN'T PER SE IN
THE SENSE THERE'S NOT -- IF YOU

LOOK AT THE CHAIN OF TITLE, YOU WON'T SEE A DEED IN THE SEIZING AGENCY.

YOU HAVE A RECORDED PROBABLE CAUSE ORDER, AND IF YOU'RE A TITLE AGENT, YOU KNOW -- YOU STUDY TITLES, YOU CAN'T SIMPLY LOOK AT THE STATUTE IT REFERS TO.

IT'S BY OPERATION OF THE PROBABLE CAUSE FINDING IN THE APH ORDER ITSELF.

BUT THERE'S NO REAL ESTATE INSTRUMENT, IF THAT'S WHAT YOU'RE ASKING, FORM THAT WE USE --

>> SO THEY CAN'T, THE CITY CAN'T GO AND SELL THE PROPERTY BEFORE THERE'S THE FORFEITURE.

>> THEY CAN'T GO AND SELL IT, BUT THEY OWN IT, AND THAT'S WHEN WE GET INTO ALL THESE PRACTICAL PROBLEMS WITH MAINTENANCE, ETC., THAT I MENTIONED IN MY BRIEF.

>> WOULD THE SAME THING OCCUR WITH PERSONAL PROPERTY?

>> YES.

THE STATUTE I REFERRED TO DOESN'T DISTINGUISH BETWEEN REAL OR PERSONAL PROPERTY.

>> SO THERE'S NO, IT'S NOT LIKE THEY CAN'T GO IN AND ACTUALLY SELL THE TITLE WITH THE PROPERTY UNTIL FORFEITURE PROCEEDINGS.

>> THEY CAN, AND THIS IS THE WAY

IT HAPPENS.

EITHER BY STIPULATION OR THE PARTIES OR MOTION OF THE COURT BECAUSE THAT'S A DEPRECIATING ASSET AND THEY ARE AN INTERLOCUTORY SALE.

IF THE JUDGE DETERMINES THAT'S THE BETTER WAY TO PROCEED, THEN THAT IS DONE BY COURT ORDER.

>> IF IT'S CHALLENGED, THEY CANNOT.

>> THEY CANNOT.

THANK YOU.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, COUNSEL FOR PETITIONER.

GOOD MORNING.

MY NAME IS CYNTHIA EVERETT, AND I'M THE VILLAGE ATTORNEY FOR THE VILLAGE OF PINECREST.

THE VILLAGE OF PINECREST IS NOT SEEKING TO ABANDON OR HIDE FROM ANY OF ITS BURDENS IN THIS MATTER.

THE STATUTE CLEARLY SETS FORTH A TWO-STAGE PROCESS FOR FORFEITURE PROCEEDING.

THE ADVERSARIAL PRELIMINARY HEARING STAGE AND THE SECOND FINAL FORFEITURE STAGE, AND THE PLAIN AND CLEAR READING AND LANGUAGE OF THIS STATUTE ONLY PROVIDES THAT AT THAT FIRST STAGE THAT THE SEIZING AGENCY'S ONLY BURDEN, ONLY RESPONSIBILITY IS TO SHOW OR PROVE PROBABLE

CAUSE.

>> SO WHAT, WHAT WOULD BE THE INNOCENT OWNER'S ROLE AT THE PRELIMINARY HEARING?

I MEAN, AN INNOCENT OWNER SUCH AS MS. GOMEZ WHO'S NOT EVEN ON THE PREMISES?

WHAT WOULD BE THE POINT OF HAVING A PRELIMINARY ADVERSARIAL HEARING AT HER REQUEST IF SHE CAN'T COME IN AND SAY SHE'S THE INNOCENT OWNER?

>> IF UNDER THE FACTS OF THIS CASE THERE WAS ONLY ONE CLAIMANT OR PERSON ENTITLED TO NOTICE AND THE PROBABLE CAUSE IS AS CLEAR AS IT WAS IN THIS CASE, FRANKLY, THERE WOULD NOT BE ANY REAL POINT TO HAVING THAT ADVERSARIAL PRELIMINARY HEARING BECAUSE, AGAIN, THAT'S JUST TO ESTABLISH PROBABLE CAUSE FOR THE CONTINUED SEIZURE OF THE PROPERTY.

BUT AS IS IN THIS CASE, THERE'S MORE THAN ONE CLAIMANT HERE, MORE THAN ONE OTHER THAN, MORE THAN ONE ENTITY WITH AN INTEREST IN THIS PROPERTY.

>> WHO ARE THE OTHERS?

>> THERE'S A MORTGAGE HOLDER.

>> WHO REQUESTED THE ADVERSARIAL PRELIMINARY HEARING?

>> WELL, MS. GOMEZ WANTED THE ADVERSARIAL PRELIMINARY HEARING, BUT IN TERMS -- BUT, AGAIN, AS WAS MENTIONED BY THIS COURT, AT

THAT HEARING YOU CAN CHALLENGE
PROBABLE CAUSE.

THERE MAY BE REASONS IN OTHER
TYPES OF CASES WHERE PROBABLE
CAUSE CAN BE ESTABLISHED AND CAN
BE DEFEATED AT THE ADVERSARIAL
PRELIMINARY HEARING STAGE
REGARDLESS OF YOUR KNOWLEDGE AS
AN OWNER.

IN THINKING PARTICULARLY ABOUT
THIS CASE AND ALMOST ANY
SCENARIO, I CAN'T IMAGINE A CASE
WHERE THE OWNER'S KNOWLEDGE OR
LACK THEREOF IS GOING TO IMPACT
ON PROBABLE CAUSE WHICH IS
SOLELY FOCUSED ON THE PROPERTY.
THE FACT THAT IN THIS PARTICULAR
CASE THERE IS A RESIDENCE BEING
USED AS A MARIJUANA GROW HOUSE
IN PINECREST WHETHER MS. GOMEZ
OR ANYBODY ELSE CLAIMS WE DIDN'T
KNOW ABOUT IT DOES NOT IN ANY
WAY CHANGE OR MITIGATE THE FACT
THAT THAT PROPERTY WAS CLEARLY
BEING USED TO FACILITATE A
CRIME.

>> BUT YOU'RE GOING TO HAVE TO
PROVE EVENTUALLY THAT THE OWNER
KNEW THAT THE PROPERTY WAS BEING
USED OR HAD REASON TO KNOW WITH
REASONABLE CARE, WHATEVER THE
LANGUAGE IS, TO KNOW THAT THE
PROPERTY WAS BEING USED FOR THAT
ILLICIT PURPOSE, AREN'T YOU?

>> ABSOLUTELY.

>> ALL RIGHT.

NOW, SUPPOSE, FOR EXAMPLE, THAT THE OWNER IN THIS CASE THAT THE OWNER MOVED TO EUROPE, GOT A JOB IN ENGLAND FOR FIVE YEARS, LIVES IN ENGLAND AND RENTED THE HOUSE -- GAVE IT TO AN AGENT TO REPRESENT THE HOUSE TO WHOEVER WAS WILLING TO LEASE IT.

HOW, HOW IS IT THAT YOU'RE GOING TO PROVE, HOW IS THAT NOT A PART OF PROBABLE CAUSE, THE FACT THAT SHE HAD ABSOLUTELY NO KNOWLEDGE, WASN'T LIVING IN THE COUNTRY, NO WAY OF KNOWING?

>> THAT IS NOT PROBABLE CAUSE BECAUSE THE FACT THAT SHE TURNED THE PROPERTY OVER TO ONE PERSON OR ANOTHER DOES NOT CHANGE HOW THAT PROPERTY WAS BEING USED REGARDLESS OF WHO THE PERSON WAS WHO WAS USING THE PROPERTY IN THAT MATTER.

>> BUT PART OF PROBABLE CAUSE IS THE FACT SHE KNEW IT WAS BEING USED FOR THAT PURPOSE.

>> MOST RESPECTFULLY, WE DISAGREE WITH THAT.

THAT TENDS TO BE THE LANGUAGE AND THE RULING WITH THE FIRST AND FIFTH DCA COURTS, BUT OWNER KNOWLEDGE IS NOT A PART OF PROBABLE CAUSE.

PROBABLE CAUSE IS ABOUT THE PROPERTY.

HOW IS THIS PROPERTY BEING USED, HOW WAS THIS PROPERTY ACQUIRED,

HOW IS THIS PROPERTY BEING USED
TO FACILITATE A CRIMINAL
TRANSACTION?

OWNER KNOWLEDGE, FRANKLY, IS NOT
LIKELY IN ANY SCENARIO TO PLAY A
ROLE IN THAT DETERMINATION.

>> WHAT IS THE LANGUAGE THAT
YOUR OPPOSING COUNSEL RELIES ON
ABOUT TAKING EVIDENCE?

WHAT DOES THAT MEAN?

>> IF WE'RE, IF WE'RE TALKING
ABOUT 7036A -- NO, THAT'S THE
ULTIMATE FORFEITURE.

>> I THINK 2C.

>> TO DETERMINE WHETHER THERE IS
PROBABLE CAUSE TO BELIEVE THAT
THE PROPERTY WAS USED, ETC.,
ETC., AND THE COURT CAN TAKE ANY
TESTIMONY ON THAT ISSUE.

ON THAT ISSUE.

THIS PROPERTY, MAYBE IT'S A
DUPLEX, MAYBE THE POLICE
MISTAKENLY ARE, YOU KNOW, WERE
OBSERVING MATTERS FROM AFAR AND
FOCUSED ON THE RIGHT SIDE OF THE
DUPLEX WHEN IT SHOULD HAVE BEEN
THE LEFT SIDE OF THE DUPLEX.

I MEAN, THERE COULD BE
SITUATIONS WHERE THEY GOT THIS
BOAT MIXED UP WITH THAT BOAT.
IT WASN'T THIS PROPERTY THAT WAS
BEING USED OR THIS PROPERTY THAT
WAS ACQUIRED WITH PROCEEDS OF A
DRUG TRANSACTION --

>> SO IT CAN ONLY BE UNDER THAT
PHRASE EVIDENCE WITH REGARD TO

THE PROPERTY, NOT PERSONS?

>> WELL, I THINK THE COURT WILL TAKE AND IN THIS CASE WE KEPT HEARING THAT THE COURT DID NOT HEAR MS. GOMEZ.

MS. GOMEZ TESTIFIED AT THE PRELIMINARY HEARING.

THE COURT HEARD HER.

THE COURT TOOK HER TESTIMONY.

SO WHATEVER TESTIMONY A CLAIMANT OR A PERSON WHO WAS ENTITLED TO NOTICE MAY WANT TO GIVE IS GOING TO BE TAKEN BY THE COURT.

>> BUT IF IT DOESN'T, IF IT FALLS ON DEAF EARS AND DOESN'T HAVE ANYTHING TO DO WITH THE CASE, IT'S A NOTHING.

I WANT TO UNDERSTAND THAT'S THE ARGUMENT, THAT THIS IS A CLAUSE THAT IT COMES INTO EVIDENCE ON.

MOST OF THE TIMES WE'RE DEALING WITH PROBABLE CAUSE IT INVOLVES SOMEBODY DOING SOMETHING, AND IT DOES INVOLVE A PERSON.

NOT NECESSARILY JUST PROPERTY.

THIS IS ONE OF THOSE UNIQUE CIRCUMSTANCES.

AND IT IS SOMEWHAT TROUBLING.

THE WAY THIS IS WORDED, I MEAN, THAT MAY BE THE OUTCOME, BUT IT IS SOMEWHAT TROUBLING.

YOU HAVE LANGUAGE LIKE THAT IN A STATUTE, AND THIS COUNTRY, YOU KNOW, SOMEONE IN TOTAL GOOD FAITH THE PRIEST HAS MOVED TO EUROPE AND LOSES, LOSES HIS

HOME.

I MEAN, THAT'S WHAT'S SO
TROUBLING.

AND YOU MAY BE CORRECT, BUT I'M
TRYING TO UNDERSTAND.

IT'S ONLY UNDER THAT PHRASE IS
THAT IT CAN ONLY BE THINGS WITH
REGARD TO THE PROPERTY OR THINGS
THAT'S HAPPENING THERE, NOTHING
ELSE.

>> NO.

I WANT TO MAKE IT CLEAR, I THINK
ANY TESTIMONY THAT A PERSON
WISHES TO PROFFER IS GOING TO BE
HEARD OR AT LEAST LISTENED TO --
>> BUT NOT WITH REGARD TO
KNOWLEDGE OF WHAT'S GOING ON
THERE.

>> NO.

WELL, I DISAGREE WITH THAT IN
THE SENSE THAT IF THERE'S A
SCENARIO WHERE KNOWLEDGE MAY
IMPACT ON A DETERMINATION OF
PROBABLE CAUSE, I THINK THAT
TESTIMONY IS RELEVANT AND WILL
BE TAKEN.

BUT IN THIS SCENARIO WHETHER OR
NOT YOU ARE ON THE SCENE OR KNEW
THAT YOUR TENANT OR SOMEONE ELSE
WAS GROWING MARIJUANA IN YOUR
HOUSE DOES NOT CHANGE WHETHER OR
NOT THAT PROPERTY WAS BEING USED
TO FACILITATE A CRIME.

IF YOU KNEW ABOUT IT, THE
PROPERTY WAS BEING USED IN THAT
MANNER.

IF YOU DIDN'T KNOW ABOUT IT, THE PROPERTY'S STILL BEING USED IN THAT MANNER.

>> COUPLE OF QUESTIONS.

BEFORE THIS STATUTE WAS AMENDED, WHAT -- THE COURTS HAD INTERPRETED THE STATUTE AS TO ALLOW FOR THE INNOCENT OWNER'S DEFENSE, THAT IS, FOR THE PERSON TO BE ABLE TO RAISE AS AN AFFIRMATIVE DEFENSE IN THE FORFEITURE STAGE INNOCENT OWNER.

SO THIS STATUTE ACTUALLY SHIFTED THE BURDEN TO THE, TO THE STATE OR THE SEIZING AGENCY TO ESTABLISH THAT ELEMENT.

SO IN EFFECT, IT MADE IT, IT STRENGTHENED AS I SEE IT THE PROTECTION BY PUTTING THE STATE OR THE SEIZING AGENCY TO THE, TO THAT BURDEN AS AN ELEMENT OF THE FORFEITURE, IS THAT CORRECT?

>> YES, THAT'S CORRECT.

>> HAD THE STATUTE EVER BEEN INTERPRETED THAT AT THE SEIZING STAGE THAT THERE WAS, THAT KNOWLEDGE WAS A PART OF THE SEIZING STAGE?

>> NOT UNTIL THE FIRST DCA TO THE BEST OF MY KNOWLEDGE.

>> OKAY.

SO REALLY, AGAIN, WHEN THEY WENT TO THIS TWO-STEP PROCESS, AS I SAID, THEY REALLY PUT SOMETHING ON THE STATE THAT HAD NOT BEEN PUT ON THERE BEFORE, IS THAT

CORRECT?

>> WHEN THE LEGISLATURE CHANGED
THE STATUTE?

>> RIGHT.

>> YES.

>> OKAY.

THE OTHER QUESTION I HAVE
BECAUSE ONE OF THE COMPELLING
ARGUMENTS THAT IS BEING MADE
IT'S SORT OF MORE OF THIS IDEA
OF THE STATE OR MUNICIPALITY
TAKING SOMETHING, THERE IS A
PRIEST, INNOCENT OWNER, AND IT'S
NOT UNTIL THREE YEARS LATER THAT
HE FINALLY OR SHE -- I GUESS HE
IF IT'S A PRIEST -- FINALLY IS
ABLE TO SAY, HAVE THEIR DAY IN
COURT OR HAVE -- AND THERE'S NO
EVIDENCE OF KNOWLEDGE.

AS A PRACTICAL MATTER OR AS THE
STATUTE SAYS, IT SAYS THAT ONCE
THE COURT DETERMINES THERE'S
PROBABLE CAUSE TO BELIEVE THAT
THE PROPERTY HAS BEEN OR IS
BEING USED.

SO, AGAIN, THEY REITERATE THAT'S
THE FINDING THAT THE PROPERTY'S
BEING USED.

THE COURT SHALL ORDER THE
PROPERTY RESTRAINED BY THE LEAST
RESTRICTIVE MEANS.

SO I'D LIKE TO KNOW, DOESN'T
THAT SORT OF COUNTER WHAT
COUNSEL'S BEEN SAYING WHICH IS
THAT THE COURT IS CHARGED WITH
SEEING THAT IF THERE'S A

CONCERN, AGAIN, IF THEY'VE HEARD THIS PERSON MIGHT BE INNOCENT OTHER THAN, THAT THEY ORDER A SEIZURE BUT ONLY IN THE LEAST RESTRICTIVE MEANS SO THAT THE PROPERTY DOESN'T CONTINUE TO BE USED IN A CRIMINAL MANNER. SO CAN YOU ADDRESS SUBSECTION D AS BEING A WAY THAT THESE LIST OF HORRIBLES ARE MINIMIZED, FIRST OF ALL?

>> YES, YOUR HONOR, I CAN, AND I THINK YOUR HONOR POINTS TO THAT SECTION OF THE STATUTE.

CLEARLY, THE PROPERTY IS CLEAR TO BE HELD BY THE LEAST RESTRICTIVE MEANS.

IT'S IMPORTANT TO KNOW THAT IN THIS CASE IT'S A HOUSE, BUT IT WASN'T LIVED IN BY THE OWNER. IT WAS THE OWNER TESTIFIED AS, AT THE ADVERSARIAL PRELIMINARY HEARING THAT THIS WAS INVESTMENT PROPERTY.

SO THIS IS NOT A CASE WHERE THE VILLAGE OF PINECREST HAS GONE IN AND PUT SOMEONE OUT OF THEIR HOME.

SECONDLY, YES, THE PROPERTY IS TO BE HELD BY THE LEAST RESTRICTIVE MEANS POSSIBLE.

IN THIS CASE, ALL THE VILLAGE OF PINECREST HAS DONE IS FOLLOW A LIST OF --

[INAUDIBLE]

THAT'S IT.

AND WITH ALL DUE RESPECT TO THE PETITIONER, I'VE BEEN PRACTICING LAW IN MIAMI-DADE COUNTY FOR 27 YEARS.

NOT ONLY CAN YOU GET AN EXPEDITED HEARING IF YOU ASK FOR ONE, YOU CAN APPROACH THE COURT AT ANY TIME FOR ADDITIONAL RELIEF YOU MIGHT DEEM NECESSARY.

>> SO WHAT HAPPENS TO THE PROPERTY?

IS IT JUST SITTING THERE?

>> IT'S SITTING THERE AND BEING MAINTAINED BY THE VILLAGE OF PINECREST.

>> DOES THE VILLAGE THEN LEASE --

>> THE VILLAGE DOES NOT LEASE THE PROPERTY.

>> THIS ALSO CREATES A PROBLEM.

THERE'S A MORTGAGE ON ONE PROPERTY AND THERE IN CITY BEAUTIFUL WITH MANSIONS AND ONE-ACRE ESTATES, KIDS SMOKE POT OUT BEHIND SOME PLACE AT THE FAR EDGE OF THE PROPERTY, SOME PLANTS GROW FROM SEEDS AND THOSE KINDS OF THINGS.

I MEAN, THEORETICALLY THIS THING COULD OPERATE, YES, THAT'S IMPROPER USE.

YOU'VE GOT PLANTS GROWING THERE, AND YOU'RE GOING TO LOSE YOUR PROPERTY IF YOU DON'T PAY THE MORTGAGE PAYMENTS.

SO I'M, I MEAN, IT JUST SEEMS

LIKE THIS IS SOME KIND OF
MAGICAL KIND OF THING.
IT'S NOT A PROBLEM, YOU KNOW,
I'VE HAD RENTAL PROPERTY, AND IF
YOU DEPEND ON IT FOR DEBT
SERVICE, I MEAN, IT DOES HAVE,
IT HAS AN IMPACT.

>> IT COULD HAVE AN IMPACT.
IMPACT, BUT, AGAIN, IF YOU HAVE
NOT EXERCISED YOUR ABILITY OR
AUTHORITY TO GO TO THE COURT AND
SAY I NEED A PARTICULAR TYPE OF
RELIEF, I NEED TO LEASE OUT THIS
PROPERTY OR SOMEONE NEEDS TO
LEASE OUT THIS PROPERTY SO THAT
THE DEBT SERVICE CAN BE MADE, IF
THAT'S NOT DONE, THEN PERHAPS
THAT IS NOT A REAL
CONSIDERATION.

>> IN OTHER WORDS, WHAT YOU'RE
SAYING IS THAT THE COURT HAS THE
FLEXIBILITY TO NOT ONLY MAKE
SURE THE PROPERTY'S MAINTAINED,
BUT THAT IF THERE'S -- BUT TO
TAKE STEPS TO, TO AMELIORATE OR
MITIGATE ANY DAMAGE.

BECAUSE ULTIMATELY, AS I SEE IT,
IF YOU'VE WRONGFULLY SEIZED THIS
PROPERTY, THE CITY IS
RESPONSIBLE FOR THE DAMAGES, IS
THAT CORRECT?

>> [INAUDIBLE]

>> SO YOU'VE DONE THIS --
BASICALLY, EVENTUALLY IF THEY
FIND THAT YOU CAN'T ESTABLISH
THIS MS. GOMEZ KNEW OR SHOULD

HAVE KNOWN, YOU'VE GOT A BIG BILL TO PAY.

>> WE MAY WELL HAVE A --

>> YOU AGREE THAT'S WHAT'S CONTEMPLATED.

IT'S CONTEMPLATED THAT THE PLAYING FIELD IS LEVELED BY REALLY CONTEMPLATING THAT THE STATE OR THE SEIZING AGENCY IS VIEWING THIS SEIZURE AT THEIR OWN RISK.

>> YES, YOUR HONOR, AND IT'S OUR POSITION THAT THE STATUTE HAS BUILT IN, IT'S REplete WITH THOSE TYPES OF PROVISIONS AND TO PROTECT THE INNOCENT, YOU KNOW, PROPERTY OTHER THAN AND TO INSURE THAT THERE IS DUE PROCESS ALL ALONG THE WAY.

>> SO WHY COULDN'T THE INNOCENT OWNER COME IN EVEN AT THE -- I KNOW THAT THE FOCUS OF THE PRELIMINARY HEARING IS ON THE, WHETHER OR NOT THE PROPERTY IS BEING USED TO FACILITATE A CRIME.

BUT AS AN ADJUNCT TO THAT, WHY COULDN'T YOU THEN HAVE SOME TESTIMONY ABOUT THE FACT THAT THIS IS RENTAL PROPERTY, I NEED TO HAVE A RENTER BE ABLE TO RE-RENT THIS PROPERTY SO THAT I CAN MAKE MY DEBT SERVICE AND ALL OF THAT?

>> YOU COULD HAVE THAT.

AND IN THIS CASE WE DID HAVE

SOME OF THAT TESTIMONY.

HERE'S THE PROBLEM, I THINK,
WITH THAT LINE OF REASONING OR
TAKING IT TO ITS LOGICAL
CONCLUSION.

FORFEITURES HAPPEN IN VARIOUS
WAYS.

I THINK THE MOST COMMON METHOD
OR TYPE OF ACTION IS WHERE
THERE'S PROBABLY A MOTOR VEHICLE
AND SOMETHING'S BEING DONE, YOU
KNOW, WITH THAT MOTOR VEHICLE AT
A TRAFFIC STOP AND THEN YOU FIND
DRUGS OR MONEY, OR THERE'S SOME
TYPE OF INVESTIGATION THAT'S
BEING CARRIED OUT BY LAW
ENFORCEMENT AGENCIES.

THE PINECREST POLICEMEN AS
CONCEDED BY THE PETITIONER, THEY
GET A PROBLEM THAT THERE'S AN
EMERGENCY SITUATION, SOMEONE'S
BREAKING IN.

THEY RESPOND TO THE HOUSE, THEY
CHECK IT OUT AS THEY'RE ALLOWED
TO DO UNDER LAW, AND THEY FIND A
MARIJUANA GROW HOUSE.

THIS IS NOT AN INSTANCE WHERE
WE'VE HAD WEEKS, MONTHS, YEARS
TO INVESTIGATE AND PULL ALL OUR
FACTS TOGETHER BEFORE WE GO TO
COURT WITH THE EVIDENCE.

UNDER OUR FORFEITURE LAWS, YOU
ARE TALKING ABOUT PROBABLY NO
LONGER THAN 30-35 DAYS WITH THE
STATUTORY REQUIREMENTS OF NOTICE
AND IN TEN DAYS WHERE YOU'RE IN

COURT ASKING FOR A FULL-SCALE HEARING, ALMOST A TRIAL.

IT IS NOT REASONABLE TO EXPECT A LAW ENFORCEMENT AGENCY TO BE ABLE TO BE, FRANKLY, INITIATE AND COMPLETE AN INVESTIGATION IN THAT SHORT PERIOD TO COUNTER ANY, ANY ADVOCACY OF INNOCENT OWNER KNOWLEDGE.

AND, AGAIN, IT CAN BE MORE THAN ONE PERSON COMING IN AT THAT STAGE.

>> WOULDN'T A BETTER, WOULDN'T THE WAY TO SOLVE SOME OF THIS BECAUSE I KEEP ON THINKING OF A SITUATION OF A YEAR OR TWO, COULDN'T THE RULES BE AMENDED TO PROVIDE THAT IF AN OWNER ASSERTS IN GOOD FAITH BASIS FOR LACK OF KNOWLEDGE THAT ANY HEARING NOT ONLY IS EXPEDITED, BUT SHALL BE HELD IN NO, YOU KNOW, COULD THEY DO THAT WITHOUT VIOLATING THE STATUTE TO MAKE THAT CLEAR? NO ONE'S REALLY PROPOSED THAT, BUT I KEEP ON THINKING OF THE SITUATION WHERE YOU REALLY DO HAVE AN INNOCENT OWNER, AND HERE WE STILL HAVEN'T GOTTEN AN ADJUDICATION ON THE MERITS WHICH I'M NOT SURE I UNDERSTAND EXACTLY WHY.

YOU KNOW, THEY COULD HAVE PROCEEDED WITH THE SECOND, YOU KNOW, STAGE IT WOULD SEEM TO ME BY NOW.

>> AND I WOULD LIKE TO ADDRESS THAT BECAUSE I'M HEARING THIS ONE TO TWO YEARS OR THREE YEARS. AS A PRACTICAL MATTER, IT'S ONLY GOING TO TAKE A SERIES, THAT'S WHY WE'RE TWO YEARS OUT, AND YET WITH THE UNDERLYING FORFEITURE COULD HAVE PROCEEDED BUT IN LIGHT OF THE WAY THE APPEALS WERE COMING AND BEING HANDLED AND THE ISSUE --

>> WELL, COULDN'T, BUT EITHER THE THIRD DISTRICT OR THIS COURT COULD HAVE ALLOWED THE -- THERE'S NO REASON THAT THEY COULDN'T HAVE RELINQUISHED JURISDICTION TO ALLOW THE FORFEITURE PROCEEDINGS TO PROCEED.

>> THAT'S CORRECT.

THEY COULD HAVE.

BUT IT WAS A MATTER OF ECONOMY WHEN THE PARTIES ASKED THE COURT TO STAY THE UNDERLYING FORFEITURE.

NORMALLY, WHAT I'M SUGGESTING TO THE COURT, A NORMAL FORFEITURE DOES NOT TAKE TWO OR THREE YEARS.

THESE MATTERS ARE RESOLVED MORE THAN LIKELY LESS THAN A YEAR.

SO ANYONE WHO'S BEING --

>> PRIOR TO THE ADJUDICATION OF ANY CRIMINAL ACTION?

BECAUSE SOMETIMES CRIMINAL CASES CAN TAKE A WHILE.

>> SOMETIMES CRIMINAL -- THEY DO PROCEED ON DIFFERENT TRACKS SO, YES, I WOULD SAY IN MOST INSTANCES IN STATE FORFEITURE PROCEEDINGS THEY ARE RESOLVED PRIOR TO AND INDEPENDENT OF ANY UNDERLYING OR PARALLEL CRIMINAL PROCEEDINGS.

>> IF THE STATE DISCOVERS AFTER THEY START DISCOVERY THAT THIS IS TRULY AN INNOCENT OWNER, I MEAN, THERE ARE OTHER REMEDIES, YOU KNOW, AS TO DISMISS THE ACTION.

SO WE REALLY, I MEAN, A LOT OF THIS WE'RE RELYING ON THE GOOD FAITH OF THE STATE OR THE MUNICIPALITY TO INSURE THAT IF AT ANY STAGE THEY FIND BONA FIDE EVIDENCE THAT THE PERSON REALLY DID NOT KNOW OR SHOULD HAVE KNOWN THAT THEY OUGHT TO DO EVERYTHING TO INSURE THAT THAT PROPERTY IS RETURNED.

>> YES.

THE GOOD FAITH OF ANY PARTY PARTICULARLY IN HERE, THE SEIZING AGENCY, IS INVOLVED, BUT AS A PRACTICAL MATTER, THERE'S A HAMMER OVER THE SEIZING AGENCY'S HEAD.

THE SEIZING AGENCY MAY WELL BE LIABLE FOR ANY LOSS OR DIM IN ADDITION OR VALUE OF THE PROPERTY AS WELL AS ATTORNEYS' FEES OR COSTS.

SO NO REASONABLE AGENCY IS GOING TO DRAG ANYTHING OUT IF THERE'S A REAL POSSIBILITY THAT THEY CAN'T, THAT THEY'RE NOT GOING TO PREVAIL.

BUT THAT'S THE PURPOSE OF ALLOWING THE AGENCY TIME TO SEIZE THE PROPERTY, HOLD THE PROPERTY, AND IN TERMS OF THE CONCERN, AGAIN, TITLE IS NOT PERFECTED, THE SEIZING AGENCY CANNOT DISPOSE OF THE PROPERTY, SELL IT, USE IT EXCEPT TO THE EXTENT THAT IT MAY BE NECESSARY IN TERMS OF A VEHICLE THAT NEEDS TO BE OWNED OR OPERATED NOW AND THEN, WE CAN'T DO ANYTHING WITH THE PROPERTY.

>> DO THEY EVER -- AGAIN, YOU'RE SAYING THAT A OWNER COULD GO IN AND SAY, I FOUND ANOTHER RENTER, THIS IS THE RENTER, I'D LIKE THE APPROVAL THAT THIS BE THE PERSON RENTING THIS PROPERTY, CAN GO BACK TO THE COURT AND ASK FOR THAT RELEASE?

>> FRANKLY, I DON'T THINK YOU HAVE TO GO TO THE COURT.

YOU CAN TALK TO THE VILLAGE OF PINECREST AND SAY THIS IS WHAT I WANT OR NEED TO DO, AND THEY CAN --

>> BUT SUBSECTION --

>> WOULDN'T THAT BE DETERMINED BY WHETHER OR NOT THIS IS A CRIME SCENE?

SOME PART OF THE PARALLEL
CRIMINAL CASE.

>> YOU'RE CORRECT IF THAT IS THE
ISSUE, BUT I'M SAYING IN TERMS
OF SIMPLICITY, APPROACH THE
VILLAGE OF PINECREST AND SAY,
THIS IS WHAT I NEED.

IF THE PARTIES CAN'T RESOLVE IT
OR WORK IT OUT, IT MAY REQUIRE
JUDICIAL INTERVENTION IN ORDER
TO ALLOW THE USE OF THE PROPERTY
THAT'S NECESSARY AS OPPOSED TO
THE --

>> THE POINT IS THAT SUBSECTION
D ACTUALLY REQUIRES THE COURT TO
ONLY RESTRAIN THE PROPERTY BY
THE LEAST RESTRICTIVE MEANS.

>> IN THIS CASE, AS I SAID,
PREVIOUSLY THERE'S ONLY A LIST
ON THE PROPERTY.

NOTHING ELSE HAS BEEN DONE TO
RESTRAIN THE USE OF THAT
PROPERTY.

THERE ARE NO -- I WAS JUST GOING
TO SAY, IF THERE ARE NO FURTHER
QUESTIONS, THE VILLAGE OF
PINECREST WOULD ASK YOU TO
AFFIRM THE DECISION OF THE THIRD
DISTRICT COURT OF APPEALS.

THANK YOU.

>> THANK YOU.

I THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.

ALL RIGHT.

THE COURT WILL NOW TAKE ITS
MORNING RECESS FOR TEN MINUTES.

>> PLEASE RISE.