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In re Forfeiture of the Following Described Vehicle, 1972 Porsche 2 Dr., '74 Florida License Tag ID 91788 VIN #9111200334, 307 So. 2d 451 (Fla. 3d Dist. Ct. App. 1975)

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Criminal Law—FORFEITURES—SIGNIFICANT INVOLVEMENT IN ILLICIT DRUG OPERATION REQUIRED TO JUSTIFY AUTOMOBILE FORFEITURE; EVIDENCE OBTAINED BY ILLEGAL SEARCH INADMISSIBLE IN FORFEITURE PROCEEDING; IMPOUNDMENT OF AUTOMOBILE WITHOUT WARRANT IN ABSENCE OF PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES INVALIDATES RELATED INVENTORY SEARCH.—In re *Forfeiture of the Following Described Vehicle, 1972 Porsche 2 Dr., '74 Florida License Tag ID 91788 VIN #9111200334,* 307 So. 2d 451 (Fla. 3d Dist. Ct. App. 1975).

Robert Higgins, Jr., was arrested in a police raid at another person's residence and charged with possession of cocaine and marijuana. His car, which had been legally parked on the street nearby, was towed away and stored for safekeeping. This procedure was allegedly the policy of the Dade County Public Safety Department. A warrantless search of the automobile for inventory purposes was made at the scene of the arrest. Two packets of "PCP" (phencyclidine), a controlled drug, were discovered underneath a seat.[1]

Subsequently, the state filed a petition for a rule to show cause why the automobile should not be forfeited to the use of or sale by the Dade County authorities under sections 893.12(2) and 893.12(5) of the Florida Statutes.[2] These provisions authorize forfeiture to the state of

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1. *In re* Forfeiture of the Following Described Vehicle, 1972 Porsche 2 Dr., '74 Florida License Tag ID 91788 VIN #9111200334, 307 So. 2d 451, 452 (Fla. 3d Dist. Ct. App. 1975).

FLA. STAT. § 893.03(3)(a) (1973) names phencyclidine as a controlled substance. According to the statute, phencyclidine has "a depressant effect on the nervous system," FLA. STAT. § 893.03(3)(a) (1973), and "may lead to moderate or low physical dependence or high psychological dependence." FLA. STAT. § 893.03(3) (1973).

2. The case was decided under the forfeiture statute before it was amended in 1974. The relevant portion of FLA. STAT. § 893.12(2) (1973) provided:

> Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited to the state or other jurisdiction responsible for the seizure.

FLA. STAT. § 893.12(2) (Supp. 1974) provides:

> Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided by the Florida Uniform Contraband Transportation Act.

Before its repeal, the relevant portion of FLA. STAT. § 893.12(5) (1973) (brackets in original) provided:

> The state attorney within whose jurisdiction the vessel, vehicle, or aircraft has been seized because of its use or attempted use in violation of any provision of this chapter shall proceed against the vessel, vehicle, or aircraft by rule to show cause in the court having jurisdiction of the offense, and have it forfeited to the use of or the sale by the law enforcement agency making the seizure on producing due proof that the [vessel,] vehicle, [or aircraft] was being used in violation of the provisions of this section.

vehicles used in violation of state drug abuse statutes.[3] After a hearing on the petition, the trial judge granted Higgins' motion to dismiss the rule, stating that in his opinion the statute was intended to require vehicle forfeiture only if "the vehicle is being used to further a drug operation,"[4] and thus did not authorize vehicle forfeiture simply because the owner had been arrested for possessing illegal drugs.

The Third District Court of Appeal, in an opinion written by Judge Hendry, affirmed the judgment of the lower court. The district court voiced general agreement with the idea that "forfeiture of an automobile is a drastic remedy in the absence of a nexus between the illegal drugs found in the car and the furtherance of an illegal drug 'operation,' even though a strict reading of the language contained in Section 893.12(2) would seem to permit a forfeiture for 'any violation of this chapter.' "[5] However, the court expressly declined to rest its decision on this point,[6] finding another ground conclusive. It held the seizure and search of the car were unjustified because the state failed to show the presence of probable cause and exigent circumstances that might obviate the need for a warrant.[7] In addition, the court rejected the state's contention that the impoundment, search, and inventory could be justified as a routine police procedure designed to protect the

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The Florida Uniform Contraband Transportation Act, FLA. STAT. §§ 943.41-.44 (Supp. 1974), was enacted to provide uniform standards and procedures for vehicle forfeitures. Fla. Laws 1974, ch. 74-385, Preamble. Although the Act repealed FLA. STAT. § 893.12(5) (1973), it contains a provision nearly identical to the repealed section. *See* FLA. STAT. § 943.44(1) (Supp. 1974).

The Act does, however, define "violation" much more specifically than § 893.12(2). Section 943.41(2)(a) includes within the definition of contraband "[a]ny controlled substance as defined in chapter 893." Section 943.42 makes it unlawful:

(1) To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.

(2) To conceal or possess any contraband article in or upon any vessel, motor vehicle, or aircraft.

(3) To use any vessel, motor vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange or giving away of any contraband article.

Section 943.43 provides that any vessel, motor vehicle, or aircraft used in violation of § 943.42 "shall be seized and may be forfeited."

3. The Florida Comprehensive Drug Abuse Prevention and Control Act, FLA. STAT. §§ 893.01-.15 (1973), was enacted in 1973 to bring the state's drug abuse laws into substantial conformance with the Federal Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. §§ 801-966 (1970). Fla. Laws 1973, ch. 73-331, Preamble. The federal statutory counterpart to § 893.12 is 21 U.S.C. § 881 (1970).

4. *Quoted in* 307 So. 2d at 452.

5. *Id.*

6. *Id.*

7. *Id.* at 452-53.

police against potential claims of theft of the car or loose items within the car.[8]

The decision in *1972 Porsche* touches upon three significant questions in the areas of statutory forfeitures and related searches and seizures: what degree of drug offense will support forfeiture of a vehicle?; may contraband drugs seized during an illegal vehicle search be used as evidence in a forfeiture proceeding?; and may warrantless impoundment and inventory search of a vehicle be made without demonstrating an exception to the warrant requirement?

What Degree of Drug Offense Will Support Forfeiture of a Vehicle?

The state contended in *1972 Porsche* that because illegal drugs were found in the car it was obviously being used in violation of the drug abuse law and was subject to forfeiture. The court favored Higgins' argument that the forfeiture statute reflects a legislative intent to curb illegal drug operations, not simple possession of drugs. The court stated, "In our view, forfeiture statutes are intended to apply to those individuals who are 'significantly involved in a criminal enterprise.' "[9]

The language quoted by the district court was lifted out of context from the United States Supreme Court's opinion in *United States v. United States Coin & Currency*.[10] That case dealt in part with the question of whether a person can be divested of ownership of his property by forfeiture when he himself is innocent of *any* wrongdoing. The dicta of the *1972 Porsche* court went beyond this.[11] It regarded the

8. *Id.* at 453.

9. *Id.* at 452, *quoting* United States v. United States Coin & Currency, 401 U.S. 715, 721-22 (1971). The district court's use of the plural ("forfeiture statutes") in this context indicates the court did not limit its reasoning solely to the interpretation of the statute in question. The same viewpoint could be applied to other forfeiture provisions, *e.g.*, FLA. STAT. § 206.205 (1973) (vehicles and boats used in the transportation of untaxed motor fuel); FLA. STAT. §§ 562.27(6), .35 (1973) (conveyances used in transporting illicit alcohol, its raw materials, or distilling equipment); FLA. STAT. § 849.36(1) (1973) (vessels and vehicles used to transport lottery tickets or other gambling paraphernalia).

10. 401 U.S. 715 (1971).

11. Even if the *1972 Porsche* court had limited itself to ruling that an innocent owner is not subject to the penalty of forfeiture, its reliance on *Coin & Currency* would still be ill-founded. The broad language of that case was severely restricted by the Court in Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974). That case involved the seizure by Puerto Rican authorities of a pleasure yacht owned by a leasing company that had no knowledge of its lessee's criminal activity on board the vessel—the possession of a single marijuana cigarette. In *Calero-Toledo*, Mr. Justice Brennan, for the majority, read *Coin & Currency* as having involved only statutory interpretation, and not the constitutional issue of whether forfeiture of an innocent person's property constitutes a "taking" of that property without due process of law. "Thus, *Coin & Currency* did not overrule

Florida statute as inapplicable not only to innocent owners, but also to vehicle owners who are guilty of minor violations of drug laws.[12] The

prior decisions that sustained application to innocents of forfeiture statutes . . . not limited in application to persons 'significantly involved in a criminal enterprise.' " 416 U.S. at 688. The Court in *Calero-Toledo* held that forfeiture statutes are not unconstitutional merely because they are applied to an innocent person's property. Further, it was felt that the extended reach of the Puerto Rican statute was buttressed by an important and legitimate governmental interest. "To the extent that such forfeiture provisions are applied to lessors, bailors, or secured creditors who are innocent of any wrongdoing, confiscation may have the desirable effect of inducing them to exercise greater care in transferring possession of their property." *Id.* at 687-88.

Nevertheless, the Court did not hold that the owner's innocence could never be a constitutional defense to a forfeiture proceeding. Two possible exceptions were noted. The first was if the property has been stolen or "borrowed" without permission and used to convey contraband. The Court reasoned "that it would be difficult to reject the constitutional claim of an owner whose property subjected to forfeiture had been taken from him without his privity or consent." *Id.* at 689. FLA. STAT. § 943.43 (Supp. 1974) specifically prescribes that, in such circumstances as are outlined in the Court's opinion, forfeiture shall not apply:

> No vessel, motor vehicle, or aircraft . . . shall be forfeited under the provisions of ss. 943.41-943.44, unless the owner or person legally in charge of such vessel, motor vehicle, or aircraft was at the time of the alleged illegal act a consenting party or privy thereto. No vessel, motor vehicle, or aircraft shall be forfeited . . . by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel, motor vehicle, or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of this state or any political subdivision thereof, any other state, or the United States.

The *Calero-Toledo* Court recognized a second possible exception for "an owner who prove[s] not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for, in that circumstance, it would be difficult to conclude that forfeiture served legitimate purposes and was not unduly oppressive." 416 U.S. at 689-90 (footnote omitted). Given the facts of the *Calero-Toledo* case, however, it is not easy to hypothesize situations in which this condition could be met. A yacht leasing company may have means by which to guard against the use of its property in a smuggling operation, but what possible steps could it take to satisfy itself that a lessee was not in possession of a minute quantity of marijuana? The opinion suggests a burden of due care that may be well-nigh impossible to meet. Justice Douglas, in dissent, argued for a less harsh approach: "I, therefore, would remand the case to the three-judge court for findings as to the innocence of the lessor of the yacht—whether the illegal use was of such magnitude or notoriety that the owner cannot be found faultless in remaining ignorant of its occurrence." *Id.* at 694.

12. In Grimm v. State, 305 So. 2d 252 (Fla. 1st Dist. Ct. App. 1974), the court expressed a diametrically opposed view of FLA. STAT. § 893.12(2) (1973). The result in *Grimm* graphically illustrates the draconian consequence of a strict-constructionist approach to this statute. The appellant and three companions, while parked near a beach, aroused the suspicion of a police officer. Upon coming closer, the officer detected the aroma of marijuana. The occupants of the car were arrested. One passenger had 13 grams of marijuana, a felony quantity, stowed in a sock. He received a $100 fine and a year's unsupervised probation. Approximately one gram of marijuana was found in the ashtray of the car. Grimm, the owner, forfeited his new $4000 Fiat to the State of Florida. The court was not sympathetic. It found that "[t]he statutory language is clear," and that

court apparently felt that the purpose of forfeiture is to provide an additional deterrent to trafficking in substantial quantities of contraband.[13] The opinion, however, is unclear as to when the drug law violation becomes too slight to warrant forfeiture, *i.e.* whether it applies only to major smuggling and marketing schemes or would reach the business of the small-time dealer. At the least, the court has indicated that it does not feel compelled by the broad wording of the statute to effect a forfeiture for every violation of the drug laws, no matter how insubstantial. Florida courts have traditionally disfavored statutory forfeitures, and have endeavored to limit their application.[14] The result in *1972 Porsche* is consistent with that tendency.

"the public policy established by the legislature has been violated and the sanction designated by that body must perforce be invoked." 305 So. 2d at 253. "While the law in relation to the facts of this case is harsh, it is the law. Appellant argues that it was the legislative intent to only confiscate vehicles of those 'trafficking' in illegal drugs, but the statute . . . is unambiguous." *Id.* (McCord, J., specially concurring).

The Florida Uniform Contraband Transportation Act, FLA. STAT. §§ 943.41-.44 (Supp. 1974), is clearer still. *See* note 2 *supra.*

13. A plausible argument could be made that the Federal Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. §§ 801-966 (1970), after which the Florida act was modeled, had the principal purpose of cracking down on large scale trafficking in drugs, not individual possession, and that the Florida law is meant to reach the same end. The recommendation of the President's Advisory Commission on Narcotics and Drug Abuse was that the law be oriented toward rehabilitation of the individual drug abuser, but that "[t]he illegal traffic in drugs should be attacked with the full power of the Federal Government. The price for participation in this traffic should be prohibitive. It should be made too dangerous to be attractive." H.R. REP. No. 91-1444, 91st Cong., 2d Sess., (1970), 3 U.S. CODE CONG. & AD. NEWS 4575 (1970). On the other hand, federal courts have decided that "it is impossible to conclude that Congress was concerned only with large scale trading in narcotics. The intent is clearly expressed to make unlawful (and therefore subject to forfeiture) the use of any vehicle for transporting, concealing or possessing *any* contraband article . . . ." United States v. One 1971 Porsche Coupe Auto., V.I. No. 9111100355, 364 F. Supp. 745, 749 (E.D. Pa. 1973); *accord,* United States v. One 1972 Datsun, Vehicle ID. No. LB1100355950, 378 F. Supp. 1200, 1202 (D.N.H. 1974).

14. Referring to the forfeiture provision in the state's alcoholic beverage laws, the Florida Supreme Court said, "Forfeitures are not favored in law or equity and a statute authorizing the same must by the courts be strictly construed." General Motors Acceptance Corp. v. State, 11 So. 2d 482, 484 (Fla. 1943). In the *GMAC* case the court refused to infer from the statute a legislative intent to forfeit the property of an innocent conditional seller of a car. Today an innocent lienholder's interests are protected from forfeiture under FLA. STAT. § 943.44(1) (Supp. 1974). *See also* Boyle v. State, 47 So. 2d 693 (Fla. 1950), in which the doctrine of strictly construing forfeiture statutes led to the ruling that money seized from a crap table during a gambling raid did not fall under the statutory definition of "property" that could be forfeited under Fla. Laws 1895, ch. 4373, § 4. That provision was amended in 1953 to make explicit the legislative intent that money used as a prize or a stake in a gambling operation is subject to forfeiture. Fla. Laws 1953, ch. 28088 (now FLA. STAT. § 849.12 (1973)). Subsequent to the *GMAC* and *Boyle* decisions, the legislature, in an apparent effort to make the courts take a harder line on at least some forfeitures, enacted FLA. STAT. § 562.408 (1973) as an addition to an existing forfeiture statute:

Whatever the validity of its interpretation of the statute, the court's conclusion at least accords with a notion of fairness. The evil effects of too literal a reading of statutes of this sort have been amply demonstrated.[15] To declare the forfeiture of a valuable automobile for simple possession of a sole marijuana cigarette, for example, is to impose a penalty that appears wholly out of proportion to the severity of the offense. Seizures and forfeitures are justifiable, if at all, only as means to discourage the use of vehicles in the movement or sale of substantial amounts of contraband.[16]

May Contraband Drugs Seized During an Illegal Vehicle Search Be Used as Evidence in a Forfeiture Proceeding?

The court of appeal's decision in *1972 Porsche* rested on a finding that the packets of drugs had been obtained by a search that violated the fourth amendment. The drugs were therefore suppressed under the exclusionary rule.[17] Since the illegal use of the automobile could not

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It is deemed by the legislature that this law is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety and morals of the people of the state. All the provisions of this law shall be liberally construed for the accomplishment of these purposes.

See also FLA. STAT. §§ 943.41-.44 (Supp. 1974); note 2 *supra*. Against this backround, *1972 Porsche* could be viewed as one more skirmish between the legislature and the state's judiciary in a continuing battle over the wisdom of statutory forfeitures.

15. Comment, *Automobile Forfeiture Under Article 725d—Texas Style*, 14 S. TEX. L.J. 193 (1973), quotes the following from a report of the Texas Legislature:

In the eight month period from October, 1971, to June, 1972, eighty-four vehicles were seized under the authority of the State of Texas, an average of one every three days.

L. B. Yates lost his 1961 Chevrolet for one partially smoked marijuana cigarette. W. F. Sinclair lost his 1968 Plymouth for one marijuana cigarette. W. F. Griffin lost his 1964 Volkswagen for the equivalent of less than one half of one marijuana cigarette. M. A. Beavers lost his 1964 Chevrolet for three marijuana cigarettes. J. S. Coker lost his 1968 Volkswagen bus for the equivalent of five marijuana cigarettes. S. Carmichael lost his 1969 Corvette for the equivalent of eight marijuana cigarettes. And the State of Texas moved in all its majesty to seize and forfeit W. L. Landrum's 1970 Honda motorcycle because he rode it while carrying the equivalent of ten marijuana cigarettes.

Id. (footnote omitted).

16. Mr. Justice Douglas, dissenting in Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974), made a similar observation: "If the yacht had been notoriously used in smuggling drugs, those who claim forfeiture might have equity on their side. But no such showing was made; and so far as we know only one marihuana cigarette was found on the yacht. We deal here with trivia where harsh judge-made law should be tempered with justice." *Id.* at 693.

17. *See* Mapp v. Ohio, 367 U.S. 643 (1961); Weeks v. United States, 232 U.S. 383 (1914). Florida has written the exclusionary rule into its constitution. Like the fourth amendment, FLA. CONST. art. I, § 12 declares the right to be free from unreasonable searches

be demonstrated without the excluded evidence, Higgins was entitled to retain ownership of his car.

One 1958 Plymouth Sedan v. Pennsylvania[18] supports the court's holding on this point. The United States Supreme Court there ruled that the exclusionary rule applies in a forfeiture proceeding even though such a proceeding traditionally has been treated as a civil in rem action.[19] In *One 1958 Plymouth,* the Court stated that a forfeiture proceeding "is quasi-criminal in character. Its object, like a criminal proceeding, is to penalize for the commission of an offense against the law."[20] Given this interpretation of the nature of forfeitures, it was clear to the Court that the exclusionary rule was applicable to forfeiture proceedings. "It would be anomalous indeed, under these circumstances, to hold that in the criminal proceeding the illegally seized evidence is excludable, while in the forfeiture proceeding, requiring the determination that the criminal law has been violated, the same evidence would be admissible."[21] Since the requisite criminal use often cannot be established without recourse to the tainted evidence, the property sought to be forfeited may be returned to the owner.[22]

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and seizures. It further provides that "[a]rticles or information obtained in violation of this right shall not be admissible in evidence."

18. 380 U.S. 693 (1965).

19. Summaries of the historical development and procedural treatment of forfeitures can be found in Note, *Due Process in Automobile Forfeiture Proceedings,* 3 U. BALT. L. REV. 270 (1974); Comment, *Rendering Illegal Behavior Unprofitable: Vehicle Forfeiture Under the Uniform Controlled Substances Act,* 8 CREIGHTON L. REV. 471 (1974-1975).

20. 380 U.S. at 700. In the past, Florida has treated forfeitures as civil actions. This doctrine led the Florida Supreme Court to hold that, under res judicata principles, the acquittal of the owner of a car in a criminal trial for alleged violation of the alcoholic beverage laws has no bearing on a proceeding for forfeiture of the car involving the same set of facts. State v. Dubose, 11 So. 2d 477 (Fla. 1943). The same conclusion has been reached by the United States Supreme Court. One Lot Emerald Cut Stones & One Ring v. United States, 409 U.S. 232 (1972); The Palmyra, 25 U.S. (12 Wheat.) 1 (1827). Coffey v. United States, 116 U.S. 436 (1886), ruled that acquittal in a criminal trial is a bar to a forfeiture proceeding. The case was distinguished in *Emerald Cut Stones,* 409 U.S. at 235 n.5, and probably has little validity today.

A related issue is whether forfeiture of property and a conviction of the owner based on identical factual grounds constitute double jeopardy. Such claims have had scant success because of the theory that forfeiture is a civil, not a criminal, sanction, and that the two actions often involve differing issues and standards of proof. *See* One Lot Emerald Cut Stones & One Ring v. United States, *supra;* United States v. One (1) 1969 Buick Riviera Auto., 493 F.2d 553 (5th Cir. 1974); United States v. Mendoza, 473 F.2d 692 (5th Cir. 1972). The conclusion to be drawn from comparing *Emerald Cut Stones* with *1958 Plymouth* is that, while forfeiture proceedings are considered criminal in nature for purposes of the exclusionary rule, they are generally to be treated as civil actions.

21. 380 U.S. at 701 (footnote omitted).

22. It should be noted that *1958 Plymouth* does not stand for the proposition that all forms of contraband are immune from confiscation and must be returned to the owner if illegally obtained by the authorities. The Court's opinion drew a distinction between

May Warrantless Impoundment and Inventory Search of a Vehicle Be Made Without Demonstrating an Exception to the Warrant Requirement?

In light of *1958 Plymouth,* it is in no way surprising that the district court ruled invalid the attempted forfeiture of Higgins' car, since it was grounded on the fruits of an improper search. What is significant, however, is the initial finding that an illegal search had taken place. The court's terse holding on this point read simply:

> The state has offered nothing to substantiate either that the police had probable cause to believe that contraband was in the vehicle or that exigent circumstances existed at the time of the search. *Compare,* United States v. McCormick, 502 F.2d 281 (9th Cir. 1974).
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> At the hearing in the trial court, the state relied simply on the policy of the Dade County Public Safety Department. It was contended that the vehicle was inventoried, searched, and towed as a matter of "self-protection" since the car was not located at the owner's, Higgins', residence and therefore potentially was subject to a claim that either the car or loose articles lying therein were taken. We find such a rationale legally insufficient.[23]

Absent probable cause and exigent circumstances, the only basis for upholding the search in the instant case was the emerging inventory search doctrine. The court's ambiguous holding on that doctrine is susceptible to two interpretations. It may be read as (1) rejecting the notion that an inventory search of a vehicle lawfully impounded may be conducted without a warrant; or (2) requiring the state to demonstrate the necessity of the underlying warrantless impoundment in order to apply the inventory search "exception" to the warrant requirement.

The first interpretation implies a sweeping change in Florida law, and thus seems unwarranted in light of the court's failure to discuss extensive case law validating warrantless inventory searches of vehicles

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contraband per se and derivative contraband. *Id.* at 698-700. The former is any item the possession of which, without more, constitutes a crime. Controlled drugs, moonshine whiskey, and the like fall into this category. These may be forfeited regardless of the legality of the search and seizure. *See* United States v. Jeffers, 342 U.S. 48, 54 (1951); Trupiano v. United States, 334 U.S. 699, 710 (1948). Returning such objects to their owner would not only be against public policy, but would again subject the owner to possibile criminal penalties for their possession. Derivative contraband consists of items which are not in themselves illegal to possess, but which can be seized if used in violation of the law. Typical of these are vehicles used to transport prohibited goods. In the case of derivative contraband, public policy would not prohibit return of the property to its original owner.

23. 307 So. 2d at 453.

lawfully in police custody. The established policy of most law enforcement agencies in Florida is that when a suspect's vehicle has been impounded, it shall be searched and a complete inventory taken of all items found within it. The reasons for such a search are twofold. First, the inventory is conducted to safeguard the owner's possessions from theft or damage. Secondly, the search and inventory serve to protect the law enforcement agency or a garage owner with whom the car is left from false claims by the owner of loss or destruction of his property while it is in official custody.[24] Recent decisions of Florida district courts[25] have upheld routine inventory searches made without a war-

24. *See* 1973 FLA. ATT'Y GEN. OP. 073-43, at 3, *quoting* Heffley v. State, 423 P.2d 666 (Nev. 1967); note 27 *infra*.

25. State v. Cash, 275 So. 2d 605 (Fla. 1st Dist. Ct. App. 1973); State v. Galloway, 266 So. 2d 53 (Fla. 3d Dist. Ct. App. 1972); Urquhart v. State, 261 So. 2d 535 (Fla. 2d Dist. Ct. App. 1971), *cert. denied*, 266 So. 2d 349 (Fla. 1972); State v. Ruggles, 245 So. 2d 692 (Fla. 3d Dist. Ct. App. 1971); Godbee v. State, 224 So. 2d 441 (Fla. 2d Dist. Ct. App. 1969). Each of these cases assumed expressly or by implication that the vehicle was lawfully in police custody at the time of the inventory. For example, the leading case in the area, *Godbee*, only dealt with the question of "whether a search may be made, without a warrant, for the sole purpose of making an 'inventory' of the contents of an automobile *in the lawful possession of police officers* after the owner thereof has been lawfully placed under arrest, and when such search is not incidental to the arrest." 224 So. 2d at 442 (emphasis added; footnote omitted).

The constitutional validity of warrantless inventory searches has apparently been endorsed by the United States Supreme Court, albeit not in a straightforward manner. Cooper v. California, 386 U.S. 58 (1967), concerned the search of a car being held as evidence pursuant to a California forfeiture statute. A 5-4 majority ruled the search constitutional. "It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it." *Id.* at 61-62. *Cooper*, however, assumed the initial seizure was legal. As the Supreme Court subsequently noted in Coolidge v. New Hampshire, 403 U.S. 443 (1971):

> In *Cooper*, the seizure of the petitioner's car was mandated by California statute, *and its legality was not questioned.* The case stands for the proposition that, *given an unquestionably legal seizure*, there are special circumstances that may validate a subsequent warrantless search.

Id. at 464 n.21 (emphasis added).

Harris v. United States, 390 U.S. 234 (1968), a per curiam opinion, upheld a conviction gained on the basis of a registration card that fell within the plain view of the officer as he was engaged in rolling up the windows of an impounded car after it began to rain. Although the officer had gone to the car to conduct an inventory, his search was complete at the time he noticed the card. The Court noted, "The admissibility of evidence found as a result of a search under the police regulation is not presented by this case. . . . [T]he discovery of the card was not the result of a search of the car, but of a measure taken to protect the car while it was in police custody." *Id.* at 236. In a brief concurrence, Justice Douglas stressed that the car was lawfully in police possession, and the evidence was not discovered in an inventory search, but was found accidentally during the performance of the police duty to protect the car. *Id.* at 236-37.

In Cady v. Dombrowski, 413 U.S. 433 (1973), the police entered the trunk of the defendant's car according to what was described as standard procedure of the police department. The defendant, an off-duty policeman, had been injured in an accident involving the car, which was towed to a garage. The purported purpose of the warrantless search

rant, as opposed to warrantless searches which are exploratory in nature. Those decisions have allowed liberal use in criminal trials of incriminating evidence uncovered during such inventories. The apparent governing rationale of holding warrantless inventory searches valid is that they are "reasonable" within the meaning of the fourth amendment,[26] because they are undertaken to protect the dual interests of the owner and the police.[27] On the other hand, a warrantless exploratory search or "fishing expedition," motivated by the intent to find contraband or evidence, is unconstitutional even if conducted pursuant to a lawful impoundment.[28]

If the *1972 Porsche* court's opinion is read to mean the impoundment (rather than the related inventory) was unjustified, the fore-

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was to retrieve the policeman's service revolver believed to be in the car, and thereby prevent it from falling into the wrong hands. Incriminating evidence of a murder was found in the trunk. Mr. Justice Rehnquist, speaking for a five-man majority, noted, "The police did not have actual, physical custody of the vehicle . . . , but the vehicle had been towed . . . at the officers' directions. . . . [L]ike an obviously abandoned vehicle, it represented a nuisance, and there is no suggestion in the record that the officers' action in exercising control over it by having it towed away was unwarranted either in terms of state law or sound police procedure." *Id.* at 446-47.

Justice Rehnquist concluded, "Where, as here, the trunk of an automobile, which the officer reasonably believed to contain a gun, was vulnerable to intrusion by vandals, we hold that the search was not 'unreasonable' . . . ." *Id.* at 448.

26. *But see* 1973 FLA. ATT'Y GEN. OP. 073-43, which suggests "an *inventory* is *not a search* in the constitutional sense of the word." *Id.* at 4. The same conclusion was reached in State v. Wallen, 173 N.W.2d 372 (Neb.), *cert. denied,* 399 U.S. 912 (1970), and People v. Sullivan, 272 N.E.2d 464 (N.Y. 1971). The logic of *Wallen* and *Sullivan* was criticized in United States v. Lawson, 487 F.2d 468, 471-72 (8th Cir. 1973).

27. In Godbee v. State, 224 So. 2d 441 (Fla. 2d Dist. Ct. App. 1969), the court stated that the police were

> duty bound, under routine police procedures, to inventory the car and its contents both for the preservation thereof and to insulate themselves and the garage owner acting under their direction from possible responsibility in the event of theft or destruction. Gaining access to the interior of the car and making inventory of its contents for this purpose was not, in our view, an unreasonable "search" in violation of any constitutional prohibition.

Id. at 443.

28. In the leading Florida case of Godbee v. State, 224 So. 2d 441 (Fla. 2d Dist. Ct. App. 1969), the court stressed that it would uphold an inventory only "when the totality of circumstances show such 'inventory' to be otherwise reasonable and prudent, and when it is in no way an *exploratory* search predicated upon a suspicision or subterfuge." *Id.* at 443 (footnote omitted); *accord,* 1973 FLA. ATT'Y GEN. OP. 073-43, at 4-5. Similarly, State v. Volk, 291 So. 2d 643 (Fla. 2d Dist. Ct. App. 1974), held that evidence turned up by an inventory following a "pretextual" impoundment that was not in accordance with standard procedures is inadmissible; *accord,* United States v. Ducker, 491 F.2d 1190, 1192 (5th Cir. 1974).

In O'Berry v. Wainwright, 394 F. Supp. 591 (S.D. Fla. 1975), the state argued that a warrantless exploratory search of an impounded vehicle was permissible under the automobile exception, the plain view doctrine, and as a search incident to arrest. The federal district court rejected each of those contentions.

going principles would not be drastically affected; inventories that are made pursuant to valid impoundments and that are conducted for protective purposes would be untouched. The conclusion that it was the impropriety of the seizure, and not the inventory search per se, that led the *1972 Porsche* court to exclude the fruits of the search is suggested by the fact that the only case cited as ground for the decision was *United States v. McCormick*.[29] In that case the Ninth Circuit Court of Appeals ruled that, absent a recognized exception to the warrant requirement, seizure of a vehicle for impoundment purposes must be authorized by warrant.

The defendant in *McCormick* was apprehended at his home by Secret Service agents acting under authority of an arrest warrant. When the agents arrived, they parked in the driveway of the house, effectively blocking any means of exit for McCormick's car. The car was impounded, and a later search turned up a photographic negative of a treasury seal. Use of the photographic negative as evidence contributed to the conviction of the defendant for conspiracy to counterfeit Federal Reserve notes.

The Ninth Circuit Court of Appeals reversed the conviction. Its decision conceded that, had the initial seizure of the car been valid, the later search would also have been valid.[30] The court reasoned, however, that "the Fourth Amendment applies equally to searches and to seizures."[31] Thus whatever rules govern the validity of searches are applicable to seizures. The most basic rule in the area is that, subject to certain specific and well-defined exceptions, any search or seizure made without the prior issuance of a warrant is per se unreasonable.[32]

The government attempted to justify the warrantless impoundment in *McCormick* by asserting that the forfeiture statute under which the car was seized obviated the warrant requirement.[33] No attempt was made to rationalize the seizure as a protective measure, although the court did not intimate that such a rationale would be insufficient.

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29. 502 F.2d 281 (9th Cir. 1974).

30. *Id.* at 284.

31. *Id.* at 285.

32. *See* Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); Katz v. United States, 389 U.S. 347, 357 (1967); Haile v. Gardner, 91 So. 376 (Fla. 1921); State v. Williams, 227 So. 2d 331 (Fla. 4th Dist. Ct. App. 1969).

33. 502 F.2d at 283. 49 U.S.C. § 782 (1970) provides that any vehicle used to conceal or transport contraband "shall be seized and forfeited." The imperative nature of the language in § 782 could arguably be taken to mean that Congress intended that such vehicles could be seized without a warrant. It is this interpretation that the *McCormick* court rejected.

Rather, the court rejected the idea that an " 'Act of Congress can authorize a violation of the Constitution.' "[34]

Since the statute could not obviate the need for a warrant, it was necessary for the court to determine whether any of the traditional exceptions to the warrant requirement could uphold the seizure. The "plain view" exception, which allows the warrantless seizure by the police of evidence or contraband which is in plain view, was dismissed on authority of *Coolidge v. New Hampshire*;[35] in *McCormick* the police knew beforehand of the existence of the car and its prior illegal use, and therefore had opportunity to obtain a warrant.[36] The search of the car independent of its seizure could not qualify as a search incident to a valid arrest under the rules laid down in *Chimel v. California*[37] because McCormick was arrested in his house, and the car was not " ' "within his immediate control"—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.' "[38]

Finally, the so-called "automobile exception" first articulated in *Carroll v. United States*[39] was held inapplicable to the *McCormick* seizure. Transplanting the *Carroll* search principles to a seizure situation, the *McCormick* court concluded that a warrantless seizure conducted pursuant to a forfeiture statute falls within the automobile exception only if (1) there is probable cause to believe the automobile contains contraband; and (2) exigent circumstances exist that make it impractical to secure a warrant prior to the seizure.[40]

The situation confronted by the *McCormick* court differed materially from the exigent circumstances that have justified application of the automobile exception. In *Carroll* exigent circumstances were held to exist because the automobile could be driven from the jurisdiction while a warrant was being procured.[41] In *McCormick* the car was

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34. 502 F.2d at 286, *quoting* Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973).

35. 403 U.S. 443 (1971). *Coolidge* limited the "plain view" doctrine to instances where a police officer comes "inadvertently across a piece of evidence incriminating the accused." *Id.* at 466. Thus in *Coolidge* and *McCormick,* both cases in which the police knew of the prior illegal use of a car and also its description, the fact that the car was in plain view could justify neither its seizure nor search.

36. 502 F.2d at 288.

37. 395 U.S. 752 (1969).

38. 502 F.2d at 286, *quoting* Chimel v. California, 395 U.S. 752, 763 (1969).

39. 267 U.S. 132 (1925).

40. 502 F.2d at 287.

41. 267 U.S. at 153.

> Only in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search. *Carroll* . . . holds a search warrant unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may

legally parked and was actually prevented from being moved. Although there was probable cause to believe that the car had been used to transport contraband, and therefore was subject to the statutory seizure provisions,[42] the court held that no exigency existed sufficient to justify warrantless impoundment.[43] Since the car was stationary and driverless, the police would have been at no disadvantage if required to obtain a warrant prior to the seizure.

On its facts, *1972 Porsche* is quite similar to *McCormick*. Both cases involved warrantless impoundment and search of a vehicle that was legally parked and unoccupied at the time of the owner's arrest. Application of the *McCormick* probable cause—exigent circumstances test by the *1972 Porsche* court may suggest that the exceptions to the warrant requirement examined in *McCormick* are exclusive. Such an inference is inappropriate.[44] The *McCormick* principle applied in *1972 Porsche* should be viewed as an application of the emerging Florida rule that warrantless impoundment is permissible only when necessary under the circumstances. In *State v. Volk*,[45] the Second District Court of Appeal affirmed the suppression of evidence discovered in an inventory because there was no necessity for impounding the vehicle and the police did so contrary to their usual procedure. Similarly, an Attorney General's opinion has indicated that an inventory search predicated on a warrantless impoundment is justifiable only when such circumstances as the likelihood of vandalism or theft make the impoundment necessary.[46]

In *1972 Porsche,* there were three grounds on which it could be argued warrantless impoundment was necessary. First, the Florida Comprehensive Drug Abuse Prevention and Control Act authorizes the seizure and forfeiture of vehicles used in violation of drug laws.[47] The Act empowers law enforcement agencies to authorize officers to make such seizures, and directs any officer so authorized, "whenever he shall discover any . . . vehicle . . . which has been or is being used in viola-

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never be found again if a warrant must be obtained. Hence an immediate search is consitutionally permissible.

Chambers v. Maroney, 399 U.S. 42, 51 (1970).

42. 502 F.2d at 287.

43. *Id.* The chief underpinning for the rationale of *McCormick* is Coolidge v. New Hampshire, 403 U.S. 443 (1971), which condemned the use of evidence found in the search of a parked and unoccupied car. *See also* O'Berry v. Wainwright, 394 F. Supp. 591 (S.D. Fla. 1975).

44. *See* text accompanying notes 54-57 *infra.*

45. 291 So. 2d 643 (Fla. 2d Dist. Ct. App. 1974).

46. 1973 FLA. ATT'Y GEN. OP. 073-43, at 2.

47. FLA. STAT. § 893.12(2) (1973), *as amended,* FLA. STAT. § 893.12(2) (Supp. 1974). *See* FLA. STAT. § 943.43 (Supp. 1974).

tion of any of the provisions of this chapter, . . . to seize such . . . vehicle."[48] *McCormick* makes it clear that directory provisions of such statutes do not constitute an independent exception to the warrant requirement; statutory directives in themselves are insufficient to establish the necessity of a warrantless seizure.

Secondly, it could be argued that a warrantless impoundment is necessary if required by routine police procedure. Though such an argument makes it possible to distinguish the *Volk* case, it is untenable in light of the *McCormick* holding with regard to statutes requiring seizures.

Thirdly, it could be argued that warrantless impoundment is necessary for protective purposes. Most Florida cases upholding inventory searches fit into this category rather than the *McCormick* probable cause—exigent circumstances test. With exceptions,[49] the Florida cases upholding inventory searches typically involve the arrest of a driver for a traffic offense of such a serious character that he must go with the police to post bond. Rather than abandon the car at the side of the road, the police impound the car, tow it from the scene and conduct an inventory.[50] The impoundment may thereby protect the owner's property from damage or theft.[51] In *1972 Porsche,* the court rejected as "legally insufficient" the State's attempt to justify its impoundment procedure as a matter of police self-protection.[52] Though the court's language might be read to suggest an outright rejection of any pro-

48. FLA. STAT. § 893.12(3) (1973), *as amended,* FLA. STAT. § 893.12(3) (Supp. 1974).

49. In Godbee v. State, 224 So. 2d 441 (Fla. 2d Dist. Ct. App. 1969), the suspect was apprehended by the police, but fled on foot, leaving his car illegally parked on a sidewalk. The vehicle was impounded and an inventory taken that disclosed a cache of stolen weapons. In State v. Cash, 275 So. 2d 605 (Fla. 1st Dist. Ct. App. 1973), a motel owner reported a trespasser. Police arrested the man and were informed by the motel owner that the alleged trespasser had a car on the motel premises. The motel owner then asked the police to tow the car away. The *Cash* court held that the ensuing inventory search was reasonable, but did not consider whether the underlying warrantless impoundment was proper. On similar facts, the Eighth Circuit Court of Appeals, noting that the police had no basis for impounding the car, held the ensuing inventory was an unreasonable search. United States v. Lawson, 487 F.2d 468, 471 (8th Cir. 1973), *cited with approval in* State v. Volk, 291 So. 2d 643 (Fla. 2d Dist. Ct. App. 1974).

50. *See* State v. Galloway, 266 So. 2d 53 (Fla. 3d Dist. Ct. App. 1972); Urquhart v. State, 261 So. 2d 535 (Fla. 2d Dist. Ct. App. 1971), *cert. denied,* 266 So. 2d 349 (Fla. 1972); State v. Ruggles, 245 So. 2d 692 (Fla. 3d Dist. Ct. App. 1971). Note that in each of these cases the inventory was made after the impoundment decision but before the car was moved. The order of events is immaterial; the crucial factor is that the inventory is made pursuant to impoundment.

51. Most Florida inventory cases have addressed themselves to the validity of the inventory search rather than the validity of the underlying impoundment. *See* note 25 *supra.* Thus the case law has not explored the issue of whether protective principles justify impoundment as well as the related inventory.

52. *See* text accompanying note 23 *supra.*

tective impoundment rationale, it is more likely to mean that a distinction will be drawn between impoundments carried out to protect the police and those carried out to protect owners' property.[53] *Volk,* however, suggests that a bare claim that impoundment is motivated by the desire to protect the owner is not dispositive; if circumstances indicate such "protection" is unnecessary the impoundment is inappropriate—although protective principles would make an inventory necessary once the vehicle is lawfully impounded.

Even where warrantless impoundment is not required to protect the owner's property, it may be justified if necessary to protect the public. Subsequent to *McCormick,* the Ninth Circuit in *Cardenas v. Pitchess*[54] upheld an impoundment on such grounds. The *Cardenas* suspects, arrested for disturbing the peace, were known members of a Cuban Power group suspected of a series of bombings. Their car contained a pistol in plain view. In upholding use of the evidence discovered in an inventory search, the court maintained the impoundment—inventory distinction drawn in *McCormick,* but recognized an exception to the warrant requirement not discussed in that case. The *Cardenas* court held, "*Protection of the public justified the impoundment,* and protection of both petitioner's property and the safety of the police officers justified the inventory."[55] There are a variety of situations in which public protection may necessitate impoundment. For instance, an illegally parked[56] or disabled vehicle may pose a threat to traffic, or

53. As a practical matter, a police need for self-protection—either from destructive devices contained in the car or from false charges of police theft—does not arise unless the police take possession of and assume responsibility for the car. The owner's need for protection, however, exists whether or not the police take custody. If his property is endangered, impoundment may be necessary to protect it. Once it has been impounded, the inventory helps protect his property from dishonest custodians. *Cf.* text accompanying note 55 *infra.*

54. 506 F.2d 1224 (9th Cir. 1974).

55. *Id.* at 1226 (emphasis added). *See* Cady v. Dombrowski, 413 U.S. 433, 447 (1973):

> In *Harris* the justification for the initial intrusion into the vehicle was to safeguard the owner's property, and in *Cooper* it was to guarantee the safety of the custodians. Here the justification, while different, was as immediate and constitutionally reasonable as those in *Harris* and *Cooper*: concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle.

56. *E.g.,* cases cited note 49 *supra.* In situations where an illegally parked or disabled car poses no immediate threat to the public and is unlikely to be damaged or vandalized, it seems reasonable to require a warrant for its impoundment. *See* text at p. 454 *infra.* However, in State v. Volk, 291 So. 2d 643 (Fla. 2d Dist. Ct. App. 1974), the court noted it had upheld inventory searches "in cases in which an automobile has been necessarily impounded after abandonment." *Id.* at 644. That statement referred, *id.* at n.1, to Godbee v. State, 224 So. 2d 441 (Fla. 2d Dist. Ct. App. 1969), in which the driver abandoned his car on the public sidewalk after eluding arresting officers. The *Volk* dicta thus may not mean that abandonment per se necessitates warrantless impoundment. But dicta in Cady v.

it may be necessary to prevent an inebriated driver from continuing to pilot his car at the peril of himself and others.[57] In such cases the central factual issues are identical to those posed in other protective impoundment situations: was protection required, and was impoundment necessary to achieve that protection?[58]

If the answers to the foregoing questions are affirmative, *1972 Porsche* and *McCormick* suggest a further question must be asked: was there a legal basis for *warrantless* impoundment? Because *McCormick* explicitly recognizes that impoundment constitutes a seizure, and *1972 Porsche* impliedly accepts that holding, it follows that a warrant is normally required to impound property. Although both cases involved impoundments authorized by forfeiture statutes, it makes little sense to limit the cases to those facts. If impoundment constitutes a seizure when carried out for forfeiture purposes, it should also be regarded as a seizure when carried out for protective purposes. Thus warrantless impoundment should be permissible only if it falls within a recognized exception to the warrant requirement.

The exception most frequently applicable to impoundment is that recognized in *Carroll*—the existence of special circumstances that make it "not practicable to obtain a warrant."[59] By analogy to *Carroll* and *McCormick,* the courts could hold that, absent other applicable exceptions, warrantless impoundment is permissible only if (1) the police have probable cause to believe impoundment is necessary to protect the public or to protect the owner's property from theft or damage; and (2) procuring a warrant is impracticable because damage to the

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Dombrowski, 413 U.S. 433, 447 (1973), *quoted in* note 25 *supra,* suggests that abandoned vehicles constitute a nuisance, and that it is not unreasonable for police to tow away such vehicles without a warrant. *Cf.* United States v. Lawson, 487 F.2d 468 (8th Cir. 1973), where the court distinguished inventory searches of cars parked on private property from inventories of cars left beside the road, noting *inter alia* that the latter category constitutes "a nuisance along the highway." *Id.* at 471.

57. "We have upheld inventory searches in cases in which an automobile has been necessarily impounded . . . where its *sole* occupant is, because of intoxication, unfit to drive." State v. Volk, 291 So. 2d 643, 644 (Fla. 2d Dist. Ct. App. 1974) (emphasis added), *citing* Urquhart v. State, 261 So. 2d 535, 536 (Fla. 2d Dist. Ct. App. 1971). In *Urquhart,* Judge Mann noted in concurrence, "The practice of removing to a safe place, under the control of a safe driver, *every* vehicle from which its drinking driver is parted by the police is sound." 261 So. 2d at 536.

The quoted language suggests the Second District might invalidate as unnecessary an automobile impoundment made when a sober driver other than a police officer was available. *Cf.* note 58 *infra.*

58. Factors relevant to the necessity requirement are discussed in United States v. Lawson, 487 F.2d 468, 476-77 (9th Cir. 1973); Urquhart v. State, 261 So. 2d 535, 538 (Fla. 2d Dist. Ct. App. 1971) (Mann, J., concurring in denial of rehearing). *Cf.* Mozzetti v. Superior Ct., 484 P.2d 84, 89 (Cal. 1971).

59. Carroll v. United States, 267 U.S. 132, 153 (1925).

public or damage or theft of the owner's property is likely to occur while a warrant is being procured.

Where impoundment is predicated on public protection, the second branch of the proposed test would usually be met. If a danger to the public exists, it is likely to be immediate.[60] But where impoundment is undertaken to protect the owner, delaying impoundment until a warrant is obtained will often be practicable. Where an automobile is legally parked in a business district during daylight hours, for instance, it may well be possible to obtain a warrant before the threat to the owner's property becomes significant.

If the above tests had been applied in *1972 Porsche,* the court could have reached its result on either of two grounds. First, it could have reasoned that impoundment was unnecessary per se. Since the car was legally parked in a residential neighborhood, the court could have concluded the police had no basis for believing the car posed a threat to the public or was likely to attract thieves or vandals. Secondly, the court could have concluded that under the circumstances theft or damage was likely to occur only if the car were left in the neighborhood for an extended period. Therefore, the court could have reasoned, there was no exigency sufficient to dispense with the warrant requirement.

The *1972 Porsche* court, of course, did not go so far. At most, the ambiguous opinion indicates that impoundment is a seizure subject to fourth amendment requirements, and that a bare claim of police self-protection does not create an exception to those requirements. But if Florida courts pursue the rationale of *McCormick* in subsequent cases, they may succeed in making impoundment and inventory procedures consistent with other search and seizure law.

MICHAEL P. MABILE

Criminal Law—SEARCH AND SEIZURE—THE RELATIONSHIP BETWEEN FLORIDA'S KNOCK AND ANNOUNCE STATUTE AND THE EXCLUSIONARY RULE.—*State v. Roman,* 309 So. 2d 12 (Fla. 4th Dist. Ct. App. 1975).

Two armed plainclothes police officers accompanied by an unarmed police cadet went to a college dormitory to execute search warrants and capiases on two students. Unable to find the students, the officers enlisted the aid of defendant Mark Roman. The officers did not inform

60. *See, e.g.,* Cady v. Dombrowski, 413 U.S. 433 (1973); Cardenas v. Pitchess, 506 F.2d 1224 (9th Cir. 1974). In each case the danger to the public was that a weapon contained in the car might fall into the wrong hands if not quickly recovered by police officers.