

ORDINANCES & REGULATIONS

Ordinances & Regulations: Indigent Representation

City of Ft. Lauderdale v. Crowder,
983 So. 2d 37 (Fla. 4th Dist. App. 2008)

When an indigent defendant is charged only with a misdemeanor violation of a city ordinance, the city is responsible for paying for representation of the indigent defendant.

FACTS AND PROCEDURAL HISTORY

All three defendants involved in the case were charged with violating Municipal Ordinance 16-1 of the City of Fort Lauderdale (City). Ordinance 16-1 makes it unlawful for a person to commit any act within the City that would constitute a felony or misdemeanor under county ordinance or state law. While the State of Florida charged none of the defendants with violating state criminal statutes, the city attorney prosecuted the defendants for violating city ordinances. All defendants were indigent, unable to pay for legal representation, and demanded counsel. However, the public defender gave notice that he would not provide legal representation for defendants who have been charged with violations of only city ordinances. In one of the cases, the trial judge found that the City must fund and provide representation for the indigent defendant; in the other two cases, the judges found that the State must pay for indigent representation. All three cases posed a common question certified by the County Court: “is the City of Fort Lauderdale responsible for the cost of representation of indigent defendants charged solely with a misdemeanor violation of a city ordinance?” *Crowder*, 983 So. 2d at 38.

ANALYSIS

The City argued that under Florida’s Constitution, funding indigent representation is the exclusive responsibility of the State because it is a “court-related function.” Fla. Const. Art. V, § 14. The State argued that because the defendants were charged with violations of a city ordinance and not a state criminal statute, the City should pay for the indigent representation.

In analyzing the State and City's respective arguments, the court looked to the history of Article V's adoption into the Florida Constitution in 1972. When Article V was first adopted, local governments largely funded the judicial branch. However, in 1998, the Constitution Revision Commission submitted Revision 7 to the electorate, which significantly revised judicial-branch funding and placed on the State the burden to pay for the judicial branch. In 1998, the electorate approved the revision. Article V, Section 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts for performing court-related functions.

Fla. Const. Art. V, § 14(c) (1998). According to the Constitution Revision Commission's Statement of Intent, the State's obligation regarding state courts includes but is not limited to funding all court-related functions and requirements which are statewide in nature. Therefore, the court found that the court-related functions referred to in subsection (c) encompass only court-related functions that are statewide in nature.

In 2003, the Florida Legislature implemented Revision 7's new requirements. Florida Statutes sections 27.51 and 27.54 prescribe the duties of the public defender, and nowhere within these statutes does it authorize the State to provide an indigent defendant with representation when the defendant is charged with violating only a municipal ordinance. Fla. Stat. §§ 27.51(1) and 27.54(2) (2007). Pursuant to the statutes, the public defender is authorized to represent the indigent defendant only when the defendant is charged with at least one state law violation, or when the county or municipality has contracted with the public defender to provide representation. The court concluded that the statutes are consistent with Article V of the Florida Constitution because enforcing municipal ordinances is not statewide in nature and, therefore, is not required by law.

Further, Florida's statutory provision for municipal-ordinance enforcement stipulates that in civil actions, not criminal prosecutions, when incarceration is authorized, a city is re-

quired to pay for counsel for an indigent defendant accused of violating a municipal ordinance. Fla. Stat. § 162.30 (2007). The court concluded that the necessity for a public defender in these three cases resulted directly from the City's decision to make these violations of a city ordinance criminal offenses. Even if the ordinance serves a municipal purpose, it does not turn enforcement of the ordinance into a court-related function authorized by general law. There is no reason to make all citizens of Florida pay to enforce the City's purpose.

Therefore, the court held that pursuant to Article V, Section 14 of the Florida Constitution and the statutes implementing Revision 7, the City was required to fund representation of defendants facing prosecution for violating its municipal ordinances.

SIGNIFICANCE

The court in *Crowder* held that the statutes implementing Revision 7 are consistent with Article V, Section 14 of the Florida Constitution. If a municipality decides to prosecute an indigent defendant for a violation of its ordinance, not in connection with a violation of state law, the municipality will be responsible for funding counsel. Alternatively, a municipality may enter into an agreement with the State's Public Defender to represent indigent defendants, provided that the city also funds such legislation.

RESEARCH REFERENCES

- 12A Fla. Jur. 2d *Payment of Costs of Criminal Prosecutions* § 21 (2007).
- Robert F. Williams, *The Florida Constitution Revision Commission in Historic and National Context*, 50 Fla. L. Rev. 215 (1998).

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Ordinances & Regulations: State Preemption

City of Miami v. Wellman,
976 So. 2d 22 (Fla. 3d Dist. App. 2008)

A municipal ordinance that permits law enforcement officials to impound vehicles used during the commission of an act of pros-

titution or during the sale or purchase of a controlled substance is unconstitutional when it fails to provide adequate notice to the owner, applies an inadequate standard of proof, and lacks an innocent-owner defense.

FACTS AND PROCEDURAL HISTORY

The City of Miami (City) impounded the vehicles of Danielle Wellman and Nadine Theodore because the vehicles were used while their husbands sought to solicit prostitution. Similarly, Gustav Dorcilome's vehicle was impounded after one of his passengers attempted to purchase marijuana from an undercover police officer. City of Miami Ordinance Section 42-121 authorizes the City to impound vehicles that have been used to facilitate the commission of an act of prostitution, assignation, or lewdness or that have been used for the sale or purchase of a controlled substance.

The owners filed a declaratory action against the City, alleging that the ordinances violated the Florida Constitution common law, which prohibits a party from judging its own case. The trial court rejected most of the owners' arguments, but did find that the ordinances were unconstitutional as applied. The court issued the following three orders: (1) the ordinances must provide an innocent-owner exception; (2) the ordinances' notice requirement was inconsistent with the Florida Forfeiture Act; and (3) the City was enjoined from enforcing the ordinances in any manner inconsistent with the court's orders.

On appeal, the Third District Court of Appeal held that the ordinances conflicted with state law on forfeitures, and therefore, the ordinances were unconstitutional. However, the Florida Supreme Court reversed and remanded the case to the appellate level for reconsideration. On remand, the court affirmed the trial court's injunction and held that the ordinances were unconstitutional.

ANALYSIS

Under the City's ordinances, an arresting police officer is required to provide notice to the owner of the vehicle and any person found to be in control of the vehicle at the time of the impoundment. The owner may request a preliminary hearing within five days of receiving such notice in order to determine whether

there is probable cause to impound the vehicle. The owner may then request a final hearing where the City has the burden of showing by a preponderance of the evidence that the vehicle was used for a proscribed purpose. Charter & Code Miami (Fla.) §§ 42-121–122 (1997).

The court first examined the adequacy of the notice requirement. Article I, Section 9 of the Florida Constitution requires that in all forfeiture cases “notice shall be served on all persons whom the agency knows, or with reasonable investigation should know, have a legal interest in the subject property.” The court explained that “[e]ven though an impoundment is not a forfeiture, . . . the notice requirement under due process applies to impoundment cases.” *Wellman*, 976 So. 2d at 26. The City argued that although the ordinance does not explicitly require the officer to give notice to all owners, even if they are not present, standard practice was to give such adequate notice. However, the court held that the mere practice of adequate notice was insufficient, and that lack of notice to lessors, renters, and lienors was problematic.

Next, the court examined the adequacy of the hearing. The owners argued that the hearing required by the statute was unconstitutional because it permitted the agency to exercise powers that are typically reserved for the judicial branch. Although the court agreed with the owners that such proceedings are judicial in nature, it went on to explain that it is common for administrative agencies to hold similar hearings to determine the issue of probable cause.

The court then considered the burden of proof required of the City. The owners argued that the Florida Forfeiture Act requires clear and convincing evidence before the government may take an individual’s property. Although the court recognized that an impoundment is not a forfeiture, the court again compared the two actions and held that the preponderance of the evidence standard was inadequate.

Finally, the court considered the owners’ argument that due process requires an innocent owner to be immune from loss of property. The court again considered the precedent for forfeitures and noted that an owner’s lack of knowledge that the property was being used in criminal activity is a defense to forfeitures; therefore the court held that it is also a defense to impoundments.

Accordingly, the court affirmed the order granting the owners injunctive relief. It denied the City's request to impose other requirements in order to make the ordinances constitutional.

SIGNIFICANCE

Wellman analogizes the concepts of forfeiture and impoundment and makes clear that a local ordinance must provide the rightful owner with adequate notice, must require a "clear and convincing evidence" standard of proof, and must include an innocent-owner exemption. Although the Court did not explicitly state that these ordinances violated the Florida Forfeiture Act, it did state that without the above requirements, such ordinances are unconstitutional because they violate the Florida Constitution.

RESEARCH REFERENCE

- 12A Fla. Jur. 2d *Counties* § 59 (2005 & Supp. 2008).

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