

are satisfied. Accordingly, the transfer of \$3,200.00 on March 2, 1995 to Bruno Gavica was a fraudulent transfer under Florida Statute §726.102(2).

NOW THEREFORE, it is hereby ORDERED and ADJUDGED that:

1. The Travelers Insurance Company shall recover from Frances Almeida, damages in the principal amount of \$2,000.00, plus prejudgment interest in the amount of \$712.00 for a total of \$2,712.00, that shall bear interest at a rate of 10% per year, for which sum let execution issue.

2. The Travelers Insurance Company shall recover from Manuel Almeida, damages in the principal amount of \$7,500.00, plus prejudgment interest in the amount of \$2,679.03, for a total of \$10,179.03, that shall bear interest at a rate of 10% per year, for which sum let execution issue.

3. The Travelers Insurance Company shall recover from Bruno Gavica, damages in the principal amount of \$23,200.00, plus prejudgment interest in the amount of \$8,017.67, for a total of \$31,217.67, that shall bear interest at a rate of 10% per year, for which sum let execution issue.

4. The Travelers Insurance Company shall recover from Adonay Gavica a/k/a Adonay Almeida, damages in the principal amount of \$83,100.00, plus prejudgment interest in the amount of \$27,318.45, for a total of \$110,318.45, that shall bear interest at a rate of 10% per year, for which sum let execution issue.

5. The Court further awards The Travelers Insurance Company costs against Frances Almeida, Manuel Almeida, Bruno Gavica and Adonay Gavica a/k/a Adonay Almeida, jointly and severally. The Court reserves jurisdiction to determine the amount of costs at a later date.

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Eminent domain—Inverse condemnation—Department of Transportation—DOT's overt pre-condemnation activities amounted to de facto taking—Property owner established elements of de facto taking due to DOT's pre-condemnation activities, also known as "condemnation blight," by showing officially declared intention by government to condemn portion of property for roadway, overt pre-condemnation activity which caused substantial interference with use, enjoyment, and marketability of property, and substantial financial injury as evidenced by market loss suffered as direct result of project influence—Property owner awarded full compensation—DOT liable for interest from de facto date of taking to formal date of taking  
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, Petitioner, Counter Defendant, vs. PROFUNDO, INC., a Florida Corporation, Defendant, Counter Plaintiff, 13th Judicial Circuit in and for Hillsborough County, Civil Action No. 97-05880. Division F. Parcel Nos. 112/706. Turnpike Division. May 29, 1998. Gregory P. Holder, Judge.

**NON-FINAL ORDER ON ISSUE  
OF FULL COMPENSATION AND  
LIABILITY IN INVERSE CONDEMNATION CLAIM**

THIS CAUSE having come before the Court on Defendant/Counter-Plaintiff PROFUNDO, INC.'s Motion in Limine to Determine Condemnor's Liability for Full Compensation, and the Court, having received evidence and argument from Defendant/Counter-Plaintiff and Petitioner/Counter-Defendant, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, and having considered all the evidence, argument of counsel, and applicable case law, hereby finds that Defendant/Counter-Plaintiff is entitled to full compensation for the taking of Parcels 112/706, including damages to property remaining, as of December 14, 1994. The Court bases its decision upon the following considerations:

**I. NATURE OF THE CASE**

This *in limine* hearing was on the pleadings raised by the landowner-condemnee in its Answer and Amended Counterclaim

in inverse condemnation brought against Petitioner/Counter-Defendant, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT"), in response to its eminent domain action to acquire 45.647 acres, more or less (identified as Parcel 112, herein), by Defendant/Counter-Plaintiff, PROFUNDO, INC. ("PROFUNDO"). PROFUNDO has voluntarily dismissed Count II, its Civil Rights claim. FDOT's acquisition of land is for the purpose of construction of a portion of the North Suncoast Expressway, a limited access toll facility. PROFUNDO alleged in its pleadings that FDOT's conduct during the planning and acquisition process stages of the North Suncoast Project, beginning in early 1989 through the date in which FDOT acquired title to a portion of PROFUNDO's property on October 16, 1997, constituted a taking of PROFUNDO's land at a point in time earlier than October 16, 1997.

**II. FINDINGS OF FACT**

The Court specifically finds as follows:

1. During 1987-88 PROFUNDO assembled property now known as the Cheval Development for the purpose of developing an upscale golf course community and selling, on a retail basis, residential lots and other amenities. The development is divided into 855 acres of Cheval East and 888 acres known as Cheval West. A local subdivision collector roadway had been planned by PROFUNDO's predecessors through the area now known as "Cheval West", from Van Dyke Road on the south to Lutz Lake Fern Road on the north. This rural two-lane road within a proposed one hundred twenty (120) foot wide right-of-way, was to be known as Ramblewood Drive (Road).

2. As a part of the development process for Cheval West, PROFUNDO submitted its master plan to Hillsborough County ("County") for approval in 1989. FDOT objected to the submitted master plan until such time as it was able to elicit from PROFUNDO an agreement not to develop within a three hundred (300) foot swath of land through Cheval West which corridor the FDOT wanted to reserve for its future North Suncoast Expressway project. The North Suncoast Expressway was designed as a high speed 4 - 6 lane thoroughfare, elevated from 8 to 35 feet, and capable of accommodating 84,000 vehicles per day, 14% of which is estimated to be truck traffic.

3. As part of its attempt to lower acquisition costs for this public project, the FDOT requested the County to refrain from issuing any final approval on PROFUNDO's project until FDOT had an opportunity to secure an "agreement" with PROFUNDO regarding the North Suncoast Corridor.

4. FDOT required from PROFUNDO an agreement not to develop within the land reserved for the North Suncoast Corridor until the end of the 1991 Florida Legislative session. This agreement was acknowledged by letter dated May 18, 1989.

5. FDOT caused the County to require PROFUNDO to eliminate from its master plan approximately 48 lots from its plat within the North Suncoast Corridor to allow for FDOT's reservation of the three hundred (300) foot limited access corridor for approximately 5,300 lineal feet from Cheval's south boundary to its north boundary on Lutz Lake Fern Road.

6. From 1989 through Spring of 1990, FDOT repeatedly declared its intent to file a "map of reservation" on Cheval West, pursuant to §337.241(1), *Florida Statutes* 1987; which filing would officially freeze development within the corridor. On April 26, 1990, the statute authorizing such maps was struck down by the Florida Supreme Court in *Joint Ventures, Inc. v. Dept. of Transportation*, 563 So. 2d 622 (Fla. 1990). FDOT did not, thereafter, formally file such a map on Cheval. The Department used other tools at its disposal for "corridor protection."

7. In order to track the development of PROFUNDO's property during the development process, and to insure "corridor protection", FDOT requested the County to provide it with copies of any plats or requests being filed by PROFUNDO.

8. After being provided notice of PROFUNDO's application for preliminary plat approval for one of its villages in Cheval

West, on December 18, 1989, FDOT objected to the preliminary plat filed by PROFUNDO, responding in writing to the County that "the Department cannot approve this plat." The FDOT's objection was based upon the fact that PROFUNDO planned to place utilities on its own land within the area the FDOT reserved for the North Suncoast Corridor. It is acknowledged that FDOT has no direct legal authority to approve or disapprove any local development plan. However, this objection caused the County to halt its approval process until FDOT was satisfied on the utility placement issues.

9. Faced with mounting debt and taxes, PROFUNDO was financially pressured to produce its finished lots so that the lots could be offered for sale as soon as possible. PROFUNDO was, in effect, required to seek an accommodation with FDOT. In exchange for letting PROFUNDO place the utilities on its land within the area the FDOT reserved for the North Suncoast Corridor, FDOT required PROFUNDO to agree to store and treat the water running from the entire roadway extending through the Cheval Development at no monetary compensation therefor. FDOT then withdrew its objection with Hillsborough County, and the County development approval process moved forward.

10. Subsequently, when PROFUNDO applied to Hillsborough County for rezoning of its property in Cheval West, FDOT requested that Hillsborough County indicate in the final site plan and conditions of the approval that a minimum of two hundred eighty (280) feet of right-of-way have been reserved with an additional twenty (20) feet of right-of-way located at the outside edge for utility placement.

11. On August 21, 1990, PROFUNDO received the County's approval of its PDH Zoning and General Site Plan for Cheval West. The approval tracked language contained in the letter agreement dated May 18, 1989, by restricting development within the three hundred (300) foot wide reserved North Suncoast Corridor until the end of the 1991 Florida Legislative session. The Revised Final Conditions of Approval also included an additional requirement that PROFUNDO dedicate up to one hundred twenty (120) feet width of right-of-way within the corridor to the appropriate governmental authority should the Expressway receive full authorization prior to the end of the 1991 Florida Legislative session. The Court notes that FDOT has stipulated that neither the County's discussed future roadway through Cheval, nor the State's North Suncoast Expressway were made necessary from any traffic impact created by a fully developed Cheval. Furthermore, the uncontradicted evidence at hearing was that the County's Ramblewood Drive (Road) was not made necessary by any traffic impact from a fully developed Cheval. FDOT has stipulated that it, like Hillsborough County, will not now pursue this "dedication" requirement from PROFUNDO.

12. Using Hillsborough County as its agent, the FDOT was able to protect and preserve the North Suncoast Corridor from development by PROFUNDO from May 18, 1989 until the date of formal taking, October 16, 1997. FDOT has acknowledged that the purpose of these efforts to prevent private development within the corridor was the desire to reduce costs to the State for the acquisition of North Suncoast Expressway right-of-way. Underscoring this goal was the persistent effort by the FDOT between 1990 and 1996 to secure an uncompensated exaction of 120 feet width of right-of-way from PROFUNDO.

13. The North Suncoast Corridor was not fully authorized by the end of the 1991 Florida Legislative session. Neither the economic nor state environmental feasibility approvals required by the Legislature in 90-136, *Laws of Florida*, had been achieved, and were not received by FDOT until 1995. Despite the fact that the North Suncoast Corridor was not fully authorized by the end of the 1991 Florida Legislative session, the FDOT unequivocally expressed to PROFUNDO that the North Suncoast Expressway would be built within its marked corridor through Cheval. FDOT repeatedly declared that its formal right-of-way acquisition could begin as early as 1992; then 1993, 1994 and 1995. That acquisi-

tion did not occur until October 16, 1997.

14. Relying upon the representations of FDOT officials that the North Suncoast Expressway would be built, but seeking another alignment to avoid foreseeable damages to its subdivision, PROFUNDO spent approximately \$150,000 to study an alternative alignment for the North Suncoast Corridor located to the west of the Cheval Development.

15. PROFUNDO presented its alternative alignment for review to the FDOT in late 1991 and also formally presented its proposed alignment to FDOT at public hearing on May 19, 1992.

16. Rejecting PROFUNDO's efforts to shift the alignment to the west of its development, FDOT publicly announced on August 21, 1992, its selection of the alignment for the North Suncoast Corridor which traversed the Cheval development. Attached to its press release was not only a description indicating that the alignment runs in a northeasterly direction through the Cheval development, but also a map identifying the Cheval development and the alignment running through it. From 1991 forward, over 1,000 news articles publicized the North Suncoast Expressway, many noting the route through Cheval West. Numerous subsequent public hearings solidified that alignment in the public's perception.

17. It was clearly the FDOT's intent to reserve (or "protect") the right-of-way for the proposed North Suncoast Corridor from development beginning in mid-1989 through the date of deposit pursuant to the Order of Taking, October 16, 1997. This effort was in fact an integral part of FDOT's "acquisition process."

18. On December 14, 1994, the Federal Highway Administration "Record of Decision" was issued, formally approving the location and design and designating the North Suncoast Expressway as a federally authorized project of the State, ensuring the highway's eventual construction, *a fait accompli*.

19. It is uncontradicted that despite PROFUNDO's active attempt to market the lots in Cheval West, the marketability and price of lot sales in Cheval West rapidly decreased from 1991 thereafter. The rate of sales decreased dramatically. The cause of the drop of lot sales and the price of lot sales was due to the well publicized presence of the reserved North Suncoast Corridor on PROFUNDO's property. Cheval's competitors seized upon the Corridor as a negative marketing tool to dissuade potential Cheval lot purchasers.

20. As time passed through 1993-95, the presence of FDOT's North Suncoast Corridor through the Cheval Development continued to be publicized. In an effort to avoid tax sales and loan defaults, PROFUNDO was forced to sell off portions of its property in bulk sales to other developers at prices substantially below what the fair market value would have been, without the threat of the North Suncoast Corridor. For each of those bulk sales, PROFUNDO reserved an ownership interest in the property conveyed retaining the right to receive any award for damages caused by the effect of the North Suncoast Corridor.

21. In 1994 market losses from sales within Village One and Three totaled \$583,754.

22. The largest bulk sale occurred in December 1995, to Lumbermans and included the sale of Villages 2, 4, 5A, 5B, and 6. When compared with sales of other properties not adjacent to a proposed elevated limited access facility, the price differential resulted in a loss to PROFUNDO in the amount of \$7,177,464.00. The sale to Lumbermans averaged \$22,234 per lot. In contrast, in 1991, individual lots of similarly situated golf course properties within Cheval sold for \$125,000 and \$122,000 per lot, when unaffected by the corridor. The total market losses from sales in 1995 were \$7,299,964.

23. In 1996, total market losses incurred from additional sales in Villages 1 and 3 totaled \$224,604.

24. In 1997, Village 9 sold for an average of \$12,912 per lot which translated to a loss of \$2,465,313 when compared to other similarly situated properties in other communities not adjacent to a proposed elevated limited access facility. This sale was, in fact,

a net loss to PROFUNDO. Total market losses from sales in 1997 were \$3,821,309.

25. All told, the uncontradicted evidence at hearing demonstrated approximately \$12.8 million in market losses to PROFUNDO between 1991-1997.

26. By mid 1994, with the sale of the PGA Golf Course and facilities, PROFUNDO began liquidation of its assets in both Cheval West and Cheval East. The market losses alleged by PROFUNDO in Cheval East are indirectly related to the presence of the FDOT's reserved corridor, in that due to the inability to sell lots at market value in Cheval West, financial pressure required PROFUNDO to liquidate its otherwise "undamaged" lots in Cheval East by wholesale sell-offs. By 1997, PROFUNDO had over 75 million dollars in unreturned capital and debt invested in the Cheval project. All reasonable economically viable use of the entire Cheval subdivision was thus denied to PROFUNDO by 1994.

### III. CONCLUSION OF LAW

The Fifth Amendment of the United States Constitution guarantees to each citizen "just compensation" for the governmental taking of private property. Just compensation "rests on equitable principles and it means substantially that the owner shall be put in as good a position pecuniarily as he would have been if his property had not been taken." *Seaboard Air Line Ry. Co. v. U.S.*, 261 U.S. 299, 304 (1923). The Fifth Amendment is applicable to the states by operation of the 14th Amendment. *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 239 (1897).

Florida's Constitution is equally protective of a citizen's individual property rights, including the right "to acquire, possess, and protect property." Article I, Section 2. The right is woven throughout our State's organic laws.

No person shall be deprived of life, liberty, or property without due process of law . . .

Article I, Section 9

No private property shall be taken, except for a public purpose and with full compensation therefor paid to each owner . . .

Article X, Section 6

"The theory and purpose of that guarantee is that the owner shall be made whole, so far as possible and practicable." *Dade County v. Brigham*, 47 So. 2d 602, 604 (Fla. 1950).

It is axiomatic that in setting the parameters of "just" or "full" compensation, "The Court must exclude any depreciation in value caused by the prospective taking once the government 'was committed' to the project." *U.S. v. Virginia Power & Electric and Power*, 365 U.S. 624, 636 (1961).

The rule advocated by the Department and followed in the trial in the instant case, would permit a condemner to depreciate property values by a threat of condemnation then take advantage of the depressed value which results by paying the landowner the depreciated value. This would amount to a confiscation of the owner's property to the extent of the depreciation of value. All our laws, organic and statutory, are intended to prevent this happening.

*State Road Department v. Chicone*, 158 So. 2d 753, 757 (Fla. 1963).

The Court notes that although the facts in *Chicone* deal with the proper valuation of the land taken, the principles enunciated therein are equally applicable to all elements of "full compensation" which includes the right to severance damages. *Divis. of Admin. v. Grant Motor Co.*, 345 So. 2d 843 (Fla. 2d DCA 1977).

With these principles in mind, this Court has weighed the evidence and arguments presented at hearing. The FDOT, in furtherance of the acquisition process of its expressway project, has, for a period of nearly 8½ years, marked a three hundred foot wide swath through the heart of PROFUNDO's Cheval West Development. This private property was designated for the North Suncoast Corridor by letter agreement dated May 18, 1989. The corridor was reserved for FDOT without compensation until the

close of the 1991 session of the Florida Legislature. This reservation, whether involuntary or not, would alone be insufficient to amount to a taking. *City of Miami v. Romer*, 73 So. 2d 285 (Fla. 1954).

From 1991 on, however, as proximately caused by the mounting public knowledge of the corridor, sale prices in Cheval West fell, the monetary impact on PROFUNDO became more severe each year. By mid 1994, when PROFUNDO was forced by financial pressures to sell the PGA Golf Course in Cheval West, it was clear that a substantial damage to PROFUNDO had occurred due to the Corridor designation. It was then that the investors began to liquidate the entire Cheval holdings.

FDOT's plans for the location of the North Suncoast Expressway through Cheval West essentially never varied from 1989 until the formal date of taking herein. Those plans became final on December 14, 1994, with the issuance by the Federal Highway Administration of "the Record of Decision."

Acting as it did with a determined fiscal prudence, FDOT's course of conduct secured a legitimate public benefit; namely, prevention of building within the proposed path of its Expressway. Costs of the highway project will, therefore, not be increased unnecessarily by a wasteful improvement of doomed land. That benefit is secured to FDOT.

What is not appropriate, fair or lawful due process, however, is an additional cost benefit to FDOT: a reduction of a condemnee's full compensation caused solely by suppression of unimproved property values due to the overt pre-condemnation actions of the condemner. Analogous appellate decisions in Florida prohibit such an unconstitutional project influenced "benefit." *Chicone, supra*; *City of Miami v. Silver*, 257 So. 2d 563 (Fla. 3d DCA 1972); *Dade County v. Still*, 377 So. 2d 689 (Fla. 1979).

While there are sound decisions involving identical constitutional principles of full compensation guarantees, no Florida appellate decision has been cited to this Court either ruling out "condemnation blight" as a viable cause of action in inverse condemnation, or clearly setting forth the necessary elements for such a cause of action. "Mere planning", in itself, cannot sustain a finding of taking. *Auerbach v. Dept. of Transportation*, 545 So. 2d 514 (3rd DCA 1989). Florida law is plain, however, that when the government acts to prevent private development of land that would increase the cost of a planned future public acquisition of such land, the government acts as a "prospective purchaser," giving itself an advantage "clearly inconsistent with the doctrine that the cost of community benefits should be distributed impartially among the members of the community." *Joint Ventures v. Dept. of Transportation*, 563 So. 2d 622, 626 (Fla. 1990). There is, then, no valid distinction between "freezing" property as has occurred here, and deliberately attempting to depress land value in anticipation of litigation, and to take it at the suppressed price and avoid thereby, payment of resulting severance damages. Either conduct is constitutionally prohibited. *Joint Ventures* at 626; *Board of Commissioners v. Tallahassee Bank & Trust Co.*, 108 So. 2d 74, 86 (Fla. 1st DCA 1958), cert. quashed, 116 So. 2d 762 (Fla. 1959).

FDOT repeatedly declared in 1989 and early 1990 that it would file a "map of reservation" on PROFUNDO's property. On April 26, 1990 the Florida Supreme Court held such maps, under Section 337.241(1), *Florida Statutes* (1987), unconstitutional in that they provided for an impermissible taking of property without just compensation. *Joint Ventures*, at 623, fn. 1 (posing the certified question; and, at 628, answering the certified question in the affirmative.) The fact that FDOT did not get the opportunity to file a map of reservation on PROFUNDO's land before our Supreme Court's ruling in *Joint Ventures*, does not allow FDOT to escape liability. The totality of FDOT's conduct, as it relates to Cheval West, causes this Court to find a "de facto map of reservation." Yet even a *de facto* map of reservation would not give cause *in itself* for the finding of a taking. If the only

governmental conduct at issue were the "reservation," then a taking would only occur when the owner is denied substantially all beneficial or productive use of his or her land. *Tampa - Hillsborough County Expressway Auth. v. AGWS Corp.*, 640 So. 2d 54 (Fla. 1994).

As the facts set out herein indicate, the overall conduct of the FDOT amounts to far more than either "mere planning" or a "mere map of reservation." The landowner herein has been subjected to a severe negative project influence resulting in a true loss of beneficial use of its property. This Court has reviewed the applicable case law on *de facto* takings due to pre-condemnation activities of the government, sometimes referred to as "condemnation blight." The best reasoned decisions taken together set out the following elements for such a cause of action:

- An intention by the government to condemn, ultimately; thereby placing the owner's property in a target zone. This intention must be more than a mere plan, but rather an officially declared project.
- Overt pre-condemnation activity by the government and/or extended delay which causes a substantial interference with the owner's use, enjoyment, and marketability of his or her property, often termed "project influence." This conduct need not be willful or malicious; but rather may be the result of well-meaning government attempts to produce its project at the lowest possible price to the taxpayers.
- Substantial financial injury to the property owner as a result thereof; usually quantified by the market loss suffered as a direct result of the project influence.

*See, Foster v. City of Detroit*, 254 F.Supp. 655 (D.C.E.D. Mich. 1966), *aff'd*, 405 F.2d 138 (6th Cir. 1968); *Amen v. City of Dearborn*, 718 F.2d 789 (6th Cir. 1983); *Archer Gardens Ltd. v. Brooklyn Ctr. Develop. Corp.*, 468 F.Supp. 609 (D.C.S.D. NY 1979); *Gaughen v. Commonwealth Dept. of Transp.*, 554 A.2d 1008 (Pa. Comw. Ct. 1989); *Conroy - Prugh Glass Co. v. Commonwealth*, 321 A.2d 598 (Comw. Pa. 1974); *Textron, Inc. v. Wood*, 355 A.2d 307 (Conn. 1974); *Richmond Elks Hall Assoc. v. Richmond Redev. Agency*, 561 F.2d 1327 (9th Cir. 1977); *Drakes Bay Land Co. v. U.S.*, 424 F.2d 574 (Ct. Cl. 1970), and cases cited in the Annotation, *Condemnation - Pre-improvement Planning*, 37 A.L.R. 3d 127 (1971).

Substantial financial losses, essentially ruining PROFUNDO's investment backed expectations, were apparent by mid 1994. Overt pre-condemnation activity substantially interfering with PROFUNDO's development of Cheval West occurred from 1989 through 1996. The Court notes that FDOT was not acting from ill-motive or in an arbitrary or capricious manner. Rather it was acting in what it thought was the best interests of the tax paying public. However, reduction of project costs, although laudable, is not to be put before the protection of a citizen's constitutionally protected property rights. If a public project depreciates an owner's property, causing the owner to bear more than his or her fair share of the burden of that project, then our Constitutions, State and Federal, require redress.

The last element of this condemnation blight cause of action occurred when the North Suncoast Expressway's location and design became formally authorized on December 14, 1994. It is on that date therefore that the facts herein finally ripened into a taking of PROFUNDO's property.

The legal description of the *de facto* taking is identical with that portion of Parcel 112, as set out in FDOT's Condemnation Petition located within the Cheval Subdivision proper, some 36.701 acres m.o.l. The parent tract for appraisal purposes shall be that property within the Cheval West Subdivision owned in fee by PROFUNDO, as of December 14, 1994, together with any property owned by a third party in which PROFUNDO has a reservation of ownership interest in any award for condemnation blight damages, due to the North Suncoast Corridor. Both parties shall, consistent herewith, immediately re-appraise that portion of Parcel 112, found taken hereby, together with any severance damages to the remainder parent tract caused by this taking. FDOT's

affirmative defenses are hereby denied on their merits. PROFUNDO's Motions to strike and dismiss those defenses are therefore moot.

FDOT is further found liable to PROFUNDO for interest from the *de facto* date of taking to the formal date, October 16, 1997. The Court reserves jurisdiction for the award of Attorneys fees and costs to Defendant/Counter-Plaintiff for this taking, upon motion, after entry of final judgment herein.

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Criminal law—Conspiracy—Court affirms its prior order granting motion to dismiss where entire tenor of witness's testimony and description of words and actions of defendant demonstrate his withdrawal from conspiracy—Motion for rehearing denied

STATE OF FLORIDA vs. SEAN ROBERT BUSTAMANTE, et al. 13th Judicial Circuit in and for Hillsborough County, Criminal Justice Division. Case No. 97-7092. Division E. May 5, 1998. William Fuente, Judge. Counsel: Frank de la Grana, Tampa, for Bustamante; Lyann Goudie, Tampa, for Ramos-Tirado; Kimberly Fernandez, Tampa, for Hernandez; Gregory Hill, Tampa, for Torres; Victor Martinez, Tampa, for Cohen; and Daniel M. Hernandez, Tampa, for Rodriguez.

#### ORDER DENYING STATE'S MOTION FOR REHEARING

[Original Opinion at 5 Fla. L. Weekly Supp. 612a]

THIS COURT, upon consideration on May 4, 1998 of a Motion for Rehearing filed by the State of Florida requesting the Court to reconsider its ruling set forth in its Order Granting Defendant Bustamante's Motion to Dismiss, having heard additional argument of counsel, and having read the deposition of informant Julian Mojica in its entirety, finds as follows.

- Bustamante's Motion to Dismiss was filed on February 18, 1998 and set for initial hearing on February 25, 1998.
- The State of Florida filed a Traverse on February 25, 1998.
- The Court took the motion under advisement after considering argument of counsel.
- Further hearing was had on the motion on April 9, 1998, after which the Court continued the matter under advisement.
- The Court's order granting Defendant's Motion to Dismiss was based on all arguments and pleadings presented to the Court by the parties during the times set forth above.

The State now urges that the deposition testimony of State witness Julian Mojica (page 105) demonstrates that Bustamante (and Rodriguez) did not withdraw from the conspiracy, rather, that they only withdrew "for the night."

The entire tenor of Mojica's testimony and description of the words and actions of Bustamante (deposition pages 126 - 128) demonstrate his withdrawal.

The Court does accordingly affirm its prior Order Granting Defendant Bustamante's Motion to Dismiss, and does DENY the prosecution's request to change its ruling.

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Criminal law—Search and seizure—Plain view doctrine—Inevitable discovery doctrine—Motion to suppress evidence where officers responded to 911 call, heard female voice inside residence screaming for help, entered by force, and found female with face swollen and bloody with defendant nearby—Warrantless and forced entry and arrest of defendant were lawful under circumstances—Officer had probable cause to believe bag with white powdery substance in plain view on floor was incriminating, so that seizure without warrant was lawful—Although additional evidence found pursuant to warrantless search of house would be excludable but for the inevitable discovery exception, that exception applied where a search warrant issued based on the seized cocaine would have permitted the search that produced the other evidence

STATE OF FLORIDA vs. HUMBERTO ESCUDERO. 13th Judicial Circuit, in and for Hillsborough County, Criminal Justice Division. Case No. 96-9833. Division E. March 26, 1998. William Fuente, Judge. Counsel: Ralph E. Fernandez, Tampa, for Defendant.

#### ORDER DENYING MOTION TO SUPPRESS