

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JULY TERM 2006

DAVID L. DAVIES,

Appellant,

v.

Case No. 5D05-3429

STATE OF FLORIDA,

Appellee.

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Opinion filed July 21, 2006

Appeal from the Circuit Court  
for Volusia County,  
Joseph G. Will, Judge.

James S. Purdy, Public Defender, and Anne Moorman  
Reeves, Assistant Public Defender, Daytona Beach, for  
Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and  
Anthony J. Golden, Assistant Attorney General,  
Daytona Beach, for Appellee.

GRIFFIN, J.

This is the appeal of the trial court's denial of Davies' motion for return of property seized pursuant to a criminal investigation. Davies pled to the charges and filed a motion for return of his property. He subsequently appealed his conviction. While the appeal was pending, the trial court denied the motion, correctly concluding that until the conviction was final, the defendant was not entitled to have the property returned. The conviction subsequently was affirmed.

Although it seems sensible to simply abate the trial court proceedings concerning the property until the judgment becomes final, in *Sutherland v. State*, 860 So. 2d 505 (Fla. 4th DCA 2003), the court approved an outright denial. The trial court correctly followed *Sutherland*, but we think abatement in these circumstances would simplify issues of timeliness on the claimant's part and would avoid useless proceedings here and below. We accordingly remand this case to the trial court to reconsider the motion now that the conviction has been affirmed.

REMANDED.

PLEUS, C.J. and MONACO, J., concur.