IN THE SUPREME COURT

JAMES WILLIAM ROCHE,

Petitioner,

-v-

CASE NO. 65,022

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Florida Statutes

Laws of Florida

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BRIEF OF APPELLEE

PRELIMINARY STATEMENT

The record filed in the court below is contained in four volumes. Volume I contains the record proper and references thereto will be made by the symbol "R" followed by appropriate page number. Volumes II, III, and IV contain the transcript of trial proceedings and references thereto will be made by the symbol "T" followed by appropriate volume and page number. The supplemental record filed in the court below contains the transcript of proceedings had on motion to suppress and references thereto will be made by the symbol "Supp.R." followed by appropriate page number. References to the appendix submitted by petitioner will be made by the symbol "A" followed by appropriate page number.

STATEMENT OF THE CASE

By information filed July 8, 1980, petitioner and one Robert Dandrea were charged with trafficking in cannabis (R Vol. I, pp. 1, 2). The information was founded upon evidence discovered in a van pursuant to a regulatory inspection search warrant issued upon the application of an agricultural road guard inspection officer (R Vol. I, pp. 29-32). The case was tried before a jury on November 17, 1980. The trial judge directed that a judgment of acquittal be entered on behalf of Dandrea (R Vol. III, p. 25), but denied the same as to petitioner (R Vol. III, p. 27). The jury found petiitioner guilty as charged (R. Vol. I, p. 61).

On appeal the lower court affirmed petitioner's conviction, Roche v. State, ____ So.2d ____ [(Fla. 1st DCA 1982), Case No. ZZ-346, opinion filed September 8, 1982], but on petitioner's motion for rehearing certified the following question to this court:

> DOES SECTION 570.15, F.S., VIOLATE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION IN THAT IT ALLOWS ADMINISTRATIVE SEARCHES WITHOUT A SHOWING OF "PROBABLE CAUSE" AND WITHOUT AN "ADMINISTRATIVE PLAN CONTAINING SPECIFIC NEUTRAL CRITERIA?"

(A 2, 3) The certified question was prompted by the decision in Lake Butler Apparel Company v. Department of Agriculture and Consumer Services, 551 F.Supp. 901 (M.D. Fla. 1982).

STATEMENT OF THE FACTS

The facts are accurately stated in the opinion of the lower court and are recited here for the convenience of this court.

> Appellant was the driver of a van that passed an agricultural inspection station without stopping. Another individual was a passenger in the van at the time. Deputy Sheriff Pease observed the van pass the station, pursued it, pulled it over, informed appellant that he had failed to stop as required by law, arrested appellant for the misdemeanor violation, and requested that appellant return to the agricultural inspection station.
>
> At the station, Agricultural Inspector Clark obtained permission from appellant to look into the van and, upon doing so, observed a large compartment area with no visible access and no odor emanating therefrom. Appellant informed Inspector Clark that he knew of no way into the compartment area and denied ownership of the vehicle. Inspector Clark, not satisfied with the search, thereupon obtained an agricultural search warrant pursuant to Section 570.15(1)(b), Florida Statutes.
>
> The locked compartment was forcibly opened by Inspector Clark with the assistance of Deputy Sheriff Pease and cannabis in excess of 500 pounds was discovered therein. Both the vehicle and appellant were transported to the police station, whereupon the van was searched and a flight bag, which belonged to appellant, seized. Pursuant to a warrantless search of the flight bag, Deputy Pease discovered a calculator that contained a list of weights which corresponded to the number of bales of cannabis and weights of each stored in the compartment area of the vehicle. Appellant's motions to suppress the cannabis, the flight bag and the contents found therein were denied.

(A 1, 2)

ARGUMENT

QUESTION CERTIFIED

WHETHER SECTION 570.15, F.S. (1981), VIOLATES THE FOURTH AMENDMENT TO THE FEDERAL CONSTITUTION IN THAT IT ALLOWS ADMINISTRATIVE SEARCHES WITHOUT A SHOWING OF "PROBABLE CAUSE" AND WITHOUT AN "ADMINISTRATIVE PLAN CONTAINING SPECIFIC NEUTRAL CRITERIA."

In Lake Butler Apparel Company v. Department of Agriculture and Consumer Services, 551 F.Supp. 901 (M.D. Fla. 1982), the federal district court held that Section 570.15, F.S. (1981), is unconstitutional "to the extent that such statute purports to authorize searches of motor vehicles, with or without a warrant, upon the mere showing: (1) that the searching officer has reason to believe that the vehicle is of the type described in subsection (a) of notice to stop for inspection; (2) that the vehicle has been given reasonable notice to stop for inspection; and (3) that the driver or operator of the vehicle has refused to consent to a search." The district court permanently enjoined the Department of Agriculture from conducting any vehicular searches under the authority of the statute with or without a warrant, upon the establishment of the grounds or causes above enumerated. However, the district court noted that the decree should not be construed or interpreted to enjoin or restrain the Department of Agriculture or others from conducting vehicular searches upon the existence of probable cause to believe that a violation of an existing regulatory statute has occurred or is occurring. (A-3)

The District Court's decision in Lake Butler Apparel Company is not binding on the courts of this state. Stonom v. Wainwright, 235 So.2d 545, 547 (Fla. 1st DCA 1970); State v. Dwyer, 332 So.2d 333, 335 (Fla. 1976); Bradshaw v. State, 286 So.2d 4, 6 (Fla. 1973). Indeed, Lake Butler conflicts with the decision of this court in Stephenson v. Dept. of Agr. and Consumer Services, 342 So.2d 60 (Fla. 1976). True, Stephenson was decided prior to the time the legislature redrafted Section 570.15(1)(b), deleting the requirement that criminal probable cause, as enunciated in Carroll v. United States, 267 U.S. 132 (1925), and set forth in Ch. 933, F.S., be satisfied. Chapter 79-587, § 1, Laws of Florida. However, the reasoning of this court's decision in Stephenson is just as applicable to the 1981 statute as it was prior to the amendment. Of course, Pederson v. State, 373 So.2d 367 (Fla. 1st DCA 1979), recognized that it is constitutionally permissible for the legislature to impose an administrative probable cause standard for a warrant. And it cannot be successfully challenged that agricultural inspection is entirely reasonable and constitutes a valid exercise of the police power of the state. Stephenson, 342 So.2d 62. The lower court, citing Gluesenkamp v. State, 391 So.2d 192 (Fla. 1980), cert. denied, 69 L.Ed.2d 1022 (1981), held that the reasonable governmental interests advanced by Ch. 570, F.S., which justifies the intrusion contemplated, are the protection of the public health and economic good (A-1).

In the landmark case of Camara v. Municipal Court, 387 U.S. 523 (1967), the issue was posed as follows:

> The Fourth Amendment provides that, "no Warrant shall issue, but upon probable cause." Borrowing from more typical Fourth Amendment cases, appellant argues not only that code enforcement inspection programs must be circumscribed by a warrant procedure, but also that warrants should issue only when inspector possesses probable cause to believe that a particular dwelling contains violations of the minimum standards prescribed by the code being enforced. We disagree.
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> * * * * *
>
> The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant.

Id. at 534, 539. It cannot be successfully maintained that probable cause in the criminal law sense is required before an administrative or regulatory search warrant can issue. Marshall v. Barlow's Inc., 436 U.S. 307, 320 (1978). See also People v. Hyde, 524 P.2d 830 (Cal. 1974), en banc, and United States v. Prendergast, 585 F.2d 69 (3rd Cir. 1978).

While it is clear that a warrantless intrusion motivated the results reached in Camara, See v. City of Seattle, 387 U.S. 541 (1967), and Marshall, it is equally clear that the 1983 version of Section 570.15 removes that concern; the statute now requires that when access is refused, the inspection officer must

obtain a search warrant for regulatory inspection before intrusion is warranted. Thus, as the court stated in See v. Seattle, "the decision to enter and inspect will not be the product of the unreviewed discretion of the enforcement officer in the field." 387 U.S. 947.

It appears that the decision in Lake Butler Apparel Company confuses the enforcement authority and responsibility of Florida's road guard inspection special officers with the "indiscriminate stoppings" proscribed by Carroll v. United States, supra. Section 570.15, F.S. (1981), does not ". . . subject all persons lawfully using the highways to the inconvenience and indignity . . ." of a search, 267 U.S., at 154, as petitioner would have this court believe. Rather, the statute authorizes access by specific agricultural officials to certain premises, trucks and motor vehicles used in the agricultural process. The statute merely requires such designated motor vehicles to stop at any official road guard inspection station.

The Lake Butler Apparel Company decision seems to exude concern for the fourth Amendment limits on search and seizure powers to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals. However, the Florida statute under attack merely allows access to specified places of business, vehicles and records involved in or related to the agricultural process, so

long as such access is not refused by the owner, agent or manager of such premises or by the driver of such vehicle. In the event of refusal of access, the statute clearly mandates that the officer obtain a search warrant for a regulatory inspection before intrusion can be made against the will of the person involved. This court in Stephenson v. Dept. of Agr. and Consumer Services, supra, held that, "[s]uch in no way impairs appellants' right to be free from unreasonable search and seizure, their right to due process of law, or their right to equal protection of the law." 342 So.2d, at 62. It is submitted that this holding is supported by United States v. Martinez-Fuerte, 428 U.S. 543 (1976).

It seems then the question narrows to the reasonableness of the requirement of the statute that trucks, and trailers drawn by trucks or mother vehicles, stop for inspection. But as the District Court of Appeal logically noted, "[u]nless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.'"

It seems to respondent that agricultural inspections are more closely related to drivers' license checks than detentions for criminal investigations. It must be admitted that such

drivers license checks have been recognized as reasonable and therefore accpetable in Myricks v. United States, 370 F.2d 901 (5th Cir. 1967), cert. dismissed, 386 U.S. 1015 (1967), citing City of Miami v. Aronovitz, 114 So.2d 784 (Fla. 1959). The stopping of trucks at weigh station by state authorities, and their subsequent inspection, was approved by the federal courts in United States v. Rivera-Rivas, 380 F.Supp. 1007 (D.N.M. 1974), as was the inspection of airline passenger baggage in United States v. Schafer, 461 F.2d 856 (9th Cir. 1972).

There is no question but that Florida's statute represents some interference with petitioner's right to travel and his right to privacy. Martinez-Fuerte, supra, presented a similar situation with a similar intrusion into individual rights. The question now presented is whether the interference involved is or is not an unreasonable interference. Martinez-Fuerte, supra, at 1126. The test is one of weighing the competing interests of the parties, and determining who would lose the most if the procedure involved was stricken. Id. Respondent submits that the test has already been undertaken in Martinez-Fuerte, supra, and the result there announced, (that the interests of the government justify the interference), answers the question here involved. The balance of iterests involved in the case sub judice is synonymous with that considered in Martinez-Fuerte, supra. It is submitted, therefore, that the same result should obtain.

The opinion in Lake Butler Apparel, supra, appears somewhat contradictory. The opinion quotes from the Marshall opinion for the proposition that probable cause in the criminal law sense is not required before the issuance of a search warrant can be justified. 551 F.Supp., at 905. However subsequent language in the opinion leads one to believe that the District Court was of the opinon that the decision in Marshall ". . . turned as much upon the constitutional requirement of 'probable cause' as it did upon the necessity of a warrant." 551 F.Supp., at 906.

In the final analysis, Lake Butler Apparel Company strikes down the administrative search procedure of designated vehicles as set forth in the statute because of an asserted absence of any reasonable legislative or administrative standards or specific neutral criteria for the guidance of agricultural inspectors in the selection of vehicles to be searched, or for the guidance of judicial officers in issuing warrants for such searches. 551 F.Supp. 907. It is submitted that the statute does not permit "random vehicular searches," 551 F.Supp. 907, and that the specific neutral criteria is set forth in the statute. First, designated road guard inspection officers are authorized to inspect a statutorily designated class of motor vehicles for the sole purpose of determining if said vehicles are transporting any agricultural, horticultural, or livestock products. The road guard inspection officer does not determine what vehicles are to be inspected as this is set forth in the statute. The road guard

inspection officer has no control over which motor vehicle operators will pass an official road guard inspection station without first stopping and submitting the vehicle inspection. The legislative standard sets forth the class of motor vehicles that are subject to inspection and the products that are to be searched for. The specific neutral criteria that must be met before a search warrant for a regulatory inspection can be issued are specifically set forth in the statute: (1) the road guard officer must have reason to believe that the vehicle is within the class of vehicles designated in the statute that is subject to inspection, (2) the vehicle to be inspected has had reasonable notice to stop for inspection; and (3) the driver of the vehicle has refused access for regulatory inspection. When these criteria are found to exist, then and only then may a search warrant be issued for the purpose of making the regulatory inspection mandated by the statute.

While the opinion in Lake Butler Apparel Company admits that probable cause in the criminal law sense is not required before an administrative search warrant can be issued, the opinion then subsequently recites that the meeting of the specific neutral criteria set forth in the statute ". . . is insufficient to satisfy the Fourth Amendment requirements of 'probable cause' as interpreted in Marshall v. Barlow's, Inc." Id. at 907. It appears that the district court's opinion is aiming at some vague gray area between criminal law probable

cause and the "probable cause" resulting from the district court's interpretation of Marshall. The position of respondent is that the statute in question represents a valid public interest and as such justifies the intrusion contemplated. This being so, when the statutory criteria are met, then there is probable cause to issue an administrative search warrant for the purpose of accomplishing the inspection required by the statute.

An analysis in United States v. Mississippi Power and Light Company, 638 F.2d 899 (5th Cir. 1981), may be helpful. First, note the following:

> After that intital determination, it is then the task of the district court to measure the specific search that is sought against the broad fourth amendment test of "reasonableness". Camara v. Municipal Court, 1967, 387 U.S. 523, 538-39, 87 S.Ct. 1717, 1735-36, 18 L.Ed.2d 930, 940-41. The proper elements of such an inquiry necessarily must vary with the nature and circumstances of the search that is desired, although Barlow's gives some general guidance to the district court. One element of the question is whether the proposed search is authorized by statute, and a second is whether it is properly limited in scope. 436 U.S. at 323, 98 S.Ct. at 1826, 56 L.Ed.2d at 318. A Third element should be an examination of how the agency chose to initiate this particular search. The search will be reasonable if based either on (1) specific evidence of an existing violation, (2) "a showing that 'reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [establishment]'", 436 U.S. at 320-21, 98 S.Ct. at 1824, 56 L.Ed.2d at 316, (quoting Camara, 387 U.S. at 538, 87 S.Ct. at 1736, 18 L.Ed.2d at 940), or (3) a showing that the search is "pursuant to an administrative plan containing specific neutral criteria". 436 U.S. at 323, 98 S.Ct. at 1826, 56 L.ed.2d at 318. It is

> important that "the decision to enter and inspect. . . not be the product of the unreviewed discretion of the enforcement officer in the field". See v. Seattle, 1967, 387 U.S. 541, 545, 87 S.Ct. 1737, 1740, 18 L.Ed.2d 943, 947. [Emphasis ours.]

Id. at 907, 908. In determining the reasonableness of the search, the above emphasized language indicates that one element of the question is whether the proposed search is authorized by statute. Sub judice, this must be answered in the affirmative. A second element is whether the search is properly limited in scope. This, too, must be answered in the affirmative because Section 570.15(1)(a), F.S., clearly limits the scope of the search to the enumerated items. The third element involves an examination of how the agency chose to initiate the particular search. In the instant case, no agency chose to initiate the search; the search, indeed all searches of the designated class of motor vehicles, was initiated by the legislature in its passage of § 570.15. In the instant case, however, the search was initiated following petitioner's refusal of access by resort to an administrative search warrant.

The emphasized language goes on to state that the search will be reasonable if based either on (1) specific evidence of an existing violation, (2) a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied as to a particular [motor vehicle]. First, there was evidence of a specific violation of Section 570.15(2) in that

petitioner failed to stop at the road guard inspection station. But more to the point, it is submitted that the road guard's reasonable belief that petitioner's vehicle was within the class of vehicles subject to agricultural inspection as set forth in § 570.15(1)(a) could be substituted in lieu of the "specific evidence of an existing violation." Secondly, the statute sets forth reasonable legislative standards for conducting the agricultural inspection. First, only vehicles within the designated class are required to stop for the agricultural, horticultural, etc., products. The statute obviously does not authorize a general search for drugs, firearms, moonshine or anything else other than the items set forth in the statute. Thirdly, the above emphasized language clearly shows that a search is reasonable if made pursuant to an administrative plan containing specific neutral criteria. Sub judice, there is no administrative plan, but there is a legislative plan clearly set forth in the statute. The "specific neutral criteria " is nothing more than the statutory guidelines or requirements which must be met before a search can be undertaken. If an operator of a motor vehicle believed to be within the designated class of vehicles refuses access for the purpose of accomplishing the agricultural inspection, then the road guard officer may obtain an administrative search warrant for the purpose of making the regulatory inspection. The fact that the vehicle is within the designated class and the operator thereof refuses access it is

sufficient to furnish probable cause for the issuance of the administrative search warrant. The statutory provision authorizing the issuance of the warrant does "nothing more than give teeth to the mandate of the [legislature]". United States v. New Orleans Public Service, Inc., 553 F.2d 459, 465 (5th Cir. 1977). It is respectfully submitted that proof of either of the three above discussed elements is sufficient to show the reasonableness of the search. However, the statute under consideration meets, not just one of those elements, but all three.

CONCLUSION

The decision of the district court in Lake Butler Apparel Company is not a well-reasoned one, not one binding on this court, and should be expressly rejected. The statute should be held constitutional because it does contain reasonable legislative standards or specific neutral criteria for the guidance of road guard agricultural inspectors in determining what vehicles are subject to agricultural inspection and for guidance of judicial officers in issuing administrative or regulatory search warrants.

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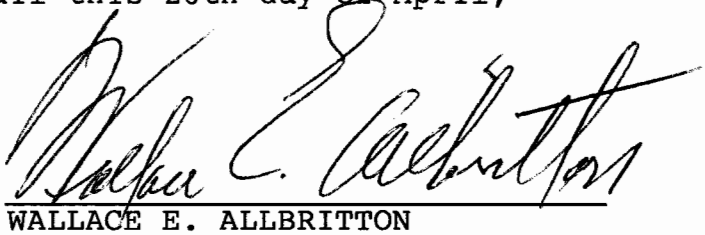
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing Brief of Appellee to Mr. Fred Haddad, Sandstrom & Haddad, 429 South Andrews Avenue, Fort Lauderdale, FL 33301, Counsel for Petitioner, by U.S. Mail this 26th day of April, 1984.



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