SUPREME COURT OF FLORIDA

CASE NO. 70, 110

RALPH RAMER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.
_____/

INITIAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

On January 16, 1985 an indictment was returned in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida charging the Petitioner with Felony Murder.

On January 23, 1986 the Petitioner filed his Motion to Suppress Physical Evidence.

On February 18, 1986 a hearing was had on the Petitioner's Motion to Suppress Physical Evidence. During the hearing the following evidence was presented:

Sargent Curran testified that he had been a police officer with the City of West Palm Beach Police Department for eighteen years. He further testified that in March of 1983 he was initially sworn in as a special deputy pursuant to Florida Statute 30.09 and had been a special deputy every year thereafter. He further testified,

Q. "Were you sworn in twice?

A. Just once. They just renew the card on a yearly basis.

Q. Oh, they renew the card every year?

A. Yes.

Q. As temporary special deputy status?

A. Yes, sir.

Q. Were you sworn in again?

A. No, sir.

* * * * * * * * * * * * * * * * *

Q. Do you go back every year, how do you become a special deputy each and every year?

A. You take the card back. It expires. This one expires March 21, 1986. I would respond back prior to that date, which they would issue me another one for a year.

Q. Do you take an oath at that time?

A. No, sir.

Q. Do you post a bond?

A. No, sir.

Q. Does the sheriff sign anything?

A. No, sir. Well, he signs the -- or stamps the face of this with his signature." (R. 30-31).

Sargent Curran testified that on May 16, 1985 he was advised by his supervisor with the West Palm Beach Police Department of a possible stolen or abandoned vehicle at a specified location in Palm Beach County outside the municipal boundaries of West Palm Beach. (R. 21). Thereafter, Sargent Curran, along with Jim Copeland, an agent from the National Auto Theft Bureau, went to the location where the vehicle was located. (R. 22). Once at the location Sargent Curran and Agent Copeland entered onto the property where the car was parked. At that point Agent

Copeland crawled under the vehicle to a location where the confidential indentification number is located and through the use of tape, obtained an imprint of the number. (R. 22).

With regard to the procedures used by Agent Copeland, Sargent Curran gave the following testimony;

Q. Now, with respect to the confidential VIN number, you have to get under the car and conduct a search in order to locate that VIN number, do you not?

A. Yes, sir.

Q. Okay. And that was done in this case, is that correct?

A. Yes, sir.

Q. And there was no search warrant of any kind whatsoever in order to conduct that search, was there, sir?

A. No, sir." (R.26-7).

The number obtained from the undercarriage of the vehicle matched the number for a car previously reported stolen. (R. 22-3). Based on this information the car was towed to the West Palm Beach Police Department where it was later searched without benefit of a search warrant and the physical evidence to be suppressed was seized. (R. 23-4). Sargent Curran further testified that at the time he first observed the vehicle, there was no evidence whatsoever that the vehicle had been abandoned. (R. 26). He then testified,

Q. "Do you know now that the real interest in that vehicle and the reason that your superiors have gone out there and looked at the vehicle was with respect to the arson investigation, do you not?

A. Yes, sir." (R. 28).

Based on the foregoing evidence, the trial court granted the Motion to Suppress Physical Evidence on two separate grounds. First, the trial court held that the vehicle was illegally searched and the evidence seized without a search warrant. (R. 149). Second, the trial court held that the search and seizure was illegal in that the West Palm Beach Police Department had no authority to act outside of its jurisdiction. (R.149).

Thereafter, the Respondent timely sought review of the trial court's order in the District Court of Appeals, Fourth District. (R. 150).

On January 7, 1987 the District Court of Appeals, Fourth District entered it's decision reversing the order of the trial court granting the Motion to Suppress Physical Evidence. State vs. Ramer, 501 So. 2d 52 (Fla. DCA 4th 1987). In it's opinion the District Court first disagreed with the trial court concerning Florida Statute 30.09. Specifically, the district court held that the restrictions imposed in Florida Statute 30.09 (4) (a-j),

> "...merely lists the circumstances under which the provisions for bonds and sureties apply. Such exceptions do not restrict the activities of a special deputy solely to those listed." (501 So. 2d at 53).

Second, the District court disagreed with the order of the trial court concering the conduct of the officer in obtaining the confidential vehicular identification number. Specifically, the court held that the officers' conduct did not violate constitutional prohibitions against unreasonable searches and seizures. (501 So. 2d at 53).

Thereafter, the Petitioner timely sought review before this Court.

On September 8, 1987 this Court granted the Petition for Review.

SUMMARY OF THE ARGUMENT

APPOINTMENT OF SPECIAL DEPUTIES

The district court erred in holding that the exceptions listed in Florida Statute 30.09 do not restrict the activities of a special deputy solely to those listed. This holding of the district court is contrary to both the letter and the intent of the statute. First, had the legislature intended to give sheriffs' unlimited authority to appoint deputies for any purpose, the legislature would have said so. Secondly, the clear intent of the statute is to authorize sheriffs to appoint special deputies either for temporary, emergency duty, or for quasi-law enforcement purposes. It was not meant to authorize sheriffs of the respective counties to appoint special deputies for any purpose, and further, for the appointments to continue indefinitely by virute of nothing more than a trip to the sheriff's office once a year to have the special deputie's card validated. Indeed, the holding of the district court would authorize the creation of an unlimited number of special deputies exercising unlimited authority for indefinite periods of time without any semblance of supervision by the respective sheriffs or any other individual. In this regard, the special deputies would enjoy greater authority and discretion than regular deputies

who presumably are fully supervised and work pursuant to specific assignments from their supervisors.

SEARCH AND SEIZURE

The district court erred in reversing the trial court's order granting the Motion to Suppress Physical Evidence. First, the court erred in relying on New York vs. Class, ___ U.S. ___, 106 S. Ct. 960 (1986). In Class, the officers inspected the vehicle indentification number located on the dash board which is placed at that location for the specific purpose of allowing an officer from outside the car to view the number. Yet, even in Class the court held that the officer conducted a search when the officer reached into the vehicle and removed a map that was covering the VIN.

The present case is factually distinguishable from Class in that the officer crawled underneath the vehicle and obtained the confidential vehicle indentification number. Even the officer acknowledged that his actions in obtaining the confidential number constituted a "search". This factor alone is sufficient to justify the trial court's order granting the Motion to Suppress.

Further, the District Court ignored what occurred after the officer obtained the confidential number. It is important to remember that the Petitioner sought to

suppress, not the vehicle, but the items of evidence seized from the vehicle after it was seized by the officer and taken to the police station and searched thoroughly.

The authority to seize vehicles and search them for contraband is strictly controlled by Florida Statute 933.19. However, Florida Statute 933.19 permits such searches only,

> "...when searches and seizures shall be made by any duly authorized and constituted bonded officer of this state...."

As previously discussed, at the time the officers seized the vehicle and had it towed to the police station, he was not a "duly authorized" law enforcement officer because his appointment was in violation of Florida Statute 30.09. Further, the officer was not a "constituted bonded officer" as acknowleged by the officer's testimony before the trial court.

POINT I

ISSUE

WHETHER THE DISTRICT COURT ERRED IN HOLDING THAT THE SHERIFFS OF THE INDIVIDUAL COUNTIES ARE AUTHORIZED TO APPOINT SPECIAL DEPUTIES ON THE CIRCUMSTANCES NOT ENUMERATED IN FLORIDA STATUTE 30.09 (4) (a)-(g).

The facts in the present case are not in dispute. Sargent Curran was appointed a special deputy in March 1983. At that time he was administered an oath, but he never posted a bond. (R-29). Each year, thereafter, he would "respond" back to the sheriff's office where a new card would be issued after the new card was stamped with the sheriff's signature.

There was no argument in either the trial court or the District Court that the appointment came within the circumstances enumerated in Florida Statute 30.09 (4). Rather, the Respondent argued that the individual sheriffs of the respective counties could appoint special deputies for reasons other than those enumerated in the statute. The District Court agreed.

The Petitioner submits that the decision of the District Court is contrary to the letter and intent of the statute and is contrary to recognized rules of statutory construction.

First, had the legislature intended to give the sheriffs of the respective counties the unlimited authority to appoint special deputies for any purpose, the legislature would have said so. That is, the legislature would have given the individual sheriffs the blanket authority to appoint special deputies and there would have been no further need to enumerate the circumstances where the sheriff was empowered to appoint such deputies.

Second, the decision of the District Court is contrary to the doctrine of Expressio Unius Est Exclusio Alterius which states that the enumeration or mention of one thing implies the exclusion of all others. Thus, under this doctrine the fact that the statute enumerates special circumstances where the sheriff is authorized to appoint special deputies implies that the sheriff is not authorized to appoint special deputies under circumstances not enumerated in the statute. Dobbs vs. Sea Isle Hotel, 56 So. 2d 341 (Fla. 1952).

Third, the decision of the District Court is contrary to the clear intent of Florida Statute 30.09 (4). In this regard the intent of the statute is two-fold: first, the statute authorizes the sheriffs of the individual counties to mobilize manpower on a short term basis to meet emergency situations. [e.g. 30.09 (4) (e) natural disasters; and (f) to quell riots.] In this sense the statute is reminiscent

of the western movie where the sheriff mobilizes a posse to go after the "bad guys". It would be unreasonable to expect the sheriff to take the time to ensure that each special deputy is properly bonded, sworn, and the paper work completed before giving chase with his newly-mobilized posse.

Second, the intent of the statute is to authorize the sheriff to appoint individuals as "quasi-deputies" to perform specific tasks that, while important, do not require the full faculties and expertise of a regular deputy. Thus, the sheriff may appoint special deputies to attend elections (a); to act as security guards at sporting events (c); to guard prisoners (d); and as parking enforcement specialists (f).

By granting the sheriff the authority to make these special assignments, the sheriff is able to provide manpower for these various activities at a lower cost and also without having to deploy regular deputies whose skills and expertise are needed for conventional law enforcement. Indeed, it is for this reason that Florida Statute 30.09 (4) restricts the powers of arrest of certain special deputies in all cases (e.g. parking enforcement specialists); restricts the arrest powers of all other special deputies unless decided otherwise by the sheriff; and relaxes the training requirements of other special deputies (e.g.

election guards and parking enforcement specialists).

The construction of the statute embodied in the decision of the District Court would lead to a very different result. Specifically, the individual sheriffs of the respective counties would have unlimited authority to create an unlimited number of special deputies exercising unlimited authority for indefinite periods of time. All that would be necessary is for the special deputy to "respond" back to the sheriff's office once a year to have his card validated.

Further, these appointments would be without any semblance of supervision by the respective sheriffs or any other individual. In this regard, the special deputies would enjoy even greater authority and discretion than regular deputies who presumably are fully supervised and work pursuant to specific assignments from their supervisors.

The idea that a sheriff, or any other official, could authorize an unlimited number of unsupervised law enforcement officers to roam the streets of the State of Florida is contrary to every principle and precept upon which this state and country were founded. More importantly, had the legislature intended to embrace such a novel and unique system of law enforcement, it would have said so in language that was clear and unequivocal.

Obviously, the legislature did not intend this result, and the decision of the District Court permitting such a situtation to exist, is an error.

POINT II

ISSUE

WHETHER THE DISTRICT COURT ERRED IN HOLDING THAT THE OFFICERS ACTED PROPERLY IN OBTAINING THE CONFIDENTIAL VIN NUMBER AND THEN SEIZING THE VEHICLE AND SEARCHING THE CAR AT ANOTHER LOCATION AT A LATER TIME.

The officers in the present case went to a location where the vehicle was located. Once there, the officers entered upon private property, went under the vehicle, and otbained the confidential vehicle identification number (VIN). Based on the confidential VIN, the vehicle was seized, towed to a local police station, later searched, and certain items of property seized.

The District Court held that the conduct of the officers was permissible based on the authority of New York vs. Class, ____ U.S. ____, 106 S. Ct. 960 (1986).

The Petitioner submits that the District Court's reliance on Class was misplaced, and further, the District Court failed to consider all of the facts and issues involved in the present case.

In Class a police officer stopped the defendant for two minor traffic violations. Thereafter, the officer reached into the vehicle, moved some papers on the dashboard, and inspected the vehicle indentification number.

The court first held that the officer's conduct of

reaching into the vehicle and moving the papers constituted a search within the contemplation of the Fourth Amendment. However, the court held that the warrantless search was reasonable under the facts of that case. The court stated,

> "Here, where the object at issue is an identification number behind the transparent windshield of an automobile driving upon the public roads, we believe that the placement of the obscuring papers was insufficient to create a privacy interest in the VIN. The mere viewing of the formerly obscured VIN was not, therefore, a violation of the Fourth Amendment." (106 S. Ct. at 966).

The facts in Class are far different from the facts in the present case. First, the VIN was not located behind a transparent windshield of an automobile travelling down a public road. Rather, the vehicle was parked on private property, albeit not the Petitioner's, when the officers climbed under the vehicle, and, by Sargent Curren's own admission, searched the undercarriage of the vehicle thereby obtaining the confidential VIN. Sargent Curran further admitted that based on his eighteen years of experience as a law enforcement officer, it was his opinion that he needed a search warrant to do what he did. (R-29).

The second distinction between Class and the present case is the motivation for the officers' actions. The court in Class discussed the many reasons that the VIN is necessary and valuable to law enforcement officers in the regulation of vehicles. None of these reasons pertain in

the present case. Rather, Sargent Curran was dispatched by his superiors to the vehicle on the basis of an "anonymous" tip that the vehicle was abandoned or possibly stolen. Sargent Curran discovered later that the real reason he was dispatched to the vehicle was based on a suspicion that the vehicle was used in an arson.

Thus, in Class the VIN was used to obtain information by the officer during a legitimate traffic stop while in the present case the VIN was part of a deliberate deception to obtain evidence of an unrelated crime. It should be noted that the prosecution in the present case sought to perpetuate this deception before the trial court prior to Sargent Curran's candid disclosure regarding the real motivation behind the searching of the undercarriage of the vehicle.

A third distinction between Class and the present case concerns what occurred after the officers in the respective cases obtained the VIN. In Class the officer observed a handle of a pistol under the drivers seat while looking at the VIN. Since the officer was in a location where he had the lawful right to be, the observation of the weapon in plain view was lawful, as was its immediate seizure. Cf. Ensor vs. State, 403 So. 2d 349 (Fla. 1981).

By contrast the confidential VIN in the present case was used by Sargent Curran as a basis to seize the vehicle,

tow the vehicle to another location, and then search the vehicle thereby uncovering the evidence to be suppressed.

Whatever view one takes of the intial search of the undercarriage of the vehicle, it is clear that the warrantless seizure of the vehicle and the subsequent search of the vehicle raised substantial, independent issues with respect to the Fourth Amendment to the United States Constitution and Article 1 Section 12 of the Florida Constitution.

It has long been recognized that a police officer may seize an automobile and then search the automobile based on probable cause that the automobile either contains contraband or is evidence of a crime. This doctrine of law is codified in Florida Statute 933.19. However, Florida Statute 933.19 permits the seizure of a vehicle and the subsequent search of the vehicle only when done by a "duly authorized and constituted bonded officer".

In the present case Sargent Curren was neither a "duly authorized officer" nor a "bonded" officer at the time he seized the Petitioner's vehicle, had it towed to the police station and later searched the vehicle. Specifically, Sargent Curran was not authorized in that he was beyond the municipal boundaries of West Palm Beach. State vs. Carson, 374 So. 2d 620 (Fla. DCA 4th 1979), Collins vs. State, 143 So. 2d 700 (Fla. DCA 2nd 1962). Further his appointment as

a special deputy was a nullity for the reasons discussed in Point I of this brief. Nor had he been administered an oath. Holloway vs. State, 342 So. 2d 966 (Fla. 1977). In addition, based on his testimony, Sargent Curran was not bonded as required by Florida Statute 933.19. Stinson vs. State, 80 So. 506 (Fla. 1918).

It is clear that Sargent Curran did not meet the criteria set forth in Florida Statute 933.19 at the time he seized the Petitioner's vehicle. Thus, the seizure and subsequent search of the vehicle was unlawful. As such, the evidence obtained during the seizure of the search of the vehicle was properly suppressed by the trial court.

CONCLUSION

For the reasons and authorities cited herein the Petitioner respectfully requests the Court to reverse the decision of the District Court of Appeals, Fourth District and remand the case with instructions that the order of the trial court granting the Motion to Suppress Physical Evidence be reinstated.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 9th day of October, 1987 to: Amy Lynn Diem, Assistant Attorney General, 111 Georgia Avenue, Suite 204, West Palm Beach, Florida 33401.

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