IN THE SUPREME COURT OF FLORIDA

RALPH RAMER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 70,110
	)	
STATE OF FLORIDA,	)	
	)	
Respondent,	)	
	)	

BRIEF OF RESPONDENT ON

THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS

Continued)

PRELIMINARY STATEMENT

Petitioner was the Appellee in the Fourth District Court of Appeal and the defendant in the Criminal Division of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Respondent was the Appellant below and the prosecution in the trial court.

In this brief, the parties will be referred to as they appear before this Honorable Court of Appeal.

The following symbol will be used:

"R" Record on Appeal

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts as found on pages one (1) through five (5) of Petitioner's Brief on the Merits with the following additions and/or clarifications:

On May 16, 1985, Sergeant Curran of the West Palm Beach Police Department was assigned to respond to a location off of Summit Boulevard in Palm Beach County by his supervisor. Curran was told a vehicle was possibly stolen and left abandoned in the parking lot of an apartment complex. (R 21). Sergeant Barrett informed Curran that the vehicle had been sitting there for several days, possibly abandoned. (R 25). Jim Copeland of the National Auto Theft Bureau accompanied him. Copeland was not a law enforcement officer but only an insurance man. (R 26).

Upon arrival, Copeland crawled under the Ford Bronco at Curran's direction and obtained the confidential vehicle identification number off the frame. (R 22, 38). Once the confidential vehicle number was obtained, Copeland's Atlanta office was contacted and advised he and Curran that the vehicle was reported stolen. Curran was advised to have the vehicle towed to the station. (R 23). The vehicle was unlocked at the police station by Curran and searched by other individuals. (R 24).

Curran testified that at the time he had responded to

that location, he had been appointed as a special deputy sheriff. (R 24). Curran had taken an oath as a special deputy on March 18, 1983 and was sworn in on April 3, 1983. (R 30). Curran's special deputy identification card was renewed on a yearly basis although he was not required to take the oath each year. (R 30-31). Curran's special deputy card contained the stamped signature of the sheriff on it. (R 32). Curran testified that he now knew the real interest in the vehicle was with respect to an arson investigation. (R 28).

Ralph Ramer testified that on May 16, 1985 he owned a Ford Bronco. (R 8). The Ford Bronco was parked at his girl friend's address and was not abandoned. (R 12). Ramer testified that he parked the vehicle on May 15, 1985 and that it had a cracked fuel line. (R 18).

The State charged Petitioner with felony murder and arson, contrary to Section 782.04(1)(a), (2)(b), and 806.01(2). (R 59). Petitioner moved to suppress the evidence seized, including a certain book with duct tape on February 18, 1986. (R 147). After hearing the evidence presented, the trial court found that the viewing of the confidential vehicle identification number constituted an illegal search and that the police had no authority to act outside its jurisdiction and granted the motion to suppress. (R 149). On January 7, 1987 the Fourth District Court of Appeal entered its decision

reversing the order of the trial court. State v. Ramer, 501 So.2d 52 (Fla. 4DCA 1987). On September 8, 1987 this Court accepted jurisdiction of this cause. This brief follows.

SUMMARY OF THE ARGUMENT

POINT I

The District Court of Appeal correctly found that the circumstances set forth in Sec. 30.09(4)(a)-(g) constitute exceptions to the statutory oath and bond requirements rather than a list of the only circumstances under which special deputy status may be conferred. At the very least, the officer was acting as a private citizen and violated no fourth amendment rights of Petitioner.

POINT II

The District Court of Appeal correctly determined that the agent's action in crawling underneath Petitioner's vehicle to obtain the vehicle identification number was reasonable. The observation of the vehicle identification number did not constitute a search. In any event, this action was reasonable where the intrusion was minimal and Petitioner did not have a reasonable expectation of privacy in the vehicle identification number.

ARGUMENT

POINT I

THE DISTRICT COURT OF APPEAL CORRECTLY CONCLUDED THAT SEC.30.09(4)(a)-(g), FLORIDA STATUTES, LISTS THE CIRCUMSTANCES UNDER WHICH THE PROVISION FOR BONDS AND SURETIES ARE NOT APPLICABLE.

Petitioner contends Sec. 30.09(4)(a)-(g), Fla. Stat. (1985) limits the circumstances under which a special deputy sheriff can function solely to those enumerated in Sec. 30.09(4)(a)-(g), Respondent maintains, however, that such a construction completely ignores the otherwise clear and unambiguous meaning of this statute.

In the instant case, the trial court granted the motion to suppress finding that the police had no authority to act outside of its jurisdiction. (R 149). During the suppression hearing, Curran testified that at the time he responded to the location off of Summit Boulevard, he had been appointed as a special deputy. (R 245). He took the required oath on March 18, 1983 and was sworn in on April 3, 1983. (R 30). His special deputy sheriff identification card was renewed on a yearly basis although he was not required to take oath each year. The statute only requires that an oath be taken and not that it be taken on a yearly basis. After taking this oath, Curran was then duly sworn. Thus, since Curran was properly qualified as a special deputy and acting

in that capacity, the trial court erred in finding that Curran acted without authority outside of his jurisdiction. The trial court incorrectly construed the statute sub judice to limit a special deputy's activities to the circumstances set forth in Sec. 30.09(4)(a)-(g), Section 30.09 provides:

> 30.09 Qualification of deputies, special deputies
>
> (1) Bond, sureties, performance of services.— Each deputy sheriff, appointed as aforesaid, shall be required to give bond in the penal sum of one thousand dollars, payable to the governor of Florida and his successors in office, with two or more good and sufficient sureties, to be approved by the board of county commissioners and filed with the clerk of the circuit court, which bond shall be conditioned upon the faithful performance of the duties of his office. No deputy sheriff shall be allowed to perform any service as such deputy until he shall subscribe to the oath now prescribed for sheriffs and until the approval of his bond. The aforesaid sureties shall be liable for all fines and amercements imposed upon their principal.
>
> (2) Surety companies.— The requisite of two sureties and justification of same shall not apply where surety is by a solvent surety company authorized to do business in this state.
>
> (3) Liability of sheriff.— The giving of said bond by said deputy shall not in any manner relieve the sheriff of the liability for the acts of his deputies.
>
> (4) Exceptions.— The provisions of this section, and of § 30.08, shall not apply to the appointment of special deputy sheriffs when appointed by the sheriff, under the following circumstances:

(a) On election days, to attend elections.

(b) To perform undercover investigative work.

(c) For specific guard or police duties in connection with public sporting or entertainment events, not to exceed thirty days; or, for watchman or guard duties, when serving in such capacity at specified locations or areas only.

(d) For special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners.

(e) To aid in preserving law and order, or to render necessary assistance in the event of any threatened or actual hurricane, fire, flood, or other natural disasters, or in the event of any major tragedy such as an airplane crash, train or automobile wreck, or similar accident.

(f) To raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy.

The appointment of any such special deputy sheriff in any such circumstance may be made with full powers of arrest whenever the sheriff shall deem such appointment reasonable and necessary in the execution of the duties of his office. Except under circumstances (a), (e) and (f), the appointees shall possess at least the minimum requirements as set forth by the police standards board. The appointment of any such special deputy sheriff shall be recorded in a register maintained for such purpose in the sheriff's office, showing the terms and circumstances of such appointment.

(5) Removal for violation. — A violation of this section shall subject the offender to removal by the governor.

(emphasis supplied)

Respondent submits that a plain reading of this statute reveals that Section 30.09(4)(a)-(g) constitutes exceptions to the statutory oath and bond requirements set forth in Section 30.09(1)-(3) and 30.08 (now repealed). The statute says as much in a straightforward fashion. This statute enables county sheriffs to employ manpower on a short term basis to meet emergency situations or to perform very routine tasks without the need for complying with the technical and time-consuming bond and surety requirements.

It is a well-established rule of statutory construction that in seeking to effectuate legislative intent, where the words selected by the legislature are clear and unambiguous, judicial interpretation is not appropriate to displace the expressed intent of the legislature. Heredia v. Allstate Insurance Company, 358 So.2d 1353 (Fla. 1978). Legislative intent is to be determined from the language of a statute, and the plain meaning of the statutory language is this Court's first consideration. St. Petersburg Bank and Trust Company v. Hamm, 414 So.2d 1071 (Fla. 1982). See, also, Thayer v. State, 335 So.2d 815 (Fla. 1976). Where the language of a statute is clear and unequivocal, legislative intent may be gleaned from the words used without applying incidental rules of construction. Reino v. State, 352 So.2d 853 (Fla. 1977).

In the case sub judice, it is indisputable that the

language used in Section 30.09(4) is clear and unambiguous. As such, it is incumbent on this Court to give effect to the expressed intention of the legislative. Section 30.09(4) states that the provisions of Section 30.08 (now repealed) and the provisions of Section 30.09(1)-(3) do not apply to special deputies appointed under the circumstances set out in Section 30.09(4)(a)-(g). Consequently, there is no need for this Court to go beyond the plain meaning of this statute.

Petitioner's construction can only leave this Court puzzled and unconvinced. Considering this act as a whole, the subject matter being regulated is the qualifications for functioning as a special deputy and the exceptions thereto. The statute does not purport to constrict the circumstances under which a duly qualified deputy who has complied with the oath and bond requirements can function. See, e.g. State v. Campbell, 427 So.2d 765 (Fla. 2nd DCA 1983) (holding arrest and search of defendants valid where officers functioned as special deputies for purposes of investigation outside their jurisdiction). To read the statute as Petitioner urges conflicts with the overall statutory scheme of Section 30.09 which provides the qualifications relating solely to bonds and sureties. One indication of legislative intent is the title of the law enacting the statute. Parker v. State, 406 So.2d 1089 (Fla. 1981). The title has the function of defining the scope of an act. Finn v. Finn, 312 So.2d 726 (Fla. 1975). Petitioner's interpretation interjects into this statute a regulation beyond

the mere scope of qualifications. The instant statute does not purport to circumscribe the power of a special deputy to act in these situations set forth in 30.09(4)(a)-(g) but merely relaxes the requirements by providing "exceptions" to the statutory qualifications. The interpretation advanced by Petitioner has the effect of greatly broadening an otherwise expressly precise statute. Petitioner's misguided attempt to digress into various hypothetical situations where special deputies are unleashed without supervision and run rampant throughout the counties is sheer speculation and does not in any manner undermine the correct interpretation given by the Fourth District Court of Appeal in this cause.

Alternatively, should this court find that the officer acted outside his authority, Respondent maintains that he was acting as a private citizen and the subsequent search triggered no fourth amendment protections. It is well-established that police may legally carry the investigation of a crime to other areas outside his jurisdiction. State v. Schuyler, 390 So.2d 459 (Fla. 3rd DCA 1980); State v. Williams, 366 So.2d 135 (Fla. 2nd DCA 1979); Parker v. State, 362 So.2d 1033 (Fla. 1st DCA 1978); Collins v. State, 143 So.2d 700 (Fla. 2nd DCA 1962). At bar, Curran did not assert his official position for any purpose and was not seeking to use the power of his office to observe unlawful activity or gain access to evidence not available to a private citizen. See, Phoenix v. State, 455 So.2d

1024 (Fla. 1984). The trial court erred in granting the motion to suppress where Curran's actions, as those of a private citizen, did not violate any of Petitioner's rights.

POINT II

THE DISTRICT COURT CORRECTLY HELD THAT THE AGENTS CONDUCT IN CRAWLING UNDER THE VEHICLE TO OBTAIN THE CONFIDENTIAL VEHICLE IDENTIFICATION NUMBER DID NOT VIOLATE THE FOURTH AMENTMENT.

Respondent maintains that the agent's action in crawling under the vehicle to obtain the confidential vehicle identification number did not violate constitutional prohibitions against unreasonable searches and seizures and that consequently, the trial court erred in granting the motion to suppress on this basis where it misapplied the law to the established facts.

In the instant case, Mr. Copeland crawled under the vehicle to obtain the secret vehicle identification number off of the frame.[1] (R 22). Due to the location of the numbers on the top of the frame, tape was pressed down on the numbers and lifted off to give an imprint. (R 43). Respondent submits that obtaining the vehicle identification number in this fashion did not constitute an illegal search.

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[1] The record in this case does not reveal whether the public identification number was inspected first or whether it was altered or obscured.

In United States v. Johnson, 431 F.2d 441 (5th Cir. 1970)(en banc), the court held that inspections of motor vehicles performed by police officers, who were entitled to be on the property where the vehicles were located, which in no way damaged the vehicles and were limited to determining the correct identification numbers thereof were not searches within the meaning of the Fourth Amendment. Alternatively, the court held that if either of such inspections constituted a Fourth Amendment search, no warrant was necessary because such inspections were reasonable. In Johnson, supra, the agent had taken the confidential vehicle identification number off the frame of the vehicle by using gasoline to clear off the numbers and then rubbing ink over them. He then laid a piece of scotch tape over them to lift off an imprint. Id, at 451. Similarly, in United States v. Kitowski, 729 F.2d 1418 (11th Cir. 1984), the court held that inspections of motor vehicles by officers which are limited to determining the correct identification numbers are not searches within the fourth amendment, and that alternatively, if such inspections did constitute a search, no warrant was necessary because the search was reasonable.

Respondent submits that under the facts sub judice, crawling underneath the vehicle did not constitute a search. At bar, the confidential identification number was located on the frame sufficiently open to view that the observation of it was not a search. See, United States v. Gunn, 428 F.2d

1057 (5th Cir. 1970)(holding valid the copying of serial numbers from tires on a vehicle and finding no search existed where on one tire the numbers faced outward but on the others they faced inward and agent had to crawl under the car to find them); United States v. Cotton, 721 F.2d 350 (11th Cir. 1983), cert. denied 106 S.Ct. 1614 (inspecting auto, auto engine, and moped in order to examine their confidential vehicle identification number was not a search); United States v. Duckett, 583 F.2d 1039, 1312-1313 (5th Cir. 1978)(officer may open door to vehicle to view identification number without running afoul of fourth amendment proscriptions); United States v. Forrest, 620 F.2d 446, 455 (5th Cir. 1980)(to same effect.)

In State v. Cohn, 284 So.2d 486 (Fla. 3DCA 1973), two officers noticed a Cadillac parked in an apartment complex. The unusual color of the vinyl top drew their attention to the vehicle and upon stopping to examine the public vehicle identification number which was visible through the front window, they noticed it had been altered. The officers opened the vehicle with a coat hanger to check the confidential vehicle identification number which was inside the car. The officers determined the car was stolen because the numbers did not correspond. The appellate court found that once the officers observed that the public vehicle identification number had been altered they then had probable cause for a search of the

inside of the car. The court, following the decision in United States v. Johnson, supra, found that the mere checking of a serial number in order to more positively identify an auto is not a search and that alternatively, if it was a search it was reasonable. Lastly, the court concluded that no property right of the defendant was violated where he did not own the car and thus, no right of privacy could have been violated. Following the State v. Cohn decision, the Fourth District in State v. Eaton, 498 So.2d 1066 (Fla. 4DCA 1986)(Glickstein, J., specially concurring) reversed an order suppressing evidence finding that the examination of a vehicle for the purpose of inspecting vehicle identification numbers is not a search. Respondent thus submits that no search occurred in the instant case where the officer's actions involved no measure of force and were reasonable. State v. Ashby, 245 So.2d 225 (Fla. 1971)(an inspection generally requires some measure of force or intrusion to constitute a search).

Should this Court find that the agent's actions constituted a search, Respondent maintains that it was not illegal based upon the lack of expectation of privacy in vehicle identification numbers and the limited nature of the intrusion.

In New York v. Class, ____ U.S. ____, 106 S.Ct.____, 89 L.Ed.2d 81 (1986), the Supreme Court held that there is no reasonable expectation of privacy in vehicle identification

numbers for purposes of the fourth amendment. In Class, a police officer stopped the defendant for traffic law violations. Although they had no reason to suspect that the vehicle was stolen, one officer opened the door of the defendant's car to look for the vehicle identification number. When the officer did not find it, he reached into the interior of the car to move some papers obscuring the dashboard vehicle identification number. In doing so, a gun was discovered protruding from the driver's seat. Id. 89 L.Ed 2d at 87. In Class, the Court appropriately noted:

> The factors that generally diminish the reasonable expectation of privacy in automobiles are applicable a fortiori to the vehicle identification number. As we have discussed above, the vehicle identification number plays an important part in persuasive regulation by the government of the automobile. A motorist must surely expect that such regulation will on occasion require the state to determine the vehicle identification number of his or her vehicle, and the individuals reasonable expectation of privacy in the vehicle identification numbers is thereby diminished.

Id. 89 L.Ed2d at 90. Although in Class the vehicle identification number was located on the dashboard, Respondent submits that Petitioner had no reasonable expectation of privacy on a vehicle identification number located on the frame, on the exterior of the car. To recognize a reasonable expectation of privacy as to a confidential vehicle identification number defeats its purpose in being confidential

and unknown to the vehicle operator, namely, to allow a secondary method of identifying a vehicle in case the public vehicle identification number has been altered. Thus, a finding that this is not a reasonable expectation of privacy society is willing to recognize is even more compelling where a confidential vehicle identification number is involved. Although Class recognized that the officers action in reaching into the interior compartment by the officer constituted a search, Respondent maintains that no search occurred sub judice where the agent's action in looking at the vehicle undercarriage was far less intrusive than reaching into a passenger compartment.

Under the rationale of Class, Petitioner did not have a reasonable expectation of privacy in this number. Curran had at the very least a reasonable suspicion for making the inspection based upon the information he possessed that the vehicle was abandoned and possible stolen. (R 21, 25). Where there is a legitimate reason to identify a motion vehicle, inspection of its confidential number is not an unreasonable search. United States v. Powers, 439 F.2d 373 (4th Cir. 1971). Contrary to Petitioner's assertions that the motivation in examining the identification number was "part of a deliberate deception to obtain evidence of an unrelated crime", it is clear that Curran was dispatched by his supervisors on the basis of information that the vehicle

was abandoned or possibly stolen. The fact that Curran later discovered that evidence contained in the vehicle was relevant to another crime as well does not defeat the motivation for the inspection of the vehicle in this case. The officer's possible suspicions about other criminal activity do not render a search and seizure invalid. See, Hansbrough v. State, 509 So.2d 1081 (Fla. 1987).

Petitioner does not dispute that a police officer may seize an automobile and then search the automobile based on probable cause that the automobile contains contraband or is evidence of a crime,[2] but instead contends that Curran was not a "duly authorized officer" at the time of the seizure to allow him to do this. Respondent maintains that Curran was a duly authorized officer for the reasons set forth in Point I, supra. Respondent would further point out that Petitioner never presented the argument to the trial court that Curran was not a "duly authorized officer" for purposes of seizing the vehicle under Section 933, 19 Florida Statutes (1985). The only ground asserted for suppression which related to the officer's lack of authority to do so was that Curran went beyond the municipal boundaries of West Palm Beach and was in violation of Section 30.09, Florida Statutes (1985) (R 4-5, 34-36). It is axiomatic

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[2] Upon hearing the vehicle was stolen, Curran then had probable cause to seize it. State v. Parnell, 221 So.2d 129 (Fla. 1969). The impoundment of a stolen vehicle was both reasonable and necessary. Miller v. State, 403 So.2d 1307 (Fla. 1981).

that one may not tender a position to the trial court on one ground and successfully offer a different basis for that position on appeal. Sapp v. State, 411 So.2d 363 (Fla. 4th DCA 1982). In order to be preserved for review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of this presentation if it is to be considered preserved for appellate review. Tillman v. State, 471 So.2d 32, 35 (Fla. 1985). Thus, Petitioner's newly-asserted ground for reversal of the district court opinion, which was not presented to the trial court, is not preserved for review. Petitioner has not contended that Curran was not a law enforcement officer under the statutory requirements of Section 943.13, Florida Statutes (1985) and such a challenge never arose in the trial court. Moreover, as to Petitioner's assertion that Curran was not properly "bonded", the trial court determined the bonding was not a problem in this case and that the sheriff was allowed to provide a blanket bond. (R 55). Thus, this issue was resolved against Petitioner by the trial court.

It is clear that Section 933.19 is merely a codification of the Carroll v. United States, 267 U.S. 132 (1925) decision. Section 933.19 purports to govern situations relative to the unlawful hauling or transportation of intoxicating liquors, illegal drugs, or merchandise made unlawful by the laws of this state. Consequently, Section 933.19 has no applicability to the case at bar.

Respondent thus maintains that the decision of the Fourth District Court of Appeal that the agent's conduct in obtaining the confidential vehicle identification number did not violate the fourth amendment and that the city officer was a duly sworn and properly appointed deputy sheriff was correct.

CONCLUSION

WHEREFORE, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests this Court to affirm the District Court's opinion reversing the order of the trial court granting the motion to suppress.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent on the Merits has been furnished, by United States Mail, to PHILIP G. BUTLER, JR., ESQUIRE, 324 Datura Street, Suite 320, West Palm Beach, Florida 33401 this 23rd day of October, 1987.

Amy Lynn Diem
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