IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,289

STATE OF FLORIDA,

Petitioner,

v.

DAVID WHITE,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

David White was the defendant below and shall be referred to as "respondent." The State was the plaintiff below and shall be referred to as "petitioner." References to the record will be preceded by "R." References to any supplemental record will be preceded by "SR."

STATEMENT OF THE CASE AND FACTS

Respondent was charged by information with possession of a firearm by a convicted felon, possession of cannabis with intent to sell, and possession of drug paraphernalia (R 16). Respondent filed a motion to suppress (R 32). The parties stipulated to the following (R 34):

1. The defendant, David Allen White, was operating a motor vehicle on Novembe [sic] 20, 1992 upon the streets of Indian River County which had a defective tail light.

2. Upon noticing the defendant's tail light, Deputy Sheriff William Moore effected a lawful traffic stop.

3. Upon running the defendant, David Allen White's driver's licenses it was discovered that there was a civil contempt arrest warrant outstanding, for the defendant's failure to pay child support.

4. Deputy Sheriff William Moore confirmed the existance [sic] of said warrant.

5. Thereupon, Deputy Sheriff William Moore with the assistance of Deputy Sheriff Mike Walsh, conducted a search incident to arrest, thereupon discovering the contraband.

6. Upon transfering [sic] the defendant to the Indian River County Sheriff's Office, Deputy Sheriff William Moore retrieved tha [sic] actual hard copy of the warrant and discovered that the warrant had been served 4 days prior to the defendant's arrest.

At the motion to suppress hearing the parties also agreed that the "officers verified the existence of a gun through

communications." (R 2).

The trial judge granted the motion to suppress, relying on State v. Schafer, 583 So. 2d 374 (Fla. 4th DCA 1991), cause dismissed, 598 So. 2d 78 (Fla. 1992) and Martin v. State, 424 So. 2d 994 (Fla. 2d DCA 1983). The trial court noted conflict with Mayberry v. State, 561 So. 2d 1201 (Fla. 2d DCA 1990) and McCray v. State, 496 So. 2d 919 (Fla. 2d DCA 1986).

SUMMARY OF THE ARGUMENT

I

Here, an arrest and search were based on a warrant that although originally valid, had been served four days earlier. The proper analysis is not to simply conclude that the search was improper because the police relied on a warrant that had already been served. The correct analysis is whether there was police misconduct or an unreasonable delay in removing the information from police records. The defendant, who has the burden on a motion to suppress, has not demonstrated misconduct or unreasonable delay.

POINT I

THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION TO SUPPRESS.

The analysis employed in State v. Schafer, 583 So. 2d 374 (Fla. 4th DCA 1991), cause dismissed, 598 So. 2d 78 (Fla. 1992) and State v. Gifford, 558 So. 2d 444 (Fla. 4th DCA 1990), is incorrect.

In 2 LaFave, Search and Seizure, Section 3.5(d) (1987) entitled "Police records and the problem of updating," LaFave succinctly articulated the correct analysis on this subject:

> The point is not that probable cause is lacking because it turned out that the "facts" upon which the officer acted were actually not true, for quite clearly information sufficient to establish probable cause is not defeated by an after-the-fact showing that this information was false, any more than information insufficient to show probable cause can be found adequate on the basis of an after-the-fact showing that in fact conclusory allegations were correct. Rather the point is that the police may not rely upon incorrect or incomplete information when they are at fault in permitting the records to remain uncorrected.
>
> * * *
>
> The question which remains is what kind of delays in updating the information relied upon will suffice to support the conclusion that the government was at fault. Courts are perhaps understandably not inclined to infer police misconduct when the records lack currency by just a few days.

(footnote(s) omitted). Id. at 21, 23.

Schafer and Gifford relied in part on Pesci v. State, 420 So. 2d 380 (Fla. 3d DCA 1982). Pesci held that it was constrained by article 12 of the Florida Constitution regarding the exclusionary rule. Id. at 381. However, since Pesci, Article 12 has been

amended to be construed in conformance with the United States Constitution and the decision of the United States Supreme Court. Moreover, the holding in Pesci supports reversing the denial of the motion to suppress here. Pesci held that "an arrest is invalid when the arresting officer acts upon information in criminal justice system records which, though correct when put into the records, no longer applies and which, through fault of the system, has been retained after the information should have been removed." (emphasis supplied).

Here, the police could hardly be considered culpable when the delay involved was only four days. See Mayberry v. State, 561 So. 2d 1201, 1202 (Fla. 2d DCA 1990) and cases cited therein (fact that warrant was invalid does not invalidate arrest and search where there was no showing of excessive or unacceptable delay in removing warrant from records); Commonwealth v. Riley, 425 A.2d 813, 816 (Pa. 1981) (police misconduct cannot be inferred when the outstanding arrest warrant and juvenile detainer were satisfied only four days earlier); In re R.E.G., 602 A.2d 146, 149 (D.C.App. 1992) (three days not an unreasonable delay) and State v. Banks, 1994 WL 220401 (Ohio App. 2 Dist. 1994) (five days not unreasonable - "Nothing suggests the police were 'at fault' in not more quickly updating their information base. A certain amount of administrative delay must be recognized and tolerated."). Cf. Martin v. State, 424 So. 2d 994 (Fla. 2d DCA 1983) (not discussing time factor but finding arrest illegal where warrant had been served over 8 months before the stop - incident occurred before

amendment to Article 12 of the Florida Constitution); Albo v. State, 477 So. 2d 1071, 1075 (Fla. 3d DCA 1985) (quoting LaFave and holding that a several month delay was too long). See also United States v. Garofalo, 496 F.2d 510 (8th Cir. 1974) (probable cause not defeated by after-the-fact showing that normally reliable informant was lying).

Whitely v. Warden, 401 U.S. 560, 91 S. Ct. 1031, 28 L. Ed. 2d 306 (1971), is not inconsistent with petitioner's position:

> In that case petitioner had been arrested by an officer who had relied on a police radio bulletin which stated that a warrant existed for petitioner's arrest. After finding that the warrant itself was invalid because it was unsupported by a proper affidavit, the Court reversed petitioner's conviction and rejected the state's argument that the officer's reasonable reliance on the bulletin furnished probable cause and thus legalized the arrest.
>
> Whitely does not control the instant case, however, because the warrant there under examination, unlike those at issue here and in Patterson, was void ab initio. As such, we read Whitely to stand for the proposition that the prosecution may not bootstrap itself to a legal arrest and resultant conviction by asserting that police relied reasonably on a warrant that never legally existed. (footnote(s) omitted).

Childress v. United States, 381 A.2d 614, 617 (D.C.App. 1977).

Childress went on to hold that four days was a justifiable administrative delay and that releasing the defendant would do nothing to advance the purpose of the exclusionary rule as there was no improper police misconduct to deter. Id. at 617, 618. Similarly, applying the exclusionary rule here would serve no purpose.

The exclusionary rule does not apply to all searches. The rule is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." United States v. Calandra, 414 U.S. 338, 347-48, 94 S. Ct. 613, 619-20, 38 L. Ed. 2d 561 (1974). Its application "has been restricted to those areas where its remedial objectives are thought most efficaciously served." Calandra, 414 U.S. at 347, 94 S. Ct. at 620. The "rule's primary purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." Calandra, 414 U. S. at 347, 94 S. Ct. at 619-20. Applying the exclusionary rule would do no good here. The defendant has not shown any police misconduct. See Rakas v. Illinois, 439 U. S. 128, 130 n. 1, 99 S. Ct. 421, 424 n. 1, 58 L. Ed. 2d 387 (1978) (proponent of a motion to suppress has the burden to prove that his Fourth Amendment rights were violated).

Any suggestion that a rule allowing a court to make such "reasonableness" determinations is unworkable and will lead to the exception swallowing the rule, is unfounded. Courts judge the reasonableness of law enforcement's actions daily (e.g., founded suspicion, probable cause, voluntary consent). Unreasonable delays will not be tolerated. See 2 LaFave, Search and Seizure, Section 3.5(d) (1987) pp. 19-24 entitled "Police records and the problem of updating," (cases finding certain delays unreasonable).

This Court should reverse. If for some reason this Court

feels that it cannot determine whether four days is an unreasonable delay, it should remand the case, allowing evidence to be presented on the procedures used by the Sheriff's Department regarding the handling of computerized warrant information.

CONCLUSION

Based on the preceding argument and authorities, this Court should reverse.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of this document has been furnished by mail to Stephen Fromang, 1432 21st Street, Suite E, Vero Beach, FL 32960, this 23 day of June 1994.

Of Counsel