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IN THE SUPREME COURT OF FLORIDA

Case No. 83,289

STATE OF FLORIDA

Petitioner

v.

David White

Respondent

RESPONDENT'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 ARGUMENT

Here,an arrest and search were based on a warrant that although originally valid,had been served four days earlier. The proper analysis is simply to conclude that the search was improper since the police relied on a WARRANT that had already been served. The state has already conceded that there was a BAD search due to reliance on a warrant that had already been served by other deputies of the SAME sheriff's office. The defendant met his burden of proof as to a showing of a LACK of a valid warrant WHEN the state conceded the arresting officers had erred. Constructive knowledge between officers is well recognized in Florida case law as being a method of officers apprising themselves or being apprised. Thus the knowledge that the warrant had already been served was constructively KNOWN by these two arresting officers.

POINT ONE.

THE TRIAL COURT DID NOT ERR IN GRANTING THE DEFENDANT'S MOTION TO SUPPRESS

The analysis employed in STATE V. SHAFER 583 So.2d 374(4th DCA 1991) is correct as is the analysis mentioned in STATE v. GIFFORD 558 So.2d 444 (4th DCA 1990).

While LaFave,Search and Seizure,Sec. 3.5(d)(1987) does make a point about record up-dating,the ATTORNEY GENERAL's lawyer writing the initial brief misses the BIGGER problem:

> Who has control of the computer input? Should the court undertake to write an exception to the search and seizure rules similar to the EXIGENT CIRCUMSTANCE exception? The right to be free from unreasonable search and seizure should be protected not undermined. Too often, lawyers WHO are trying to win for their employer,the state attorney or Attorney General seek to entrench these rights merely so they can win never caring about the real dangers they unleash. This myopic view of HOW a Sheriff's Office works is clearly seen in this initial brief. What is to prevent a sheriff's office from using this NEW exception that is so fervently sought by the Att. Gen. as an excuse NOT to clear their computers of VOID or 'already served warrants' on people they want to continue to follow and harrass. If the Att. Gen's idea is followed,the Sheriff's Office would then have a 4 day window and in that 4 days they could go out and arrest and search the subject person and the immediate area where he was seized. The person would say: YOU CAN'T ARREST ME AND SEARCH BECAUSE THE WARRANT IS VOID. The cops would say: OH YEAH...WELL THE SUPREME COURT OF FLORIDA SAYS WE HAVE 4 DAYS BEFORE WE CAN'T 'LAWFULLY' ARREST AND SEARCH YOU.
> It does not matter what Lafave says about the issue in his ivory tower somewhere. It's a common sense notion that IF you permit this KIND of slippage,the ONLY thing that will lose out is the right to be free of unreasonable search and seizure. The Att. Gen's assistant who is asking for this erosion of 4th amendment rights won't care because he or she will be in some law firm probably trying to undo the harm that's been done WHILE they were on the state's payroll writing this KIND of ridiculous verbage.

The exclusionary rule operates to compel officers to observe the rights of citizens. Moreover,it would be absurd for opposing counsel to say that the idea of CONSTRUCTIVE KNOWLEDGE does not operate between officers. In other words,IF one cop knows a fact,then all other cops involved in the investigation KNOW the same fact. In this instance,the sheriff's Office maintains a computer and ALL officers are subject to the data in the computer in terms of being apprised of its contents. Just because these ar-

resting officers did not KNOW-actually KNOW- that the warrant was VOID does not mean that they were lawfully entitled to perform a warrantless seizure and search based on a VOID warrant about which other sheriff's deputies from the same Sheriff's Office ACTUALLY KNEW.

In addition,the Att. Gen. is asking it seems for some kind of LEON 'good faith' application. However,LEON's rule-if you can call it that-was and is strictly associated with EXECUTION OF WRITTEN SEARCH WARRANTS,(US v. LEON 104 S.CT. 3405 ,19 84). The deputies should be the ONES on whom the burden should fall to have correct and accurate information. Concomitantly,the support-personnel working to enter "warrant-service"into said sheriff office computers should do so in a diligent and prompt manner. David White as a citizen should not have his right to be free of unreasonable search and seizure put in peril simply because the Sheriff's employees were lax in entering computer data,or were lax in not getting to the arresting deputies accurate information WHEN these arresting officers accessed the sheriff's computers at the TIME of the arrest of David White.

A trial court's decision to grant a motion to suppress should not be lightly overturned. The trial judge's ruling IF upheld by the Supreme Court stands for a strict reading of the 4th amendment of the US constitution. It stands for the propostion that ANY seizure and search must be reasonable. In this case,it is not a reasonable search since the entire seizure and search was done based on a VOID warrant. The officers did not have ANY right to do what they did and a "GOOD FAITH"argument should not be allowed to be used to BOOT STRAP this otherwise bad seizure and search into the realm of propriety.

The Supreme Court of Florida must stand for the propostion that the 4th amendment of the US constitution is a protective document and this right to be free of unreasonable seizure and search can't be entrenched in the manner desired by the Att. Gen's appellate office!

CONCLUSION

At a time WHEN the war of drugs has been used to justify the erosion of constitutional protection,this COURT needs to stand up and say NO WAY will Florida go that route.Today it's David Allen White's turn to face this issue and this call for eroding the 4th amendment,tomarrow it might be you or me. Like one poet said: When they came for him,I said nothing...WHEN they came for me,there was nobody left to speak out.

Unlike the Att. Gen's Office and its minions that can advocate ANYTHING they fancy,this court MUST be a bastion of protection and strict adherence NOT some rubber stamp job!

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I hereby certify that a true copy was sent to opposing counsel on this 12th day of JULY,1994.

S.Fromang