IN THE SUPREME COURT OF FLORIDA

STANLEY SHADLER,

Petitioner,

v. Case No. 93,784

STATE OF FLORIDA,

Respondent.
_____/

RESPONDENT'S MERITS BRIEF

On Review from the District Court of Appeal
of the State of Florida
Fifth District

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STATEMENT OF THE CASE AND FACTS

On June 18, 1997, Deputy Bowling received information from a fellow officer that Petitioner's driver's license might have been suspended. (R.17). Deputy Bowling "ran his driver's license at that time using the DHS through our dispatcher." (R.17). Deputy Bowling testified that when the dispatcher gets the number, she runs it in the computer banks which are maintained by the Florida Department of Highway Safety and Motor Vehicles (DHSMV), Division of Driver's Licenses (DDL). (R.19). Deputy Bowling was notified by his dispatcher that Petitioner's license was suspended. (R.19).

About two hours later, Deputy Bowling observed Petitioner driving and conducted a traffic stop based on the information he had received two hours earlier. (R.18). When he stopped Petitioner, Deputy Bowling again "ran" Petitioner's license by calling the number in to the dispatch operator. (R.19). He was told a second time that Petitioner's license was suspended. (R.19). Based on the information provided by the DHSMV/DDL, Deputy Bowling arrested Petitioner for driving while his license was suspended. (R.20). During the search incident to the arrest, Deputy Bowling found cocaine in Petitioner's wallet. (R.20). The State charged Petitioner with possession of cocaine.[1]

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[1]The record on appeal does not contain the Information filed in the case, charging the Defendant. However, the court minutes for the motion hearing reflect that the Defendant was charged with "Unlawful Possession of a Controlled Substance". (R.2).

Petitioner filed a motion to suppress the cocaine, claiming that the arrest was unlawful because Petitioner's license was not suspended at the time the officer stopped him. (R.1). He alleged that the search incident to that arrest was unlawful since there was not a valid ground to arrest to begin with. (R.1).

At the hearing on the motion to suppress, Petitioner presented evidence that his license had been reinstated prior to the arrest. (R.25). He testified that after his arrest he went to the "Motor Vehicle bureau" to see why the computer showed that his license was suspended. (R.26). He stated that he was told by an examiner that it was an error -- "a computer glitch" -- and that his license was **not** suspended. (R.26, 30). The examiner issued Petitioner another license at that time. (R.26).

In his argument, defense counsel argued that the trial court should consider the Division of Driver's License to be a law enforcement entity because it was part of the Department of Highway Safety and Motor Vehicles -- which is also the parent department to the Florida Highway Patrol. (R.30, 33). Counsel asked the trial court to apply *State v. White*, 660 So. 2d 664 (Fla. 1995) and grant the motion to suppress. (R.31). The trial court granted the motion in a written order which specifically found that:

> The information was supplied to the arresting officer (a deputy sheriff) by the Florida Department of Highway Safety and Motor Vehicles. The Florida Highway Patrol is a division of that department and it has law

> enforcement powers.
>
> Given these facts, a failure to suppress would vitiate the purpose of the exclusionary rule set forth in *State v. White*, 660 So. 2d 664 (Fla. 1995).

(R.3).

The State appealed the order in the Fifth District Court of Appeal. The appellate court held:

> We disagree with the trial court that the error in this case can be attributed to police or law enforcement personnel merely because the Department contains four divisions under the governor and cabinet of Florida, one of which is the Florida Highway Patrol (a law enforcement agency). The other three divisions, The Division of Driver's Licenses, the Division of Motor Vehicles and the Division of Administrative Services, are independent from one another as well as the Florida Highway Patrol. Each has its own separate organizational structure and division director. The erroneous information came from the Division of Driver's License. Persons working for that division are not law enforcement personnel, but rather are more similar to the court employees in *Arizona v. Evans* (cite omitted).

(*State v. Shadler*, 714 So. 2d 662 (Fla. 5th DCA 1998). The District Court reversed the order granting the suppression, and Petitioner sought review in this court based on conflict with *State v. White*, *supra* p.2.

SUMMARY OF ARGUMENT

The Division of Driver Licenses (DDL), a division of the Department of Highway Safety and Motor Vehicles (DHSMV), is the agency responsible for maintaining driver license records. The DDL does not have law enforcement powers and serves no law enforcement function. The trial court erred when it granted the motion to suppress based on its finding that the DDL employees are law enforcement employees simply because the Florida Highway Patrol, a police agency, is also a division of the DHSMV. Accordingly, the appellate court correctly reversed the trial court's order granting the motion to suppress.

ARGUMENT

POINT ON REVIEW

THE DISTRICT COURT CORRECTLY REVERSED THE TRIAL COURT AFTER DETERMINING THAT THE ERRONEOUS COMPUTER INFORMATION WAS PROVIDED BY NON-LAW ENFORCEMENT PERSONNEL OF THE DIVISION OF DRIVER LICENSES.

The Division of Driver Licenses (DDL) is one of four divisions that make up the Department of Highway Safety and Motor Vehicles (DHSMV). (Appendix A). The DHSMV is one of the largest agencies in Florida state government. The DHSMV answers to the Governor and the Cabinet, and has an Executive Director who oversees the entire agency. The four divisions are independent -- each has a separate organizational structure and is supervised by separate division directors. *See generally*, Fla.Admin.Code R. 15.1001-15.1006.

The DDL is responsible for issuing driver licenses and maintaining records relating to their issuance, receiving and accounting for all fees related to driver licenses, providing for driver education testing, and licensing and regulating all commercial driving schools. Fla.Admin.Code R. 15.1004(1). The DDL also supplies identification cards, provides for voter registration and maintains records regarding voter registration, and compiles statistical data for the public and other State agencies. Section 97.057, Fla. Stat. (1997); Fla.Admin.Code R. 15.1004(3)(c); Fla.Admin.Code R. 15.1004(5)(j).

Employees of the DDL are not sworn law enforcement officers. They include driver license examiners, hearing officers, and at least one physician -- none of whom are law enforcement personnel. Sections 322.13, 322.2615(6)(b), 322.125, Fla. Stat. (1997). The DDL does not have the authority to conduct criminal investigations. *Compare* Fla.Admin.Code R. 15.1004 *with* 15.1003(2)(b)(6).

The DDL does have the authority to -- and the sole responsibility for -- operating and managing a statewide database on a specially-tailored computer system that was developed by DHSMV. (A-2). This database includes all of the information generated by the DDL regarding the status of each and every licensed driver in the State. The DDL keeps the database updated based on the information received as to traffic tickets issued to drivers and any court action taken against drivers. (A-2). It is also the DDL which reinstates driving privileges of those whose driver license has been suspended or revoked. (A-2).

The Florida Highway Patrol (FHP) is another one of the four divisions which make up the DHSMV. Unlike the DDL, the FHP has no control over the computer database which is operated and maintained by DDL. While the FHP does issue traffic citations, both civil and criminal, any computer documentation of a resulting suspension is the sole responsibility of the DDL.

The FHP enforces the traffic laws of the State of Florida, while the DDL administers the laws regulating the licensing of

drivers in the State of Florida. They are distinct and separate divisions with distinct and separate functions and responsibilities -- one is a law enforcement agency while the other is the sole custodian of the driver license database. The DDL feeds information which it has collected and maintained to the FHP and any other law enforcement agency which seeks that information. The FHP has no control over the computer information regarding the status of a person's license to drive.

The Fifth District Court of Appeal recognized the separate and distinct functions of each of these two divisions of the DHSMV. The appellate court likewise distinguished between errors which are generated by law enforcement personnel and errors which are committed by **non**-law enforcement personnel. The Fifth correctly found that the DDL is a **non**-law enforcement agency, and therefore refused to apply the exclusionary rule by holding the police officer responsible for DDL's erroneous information.

The United States Supreme Court made it clear that the exclusionary rule is simply not effective when the offending action is not the fault of law enforcement action. *Arizona v. Evans*, 514 U.S. 1 (1995). In *Evans*, the Court was faced with the question of whether to make law enforcement officers responsible for the erroneous information provided by the court personnel who failed to enter the correct information. Because the exclusionary rule is supposed to act as a **deterrent** to future violations of the Fourth

Amendment, the Court looked to see if the exclusionary rule would effect, in any way, the future conduct of the court personnel who committed the error. The Court made three very important determinations: first, that the exclusionary rule was designed to deter **police conduct**, not mistakes by court employees; second, that there is no evidence that court employees ignore or subvert the Fourth Amendment or otherwise promote lawlessness; third, "and most important, there is no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed." *Id*. at 14-15.

The Court pointed out that "[t]he exclusionary rule operates as a judicially created remedy designed to safeguard against **future** violations of the Fourth Amendment rights through the rule's general deterrent effect." (emphasis added). *Id*. at 10. The Court discussed its *Leon* decision and the analysis necessary when determining whether to implement the exclusionary rule. The Court quoted the *Leon* opinion:

> Where the officer's conduct is objectively reasonable, "excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that . . . the officer is acting as a reasonable officer would and should act in similar circumstance. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty."

(internal cites omitted)

United States v. Leon, 468 U.S. 897 at 919-920 (1984).

The Court determined that the exclusionary rule would have no deterrent effect whatsoever on the conduct of the court employees. Therefore, there was no need to apply the exclusionary rule. The Court ultimately held that the officer was objectively reasonable when he relied on the police computer record, and it identified a "categorical exception to the exclusionary rule for clerical errors of court employees". *Id*. at 15-16.

One year after the *Evans* decision, this court decided *State v. White*, 660 So. 2d 664 (Fla. 1995). In *White*, this court applied the *Evans* rule of law to a situation in which the law enforcement officers were the ones who fed the erroneous information into the computer. When the computer incorrectly showed that the defendant had a pending warrant for his arrest, he was arrested based on that incorrect information. This court held that the law enforcement personnel were responsible for the incorrect information since they had failed to cancel the warrant information after they had already served the warrant several days before. *Id*.

It is clear, however, that this court's holding was based on the facts of the case which showed that it was clearly the officers' responsibility to notify the keeper of the computer records that they had already served the arrest warrant. They were the only persons who could have put the correct information in the

computer to show that the warrant was no longer outstanding. Because they were the ones who had the information but failed to put it in the computer promptly, they were at fault. This court did not allow the officers to benefit from their own error.

In reaching that decision, this court applied the United States Supreme Court's *Leon* analysis to determine whether the exclusionary rule would deter future carelessness or oversight. Since there was one sole cause for the error -- "failure of the police to maintain up-to-date and accurate computer records" -- it was proper to apply the exclusionary rule. *Id*. at 667. This court upheld the suppression of the evidence, stating clearly that "[s]uppression of evidence seized pursuant to police computer error will encourage law enforcement agencies to diligently maintain accurate and current computer records."

The instant case, however, presents a distinctly different set of facts. In the case at bar, the incorrect computer information was not caused by any law enforcement personnel. The civilian, non-sworn personnel of the Division of Driver Licenses, for some reason, failed to enter the correct information into the state license data bank -- that the Defendant's license had been re-instated. There was no failure on the part of any law enforcement person. The particular computer information which was the basis of the arrest in this case was within the absolute control of the DDL.

While there are some instances in which law enforcement

personnel control computer information which can form the basis of an arrest, that was not the situation here. This was not a situation in which the police agency which arrested someone failed to cancel the warrant. Nor was it a situation where a law enforcement agency issued a BOLO which they failed to promptly cancel. This case involved computer information which no law enforcement agency had any control over.

The Defendant's suspension was clearly the result of either a court's ruling or an administrative hearing relating to a drinking and driving offense. There was no law enforcement action connected to his license suspension. When the Defendant failed to present proof of completion of the court ordered alcohol treatment course, the DDL sent him a notice that his license would be canceled indefinitely. (R.5). The Defendant ultimately presented the necessary proof prior to the date he was advised to do so, and his license should have been reinstated. (R.4, 7). For some reason, that information was never entered into the DHSMV computer. But that failure was not the fault of any law enforcement personnel.

When Deputy Bowling correctly followed procedure for determining whether someone has a valid driver license, he received information that the Defendant's license was suspended. There was no "collective knowledge" to be imputed to Deputy Bowling. In fact, the Defendant himself assumed that his license was reinstated. There was simply an error -- a "computer glitch" as

counsel called it. But it was not the officer's error.

The Defendant would have the courts apply the exclusionary rule simply because one of the four divisions which fall under the umbrella of the DHSMV is the Highway Patrol. That is the sole connection that the Defendant can find between the clerical/administrative duties of the DDL and the law enforcement community. But that connection is so tenuous that it cannot support the application of the exclusionary rule.

If courts hold law enforcement agencies responsible for clerical errors over which they have no control, there will be a dangerous chilling effect on officers. They will hesitate to act upon any computer information for fear that they will be charged with violating the Fourth Amendment. Nor will it have any deterrent effect on the DDL personnel who have no knowledge of the effect of the court's ruling. In short, applying the exclusionary rule to the instant case will not accomplish any of the goals of the exclusionary rule.

The Fifth District Court recognized that the facts of the instant case simply did not call for the exclusionary rule's protection for the Defendant. The appellate court correctly applied this court's ruling in ***White*** and the United States Supreme Court's ruling in ***Evans*** when it reversed the trial court's order granting the motion to suppress. Therefore, this court should affirm the Fifth District Court's decision.

CONCLUSION

Based on the arguments and authorities presented herein, the State respectfully asks this court to uphold the decision of the Fifth District Court of Appeal in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Respondent's Merits Brief has been furnished by U.S. mail to **Kevin R. Monahan**, Attorney for Petiitoner, at P.O. Box 2682, Palatka, FL 32178, this _____ day of February, 1999.

Rebecca Roark Wall
Of Counsel

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TABLE OF AUTHORITIES

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CERTIFICATE OF FONT

Undersigned counsel hereby certifies that the brief filed herein is produced in **COURIER NEW, 12 point**.

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Of Counsel

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APPENDIX

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