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FILED

IN THE SUPREME COURT OF THE STATE OF FLORIDA

SID J. WHITE

JAN 7 1999

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

STANLEY SHADLER,

Petitioner,

vs.

CASE NO.: 93-784

STATE OF FLORIDA,

Respondent,

_____ /

ON APPEAL FROM THE DISTRICT COURT
OF APPEAL FOR THE FIFTH DISTRICT
FOR THE STATE OF FLORIDA

INITIAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE

The Petitioner in the present case is charged with possession of cocaine. (R-2, 20) He filed a motion to suppress evidence, alleging as grounds that his arrest for driving on a suspended license was unlawful because the computerized driving record on which the arresting officer relied incorrectly listed his driver's license as suspended. (R-1) Following a hearing on the motion, the trial court suppressed the evidence as the fruit of an unlawful search and the State timely filed a notice of appeal. (R-3, 8) On appeal the Fifth District Court of appeal reversed the trial court and the Petitioner filed to invoke the discretionary jurisdiction of this court which was granted.

FACTS

The Petitioner, Stanley Shadler, was stopped by a Deputy Sheriff for the Putnam County Sheriff's office on June 18, 1997. Another officer had relayed information that the Petitioner did not have a valid license (R-17). When the officer later saw the Petitioner driving the car he conducted a traffic stop (R-18). Upon making the stop the officer ran the Petitioner's license through DHSMV/DDL (R-18) an acronym for the Department of Highway Safety and Motor Vehicles, Division of Drivers Licenses. The license came back as suspended (R-19).

The Petitioner was arrested for Driving on a suspended license and was searched incident to his arrest. In looking through the Petitioner's wallet a white powdery substance was found in a plastic bag (R-20) which was later tested to be cocaine. The Petitioner was accordingly charged with possession of cocaine.

In fact, the Petitioner's license was not suspended. He was notified April 24, 1997 that it would be for failure to complete an alcohol treatment course, effective May 14, 1997 (R-5). Mr. Shadler completed the course and his license was reinstated May 13, 1997 (R-5 unmarked). The State stipulated that the DHSMV would acknowledge the misinformation was the result of a "computer glitch" and that the issue before the court was whether the DHSMV/DDL is a law enforcement agency (R-30).

SUMMARY OF ARGUMENT

The applicable law in this case requires the suppression of evidence obtained as the result of an arrest predicated by computer error where that error was the result of an agency charged with law enforcement duties. The Department of Highway Safety and Motor Vehicles, which was the agency that furnished the erroneous information, is such an agency.

ARGUMENT

THE TRIAL COURT WAS CORRECT IN SUPPRESSING THE EVIDENCE SEIZED INCIDENT TO THE PETITIONER'S UNLAWFUL ARREST THAT RESULTED FROM COMPUTER ERROR BY THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

This case revisits the issue addressed by this Court in the 1995 decision of State v. White, 660 So.2d 664 (Fla. 1995). In that case the Florida Supreme Court addressed the issue of a search incident to an arrest predicated by computer error. In that case the Defendant was arrested after a routine traffic stop when it was discovered that there was an outstanding civil contempt warrant for child support. In fact the warrant had previously been served and his arrest was the result of an error in the computer records of the Indian River County Sheriff's office.

Florida law had held that evidence seized as a result of such an unlawful arrest should be suppressed, State v. Schafer, 583 So.2d 374 (Fla. 4th DCA 1991); State v. Gifford, 558 So.2d 444 (Fla. 4th DCA 1990). Those precedents, however, were called into question by the then recent decision of the US Supreme Court of Arizona v. Evans, 115 S.Ct. 1185; 131 L.Ed.2d 34 (1995). That court held that the exclusionary rule did not require the suppression of evidence obtained incident to an arrest that had resulted from record keeping errors by court personnel.

When this court reviewed the White case the Evans decision

was distinguished. The Fourth Amendment Exclusionary Rule is aimed at deterring improper police conduct. In Evans the improper or negligent conduct was by Judicial personnel whose errors are not embraced by the exclusionary rule, United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed. 677 (1984). The Evans Court ruled accordingly.

However, in the White case the Florida Supreme Court was dealing with the errors of a law enforcement agency and held that where the computer error was made by a law enforcement agency the exclusionary rule still applies.

A recent decision from the First District Court of appeal dealt with a case directly on point. There, as here, a motorist was placed under arrest for driving with a suspended license. In fact the driver had a valid license. The First District Court of Appeal deemed the White decision as controlling and held that an arrest and search that was the result of erroneous information that the Defendant's license had been suspended was improper and ordered the suppression of the evidence, Bruno v. State, 704 So.2d 134 (Fla. 1st DCA 1997).

The trial court in this cause ruled similarly and ordered the evidence suppressed, specifically finding that the Department of Highway Safety & Motor Vehicles is included in the White decision as it is an agency charged with law enforcement duties through the Division of the Florida Highway Patrol. (R-3)

On appeal, the Fifth District Court of Appeal rejected this

position and looked further down the Department's organizational chart and held that the Division of Driver's Licenses, which was responsible for the record keeping and the computer error, was not a law enforcement agency and its personnel are "more similar to the court employees of Arizona v. Evans." State v. Shadler, 714 So.2d 662, 663. See also Bunse v. State, 661 So.2d 389 (Fla. 5th DCA 1995).

The status of the law does not appear to be in dispute in this appeal as both sides agree that where inaccurate records are negligently maintained by a law enforcement agency then an arrest predicated on the erroneous records is unlawful and the suppression of the evidence is appropriate. However, where the inaccurate information is supplied by non-law enforcement agencies the evidence is not subject to suppression.

Both the trial and appellate courts applied this rule with different results. At issue is whether the Department of Highway Safety and Motor Vehicle's Division of Drivers Licenses is embraced in this Court's mandate that law enforcement agencies properly maintain their records so as to preclude wrongful arrests or be subject to the suppression of evidence seized thereby.

The holding of the Fifth DCA would greatly narrow the scope of this Court's decision in White. There is probably no agency in the State of Florida which furnishes more information to police officers in the field than the Department and the Drivers

License Division. Information furnished by this agency is fed to police officers during virtually every traffic stop made in the State.

The organization of the DHSMV is set forth in the Florida Administrative Code and is not in dispute. Fla.Admin.Code R. 15.1001-15.1006. It is headed by an executive director and has four divisions, including the Florida Highway Patrol and the Division of Drivers Licenses. The trial court looked to the Executive Director and the DHSMV and ruled that the Department is charged with law enforcement responsibilities. The Fifth District Court of Appeal looked further down the organizational chart (Appendix A) to the Division of Drivers Licenses and found that they are not so charged. Neither the Bruno or Bunse decisions addressed this factual question.

The Petitioner submits to this Court that the trial court was correct in its interpretation and application of the White decision. In White this Court dealt with a data processing error made by the Indian River Sheriff's office. The Court held that:

Suppression of evidence seized pursuant to police computer error will encourage law enforcement agencies to diligently maintain accurate and current records.

Id at 667.

The opinion went on to cite this language from State v. Evans as "germane" to their opinion:

It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness. As automation increasingly invades modern

life, the potential for Orwellian mischief grows. Under such circumstances the exclusionary rule is a "cost" we cannot afford to be without. 177 Ariz. 201, 204, 886 P.2d 869, 872 (1994), rev'd ___ U.S. ____, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995).

at 667,668.

The Court's opinion recited the Fourth Amendment's guarantee of the right of the people to be secure in their person against unreasonable searches and seizures. It looked to the growing and pervasive role of computers in our lives and the mischief and damage that can be done by inaccurate information; never more true than in the case of data that can result in arresting the innocent. A concern for protecting people from false arrest and the need to encourage agencies to diligently maintain accurate and current computer records were the overriding concerns of this Court in White.

Those concerns, which were not addresses in the lower court's opinion, would be served by reversing the Fifth DCA's ruling and restoring the decision of the trial court.

Finding that the DHSMV is a law enforcement agency will afford the citizens of Florida the protection this Court sought to give them in White: to be secure against arrest by computer error and to encourage the Department to maintain accurate records. That the Director, who presides over the State's largest law enforcement body, would be so motivated is unquestionable.

The Department does not see itself as the disjointed

fragmented agency the State maintains with one division disinterested in the activities and mission of the other. A visit to the Department's web site shows they see themselves as a cohesive interrelated team working to accomplish a common mission. Appendix B.

Law enforcement is an essential element of that mission and the data furnished to officers in the field by employees of the Division of Drivers Licenses is an indispensable part of that mission. No employee of the Division charged with maintaining records relating to drivers' legal right to drive could possibly be unaware of the extensive use that is made of such information as part of the law enforcement function of the Highway Patrol as well as other law enforcement agencies.

That personnel of the Division are not directly charged with law enforcement duties and arrest powers does not excuse their neglect. In Evans, the Supreme Court did not exclude employees who are "adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, Id at 115 S.Ct. 1193.

A finding in behalf of the Petitioner would be consistent with the principles set out in White. It is almost certain that the prosecution in that case could have shown that the personnel responsible for the erroneous data for the Indian River Sheriff's office were clerical personnel under a Warrants or Civil Division as opposed to personnel from a Patrol or Detective Division.

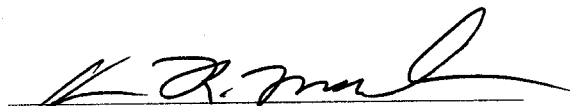
Such clerical personnel rarely are sworn law enforcement officers actually charged with law enforcement duties. They are from that myriad of clerical personnel essential to the operation of any large organization. Dispatchers have been held to be such adjuncts and the need to insure their effective training and efficiency in handling information is an important function of the exclusionary rule, United States v. Schareef, 100 F.3d 1491 (10th Cir. 1996). These concerns are no less applicable to the employees who mishandled Mr. Shadler's licensing information, just one step removed from the dispatcher that relayed it.

Following the State's organizational chart approach the White rule could be easily vitiated. The responsibility of the Director of the DHSMV to see to it that subordinates maintain records in an efficient and accurate manner to preclude the arrest of innocent parties is no less because his agency is divided into divisions. To hold otherwise would create a disincentive to do so. This court should not allow the right hand of law enforcement to profit by the inefficiencies of the left hand of the bureaucracy when they are both part of the same body. The decision of the trial court should be restored and the District Court of Appeal reversed.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully prays this honorable court reverse the decision of the Fifth District Court of Appeal.

Respectfully submitted,

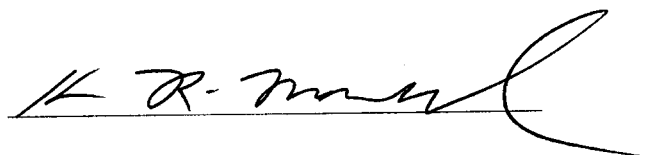


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Initial Brief of Appellee has been furnished by delivery via U.S. Mail to Roberta J. Tylke, Assistant Attorney General, 444 Seabreeze Blvd, Daytona Beach, FL, 32118 this 5th day of January 1999.



**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
FLORIDA HIGHWAY PATROL**

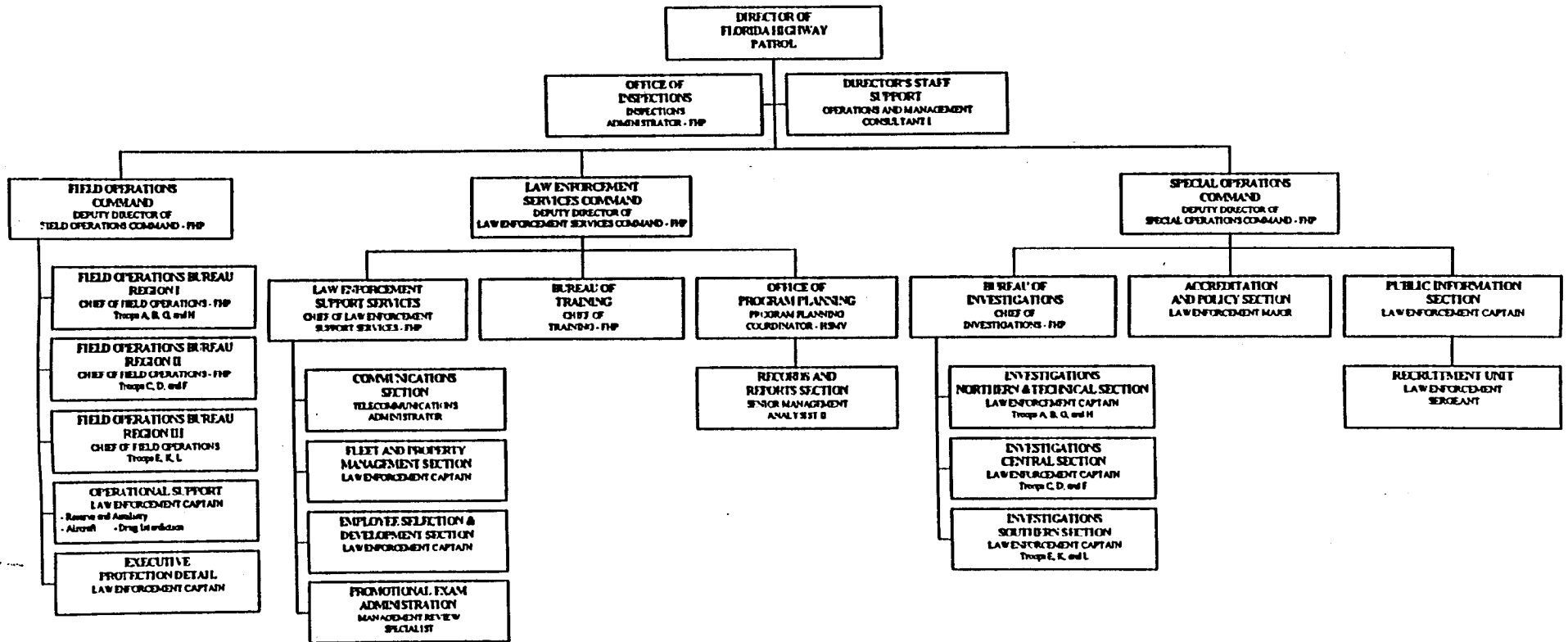




Photo courtesy of Florida Tourism Industry Marketing Corp.

Division Information

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- ▶ [Division of Driver Licenses](#)
- ▶ [Driver License Facts & Figures](#)
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Department of Highway Safety & Motor Vehicles

Overview

At the Department of Highway Safety and Motor Vehicles (DHSMV), we come into contact with nearly every Floridian.

People visit our offices to get a driver license to operate their vehicles. They come to us to register and title these same vehicles. They may receive assistance from the Florida Highway Patrol when their vehicle breaks down along Florida's highways or be reminded to slow down and buckle up.

But there is more to DHSMV than meets the eye. Our mission is making highways safe through service, education and enforcement.

More than 5,000 people around the state are dedicated to accomplishing this mission in more ways than most people know. You may be surprised by some of the duties department members perform.

Mission:

The Florida Department of Highway Safety and Motor Vehicles promotes a safe driving environment through law enforcement, public education and service, reduction of traffic crashes, titling and registering of motor vehicles and vessels, licensing motor vehicle operators, and regulation of motor vehicle exhaust.

- Fred Dickinson**, Executive Director
- Joe McCaskill**, Deputy Executive Director
- Sandra Lambert**, Director, Division of Driver Licenses
- Charles Brantley**, Director, Division of Motor Vehicles
- Col. Curt Hall**, Director, Florida Highway Patrol
- Sandra DeLopez**, Director, Division of Administrative Services
- Randy Esser**, Director, Information Systems Administration