

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA.

CRIMINAL DIVISION: "R"

CASE NO: 01-7438CF A02

STATE OF FLORIDA,

vs.

*****,

Defendant.

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE IN UNLAWFUL SEARCH

Pursuant to Fla. R. Crim. P. 3.190(h), article I, section 12 of the Florida Constitution, and the fourth and fourteenth amendments to the United States Constitution, Mr. *****, through undersigned counsel, requests that this Court grant this motion and in support thereof states the following:

1. Mr. ***** is charged by information with one count of felon in possession of firearm.
2. Mr. ***** is requesting that the firearm that was unlawfully seized in this case be suppressed.

FACTS

On July 8, 2001 at approximately 1:30 p.m., Officer Stephen Miller of the Lake Park Police Department stopped an automobile that Anthony ***** was driving because Mr. ***** failed to use a turn signal when required to do so and also because one of the rear taillights on Mr. *****'s car was broken. After stopping Mr. *****'s automobile, Office Miller asked to see *****'s driver's license. The license identified

him as being Anthony ***** who was a black male with a date of birth of November 11, 1964. The license also stated that Mr. ***** was five feet, 6 inches tall.¹

After doing a computer check using Mr. *****'s license, Office Miller was told by dispatch that Anthony ***** had an outstanding warrant for the traffic offense of driving under a suspended license in case number 01-8883TC A02. Although Mr. ***** told the officer that he did not have any outstanding warrant, Officer Miller still ordered Mr. ***** out of his car at which time Mr. ***** was handcuffed and placed under arrest. Moreover, in spite of Mr. *****'s protests that he did not have an outstanding warrant, Officer Miller did not ask dispatch what the outstanding warrant stated regarding the height and weight of the individual who was the subject of that warrant. Had he done so, Officer Miller would have been told that the individual who was the subject of that warrant was five feet, eight inches tall and weighed 130 pounds.²

Pursuant to a search incident to arrest, Officer Miller found a firearm, allegedly in Mr. *****'s waistband. The officer then discovered that Mr. ***** had a prior felony conviction. Mr. ***** was arrested for and subsequently charged with committing the offense of felon in possession of a firearm.

After Mr. ***** was arrested in the present case, he was taken to the jail at the Palm Beach County Sheriff's Office where he was booked in.³ According to that particular booking record, Mr. ***** is five feet, 6 inches tall and weighed 185 pounds

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¹ A copy of Mr. *****'s driver's license is attached to this motion and is identified as "Exhibit 'A.'" "

² A copy of that warrant is attached to this motion and is identified as "Exhibit 'B.'" "

³ A copy of the booking record is attached to this motion and is identified as "Exhibit 'C.'" "

on July 8, 2001.

Mr. ***** was subsequently given a court date in case number 01-8883TC A02. When he arrived in court for that case, Mr. ***** discovered that the person who had been issued a traffic citation in case number 01-8883TC A02 had been fingerprinted and that the fingerprint was located on the citation itself.⁴ Mr. ***** asked his attorney, Assistant Public Defender Hillary Harrison Gulden, if he could be fingerprinted in court so that his fingerprints could be compared to the fingerprint on the citation. That comparison was done, and case number 01-8883TC A02 was subsequently nolle prossed when after it was determined that Mr. *****'s fingerprints did not match the fingerprint on the citation.⁵

LAW

In *State v. White*, 660 So. 2d 664 (Fla. 1995), the defendant moved to suppress contraband that was discovered during a search incident to arrest following a traffic stop. The State and defendant stipulated to the following facts:

- (1) The defendant, David Allen White, was operating a motor vehicle on November 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.

⁴ A copy of Florida Uniform Traffic Citation number 7874-AXT that was issued in case number 01-8883TC A02 is attached to this motion and is identified as "Exhibit 'D.'"

⁵ A copy of the nolle proesse in case number 01-8883TC A02 is attached to this motion and is identified as "Exhibit 'E.'" However, the case number on the written nolle proesse was incorrectly written as "00-8883TC A02."

(3) Upon running the defendant, David Allen White's driver's license 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 existence 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 transferring the defendant to the Indian River County Sheriff's Office, Deputy Sheriff William Moore retrieved the actual hard copy of the warrant and discovered that the warrant had been served 4 days prior to the defendant's arrest.

Id. at 665.

The trial court granted the motion to suppress finding that a void warrant cannot support a legal arrest and incidental search. *Id.* The *White* Court ultimately agreed with the trial court's decision granting the motion to suppress and in so doing stated that "[i]t 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." *Accord Shadler v. State*, 761 So. 2d 279 (Fla. 2000); *State v. Murphy*, 793 So. 2d 112 (Fla. 2d DCA 2001).

Although Mr. *****'s case does not present an instance of computer error precipitated by government carelessness, it does, nonetheless, present an instance of human error precipitated by government carelessness that led to *****'s arrest which is also equally repugnant to the principles of a free society.

In the present case, Officer Miller exhibited carelessness when he did not obtain

additional information contained in the arrest warrant in case number 01-8883TC A02 after Mr. ***** told him that he did not have any outstanding warrant. Such readily-available information would have included the height and weight of the person for whom the warrant was issued. Had that been done in this case, Officer Miller would have discovered that the person identified in the warrant was five feet, eight inches tall and weighed 130 pounds whereas Mr. *****'s driver's license stated that he was 5 feet, 6 inches tall. In addition, Mr. ***** weighed 185 pounds when he was arrested in the present case as evidenced by the booking record identified as "Exhibit 'C,' " a copy of which is attached to this motion.

Another instance of government carelessness occurred when the officer who issued the citation in case number 01-8883TC A02 on April 11, 2001 did not have the fingerprint on that citation compared to Anthony *****'s fingerprints which were currently on file at the Palm Beach County Sheriff's Office as a result of *****'s arrest on September 21, 2000 in case number 00-10361CF A02. Had that fingerprint comparison been done anytime between April 11, 2001 and July 8, 2001, law enforcement would have known that Anthony ***** was not the individual who was cited for DUS in case number 01-8883TC A02. And had law enforcement known that Anthony ***** was not the individual who was cited for DUS in case number 01-8883TC A02, Mr. ***** would not have been arrested on July 8, 2001 and then searched incident to that arrest which, in turn, led to the seizure of the firearm that was allegedly located in Mr. *****'s waistband.

Because it is indeed repugnant to the principles of a free society that a person

should ever be taken into police custody because of an error (whether that error be human or computer-generated) precipitated by government carelessness, the firearm that was seized in the present case should be suppressed as the fruit of an unlawful search.

WHEREFORE, Mr. *****, through undersigned counsel, requests that the Court grant this motion suppressing the firearm that was unlawfully seized in the present case.

Ronald S. Chapman
Counsel for Defendant

CERTIFICATE OF SERVICE

I do certify that a copy hereof has been furnished to Assistant State Attorney Terence Nolan by delivery this 23d day of October, 2001.

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Circuit Judge Kenneth A. Marra