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DATE: February 25, 2000

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS

BILL #: HB 1491 (PCB CP 00-03)

RELATING TO: The Exclusionary Rule

SPONSOR(S): Committee on Crime & Punishment and Representative Ball

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT YEAS 5 NAYS 0
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(5)

I. SUMMARY:

HB 1491 creates a statutory exception to the exclusionary rule within chapter 90 (the Florida Evidence Code) for situations where a law enforcement officer effects an arrest based objectively reasonable reliance on information obtained from the Division of Driver Licenses. With regard to such cases, HB 1491 provides that evidence shall not be suppressed on the grounds that an arrest is subsequently determined to be unlawful due to erroneous information obtained from the Division of Driver Licenses.

The bill also makes specific Legislative findings with respect to the Department of Highway Safety and Motor Vehicles, the Division of Driver Licenses, and the exclusionary rule.

The bill also adds a subsection to s. 322.20 to provide that records created and maintained by the Division pursuant to chapter 322 shall not be regarded as law enforcement functions of agency record keeping.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article I, Section 12 of the state constitution is Florida's provision protecting persons from unreasonable searches and seizures. This section provides in part:

> . . . This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

This provision requires that decisions of the Florida Supreme Court regarding unreasonable searches and seizures comply with the decisions of the United States Supreme Court.

When evidence in a criminal case is suppressed as a result of an improper search, it is by operation of the "exclusionary rule." The exclusionary rule is a judicially created remedy designed to safeguard against future violations of 4th Amendment rights by its general deterrent effect on law enforcement agency or officer misconduct. This rule was not designed as a personal constitutional right of the party aggrieved. United States v. Leon, 487 U.S. 897 (1984); United States v. Calandra, 414 U.S. 338 (1974).

In United States v. Leon, 487 U.S. 897 (1984), the United States Supreme Court recognized a good-faith exception to the exclusionary rule. In Leon an officer conducted a search based on a search warrant issued by a state-court judge and found large quantities of drugs and other evidence. The items found were suppressed by the trial court based on a finding that there was insufficient probable cause to issue the warrant. The Court of Appeals affirmed the suppression of evidence. On review, the United State Supreme Court reversed the Court of Appeals and held that the exclusionary rule should not apply where evidence is seized in reasonable good-faith reliance on a search warrant which was later found to be invalid. In reaching its ruling, the Court developed a framework within which to analyze whether the application of the exclusionary rule was appropriate under the circumstances of the case before it.

Leon's analytical framework (discussed later) has been reapplied by the Court in other situations to determine the appropriateness of applying the exclusionary rule in other circumstances. For example in Illinois v. Krull, 480 U.S. 340 (1987), the Court upheld a search based on an officer's good-faith reliance on a statute authorizing warrantless administrative searches in which the statute was subsequently found to violate the 4th Amendment. Also, in Arizona v. Evans, 514 U.S. 1 (1995) the Court ruled that the exclusionary rule **does not** require the suppression of evidence seized in violation of the 4th Amendment where the erroneous information resulted from clerical errors of court employees. Significantly in Evans, *supra*, the Court reaffirmed the use of the Leon analytical framework for determining the applicability of the exclusionary to various situations saying:

> Even the dissenting Justices in Krull agreed that Leon provided the proper framework for analyzing whether the exclusionary rule applied; . . . (Citation omitted).
> *Id*. at 346.

On January 6, 2000, in Shadler v. State, slip opinion No. SC93784, the Florida Supreme Court reversed a decision of the Fifth District Court of Appeals, and in a 4-3 decision held that the exclusionary rule applies to errors committed by employees of the Division of Drivers Licenses of the Florida Department of Highway Safety and Motor Vehicles.[1]

The facts of the Shadler, case were as follows: A sheriff's deputy learned from a fellow officer that the defendant's driver's license was suspended. This information was subsequently verified through the sheriff's dispatcher. Approximately two hours later, the deputy stopped Shadler on the basis the information previously received. At the stop, the deputy ran a computer check through the Department of Highway Safety and Motor Vehicles ("DHSMV"), Division of Driver Licenses, which confirmed that Shadler's license was suspended. The deputy arrested Shadler for driving with a suspended license and searched him incident to that arrest. During the search, the deputy found cocaine inside Shadler's wallet. Shadler was then charged with possession of cocaine. After his arrest, Shadler learned from the DHSMV that the record showing a suspension of his license was mistaken due to a computer error, and that his license was in fact not suspended.[2]

The Florida Supreme Court relied upon their previous opinion in State v. White, 660 So.2d 664 (Fla. 1995) where they ruled that if an error causing an [illegal] arrest is attributable to law enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule. Even though the Court in Shadler relied on the White decision, however, the White opinion itself noted:

> The rule is not all encompassing, and its use has been historically limited to the deterrence of police misconduct. (Citations omitted) Even within the realm of deterring police misconduct, the rule is not ironclad, as is

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[1] The Justices for the majority were Anstead, Shaw, Pariente, and Lewis. The dissenters were Justices Wells, Harding and Quince.

[2] Shadler had been notified on April 24, 1997 that his license would be suspended if he did not complete an alcohol treatment course by May 14, 1997. Shadler completed the course and his license was returned to him on May 13, 1997. The stop took place on June 18, 1997.

> demonstrated by its "good-faith" exception enunciated in United State v. Leon (Citation omitted).
> *Id.*

Contrast the above excerpt with the following excerpt from Shadler:

> Finally, and of greatest importance, we conclude that the exclusion of evidence in cases such as the one at bar will surely serve to encourage accurate record keeping of driver's information.
> *Id.*

The Court in Shadler declares that the Department of Highway Safety and Motor Vehicles, including the Division of Driver Licenses (Division), is "essentially a law enforcement agency" and therefore, under White, the exclusionary rule applies to their errors. *Id*. at 13. As a result, evidence found during a search conducted incident to an arrest which is predicated on erroneous information obtained from the Division will be suppressed, even though the law enforcement officer was acting in good-faith reliance on that information.

In a strongly worded dissenting opinion, Justice Wells (with Justices Harding and Quince concurring) stated that it is "**patently erroneous** to stretch the reach of the exclusionary rule or of White's application of the exclusionary rule to the Division of Driver Licenses." (Emphasis added) Wells at slip opinion page 21. Justice Wells further stated:

> . . . **the majority avoids the requirement that our search and seizure applications comply with the decisions of the United States Supreme Court.** Reflective of this avoidance of the requirement is the majority's reliance on only the concurring opinions in Evans and on a 1974 opinion concerning the exclusionary rule in United States v. Calandra, 414 U.S. 338 (1974), and the majority's total omission of any reference to or quotation from Chief Justice Rehnquist's majority opinion in Evans and any reference whatsoever to the 1984 seminal opinion concerning the exclusionary rule in Leon, 468 U.S. 897 (1984). It is **Leon** which is discussed extensively in the majority opinion in Evans.
> *Id*. at 17. (Emphasis added).

Under the Leon framework, the determination of whether there is sound reason to apply the exclusionary rule is based on **three factors**.

The **first** factor is whether the exclusion of evidence will serve the purpose of the exclusionary rule to deter *police misconduct. See,* Krull *supra*, (analyzing Leon) at 348. The Division of Driver Licenses is one of four divisions within the DHSMV.[3] Each division within the DHSMV is supervised by a separate director and has its own organizational structure. Within the DHSMV, only the Florida Highway Patrol has been granted statutory law enforcement powers, under the direction and supervision of the Department. [Section 321.05.] The Division is responsible for administrative functions regarding the issuance of driver licenses, and maintenance of driving records. With regard to the "misconduct" component of Leon's first factor, no misconduct on the part of the officer or employee of the

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[3] The other divisions within the DHSMV are: the Florida Highway Patrol, the Division of Motor Vehicles, and the Division of Administrative Services.

Division was alleged by the defendant nor supported by the record.[4] Further, Justice Anstead, writing for the four member majority, did not address any issue of misconduct with regard to employees of the Division or the arresting officer. No majority opinion of the United States Supreme Court has expanded the application of the exclusionary rule to purely clerical errors in administrative agency record keeping.

The **second** factor of the Leon framework requires a showing that the person or entity making the error is inclined to ignore or subvert the 4th Amendment, or that lawlessness among these actors justifies the extreme sanction of exclusion. *See,* Krull *supra*, (analyzing Leon) at 348. In Shadler, *supra*, there was no mention of any basis to assume that any employee of the Division or the arresting officer was "inclined to ignore or subvert the 4th Amendment" or that there is "lawlessness" within the employees of the Division or the law enforcement agency.

Third, and most important, there must be a basis for believing that the exclusion of evidence would have a significant deterrent effect on the person or entity responsible for the error. *See,* Krull *supra*, (analyzing Leon) at 348. In Shadler, *supra*, after noting that the Division "is supervised by a separate director and has its own organizational structure," Justice Anstead wrote:

> We reject the invitation of the State to focus solely on the work of the Division of Driver Licenses. We cannot focus solely on the internal subdivisions of the Department of Highway Safety any more than we can focus solely on the internal subdivisions of any large law enforcement agency in assessing its accountability and protecting our citizens from unlawful arrests due to agency mistakes.
> Id. at 13.

The court later continued:

> . . . we conclude that at the very least the employees of the Division of Driver Licenses are "adjuncts to the law enforcement team" in the Department of Highway Safety [and Motor Vehicles].

The following excerpt from the majority opinion in Arizona v. Evans, *supra*, however, indicates a contrary conclusion:

> Finally, 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. Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, see Johnson v. United States, 333 U.S. 10, 14 (1948), they have no stake in the outcome of particular criminal prosecutions. Cf. Leon, at 917; Krull, supra, at 352. . . .
> Evans at 14.

As is the case with court clerks addressed by the United States Supreme Court in Evans, employees of the Division are not engaged in ferreting out crime, neither to do they have

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[4] This information is according to the Attorney General's Motion for Rehearing page 4.

any stake in the outcome of criminal prosecutions. In fact, record entries are made, on a day to day basis, by Division employees who simply input data into the computer without regard to whether or not a particular entry will eventually result in an arrest, search, or criminal prosecution. In fiscal year 1998-99 the Division processed nearly 13 million driver records, including over 1.2 million license revocations and suspensions.[5] Without a stake in criminal prosecutions, or a function which is more than mere record keeping, there is no basis to conclude that employees of the Division will be deterred from making future mistakes by excluding evidence in prosecutions they know nothing about.

The information which appears on a person's driving record comes from a wide variety of sources.[6] In addition, the Division employees of the DHSMV do not have exclusive control over the information that is entered into their computer system.[7] The DHSMV cannot independently verify the accuracy of every entry from every source.

The Shadler, majority's conclusion that errors of the Division should lead to exclusion of evidence is based on furthering the following principle which was embraced by the Florida Supreme Court in White, *supra*:

> 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.
> (Citation omitted).
> Shadler at 7, and partially quoted at 12.

This principle, however, is an excerpt taken from the Arizona Supreme Court's decision in Evans, *supra*, **which was the same opinion that was reversed by the United States Supreme Court**. In reversing the Arizona Supreme Court in Evans, the United States Supreme Court solidified its commitment to applying the exclusionary rule in a manner designed to accomplish its purpose of deterring police misconduct. As the United States Supreme Court explained in Evans:

> If it were indeed a court clerk who was responsible for the erroneous entry on the police computer, application of the exclusionary rule also could not be expected to alter the behavior of the arresting officer. As the trial court in this case stated: "I think the police officer [was] bound to arrest. I think he would [have been] derelict in his duty if he failed to arrest." App. 51. Cf. Leon, supra, at 920 ("'Excluding the evidence can in no way affect [the officer's] future conduct unless it is to make him less willing to do his duty.'" quoting Stone, 428 U.S., at 540 (White, J., dissenting)).

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[5] According to the Department of Highway Safety and Motor Vehicles website http://www.hsmv.state.fl.us/reports/facts_dl.html, on February 17, 2000.

[6] Other sources include: clerk of courts from Florida and other states, driver license offices of other states, tax collectors, insurance agencies, driving schools, the Department of Revenue, Probation and Parole, drivers themselves, and others.

[7] Other sources which can input information directly into the DHSMV computer include: judges, clerks of courts, and tax collectors.

> Evans, *supra* at 14.

The following passages are also instructive:

> As with any remedial device, the rule's application has been restricted to those instances where its remedial objectives are thought most efficaciously served. Leon, supra, at 908; Calandra, supra, at 348. Where "the exclusionary rule does not result in appreciable deterrence, then, clearly, its use . . . is unwarranted." United States v. Janis, 428 U.S. 433, 454 (1976).
> Evans, *supra*, at 8.
>
> . . . .
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> Particularly when law enforcement officers have acted in good objective faith, or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends the basics of the criminal justice system. (Citation omitted)
> Leon, *supra*, at 908.

C. EFFECT OF PROPOSED CHANGES:

HB 1491 essentially reverses the Florida Supreme Court's ruling in Shadler, *supra*. The bill makes the following findings of the Legislature:

1. The Department of Highway Safety and Motor Vehicles is not a law enforcement agency.

2. The Division of Driver Licenses is not an adjunct of any law enforcement agency.

3. Records maintained by the Division are not within the collective knowledge of any law enforcement agency.

4. The mission of the Department of Highway Safety and Motor Vehicles provides sufficient incentive to maintain records in a current and correct fashion.

5. The application of the exclusionary rule to cases where a law enforcement officer effects an arrest based objectively reasonable reliance on information obtained from the Division is repugnant to the purposes of the exclusionary rule and contrary to the decisions of the United States Supreme Court in Arizona v. Evans, *supra* and United States v. Leon, *supra*.

The bill creates a statutory exception to the exclusionary rule within chapter 90 (the Florida Evidence Code) for situations where a law enforcement officer effects an arrest based objectively reasonable reliance on information obtained from the Division. With regard to such cases, HB 1491 provides that evidence shall not be suppressed on the grounds that an arrest is subsequently determined to be unlawful due to erroneous information obtained from the Division.

The bill also adds a subsection to s. 322.20 to provide that records created and maintained by the Division pursuant to chapter 322 shall not be regarded as law enforcement functions of agency record keeping.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The decision of whether or not to apply the exclusionary rule in a particular situation does not, by itself, raise a 4th Amendment issue with regard to the use of such evidence at trial. The majority opinion of Arizona v. Evans states:

> . . .We have recognized, however, that the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands. "The wrong condemned by the [Fourth] Amendment is 'fully accomplished' by the unlawful search or seizure itself," and the use of the fruits of a past unlawful search or seizure "'work[s] no new Fourth Amendment wrong,'" Leon, supra, at 906 (quoting Calandra, supra, at 354).
> "The question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." (Citations omitted). Evans at 10.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime and Punishment adopted an amendment to change the effective date of the act to July 1, 2000.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by: David M. De La Paz

Staff Director: David M. De La Paz