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DATE: March 30, 2000

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS

BILL #: HB 1491

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
(2) JUDICIARY YEAS 8 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

HB 1491 creates a statutory exception to the exclusionary rule within chapter 90, F.S., (the Florida Evidence Code) for situations where a law enforcement officer makes an arrest based upon objectively reasonable reliance on information obtained from the Division of Driver Licenses. With regard to such cases, the bill 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, F.S., to provide that records created and maintained by the Division of Driver Licenses pursuant to chapter 322, F.S., shall not be regarded as law enforcement functions of agency record keeping.

The bill will take effect July 1, 2000.

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]

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.

On January 6, 2000, in Shadler v. State, Case No. SC93784, the Florida Supreme Court held that the exclusionary rule applies to errors committed by employees of the Division of Driver Licenses of the Florida Department of Highway Safety and Motor Vehicles.

In Shadler, a sheriff's deputy learned from a fellow officer that the defendant's driver's license was suspended. Slip Op. at 2. This information was subsequently verified through the sheriff's dispatcher. Id. Approximately two hours later, the deputy stopped Shadler on the basis of the information previously received. Id. 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. Id. The deputy arrested Shadler for driving with a suspended license and searched him incident to that arrest. Id. During the search, the deputy found contraband inside Shadler's wallet and arrested Shadler for possession of contraband.[1] 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 erroneous due to a computer error, and that his license was in fact not suspended.[2]

The Florida Supreme Court relied upon its previous opinion in State v. White, 660 So.2d 664 (Fla. 1995) where it ruled that if an error causing an [illegal] arrest is attributable to law

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[1] The District Court of Appeals explained that the "contraband" in this case was actually cocaine. See State v. Shadler, 714 So. 2d 662 (Fla. 5th DCA 1998).

[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. Slip Op. at 2.

enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule. Shadler held 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. Slip Op. 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.

The Shadler dissent argued 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." Slip Op. at 21 (Wells, J., dissenting). Justice Wells stated:

> Second, though stating that it recognizes the directive of article I, section 12 of the Florida Constitution, 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 17-18 (Wells, J., dissenting).

C. EFFECT OF PROPOSED CHANGES:

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

1. The Division of Driver Licenses of 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 and its employees have no stake in particular prosecutions.

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 upon 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 and United States v. Leon.

The bill creates a statutory exception to the exclusionary rule within chapter 90 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, the bill 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, F.S., to provide that records created and maintained by the Division pursuant to chapter 322, F.S., shall not be regarded as law enforcement functions of agency record keeping.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. 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:

This bill creates a statutory "good faith" exception to the exclusionary rule in cases where a law enforcement officer relies on information obtained from the Division of Driver's Licenses. 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 Fourth Amendment rights by its general deterrent effect on a 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, 906 (1984). In Leon, 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. Leon, 487 U.S. at 902. The items found were suppressed by the trial court based on a finding that there was insufficient probable cause to issue the warrant. Id. at 903. The Ninth Circuit affirmed the suppression of evidence. Id. at 904. 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. Id. at 922. 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.

The first factor that the Leon court considered is whether the exclusion of evidence would deter police misconduct. Leon, 468 U.S. at 916; Arizona v. Evans, 514 U.S. 1, 11 (1995). 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. Leon, 468 U.S. at 916; Evans, 514 U.S. at 11. 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. Leon, 468 U.S. at 916; Evans, 514 U.S. at 11.

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. In Evans, a police officer obtained information that indicated there was a warrant outstanding for Evans arrest, arrested him, and found marijuana. Evans, 514 U.S. at 4-5. It was later learned that there was no outstanding warrant but that either the sheriff's office or the court clerk's office had not corrected computer records to reflect there was no warrant. Id. at 5. The court held that the exclusionary rule need not be applied because the officer's relied in good faith on information from personnel that had no stake in the outcome of a prosecution. Id. at 14-16.

The court explained as follows:

> If court employees were responsible for the erroneous computer record, the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction. First, as we noted in Leon, the exclusionary rule was historically designed as a means

> of deterring police misconduct, not mistakes by court employees. (citations omitted). Second, respondent offers no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion. ... 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 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, (citations omitted), they have no stake in the outcome of particular criminal prosecutions.

Evans, 514 U.S. at 14-15.

Evans did not address whether the same rule would apply to police employees. This bill avoids that question by finding, as a matter of law, that employees of the Division of Driver's Licenses are not law enforcement personnel. The Shadler court concluded, based solely on an analysis of the Department's website and the Florida Administrative Code, that employees of the Division are "adjuncts to the law enforcement team." Slip Op. at 14.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

In Lowry v. Parole and Probation Comm'n, 473 So. 2d 1248, 1250 (Fla.1985), the court explained that when an amendment to a statute is enacted after controversy arises as to the interpretation of the original act, the amendment may be considered a legislative interpretation of the original law, rather than a substantive change thereof. This bill clearly rebuts the Court's factual premise that clerks at the Division of Driver's Licenses are law enforcement personnel. By clarifying that employees of the Division of Driver's Licenses are not adjuncts to law enforcement, it could be argued that Shadler's factual premise was wrong from the beginning and that Shadler should not be applied in any cases pending in the Florida Supreme Court, the District Courts of Appeal, or the trial courts.

This bill contains citations to United States Supreme Court case law which would be placed in the Florida Statutes. According to House Bill Drafting, citation to case law in the statutes is discouraged.

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:	Staff Director:
David M. De La Paz	David M. De La Paz

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:	Staff Director:
L. Michael Billmeier, J.D.	P.K. Jameson, J.D.