Rel: January 17, 2020

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0233

Frederick Leterrence Berry

v.

State of Alabama

Appeal from Pike Circuit Court
(CC-18-107)

On Application for Rehearing

COLE, Judge.

The opinion issued on September 20, 2019, is withdrawn, and the following opinion is substituted therefor.

Frederick Leterrence Berry appeals his guilty-plea conviction for possession of a controlled substance, a

violation of § 13A-12-212, Ala. Code 1975, and his resulting sentence of 24 months in prison, which the trial court suspended and imposed 24 months' probation.

Facts and Procedural History

Before he pleaded guilty, Berry moved to dismiss his indictment, arguing that his arrest was unlawful because "the officers were not in possession of the arrest warrant when they arrested [him] for failure to pay fines." (C. 33.) In a separate motion, Berry moved to suppress the drug evidence found as a result of that arrest.

At the hearing on Berry's motions, only one witness testified--Lt. Matthew Raiti of the Troy Police Department.[1] Lt. Raiti's testimony established the following: On April 6, 2017, the Troy Police Department was looking for a woman who had been reported missing by her family. While the search was ongoing, Lt. Raiti located what he believed to be the missing woman's vehicle in the parking lot of a Motel 6. Lt. Raiti spoke with the motel clerk, who directed him to Room 120. Lt. Raiti then went to Room 120 and knocked on the door, but he

[1]Berry was not present at the hearing because he had voluntarily absented himself from the proceeding. (R. 9-10.)

received no response. Lt. Raiti knocked again and heard "some noises" coming from inside the room. Lt. Raiti looked into the room through the window and saw a "black male walk towards the front of the room and then a white female walk into the restroom." (R. 9.) Lt. Raiti was "pretty sure" that the female was the missing person.

The black male then opened the door and spoke with Lt. Raiti. Lt. Raiti told the male why he was at the motel and asked him for his name, to which the male responded, "Frederick Berry." (R. 11.) At that point, Lt. Raiti ran Berry's name "through NCIC [National Crime Information Center] and through dispatch." (Id.) Lt. Raiti explained that it was "common practice" to check for warrants on people--particularly when he was looking for a missing person and he did not know if the female had been kidnapped. (R. 11.) Lt. Raiti said that, under the circumstances in this case, "it's pretty imperative [he] know[s] who [he is] speaking with." (R. 11-12.)

Dispatch responded to Lt. Raiti's request and informed him that Berry had two active capias warrants from the Troy Municipal Court--"[o]ne was for possession of marijuana second

and one was driving while [his license was] revoked." (R. 12-13, 15.) "Once [Lt. Raiti] was able to find out [they] had the warrants and [he] confirmed the information on the warrants ...., [he] placed [Berry] under arrest." (R. 13.) Lt. Raiti then performed a search incident to arrest. In Berry's right front pocket, Lt. Raiti found 15 Alprazolam pills and 3 blue oval pills that he could not identify. After he arrested and searched Berry, Lt. Raiti continued into the motel room where he located the missing female in the bathroom. Lt. Raiti then took Berry to the police station, booked him, processed him, and served him with copies of the active capias warrants. At that time, Berry was also charged with possession of a controlled substance.

On cross-examination, Lt. Raiti was asked to explain what a capias warrant is, to which he responded:

> "Capias warrants in essence are that the person has already been to--they've already been in front of a judge and have [pleaded] guilty or been found guilty and essentially they owe money to the Court or they could be not complying with conditions of their probation or whatever they've been given."

(R. 18.) Lt. Raiti also acknowledged that the active capias warrants for Berry's arrest were not for new offenses, that he did not physically see the warrants before he arrested Berry,

and that he did not have the warrants in his hand when he arrested Berry.

At the close of the hearing, Berry's counsel argued that, because Lt. Raiti did not have physical possession of the capias warrants and because "it's not a felony or misdemeanor that the defendant is being arrested for," Berry's arrest was unlawful and the search incident to that arrest was unlawful. (R. 21-22.) The State responded:

> "Following his procedures and policy under these circumstances, [Lt. Raiti] runs the information on Mr. Berry, comes back from dispatch that there are two outstanding warrants for him, capias warrants from the municipal court, which I'll agree they appear to be for failing to comply with conditions of a sentence that had been imposed on him for possession of marijuana second degree and driving while his license was revoked.
>
> "Acting on those warrants, he affected a lawful arrest and searched him incident to that lawful arrest where Lieutenant Raiti testified that he found the contraband that is the subject of these charges now that we have.
>
> "Furthermore, Lieutenant Raiti testified as well that once Mr. Berry was taken into custody, taken to the police station, as the statute would require, [§]15-10-3, [Ala. Code 1975,] with respect to warrantless arrests, when the officer has actual knowledge that a warrant for the person's arrest for the commission of a felony or misdemeanor has been issued, provided the warrant was issued for that chapter, and upon request, the officer shall show

> the warrant to the arrested person as soon as possible. And I believe that's exactly what he did.
>
> "He does not have to have the warrant in his possession at the time of the arrest, but shall inform a defendant of the offense charged and the fact that a warrant has been issued. I think every bit of that is very clear and exactly what Lieutenant Raiti testified to.
>
> "The fact that these were not arrest warrants for new offenses is inconsequential. The punishment remains the same. He has failed to comply with the orders of the court. Conditions of his sentences being that he pay these fees and these fines. These are misdemeanor offenses for which he was charged and he could be subject to further incarceration for failing to comply with the orders of the municipal court of Troy.
>
> "So any argument should fall woefully short of whether or not this was an actual legal and lawful arrest. And any search incident to that arrest comports specifically with the law."

(R. 23-25.)

After the hearing, the trial court issued an order finding that the drugs found in Berry's possession were "seized during a search of [his] person pursuant to his lawful arrest, and therefore [there was] no violation of his Statutory (Alabama Code [1975,] § 15-10-3) or Fourth Amendment Rights." (C. 45.) Thus, the trial court denied Berry's motions "separately and severally." (C. 45.) During the guilty-plea colloquy, Berry reserved for appeal the "issues

raised within those respective motions." (R. 32.) This appeal follows.

Discussion

On appeal, Berry argues, as he did in the trial court, that his arrest violated § 15-10-3(a)(6), Ala. Code 1975, because Lt. Raiti was not in physical possession of the outstanding capias warrants for Berry's arrest at the time he arrested Berry. According to Berry, because Lt. Raiti did not have physical possession of the capias warrants at the time he arrested Berry and searched him incident to that arrest, both his statutory and his Fourth Amendment rights were violated, and, thus, the drug evidence found as a result of the search incident to his arrest should have been suppressed.

I.

Berry's argument that his arrest violated § 15-10-3(a)(6) is without merit. Berry's arrest on validly issued, active capias warrants related to the commission of misdemeanor offenses by an officer who did not physically possess those warrants complied with Alabama law.

As it is currently constituted, § 15-10-3(a)(6) authorizes law-enforcement officers to arrest a person when they are not in physical possession of a warrant

> "[w]hen the officer has actual knowledge that a warrant for the person's arrest for the commission of a felony or misdemeanor has been issued, provided the warrant was issued in accordance with this chapter. However, upon request the officer shall show the warrant to the arrested person as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest the officer shall inform the defendant of the offense charged and of the fact that a warrant has been issued."

(Emphasis added.)

According to Berry's reading of this statute, an officer may arrest a person when he or she is not in physical possession of a warrant only when that warrant is issued for a newly committed felony or misdemeanor offense--not when it is a capias warrant that is related to the commission of a felony or misdemeanor offense. Berry bases his narrow reading of § 15-10-3(a)(6) on two cases from this Court: Johnson v. State, 675 So. 2d 512 (Ala. Crim. App. 1995), and Edwards v. State, 961 So. 2d 914 (Ala. Crim. App. 2006). Those cases, however, do not control here.

To be sure, both Johnson and Edwards hold that, "[a]ccording to § 15-10-3(a)(6), because the warrant for the appellant's arrest was not for the commission of a felony or a misdemeanor, the arresting officer could not legally arrest the appellant without personally possessing the arrest warrant." Johnson, 675 So. 2d at 513; see also Edwards, 961 So. 2d at 915-16. However, those cases do not involve arrests based on validly issued, active capias warrants related to the commission of a misdemeanor offense. Rather, both Johnson and Edwards involve arrests based on warrants issued for civil contempt citations for failure to pay child support. See Johnson, 675 So. 2d at 513; Edwards, 961 So. 2d at 915. Neither Johnson nor Edwards applies in cases that involve an arrest for an outstanding capias warrant related to the commission of a criminal offense, nor do those cases persuade this Court to read § 15-10-3(a)(6) in the same way Berry does.

In Ex parte Chesnut, 208 So. 3d 624, 640 (Ala. 2016), the Alabama Supreme Court recognized the following fundamental principles of statutory construction:

> "'It is this Court's responsibility to give effect to the legislative intent whenever that intent is manifested. State v. Union Tank Car Co., 201 So. 2d 402, 403

> (1967). When interpreting a statute, this Court must read the statute as a whole because statutory language depends on context; we will presume that the Legislature knew the meaning of the words it used when it enacted the statute. Ex parte Jackson, 614 So. 2d 405, 406-07 (Ala. 1993). Additionally, when a term is not defined in a statute, the commonly accepted definition of the term should be applied. Republic Steel Corp. v. Horn, 105 So. 2d 446, 447 (1958). Furthermore, we must give the words in a statute their plain, ordinary, and commonly understood meaning, and where plain language is used we must interpret it to mean exactly what it says. Ex parte Shelby County Health Care Auth., 850 So. 2d 332 (Ala. 2002.)'
>
> "Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003.)"

Applying these principles of statutory construction to § 15-10-3(a)(6), we read that statute in a way that authorizes a law-enforcement officer to arrest a person when the officer is aware of a validly issued, active capias warrant that is related to the commission of a misdemeanor offense. Our reading of § 15-10-3(a)(6) is supported by the "plain, ordinary, and commonly understood meaning" of § 15-10-3(a)(6), the legislative history of § 15-10-3, and precedent from both this Court and the Alabama Supreme Court involving arrests on validly issued, active capias warrants related to the

commission of a misdemeanor offense when the officers were not in physical possession of those warrants.

First, the plain language of § 15-10-3(a)(6) clearly authorizes a law-enforcement officer to arrest a person without being in physical possession of a warrant if the officer has actual knowledge of a warrant that has been issued "for the commission of a felony or misdemeanor" offense. According to Berry, the word "for" should be construed narrowly to limit an officer's authority to arrest when the officer has actual knowledge that a warrant has been issued for a newly committed offense--not when the warrant is related to the commission of a prior offense. However, the word "for" is not as narrow as Berry suggests. Merriam-Webster defines the word "for" as being "with respect to" or "concerning" something. See Merriam-Webster Collegiate Dictionary 488 (11th ed. 2003). Before arresting Berry, Lt. Raiti confirmed with dispatch that Berry had two active capias warrants, "[o]ne was for possession of marijuana second and one was driving while [his license was] revoked." (R. 12-13, 15.) Berry, thus, had outstanding warrants "with respect to" the commission of two misdemeanor offenses. The plain and

unambiguous language of § 15-10-3(a)(6) expressly authorizes an arrest "with respect to" a misdemeanor offense to be made by an officer who does not physically possess that warrant. Thus, Lt. Raiti's actions complied with the plain and ordinary understanding of the statute.

Aside from a plain reading of the statute, the legislative history of § 15-10-3 also supports our reading of the statute. We recognize that Alabama law has not always authorized a law-enforcement officer to arrest a person for an outstanding misdemeanor warrant when the officer was not in physical possession of that warrant. In fact, from 1852 to 1988, Alabama law prohibited an officer from arresting someone for a misdemeanor offense unless that officer either observed the misdemeanor offense being committed or was in physical possession of a misdemeanor warrant for that person's arrest.[2] See Adams v. State, 175 Ala. 8, 11, 57 So. 591, 592 (1912) ("It may be conceded that the arrest in question, the defendant having been charged only with a misdemeanor not

[2]See Ala. Code of 1852, § 445; Ala. Code of 1867, § 3994; Ala. Code of 1876, § 4664; Ala. Code of 1886, § 4262; Ala. Code of 1896, § 5211; Ala. Code of 1907, § 6269; Ala. Code of 1923, § 3263; Ala. Code of 1940, Title 15, § 154; and § 15-10-3, Ala. Code 1975.

committed within the presence of the officer could only have been lawfully made under a warrant ...; yet the state's proof shows that [the officer] did have a warrant."); see also Shewmake v. City of Montgomery, 506 So. 2d 383, 385 (Ala. Crim. App. 1987) (recognizing that, as long as one of the officers who is present when the arrest is made is in possession of the outstanding misdemeanor warrant, the officer who actually arrests the defendant need not be in physical possession of the warrant).

Title 15, § 154, of the Code of 1940--the Code that immediately preceded our current code--set out the circumstances under which an officer was permitted to arrest someone without a warrant as follows:

> "An officer may also arrest any person, without warrant, on any day and at any time, for any public offense committed, or a breach of the peace threatened in his presence; or when a felony has been committed, though not in his presence, by the person arrested, or when a felony has been committed, and he has reasonable cause to believe that the person arrested committed it; or when he has reasonable cause to believe that the person arrested has committed a felony, although it may afterwards appear that a felony had not in fact been committed; or on a charge made, upon reasonable cause, that the person arrested has committed a felony."

That section from the Code of 1940 was carried over to the Code of 1975, and originally read as follows:

> "'An officer may arrest any person without a warrant, on any day and at any time, for:
>
> "'(1) Any public offense committed or a breach of the peace threatened in his presence;
>
> "'(2) When a felony has been committed, though not in his presence, by the person arrested;
>
> "'(3) When a felony has been committed and he has reasonable cause to believe that the person arrested committed it;
>
> "'(4) When he has reasonable cause to believe that the person arrested has committed a felony, although it may afterwards appear that a felony had not in fact been committed; or
>
> "'(5) On a charge made, upon reasonable cause that the person arrested had committed a felony.'"

Ex parte Edwards, 452 So. 2d 503, 505 (Ala. 1983) (quoting § 15-10-3, Ala. Code 1975).

Under that version of § 15-10-3, the Alabama Supreme Court twice addressed the question that is currently before this Court: Whether a law-enforcement officer may arrest a person for a validly issued, active capias warrant related to the commission of a misdemeanor offense without physically possessing the warrant. In both cases, the Alabama Supreme Court held that the officer could not.

In the first case, Ex parte Talley, 479 So. 2d 1305 (Ala. 1985), "Montgomery police officer Stephen Eiland went to Talley's sister's residence with two other officers in order to arrest Talley for three unpaid misdemeanor fines. None of the officers had a warrant with them at the time of the arrest." 479 So. 2d at 1305 (emphasis added). When the officers attempted to arrest Talley, Talley escaped from their custody. Talley was later captured, charged with escape, and tried and convicted of that offense. On appeal, Talley argued that, at the time the officers came to arrest him on the capias warrants, none of the officers had the warrants in their possession; thus, his arrest violated § 15-10-3. 479 So. 2d at 1306. The State argued, on the other hand, that "in order to make a valid arrest for a misdemeanor which was not witnessed by the officer, a warrant must exist, but need not be in the officer's physical possession at the time of the arrest." 479 So. 2d at 1306 (emphasis added).

The Alabama Supreme Court agreed with Talley, explaining that, under § 15-10-3, "a warrant is required to effect an arrest on a misdemeanor not witnessed by the police officer" but noting that "[t]he statute ... does not mention whether

the warrant has to be in the arresting officer's possession." 479 So. 2d at 1307. The Alabama Supreme Court, relying on United States v. Robinson, 650 F.2d 537 (5th Cir. 1981), which examined § 15-10-3, concluded that "'it would seem to be implicit in the statutory authorization that the officer must have in his possession the warrant for a misdemeanor arrest for the purpose of exhibiting it to the arrestee.'" Talley, 479 So. 2d at 1307.

In the second case, Ex parte Brownlee, 535 So. 2d 218 (Ala. 1988), "El Paso Brownlee was arrested on November 13, 1985, in Tuscaloosa on a writ of arrest issued for his failure to pay a fine on an earlier misdemeanor charge of driving while his license was revoked," and a small amount of marijuana was found in his possession after he was arrested. 535 So. 2d at 219 (emphasis added). Brownlee argued that the drug evidence was due to be suppressed because, he said, "the arrest writ on the misdemeanor charge was not in the possession of the police officer at the time of his arrest, as required by Ala. Code 1975, § 15-10-3." 535 So. 2d at 219 (emphasis added). The Alabama Supreme Court agreed, holding that

> "[f]or an arrest to be valid on a misdemeanor offense not witnessed by the arresting officer, the officer must have the arrest warrant in his possession at the time of arrest. Ex parte Talley, 479 So. 2d 1305 (Ala. 1985). See, also, Ex parte Edwards, 452 So. 2d 503 (Ala. 1983). Thus, when a police officer arrests without a warrant, and the defendant objects to the introduction of evidence seized as an incident to the arrest, 'the burden is on the State to show that the arrest was lawful' pursuant to § 15-10-3. Duncan v. State, 278 Ala. 145, 161, 176 So. 2d 840, 855 (1965)."

Brownlee, 535 So. 2d at 219. The Alabama Supreme Court then concluded that the State had failed to meet its burden and reversed the circuit court's decision denying Brownlee's motion to suppress. Brownlee, 535 So. 2d at 220.

Talley and Brownlee make two points clear: First, the Alabama Supreme Court has equated a capias warrant that is related to the commission of a misdemeanor offense with a "misdemeanor warrant"; second, at the time those cases were decided, § 15-10-3 prohibited an officer from arresting someone on a validly issued, active capias warrant related to a misdemeanor offense unless that officer was in physical possession of that warrant.

A little over six months after the Alabama Supreme Court decided Brownlee, however, the Alabama Legislature amended § 15-10-3, Ala. Code 1975. See Act No. 89-857, Ala. Acts 1989.

That amendment, which became effective on May 17, 1989, added (among other things) subsection (a)(6) to § 15-10-3. That subsection authorized officers to arrest any person without having a warrant in their possession

> "[w]hen he has actual knowledge that a warrant for the person's arrest for the commission of a felony or misdemeanor has been issued, provided such warrant was issued in accordance with the provisions of this chapter. However, upon request he shall show the warrant to the arrested person as soon as possible. If the officer does not have the warrant in his possession at the time of arrest he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued."

Act No. 89-857, Ala. Acts 1989.

In other words, under § 15-10-3(a)(6), the legislature authorized law-enforcement officers to arrest a person on an outstanding felony or misdemeanor warrant without being in possession of that warrant so long as two conditions were met: (1) the officer had actual knowledge that the warrant had been issued; and (2) the warrant was issued in accordance with Chapter 10 of Title 15, Code of Alabama 1975.

After the legislature amended § 15-10-3, this Court twice addressed the same question that was at issue in Talley and Brownlee. In both cases, this Court came to a different conclusion than did the Alabama Supreme Court in Talley and

Brownlee and held that an arrest made on a capias warrant related to the commission of a misdemeanor offense could be made without the officer being in physical possession of the warrant.

In the first case, Scarbrough v. State, 621 So. 2d 996 (Ala. Crim. App. 1992), Scarbrough was arrested on "a misdemeanor warrant from municipal court for failing to pay a fine" that "had been issued by the Birmingham Municipal Court in 1988 on the charge of failure to pay a fine on a conviction in municipal court for driving without a driver's license." 621 So. 2d at 997, 999 (emphasis added). In other words, the arrest was made based on a capias warrant related to a misdemeanor offense. In the trial court and on appeal, Scarbrough argued that his arrest on the capias warrant was illegal. To support his argument, Scarbrough cited Ex parte Talley, supra, arguing "that the arrest was illegal because the officers did not have the misdemeanor warrant in their possession" at the time of the arrest. Scarbrough, 621 So. 2d at 998 n.1. This Court noted the holding in Talley, but rejected Scarbrough's argument because the legislature had amended § 15-10-3 to specifically authorize arrests for

validly issued, active misdemeanor warrants when the officer was not in possession of the warrant. Specifically, this Court explained:

> "Talley was decided on the basis of former Ala. Code 1975, § 15-10-3(1). Effective May 17, 1989, more than eight months before the instant offense, § 15-10-3 was amended. The amended version provides, in pertinent part, that '[a]n officer may arrest any person without a warrant, on any day and at any time ... [w]hen he has actual knowledge that a warrant for the person's arrest for the commission of a felony or misdemeanor has been issued, provided such warrant was issued in accordance with the provisions of this chapter.' Ala. Code § 15-10-3(a)(6) (Supp. 1990) (emphasis added). The officers in this case clearly had actual knowledge that the misdemeanor warrant had been issued. The question of the validity of the issuance of the warrant was not raised at trial and is not advanced on appeal."

Scarbrough, 621 So. 2d at 998 n.1.

In the second case, Webster v. State, 662 So. 2d 920 (Ala. Crim. App. 1995), police officers received a tip from an informant who told them that Webster would be selling drugs at a specific place and at a specific time. Webster, 662 So. 2d at 921. Before going to the location described by the informant, a detective "discovered that [Webster] was subject to three outstanding capias warrants for the misdemeanor offense of failure to pay municipal court fines." 662 So. 2d at 921 (emphasis added). "The municipal court confirmed this

information and issued the warrants." Id. Without being in physical possession of those warrants, the detective went to the place where the informant said Webster would be and "immediately informed [Webster] that he was under arrest pursuant to the arrest warrants."[3] Id. After placing him under arrest, the detective used a drug-detection dog to sniff Webster's car. The dog alerted to the presence of drugs. The

[3]Although Webster does not expressly note whether the officer in that case had physical possession of the capias warrants at the time Webster was arrested, to read that case to say that the officer had possession of the warrants at the time of the arrest would be inconsistent with the plain language of that opinion. Indeed, when this Court discussed the issuance of the capias warrants in Webster it immediately cited § 15-10-3(a)(6), Ala. Code 1975--the statute that addresses when an arrest can be made without being in physical possession of the warrant. If the officer in Webster had been in possession of the capias warrants at the time he arrested Webster, then there would have been no need for this Court to cite or discuss § 15-10-3(a)(6). Furthermore, the facts outlined in Webster show that another officer was "advised to .... 'go ahead and do a vehicle inventory search' while the paperwork on the arrest warrant was conducted." 662 So. 2d at 921 (emphasis added). Again, both the stated facts and the law this Court applied in its analysis all clearly indicated that the capias warrant for a "misdemeanor offense of failure to pay municipal court fines" was not in the officer's possession at the time of Webster's arrest and the subsequent search, all of which this Court upheld because "'[o]nce the capias warrant was issued, the officers were authorized to take [Webster] into custody on that warrant,'" Webster, 662 So. 2d at 921 (quoting Fletcher v. State, 621 So. 2d 1010, 1023 (Ala. Crim. App. 1993)).

officers on the scene then took Webster to the police station and took his vehicle to an impound lot to search it for drugs based on the alert from the drug-detection dog.

At the police station, the dog sniffed the interior of the vehicle but did not alert as to the presence of drugs. Thereafter, the officers, who were no longer searching for drugs, conducted an inventory of the vehicle pursuant to Webster's arrest on the capias warrants. During the inventory search, the officers found cocaine and, as a result, arrested Webster for unlawful possession of a controlled substance. Webster pleaded guilty to that offense.

On appeal, Webster argued that the circuit court erred when it denied his motion to suppress the drug evidence found in his car because, he said, it was the fruit of an illegal search. Although Webster's argument was that the officer acted in bad faith in having the warrants issued to facilitate the investigation of the informant's tip, in addressing Webster's argument, this Court expressly recognized that, "'[o]nce the capias warrant was issued, the officers were authorized to take [Webster] into custody on that warrant,'" Webster, 662 So. 2d at 921 (quoting Fletcher v. State, 621 So.

2d 1010, 1023 (Ala. Crim. App. 1993)) (emphasis added). This Court then held that Webster "was subject to a lawful arrest pursuant to the capias warrants issued by the municipal court." 662 So. 2d at 922 (emphasis added).

In other words, Scarbrough and Webster make it clear that our Court, after the legislature amended § 15-10-3, has held, like the Alabama Supreme Court did in Talley and Brownlee, that a capias warrant for failing to pay fines associated with a misdemeanor offense is a "misdemeanor warrant," and that, unlike the holding of the Alabama Supreme Court in Talley and Brownlee under the previous statute, officers may make arrests on validly issued, active capias warrants for failing to pay municipal-court fines when the officer is not in physical possession of those warrants.

Thus, consistent with the plain meaning of § 15-10-3(a)(6), the legislative history of that statute, the Alabama Supreme Court's decision to equate a capias warrant related to a misdemeanor offense with a "misdemeanor warrant," and our holdings in Webster and Scarbrough, we hold that law-enforcement officers in Alabama are not required to physically possess a validly issued, active capias warrant that is

related to the commission of a misdemeanor offense in order to make a valid arrest under Alabama law. Indeed, as the State argued in its application for rehearing, to hold otherwise would "lead to absurd results where officers who cannot obtain a physical copy of a capias warrant in a timely manner are prohibited from arresting dangerous criminals who are flagrantly violating court orders, while suspects charged with relatively minor offenses can be arrested on the spot." (State's application for rehearing, p. 6.) "As we have so often said, statutes must be given a reasonable interpretation, not one that is illogical, incompatible with common sense, or that would reach an absurd result that could not possibly have been intended by the Legislature." P.J.B. v. State, 999 So. 2d 581, 587 (Ala. Crim. App. 2008).

When that holding is applied to this case, it is clear that Berry's arrest was permitted by § 15-10-3(a)(6), Ala. Code 1975, and, thus, Berry's motion to suppress evidence from the search incident to that arrest was properly denied by the trial court.

II.

Berry also argues on appeal that his Fourth Amendment rights were violated because Lt. Raiti was not in possession of the capias warrants when he arrested Berry. But even if Lt. Raiti had violated § 15-10-3(a)(6), Berry's Fourth Amendment argument would still be meritless.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and ensures that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV.

Berry does not argue that his arrest ran afoul of either the "reasonableness" clause or the "warrant" clause of the Fourth Amendment. In fact, Berry claims neither that his seizure was unreasonable nor that the capias warrants for his arrest did not exist at the time of his arrest or that the warrants were, in some way, invalid. Rather, Berry concedes that the capias warrants were validly issued and active at the time of his arrest; he argues only that, under § 15-10-

3(a)(6), Ala. Code 1975, a police officer cannot arrest a person for an outstanding capias warrant unless that officer is in physical possession of that warrant. In other words, Berry argues on appeal that, because, he says, his arrest did not comply with the procedures set out in the Code of Alabama, his rights under the United States Constitution were violated.

Although Berry invokes the Fourth Amendment by claiming that the Fourth Amendment requires actual, physical possession of a warrant before an officer can arrest someone, the constitutionality of an arrest does not turn on whether an officer has actual, physical possession of an arrest warrant. See, e.g., United States v. Bembry, 321 F. App'x 892, 894 (11th Cir. 2009) (not selected for publication in the Federal Reporter) (recognizing that "[t]here is no federal requirement that an officer have a warrant in hand or nearby when he is arresting a suspect"); United State v. Munoz, 150 F.3d 401, 411 n.6 (5th Cir. 1998) (noting that "[t]he arrest warrant need not pertain to the crime with which the suspect is later charged. ... Nor must law enforcement officers possess the warrant; they must only have reliable knowledge of it"); United States v. Buckner, 717 F.2d 297, 301 (6th Cir. 1983)

("The fact that the officers did not have the arrest warrant in hand is of no consequence."; United States v. Leftwich, 461 F.2d 586, 592 (3d Cir. 1972) ("While it is true that the arresting agents did not have the warrant with them at the time of arrest, they were not required to have it in their possession if it was outstanding at that time."); United States v. Holland, 438 F.2d 887, 888 (6th Cir. 1971) ("The fact that the officers did not have physical possession of the warrant at the time of the arrest is of no consequence to the validity of the arrest."); United States v. Salliey, 360 F.2d 699, 704 (4th Cir. 1966) ("The arrest by officers not in possession of the outstanding warrant was legal."). Thus, even if Lt. Raiti had violated § 15-10-3(a)(6) when he arrested Berry, that statutory violation would not require a finding that the Fourth Amendment was also violated. See, e.g., California v. Greenwood, 486 U.S. 35, 41-44 (1988) ("We reject the notion that the Florida law procedures governing warrantless arrests are written into the federal Constitution."). As the Eleventh Circuit has stated: "There is no federal right not to be arrested in violation of state law." Knight v. Jacobson, 300 F. 3d 1272, 1276 (11th Cir.

2002) (holding that a misdemeanor arrest supported by probable cause was valid under the Fourth Amendment, even though it may have violated Florida state law).

In sum, even if Lt. Raiti had violated state law when he arrested Berry, there would be no constitutional violation here because the Fourth Amendment does not require officers to be in actual, physical possession of an arrest warrant when executing an arrest.

III.

Finally, we note that even if Berry's arrest had violated § 15-10-3 or the Fourth Amendment (which it did not), the exclusion of the drug evidence found as a result of Berry's arrest would still not have been the proper remedy in this case for two reasons.

First, even if we viewed Lt. Raiti's actions as having violated the Fourth Amendment, we would hold that Lt. Raiti acted in good faith and in objectively reasonable reliance on precedent from both this Court and the Alabama Supreme Court. Thus, the exclusionary rule would not apply. In fact, our Supreme Court's decision in Ex parte Morgan, 641 So. 2d 840 (Ala. 1994), compels such a finding.

In Morgan, law-enforcement officers in Alabama were contacted by law-enforcement officers in Florida, who informed the Alabama officers that they had warrants from the State of Florida for Morgan's arrest and that they needed help locating him at his last known address in Alabama. At some point, an officer from Florida, who was in possession of the Florida warrants, came to Alabama and joined with officers from both an Alabama law-enforcement agency and officers from various federal agencies to locate Morgan at his last known address in Alabama. When they arrived at the address, Morgan answered the door and did not consent to the officers entering the room. When the officers confronted him with the Florida warrants, however, Morgan relented. At that point, an officer with an Alabama agency arrested Morgan, based upon the Florida warrants, for being a fugitive from justice from the State of Florida. When officers searched Morgan's room, they located various items that he later argued were "fruit of the poisonous tree." The day after they arrested Morgan, law-enforcement officers from Alabama obtained an Alabama fugitive-from-justice warrant for Morgan.

On appeal, Morgan argued that the items found in his room were "obtained upon an illegal warrantless arrest." Morgan, 641 So. 2d at 842. The Alabama Supreme Court agreed that "the warrantless arrest was invalid." 641 So. 2d at 842. Specifically, Morgan's arrest "did not meet the requirements of § 15-9-40 and § 15-9-41, because the police did not have a fugitive-from-justice warrant before making the arrest and did not know before the arrest that the crimes Morgan was charged with were punishable by life imprisonment." Id. Because the motel room where Morgan was located was searched incident to his arrest, Morgan did not consent to the officers entering his motel room, and "[t]he [Fourth Amendment] protection against warrantless searches and seizures in regard to a dwelling has been extended to motel rooms," the Alabama Supreme Court found that the statutory violation in Morgan implicated Fourth Amendment consideration. 641 So. 2d at 842 (citing United States v. Diaz, 814 F.2d 454 (7th Cir. 1987)). However, the Alabama Supreme Court did not end its analysis there. Rather, the Court held that the officer's arrest of Morgan without being in possession of an Alabama fugitive-from-justice warrant and the subsequent search of Morgan's

property incident to that arrest "f[e]ll under the protection of the 'good faith' exception to the Fourth Amendment exclusionary rule." 641 So. 2d at 843.

In so doing, the Alabama Supreme Court explained:

> "The good faith exception provides that evidence obtained in violation of the Fourth Amendment by officers acting in objectively reasonable reliance on a warrant issued by a neutral and detached magistrate need not be excluded from the State's case-in-chief even if the warrant is ultimately found to be invalid. United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). The officers' reliance on the magistrate's probable-cause determination and on the technical sufficiency of the warrant the magistrate issued must be objectively reasonable. Leon.
>
> "'[]The exclusionary rule [of the Fourth Amendment] is neither intended nor able to "cure the invasion of the defendant's rights which he has already suffered,"' but rather 'operates as "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect [of preventing subsequent police misconduct]."' Leon, 468 U.S. at 906, 104 S. Ct. at 3412. The deterrent effect must be balanced against the 'substantial social cost' the rule imposes. Leon, 468 U.S. at 907, 104 S. Ct. at 3412.
>
> > "'[W]hen law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred [by the exclusionary rule] on such guilty defendants offends basic concepts of the criminal justice system.'
>
> "Leon, 468 U.S. at 908, 104 S. Ct. at 3412."

Morgan, 641 So. 2d at 843 (emphasis added).

The Alabama Supreme Court concluded in Morgan that, although the Alabama officers did not comply with Alabama law when they arrested Morgan without possessing an Alabama fugitive-from-justice warrant, "an objective officer could have reasonably relied upon the two Florida warrants in the possession of a Florida law enforcement official present at the arrest scene to conduct the warrantless arrest." Morgan, 641 So. 2d at 843.

Similarly, here, even if Lt. Raiti violated Berry's constitutional rights when he arrested Berry, Lt. Raiti's arrest of Berry was "objectively reasonable" because an officer could have reasonably believed that it was proper to arrest Berry on the already issued, active capias warrants without being in physical possession of those warrants, given this Court's decisions in Webster and Scarbrough, which expressly hold that an officer who does not physically possess a "capias warrant" may thus still make a valid arrest "once a capias warrant has issued." To hold that Lt. Raiti's arrest of Berry was anything other than objectively reasonable would result in the untenable effect of informing law-enforcement

officers that the opinions of this Court cannot be reasonably relied upon by them in the field. Cf. Michigan v. DeFillipo, 443 U.S. 31 (1979) (holding that an officer's assumption that a law was valid was reasonable even though the law was later declared unconstitutional and thus affirming the arrest and search incident to that arrest). "[T]he sole purpose of the exclusionary rule is to deter misconduct by law enforcement." Davis v. United States, 564 U.S. 229, 246, 131 S. Ct. 2419, 2432, 180 L. Ed. 2d 285 (2011). There has never been any allegation before the trial court or on appeal that Lt. Raiti's arrest of Berry was anything other than "nonculpable, innocent police conduct." And, as the United States Supreme Court has noted, it has "'never applied' the exclusionary rule to suppress evidence obtained as a result of nonculpable, innocent police conduct." 564 U.S. at 240, 131 S. Ct. at 2428. As the United States Supreme Court has explained: "'[T]he ultimate touchstone of the Fourth Amendment is "reasonableness."' Riley v. California, 573 U.S. [373,] 134 S. Ct. 2473, 2482, 189 L. Ed. 2d 430 (2014) (some internal quotation marks omitted)." Heien v. North Carolina, 574 U.S. 54, 60, 135 S. Ct. 530, 536, 190 L. Ed. 2d 475 (2014). Thus,

even if we agreed with Berry's reading of § 15-10-3(a)(6), Lt. Raiti's actions were certainly reasonable when he construed that statute in precisely the same way this Court has interpreted it.

Second, even if we had concluded that Lt. Raiti's actions violated state law, we would hold that the exclusionary rule would not bar the admission of the drug evidence in this case. As the United States Court of Appeals for the Sixth Circuit has explained:

> "The exclusionary rule is a judicially fashioned remedy aimed at deterring constitutional violations, the application of which is appropriate when the Constitution or a statute requires it. Sanchez-Llamas v. Oregon, [548] U.S. [331], [347,] 126 S. Ct. 2669, 2680, 165 L. Ed. 2d 557 (2006); United States v. Caceres, 440 U.S. 741, 754–55, 99 S. Ct. 1465, 59 L. Ed. 2d 733 (1979); United States v. Giordano, 416 U.S. 505, 524, 94 S. Ct. 1820, 40 L. Ed. 2d 341 (1974) (in the absence of Fourth Amendment violation, suppression remedy depends upon provisions of the statute); United States v. Ware, 161 F.3d 414, 424–25 (6th Cir. 1998). It is well-settled that '[s]uppression of evidence ... has always been our last resort, not our first impulse,' and the exclusionary rule is only applicable 'where its remedial objectives are thought most efficaciously served.' Hudson v. Michigan, 547 U.S. 586, 126 S. Ct. 2159, 2163, 165 L. Ed. 2d 56 (2006) (citation omitted).
>
> "Although exclusion is the proper remedy for some violations of the Fourth Amendment, there is no exclusionary rule generally applicable to statutory

> violations. Rather, the exclusionary rule is an appropriate sanction for a statutory violation only where the statute specifically provides for suppression as a remedy or the statutory violation implicates underlying constitutional rights such as the right to be free from unreasonable search and seizure. See Sanchez-Llamas, 126 S. Ct. at 2679-682 (finding that suppression is not an appropriate remedy for violation of Article 36 of the Vienna Convention); United States v. Donovan, 429 U.S. 413, 432 n.22, 97 S. Ct. 658, 50 L. Ed. 2d 652 (1977) (denying exclusion for violation of wiretapping statute, 18 U.S.C. § 2518); Ware, 161 F.3d at 424 (6th Cir. 1998) ('statutory violations, absent underlying constitutional violations, are generally insufficient to justify imposition of the exclusionary rule'); United States v. Meriwether, 917 F.2d 955, 960 (6th Cir. 1990) (holding that government violations of the Electronic Communications Privacy Act do not warrant suppression of evidence)."

United States v. Abdi, 463 F.3d 547, 555-56 (6th Cir. 2006) (emphasis added).

So even if Lt. Raiti had violated § 15-10-3(a)(6) when he arrested Berry, that statutory violation would not be tantamount to a Fourth Amendment violation. Indeed, this is not a case where a police officer arrested someone without a warrant having been issued. See, e.g., State v. Phillips, 517 So. 2d 648 (Ala. Crim. App. 1987) (holding that evidence should be suppressed when there was no warrant issued for Phillips's arrest for a misdemeanor offense and the

misdemeanor was not committed in the presence of a police officer). This is also not a case where the warrants that were issued for Berry's arrest were in some way invalid. See, e.g., Anderson v. State, 445 So. 2d 974 (Ala. Crim. App. 1983) (holding that a warrant that was accompanied by an unsigned affidavit was invalid and that evidence seized as a result of that warrant was subject to exclusion). Nor is this even a case, like Morgan, where warrants were issued after the arrest. Rather, this is a case where validly issued warrants for Berry's arrest already existed; the officer simply did not possess them when he arrested Berry. As already stated, failure to strictly adhere to the terms of § 15-10-3(a)(6), Ala. Code 1975, in executing an arrest on a validly issued, outstanding warrant without physically possessing the warrant at the time of arrest would not automatically result in a constitutional violation, and exclusion of the evidence obtained pursuant to the search was not required.

Conclusion

In conclusion, Lt. Raiti's arrest of Berry was permitted by both Alabama law and the Fourth Amendment, and, even had this Court held otherwise, Berry's arrest would still have

been objectively reasonable based on clear precedent supporting the validity of that arrest. The evidence obtained from Berry incident to his arrest was not due to be suppressed under any of Berry's arguments. As the United States Supreme Court has stated, "[s]uppression of evidence ... has always been our last resort, not our first impulse." Hudson v. Michigan, 547 U.S. 586, 591, 126 S. Ct. 2159, 2163, 166 L. Ed. 2d 56 (2006). Accordingly, the trial court did not err by denying Berry's motion to suppress.

For these reasons, we grant the State's application for rehearing and affirm the judgment of the trial court.

APPLICATION FOR REHEARING GRANTED; OPINION OF SEPTEMBER 20, 2019, WITHDRAWN; OPINION SUBSTITUTED; AFFIRMED.

Minor, J., concurs.

Windom, P.J., concurs in Part I and Part II and concurs in the result.

McCool, J., concurs in Part I and Part II and concurs in the result, with opinion.

Kellum, J., concurs in the result.

McCOOL, Judge, concurring in Part I and Part II and concurring in the result.

I agree that Frederick Leterrence Berry's arrest did not violate § 15-10-3(a)(6), Ala. Code 1975, or violate his Fourth Amendment rights, and I concur fully with Parts I and II of the main opinion. However, I believe that Part III of the main opinion is unnecessary to the disposition of Berry's appeal and, thus, is merely dictum. I would not include Part III in this Court's decision, and I express no opinion as to the correctness of the reasoning set forth in that part. Accordingly, I concur with Parts I and II of the main opinion, and I concur in the result.