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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-1288

State of Alabama

v.

Trenteon J. King

Appeal from Mobile Circuit Court
(CC-17-5256)

KELLUM, Judge.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

Windom, P.J., and Minor, J., concur. McCool, J., concurs specially, with opinion. Cole, J., concurs in the result.

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McCool, Judge, concurring specially.

In this case, the search warrant was directed "to the Sheriff of Mobile County" but was executed by officers of the Mobile Police Department. Consequently, it is clear that the search warrant was not "executed by any of one of the officers to whom it is directed" in violation of § 15-5-7, Ala. Code 1975. The majority's unpublished memorandum correctly addresses the only arguments raised by the State on appeal; thus, I concur with the decision to affirm the trial court's order suppressing the evidence recovered as a result of the execution of the search warrant. However, the violation in this case was a technical violation of a state statutory provision and was not a constitutional violation. I write specially to note that exclusion of the evidence is not always required for statutory violations that do not rise to the level of constitutional violations. As a plurality of this Court recently stated:

"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

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the right to be free from unreasonable search and seizure.'"

Berry v. State, [Ms. CR-18-0233, January 17, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020) (plurality opinion) (quoting United States v. Abdi, 463 F.3d 547, 556 (6th Cir. 2006)).

I did not concur in the section of Berry that included the above-quoted language because the case was decided properly on other grounds and the section was unnecessary to the disposition of the appeal. However, I do agree that the exclusion of evidence is not always required for statutory violations that do not rise to the level of constitutional violations. Nevertheless, this specific issue was not properly presented in the present case. Therefore, I concur.