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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA, Appellant, v. J.R.D., Appellee.	Case No. 2D18-2034

Opinion filed December 20, 2019.

Appeal from the Circuit Court for Sarasota County; Rochelle Curley, Judge.

Ashley Moody, Attorney General, Tallahassee, and Linsey Sims-Bohnenstiehl, Assistant Attorney General, Tampa, for Appellant.

Howard L. Dimmig, II, Public Defender, and Daniel Muller, Assistant Public Defender, Bartow, for Appellee.

VILLANTI, Judge.

The State appeals a dispositive order granting the suppression of a small quantity of illicit drugs discovered on J.R.D. following his arrest on an allegedly valid warrant. However, because J.R.D.'s arrest resulted from a combination of human and computer error by the police, the arrest was illegal, and we affirm the trial court's

decision to suppress the contraband. We write to explain why suppression was the proper remedy on these facts.

At the hearing on the motion to suppress, the arresting officer testified that she and another officer came into contact with J.R.D. and his identical twin brother while on routine patrol on December 5, 2017. She stopped both brothers because she believed that at least one of them had an active warrant. The Sarasota County Sheriff's computerized warrant system confirmed the officer's belief concerning the existence of a warrant because it reflected that <u>both</u> boys had active warrants. The officer also contacted the Sheriff's dispatch officer to confirm the existence of the warrants—a procedure consistent with department policy—and the dispatch officer advised that J.R.D. had an active warrant but that his brother did not. Based on the information from the warrant system and the confirmation from the dispatch officer, the officer arrested J.R.D. and subsequently discovered contraband. The officer then put J.R.D. in her car to take him to jail.

However, as the officer was on her way to the jail with J.R.D., she learned that the information from both the warrant system and the dispatch officer was incorrect and that J.R.D. had no active warrants at that time. Instead, only J.R.D.'s brother had a current active warrant. Nevertheless, the officer proceeded to the jail with J.R.D., and the State brought charges against him based on his possession of the contraband. J.R.D. moved to suppress the contraband based on the illegal arrest. The trial court granted the motion, concluding that the evidence should be suppressed as a product of an illegal arrest. The State now appeals this dispositive order.

In reviewing an order on a motion to suppress, "we accept the historic facts as found by the trial court but review the legal issues de novo." McClamma v. State, 138 So. 3d 578, 581-82 (Fla. 2d DCA 2014). In this case, the State concedes that the wrong person was arrested and that the discovery of contraband pursuant to that arrest was thus illegal. Hence, the only question is a legal one, i.e., whether the trial court properly applied the exclusionary rule to suppress the evidence found as a result of the illegal arrest. See Bowen v. State, 685 So. 2d 942, 944 (Fla. 5th DCA 1996) ("When an individual is unreasonably seized, any evidence obtained as a result of the seizure must be suppressed."). As to that question, the State argues that the remedy of suppression was inapplicable to this case because the police conduct at issue constituted nothing more than simple negligence and the arresting officer acted in good faith. In contrast, J.R.D. argues that the State did not prove that the errors arose from only simple negligence and that because the underlying errors were attributable to police conduct, suppression of the evidence seized is the only proper remedy. Like the trial court did, we agree with J.R.D.

We begin with the proposition that the Constitution itself does not provide a remedy when contraband is found during a seizure or search conducted in violation of the Fourth Amendment. To avoid allowing constitutional rights to be ignored with impunity, the Supreme Court created a remedy in the form of the exclusionary rule. See Weeks v. United States, 232 U.S. 383, 393 (1914) ("If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned,

might as well be stricken from the Constitution."), overruled on other grounds by Mapp v. Ohio, 367 U.S. 643 (1961). "The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." Arizona v. Evans, 514 U.S. 1, 10 (1995). Under this rule, the police conduct resulting in the illegal seizure need not be nefarious or intentional for the remedy of suppression to apply; suppression is also appropriate to "deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." Herring v. United States, 555 U.S. 135, 144 (2009).

However, an exception to the exclusionary rule applies when the police exercised complete good faith and the underlying error was not attributable to police conduct.

> The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force.

United States v. Leon, 468 U.S. 897, 919 (1984) (quoting Michigan v. Tucker, 417 U.S. 433, 447 (1974)). In Evans, the Supreme Court reaffirmed this interpretation of the good faith exception to the exclusionary rule, explaining that an error in a police computer system that was caused by court personnel did not warrant application of the exclusionary rule "[b]ecause court clerks . . . have no stake in the outcome of particular criminal prosecutions." 514 U.S. at 15. And as Justice Scalia later explained, "the value of deterrence depends upon the strength of the incentive to commit the forbidden

act." Hudson v. Michigan, 547 U.S. 586, 596 (2006). Therefore, when the mistake is attributable to an officer's reliance in good faith on information provided by other government entities that have no incentive to err, application of the exclusionary rule has no value. Florida courts have followed this logic, agreeing that the exclusion of evidence based on an error not attributable to law enforcement would not further the rule's purpose of deterrence. See, e.g., Shadler v. State, 761 So. 2d 279, 285 (Fla. 2000). However, the good faith exception does not apply to mistakes or errors caused by law enforcement personnel. Simply put, "if the error causing the arrest is attributable to law enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule." Id. at 281. No exceptions to that rule apply.

In the present case, the errors resulting in the illegal arrest of J.R.D. were twofold, and both errors were attributable to at least the negligence of law enforcement personnel. First, according to the arresting officer's testimony, the Sheriff's computerized warrant system incorrectly reflected that J.R.D. had an active warrant for his arrest. A police computer error that results in an erroneous arrest is a valid basis to suppress any evidence obtained as a result of that arrest. See State v. Murphy, 793 So. 2d 112, 114 (Fla. 2d DCA 2001); see also State v. White, 660 So. 2d 664, 667 (Fla. 1995) ("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." (quoting State v. Evans, 866 P.2d 869, 872 (Ariz. 1994))). The Florida Supreme Court has explained that a computer error is attributable to the police because the accuracy of the information in the system depends entirely on the information entered into it; "junk in equals junk out." White, 660 So. 2d at 666. Hence, when the

"failure of the police to maintain up-to-date and accurate computer records resulted in an illegal arrest and search," evidence gathered in that search had to be suppressed. Id. at 667; see also Shadler, 761 So. 2d at 285 ("With the benefits of more efficient law enforcement mechanisms comes the burden of corresponding constitutional responsibilities." (quoting Evans, 514 U.S. at 17-18 (O'Connor, J., concurring))); Miles v. State, 953 So. 2d 778, 780 (Fla. 4th DCA 2007) (concluding that the exclusionary rule applied when the State failed to prove that the computer error was not attributable to law enforcement); Albo v. State, 477 So. 2d 1071, 1076 (Fla. 3d DCA 1985) ("Suppressing the fruits of an arrest made on a recalled warrant will deter further misuse of the computerized criminal information systems and foster more diligent maintenance of accurate and current records." (quoting People v. Ramirez, 668 P.2d 761, 765 (Cal. 1983))). Suppression is warranted because "[t]his type of police negligence fits squarely within the class of governmental action that the exclusionary rule was designed to deter, i.e., police negligence or misconduct that is likely to be thwarted if the evidence seized is suppressed." White, 660 So. 2d at 667.

Here, the only evidence presented at the suppression hearing showed that the Sheriff's computerized warrant system contained an error. The State presented no evidence that this error was attributable to anyone other than the law enforcement personnel responsible for keeping that system up to date. Therefore, the error here, which resulted from the incorrect information in the Sheriff's computerized warrant system, would not support application of the good faith exception to the exclusionary rule.

Second, according to the arresting officer's testimony, she followed the department procedure to confirm the warrant, and the Sheriff's dispatch officer mistakenly confirmed that J.R.D. had an active warrant, presumably because of "confusion" between J.R.D. and his identical twin brother's somewhat similar names and their obviously identical birth dates.[1] Based on these somewhat unique facts, the State contends that because "the error was the result of isolated negligence attenuated from the arrest," the exclusionary rule should not apply. Herring, 555 U.S. at 137. However, the State failed to carry its burden of proof on this point.

"[T]he defendant has the burden to prove that a search is invalid; however, once the defendant establishes that the search was conducted without a warrant, the burden shifts to the State to produce clear and convincing evidence that the warrantless search was legal." Palmer v. State, 753 So. 2d 679, 680 (Fla. 2d DCA 2000). Here, then, the burden was on the State to prove that its conduct was such that the exclusionary rule should not apply. See Miles, 953 So. 2d at 779-80 (reversing conviction when State introduced no evidence to support its argument that the error in the computer system was caused by someone other than law enforcement). And because "the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence," Herring, 555 U.S. at 144, the State had the burden to prove that the dispatch officer's conduct was not deliberate, reckless, or grossly negligent.

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[1]We note that other than beginning with the same letter, the twin brothers' names are not particularly similar.

In the present case, however, the State offered no evidence whatsoever on this point. It did not offer any testimony from the dispatch officer concerning what steps she took to "confirm" the warrant; it offered only the testimony of the arresting officer that the existence of the warrant was erroneously confirmed. And the State itself recognized in its brief that "there was no evidence before the trial court that such errors by the Sarasota Police Department are routine or widespread." The problem with this statement is that it was the State's burden to prove that such errors were not routine or widespread, and it failed to do so. Therefore, because the trial court had no evidentiary basis upon which to find that the dispatch officer's conduct was an isolated incident of simple human error, the State failed to carry its burden to prove that the good faith exception to the exclusionary rule should apply.[2]

Moreover, we note that there was some indication by the arresting officer that the dispatch officer provided the incorrect information because she confused J.R.D.'s name with that of his brother. Tellingly, this error was made by the same police department that erroneously arrested J.R.D., and the error defeated the entire purpose of the department policy requiring a confirmatory call to the dispatch officer. Here, instead of catching and correcting the error in the computerized warrant system viewed

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[2]Contrary to the concurring opinion's characterization of our decision, we do not hold that the exclusionary rule applies to any police conduct regardless of how isolated or attenuated from the arrest. Rather, as we explain in depth in our opinion, the State has the burden to prove that any police negligence was isolated and attenuated from the arrest, and the State failed to carry that burden in this case. We find the existence of two errors in the same arrest disturbing; first, the error in the computer system that showed two warrants and second, the error arising from the dispatcher providing erroneous information to the officer. It is this combination of errors that leads us to conclude that J.R.D.'s arrest arose from more than an isolated act of simple negligence.

by the arresting officer, the dispatch officer exacerbated the error by making a second error. We cannot agree with the State that this was the kind of attenuated negligence discussed in Herring or that application of the exclusionary rule in this case would not deter future police misconduct.

Finally, we cannot agree that the act of the dispatch officer constituted some sort of independent negligence that should excuse the actions of the arresting officer. Just as Florida courts have long held that the knowledge of one officer may be imputed to other officers under the fellow officer rule, the same is true for their mistakes. See Walker v. State, 606 So. 2d 1220, 1221 (Fla. 2d DCA 1992) ("Based on the 'collective knowledge' or 'fellow officer' rule, an otherwise illegal arrest cannot be insulated from challenge by the fact that the arresting officer relied on erroneous radio information from a fellow officer or employee."); Reza v. State, 163 So. 3d 572, 576 n.4 (Fla. 3d DCA 2015) ("Thus, 'the rule works both ways: to validate an arrest when the responsible officers have probable cause and to vitiate it when, as here, none objectively exists.' " (quoting Albo, 477 So. 2d at 1073)). "[J]ust as the police may permissibly act upon their collective knowledge, so they are restrained by their collective ignorance." Albo, 477 So. 2d at 1074. Hence, the fact that the arresting officer relied in good faith on information from the dispatch officer does not insulate this arrest from the application of the exclusionary rule.

Accordingly, because the only evidence adduced at the suppression hearing established that J.R.D.'s arrest was based on an error in the Sarasota County Sheriff's warrant system that was perpetuated by misinformation provided by its

dispatch officer, the good faith exception to the exclusionary rule does not apply. We therefore affirm the order granting the dispositive motion to suppress.

Affirmed.

ROTHSTEIN-YOUAKIM, J., Concurs.
ATKINSON, J., Concurs in result only with opinion.

ATKINSON, Judge, Concurring.

I concur in the majority opinion in result only. Language in the majority opinion suggests that the exclusionary rule always applies—and that the good faith exception never applies—when an improper search or seizure is attributable to police error:

> However, the good faith exception does not apply to mistakes or errors caused by law enforcement personnel. Simply put, "if the error causing the arrest is attributable to law enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule." . . . No exceptions to that rule apply. . . . The State presented no evidence that this error was attributable to anyone other than the law enforcement personnel responsible for keeping that system up to date. Therefore, the error here, which resulted from the incorrect information in the Sheriff's computerized warrant system, would not support application of the good faith exception to the exclusionary rule.

(citing Shadler v. State, 761 So. 2d 279, 281 (Fla. 2000)). The majority relies on Florida Supreme Court opinions, the language of which suggests that if police error led to the search or seizure, ipso facto, the resulting evidence must be suppressed. See Shadler, 761 So. 2d at 281 (citing State v. White, 660 So. 2d 664, 667 (Fla. 1995), for the proposition "that if the error causing the arrest is

attributable to law enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule").[3]

However, subsequent United States Supreme Court case law is incompatible with the rigid formulation expressed in those passages of the majority opinion quoted above. See Herring v. United States, 555 U.S. 135, 147 (2009) (rejecting the "claim that police negligence automatically triggers suppression" because it could not be "squared with the principles underlying the exclusionary rule, as they have been explained in our cases"). We are constitutionally bound to follow such case law. See art. I, § 12, Fla. Const. (providing that the right to be free from unreasonable searches and seizures "shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court"); Bernie v. State, 524 So. 2d 988, 992 (Fla. 1988) ("[A]rticle I, section 12, of the Florida Constitution brings this state's search and seizure laws into conformity with all decisions of the United States Supreme Court.").

"[W]rongful police conduct" that is "the result of isolated negligence attenuated from the arrest" does not justify imposition of the exclusionary rule. See Herring, 555 U.S. at 136–37, 147–48; see also Davis v. United States, 564 U.S. 229, 239 (2011) ("[I]n Herring . . . we extended [Arizona v.] Evans[, 514 U.S. 1 (1995)], in a

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[3]In Shadler, the Florida Supreme Court held that the Department of Highway Safety and Motor Vehicles, acting through its Division of Driver Licenses (the Department), constitutes a law enforcement agency, and applied White to conclude that the exclusionary rule was justified when police relied on a Department record erroneously indicating that the defendant's license had been suspended. Shadler, 761 So. 2d at 280. The holding of Shadler is now in direct conflict with section 322.202(1), Florida Statutes (2019), which provides that the Department is not a law enforcement agency and that the exclusionary rule does not apply when police reasonably rely on errors made by the Department in conducting an arrest.

case where police employees erred in maintaining records in a warrant database. 'Isolated,' 'nonrecurring' police negligence, we determined, lacks the culpability required to justify the harsh sanction of exclusion." (quoting Herring, 555 U.S. at 137, 144)). When an unlawful search or seizure is caused by police error, the question of whether such a Fourth Amendment violation requires suppression "turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct." Herring, 555 U.S. at 137.

> In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, . . . we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not "pay its way."

Id. at 147–48 (citing and quoting United States v. Leon, 468 U.S. 897, 907–10 (1984)).

In White, the Florida Supreme Court held that the "failure of the police to maintain up-to-date and accurate computer records . . . fits squarely within the class of governmental action that the exclusionary rule was designed to deter, i.e., police negligence or misconduct that is likely to be thwarted if the evidence seized is suppressed." White, 660 So. 2d at 667. But that does not necessarily mean that all negligent record-keeping—or every instance of reasonable reliance upon it by arresting officers—is of the type justifying "the extreme sanction of exclusion." See Herring, 555 U.S. at 140 (quoting Leon, 468 U.S. at 916).

The Florida Supreme Court in White aimed to resolve what it perceived the United States Supreme Court had "left unanswered" up to that point: "[W]hether the exclusionary rule bars the use of evidence obtained as the result of an illegal arrest

resulting from police error." White, 660 So. 2d at 666 ("[In Evans, the United States Supreme] Court held that the [exclusionary] rule does not require evidence suppression where the erroneous computer information results from clerical errors committed by court employees." (emphasis added)); see also Evans, 514 U.S. at 14–16 (applying the good faith exception to police reliance on a court record erroneously indicating the existence of an outstanding arrest warrant).

The United States Supreme Court has since answered that question: "What if an officer reasonably believes there is an outstanding arrest warrant, but that belief turns out to be wrong because of a negligent bookkeeping error by another police employee?" Herring, 555 U.S. at 136–37. If the unconstitutional seizure was the product of mere negligence lacking a systemic quality that is susceptible of deterrence, then application of the exclusionary rule is not "worth the price paid by the justice system." Id. at 144 (recognizing that an "error that arises from nonrecurring and attenuated negligence is . . . far removed from the core concerns that led" to the adoption of "the rule in the first place").

In this case, the arresting officer initially detained J.R.D.'s identical twin brother, believing there was a warrant for his arrest. After checking the Sheriff's computerized warrant system, the arresting officer saw that J.R.D. also had an active warrant for his arrest. Both brothers were detained while the arresting officer called the dispatch officer to confirm whether the warrants were still active. When the dispatch officer advised that only J.R.D. had an active warrant, the arresting officer released J.R.D.'s twin brother and arrested J.R.D. A search incident to that arrest yielded contraband. As the arresting officer was on her way to the jail with J.R.D., the dispatch

officer called to tell her that it was actually J.R.D.'s brother who had the active warrant, not J.R.D., attributing the error to the fact that the two brothers had "the same date of birth[] and similar names."

J.R.D.'s unlawful seizure was based not on the dispatcher's subsequent mix-up of the twin brothers but on an error in a police database that incorrectly reflected a warrant for J.R.D. Depending on the circumstances, an officer's good faith reliance on such an error might obviate application of the exclusionary rule if "there is no evidence that errors in [the] system are routine or widespread." See Herring, 555 U.S. at 139–40, 146–47 (finding law enforcement official's failure to update computer a database to reflect the recall of an arrest warrant did not justify the exclusionary rule because the "error was negligent," but not "reckless," "deliberate," or "systemic"). However, the State did not adduce any testimony indicating that such inaccuracies are not systemic or recurring. Cf. id. at 146–47 (noting that an officer testified that he "never had reason to question information about a Dale County warrant" and that others "testified that they could remember no similar miscommunication ever happening on their watch"). And the only evidence bearing upon the inquiry was the arresting officer's testimony that while their database showed all of their active warrants, officers "still run them through dis[patch]" to confirm that the warrants are still active. Without more, this description could as easily indicate a frequent recurrence of stale warrants as it could suggest a belt-and-suspenders application of due diligence to an already reliable record-keeping system.

The majority concludes that the violation was based on the initial database error which was "exacerbated" by the subsequent dispatcher's mistake, the latter of

which the State failed to prove "was an isolated incident of simple human error." To the contrary, the officer's decision to continue the detention of J.R.D. but release his brother was made in reasonable reliance on a human error, committed by a dispatch officer who confused the first names of two brothers with the same last name and birthdate whom the arresting officer happened to encounter at the same time. That error was not systemic; it was serendipitous. A healthy imagination would be hard pressed to conjure many scenarios for which the label "recurring or systemic" is less befitting than the twin-brother encounter, and there is no indication that the dispatch officer's conduct was "deliberate, reckless, or grossly negligent." Id. at 144 (explaining that the exclusionary rule "serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence"). In fact, the record reveals that the dispatch officer immediately called the arresting officer to correct his or her mistake. See id. at 138 (noting the alacrity with which a sheriff's department employee called to rectify the warrant "mixup" upon which the arresting officer had relied).

However, while the police dispatcher's subsequent negligence was by its nature unlikely to recur, J.R.D.'s Fourth Amendment rights were violated when the arresting officer seized him in reliance on a police database error that there is no reason to believe was isolated. Because the exclusionary rule does apply to the detention that led to J.R.D.'s arrest and attendant search, I agree that the trial court's order granting J.R.D.'s motion to suppress must be affirmed.