IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, 4TH DCA
WEST PALM BEACH, FLORIDA

STATE OF FLORIDA, DCA CASE NO.: 4D15-2733

Appellant,

vs.

CHARLES WILEY WORSHAM, JR.,

Appellee.
_____/

Appeal from the Circuit Court
Palm Beach County, Florida

ANSWER BRIEF OF APPELLEE

COUNSEL FOR APPELLANT

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Preliminary Statement

Appellant was the State in the trial court below. Appellant will be referred to as Appellant and/or the State in the brief. The Appellee is the defendant below, and will be referred to as Appellee or the Defendant.

The pleadings from the record on appeal will be referred to as "R". The transcripts from the hearing below will be referred to as "T". Exhibits will be referred to as "E" followed directly by their exhibit number. Items contained in an appendix, if any, will be referred to as "AP" followed by document number as listed in appendix.

STATEMENT OF THE CASE AND FACTS

Appellee adopts the statement of facts as pleaded by the appellant as being an accurate factual recital of the proceedings below relevant to this appeal.

SUMMARY OF ARGUMENT

Appellee argues that the trial court was correct in granting the motion to suppress because the State, in order to obtain the information contained within the defendant's vehicle's SDM, was required to obtain a search warrant.

ARGUMENT

(Restated)

THE TRIAL COURT WAS CORRECT IN GRANTING THE APPELLEE'S MOTION TO SUPPRESS

Standard of Review

The standard of review is *de novo* because this court is being asked to review a pure question of law decided by the trial court. State v. Glatzmayer, 789 So.2d 297 (Fla. 2001)

The appellant opens its argument with the premise that the trial court erred because "Appellee has no reasonable expectation of privacy in the SDM." (Appellant's brf pg 4) Because appellee does in fact have a reasonable expectation of privacy in the "contents" of the SMD, a warrant to download that information was required. The appellant first seizes upon the court's holding in Crump v. State, 622 So.2d 963 (Fla. 1993) to argue that the SDM like tires is merely part of a vehicle. Appellant is also apparently arguing that the SDM is no different than containers in a vehicle, which can be searched

without a warrant incident to an arrest arising from the vehicle. Crump, at 970.

Appellant also argues that based upon Diaz v. State 213 Cal.App.4th 743, 756, 153 Cal.Rptr.3d. 90, 101 (2013), warrantless searches of a black box are constitutional because in essence everything it captures can otherwise be seen on a public roadway. The Supreme Court's holding in United States v. Jones, 565 U.S. --- , 132 S.Ct. 945, 181 L.Ed.2d 911 (2012) calls both cases, and the appellant's argument into question. As noted by the appellant, the Court in Jones held that the monitoring of a GPS device's information absent a warrant, violated the Fourth Amendment. The appellant argues that Jones is inapplicable because the Court based its holding on a "trespass" of the defendant's vehicle by the government. The appellee respectfully disagrees.

The appellee would argue that relevant to the instant case, the holding in Jones makes it clear that (1) although positioning of a vehicle can be visible from the street, it can still be protected by the Fourth Amendment, and (2) seeking the contents of the monitor is considered a "search" within the meaning of the Fourth Amendment. In Jones, as the State has argued here,

part of the government's argument was that there was no expectation of privacy because the location of the vehicle on the road was visible to all. The Court found an expectation of privacy. Further, while the police in the instant case did not place the SDM on appellee's vehicle, because the contents of the SDM are not readily accessible nor can the SDM be considered the equivalent of a mere container located in a car, the court should find an added level of privacy which clearly includes an expectation of privacy. The Fourth Amendment to the United States Constitution and Article I, section 12 of the Florida Constitution guarantee the right to be free from "unreasonable searches and seizures." It was unreasonable for the officer to have searched the SDM without a warrant. The officer knew this which is why he sought a warrant after the fact. Further, the opinions of the United States Supreme Court must be followed on all search and seizure issues, regardless of whether the claim of an illegal search is based on the Florida or United States Constitution. See, Green v. State, 824 So.2d 311, 313 (Fla. 1st DCA 2002).

Directed to the additional arguments made by the appellant, inevitable

discovery, good faith exception and or search incident to arrest, the appellee would argue that appellant did not raise these arguments below so they cannot be raised now for the first time on appeal. Morrison v. State, 818 So.2d 432, 446 (Fla.2002) (finding that because a defendant "did not argue the point he now raises below [in support of his motion to suppress], he is foreclosed from raising that argument" on appeal).

CONCLUSION

WHEREFORE, based on foregoing reasons, argument and authorities cited herein, appellant respectfully requests that the trial court's Order granting appellee's motion to suppress be affirmed.

Respectfully submitted,
/s/ Jack A. Fleischman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed this 20 day of June, 2016, to: Attorney General's Office – Criminal Appeals Division, crimappwpb@myfloridalegal.com.

By /s/ *Jack A. Fleischman*
Jack A. Fleischman

CERTIFICATE OF COMPLIANCE RE: FONT SIZE

COMES NOW, Jack A. Fleischman, attorney for the appellant, and certifies that he has used Times New Roman, 14 Point Font, for this brief.

Respectfully submitted,
/s/ *Jack A. Fleischman*
Jack A. Fleischman

cc: Client