IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FOURTH DISTRICT

CASE NO. 4D15-2733

STATE OF FLORIDA,

Appellant,

v.

CHARLES WILEY WORHSAM, JR.

Appellee.

_____/

APPEAL FROM THE CIRCUIT COURT
OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Appellant was the prosecution and Appellee was the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida.

In this brief, the parties will be referred to as they appear before this court, except that Appellant may also be referred to as "the state".

The following reference will be used in this brief: "R" for the Record on Appeal.

STATEMENT OF THE CASE AND FACTS

Appellee was charged by information with two counts: DUI manslaugter and operating a vehicle in a reckless manner causing the death of his passenger (vehicular homicide) (R 17-18).

Appellee's vehicle was involved in a high speed crash which killed the passenger of his vehicle. The facts of the case, as ascertained through the investigation, are outlined in the probable cause affidavit (R 3-5).[1] A blood draw was

[1]Beyond the black box form where downloaded information was obtained on October 18, 2013, the information developed by law enforcement at the time of obtaining the warrant on October 22, 2015, was (1) a witness, Travis Carlson, told police that Appellant drove off from the Shell gas station with the victim at a high rated of speed (2) the point of impact was 0.6 from where Appellant left Shell (3) Sergeant Rasor and the warrant's affiant conducted a "speed formula of the crash scene and generated a minimum speed for the Fiat 500 at 77 mph prior to the

taken from Appellant which showed he had .171 grams of alcohol per 100 mililiters of blood in his system at the time of the blood draw which took place approximately two hours after the crash on October 7, 2013 at 1:15 a.m..

Pertinent to the issue at bar, Appellee's vehicle had been impounded at the Delray Beach Tow lot when the vehicle's "black box" or sensing diagnostic module ("SDM") which recorded Appellee's speed and braking was downloaded by a third-party, Kimly-Horn and Associates , at the request of the investigating officers (R 5). The results of the downloaded information from the SDM showed Appellee was traveling at 85 miles per hour just prior to the crash which killed the passenger (R 5).

Appellee filed a motion to suppress the information downloaded from the SDM (R 45-94). The state filed a response (R 128-133).

Appellee did not contest probable cause. Rather, it is his position that law enforcement "had no right to access the vehicle's black box without first obtaining a court Order, search warrant, or consent of Worsham." (R 48).

A hearing was held on on Appellee's motion to suppress on May 7, 2015 (R - Trans., May 7, 2015). At that hearing there was no testimony but argument as to the

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crash" (4) several witnesses said Appellant had been drinking prior to the crash; Appellant appeared to be drunk or was "buzzing"; and, Appellant had an odor of alcohol on his breath when he was initially confronted by the police. (R 3-5).

point of law.

On July 1, 2015 in a written order, the trial court granted the motion to suppress and, in said order, "further suppresses any opinion testimony that relies in substantial part on the box" (R 135). This appeal follows.

SUMMARY OF ARGUMENT

The trial court abused it's discretion and erred in granting Appellee's motion to suppress. Appellant did not have a reasonable expectation of privacy in the SDM "black box" attached to his vehicle. Speed and braking were always exposed to the public on public highways; the box was not in a private area of the vehicle and was subject to other's possession and ownership to assess the speed of their vehicle; . Further, the vehicle, under the facts of this case where Appellant was under the influence of alcohol and observed speeding, was an instrumentality of the crime which was proper subject for investigation, as the vehicle had been properly impounded and public policy mandates that officer's have the ability to investigate fatal accidents. Moreover, the police had applied for a warrant after the initial download had been done. The officer had probable cause as it was based on facts that would have had justified the issuance of a warrant, even though a warrant had not actually been obtained, though had been applied for. The information from the SDM would have been inevitably discovered. Finally, the officers warrantless search was

based on good faith of binding judicial precedent. Accordingly, the trial court decision should be reversed.

ARGUMENT

THE TRIAL COURT ERRED GRANTING APPELLEE'S MOTION TO SUPPRESS

This Court has jurisdiction pursuant Florida Rule of Appellate Procedure 9.140 (c)(1) (B).

Appellant contends that trial court erred granting the motion to suppress the downloaded information from Appellee's vehicle's 'black box' which was downloaded without a warrant. Appellant contends the trial court erred in that Appellee had no reasonable expectation of privacy in the SDM. Further, even if the search was unreasonable, the warrantless download of the information was proper. The officer had probable cause as it was based on facts that would have had justified the issuance of a warrant, even though a warrant had not actually been obtained, though had been applied for.

Under the Fourth Amendment of the United States Constitution, "a search conducted without a warrant issued upon probable cause is '*per se* unreasonable ... subject only to a few specifically established and well-delineated exceptions.' " United States v. Borostowski, 775 F.3d 851, 864 (7th Cir.2014) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)). "A

'search' within the meaning of the Fourth Amendment occurs only where an individual has a reasonable expectation of privacy in the area searched." United States v. Kelly, 772 F.3d 1072, 1083–84 (7th Cir.2014) (citing Katz v. United States, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring)).

The United States Supreme Court has long held that the expectation of privacy is diminished in the automobile. Carroll v. United States, 267 U.S. 132 153, 156 (1925) (contraband may be seized from an automobile without a warrant if the officer has probable cause to believe the contraband was being transported in the automobile). This automobile exception to the warrant requirement has been extended to encompass searches backed by reasonable cause of other offenses and warrantless inventory searches of impounded vehicles. See, e.g., Wyoming v. Houghton, 526 U.S. 295, 303 (1999) (holding that when officers have probable cause to search a car, "the balancing of the relative interests weighs decidedly in favor of allowing searches of a passenger's belongings" that are capable of concealing the object of the search because "[p]assengers, no less than drivers, possess a reduced expectation of privacy with regard to the property that they transport in cars").

The state applied for a search warrant (R 52-56). The state outlined probable cause for the warrant (R 54-55). The warrant was not issued as law enforcement had already downloaded the information before the warrant was ruled upon.

Beyond the black box form where downloaded information was obtained on October 18, 2013, the information developed by law enforcement at the time of obtaining the warrant on October 22, 2015, was (1) a witness, Travis Carlson, told police that Appellant drove off from the Shell gas station with the victim at a high rated of speed (2) the point of impact was 0.6 from where Appellant left Shell (3) Sergeant Rasor and the warrant's affiant conducted a "speed formula of the crash scene and generaed a minimum speed for the Fiat 500 at 77 mph prior to the crash" (4) several witnesses said Appellant had been drinking prior to the crash (5) Appellant appeared to be drunk or was "buzzing"; and (6) Appellant had an odor of alcohol on his breath when he was initially confronted by the police. (R 3-5).

A search warrant for property may be issued "[w]hen any property constitutes evidence relevant to proving that a felony has been committed." Sec. 933.02(3), Fla. Stat.. For the magistrate to determine that probable cause exists to issue a search warrant, two elements must be proven within the affidavit: "(1) the commission element-that a particular person has committed a crime-and (2) the nexus element-that evidence relevant to the probable criminality is likely to be located at the place searched." State v. Vanderhors, 927 So.2d 1011, 1013 (Fla. 2d DCA 2006) (citing Burnett v. State, 848 So.2d 1170, 1173 (Fla. 2d DCA 2003)) .

Vehicular homicide is "the killing of a human being ... caused by the operation

of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another." Sec. 782.071, Fla. Stat. (2006). Vehicular homicide, by definition, requires proving reckless driving, which is "driving with a willful or wanton disregard for safety." D.E. v. State, 904 So.2d 558, 561 (Fla. 5th DCA 2005). Although other "circumstances" are necessary to make a prima facie showing of vehicular homicide, such as location, time of day, and road conditions, see id., that is not the standard for probable cause in order to issue a search warrant. A magistrate may issue the search warrant "[w]hen any property constitutes evidence relevant to proving that a felony has been committed." § 933.02(3), Fla. Stat. (emphasis added).

In Crump v. State, 622 So. 2d 963 (Fla. 1993), the Florida Supreme Court held probable cause existed to seize the defendant's truck without a warrant. After impounding the truck and ollowing the search, the police compared the tread on the truck's tires to the plaster casts made from tracks found near Smith's body and concluded that they were similar. Id., at . (emphasis added). Similar to the instant case where the SDM was attached to the vehicle, the tires were part of the vehicle and they were used as evidence against the defendant in proving his guilt. The Court observed:

> [Arizona v. Gant], 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009)] is not applicable because it concerns a search incident to arrest. After Gant, warrantless searches of automobiles are still reasonable if supported by probable

> cause when the offense is a crime that might yield physical evidence. See Brown v. State, 24 So.3d 671, 681 (Fla. 5th DCA 2009) ("[W]e hold that when the offense of arrest of an occupant of a vehicle is, by its nature, for a crime that might yield physical evidence, then as an incident to that arrest, police may search the passenger compartment of the vehicle, including containers, to gather evidence, irrespective of whether the arrestee has access to the vehicle at the time of the search."). Furthermore, the automobile exception to the warrant requirement, irrespective of an arrest, permits a warrantless search supported by probable cause "based on the inherent mobility of vehicles, as well as the reduced expectation of privacy in a vehicle." Harris v. State, 71 So.3d 756, 765 (Fla.2011) (citing Pennsylvania v. Labron, 518 U.S. 938, 990, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996)), rev'd on other grounds, —— U.S. ——, 133 S.Ct. 1050, 185 L.Ed.2d 61 (2013).

Crump, 622 So. 2d at 970 (emphasis added)

In reversing the trial court's order granting the motion in McIntosh v. State, 116 So. 3d 582 (Fla. 5th DCA 2013) where the defendant filed a motion to suppress wherein he alleged the officers did not have probable cause to search his vehicle after his arrest and discovered a a firearm owned by him the Fifth District cited the holding in Crump:

> McIntosh's case is more akin to United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), and Crump v. State, 622 So.2d 963 (Fla.1993), wherein warrantless searches of vehicles are addressed. In Crump, the supreme court held the lower court correctly denied a defendant's motion to suppress evidence obtained without a warrant from his pick-up truck, stating:

> Under the vehicle exception to the warrant requirement "[o]nly the prior approval of the magistrate is waived; the search otherwise [must be such] as the magistrate could authorize."
>
> Carney, 471 U.S. at 394, 105 S.Ct. at 2071 (quoting United States v. Ross, 456 U.S. 798, 823, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572 (1982)). In the instant case, the relevant question is whether the police unreasonably seized and searched Crump's truck. We find that this search was not unreasonable because it was plainly one that a magistrate could authorize. Here, the record shows that the police officers relied on a witness's description and identification of Crump's truck as the vehicle that Smith entered on the night of her murder and the unique features of the truck with its amber rotating light which was broken on the passenger side, dark tinted windows, and large tires. The facts establish that probable cause existed to seize Crump's truck, thus we find that a magistrate could have authorized a warrant. We hold that the trial court correctly denied Crump's motion to suppress the evidence.

Crump, 622 So.2d at 970.

In accordance with Crump and McIntosh, the SDM contained evidence of the vehicular homicide and DUI manslaughter for which a magistrate would have issued a warrant. The SDM was an integrated not an extraneous or third-party device which had no relevance to the crimes charged. It was clearly relevant as to whether Appellant operated the vehicle in a reckless manner as to speed, while under the influence of alcohol. See e.g., State v. Abbey, 28 So. 3d 208 (Fla. 4th DCA 2010) (held probable cause existed for warrant to search black box of defendant's sports car

after fatal accident that gave rise to charge of vehicular homicide). In California v. Carney, 471 U.S. 386 (1985), the United States Supreme Court analyzed the "automobile exception" to the Fourth Amendment. In Carney, the Supreme Court stated that the issue is whether, apart from the lack of a warrant, this search was unreasonable. Under the vehicle exception to the warrant requirement "[o]nly the prior approval of the magistrate is waived; the search otherwise [must be such] as the magistrate could authorize." Carney, 471 U.S. at 394. See U.S. v. Ross, 456 U.S.798, 809 (1982) (a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained).

Further, even if this Court determines that the search was improper, the computer evidence could still be admitted pursuant to the inevitable discovery doctrine. The inevitable discovery doctrine was adopted by the United States Supreme Court in Nix v. Williams, 467 U.S. 431 (1984). The inevitable discovery doctrine allows evidence obtained as the result of unconstitutional police procedure to be admitted if the evidence would ultimately have been discovered by legal means. The Court reasoned that "[e]xclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Nix, 467 U.S. at 446. The Florida Supreme Court has embraced the doctrine. Jeffries v. State, 797 So. 2d 573 (Fla. 2001); Maulden v. State, 617 So. 2d 298 (Fla. 1993);

Craig v. State, 510 So. 2d 857 (Fla. 1987), cert. denied, 484 U.S. 1020 (1988).

The inevitable discovery doctrine requires the state to establish by a preponderance of the evidence that the police ultimately would have discovered the evidence independently of the improper police conduct by "means of normal investigative measures that inevitably would have been set in motion as a matter of routine police procedure." Craig, 510 So. 2d at 863 (citations omitted). "In order to apply this doctrine, there does not have to be an absolute certainty of discovery, but rather, just a reasonable probability." State v. Ruiz, 502 So. 2d 87, 87 (Fla. 4th DCA 1987) (citing United States v. Brookins, 614 F.2d 1037 (5th Cir. 1980)); see also Jeffries, 797 So. 2d at 578 (quoting Ruiz).

As stated previously, the officer's had independent evidence as to Appellee's rate of speed and blood alcohol level which would have led to a warrant in support of downloading the speed and braking information from the SDM.

Courts in New York and California have addressed the issue of a warrantless search of an SDM "black box" for data. In both cases, those courts have upheld the warrantless searches.

In People v. Christmann, (2004) 3 Misc.3d 309, 315, 776 N.Y.S.2d 437, the New York court held, in a prosecution for speeding and failing to exercise due care, that accident data recorded in a motor vehicle's SDM was admissible because it was

reliable. See Bachman v. Gen'l Motors Corp., (2002) 332 Ill.App.3d, 776 N.E.2d 262,281 ("crash sensors such as the SDM have been in production in automobiles for over a decade" and are generally accepted as a tool of accident reconstruction), appeal denied, 202 Ill.2d 598, 272 Ill.Dec. 339, 787 N.E.2d 154 (2002).

In Christmann, the court held the motorist had only a diminished expectation of privacy, following an accident, in the vehicle's mechanical areas, and therefore retrieval by police officer, in prosecution for speeding and failure to exercise due care, of data stored in vehicle's sensing diagnostic module (SDM), did not constitute an unreasonable search and seizure. Christmann further noted:

> In the area of automobile safety, there is a high degree of governmental regulation, and a search conducted to carry out this regulation has a lower threshold of reasonableness...[t]he downloading of the information is not analogous to a container search, nor does it extend to the private areas of the vehicle. There is also no opportunity for a police officer to select only the desired data or to manipulate it.

Id., at 441.

The Christmann decision cited as authority People v. Quackenbush, 88 N.Y.2d 534, 647 N.Y.S.2d 150, 670 N.E.2d 434 (1996) wherein the court found only a diminished expectation of privacy in the mechanical areas of the vehicle and further found that that diminished expectation must yield to the overwhelming state interest

in investigating fatal accidents.

The public policy arguments of Christmann and Quackenbush should be considered and applied here as well. The state has an interest in fully investigating fatal accidents and evidence which is clearly relevant which is attached to the vehicle where a defendant does not have a reasonable expectation of privacy should be admitted, even if subject to a warrantless search. Automobiles are subject to government regulation. Moreover, if an automobile is impounded (not subject to a warrant) - as what occurred here - evidence such as photos of accident damage are admissible. Accordingly, there is no distinction between an SDM which is attached to the vehicle which upon resale of the vehicle other individuals would be monitored and could access. As noted in Christmann, an SDM does not extend to a private area of the vehicle. Again, the logic of Christmann applies with equal force here under these factual circumstances.

In People v. Diaz (2013) 213 Cal.App.4th 743, 756, 153 Cal.Rptr.3d 90, 101 where the warrantless downloading of the black box information was upheld the Court stated:

> In this case, defendant's vehicle was itself an instrumentality of the crime of vehicular manslaughter. Defendant concedes it was lawfully seized. Consistent with the California Supreme Court cases discussed above, the officers' "subsequent examination of the [vehicle] for the purpose of examining its evidentiary value [did] not

> constitute a 'search' as that term is used in the California and federal Constitutions. [Citations.]" (People v. Rogers, supra, 21 Cal.3d at pp. 549–550, 146 Cal.Rptr. 732, 579 P.2d 1048.)

In Diaz, the defendant argued the instrumentality exception was no longer applicable. Analyzing the doctrine established in People v. Minjares (1979) 24 Cal.3d 410, 153 Cal.Rptr. 224, 591 P.2d 514 , the Diaz court distinguished Minjares in that the state sought to justify the search of a closed container in the trunk under the instrumentality exception as they argued the car was an instrumentality of the defendant's crime of escape. In Diaz, a manslaughter case, the court noted that the truck was itself evidence. The Diaz court further noted the distinction for a search of an "object" attached to a vehicle:

> Next, in Bittaker, a case that "antedate[d] the enactment of article I, section 28, of the California Constitution, which bars exclusion of relevant evidence in criminal proceedings" (Bittaker, supra, 48 Cal.3d at p. 1077, fn. 15, 259 Cal.Rptr. 630, 774 P.2d 659), the court held that "while the instrumentality doctrine justifie[d] the officer's entry into the van to search for blood stains and other evidence of [the victim's] rape, it may not in itself justify the search of the van for other objects not attached to or part of the van itself." (Id. at p. 1077, 259 Cal.Rptr. 630, 774 P.2d 659.) Again, in this case, the search of the SDM involved a search of an object attached to and part of the truck itself, and thus, the search fell squarely within the instrumentality exception.

Diaz, 153 Cal. Rptr. 3d at 101 (emphasis added)

The logic of the Diaz decision should apply with equal force here. The vehicle was the instrumentality that caused the vehicular homicide. As such evidence, such as the SDM, attached to that vehicle. See People v. Griffin (1988) 46 Cal.3d 1011, 1024-25, 251 Cal.Rptr. 643, 761 P.2d 103(court upheld taking of blood samples that had soaked into the floorboard of from the defendant's lawfully impounded truck as the "the truck in this case was itself evidence and bloodstains within the limits of the instrumentality exception."); People v. Zamora, 695 P.2d 292 (Colo.1985) (held warrantless search of an impounded automobile because it was legally seized as evidence itself and the police have a reasonable belief that the object is itself evidence of the commission of a crime, a subsequent examination of the object made proximate in time to the seizure, and undertaken for the purpose of determining its evidentiary value, is not an unlawful search); People v. Rogers , (1978) 21 Cal.3d 542, 146 Cal.Rptr. 732, 579 P.2d 1048 (held warrantless search of a van proper where police had impounded from the defendant upon his arrest for committing lewd acts on children and they had cause to believe it had been an instrumentality of the crime); Booth v. State, 26 Ark.App. 115, 761 S.W.2d 607 (1989)(held police had reasonable belief that vehicle was evidence of the commission of a crime and since the reason for and nature of the custody of the vehicle was to use it as evidence, the subsequent warrantless searches were not unconstitutional).

In North v. Superior Court, (1972) 8 Cal.3d 301, 104 Cal.Rptr. 833, 502 P.2d 1305, the police impounded the defendant's vehicle, which they believed had been used in a kidnapping, examined its interior without a warrant, and found the victim's fingerprints. In addition, they determined that the vehicle's tires and wheel span were consistent with impressions and measurements taken at the crime scene. Id., at 1307.

Further, Diaz held that one does not have an expectation of privacy in speed on a public highway:

> We agree that a person has no reasonable expectation of privacy in speed on a public highway because speed may readily be observed and measured through, for example, radar devices (e.g., People v. Singh (2001) 92 Cal.App.4th Supp. 13, 15, 112 Cal.Rptr.2d 74), pacing the vehicle (e.g., People v. Lowe (2002) 105 Cal.App.4th Supp. 1, 5, 130 Cal.Rptr.2d 249), or estimation by a trained expert (e.g., People v. Zunis (2005) 134 Cal.App.4th Supp. 1, 6, 36 Cal.Rptr.3d 489). Similarly, a person has no reasonable expectation of privacy in use of a vehicle's brakes because statutorily required brake lights (Veh.Code, § 24603) announce that use to the public. Thus, defendant has not demonstrated that she had a subjective expectation of privacy in the SDM's recorded data because she was driving on the public roadway, and others could observe her vehicle's movements, braking, and speed, either directly or through the use of technology such as radar guns or automated cameras. In this case, technology merely captured information defendant knowingly exposed to the public—the speed at which she was traveling and whether she applied her brakes before the impact. (See, e.g., Smith v. Maryland (1979) 442 U.S. 735, 741–745, 99 S.Ct. 2577, 61 L.Ed.2d 220 [installation of a pen register at the

> telephone company's central offices, at the request of police, did not constitute a "search" within the meaning of the Fourth Amendment because the pen register merely recorded the telephone numbers dialed from the petitioner's home, and the petitioner could "claim no legitimate expectation of privacy," because "[w]hen he used his phone, petitioner voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment in the ordinary course of business.").

Diaz, 153 Cal Rptr. 3d at 101-102.

Again, the logic of Diaz as to Appellee's lack of a reasonable expectation of privacy, should apply with equal force here. Appellee did not have a subjective expectation of privacy in the SDM's recorded data because he was driving on the public roadway where others could observe his vehicle's movements, braking, and speed. As noted by Diaz, "technology merely captured information defendant knowingly exposed to the public—the speed at which she was travelling and whether she applied her brakes before the impact". Id., at 757-758.

Below Appellee argued as his primary authority the holding of United States v. Jones (2012) 565 U.S. ——, 132 S.Ct. 945, 181 L.Ed.2d 911. In Jones, the court held that the government's placement of a GPS tracking device on the undercarriage of a vehicle after a search warrant had expired, and the subsequent monitoring of the vehicle's movement and location for four weeks after that, violated the Fourth Amendment. Jones, 132 S.Ct. 945, 948-949. The Court based its decision on the

common law theory of trespass in placing the GPS on the defendant's personal property, combined with the police attempt to obtain information. Id. at p. 951 & fn. 5), The Supreme Court found that the government had "physically occupied private property for the purpose of obtaining information" when it "trespassorily inserted the information-gathering device" onto the vehicle. Id. at 950, 952. Jones concerned the government's trespass into the vehicle where the defendant had an expectation of privacy. Here, the trespass theory underlying Jones has no bearing on the instant case. The original purpose of the SDM was not to obtain information for the police.

Distinguished from Jones, in Matos v. State, 899 So. 2d 403, 408 (Fla. 4th DCA 2005) the SDM recorded the defendant's speed at the time of the accident automatically without any intervention by a police officer, as in this case. The SDM was not used by a police officer to determine the speed of the defendant's vehicle while the officer was engaged in the enforcement of the motor vehicle laws of the state. See e.g., U.S. v. Davis, 785 F. 3d 498 (11th Cir. 2015)(held cell phone carrier's business records containing historical cell tower location information was reasonable as to defendant; defendant had no reasonable expectation of privacy in records made, kept, and owned by carrier, records were not recordings of conversations; records were not real-time tracking of precise movements; records served compelling government interest in assisting investigation of various crimes, and society had

compelling interest promptly apprehending criminals and vindicating rights of innocent suspects).

If this Court were to find the warrantless search improper, Appellant contends that a good faith exception. Davis v. United States, 564 U.S. 229, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). In Davis, the United States Supreme Court held that the exclusionary rule did not apply to evidence discovered as a result of an automobile search incident to arrest conducted before the Supreme Court issued its decision in Gant [2] which significantly circumscribed the holding of New York v. Belton, 453 U.S. 454(1981), with regard to searches of an automobile incident to an arrest. Davis decided whether the exclusionary rule should be applied "when the police conduct a search in objectively reasonable reliance on binding judicial precedent." Davis, 131 S.Ct. at 2428. Here Appellant contends the officer reasonably relied upon the holding in Crump, *supra*, in conducting the warrantless download of the SDM.

[2] Arizona v. Gant, 556 U.S. 332(2009)

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, Appellant respectfully requests that this court reverse the trial court's order granting Appellee's motion to suppress.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been e-mailed to: Jack Fleischman, Esq., at jf@ffjustice.com on March 28, 2016.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Times New Roman 14-point type and complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

/S/Mitchell A. Egber
MITCHELL A. EGBER
Assistant Attorney General