Lisa Bell

PLA 1103

Professor Howard Swett

Final Exam

Due 4/20/2021

Memorandum of Law

To: Professor Howard Swett

From: Lisa Bell

Date: 4/5/2021

Subject: People v Barker

FACTS

While on duty, police officer Matthew Dillon stopped our client and suspected drug dealer Sonny Barker for expired vehicle registration. Officer Dillon admitted that although he stopped the vehicle for expired vehicle registration, he was hoping to find something related to Sonny's suspected drug dealing. The car belonged to his mother and Sonny could not provide his driver's license or the vehicle's registration. After a search, no warrants were found on Sonny and the car had not been reported stolen.

Officer Dillon asked Sonny to search the car and Sonny permitted him. In the glove box, Officer Dillon found Sonny's wallet, over an ounce of what appeared to be marijuana and a piece of paper with the email sbarker@digicom.com written on it. Officer Dillon then found a plastic bag containing a large amount of marijuana under the front seat. Sonny did not claim medical use of marijuana and no medical card was produced.

After arresting Sonny and without first procuring a warrant, Officer Dillon accessed the email account with the assumed password "doobie" and found an email message from Sonny's mother stating "sold latest shipment of maryjane for a cool million; deposited your share in your mutual fund account at Citibank. Love, Ma". After finding this email, Sonny was charged with possession for the sale of marijuana.

ISSUES

I. Whether or not the expiration of the defendant's vehicle registration was a valid reason for stopping the defendant.

II. Whether or not a pretextual stop is legal in the state of Florida.

III. Whether or not the defendant's permission to search the vehicle made the search lawful.

IV. If the marijuana being out of the suspect's reach constitutes constructive possession and whether or not it was reasonable for the officer to believe that the suspect knew that the marijuana was in the car.

V. If accessing the defendant's email account before obtaining a warrant was lawful and if the evidence produced as a result of stop and accessing the email account would be subject to the exclusionary rule.

VI. Whether or not the defendant can be charged with simple drug possession or drug possession for sale.

RULES

I. U.S. Const. amend. IV - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause

II. Fla. Stat. § 320.07(3)(a) – The operation of a motor vehicle without valid registration

III. Amdt4.3.2.1 – No Need for a Warrant to Conduct a Search or Seizure

IV. Amdt4.5.2.1 – Adoption of A Federal Exclusionary Rule

V. Fla. Stat. § 893.02(3) – Drug Abuse and Prevention Control

VI. Fla. Stat.§ 893.03 – Standards and Schedules

VII. Fla. Stat. § 893.13 – Prohibited Acts; Penalties

VIII. 21 U.S.C § 812(d)(2) (2019) – Schedules of Controlled Substances

IX. 21 USC § 844(a) (2019) – Unlawful Acts; Penalties

ANALYSIS

The Fourth Amendment to the United States Constitution protects against unreasonable search and seizures. This includes those conducted during traffic stops. *United States v Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)*. In considering *Terry v. Ohio, 392 U.S.*

1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the court would find that the validity of Officer Dillon's stop was unreasonable. As found in *Wren v United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996)*, the reasonableness for an officer conducting a traffic stop does not depend upon the officer's motivation for stopping a suspect, but upon the validity of the basis for stopping him.

While Officer Dillon knew stopping the suspect could only amount to issuing a traffic citation for an expired tag; a civil offense; he openly admitted that his motivation in making the stop was to see if he could uncover other criminal activity. Having an expired vehicle registration is not a crime in the state of Florida until its expiration exceeds six months of the owner's birth month. *Fla Stat. §320.07(3)(a)*. In reviewing *Jones v State, 842 So.2d 889 (Fla. 2nd DCA 2003)*, the court would find this to be a pretextual stop made by the officer in the hopes of detecting criminal activity and in absence of an objectively valid reason to stop him. In further reviewing *Chaney v State, 956 So.2d 535, 537-538 (Fla. 4th DCA 2007)* the court would also find that Officer Dillon did not know of or have probable cause to suspect criminal activity when he stopped Mr. Barker.

Although Mr. Barker gave Officer Dillon permission to search the vehicle, any evidence produced as a result of the illegal stop that initiated the permission given would be excluded under the Due Process Clause of the Fourteenth Amendment. *338 U.S. at 27-28*. This includes the search for digital evidence obtained without a search warrant. Further intrusion upon our client's privacy occurred when the officer accessed his email without first obtaining a warrant authorizing the search for evidence that was not present during the consented search of the vehicle. This unauthorized search produced the incriminating statement from his mother suggesting the suspect received payment for the sale of marijuana. Because the evidence was produced as a result of an illegal stop and by a warrantless search of the suspect's private papers, it is "fruit of the poisonous tree" subject to the exclusionary rule, and should be inadmissible at trial. *Amdt4.3.2.1, Amdt4.5.2.1, Wolf v Colorado, 388 U.S. 25 (1949)*.

The marijuana found in the vehicle is a schedule I controlled substance under state and federal laws. *Fla. Stat. § 893.02(3) § 893.03, 21 U.S.C § 812(d)(2) (2019)*. Constructive Possession requires that the suspect be knowledgeable of the presence of the drug and have the ability to gain control over it. Because the vehicle belonged to Mr. Barker's mother and the drugs

were located in a place not visible to Mr. Barker or the officer, and Mr. Barker has no known medical condition warranting the use of marijuana, Officer Dillon had no reasonable reason to believe that Mr. Barker knew it was in the car. As provided in *De La Cruz v. State, 884 So. 2d 349*, the court would find that Mr. Barker could not have possessed or otherwise been in control of the marijuana if he did not know of its existence, and therefore could not have had the intent to administer, sell or transfer it. *(Fla. Stat. 893.13, 21 U.S.C § 812(d)(2), 21 U.S.C § 844(a) (2019).*

CONCLUSION

Because the Officer's decision to stop our client was based upon his intent to discover criminal activity and he was without a reasonably objective basis to stop him, the stop and search are unlawful, and seizure of the marijuana is subject to the exclusionary rule and inadmissible at trial. The Officer's further violation of our client's right to privacy through accessing our client's email account without a warrant constitutes an intrusion and would strengthen our case in requesting the Court grant a Motion to Suppress the Evidence and a subsequent Motion to Dismiss based upon the absence of material issues of fact. *FRCP 41(h), FRCP 12(b)(6).*