CSH

Supreme Court of Florida

MONDAY, JANUARY 28, 2019

CASE NO.: SC18-1972
Lower Tribunal No(s).:
062002CF006287A88810

VERNON CARTER vs. MARK S. INCH, ETC.

Petitioner(s) Respondent(s)

To the extent petitioner seeks the type of relief available in a motion filed pursuant to Florida Rule of Criminal Procedure 3.850, this case is hereby dismissed as unauthorized. *See Baker v. State*, 878 So. 2d 1236 (Fla. 2004). To the extent petitioner seeks additional relief, the petition is hereby denied. *See Jones v. Fla. Parole Comm'n*, 48 So. 3d 704, 710 (Fla. 2010); *Sneed v. Mayo*, 69 So. 2d 653, 654 (Fla. 1954). Any motions or other requests for relief are also denied. No motion for rehearing or reinstatement will be entertained by this Court.

POLSTON, LABARGA, LAWSON, LAGOA, and LUCK, JJ., concur.

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VERNON CARTER, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT
868 So. 2d 1276; 2004 Fla. App. LEXIS 4089; 29 Fla. L. Weekly D 800
CASE NO. 4D02-4114
March 31, 2004, Opinion Filed Exhibit #2

Editorial Information: Subsequent History

Released for Publication April 16, 2004. Post-conviction relief denied at Carter v. State, 939 So. 2d 110, 2006 Fla. App. LEXIS 16379 (Fla. Dist. Ct. App. 4th Dist., 2006)Post-conviction proceeding at, Remanded by Carter v. State, 941 So. 2d 1261, 2006 Fla. App. LEXIS 19457 (Fla. Dist. Ct. App. 4th Dist., 2006)Related proceeding at, Writ denied by, Without prejudice Carter v. State, 966 So. 2d 965, 2007 Fla. LEXIS 2368 (Fla., 2007)Related proceeding at Carter v. State, 988 So. 2d 632, 2008 Fla. App. LEXIS 11897 (Fla. Dist. Ct. App. 4th Dist., 2008)Related proceeding at, Writ denied by, in part, Writ dismissed by, in part, Without prejudice Carter v. State, 75 So. 3d 1243, 2011 Fla. LEXIS 2578 (Fla., 2011)Post-conviction relief denied at Carter v. State, 104 So. 3d 1104, 2012 Fla. App. LEXIS 16587 (Fla. Dist. Ct. App. 4th Dist., 2012)Post-conviction relief denied at Carter v. State, 104 So. 3d 1104, 2012 Fla. App. LEXIS 16597 (Fla. Dist. Ct. App. 4th Dist., 2012)Post-conviction proceeding at, Sanctions allowed by Carter v. State, 127 So. 3d 572, 2012 Fla. App. LEXIS 20200 (Fla. Dist. Ct. App. 4th Dist., 2012)Dismissed by, Motion denied by Carter v. Crews, 143 So. 3d 917, 2014 Fla. LEXIS 1553 (Fla., 2014)Related proceeding at, Transferred by Carter v. State, 2014 Fla. LEXIS 2016 (Fla., June 19, 2014)Dismissed by, Motion denied by, Request denied by Carter v. Jones, 182 So. 3d 631, 2015 Fla. LEXIS 2123 (Fla., 2015)Dismissed by Carter v. State, 2016 Fla. LEXIS 938 (Fla., May 4, 2016)Related proceeding at, Writ dismissed by, Motion denied by Carter v. State, 2017 Fla. LEXIS 122 (Fla., Jan. 19, 2017)

Editorial Information: Prior History

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ilona M. Holmes, Judge; L.T. Case No. 02-6287 CF 10A.

Disposition:

Affirmed.

Counsel

Carey Haughwout, Public Defender, and Joseph R. Chloupek, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

Judges: STONE, J. GROSS and HAZOURI, JJ., concur.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant was convicted in the Circuit Court for the Seventeenth Judicial Circuit, Broward County (Florida), of kidnapping, car jacking, attempted strong arm robbery, and battery upon a person 65 years of age or older. Defendant appealed, asserting that the trial court erred in denying his motion to suppress evidence discovered as a result of a "stop" which, he argued, was not based on reasonable suspicion.A court affirmed the denial of defendant's motion to suppress on the alternative ground of the inevitable discovery exception to the exclusionary rule, where the discovery of the crime was

based on a license plate check.

OVERVIEW: The court did not need to resolve whether the officer had a sufficiently founded suspicion to stop defendant's van by blocking it because, regardless, the court affirmed the denial of the motion to suppress on the alternative ground of the inevitable discovery exception to the exclusionary rule. Upon checking the van's license plate, the officer learned that the van had been recently stolen in a car jacking. The discovery of the crime was based on the license plate check, a process and means that was separate from, and not dependent upon, any unlawful police conduct. Here, any unlawful police conduct was patently unrelated to the ability of the police to discover the same information concerning the van as if no police overreaching had occurred.

OUTCOME: The judgment of the trial court was affirmed.

LexisNexis Headnotes

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule > Exceptions > Inevitable Discovery
Criminal Law & Procedure > Search & Seizure > Exclusionary Rule > Exceptions > Independent Source Doctrine

Pursuant to the inevitable discovery doctrine, a court may admit illegally obtained evidence if an independent source or activity would have inevitably disclosed the evidence.

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule > Exceptions > Inevitable Discovery

The exclusionary rule is not applicable even when the unlawful act may have contributed to the discovery where the information would have been otherwise acquired lawfully.

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule > Exceptions > Inevitable Discovery

In the context of the inevitable discovery doctrine, there does not have to be an absolute certainty of ultimate discovery; rather, only a reasonable probability need exist.

Opinion

Opinion by: STONE

Opinion

{868 So. 2d 1277} STONE, J.

Vernon Carter appeals a conviction of kidnaping, car jacking, attempted strong arm robbery, and battery upon a person sixty-five years of age or older. Specifically, he asserts that the trial court erred in denying his motion to suppress evidence discovered as a result of a "stop" which, he argues, was not based on reasonable suspicion. The "stop" consisted of the investigating officer's patrol car

blocking egress by Carter's van. Here, we need not resolve whether the officer had a sufficiently founded suspicion to stop the van by blocking it because, regardless, we affirm the denial of the motion to suppress on the alternative ground of the inevitable discovery exception to the exclusionary rule.

Around 11:00 p.m. on March 14, 2002, a police officer was dispatched to investigate a call from an area resident expressing concern over a suspicious van parked across the street from her apartment building in front of a closed doctor's office. The resident reported that the van had been parked for a considerable period of time with the engine running, the headlights off, and with two occupants, one of whom was partially undressed and watching a television or computer screen.

The officer testified to having patrolled the same area for the past two years and that the only cars that ever parked at that location after hours were four or five white Ford Tauruses used by employees during the day. Upon arriving at the scene, the officer observed the van, pulled his patrol car behind the suspicious vehicle in a way that blocked it, and approached the van with a flashlight.

The officer greeted Carter, who was seated inside the van, and after observing that the van had a Wisconsin license plate, inquired as to whether Carter "liked cheese." Carter responded suspiciously, explaining that he had a Florida identification card. The officer requested Carter produce the identification card and ran the card, whereupon he found there was a warrant for Carter's arrest. Upon checking **{868 So. 2d 1278}** the van's license plate, the officer further learned that the van had been recently stolen in a car jacking.

Pursuant to the inevitable discovery doctrine, a court may admit illegally obtained evidence if an independent source or activity would have inevitably disclosed the evidence. *Moody v. State*, 842 So. 2d 754, 759 (Fla. 2003).

We recognize that the supreme court, in *Moody*, ruled adversely to the state. *Id.* at 755. There, however, the stop was based on a "hunch" and led to a search of the car where a weapon, tying the appellant to another crime, was discovered. *Id.* at 758. In this case, the discovery of the crime was based on the license plate check, a process and means that is separate from, and not dependent upon, any unlawful police conduct. Here, any unlawful police conduct was patently unrelated to the ability of the police to discover the same information concerning the van as if no police overreaching had occurred. *See, e.g., Nix v. Williams*, 467 U.S. 431, 81 L. Ed. 2d 377, 104 S. Ct. 2501 (1984).

In *Nix*, the police discovered the location of a body based on the defendant's statements. *Id.* at 435. There, the Supreme Court accepted the trial court's finding that if a search for the body had not been suspended by disclosures of unlawfully obtained information leading to discovery of the body, "the search would clearly have been taken up again . . . and the body would [have] been found in short order." *Id.* at 438. Further, in *State v. LeCroy*, 435 So. 2d 354, 357 (Fla. 4th DCA1983), we noted that the exclusionary rule is not applicable even when the unlawful act may have contributed to the discovery where the information would have been otherwise acquired lawfully.

This court has also recognized that there does not have to be an absolute certainty of ultimate discovery; rather, only a reasonable probability need exist. *State v. Ruiz*, 502 So. 2d 87 (Fla. 4th DCA1987). Common sense dictates that such reasonable probability existed here, and the state should not be shackled in its proof because the officer chose to initiate the investigation before checking the license tag.

There is no need to address the now moot issue of standing. As to all other issues raised, we find no reversible error, or abuse of discretion, and affirm.

GROSS and HAZOURI, JJ., concur.

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