

No. 07-513

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IN THE  
Supreme Court of the United States

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BENNIE DEAN HERRING,  
*Petitioner,*

v.

UNITED STATES,  
*Respondent.*

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On Writ of Certiorari to the United States Court of  
Appeals for the Eleventh Circuit

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JOINT APPENDIX

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Petition for Writ of Certiorari Filed: Oct. 11, 2007  
Certiorari Granted: Feb. 19, 2008

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## RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA (DOTHAN)

Criminal Docket for Case #:1-05-cr-00161-MHT-CSC-1

Date	Docket No.	Proceeding
06/29/2005	3	INDICTMENT as to Bennie Dean Herring(1) count(s) 1, 2. (jct, ) (Entered: 06/30/2005)
09/25/2005	16	MOTION to Suppress by Bennie Dean Herring. (Freeman, Christine) (Entered: 09/25/2005)
09/27/2005	20	ORDER as to Bennie Dean Herring re 16 MOTION to Suppress filed by Bennie Dean Herring directing the government to file its Response by

		noon on 9/29/2005, and setting an Evidentiary Hearing for 9/29/2005 03:00 PM in Courtroom 4B before Honorable Charles S. Coody. Signed by Judge Charles S. Coody on 9/27/05. (snc) (Entered: 09/27/2005)
09/28/2005	23	RESPONSE to Motion by USA as to Bennie Dean Herring re 16 MOTION to Suppress (Speirs, Verne) (Entered: 09/28/2005)
09/29/2005	24	Minute Entry for proceedings held before Judge Charles S. Coody :Motion

		Hearing as to Bennie Dean Herring held on 9/29/2005 re 16 MOTION to Suppress filed by Bennie Dean Herring. (Court Reporter Mitchell Reisner) (Attachments: # 1 Witness List) (ws ) (Entered: 10/03/2005)
10/03/2005	25	REPORT AND RECOMMEND- ATION as to Bennie Dean Herring re 16 MOTION to Suppress; Objections to R&R due by 10/7/2005. Signed by Judge Charles S. Coody on 10/3/05. (snc) (Entered: 10/03/2005)
10/05/2005		TRANSCRIPT of

		<b>SUPPRESSION HEARING as to Bennie Dean Herring held on September 29, 2005 before Judge Charles S. Coody. Court Reporter: Mitchell Reisner. (1 volume) (snc) (Entered: 10/06/2005)</b>
<b>10/07/2005</b>	<b>29</b>	<b>OBJECTION TO REPORT AND RECOMMENDATIONS 25 by Bennie Dean Herring (Freeman, Christine) (Entered: 10/07/2005)</b>
<b>10/07/2005</b>	<b>30</b>	<b>Pro Se OBJECTION TO REPORT AND RECOMMENDATIONS 25, 22 by Bennie Dean Herring (snc) (Entered: 10/11/2005)</b>

10/11/2005	31	Pro Se OBJECTION TO REPORT AND RECOMMEND- ATION 25 by Bennie Dean Herring (snc) (Entered: 10/11/2005)
10/13/2005	38	ORDER as to Bennie Dean Herring re 16 MOTION to Suppress filed by Bennie Dean Herring as to "physical evidence"; A Supplemental Hearing is set for 10/24/2005 at 01:30 PM in Courtroom 2E before Honorable Myron H. Thompson. The parties are to file Supplemental Briefs by 1:00 p.m. on

		10/21/2005 . Signed by Judge Myron H. Thompson on 10/13/05. (ws) (Entered: 10/13/2005)
10/13/2005	39	ORDER as to Bennie Dean Herring re 16 MOTION to Suppress filed by Bennie Dean Herring ; ORDER ADOPTING REPORT AND RECOMMEND- ATIONS of the United States Magistrate Judge 25 REPORT AND RECOMMEND- ATIONS as to Bennie Dean Herring GRANTING 16 MOTION to Suppress as to "statements." Signed by Judge Myron H.

		Thompson on 10/13/05. (ws) (Entered: 10/13/2005)
10/20/2005	57	BRIEF/ RESPONSE in Support by Bennie Dean Herring re 16 MOTION to Suppress (Freeman, Christine) (Entered: 10/20/2005)
10/21/2005	61	Minute Entry for MOTION HEARING held before Judge Myron H. Thompson on 10/21/2005 re 16 MOTION to Suppress filed by Bennie Dean Herring, 49 MOTION to Dismiss filed by Bennie Dean Herring, 56 MOTION in Limine filed by Bennie Dean

		<p>Herring,, 46  MOTION in  Limine to  Prevent  Testimony  Regarding Kacy  Clark filed by  USA (Court  Reporter  Mitchell  Reisner.)  (Attachments: #  1 Witness List#  2  Government's  Exhibit List# 3  Defendant's  Exhibit List)  (snc) (Entered:  10/21/2005)</p>
10/24/2005	63	<p>ORDER  ADOPTING  REPORT AND  RECOMMEND-  ATIONS as to  Bennie Dean  Herring (1)  overruling  Herring's  objections 29,  30, and 31;  (2) adopting the  Magistrate  Judge's  recommend-</p>

		<p>ation 25 as to "physical evidence" and (3) denying 16 MOTION to Suppress filed by Bennie Dean Herring. An opinion will follow later. Signed by Judge Myron H. Thompson on 10/24/05. (snc) (Entered: 10/24/2005)</p>
10/26/2005	74	<p>MEMORANDUM OPINION re 63 order adopting Magistrate Judge's 25 recommendation to deny defendant's 16 motion to suppress "physical evidence" as to Bennie Dean Herring . Signed by Judge Myron H. Thompson on 10/26/05. (snc)</p>

		(Entered: 10/26/2005)
11/07/2005		<b>JURY TRIAL</b> commenced before Judge Myron H. Thompson as to Bennie Dean Herring on 11/7/2005 (see final entry for pdf) (Court Reporter Mitchell Reisner.) (snc) (Entered: 11/08/2005)
11/08/2005	84	<b>JURY VERDICT</b> of Guilty on Counts 1 and 2 as to Bennie Dean Herring (1) (snc) (Entered: 11/08/2005)
01/27/2006	111	<b>JUDGMENT</b> as to Bennie Dean Herring (1). Count 1: 27 Mos Imp; 3 Yrs Sup Rel; \$100 SA. Count 2: 12

		Mos Imp (conc w/Ct 1); 1 Yr Sup Rel (conc w/Ct 1); \$25 SA . Signed by Judge Myron H. Thompson on 1/27/06. (snc) (Entered: 01/27/2006)
01/27/2006	112	NOTICE OF APPEAL by Bennie Dean Herring to the United States Court of Appeals for the Eleventh Circuit from 111 Judgment, entered 1/27/06. Copies mailed. (ydw, ) (Entered: 01/27/2006)

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
No. 06-10795-FF  
USA v. Bennie Dean Herring**

File Date	Entry
01/31/200 6	DKT2 (Docketing Notice) issued. To:Herring, Bennie Dean; c:Debra P. Hackett; c:Leura Garrett Canary; c:Verne H. Speirs
02/01/200 6	Probable Jurisdiction Noted: (ProSe)
04/17/200 6	Attorney Ronald W. Wise has been appointed to represent appellant Bennie Dean Herring. JFD
07/17/200 6	Appellant Brief Filed: (Atty: Ronald W. Wise)
08/21/200 6	Appellee Brief Filed: (Atty: Verne H. Speirs)
09/01/200 6	Reply Brief Filed: (Atty: Ronald W. Wise)
02/05/200 7	Ronald W. Wise argued for Appellant; Verne H. Speirs argued for Appellee
07/17/200 7	Judgment Entered
07/17/200 7	Opinion Issued
10/22/200 7	Notice of Filing Certiorari: 07-513 (Atty: Jeffrey L. Fisher)
02/25/200 8	Certiorari Granted: SC# 07-513 (Atty: Ronald W. Wise)

**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA**

THE UNITED STATES  
OF AMERICA

v.

CRIMINAL  
ACTION NO.

BENNIE DEAN HERRING

1:05-CR-161

**MOTION TO SUPPRESS PROCEEDINGS**

BEFORE: The Hon. Charles S. Coody  
HEARD AT: Montgomery, Alabama  
HEARD ON: September 29, 2005

APPEARANCES: Verne Speirs, Esq.  
Defendant Herring (pro se)  
Christine Freeman, Esq.

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[DIRECT EXAMINATION BY MR. SPEIERS OF  
MARK ANDERSON]

\* \* \* \* \*

Would you please state your full name for the record?

A Market Robert Anderson.

Q And, sir, how are you employed?

A I’m presently the captain of police in Florala,  
Alabama.

Q And, sir, before that where were you employed?

A Prior to that I was with—employed with the Coffee  
County Sheriff’s Department assigned to the violent  
crimes narcotics task force.

\* \* \* \* \*

[Page 6, line 2, to page 16, line 4]

Q How long have you been policing, if you will?

A Sixteen years.

Q Have you already post certified?

A Yes.

Q Have you been to various law enforcement schools?

A Yes, sir, many of them.

Q Okay. Can you name a few that you have been through?

A I've been to the D. E. A. schools on narcotics, Drug Interdiction, Criminal Investigation One, Two and Three. I'm certified as a criminal and narcotics investigator. I've had Interview and Interrogation, Weapons of Mass Destruction. I've had many, many other courses over the years.

Q Sir, just as a point of clarification, have you ever worked for Dale County, Alabama?

A No, sir.

Q Or the Dale County Sheriff's Office?

A No, sir.

Q The Dale County Police Department?

A No, sir.

Q Or how about have you ever worked for the Dale County Circuit Clerk's Office?

A No, sir.

Q Okay. Sir, along that same line are you familiar at all with how the Dale County warrant system works?

A No, sir.

Q In your time in Coffee County or in your sixteen years of being in law enforcement, have you ever had any reason to question a Dale County warrant?

A No, sir, I haven't.

Q Let's go back to July 7, 2004, okay?

A Yes, sir.

Q Do you remember that date?

A Yes, sir, I do.

Q Okay, sir. Do you know Bennie Dean Herring?

A Yes, sir, I do.

Q Is Mr. Herring in the courtroom today?

A Yes, sir, he is.

Q Would you point him out, sir.

A It would be him right here.

(Whereupon, the witness indicated.)

Q Sir, if you could, could you detail to the Court the events that took place on July 7, 2004 with regard to Mr. Herring?

A Yes, sir. I had came into work that afternoon. When I came into the Sheriff's Department, Investigator Reynolds told me that Bennie Herring was there and was out back of the department with the sheriff getting something out of his truck, or a truck that belonged to him. I don't know much about that truck but I understand it's his truck. There was something in it and the sheriff had let him get it out anyway.

Q Let me stop you there. Was the vehicle left there by Mr. Herring? Do you have any knowledge of why the vehicle was there?

A The only thing I know the chief deputy at the time had had it brought back there. I don't know if somebody drove it or -- but it was just in our impound lot and it was his truck.

Q Okay. So it was impounded?

A Yes.

Q Okay. I understand. Please continue.

A The sheriff had went out into the impound lot with Herring, and he -- whatever he was going to get he was going to get anyway, I don't know, but as soon as they told me he was there I had walked up back up

front to the Sheriff's Department where Sandy Pope was, she's the warrant clerk, she handles all the warrants from not just our county but any warrants that are sent to our county.

I had been told from a Dale County investigator, Tim Hicks, that there were warrants for Herring. I asked Sandy at that point if we had any warrants on him. She checked and said that we did and I asked her to call Dale County.

Q Let me stop you there and let's go through it bit by bit. What is the first thing you asked her to check on?

A Warrants from Coffee County.

Q Okay. And did she do that?

A Yes, she did.

Q Do you know how she did that?

A On her computer. She sits there at her desk, the computer is in front of her, she just types in the name. You know, if there is an active warrant it will bring it up.

Q And where were you as she was looking at this?

A I was standing at the front counter.

Q Okay. And what was the result of a search for Coffee County warrants?

A There were none.

Q All right. So what happened next?

A I asked her to call Dale County.

Q Okay. And did she do that?

A Yes, she did.

Q And where were you when she called to Dale County?

A I was still standing up front with deputy Bradley was standing beside me.

Q And what happened next?

A She was still on the phone. She looked over at me and said, "Yeah, they have got warrants on him, felony warrants." So Deputy Bradley and I entered his car. I saw Herring getting in his truck, driving up out of the parking lot of the Sheriff's Department. We got in his patrol unit, went up the road behind him. He had already made it from our driveway to and turned right.

Q Let me stop you there. From the time you learned that there was an active warrant from Dale County until the time you got behind Mr. Herring, what's the amount of time that lapsed between your knowledge of the warrant and getting behind Mr. Herring?

A From the time that Sandy said, "Yes, they have a warrant on him," until we got behind him, probably

two minutes, I mean because she was still on the phone saying, "Yeah, they have a warrant on him" and we were going out the door.

As we were chasing up to him, I called back on the radio out of the car and asked her if Dale County wanted him, would they come pick him up and she told me, "Yes." At this time she [sic] turned right on 84, Deputy Bradley turned the emergency lights on the vehicle to stop him.

Q Okay. So now Mr. Herring is stopped. All right. What did you do next?

A As we come out of the car Herring come out of his truck, was walking back toward us.

Q Let me stop you there. Did you ask him to exit his vehicle?

A No, sir.

Q Continue, please.

A As he was coming back toward us, Deputy Bradley told him he was under arrest. And he said, "Under arrest for what?"

He said, "There is a warrant on you in Dale County."

Well he turned and started back toward his truck. I was in between his car and his truck, standing in front of him and stopped him. Deputy Bradley took him by the arm in order to put the cuffs on him and he tried to pull away from Deputy Bradley and at this

point we used a little more restraint to put the cuffs on him.

Once he was cuffed, I started patting him down to search him, made sure he didn't have any weapons or anything like that on him. In his left front pocket I pulled out a small bag that had powder -- I'm sorry.

Q You pulled out a small bag?

A Right that had powder residue in it. As I pulled it out Mr. Herring looked at it and made a spontaneous statement, "That's not mine, I don't know what that is."

MR. SPEIRS: Your Honor, may I approach?

THE COURT: You may.

Q Sir, I show you what's been marked for identification as government's exhibit 2. Do you recognize that exhibit, sir?

A Yes, sir. This is what I removed from Herring's pocket.

Q And, if you will, was -- as you were patting him down, was he cuffed at this point?

A Yes, he was cuffed. He was under arrest, yes.

Q All right. And you removed that from which pocket, sir?

A His left front.

Q Left front pocket. All right.

Do you know whether any analysis has been done on that particular substance?

A Yes, sir, it has.

Q All right. Do you know what the result of that analysis, is?

A Yes, sir, it was positive for methamphetamine.

Q All right, sir. Now continuing on, what was the next thing that happened?

A He was -- Herring was put in the back of the patrol unit. At this time Deputy Bradley and I approached his truck. I was on the passenger's side, Deputy Bradley I think was on the driver's side just to search incident to the arrest.

Deputy Bradley had pulled some stuff that was up under the edge of the sheet that was just laying there. He pulled it out. As he pulled it out, a black -- I think it was black -- but it was a plastic bag, anyway it was shaped like a handgun. I picked it up and unrolled it and that handgun there was inside wrapped up in there.

MR. SPEIRS: May I approach again, Your Honor?

THE COURT: You may.

Q Sir, I show you what's been marked as government's exhibit 1. Do you recognize that particular exhibit?

A Yes, sir. This is the weapon I removed from his truck.

Q And if you would, would you describe for the Court exactly where it was and how you found it?

A It was -- The transmission hump in between the passenger's side and the driver's side, it was laying kind of on top of the hump in between the seats. As he pulled things out it kind of pulled out with it.

Q Okay. Do you know whether there was any ammunition in that particular firearm?

A No, sir. My recollection is there wasn't any.

Q There was no ammunition?

A No, sir.

MR. SPEIRS: May I approach again, Your Honor?

THE COURT: You may.

Q Sir, I show you what's been marked for identification as government's exhibit 3. Do you recognize that?

A Yes, sir. This is the Lego Classic, but it's a little red bucket that was sitting in the seat.

Q What was in the Lego bucket?

A Ammunition and a knife.

Q Now is there any ammunition in that bucket right now?

A No, sir. Just two twenty-two rifle boxes, but there is no ammo in it, no.

Q All right. Sir, I'm going to show you what's been marked for identification as government's exhibit 4. Would you take a look at what's in that A.T.F. bag.

A Yes, sir.

Q Do you recognize government's exhibit 4, the contents of that?

A Yes, sir, this is ammo that was in that box.

Q And all of this ammunition was found where, sir?

A In the seat.

Q All right.

A Sitting in the seat. It was in this box, in this bucket, but it was sitting in the seat of the truck.

Q Okay. So the ammunition that was found in his car was in this bucket, and the bucket was there in Mr. Herring's vehicle?

A Yes.

Q All right. Sir, from the time that you stopped Mr. Herring until the time you secured the evidence, how much time had elapsed?

A It was less than ten minutes. I mean, we were moving pretty quick. It was just an arrest and getting through with it.

Q If you would, could you describe for the Court exactly how far Mr. Herring was stopped from the Sheriff's Department?

A It's probably two hundred feet, three hundred yards, something like that.

Q It's not even a mile?

A No.

\* \* \* \* \*

[Page 17, line 11, to page 21, line 4]

Q Okay. Sir, if you would, could you describe for the Court from the moment you heard that there was an active Dale County warrant on Bennie Dean Herring until you had him secured and recovered the evidence in this case, approximately how much time had elapsed?

A Less than ten minutes. Probably seven, eight, nine. It's under ten minutes. I mean it was just -- he was just right there.

Q It was under ten minutes?

A Yes, sir.

Q Now, at some point in time -- or when did you learn that there was an issue with the Dale County warrant?

A This was after he was in the back of the car. Lieutenant Davis had driven up where we were when we were stopped. And at one point he was standing outside his car at the back door of the patrol unit where Herring was. And I don't know if he was talking to him, but at one point the door was open, you know.

But after that, when we were searching his truck, me and Deputy Bradley, when I walked back there I had heard Sandy call over the radio that she needed one of us. When I say "one of us," that would be Lieutenant Davis or Deputy Neil or I would call her on the link radio. Davis had went back to his car, was setting in his car and called her back. At that point, you know, I come walking back to his car and he had the window down and told me that there was a problem.

Q A problem with the warrant?

A Yes.

Q But what had you found by the time you learned there was a problem with the warrant?

A I would have had the weapon and the meth. He was already arrested before when he had this, before that ever come up.

Q During the course of your career with Coffee County, how many times had you relied on

information received from Dale County regarding warrants?

A I have before. You know, we all have. I mean, you know, it's just I don't know how many times. It's just something that we do.

Q In you could, geographically where is Dale County in relation to Coffee County?

A It's right there. We connect. Coffee County runs into Dale County.

Q How many times have you had a reason to question a Dale County warrant?

A None.

Q How many times have you had a reason to question information that came out of Dale County?

A None.

MR. SPEIRS: I think that's all I have for this witness, Your Honor.

THE COURT: Mr. Herring?

DEFENDANT HERRING: I'm handicapped, Judge.

[CROSS EXAMINATION BY MR. HERRING OF  
MARK ANDERSON]

Q Did you get your information from the Clerk's Office?

THE COURT: Mr. Herring, stand during examination.

DEFENDANT HERRING: Yes, sir. Sorry.

Q Did you get your information from the Clerk's Office from Dale County or the Sheriff's Department?

A I got mine from Sandy. She was on the phone with whoever she calls to verify the warrants.

Q Do you agree that he arrested me on outstanding warrants from Dale County?

A Yes.

Q Have you read Deputy Bradley's, I guess, it's an affidavit, statement, that's in the file?

A I'm sure I have.

Q And what you're saying is that you made a, I think you said in another hearing, we had a good faith -- Why did you all of a sudden want to know if there were any warrants on Bennie Herring? I was already in the police station, right?

THE COURT: Do what, now?

Q I was already at the Sheriff's Office. Why all of a sudden were you concerned whether there were any warrants out for Bennie Herring?

MR. SPEIERS: Your Honor, we'd object to any relevance as to why he thought there was any. He checked.

THE COURT: Overruled.

A Tim Hicks with the task force out of Dale County had told me there was a warrant for you.

Q When did he tell you that?

A I don't remember exactly when it was.

Q Well was it before that day?

A Yeah.

Q Had you acted on it earlier? Had you verified it earlier before that day?

A No, I didn't.

\* \* \* \* \*

[Page 23, line 7, to page 24, line 23]

Q You do agree that there were no warrants from Dale County?

A Now? Yeah, I know that now.

Q You found out that day that there were no warrants from Dale County?

A Yeah, after you were arrested, yeah.

Q Okay. Well, you found out that day at the site, at the arrest site, at the scene where you stopped me, you found out there were not warrants from Dale County. You knew that, didn't you?

A I knew there was a problem, and that's what the lieutenant told me, "There's a problem with the warrants, let's go to the Sheriff's Office." And we went to the Sheriff's Office. You were already under arrest.

Q What would the problem with the warrants be?

A They couldn't get a the [sic] hard copy.

Q Couldn't get a hard copy.

A Yes.

Q Are you saying there was a copy –

A No, I said they couldn't put their hands on the hard copy, is what I was told.

Q Are you saying that there wasn't a hard copy?

A No. I'm saying they are saying that they could not put their hands on a hard copy. Whether or not there was a hard copy, I do not know.

Q Who told you that, that they couldn't get their hand on a hard copy?

A Lieutenant Davis.

Q Lieutenant Davis told you he couldn't get a hard copy? That means that there might just be some type of error?

A Error? There obviously was an error.

Q Did you ever find out that there wasn't a warrant?

A Yeah.

Q You did find that out?

A Yeah.

Q At what point in time did you find that out?

A When we got back down to the Sheriff's Office.

Q The Sheriff's Office?

A Yeah.

\* \* \* \* \*

[Page 35, line 21, to page 37, line 16]

[DIRECT EXAMINATION BY MR. SPEIRS OF  
SANDY POPE]

Q Good afternoon, ma'am.

A Good afternoon.

Q Would you please state your name for the record.

A Sandy Flowers Pope.

Q And, ma'am, how are you employed?

A I work for the Coffee County Sheriff's Department.

Q Okay. And what do you do for the Coffee County Sheriff's Department?

A I am a warrant clerk.

Q And what exactly are the duties of a warrant clerk?

A I take all the warrants that are received into our office, put them on the computer and give it out to the deputy who needs it. And then once they have been served, I take them off the computer and return them to either the Clerk's Office or the agency.

Q How long have you had this particular job?

A Five years.

Q All right. And make sure I understand, you work for Coffee County, is that right?

A Yes, sir.

Q Do you have much interaction with the folks from Dale County?

A Yes, sir.

Q Okay. Who do you work with, or who do you know that has your job over in Dale County?

A Sharon Morgan.

Q Sharon Morgan. Okay. All right. Now in the five years that you have been with Coffee County, how many times have you ever had a reason to doubt information that came from Dale County, Alabama?

A Never.

Q Are you familiar with their internal warrant systems?

A No, I am not.

Q Do you know about any problems that they have with their warrant system?

A No, I do not.

\* \* \* \* \*

[Page 38, line 7, to page 41, line 11]

Q What happened with regard to Bennie Dean Herring and any warrants that you became aware of that day?

A When Mr. Herring was leaving the office, Mark Anderson came and asked me if we had any outstanding warrants on him. And I checked my computer and we did not have anything. So he asked me to contact Dale County to see if they had anything active.

Q Okay. Let's stop you there. How did you check your computer system?

A I just keyed their name in and see if anything pops up that a warrant has not been served yet.

Q Okay. And how do you check with Dale County as to whether there would be any warrants?

A I contact Sharon Morgan and ask her about her warrants.

Q Okay. And we're going to go in baby steps, okay?

A Okay.

Q All right. So you contacted Sharon Morgan, is that right?

A That's correct.

Q And what did you ask her?

A I asked her if they had any active warrants on Bennie Herring.

Q Okay. And what did you learn?

A She said that they did have an F. T. A. warrant on him on a felony charge.

Q "F .T. A.," what does that mean?

A Failure to appear.

Q All right. What did you do with that information?

A I asked her to fax a copy of that warrant to me, and I relayed the information to Investigator Mark Anderson that they did have a warrant.

Q Okay. When you relayed that information to Mark Anderson, what did he do?

A He immediately left the office to try to go stop Mr. Herring to place him under arrest for that warrant.

Q Okay. All right. Did you receive at any time calls back from Investigator Anderson after he left your office?

A He did not call me.

Q Okay.

A That I remember.

Q Okay. What happened next with regard to the warrant?

A I heard on the radio, they called, that they were signal ten-fifteen which meant they had Mr. Herring in custody, and –

Q Let me stop you there. How long after Investigator Anderson left did you hear the ten-fifteen code?

A Probably five to seven minutes. I'm not real sure on the time.

Q About five to seven minutes?

A Something like that

Q At that five to seven minute mark, what was your understanding of the Dale County warrant?

A That it was active.

Q When did you become aware that there might be a problem with the Dale County warrant?

A After I heard them call "ten-fifteen" on the radio, probably three or four minutes later Sharon called back and said that the -- she could not confirm the warrant. She first said she couldn't confirm it, and then she stated that the warrant had been recalled and she had not been notified of it.

Q Okay. And what, if anything, did you do with that information?

A I contacted them on what I call the big radio and asked one of them to contact me by link. Lieutenant Davis contacted me by link, and then I explained to him that the warrant had been recalled.

THE COURT: Why did you call Lieutenant Davis instead of Anderson?

THE WITNESS: I just asked any of them that was out with that unit to contact me.

THE COURT: All right.

THE WITNESS: So that I wouldn't have to put the information out on the air.

\* \* \* \* \*

[Page 43, lines 3 to 18]

Q And you did say that Anderson was still in the jail facility when you told him about the—

A No, he was at the Sheriff's Department.

Q Okay, I'm sorry. Yeah, that's correct, yeah. He was in the Sheriff's Office which is part of the jail facility when you told him about the purported warrants?

A That's correct.

Q Okay. And he left immediately, is that correct?

A That's correct.

Q Okay. And he from that point in time until Ms. Morgan, I believe it was, called you back was how long?

A Somewhere between ten minutes maybe. Ten, fifteen minutes, the total thing I guess. I'm not real sure of that as a time frame.

\* \* \* \* \*

[Page 45, line 8, to page 50, line 8]

[DIRECT EXAMINATION BY MR. SPEIRS OF  
SHARON MORGAN]

Q Ma'am, you have been sworn?

A Yes.

Q Yes, ma'am. Okay. Would you please state your full name for the record.

A Sharon Morgan.

Q And, ma'am, where are you from?

A Ozark, Alabama.

Q Okay. And do you work for Dale County?

A Yes, I do.

Q Q Ma'am, what do you do for Dale County?

A I'm a warrant clerk.

Q Okay. And what exactly does a warrant clerk do?

A I log in my computer all warrants coming into our office from the Circuit Clerk's Office, from the D.A.'s office, from other counties. And then they're assigned to a deputy, and then whenever that warrant has been processed the deputy has maybe failed to make contact with the individual, can't locate him, then I disburse them, you know, send it back to the county or file them.

When they're arrested I do that, and I remove, you know, delete that warrant from our system or make it inactive. It's not deleted, but it's inactive.

Q Yes, ma' am. If I understand correctly, do you work for the Sheriff's Department -- or Dale County Sheriff's Department or do you work for the Dale County Clerk's Office?

A I work for the Dale County Sheriff's Office.

Q The Sheriff's Office.

A Yes.

Q Okay. Now, you work on a computer system, is that right?

A Yes.

Q Can you describe for the Court the computer system that you have vis-a-vis the computer system that the Clerk's Office has? Are they the same system?

A No. We have our own system.

Q You have your own system?

A Yes.

Q All right. Can you tell the Court just a little bit about your system and information that perhaps might transfer from the Clerk's Office to your office.

A It doesn't transfer per computer.

Q It doesn't transfer –

A Paper.

Q It comes via paper?

A Yes.

Q Okay. All right. Now do you remember July 7th  
10 of 2004?

A Yes.

Q Okay. Do you remember -- Who is Sandy Pope?

A She works in the Coffee County Sheriff's Office.

Q Okay. And how do you know Sandy?

A She and I deal over the phone back and forth many  
times concerning individuals and warrants.

Q Were you called on July 7th of 2004 by Sandy  
Pope?

A Yes, I was.

Q And what did she ask you?

A She asked me if we had an active warrant on  
Bennie Herring.

Q And what did you tell her?

A I told her, "Yes."

Q And how did you know that?

A Because I looked him up in my computer base and it showed an active warrant

Q Okay. And what was the warrant for?

A It was for failure to appear for possession, receiving controlled substance and also obstruction of Government operations.

Q And what did Miss Pope want you to do?

A She wanted me to fax her a copy of that warrant.

Q Okay. And what did you do?

A I went in search of the warrant to try to locate it so that indeed I could do that.

Q How did you do that? How did you physically go and search for it?

A Well, I mean there are two or three different places in the office that warrants like that are kept, because it had been returned from Coffee County. And so I went and I could not locate it at first, so I called the Clerk's Office to verify the status of it and to see if I could get a copy of it so indeed I could fax it to Sandy. And at that point in time they told me that the warrant had been recalled.

Q Okay. From the time that Miss Pope asked you or called you about a warrant until the time you found out that the warrant had been recalled, approximately how much time had elapsed?

A Ten, fifteen minutes.

Q Ten or fifteen minutes?

A Mm-hmm.

Q All right. Okay. So when did you communicate with Miss Pope that there was a problem with the warrant?

A Immediately. As soon as I found out I called her which, again, was within ten or fifteen minutes.

Q All right. Ma'am, how many times have you had or has Dale County had problems, any problems with communicated about warrants?

A Several times.

Q Are you aware of any reason why individuals in Coffee County shouldn't rely on information that they get from Dale County?

A No. I mean, they should be able to rely on what I tell them.

Q Indeed, do Coffee County authorities rely on information they get from Dale County authorities?

A Yes.

Q How often do you communicate with the folks of Coffee County about warrants?

A I have no way to answer that. It's not daily, you know. I mean, a week or two may go by and we don't call, and then the next week we may have ten conversations.

Q Certainly. So you have numerous conversations with Miss Pope during the course of your duties.

A Yes, I do.

Q All right. If I understand your testimony correctly, the Clerk's Office and the Sheriff's Department do not share a common warrant database.

A That's correct.

\* \* \* \* \*

[Page 51, lines 5-9]

[CROSS EXAMINATION BY MR. HERRING OF  
SHARON MORGAN]

Q And like Mr. Speirs asked you, you have nothing to do with the Clerk's Office?

A Our systems do not overlap, no.

Q Your computer is separate?

A Exactly.

[Page 51, line 23 to page 53, line 12]

[DIRECT EXAMINATION BY MR. SPEIRS OF  
MARY BLUDSWORTH]

Q Good afternoon, ma'am.

A Hi.

Q Would you please state your full name for the record.

A Mary Bludsworth.

Q Could you spell your last name just for the court reporter?

A B-l-u-d-s-w-o-r-t-h.

Q Ma'am, how are you employed?

A I'm the Dale County Circuit Clerk.

Q How long have you been the Dale County Circuit Clerk?

A Eleven years.

Q And if you would, could you just briefly describe for the Court what the duties of a county circuit clerk are.

A To maintain all court records, basically. All pleadings and everything that's involved in a court file.

Q Yes, ma'am. Okay. Do you recall July 7th of 20 2004?

A Do I recall that day? Yes.

Q Okay. All right. Before I ask you that, let me ask you this. Do you work in the same building as the Sheriff's Department?

A I do.

Q Okay. What floor are you on?

A Third.

Q And what floor is the Sheriff's Department on?

A The basement.

Q What -- Do the Sheriff's Department and the Circuit Clerk's Office share a computer network?

A No.

Q So there is no direct sharing of information between the two entities?

A No. Ours is the court system and theirs is the county system.

\* \* \* \* \*

[Page 53, line 20, to page 55, line 7]

Q Are you aware of the status of Mr. Herring's warrant as it stood on July 7, 2004?

A Yes.

Q And what was the status of the warrant?

A Recalled.

Q Okay. What certainty do you have that the Sheriff's Department knew that that warrant had been recalled?

A None.

Q Ma'am, what reasons are you aware of that individuals in Coffee County, Alabama should have not to rely on Dale County information?

A None.

Q Should they be able to rely on Dale County information?

A As far as I know we've never had any problems.

Q Do you know Investigator Mark Anderson?

A I do not.

Q Do you know Neil Bradley?

A I do not.

Q Okay. All right. Have you ever -- Do you work with them at all?

A No.

Q You don't have any knowledge of them whatsoever?

A None.

Q Okay. Thank you, ma'am.

THE COURT: Mr. Herring?

[CROSS EXAMINATION BY MR. HERRING OF  
MARY BLUDSWORTH]

Q Would it be safe to say that your system does work, since there was no copy of the recalled warrant in the Sheriff's Office?

A I can't tell you what's in the Sheriff's Office.

Q Would you agree with me that your system does work, your Clerk's Office does work since there wasn't a copy, the warrant was recalled physically? That's not a fair question.

A As far as I know the system that we have works.

\* \* \* \* \*

[Page 56, lines 11-12]

DEFENDANT HERRING: Judge, I'd like to call Neil Bradley.

\* \* \* \* \*

[Page 58, line 17, to page 62, line 8]

Q Would you just tell us exactly your recollection of what happened that day.

A Best of my memory, you were at the office to retrieve an item out of a truck that was in impound. You came back to the office. Someone said you had a felony warrant out of Dale County.

At that time myself and Mark Anderson left the office, went back through the office, went and got in my patrol car and at that time you were driving up the hill. Once you made a turn right onto Highway 84 in the westbound lane, I activated my lights. I stopped you on a traffic stop.

Once we -- both vehicles were stopped, you exited your vehicle and started to walk towards the patrol car. Once you started walking towards the patrol car I told you to place your hands on the car. You refused to do so and you kept asking, "Why? What have I done?" And I told you at that time Dale County had a felony warrant for your arrest.

At that time you turned and walked back toward the driver's side door of your truck, and at that time I grabbed ahold of your arms and we placed you in handcuffs. Investigator Mark Anderson patted you down, checked your pockets and out of one of your pockets he pulled out a plastic baggy, a Ziploc baggy

that contained an off-white powdery substance in it. We placed you in the back of the car.

Search incident to the arrest was done on the vehicle. I remember a red bucket, a red Lego bucket that had been found that had various types of ammunition. I remember a shotgun shell in particular and a gun was found in the truck. While the search was going on, at some point myself and Investigator Mark Anderson were searching the truck. Warrant clerk Sandy Pope called on the V. H. F. radio and stated that someone needed to call her on the link. At that time I did not have my link with me, all I had was a hand-held walkie-talkie.

It is my understanding at that time Chris Davis called her on the link, and she advised him that there might be some problems in confirming the warrant.

THE COURT: All right. At that point, tell me what you had found, if anything, during the search.

THE WITNESS: At that time all I had seen was a red Lego bucket with the ammunition in it.

THE COURT: But you saw the ammunition?

THE WITNESS: I saw the ammunition inside the bucket. I saw the baggy that come out of his pocket and the gun had been removed from under the seat.

THE COURT: Already?

THE WITNESS: Already, before we learned there might be a problem confirming the warrant.

Q Do you remember me asking you for a copy of the warrant?

A Yes, sir, I do remember you asking me that.

Q I asked you several times, didn't I?

A Yes, sir. And I told you that I was not the one that arrested you, I told that you Mark Anderson arrested you.

Q Do you remember that after you told me that -- that's correct. Do you remember what I did after -- Do you remember what -- do you remember -- Let me say it this way. Do you agree that after I asked you for the warrant and you told me you didn't have one, that's when I walked back toward my truck?

A I can't remember. I don't remember you asking to see the warrant at that time.

Q When did I ask you to see the warrant?

A I remember you asking several times after you were placed under arrest and taken to the jail. I remember that specifically.

Q All right. All right. From the time you left the jail until Sandy Pope called, how long would that be?

A You're talking about from the time I left --

Q The second time that Sandy Pope called and said they were having problems confirming the warrant, how long would that be?

A I don't know. Sandy Pope did not call me on the link, she called over the V. H. F. radio. I would guess probably ten minutes from the time that we left the office to the time we had -- you know, we made the traffic stop during that time, probably ten minutes had passed. But I did not talk directly to Sandy Pope, that was Lieutenant Chris Davis that talked directly to her.

Q So from the information from Dale County as to the existence of a warrant and the non-existence of the warrant would have been a span of ten minutes?

A That would be correct.

\* \* \* \* \*

[Page 66, line 8 to page 67, line 14]

MR. SPEIRS: Your Honor, if I might? From what I can discern from the motion, he is also attacking some statements that were made. And the Government concedes that when he was arrested Miranda was not given after he was put into custodial -- or put into custody, Your Honor. So except for impeachment purposes, the Government will not seek to introduce those statements at trial except for impeachment.

THE COURT: All right. Now what's your argument about the physical evidence that was seized during the search of the truck and from you?

DEFENDANT HERRING: Well the only argument I've got is the arrest. There was no warrant from Dale County. They knew there wasn't a warrant. I

asked for a copy specifically. The lady in Dale County had been asked to fax them a copy of – the hard copy if there was one. And I wasn't going anywhere. I was outside my truck. I was walking away from the truck which means they would need the search warrant for the truck.

If there were any evidence in the way of weapons or methamphetamine, if there were any it should be suppressed. You can't -- The Supreme Court allowed this where the clerks -- where the police officer gets his information from a clerk, from a circuit clerk, they have allowed that at times. They have never allowed it where or never decided a case where it was between police agencies. In fact, they have always suppressed evidence that was erroneously gathered from one enforcement agency to the other because it's convenient.

\* \* \* \* \*

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA

THE UNITED STATES  
OF AMERICA

v.

CRIMINAL  
ACTION NO.

BENNIE DEAN HERRING

1:05-CR-161

SUPPLEMENTAL HEARING ON  
MOTION TO SUPPRESS PROCEEDINGS

\* \* \* \* \*

BEFORE: The Hon. Myron H. Thompson  
HEARD AT: Montgomery, Alabama  
HEARD ON: October 21, 2005  
APPEARANCES: Verne Speirs, Esq.  
Christine Freeman, Esq.  
(Ms. Freeman as Standby Counsel)

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\* \* \* \* \*

[Page 7, lines 2-12]

[DIRECT EXAMINATION BY MR. SPEIRS OF  
SHARON MORGAN]

Q Ma'am, would you please state your full name for the record.

A My name is Sharon Morgan.

Q And, ma'am, if you would just for the court reporter would you spell your last name?

A M-o-r-g-a-n.

Q And, ma'am, if you would, would you tell the Court what you do for a living?

A I work in the Dale County Sheriff's Office. One of my main responsibilities is the warrants, on the warrants that come into our office.

\* \* \* \* \*

[Page 7, line 24, to page 15, line 6]

Q Ma'am, if you would, would you describe for the Court what the process is for a recalled warrant in the Dale County Sheriff's Department.

A Certainly. Whenever I have a warrant recalled, it comes from -- it depends, of course, where the

warrant has originated. If it's originated from the Clerk's Office, then one of the clerks in that office calls me and notifies me that the warrant has been recalled.

Also, sometimes a judge, or a judge's secretary will call me and tell me that warrant has been recalled.

And at that point in time I look in my computer base, find out where the warrant is actually located and then get it and dispose of it.

Q Do you share a computer system with the Dale County Circuit Clerk's Office?

A No, do not.

Q If -- And if I understand your testimony correctly, if the Dale County Circuit Clerk's Office recalls a warrant, how is that information transferred to you?

A Normally by telephone.

Q Is there any other way?

A On occasion, rare occasions, I will get it in paper, a paper warrant recall.

MR. SPEIRS: May I approach, Your Honor?

THE COURT: Yes.

Q Ma'am, I show what you what's been marked for identification as Government's exhibit 1. Would you please take a look at this document.

A Yes, okay.

Q Do you know what that is?

A I sure do.

Q What is that, ma'am?

A This is the warrant, the habeas warrant that was issued on Bennie Dean Herring for failure to appear.

Q When was that warrant issued?

A The warrant was issued November the seventeenth, oh three.

Q Can you tell the Court the history of that warrant?

A Certainly. Of course it has an address here which says county road one oh nine, Brundidge, Alabama. Coffee County was not written on there when I received it. Just Brundidge, Alabama

THE COURT: Brundidge is in Coffee County?

THE WITNESS: Sir, you know, it's one of those strange -- kind of on a corner there. It's on the corner. Some parts of Brundidge, you know, county roads, some parts are in Coffee County, some parts are in Pike County and some parts are in Dale County.

THE COURT: Okay.

THE WITNESS: So I see "Brundidge" and I immediately think it's Pike County because that's

where the majority of it would be. So I sent it to Pike County for them to locate or attempt to locate Mr. Herring and to execute the warrant.

Q Okay.

A There is a date on here when it was received on the twentieth in Pike County.

Q All right

A Okay. After, I don't remember exactly how long it was, a couple of weeks or so, it was brought to my attention that this was not Pike County. So I called Pike County and asked them –

THE COURT: Called whom?

THE WITNESS: Pike County. The Pike County's Sheriff's Office Sheriff's Office [sic] and spoke to their warrant clerk and asked her to please return the warrant to me because I needed to send it to Coffee County.

Q Yes, ma'am.

A Which that was done and the warrant was sent to Coffee County. And it stayed there for a couple of weeks or so. And then someone in the office felt like they could locate Mr. Herring in Dale County. So I called Coffee County and asked them to please return to me that warrant.

Q Now when you say “return,” does that mean the warrant had been recalled, or you just asked for it back?

A I just wanted it back.

Q I understand

A It was never recalled at that point.

Q At that point in time.

A Yes.

Q Okay. Please continue, ma’am. What happened next?

A All right. So then, you know, it was in our system. And then on July the seventh, I believe it was, Sandy called me.

Q Who is Sandy?

A Sandy is from the Coffee County Sheriff’s Office who handles the warrants in their office. She called me and asked me if this was still an active warrant.

Q And what did you do?

A I went to my computer and checked my computer base, and according to what I saw, yes, it was. And I told her that. So she asked me if I would fax her a copy of it, and I said, “Of course.” So I began my search for the warrant, which was in our office – I thought. And I could not locate it immediately, so I called the Clerk’s Office.

Q Where is the Clerk's Office in relation to you?

A I'm in the basement, they're on the third floor.

Q Yes, ma'am.

THE COURT: Same building?

THE WITNESS: Yes, sir. The courthouse.

A So I called up there and I was at that point in time that the warrant had been recalled.

Q All right.

A So I immediately called Sandy in Coffee County and told her that the warrant was no longer active.

Q Now, ma'am, obviously there was some miscommunication somewhere between the Circuit Clerk's Office and the Sheriff's Department, is that right?

A Correct, yes.

Q All right. Can you -- What is your best estimate as to what happened? Where was the breakdown in this particular case?

A Well, of course this is after the fact. You know.

Q Yes, ma'am.

A I found out that the warrant had actually been recalled on February the second.

THE COURT: February second of what year?

THE WITNESS: Of oh four.

A But I did not know that. I did not have that information. That information was not entered into my computer.

So there are many different people that have access to these warrants. Everyone has access to our in-office database, and whoever, and I do not know who it was, returned the warrant to the Clerk's Office did not enter into my database that the warrant had been recalled.

Q Would it be the ultimate conclusion that someplace within the Sheriff's Department there was a breakdown somewhere?

A I would presume that's where it was, yes, sir.

Q Okay. Now, ma'am –

THE COURT: So the warrant had actually been physically returned to the Clerk's Office?

THE WITNESS: Yes, sir.

THE COURT: Someone in the Sheriff's Department had physically returned it but had not put it in your computer.

THE WITNESS: And had not notified me, yes.

MR. SPEIRS: May I approach again, Your Honor?

THE COURT: Yes.

Q Ma'am, I'm showing you what's been marked for identification as Government's exhibit two. And this is the transcript that we had before Judge Coody.

A Okay.

Q And this was back on September twenty-ninth. And I'm directing your attention to page forty-nine. And, ma'am, if you will look at lines nine through twelve. If I could get you to read lines nine through twelve, would you please do so.

A Certainly.

THE COURT: Whose testimony is this?

MR. SPEIRS: Her testimony.

A Line nine. Question: "All right, ma'am. How many times have you had or has Dale County had problems, any problems with communicating about warrants?"

Line twelve. My answer: "Several times."

Q Ma'am, is that what you meant to say, or can you clarify that statement?

A I did not say that. I most emphatically did not say that because that most emphatically is not the case.

Q What is the case?

A I have never, that I can immediately remember ever had any problem with any communication whatsoever between Coffee County Sheriff's Office, Sandy, and myself.

Q Okay. So that is somehow in the record a mistake.

A It's just a mistake. I did not say that.

\* \* \* \* \*

[Page 15, lines 18 to 22]

THE COURT: It appears it was the Sheriff's Department that made the error, not the Clerk's Office.

MR. SPEIRS: I think that's the best evidence we have, Your Honor.

\* \* \* \* \*

[DIRECT EXAMINATION OF BENNIE HERRING  
BY MS. FREEMAN]

[Page 22, lines 6-25]

A Okay. Mark Anderson testified that he executed the warrant against me in Coffee County in good faith. I asked for copies of it. And my point there is, and the point of this long drawn out statement that is made, was the fact that he was not in good faith. And my argument is that at the suppression hearing before Judge Coody was it was not done in good faith. It was done as a vendetta against me because of my investigation into Walter Clark's daughter.

THE COURT: You said it was a vendetta against you by whom?

THE WITNESS: Mark Anderson, the arresting officer.

THE COURT: And why would Mr. Anderson want to—

THE WITNESS: He killed Walter Clark's daughter.

MR. SPEIRS: We would object to that, Your Honor.

THE COURT: Just a minute.

\* \* \* \* \*

[Page 25, line 1, to page 26, line 20]

And as far as -- I'll leave off the Wallace Clark thing at that point.

A I asked Mark Anderson, I said, "What have I done?"

And he said, "Felony warrant out of Dale County."

I said, "There are no felony warrants out of Dale County because I talked with Judge McLaughlin," he's a friend of mine. I just talked to him the other day. The warrant shouldn't have issued to start with, but it did.

But the point is, I knew there weren't any warrants out of Dale County. I said, "I want a copy of that warrant. I'm a citizen of the United States, I

have a right to have a copy of that. You have to have it in your hand before you arrest me.” And they took me and threw me in the back of the car, and I started walking away from my truck, I had already walked away from my truck –

THE COURT: Let me interrupt you a second, more because I know you have a motion in limine on this whole Mr. Anderson and Mr. Clark matter. I just want to get an idea of what this is about. What evidence do you have that Mark Anderson killed Mr. Clark’s daughter?

THE WITNESS: I interviewed some of the grand jurors, and I believe they perjured themselves at the grand jury.

THE COURT: Who perjured themselves?

THE WITNESS: Mark Anderson.

THE COURT: So your basis evidence that he did it was that you interviewed the grand jurors.

THE WITNESS: And other witnesses and people that has some knowledge of the case. A lot of people.

Mark Anderson came to my house one night and Deputy Grantham finally got out of the car and came up to the door and he talked to me thirty or forty-five minutes wanting me to drop my investigation of Mark Anderson. This is not too long before I was arrested. And I wouldn’t do it for myself. And I -- I was trying to get the district attorney involved in it.

THE COURT: But the district attorney wouldn't do it?

THE WITNESS: No, sir.

\* \* \* \* \*

[Page 27, lines 6-17]

Q And at the time you asked Mark Anderson for a copy of the warrant he said he had?

A Yes, ma'am.

Q And what did he say to you?

A I said -- I'll tell you the exact words. I said, "You're full of it." I said, "You don't have a warrant for me, and I want to see a copy of it."

He says, "They're out of Dale County."

And I said, "I talked with Judge McLaughlin yesterday, and Judge McLaughlin would have been the one to issue the warrant to start with."

And Mark Anderson said, "It doesn't make a difference, you're fixing to go to jail." \* \* \*

\* \* \* \* \*

**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	)	
	)	
V.	)	CASE NO.
	)	1:05-cr-161-T
BENNIE DEAN HERRING	)	

**RECOMMENDATION OF THE  
MAGISTRATE JUDGE**

The defendant, Bennie Dean Herring (“Herring”), is charged with one felony count of being a convicted felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and one misdemeanor court of intentionally and knowingly possessing a mixture or substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. § 844(a). On September 25, 2005, Herring filed a motion to suppress (doc. # 16) asserting that a stop of his vehicle and a subsequent search of him and the vehicle lacked probable cause or consent and were conducted without a warrant or other lawful authority. Herring sought suppression of all physical evidence seized during the search as well as suppression of statements made by him during a custodial interrogation prior to officers advising him of his *Miranda*<sup>1</sup> rights.

Relying on *Arizona v. Evans*, 514 U.S. 1 (1995), the United States argues that officers acted in good faith reliance on information that there was a valid

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<sup>1</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

outstanding arrest warrant for Herring when they stopped and arrested him. On September 29, 2005, the court held an evidentiary hearing and heard argument on the motion. Based on the evidence and argument of counsel, the court concludes that the motion to suppress is due to be granted in part and denied in part.

## **FACTS**

The salient facts are undisputed. On July 7, 2004, Herring was at the Coffee County Sheriff Department, getting something out of his truck which had been impounded. Coffee County Sheriff's Investigator Mark Anderson arrived at work and learned that Herring was in the impound lot. Knowing from another officer that a warrant for Herring's arrest was outstanding, he asked Coffee County warrant clerk Sandy Pope to check whether there were any current arrest warrants in Coffee County for Herring.

Pope checked her computer database and advised Anderson that there were no active Coffee County warrants on Herring. Anderson then asked Pope to telephone the Dale County Sheriff's Department to see if they had any outstanding active warrants in Dale County on Herring. Pope telephoned Dale County warrant clerk Sharon Morgan who told Pope that there was an active Dale County felony warrant on Herring for Failure to Appear. Pope asked Morgan to fax her a copy of the warrant.

When Anderson learned from Pope that Dale County had an active outstanding warrant on

Herring, he and Deputy Bradley left the Sheriff's department in Bradley's squad car. They pulled behind Herring as he was leaving the Sheriff's Department, turned on their lights, and pulled Herring over. Deputy Bradley radioed dispatch to inform them that they were stopping Herring. Herring was placed under arrest based on the Dale County felony warrant. After Herring was handcuffed Officer Anderson searched him and found in his left front pocket a small plastic bag containing a powder residue which upon analysis tested positive for methamphetamine. The officers then searched Herring's vehicle incident to the arrest. Under the front seat, they found a handgun. The officers also found ammunition and a knife in a Lego® bucket in the front seat.

Herring was placed in the back of the patrol car during the search. While the search progressed, Lieutenant Davis arrived on the scene. As Davis stood outside the patrol car during the search, he heard Pope call over the radio that one of the officers on the scene needed to call her on the Southern Linc.<sup>2</sup> Pope then informed Davis that there was a problem with the warrant.<sup>3</sup> When the officers got back to the Sheriff's Department, they discovered that the

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<sup>2</sup> The Southern Linc is a type of wireless communication that is more secure than the radio.

<sup>3</sup> When Pope spoke to Morgan, she asked Morgan to fax a copy of the warrant to her. Shortly thereafter, Morgan called Pope to inform her that she could not confirm the warrant because the warrant had been recalled. Less than fifteen minutes elapsed between the time Pope called Morgan and Morgan called Pope back.

warrant had been recalled. Nonetheless, the evidence shows that before the officers learned there was no warrant for him, Herring had already been arrested and the methamphetamine, firearm and ammunition had been found.

## DISCUSSION

Resolution of Herring’s motion to suppress the seized evidence is governed by *Arizona v. Evans*, 514 U.S. 1 (1995). In *Evans*, the Supreme Court recognized a good faith exception to the exclusionary rule for evidence seized incident to an arrest which occurred as the result of an erroneous computer record indicating the existence of a valid arrest warrant. 514 U.S. at 7. Relying on *United States v. Leon*,<sup>4</sup> the Court observed that the purpose of the exclusionary rule is to deter unlawful police conduct, “not mistakes by court employees.” *Id.* at 14. “[T]here is no basis for believing that the application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed.” *Id.* at 15. The Court concluded that “[a]pplication of the *Leon* framework supports a categorical exception to the exclusionary rule for clerical errors of court employees.” *Id.* Consequently, the *Leon* good-faith inquiry requires the court to determine whether the officers’ conduct was objectively reasonable – that is, whether a reasonable officer would have relied on the information from the warrant clerk and acted in a similar manner.

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<sup>4</sup> *United States v. Leon*, 468 U.S. 897 (1984).

Based on the evidence presented at the hearing, the court finds that the officers acted in good faith when they stopped and arrested Herring based on the representations of the warrant clerks that there was an active outstanding felony warrant for Herring in Dale County.<sup>5</sup> The evidence also shows that as soon as the warrant clerks discovered their error, they informed the officers. Thus, there is simply no reason to believe that application of the exclusionary rule here would deter the occurrence of any future mistakes. *Id.* at 14-15 (“[N]o evidence [exists to show] that court employees are inclined to ignore or subvert the Fourth Amendment . . .”). The defendant’s motion to suppress the physical evidence that was seized during the search incident to arrest on July 7, 2004, is due to be denied.

The defendant also seeks suppression of statements he made to police officers during the search of his vehicle, arguing that he was under arrest and subjected to custodial interrogation without the benefits of the *Miranda* warnings.<sup>6</sup> The United States concedes that Herring was not given

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<sup>5</sup> Herring suggests that his truck was impounded so that he would be “suckered” into going to the Coffee County Sheriff’s Department. First, Herring presented no evidence that the officers who were involved in his arrest were also involved in any subterfuge to get him to go to the sheriff’s office. Moreover, even if the court were to assume that Herring had been “suckered” into going to the Sheriff’s Department, Herring has presented no evidence that ties any subterfuge in any way to his subsequent arrest. Herring’s suggestion amount to mere speculation.

<sup>6</sup> *Miranda, supra.*

*Miranda* warnings at the time he was arrested and before he made incriminating statements. At the evidentiary hearing on the defendant's motion to suppress, the government stipulated, in open court and on the record, that none of Herring's statements derived from the stop, search and seizure on July 7, 2004, would be admitted into evidence by the government during its case in chief.<sup>7</sup> Thus, the defendant's motion to suppress statements made during his stop, search and seizure on July 7, 2004, is due to be granted.

## CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the defendant's motion to suppress be GRANTED in so far as it relates to statements made by Herring during the stop, search and seizure on July 7, 2004. It is further the RECOMMENDATION of the Magistrate Judge that the defendant's motion to suppress be DENIED in so far as it relates to any physical evidence seized on July 7, 2004. It is further

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<sup>7</sup> Of course, should the defendant choose to testify at trial, his statements may be admissible for impeachment purposes. See *Walder v. United States*, 347 U.S. 62, 65 (1954); see also, *Harris v. New York*, 401 U.S. 222, 224 (1971); *United States v. Caron*, 474 F.2d 506, 508 (5th Cir. 1973) ("It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths.")

ORDERED that the parties shall file any objections to the said recommendation on or before **October 7, 2005**.<sup>8</sup> Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a de novo determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 3rd day of October, 2005.

/s/Charles S. Coody  
CHARLES S. COODY  
CHIEF UNITED STATES  
MAGISTRATE JUDGE

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<sup>8</sup> The court shortens the time for filing objections because this case is set for jury selection on October 12, 2005.