

Judgment rendered AUGUST 1, 2007.

No. 42,624-KW

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Applicant

versus


JEREMIAH RAY HASTINGS

Respondent

* * * * *

On Application for Rehearing

* * * * *

WHITLEY R. GRAVES

Counsel for
Respondent


J. SCHUYLER MARVIN
District Attorney

Counsel for
Applicant

ROBERT RANDALL SMITH
Assistant District Attorney

* * * * *

Before WILLIAMS, DREW and MOORE, JJ.


WILLIAMS, J., concurs.

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
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NO: 42624-KW
On Rehearing

STATE OF LOUISIANA

VERSUS

JEREMIAH RYAN HASTINGS

FILED: 06/28/07

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On Application for Rehearing in No. 147,494 on the docket of the Twenty-Sixth Judicial District, Parish of BOSSIER, Judge Jeffrey Stephen Cox.

Hon. John Schuyler Marvin
Robert Randall Smith

Counsel for:
State of Louisiana

Whitley Robert Graves

Counsel for:
Jeremiah Ryan Hastings

Before WILLIAMS, DREW and MOORE, JJ.

ORDER

Defendant, Jeremiah Ryan Hastings, seeks rehearing of our peremptory writ grant that reversed a district court ruling which would have prevented the state from referring to or mentioning any type of refusal or submission to an Intoxilyzer 5000 breath test. In granting the state's writ application, we concluded that the requirement of La. R.S. 32:661 C(1)(e) – that a law enforcement officer read to an arrestee the name and employing agency of all law enforcement officers involved in the stop, detention, investigation or arrest – though phrased in mandatory terms, did not require suppression of the evidence because the *reading* of the information was omitted.

Defendant now asks us to reconsider that ruling. He further asserts that we mistakenly believed the signature of a third officer on the rights form to be the signature of the officer named in the testimony as being involved in the detention.

After reconsideration, we still find that even though the statute uses the mandatory “shall,” nothing else suggests that the legislature intended suppression of the evidence as a consequence of this deficiency. The key question for judicial consideration is whether suppression would help deter police misconduct, a key rationale for implementing the state exclusionary rule in *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684 (1961). We do not find that suppressing this evidence would serve that goal. In the analogous case of *Hudson v. Michigan*, ___ U.S. ___, 126 S. Ct. 2159 (2006), police officers readily admitted a clear violation of the mandated knock-and-announce rule; however, the physical evidence seized pursuant to the execution of the search warrant was not suppressed because applying the exclusionary rule would not advance any societal purpose other than the issuance of a “get out of jail free card.” The majority tellingly observed, “Suppression of evidence, however, has always been our last resort, not our first impulse.” *Id.*, at 2163.

We would also note that since the rendition of *Mapp*, certain factors are now universally present: (1) aggressive internal affairs procedures are embedded in all of today’s law enforcement agencies; (2) increased training requirements have heightened the professionalism of today’s law officers; and (3) civil rights lawsuits are readily available for those aggrieved by perceived police misconduct. The same rationale applies here.

We deny rehearing and reaffirm our prior ruling.

THIS REHEARING ORDER IS DESIGNATED FOR PUBLICATION.

Shreveport, Louisiana, this 1st day of August, 2007.

DMW
FTW

Williams, J., concurs.

[Signature]

FILED: August 1, 2007

Kellin R Ware
By CLERK