

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 1581

JEFFERY FUSSELL

VERSUS

DEPARTMENT OF MOTOR VEHICLES, RECORDS OFFICE

Judgment rendered May 4, 2007

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Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 2004-14402
The Honorable Larry J. Green

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JEFFERY FUSSELL
ANGOLA, LA

PLAINTIFF/APPELLANT
IN PROPER PERSON

MICHAEL C. BARRON
BATON ROUGE, LA

ATTORNEY FOR
DEFENDANT/APPELLEE
STATE OF LOUISIANA OFFICE OF
MOTOR VEHICLES

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

J.F.
RF

PETTIGREW, J.

On April 21, 1983, Jeffery Fussell, an inmate currently in the custody of the Louisiana Department of Safety and Corrections, was indicted for the crime of first-degree murder¹ by a grand jury impaneled for the Twenty-second Judicial District Court in St. Tammany Parish. The charge against him was subsequently reduced to second-degree murder.² Mr. Fussell apparently pled guilty to the reduced charge and was sentenced to life in prison.

On April 25, 2004, Mr. Fussell sent public records requests pursuant to La. R.S. 44:31 to various governmental entities, including the Department of Public Safety and Corrections, Office of Motor Vehicles (DMV).³ His letter to the DMV sought information concerning the residential status of three members of the grand jury that had indicted him in 1983. Specifically, he asked whether the three jurors had been issued Louisiana driver's licenses for the period between January 1, 1981 and January 1, 1983. If any driver's licenses had been issued to the jurors, Mr. Fussell requested that the DMV provide him with the jurors' addresses listed on their driver's licenses for that period.

An attorney representing the DMV ultimately responded on July 9, 2004, denying Mr. Fussell's request. Subsequent attempts by Mr. Fussell to obtain the information from the DMV were also denied. Thus, on September 17, 2004, Mr. Fussell filed an application for a writ of mandamus in the district court. In his application, Mr. Fussell asserted that the information he had requested was necessary to support a petition for post-conviction relief he intended to file. Specifically, he contended that the three jurors might not have been residents of St. Tammany Parish for one year immediately prior to their service on the grand jury as required by La. C.Cr.P. art. 401. Therefore, Mr. Fussell sought a court order compelling the DMV to provide the information he requested.

¹ La. R.S. 14:30.

² La. R.S. 14:30.1.

³ Mr. Fussell addressed the letter to the Records Office, Department of Motor Vehicles. When he did not get a response to his first letter, Mr. Fussell sent letters to the DMV on May 25, 2004, and July 7, 2004.

By judgment signed September 23, 2004, the district court dismissed the petition, finding that according to La. R.S. 44:31.1,⁴ Mr. Fussell was not a "person" entitled to obtain the records he sought. Apparently, the district court dismissed the petition *ex parte* and without any supporting proof that the DMV's refusal to provide access to the records was justified. Mr. Fussell appealed the judgment, and another panel of this court vacated the judgment and remanded the matter to the district court for further proceedings. **Fussell v. Department of Motor Vehicles, Record Office**, 2005 CA 0116 (La. App. 1st Cir. 2/15/06), 925 So.2d 52 (unpublished).

On remand, the district court conducted a hearing, at which Mr. Fussell and the DMV appeared and presented evidence. The DMV opposed the records request, contending that the records no longer existed. In support of this contention, the DMV submitted the affidavit of Karen Kimball, a custodian of the DMV's records, stating that driver's license records, including addresses, were only kept for a period of seven years. The DMV also contended that Mr. Fussell was not a person entitled to the records pursuant to La. R.S. 44:31.1. Finally, the DMV argued that even if the records existed and La. R.S. 44:31.1 did not bar Mr. Fussell from viewing them, the DMV would be prohibited from releasing them in accordance with the Federal Driver's Privacy Protection Act, 18 U.S.C. § 2721, *et seq.*

Mr. Fussell argued that he needed the records to support his claim that the jurors did not reside in St. Tammany Parish for the requisite one year prior to their grand jury service, and he presented numerous documents allegedly supporting his claim. However, he did not provide any evidence to contradict the DMV's contention that the records he sought no longer existed. Accordingly, the district court denied the application and dismissed the petition. Mr. Fussell has appealed.

We find no error in the judgment of the district court. Clearly the DMV cannot produce records that it does not possess. Mr. Fussell has not cited any statutory or jurisprudential authority requiring the DMV to retain the records for a period longer

⁴ Louisiana Revised Statute 44:31.1 provides that a person "does not include an individual in custody after sentence following a felony conviction who has exhausted his appellate remedies when the request for public records is not limited to grounds upon which the individual could file for post conviction relief under Code of Criminal Procedure Article 930.3."

than seven years, and this court is unaware of any such authority. Accordingly, the judgment of the district court is affirmed. All costs of this appeal are assessed to Jeffery Fussell.⁵

AFFIRMED.

⁵ This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.