

**IN THE
MISSOURI SUPREME COURT**

STATE OF MISSOURI,)	
)	
Respondent,)	
)	Appeal No. SC85704
vs.)	
)	
BILLY LYNN BLOCKER,)	
)	
Appellant.)	

APPELLANT’S SUBSTITUTE REPLY BRIEF

On Post Opinion Transfer to the
MISSOURI SUPREME COURT

Appeal to the Missouri Court of Appeals
SOUTHERN DISTRICT
From the Circuit Court, Division II, of Iron County, Missouri
Honorable J. Max Price, Judge

Daniel T. Moore – 24949
MOORE, WALSH & ALBRIGHT L.L.P.
P.O. Box 610
Poplar Bluff, MO 63902

John M. Albright - 44943
MOORE, WALSH & ALBRIGHT, L.L.P.
P.O. Box 610
Poplar Bluff, MO 63902

Attorneys for Appellant

Jeremiah W. Nixon
Attorney General

Karen Kramer - 47100
Asst. Attorney General
P.O. Box 899
Jefferson City, MO 65102

Attorney for Respondent

ORAL ARGUMENT REQUESTED

INDEX

Section	Page
Table of Authorities	pp. 1-2
Points I - Suppression of Evidence	pp. 3-13
Point II - Trial Confession waiver	pg. 14
Point III - Pursuant to a Prescription	pp. 15-16
Point IV - Absent Witness - Denial of Continuance	pg. 17
Point V - Instructional Error	pp. 18-21
Conclusion	pg. 22
Certificate of Service	pp. 23-24
Appendix	A1-A18

TABLE OF AUTHORITIES

Case	Page
<u>Knowles v. Iowa</u> , 525 U.S. 113 (1998).	7
<u>Mapp v. Ohio</u> , 367 U.S. 643 (1961)	13
<u>New York v. Belton</u> , 453 U.S. 454 (1981)	7
<u>City of Jackson v. Rapp</u> , 700 S.W.2d 498 (Mo.App. E.D. 1985)	4
<u>State v. Bue</u> , 985 S.W.2d 386 (Mo.App. E.D. 1999)	7
<u>State v. Carter</u> , 955 S.W.2d 548, 560 (Mo. 1997)	3
<u>State v. Martin</u> , 79 S.W.3d 912 (Mo.App. E.D. 2002)	6
<u>State v. Middleton</u> , 43 S.W.3d 881 (Mo.App. S.D. 2001)	3
<u>State v. Pierce</u> , 642 A.2d 947 (N.J. 1994)	7
<u>State v. Rousan</u> , 961 S.W.2d 831, 845 (Mo. 1998)	3

Case	Page
<u>State v. Slavin,</u> 944 S.W.2d 314 (Mo.App. W.D. 1997)	6
<u>U.S. v. Chanthasouxat,</u> 342 F.3d 1271 (11 th Cir. 2003)	5
<u>U.S. v. Grant,</u> 349 F.3d 192 (5 th Cir. 2003)	3
R.S.Mo. 195.010	19
R.S.Mo. 195.030	20
R.S.Mo. 195.060	20
R.S.Mo. 195.080	20
R.S.Mo. 195.180	15, 19, 20
R.S.Mo. 304.012	4, 5
R.S.Mo. 304.015	4
R.S.Mo. 304.151	4
Rule 84.04(e)	18
<u>Black's Law Dictionary</u>	12, 13
<u>Webster's New Collegiate Dictionary, 1980</u>	15

POINT I

The trial court erred in failing to suppress the evidence.

The party's dispute on this point begins with the standard of review. The Appellant asserts that the application of law to facts in reviewing the denial of a motion to suppress is de novo. The Respondent asserts it is the sufficiency of the evidence standard relying on State v. Carter, 955 S.W.2d 548, 560 (Mo. 1997). The year after Carter, this court handed down an opinion, which the regional appellate courts have understood to hold that deference is shown to the trial court's findings of fact but the application of law to the facts is reviewed de novo. State v. Rousan, 961 S.W.2d 831, 845 (Mo. 1998); *see eg* State v. Middleton, 43 S.W.3d 881 (Mo.App. S.D. 2001). Reviewing the factual findings for clear error and questions of law or mixed questions of law and fact de novo, when the issue is the suppression of evidence, is consistent with the holdings of every federal circuit court handling criminal cases. See U.S. v. Grant, 349 F.3d 192 (5th Cir. 2003).¹

The Appellant has disputed the legality of the ultimate issue, the search of his person, beginning with the stop of the car he was riding in. The Respondent claims vehicles must be pulled off the paved portion of the roadway and onto the

¹ The Appellant is including a complete cite list in the appendix, which might be a technical violation of the rules governing briefs but the Appellant believes the rule prohibiting string citations takes precedence over including 13 case citations in the body of the brief.

shoulder when stopping pursuant to § 304.015.1. The State has not responded to the Appellant's argument that § 304.015.1 uses the term "highway", which is undefined in Chapter 304, and the most reasonable analog is "roadway", which term is defined to expressly exclude the shoulder or berm, because to construe "highway" in § 304.015.1 as synonymous with "State Highway" would require pulling as far to the right in the area maintained by the Highway Department, i.e. the tree line. The governing statute is Section 304.151, which only prohibits failing to make reasonable efforts to avoid obstructing the flow of traffic.²

Rather than responding to the statutory analysis of § 304.015, the Respondent next claims the Appellant failed to drive in a careful and prudent manner in violation of § 304.012. The crime of careless and imprudent driving is peculiar in that it requires proof the driver violated a particular traffic regulation coupled with evidence that the violation was so egregious as to endanger the property or life of another. City of Jackson v. Rapp, 700 S.W.2d 498 (Mo.App. E.D. 1985), *citing* State v. Todd, 477 S.W.2d 725 (Mo.App. 1972). As noted *supra* and apparently conceded by the Respondent's failure to address the argument, § 304.015 does not apply and was not violated. Further, to violate § 304.151 would require obstructing traffic and the Appellant's vehicle was moving before the Trooper could even get turned around and create traffic to be

² In case the court was wondering, Chinese fire drills such as the one conducted by the Appellant are, in fact, legal so long as no traffic is obstructed.

obstructed. Tr 7. The Appellant did not break any law much less commit such an egregious violation as to endanger life or property as would be required to violate § 304.012.

The Respondent next tries to claim the quantum of evidence is an articulable suspicion a crime had been committed. The Trooper's articulable suspicion was that the Appellant actually violated the law by failing to pull as far to the right when he stopped his vehicle. The issue is not whether there was a suspicion of criminal activity. The Trooper said he meant to write a ticket and forgot. Tr 18. The issue is whether the articulable suspicion was, in fact, a mistake of law, which will not be sanctioned by the courts. U.S. v. Chanthasouvat, 342 F.3d 1271 (11th Cir. 2003)(holding that a traffic stop for a non-crime required suppressing the evidence). When an officer of the law initiates a nonconsensual seizure of a person based on a mistake of the law everything thereafter is likewise unlawfully obtained. Id.

The Respondent next argues over pages 14 through 19 of its brief that the search of the Appellant was consensual and the detention lawful. Part of the Respondent's argument is that the officer lawfully detained the Appellant for his traffic violation. Res.Br 17. The Respondent appears to assert that the issue is reviewed under the clearly erroneous standard. Res.Br 15.

This court reviews issues of law de novo. The only factual issue which would be reviewed on whether sufficient evidence supported the decision is whether Trooper Carson asked or ordered the Appellant to empty his pockets or

arrested him and rifled through his pockets. Tr 170, 197 & 211. The issue of whether the Appellant's consent was voluntary is determined based on the totality of the circumstances.

The Respondent's position is that the Trooper testified he "asked" the Appellant to empty his pockets and therefore it was consensual. Unfortunately, there are many additional undisputed facts making-up the totality of the circumstances. The Trooper still had the Appellant's driver's license, hence he was not free to leave and his consent was actually acquiescence to the Trooper's claim of lawful authority. Tr 19 & 166-67. The Trooper testified the Appellant was not free to leave. Tr 23. The Trooper testified he intended to search the vehicle and he removed the Appellant from the car for "officer's safety". Hence, the Appellant's acquiescence was well advised since it was going to happen anyway.

The Respondent alleges the Trooper made a valid stop and, as the Trooper had not yet completed the purpose of the stop, writing the Appellant a ticket, the continued seizure remained valid. The problem with the Respondent's reasoning is that the constitution prohibits prolonging a traffic stop beyond the time reasonably necessary to complete the purpose of the stop. State v. Martin, 79 S.W.3d 912 (Mo.App. E.D. 2002); State v. Slavin, 944 S.W.2d 314 (Mo.App. W.D. 1997). When the Trooper approached the car after arresting the Appellant's brother he had three options: returning the Appellant's license and giving him a ticket; or returning the license and issuing a written warning; or returning the

license and giving him a verbal warning. The Trooper retained the Appellant's license and approached the car intending to search it and to remove the Appellant from it during the search. There was nothing consensual about the encounter.

The Respondent asserts the Trooper had authority to search the car and continue the detention of the passenger. The latter proposition is supported by citations to cases holding that when the driver is lawfully stopped the passenger may be detained until the purpose of the stop is completed. As just noted, the purpose of the stop was completed after the driver was arrested and the Trooper knew the passenger was a properly licensed driver and the Trooper's only options were to return the Appellant's license and give him a ticket or warning.

The Respondent supports the proposition that a vehicle could be searched because the driver was arrested citing New York v. Belton, 453 U.S. 454 (1981) and State v. Bue, 985 S.W.2d 386 (Mo.App. E.D. 1999). The salient fact in those cases is that all the occupants of the vehicle were arrested. The Belton case has been roundly criticized and State courts have distinguished it on state law grounds or factual distinctions. See State v. Pierce, 642 A.2d 947 (N.J. 1994)(containing an extended discussion of the history preceding the Belton opinion and subsequent development of the Belton rule). Curiously, the biggest concern of the Pierce court, pretensive arrests for minor traffic violations followed by searches of the motor vehicle, came to life in Iowa. The Supreme Court struck down such nonsense. Knowles v. Iowa, 525 U.S. 113 (1998).

The Knowles court struck down the warrantless search of a car following the issuance of a citation for speeding. Id. The court reasoned that the purpose of the stop was completed and the continued detention unlawful just as the Appellant herein argues. The purpose of the stop ended following the arrest of the driver and the determination that the passenger was a licensed driver with no outstanding warrants. His continued detention after the arrest and beyond the time necessary to issue a citation was unlawful. His acquiescence to the Trooper's request that he empty his pockets was not voluntary but the product of the unlawful continuing detention and occurred under circumstances where the Trooper intended to conduct the search regardless of the Appellant's response.

The Respondent next alleges the Appellant was not prejudiced. The Respondent has two theories, which become intermingled in its brief. The first argument is that the Appellant only objected to introducing the pill as an exhibit. The second involves the Appellant's alleged trial confession as a waiver of the suppression issue.

The Appellant's objection prior to trial was perhaps not the most artful. However, the Appellant had filed, taken-up and briefed his motion to suppress. Tr 1-34. Prior to the start of the trial or the introduction of evidence, the Appellant lodged his objection. Although the objection does start by mentioning the introduction of the exhibit, the objection goes on to explain that the exhibit should be excluded because it was a product of an illegal search, which if true would exclude all testimony regarding the illegally seized evidence. The State offered to

let the motion to suppress run with the trial. Tr 68. The court and parties understood what the issue was and, while perhaps not the most artful, the objection was sufficient. Indeed, the court showed the continuing objection to “the evidence of Diazepam”. Tr 70. The parties and court understood that the objection related to evidence relating to the pill, including Trooper Carson finding it, Agent Duckworth seeing it and the chemist testing it.

The objection was sufficient. The purpose of requiring an objection is to ensure that the trial court and opposing counsel understand the issue and do not get sandbagged on appeal. The State was prepared to let the motion to suppress run with the case. The court held the objection related to “the evidence of Diazepam”. Everyone knew what the objection was with the possible exception of Mr. Moore. This court might also consider the nature of a motion to suppress, which is actually directed at the physical exhibit. If the case proceeded to trial after the exhibit were suppressed, a motion in limine would be filed to exclude the testimony about the suppressed evidence. It is really a chicken and egg problem. It is unclear what the objection is to the testimony unless the physical evidence is suppressed. But once the object is suppressed, the testimony relating to it must be excluded. The court and parties understood the objection and the issue has been preserved.

The Respondent’s second argument for harmless error is wavier by confession. This theory first asserts the confession rendered the prior testimony from the State’s case-in-chief cumulative. The Respondent fails to discuss the

standard of review, the Appellant asserts the standard is a review of the record as a whole in the light most favorable to the Appellant, that is discussed at length in Point II of the Appellant's brief. The Respondent made no response to this argument. In the transcript before this court, the Appellant's testimony cannot be construed as a confession. A70-83. The Respondent avoids this problem by ignoring the standard of review, evidence in the light most favorable to the Appellant, and the question at issue, did the Appellant's testimony amount to a confession, by rehashing the testimony from other witnesses that the Appellant knew what the pill was. Appellant denied he knew what the pill was during his testimony. A77-83. The Respondent cites cases standing for the proposition that a defendant's knowledge may be inferred from his conduct. The regional appellate courts have drawn such inferences when the defendant is challenging the sufficiency of the evidence and the appellate court is reviewing the evidence in the light most favorable to the verdict, as in Cramerer, 29 S.W.3d 422 or Elmore, 43 S.W.3d 421 or Jackson, 806 S.W.2d 428.³ The claim of error in this case is not

³ The Appellant has reservations regarding the cases inferring a defendant's knowledge of the nature of the substance based on an attempt to conceal it. The cases cited involve an even more troubling development of inferring defendant's knowledge of the contents of a sealed opaque container which is actually stacking two inferences when more than one person is in the car, to-wit: knowing the container contained something illegal and knowing the nature of the substance. If

the sufficiency of the State's evidence. The issue in this case is whether the court can review the record as whole in the light most favorable to the Appellant and conclude he knowingly and voluntarily waived his constitutional right to be free from the State's unconstitutional search. No such waiver can be found in the case at bar under the harmless error standard of review.

Harmless error review requires that the reviewing court, upon a consideration of the record as a whole, be convinced beyond a reasonable doubt the error was harmless. The Appellant finds it difficult to believe the failure to suppress the only evidence of a crime, which necessarily results in excluding the

individual A hands a sealed container to person B saying "get rid of this" or even if A says nothing and B just knows A is not generally law abiding, is there any reason to believe that person B knows the nature of the substance? Is there any basis to infer that person B knows whether the contents of the container is a controlled substance, a misdemeanor amount of a controlled substance, a felony amount of a controlled substance, stolen baseball cards, or pirated MP3s that are likely to get an individual sued by the RIAA? Proving an individual knows something is "bad" in no way supports the additional inference that they know the nature of the material. An inference that the defendant had a suspicion, i.e. he or she tried to dispose or conceal the item, is really only proof of recklessness or willful ignorance, which is a step below the level of proof required, knowledge.

attendant testimony of who had the object, what it was, where it was, how it was found, and why the officer came to find it, is harmless error.

The Respondent's final theory is that there is no legal authority for the Appellant's claim that his testimony is fruit of the poisonous tree. The Appellant finds this a bit extraordinary given that he cites more than 15 cases in his second point and the legal principal being relied on by the State is from a case that is more than one hundred years old that federal courts have not relied on since 1962. The Appellant would perhaps be chagrined at not finding a case explicitly stating that Moots is no longer good law but for the fact that in response to the entirety of Point II the Respondent cites Black's Law Dictionary.

The Respondent fails to provide even an exact restatement of the definition in Black's. What the Respondent chose to paraphrase the Appellant will include in its entirety:

Fruit-of-the-poisonous-tree doctrine. *Criminal procedure*. The rule that evidence derived from an illegal search, arrest or interrogation is inadmissible because the evidence (the fruit) was tainted by the illegality (the "poisonous tree"). Under this doctrine, for example, a murder weapon is inadmissible if the map showing its location and used to find it was seized during an illegal search. -- Also termed *fruits doctrine*. See EXCLUSIONARY RULE; ATTENUATION DOCTRINE; INDEPENDENT SOURCE RULE; INEVITABLE-DISCOVERY RULE.

Black's, 679 (7th ed.). The proper paraphrase of this definition is when the fruit, the evidence, falls from a tree tainted by illegality, the fruit is likewise tainted as being unlawfully obtained. The issue at bar is whether the Appellant's testimony, the fruit, is the produce of a poisoned tree, a trial where the court admitted unlawfully seized evidence.

The exclusionary rule is not a rule of evidence. The rule is the enforcement mechanism for violations of a constitutionally protected right. A trial court's admission of improperly seized evidence is itself an unconstitutional act. Mapp v. Ohio, 367 U.S. 643 (1961). With all deference to the editors of Black's Law Dictionary, a defendant's testimony following a trial court's admission of evidence seized unlawfully is also the fruit-of-the-poisonous-tree.

The search of the Appellant was unlawful. The evidence should have been suppressed. The issue was adequately preserved. There is no procedural mechanism whereby the State's violation of the Appellant's constitutional rights can be overlooked.

POINT II

The Respondent chose to include its response to the Appellant's Point II under Respondent's Point I.

The Respondent's Point II is in reply to the Appellant's Point IV. The Appellant will keep his reply in the same order as his brief and discuss those matters under Point IV.

POINT III

The trial court erred in concluding the Appellant was not asserting a valid defense.

The Appellant should have called this the prescription defense. A great deal of ink would probably have been saved.

The Respondent first suggests this point may be an altered basis of a claim raised below. The Respondent then notes it involves the same issues raised in Points IV and V of the Appellant's brief (Points II and III in the Respondent's brief). Point III is not an altered basis for relief. The point is in response to the phraseology used by the Southern District in denying relief to the Appellant. The Point is not a new claim for why the Appellant should prevail but is a much more detailed analysis of the proper way to understand § 195.180.

The Respondent admits it is lawful to pick-up a household member's prescription. This would be possession, not just control, pursuant to the prescription. The Respondent would define "pursuant to" as "according to". The first two definitions of according are "in conformity with" and "as stated or attested by". Webster's New Collegiate Dictionary, 1980. One cannot pick up another's prescriptions under those definitions because the prescription is a directive to the pharmacist to give the patient a specific amount of a designated controlled substance. However, the last definition of "according" is precisely what the Appellant has argued all along. The last definition of "according" is

“depending on”. Whether the Appellant lawfully possessed a controlled substance depends on whether a member of his household had a prescription.

The Respondent dwells on the facts of this case. The Appellant has tried to avoid them. The problem the Appellant has had with a more orthodox approach to statutory analysis is that Chapter 195 is a mess. More accurately, Chapter 195 encompasses statutorily matters that are so broad and far ranging they would be more appropriately dealt with by the type of extended and detailed treatment meted out in regulations. The Appellant discovered the defense, if it is one, when a couple were at the river and a husband whose swimsuit had pockets ended up in possession of his wife’s prescription because her swimsuit did not have any pockets. While the facts of this case are obviously more attenuated, the General Assembly decided to let juries sort out the enumerable potential circumstances that might arise. It is a jury, not the Respondent, which gets to decide the issue under the facts of this case.

The Respondent has made much of the fact that the Appellant was in Wayne County on Highway 67 when the police found him in possession rather than at the home he shared with his grandmother. The definition of ultimate user covers household pets. Presupposing that few people stable their horses at home, is it a felony to keep the horse’s medication at the owner’s house when the horse is stabled in the next county? The only limitation on the prescription defense is that either the defendant or a member of his or her household must have a prescription.

POINT IV

Denial of a continuance based on an absent witness, the pharmacist.

The issues in this point have been properly joined in the Appellant's and Respondent's brief or the issues have been fully discussed under the other points.

POINT V

The trial court erred in refusing Instructions A and B because they were supported by sufficient evidence and the law authorizes the prescription defense, as asserted.

The Respondent asserts the Appellant failed to include the jury instructions with his brief, citing Rule 84.05(e). Rule 84.05(e) relates to appeals arising from a circuit court's reversal of an administrative agency decision. Rule 84.04(e) requires including the jury instructions. In the Appellant's copy of his appendix, the instructions are included on pages 42 through 44. The Appellant has likewise included them in the Appendix of this brief.

The Respondent begins its substantive argument by declaring that neither the Appellant nor his brother got the pill "pursuant to" a valid prescription. Although the majority of Appellant's brief is directed at the distinction between a obtaining a prescription "directly from" and obtaining it "pursuant to" a prescription, the Respondent never discusses this. The Respondent seems to assume the terms are synonymous. The Appellant will not reargue his brief, which discusses the absurd results that follow from treating the terms as synonymous.

The Respondent then casually alleges that the prescription holder had no authority to "dispense" the Diazepam to her grandson. The Appellant will again invite the court's attention to circumstances involving minor children,

incompetents and invalids. As dispense is defined in § 195.010, the legislature has also defined the term administer, to-wit:

(2) “**Administer**”, to apply a controlled substance, whether by injection, inhalation, ingestion or other means directly to the body of a patient or research subject by:

(a) A practitioner (or, in his presence, by his authorized agent);

or

(b) The patient or research subject at the direction and in the presence of the practitioner;

R.S.Mo. § 195.010(2); A46. I believe everyone would be shocked to learn that it is a felony to give their children prescription medication unless they are “in the presence of the practitioner”. If parents or spouses or guardians may give a medication to a child, spouse or incompetent person, without committing the felony of administering it outside the presence of a practitioner, it is only because such conduct fits within the definition of lawful possession under § 195.180.

Once § 195.180 is construed to allow conduct that everyone would agree must be lawful, the check the General Assembly has chosen to prevent wrongful conduct from being condoned is the judgment of an jury. § 195.180.2.

The Respondent next states that the definition of “ultimate user” is a definition and not a defense. The Appellant’s point is that “lawful possession” as defined in § 195.180, must be construed to be consistent with the definition of

“ultimate user”. This is born out by the other sections in Chapter 195 that use the term ultimate user. Section 195.030 excuses the Appellant and his brother from having to register with the Department of Health. The Respondent then cites §§ 195.080 and 195.060. As near as the Appellant can understand, the Respondent is arguing that the Appellant’s grandmother had no authority to give the Diazepam to her grandson. The grandmother has not been charged and the question in the case at bar is whether the Appellant lawfully possessed the Diazepam. Further, if it was unlawful for grandmother to give her grandson one pill it is unlawful for her to put it in the medicine cabinet or to fail to surrender control to the 2-year old or the horse and requires the conviction of home owner’s whose guests forget their prescriptions. In lieu of trying to parse out the confusion that is life, the legislation leaves it to a jury.

The Respondent next asserts the Appellant does not fit within the definition of ultimate user. The Appellant is a person. The Appellant possessed a controlled substance. The Diazepam was either for his use or for the use of his grandmother. The entire question is whether his possession was lawful. When § 195.180 is construed in a common sense manner avoiding absurd results such as outlawing medicine cabinets or requiring a parent to give prescriptions packaged in a child proof container to a small child, then the Appellant’s conduct may have been lawful. The Appellant’s brief discusses why the term “household” is used and undefined, to-wit: to cover the myriad of living arrangements in society today and to be broad enough to encompass temporary living arrangements, such as hotel

rooms or guests in the home. The proper arbiter of this dispute is a jury of the Appellant's peers.

The Respondent's final point is that the trial court's action can be justified because the instruction had been improperly drafted. The Appellant has maintained that since the record on this issue was never developed below, it cannot be properly decided by this court. Indeed in the Appellant's brief before the Southern District, the Appellant noted the issue is merely being raised out of an abundance of caution, i.e. not only did the Appellant raise the issue before the court but preserved the issue by bringing the matter to the court's attention at every turn. The court rejected the instructions for the same reason it denied the continuance or the introduction of the Appellant's exhibit. The trial court did not believe the Appellant was raising a valid defense. Indeed, the Appellant will note the court could not have given the instruction because there was no proper evidence the Appellant's grandmother had a prescription.

CONCLUSION

The Appellant's approach to the issues on appeal have never seemed quite normal. The Appellant now understands that the problem in this case is actually akin to summary judgment with the trial court summarily declaring the Appellant's defense is not valid. Other than the motion to suppress, which should be sustained, the remaining issues are whether a valid defense was properly raised and summarily denied by the trial court.

The Appellant's motion to suppress should be sustained and the court should enter an order of discharge. At the least, the Appellant should be allowed to present his defense to a jury however attenuated the proposition because it falls within the law as it is presently written and the law means exactly what is written because any other construction necessarily produces absurd results.

BY: _____
John M. Albright - 44943
ATTORNEY FOR APPELLANT
MOORE, WALSH & ALBRIGHT, L.L.P.
ATTORNEYS AT LAW
P.O. BOX 610
POPLAR BLUFF, MO. 63902-0610

**IN THE
MISSOURI SUPREME COURT**

STATE OF MISSOURI,)	
)	
Respondent,)	
)	Appeal No. SC85704
vs.)	
)	
BILLY LYNN BLOCKER,)	
)	
Appellant.)	

CERTIFICATE OF SERVICE

COMES NOW Appellant, by and through counsel, John M. Albright of MOORE, WALSH & ALBRIGHT, L.L.P., and certifies that the Brief complies with the limits in Rule 84.06(b) insofar as it is Appellant's Brief with less than 31,000 words or a Respondent's Brief with less than 27,000 words or as a Reply Brief with less than 7,750 words in that it is Appellant's Substitute Reply Brief and contains 4,510 words and that a copy of the Appellant's Substitute Reply Brief, together with a copy on disk in Word format scanned for viruses, was served upon the attorneys of record by United States mail, postage prepaid, addressed to: Karen Kramer, Asst. Attorney General, P.O. Box 899, Jefferson City, MO 65102 on this 4th day of March, 2004.

BY: _____

John M. Albright - 44943

ATTORNEY FOR APPELLANT

MOORE, WALSH & ALBRIGHT, L.L.P.

ATTORNEYS AT LAW

P.O. BOX 610

POPLAR BLUFF, MO. 63902-0610