MISSOURI COURT OF APPEALS
EASTERN DISTRICT

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	Appeal No. ED83275
VS	)	
	)	
	)	
ANTOINE L. BULLOCK,	)	
	)	
Appellant.	)	

Appeal from
The Circuit Court of Missouri
20th Judicial District, Division I
Honorable Gael D. Wood

APPELLANT'S AMENDED BRIEF

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STATEMENT OF JURISDICTION

On June 22, 2001 appellant was charged by information with the Class B. Felony of Possession of a Controlled Substance with Intent to Distribute or Deliver or Mail in violation of Section 195.211 RSMo (Legal File, page 8).

After a trial to the Court, he was found guilty as charged on March 24, 2003 (Legal File, page 4). On June 30, 2003 he was sentenced to serve five years in the Missouri Department of Corrections (Legal File, page 5).

STATEMENT OF FACTS

Trooper Gary Swartz of the Missouri Highway Patrol was the arresting officer (Tr. 10). He stopped the vehicle in which appellant was riding because of what he deemed to be improper driving (Tr. 10). Appellant was the passenger in the vehicle he stopped (Tr. 11). Swartz asked the driver, Trenton Bryant, to take a seat in his patrol car (Tr. 12). Bryant seemed nervous and told him that he was on his way home from Phoenix, ran out of money and had his friend, the appelllant, come to Phoenix in order to drive him home (Tr. 12). Bryant's home was in Cincinnati, Ohio (Tr. 12). Bryant was very nervous, volunteered information and asked Swartz to call relatives of his in order to verify his statements (Tr. 14).

Continuing his testimony, Trooper Swartz testified that when he spoke to appellant he was told by him that Bryant's mother had rented the automobile in order for him to drive to Arizona to pick Bryant up (Tr. 13). Appellant told the trooper that he and Bryant had been in Flagstaff and nowhere else in Arizona (Tr. 13). Appellant seemed nervous and avoided eye contact (Tr. 14).

Swartz issued Bryant a citation for no valid operator's license in Ohio and gave him a warning for following too close (Tr. 15). He then told Bryant that he was free to leave (Tr. 15). He testified that he found the story given him by appellant and Bryant concerning why appellant had to fly out to Arizona confusing but this did not affect his decision to issue a summons to Bryant (Tr. 16). After he was told that he

could leave, Bryant thanked Swartz and started walking to his vehicle (Tr. 16). Swartz then asked Bryant if he would mind answering a few more questions (Tr.16). He did this because he had doubts about the story told him by appellant and Bryant concerning the trip to Arizona (Tr. 17).

Swartz then told Bryant that he was concerned about the information he had received about the trip to Arizona and that there might have been some illegal activity (Tr. l7). He asked Bryant if there were any drugs in the car and Bryant said there were none (Tr. 18). He asked Bryant for his consent to search the vehicle and Bryant gave his consent (Tr. 18).

After talking to Bryant, Swartz spoke again to appellant who denied there were any drugs in the car and gave his consent to the search (Tr. 18). Swartz was then asked about the search and at this point, appellant's attorney objected to any testimony concerning the search (Tr. 18, 19). His objection was overruled (Tr. 19).

Swartz first searched the passenger compartment of the vehicle and found nothing illegal (Tr. 19). He then opened the trunk, smelled the odor of marijuana, placed appellant and Bryant under arrest, and proceeded to find processed marijuana (Tr. 19, 20).

Swartz identified Exhibit 1 as the bag he found in the trunk of the motor vehicle (Tr. 20, 21). Over objection that this exhibit was the fruit of an unlawful search, it was admitted (Tr. 21). A field test determined that the contents of the

bundles found in the bag contained marijuana (Tr. 21). He never determined who the owner of the bag was (Tr. 22). It was stipulated that the contents of the packages was in fact marijuana but appellant continued to object to the propriety of the search (Tr. 22).

Exhibit 2 is a duffel bag containing appellant's clothes and an airline name ticket bearing appellant's name (Tr. 24). Over objection this exhibit was admitted (Tr. 25). The two duffel bags belonging to appellant contained about $3000.00 in cash (Tr. 26).

On cross examination, Swartz testified that Bryant had a valid driver's license and that the two duffel bags owned by appellant contained no marijuana or drug paraphernalia or other controlled substance (Tr. 32). He repeated that he stopped Bryant, the driver, for a traffic violation but issued him no ticket for that alleged violation (Tr. 36).

The vehicle driven by Bryant had valid plates and there was no report of its having been stolen (Tr. 36). The equipment was not defective (Tr. 36). He was unable to determine who had rented the motor vehicle (Tr. 36).

The marijuana was not found in the passenger compartment (Tr. 37). There was no odor of marijuana in the interior of the motor vehicle (Tr. 37). His looking at the interior of the motor vehicle did not prompt the later search, nor did his inspection of the exterior of the car prompt the search (Tr. 37).

Appellant's alleged evasive answers to his pre-search questions, and Bryant's

alleged nervousness occurred prior to his writing out a ticket to Bryant and telling him that he was free to go (Tr. 37). When he issued the ticket and told Bryant he could go, his investigation of the alleged traffic violation had been completed (Tr. 37). The traffic stop was over and had been completed (Tr. 38). Between the time he told Bryant he could go and deciding to ask him some additional questions, none of which dealt with the traffic violation, there was no intervening event (Tr. 38).

Appellant had no contact with the contents of the trunk of the car while he was in Swartz's presence (Tr. 39).

Trooper Robert Schoonover was the respondent's next witness (Tr. 40). He was summoned to the scene of the traffic stop by Swartz (Tr. 41). He conveyed appellant to police headquarters (Tr. 42). Appellant made no statement concerning the marijuana (Tr. 42).

On cross examination he testified there was nothing in his report indicating that appellant was nervous (Tr. 43).

Trooper Eric Bartel was the respondent's final witness (Tr. 44). He assisted in inventorying the contents of the motor vehicle (Tr. 46). On cross examination he stated that he found no controlled substance inside the car (Tr. 50).

Respondent then rested its case at which time appellant filed his motion for judgment of acquittal (Tr. 50). On March 24, 2003, the motion for judgment of acquittal was denied (Tr. 56).

POINTS RELIED ON

THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR A JUDGMENT OF ACQUITTAL BECAUSE WHERE APPELLANT WAS A PASSENGER IN A MOTOR VEHICLE STOPPED FOR A TRAFFIC VIOLATION, WHERE THERE WAS NOTHING ILLEGAL IN THE INTERIOR OF THE MOTOR VEHICLE, WHERE APPELLANT MADE NO INCRIMINATING STATEMENT TO THE ARRESTING OFFICER, WHERE THE INVESTIGATION OF THE TRAFFIC VIOLATION HAD BEEN COMPLETED AND THE ARRESTING OFFICER HAD ADVISED THE DRIVER THAT HE WAS FREE TO GO, A SUBSEQUENT SEARCH OF THE TRUNK OF THE VEHICLE ALLEGEDLY DONE WITH THE CONSENT OF THE DRIVER AND APPELLANT, THERE HAVING BEEN NO INTERVENING NEW CIRCUMSTANCES PROMPTING THE SEARCH, THE SEARCH WAS ILLEGAL EVEN THOUGH APPELLANT AND THE DRIVER SEEMED NERVOUS.

State v Hoyt, 75SW3rd 879, (Mo. App. 2002)

State v Woolfolk, 3 S.W.3rd, 823, 828 (Mo. App. 1999)

State v Barks, Slip Opinion 939275 from Mo. App. Southern District

THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR A JUDGMENT OF ACQUITTAL BECAUSE WHERE APPELLANT WAS A PASSENGER IN A MOTOR VEHICLE WHICH WAS SEARCHED SUBSEQUENT TO THE CONCLUSION OF AN INVESTIGATION OF A TRAFFIC VIOLATION, WHERE APPELLANT MADE NO STATEMENT EVIDENCING HIS KNOWLEDGE OF THE CONTENTS OF THE TRUNK OF THE VEHICLE PRIOR TO ITS SEARCH, WHERE THERE WAS NO ODOR OF MARIJUANA IN THE INTERIOR OF THE MOTOR VEHICLE AND WHERE THE MARIJUANA WAS NOT VISIBLE TO THE ARRESTING OFFICER UNTIL HE HAD SEARCHED THE TRUNK, THE EVIDENCE IS INSUFFICIENT TO CONVICT APPELLANT OF POSSESSION OF THE MARIJUANA.

State v Johnson, 81 S.W.3rd 212 (Mo. App. 2002)

ARGUMENT

THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR A JUDGMENT OF ACQUITTAL BECAUSE WHERE APPELLANT WAS A PASSENGER IN A MOTOR VEHICLE STOPPED FOR A TRAFFIC VIOLATION, WHERE THERE WAS NOTHING ILLEGAL IN THE INTERIOR OF THE MOTOR VEHICLE, WHERE APPELLANT MADE NO INCRIMINATING STATEMENT TO THE ARRESTING OFFICER, WHERE THE INVESTIGATION OF THE TRAFFIC VIOLATION HAD BEEN COMPLETED AND THE ARRESTING OFFICER HAD ADVISED THE DRIVER THAT HE WAS FREE TO GO, A SUBSEQUENT SEARCH OF THE TRUNK OF THE VEHICLE ALLEGEDLY DONE WITH THE CONSENT OF THE DRIVER AND APPELLANT, THERE HAVING BEEN NO INTERVENING NEW CIRCUMSTANCES PROMPTING THE SEARCH, THE SEARCH WAS IMPROPER EVEN THOUGH APPELLANT AND THE DRIVER SEEMED NERVOUS.

There is a fair number of recent appellate decisions holding that once the initial purpose of the traffic stop has been completed and the investigation concluded, a subsequent search and seizure violates the provisions of the Fourth Amendment to the United States Constitution.

In the case of State v Hoyt, 75SW3rd 879, the Western District wrote:

> **"The issue in this case is whether the search and seizure of evidence**

occurred within the period of detention authorized by law . . . Once the investigation has been concluded, the detainee must be allowed to proceed unless specific, articulate facts create an objectively reasonable suspicion that the individual is involved in criminal activity. . . This suspicion must come about during the time necessary to effect the purpose of the stop. . .”

In the present case, the investigation had been concluded as admitted by the arresting officer. He told the driver of the vehicle that he could go on his way. They shook hands. Between the time following the handshake and the arresting officer beginning once again to question the driver and appellant, no new facts or circumstances occurred.

Respondent may argue that the alleged nervousness of appellant and the driver was sufficient basis for questioning them following the conclusion of the investigation of the traffic violation. This issue was discussed the disposed of in the case of State v Woolfolk, 3 S.W.3rd, 823, 828 (Mo. App. 1999) and State v Barks, Slip Opinion 939275 from the Southern District.

THE TRIAL COURT ERRED BY DENYING APPELLANT’S MOTION FOR A JUDGMENT OF ACQUITTAL BECAUSE WHERE APPELLANT WAS A PASSENGER IN A MOTOR VEHICLE WHICH WAS SEARCHED SUBSEQUENT TO THE CONCLUSION OF AN INVESTIGATION OF A TRAFFIC VIOLATION, WHERE APPELLANT MADE NO STATEMENT EVIDENCING HIS KNOWLEDGE OF THE CONTENTS OF THE TRUNK OF THE VEHICLE PRIOR TO ITS SEARCH,

WHERE THERE WAS NO ODOR OF MARIJUANA IN THE INTERIOR OF THE MOTOR VEHICLE AND WHERE THE MARIJUANA WAS NOT VISIBLE TO THE ARRESTING OFFICER UNTIL HE HAD SEARCHED THE TRUNK, THE EVIDENCE IS INSUFFICIENT TO CONVICT APPELLANT OF POSSESSION OF THE MARIJUANA.

The recent decision of State v Johnson, 81 S.W.3rd 212 (Mo. App. 2002) is dispositive of this issue.

As in the Johnson case, appellant was a passenger in the stopped motor vehicle. There was nothing in the interior of the vehicle of an illegal nature. There was no odor of marijuana in the interior of the car. Appellant's nervousness can not be used as the basis for the subsequent search. Appellant made no statement admitting to knowledge of or possession of the marijuana.

Under these circumstances, the State has not proved the elements of the crime of possession of an illegal substance.

CONCLUSION

Appellant respectfully urges that the conviction of appellant be set aside for the reasons argued herein.

CERTIFICATE OF SERVICE

The undersigned certifies that one (1) copy of the foregoing Appellant's Brief was mailed by First Class mail, postage prepaid on this_____day of February, 2004 to: Robert Parks, Franklin County Prosecuting Attorney, P.O. Box 568, Union, Missouri, and Andra Spillars, Assisting Attorney General Office, P.O. Box 899, Jefferson City, MO, 65102 .

_____
Richard B. Dempsey

Subscribed and sworn to by me this _____ day of February, 2004.

_____
Notary Public

My Commission Expires:

CERTIFICATION

Comes Now Richard B. Dempsey and in accordance with Rule 84.06© certifies that:

The brief submitted by Appellant;

1. Includes the information required by Rule 55.03; and

2. States that the brief complies with the limitations contained in Rule 84.06(b); and

3. States the that there are 2073 words in the brief;

4. States that there are 296 lines using Times New Roman 13 pt with Double Spacing;

_____

Richard B. Dempsey, #14988

CERTIFICATION

Comes Now Richard B. Dempsey and certify that the disk filed in this matter has been scanned by McAfee for viruses and that it is virus-free.

_____

Richard B. Dempsey, #14988

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APPENDIX TO APPELLANT'S BRIEF

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