IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. SC 90971
	)	
MATTHEW GRAYSON,	)	
	)	
Respondent.	)	

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
TWENTY-FIFTH JUDICIAL CIRCUIT, DIVISION II
THE HONORABLE MARY W. SHEFFIELD, JUDGE

APPELLANT'S SUBSTITUTE BRIEF

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INDEX

Page

TABLE OF AUTHORITIES

Page

***CASES*:**

***CONSTITUTIONAL PROVISIONS*:**

RULES:

JURISDICTIONAL STATEMENT

Matthew Grayson appeals his conviction following a bench trial in the Circuit Court of Phelps County, Missouri, for possession of a controlled substance in violation of Section 195.202, RSMo 2000.[1] On January 8, 2009, the Honorable Mary W. Sheffield sentenced Mr. Grayson to seven years in the Missouri Department of Corrections, and committed him to the Shock Incarceration Program pursuant to Section 559.115. (L.F. 21-22).[2] A notice of appeal was timely filed on January 16, 2009. (L.F. 24-26). On May 11, 2010, the Southern District Court of Appeals issued its opinion affirming the trial court's ruling, and this Court granted transfer after opinion. This Court has jurisdiction pursuant to Rule 83.04 and Article V, Section 9, Mo. Const. (as amended 1976).

[1] All statutory citations are to RSMo 2000.

[2] The Record on Appeal consists of a Legal File (L.F.), a Supplemental Legal File (Supp. L.F.), the Transcript of Motion to Suppress Proceedings (Mot. Tr.), the Transcript of Court Trial Proceedings (Tr.), and the Transcript of Sentencing Proceedings (Sent. Tr.).

STATEMENT OF FACTS

On March 25, 2008, Officer Paul Lambert was patrolling the Newburg area in Phelps County. (Tr. 8). He received a dispatch that a possible drunk driver had left a nearby address in a red Ford pickup. (Tr. 9). The dispatcher also gave the name of the suspect, Terry Reed, who Officer Lambert knew, and stated that Mr. Reed had an outstanding parole warrant. (Tr. 9, 16). The information for the dispatch came from an anonymous tip. (Supp. L.F. 1-14). The state presented no evidence regarding the source of the anonymous tip.

While patrolling the area, the officer saw a red Mazda truck and caught a glance of the driver in his lights. (Mot. Tr. 9; Tr. 9). The officer testified that the driver resembled the person for whom he was looking, even though the truck was not of the same make that dispatch had given him. (Mot. Tr. 9; Tr. 9). Officer Lambert followed the truck and observed no traffic violations or signs of intoxication, but decided to conduct an investigatory stop and pulled the vehicle over. (Mot. Tr. 9; Tr. 10, 17).

The officer walked to the vehicle, and saw that the driver was Matthew Grayson and not Terry Reed, the person named in the dispatch. (Mot. Tr. 12; Tr. 10). Officer Lambert had known Mr. Grayson for several years, and knew that there had previously been outstanding warrants for him and that he had been arrested several times. (Mot. Tr. 10; Tr. 10). However, the officer had no knowledge at the time he stopped the truck that there were any active warrants for Mr. Grayson. (Mot. Tr. 13).

The officer told Mr. Grayson that he was conducting an investigative stop and that he was looking for someone else, but told him "I need to see your driver's license." (Mot. Tr. 12-13; Tr. 10). The officer testified that Mr. Grayson was not free to leave at that time. (Mot. Tr. 13). Mr. Grayson handed over his license, and Officer Lambert took it back to his patrol car and determined through dispatch that there was an active warrant for his arrest. (Tr. 11). He told Mr. Grayson about the warrant, placed him under arrest, and conducted a pat-down search of his person. (Mot. Tr. 10; Tr. 11). The officer found a glass pipe containing a white powdery substance inside of his coat pocket; Mr. Grayson told him the coat was not his. (Tr. 11, 18-19). The officer conducted a field test of the substance, which showed positive for methamphetamines. (Tr. 19). He handcuffed Mr. Grayson and placed him in the backseat of the patrol car. (Tr. 11).

After arriving at the jail, Officer Lambert pulled Mr. Grayson out of the car and had him stand up against the wall. (Tr. 11). The officer lifted the backseat of the patrol car and found a small bag of a white powdery substance under the seat. (Tr. 11). Officer Lambert testified that he had cleaned the patrol car before his shift, and that he was the only one who had been in the car. (Tr. 22). Mr. Grayson said it was not his. (Tr. 11). Laboratory testing of the powdery substance showed that it contained methamphetamine, weighing 0.05 grams. (Tr. 29).

Mr. Grayson was charged with possession of a controlled substance. (L.F. 6). Defense counsel filed a motion to suppress the physical evidence and any testimony pertaining to it, which was overruled. (L.F. 13-14). Defense counsel renewed

objections to the admission of the evidence and testimony at trial. (Tr. 4-5, 15, 19, 20, 22, 27, 29). Following a bench trial, Mr. Grayson was found guilty of possession of a controlled substance, and was sentenced to seven years in the Department of Corrections, and committed to the Shock Incarceration Program pursuant to Section 559.115. (L.F. 21-22; Sent. Tr. 5-6). This appeal follows.

POINT RELIED ON

The trial court erred in overruling Mr. Grayson's motion to suppress and in admitting evidence found on his person and in a patrol car following his arrest, because these rulings violated his right to be free from unreasonable search and seizure as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 15 of the Missouri Constitution, in that the stop of Mr. Grayson's vehicle was not based on reasonable suspicion, his continued detention was not based on reasonable suspicion, and the officer's discovery of an outstanding arrest warrant was insufficient to attenuate the evidence and related testimony from the taint of the unconstitutional seizure; the officer had no knowledge of the warrant at the time of the stop or detention, the officer unlawfully detained Mr. Grayson and took his license to check for warrants, the evidence was discovered as a direct result of the officer's unconstitutional behavior and was derived by exploitation thereof, and failing to suppress the evidence in this case does not serve the interests protected by the constitutional guarantee against unreasonable searches and seizures because it encourages officers to detain an individual with no legal justification in the hopes of discovering that the person is subject to arrest on a pre-existing warrant.

State v. Taber, 73 S.W.3d 699 (Mo. App. W.D. 2002);

State v. Dixon, 218 S.W.3d 14 (Mo. App. W.D. 2007);

State v. Miller, 894 S.W.2d 649 (Mo. banc 1995);

Hudson v. Michigan, 547 U.S. 586 (2006);

U.S. Const., Amend IV;

U.S. Const., Amend XIV;

Mo. Const., Art. I, Sec. 15;

and Rule 29.11

ARGUMENT

I.

The trial court erred in overruling Mr. Grayson's motion to suppress and in admitting evidence found on his person and in a patrol car following his arrest, because these rulings violated his right to be free from unreasonable search and seizure as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 15 of the Missouri Constitution, in that the stop of Mr. Grayson's vehicle was not based on reasonable suspicion, his continued detention was not based on reasonable suspicion, and the officer's discovery of an outstanding arrest warrant was insufficient to attenuate the evidence and related testimony from the taint of the unconstitutional seizure; the officer had no knowledge of the warrant at the time of the stop or detention, the officer unlawfully detained Mr. Grayson and took his license to check for warrants, the evidence was discovered as a direct result of the officer's unconstitutional behavior and was derived by exploitation thereof, and failing to suppress the evidence in this case does not serve the interests protected by the constitutional guarantee against unreasonable searches and seizures because it encourages officers to detain an individual with no legal justification in the hopes of discovering that the person is subject to arrest on a pre-existing warrant.

Standard of Review & Preservation

At a hearing on a motion to suppress, the state bears the burden of proving by a preponderance of the evidence that the motion should be overruled. ***State v. Franklin***, 841 S.W.2d 639, 644 (Mo. banc 1992). In reviewing a trial court's decision to overrule a motion to suppress and allowing admission of the evidence and testimony in question, an appellate court reviews the evidence presented both at the suppression hearing and at trial. ***State v. Goff***, 129 S.W.3d 857, 861-62 (Mo. banc 2004). All facts and reasonable inferences from the facts should be stated favorably to the trial court's order, and the appellate court review to determine if the evidence is sufficient to support the ruling or if it is clearly erroneous. ***Franklin***, 841 S.W.2d at 641; ***Goff***, 129 S.W.3d at 862. However, the legal determination of whether reasonable suspicion or probable cause existed is reviewed *de novo*. ***Ornelas v. United States***, 517 U.S. 690, 699 (1996).

Appellant filed a motion to suppress evidence found in the search of his person and in the patrol car following his arrest, and any testimony regarding such evidence. (L.F. 13). He properly objected to the admission of this evidence and related testimony at the bench trial. (Tr. 4-5, 15, 19, 20, 22, 27, 29). This issue is preserved for review. Rule 29.11.

Argument

The issues in this case have been considerably narrowed upon transfer to this Court. The Court of Appeals held, in accordance with established precedent, that the

uncorroborated anonymous tip that was the basis for the dispatch was insufficient to provide justification for the stop of Mr. Grayson's car. ***State v. Grayson***, 2010 WL 1856311, at *3 (Mo. App. S.D. 2010), *cause transferred*; *see, e.g.*, ***Florida v. J.L.***, 529 U.S. 266, 270 (2000); ***Alabama v. White***, 496 U.S. 325, 329 (1990); ***State v. Miller***, 894 S.W.2d 649, 653 (Mo. banc 1995). As such, the Court determined that Mr. Grayson's claim that the stop was impermissibly extended was rendered moot. ***Grayson***, 2010 WL 1856311, at *3. Still, it declared that the detention was also unjustified as nothing in the record showed that the officer had formed reasonable suspicion that Mr. Grayson was involved in criminal activity after the alleged purpose for the stop was complete. ***Id.***; *see* ***Florida v. Royer***, 460 U.S. 491, 500 (1983); ***State v. Weddle***, 18 S.W.3d 389, 394 (Mo. App. E.D. 2000).

The question remaining is whether the officer's discovery of an outstanding warrant for Mr. Grayson's arrest, discovered as the direct result of the constitutional violations, was enough to attenuate the evidence seized after the arrest from the taint of illegality.

The United States Constitution guarantees that individuals will not be subjected to unreasonable searches and seizures. U.S. Const. Amend IV; ***United States v. Arvizu***, 534 U.S. 266, 273 (2002). The Missouri Constitution offers the same level of protection. ***State v. Woods***, 284 S.W.3d 630, 634 (Mo. App. W.D. 2009); Mo. Const., Art. I, Section 15. These protections extend to investigatory stops of vehicles, as stopping a vehicle and detaining its occupants constitutes a "seizure" for Fourth Amendment purposes. ***Arvizu***, 534 U.S. at 273; ***State v. Martin***, 79

S.W.3d 912, 916 (Mo. App. E.D. 2002). If an investigatory stop is not justified by reasonable suspicion, or if the officer exceeds the proper scope of the stop, then any evidence derived from the stop is inadmissible at trial. ***United States v. Wheat***, 278 F.3d 722, 726 (8th Cir. 2001), *citing* ***Wong Sun v. United States***, 371 U.S. 471, 484 (1963).

Officer Lambert testified that the only reason why he stopped Mr. Grayson's vehicle was because he thought he was Terry Reed, the person named in the dispatch about a possible drunk driver. (Mot. Tr. 12; Tr. 9). But as soon as the officer walked up to the truck, he saw that the driver was Mr. Grayson and not the suspect he sought. (Mot. Tr. 9-10; Tr. 18). Officer Lambert knew that Mr. Grayson had previously been arrested on warrants, so he told him that he needed to see his license. (Mot. Tr. 12-13; Tr. 10). Dispatch revealed that Mr. Grayson had a municipal warrant for possession of marijuana. (Tr. 11). But the officer had no knowledge prior to taking Mr. Grayson's license back to his patrol car and checking with dispatch that there were any active warrants. (Mot. Tr. 13; Tr. 18).

Mr. Grayson was arrested, handcuffed, and searched, and the officer found a glass pipe inside of his coat pocket which tested positive for methamphetamines. (Tr. 11). He transported Mr. Grayson to the jail in his patrol car, and after arriving, the officer pulled Mr. Grayson out of the car and had him stand up against the wall. (Tr. 11). The officer then lifted the backseat of his patrol car and found a small bag of methamphetamine under the seat, weighing 0.05 grams. (Tr. 11). He testified that he

had cleaned the patrol car before his shift began, and that Mr. Grayson was the only one who had been inside. (Tr. 22).

The exclusionary rule has traditionally barred admission at trial of evidence and testimony obtained either during, or as the direct result, of an unlawful search or seizure. ***Wong Sun***, 371. U.S. at 485. The prime purpose of the exclusionary rule is to deter future unlawful police conduct, and to effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures. ***Illinois v. Krull***, 480 U.S. 340, 347 (1987). Application of the exclusionary rule is neither intended, nor able, to cure the invasion of rights which the defendant has already suffered. ***Id.***, *citing* ***United States v. Leon***, 468 U.S. 897, 906 (1984). The rule operates as a remedy designed to generally safeguard Fourth Amendment rights by its deterrent effect, rather than any personal constitutional right of the aggrieved party. ***Krull***, 480 U.S. at 347.

Evidence derived from a Fourth Amendment violation must be excluded as fruit of the poisonous tree, although this is not a steadfast rule. ***Miller***, 894 S.W.2d at 654. Application of the exclusionary rule has been restricted to situations in which its remedial purpose is effectively advanced. ***Krull***, 480 U.S. at 347. This Court should examine whether the rule's deterrent effect will be achieved, and weigh the likelihood of such deterrence against the costs of withholding reliable information from the truth-seeking process. *See* ***Id.***

The "attenuation doctrine" is one of three limitations on the application of the exclusionary rule. ***Miller***, 894 S.W.2d at 654. In determining if the exclusionary rule

should apply, the question is whether, granting establishment of the primary illegality, the challenged evidence has been come at by exploitation of the illegality, or by means sufficiently distinguishable to be purged of the primary taint. ***Id.***, *citing* ***Wong Sun***, 371 U.S. at 488 (internal quotations and citations omitted). "The notion of the 'dissipation of the taint' attempts to mark the point at which the detrimental consequences of illegal police action become so attenuated that the deterrent effect of the exclusionary rule no longer justifies its cost." ***Illinois v. Brown***, 422 U.S. 590, 609 (1975) (Powell, J., concurring in part) (explaining the majority's holding). This is the exception to the exclusionary rule that the Court of Appeals applied in determining the evidence found in Mr. Grayson's case did not need to be suppressed. ***Grayson***, 2010 WL 1856311, at *5.

The Court of Appeals' decision is in conflict with ***State v. Dixon***, in which the Court determined that evidence found after an arrest must be suppressed, when the officer unlawfully seized the defendant prior to obtaining any information about the outstanding arrest warrant. 218 S.W.3d 14, 22 (Mo. App. W.D. 2007). In ***Dixon***, an officer stopped to see if the driver of a vehicle parked on the shoulder of a highway needed assistance. ***Id***. at 17. The driver, Dixon, said that help was on the way and he did not need assistance. ***Id***. The officer asked for his license anyway, and took it back to his patrol vehicle to record the information and run a check for warrants. ***Id***. The officer discovered an active warrant, arrested Dixon, searched his wallet and found methamphetamine. ***Id***. at 18. The Court determined that the officer had no reasonable suspicion to detain Dixon before learning of the warrant, thus it held that

the evidence obtained as the result of the unlawful search and seizure must be suppressed as fruit of the poisonous tree. ***Id***. at 22. This is similar to Mr. Grayson's case.

The Southern District's decision is also in conflict with ***State v. Taber***, which held that evidence discovered as the result of an unlawful detention must be suppressed, even when an arrest warrant was discovered during the course of the unlawful detention. 73 S.W.3d 699, 707 (Mo. App. W.D. 2002). In ***Taber***, a trooper conducted a traffic stop because he believed Ms. Taber's vehicle was not in compliance with licensing and registration laws. ***Id***. at 701. As soon as the officer approached the vehicle, he saw its license plate and realized the driver was not in violation. ***Id***. at 702. Although the officer's purpose for the stop was complete, he requested Taber's license and discovered she had a warrant for her arrest. ***Id***. The Court held that evidence found in a search of her purse after her arrest was fruits of an unlawful search and seizure and must be suppressed. ***Id***. at 707, *cited with approval in* ***State v. Martin***, 79 S.W.3d 912, 917 (Mo. App. E.D. 2002). This is also similar to Mr. Grayson's case.

In its decision, the Court of Appeals dismissed the holding in ***Taber*** by relying on United States Supreme Court precedent in ***Hudson v. Michigan***, 547 U.S. 586 (2006). ***Grayson***, 2010 WL 1856311, at *5. The Court conceded that ***Taber*** held the evidence must be suppressed in a situation similar to Mr. Grayson's, but determined that the appellate court was relying on the "but-for" analysis that the Supreme Court rejected in ***Hudson*** and that it was bound to follow the latest precedent. ***Id***. The

Court of Appeals did not mention ***Dixon***, *supra,* although it was handed down after ***Hudson*** and was presented to the Court in briefs and at argument.

In ***Hudson v. Michigan***, the United States Supreme Court stated that whether the exclusionary rule will be imposed in a particular case is separate from the question of whether the rights of the party seeking to impose the rule have been violated. 547 U.S. at 591-92. However, the specific question before the Court was whether the exclusionary rule would apply to suppress evidence discovered after a violation of the knock-and-announce requirement. ***Id***. at 590. The Court determined that evidence discovered after execution of a valid search warrant, preceded by a violation of the knock-and-announce rule, did not have to be suppressed. ***Id***. at 601. But the Court expressly stated that the interests protected by the knock-and-announce rule, which exists primarily to give residents an opportunity to prepare for the inevitable entry by police, have nothing to do with the seizure of evidence and are different than interests involved in protections against unreasonable searches and seizures. ***Id***. at 594.

In contrast to Mr. Grayson's case, the Court in ***Hudson*** made clear that the causal connection was too attenuated to apply the exclusionary rule because the evidence was not discovered as the result of the constitutional violation - it would have been discovered pursuant to the warrant regardless of whether the officers had properly announced themselves prior to its execution. ***Id***. at 604. Similarly, in ***Segura v. United States***, also cited by the Court of Appeals, the evidence obtained was not the fruit of an unlawful entry into the defendant's home. 468 U.S. 796 (1984). Officers had already applied for a search warrant based on surveillance they had been

conducting for weeks, the information from the warrant came from sources unconnected to the illegal entry, and thus there was an entirely independent source for discovery of the evidence. ***Id***. at 810-11. An analysis of cases with no "but-for" causation, such as ***Hudson*** and ***Segura***, *supra*, is not relevant here.

Also, ***Hudson*** specifically addressed the interests that are protected by the knock-and-announce rule and the appropriateness of applying the exclusionary rule to a violation thereof - the Supreme Court was not referring to any other constitutional guarantee. 547 U.S. at 590. To make this clear, the Court expressly stated, "For this reason, cases excluding the fruits of unlawful warrantless searches . . . say nothing about the appropriateness of exclusion to vindicate the interests protected by the knock-and-announce requirement." 547 U.S. at 593 (internal citations omitted). Justice Stevens even felt the need to underscore this important point by stating "Today's decision determines *only that in the specific context of the knock-and-announce requirement*, a violation is not sufficiently related to the later discovery of evidence to justify suppression." 547 U.S. at 603 (Stevens, J., concurring in the 5-4 decision) (emphasis added).

This is not the case here. The evidence discovered after Mr. Grayson's arrest would not have been discovered without the officer's constitutional violations, because his warrant would not have been discovered. The officer had no knowledge of the warrant prior to the unlawful detention. (Mot. Tr. 13; Tr. 18). The evidence discovered after Mr. Grayson's arrest was not causally attenuated from the illegality, it was obtained as the direct result of the constitutional violations.

The Supreme Court described other instances in which the exclusionary rule might not apply, if the interests were not served. ***Hudson***, 547 U.S. at 593. For example, in ***New York v. Harris***, the Supreme Court held that statements taken outside of the defendant's home would not serve the purpose of the rule that made his in-house arrest illegal. 495 U.S. 14, 20 (1990). The warrant requirement for an in-home arrest is imposed to protect the home, so the incriminating evidence gathered from the arrest in the home was suppressed in order to serve the rule, but the evidence gathered outside of the home was not suppressed. ***Id***. at 20. In contrast, in Mr. Grayson's case, the requirement that an officer have sufficient cause before seizing a person would not in any way be served by failing to suppress the evidence found as a result, even if the officer happens to discover a warrant during his or her illegal conduct.

In a notable dissent, Justice Marshall stated that an application of the factors in ***Brown v. Illinois*** compels suppression of the statements, even if they were outside of Harris' home, primarily due to the purpose and flagrancy of the officer misconduct. 495 U.S. at 24 (Marshall, J., dissenting, joined by Justices Brennan, Blackmun, and Stevens), *citing* ***Brown***, 422 U.S. 590, 592 (1975). And, when a police officer intentionally violates a constitutional command, "exclusion is essential to conform police behavior to the law." ***Id.*** Officer Lambert stated that his investigatory purpose was complete, and that the only reason he held Mr. Grayson and demanded his license was because he knew he had previously been arrested on warrants, with no knowledge that one existed. (Mot. Tr. 9-10, 12-13; Tr. 10, 18). Allowing the government the

benefit of additional evidence obtained by constitutional violations, in this instance, does nothing to deter such behavior in the future.

Analogously, in ***Brown v. Illinois***, the defendant was arrested without probable cause, was given ***Miranda*** warnings, and made incriminating statements.[3] 422 U.S. at 592. The lower court held that the giving of the ***Miranda*** warnings served to break the causal connection, such that his confession was sufficiently an act of free will as to purge the primary taint of illegality. ***Id***. at 596. The Supreme Court reversed, and stated that any incentive to avoid Fourth Amendment violations would be eviscerated by making the warnings a "cure-all," and that this alone could not break the causal connection. ***Id***. at 603. Here, in Mr. Grayson's case, the Court of Appeals held that the discovery of the warrant, alone, was sufficient to attenuate the evidence discovered after his arrest from the illegal seizure. ***Grayson***, 2010 WL 1856311, at *5. Although he was arrested on a valid warrant, the officer did not know about the warrant prior to the illegal seizure. (Mot. Tr. 13; Tr. 18). The Court's holding similarly eviscerates any officer incentive to avoid Fourth Amendment violations in the hopes that discovery of a pre-existing but previously unknown warrant will cure the poisonous taint of an illegal seizure.

In Mr. Grayson's case, the Court stated, "To our knowledge, an absence of reasonable, articulable suspicion necessary to support a *Terry* stop has never protected a person from being seized based on a valid arrest warrant." ***Id***. at *5. But Appellant

[3] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

never sought to have his arrest warrant suppressed or invalidated, he sought suppression of the additional evidence discovered as the result of constitutional violations. (L.F. 13-14). And, lack of reasonable suspicion has caused evidence to be suppressed when found in a search pursuant to an arrest warrant, when the warrant was discovered through constitutional violations. *See, e.g.*, ***Taber***, 73 S.W.3d at 707; ***Dixon***, 218 S.W.3d at 22. To allow the state the benefit of the evidence discovered in a constitutional violation because a warrant was also discovered during the course of the officer's illegality does not provide for officer deterrence against Fourth Amendment violations.

At least one state that previously decided discovery of a warrant was a sufficient attenuating cause now cautions against such a broad holding. In ***Fletcher v. State***, a Texas appellate court held, consistent with state precedent, that discovery of an arrest warrant during an illegal detention breaks the connection between the discovered evidence and the primary illegal taint. 90 S.W.3d 419, 420 (Tex. App. 2002). But the Court notably stated that it was acting with some "trepidation," and further stated:

> However, our decision should not be read as implying that an officer may detain individuals for no other reason than his hope to later discover that they are subject to arrest via a pre-existing, valid warrant. Should that circumstance arise, then the outcome may differ . . . Possibly, it is time to re-pave dark roads already laid. But it is up to those who initially laid the road to alter it.

Id. at 421.[4] Appellant urges this Court to not issue a blanket rule suggesting that discovery of an arrest warrant during constitutional violations, by itself, will always attenuate any evidence subsequently discovered, lest Missouri head down the same dark roads.

Officer Lambert stated in his report, and at trial, that his knowledge of Mr. Grayson's history was the reason he continued to detain him and told him he needed to see his license. (Mot. Tr. 13; Tr. 10). He testified, "I've known Matt for a lot of years from -- from the old jail, and I knew that a lot of times there were warrants for him. So I asked for his driver's license, which he handed me.[5] And I went back and asked dispatch to check him through MULES for warrants and driving status." (Tr. 10).

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[4] The Texas Court also descriptively remarked, "This invokes scenes from those old movies wherein mysterious individuals in trench coats walk the streets during foggy, dark night, encounter individuals at random, and ask 'do you have your papers?' If they do, they are allowed to leave; if they do not, then they are never seen again." ***Fletcher***, 90 S.W.3d at 421.

[5] When asked what his specific words were to Mr. Grayson, Officer Lambert testified that he *told* him that he needed to see his license - he did not ask for it. (Mot. Tr. 12-13). Officer Lambert also testified that Mr. Grayson was not free to leave at that time. (Tr. 13). This was not a consensual encounter.

In ***State v. Hawkins***, the W.D. stated that an officer saw the defendant exit a vehicle in a high-crime area, and the officer knew Hawkins from a prior arrest. 137 S.W.3d 549, 558 (Mo. App. W.D. 2004). The Court stated, "[K]nowledge of a person's prior criminal involvement (to say nothing of a mere arrest) is alone insufficient to give rise to the requisite reasonable suspicion." 137 S.W.3d 549, 558 (Mo. App. W.D. 2004). Here, the only reason why the officer did not release Mr. Grayson following the unjustified stop was so he could take his license and check for warrants. (Mot. Tr. 13; Tr. 10). This is the scenario warned about in ***Fletcher***, *supra*, and the interests that are protected by the Fourth and Fourteenth Amendment's prohibition against unreasonable seizures are well-served by applying the exclusionary rule in this instance.

The Supreme Court in ***Hudson*** reiterated that the penalties visited upon the Government, and in turn upon the public, because its officers have violated the law must bear some relation to the purposes which the law is to serve. 547 U.S. at 593. Appellant respectfully contends that officers should not be encouraged to conduct unjustified traffic stops with the hopes that discovery of a warrant will excuse their unconstitutional behavior, and that they will obtain the benefit of any additional evidence obtained during illegal conduct. He respectfully requests that the evidence and related testimony in this case be suppressed, and his conviction reversed.

CONCLUSION

For the reasons presented in Point I of this brief, Appellant respectfully requests that his conviction be reversed, and the case remanded.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Alexa I. Pearson, hereby certify as follows:

The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, in 13 point Times New Roman font, and includes the information required by Rule 55.03. According to the word-count function of Microsoft Word, excluding the cover page, table of contents, the signature block, and this certificate of compliance and service, the brief contains 5,179 which does not exceed the 7,750 words allowed for an appellant's brief.

The floppy disks filed with this brief and served on opposing counsel contain a complete copy of this brief, and have been scanned for viruses using McAfee VirusScan, updated in September, 2010. According to that program, these disks are virus-free.

On the 17th day of September, 2010, two true and correct copies of the foregoing brief and a floppy disk containing a copy thereof were mailed, postage prepaid, to the Office of the Attorney General, Criminal Appeals Division, 221 W. High Street, Jefferson City, MO 65102.

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Alexa I. Pearson

APPENDIX

TABLE OF CONTENTS TO APPENDIX