MODIFIED
June 1, 2010

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,	)	
	)	**WD70318**
Respondent,	)	
v.	)	**OPINION FILED:**
	)	
JACOB WALDRUP, JR.,	)	**April 27, 2010**
	)	
Appellant.	)	
	)	

Appeal from the Circuit Court of Clay County, Missouri
Honorable David Paul Chamberlain, Judge

Before: Thomas H. Newton, C.J., Joseph M. Ellis, and Cynthia L. Martin, JJ.

Mr. Jacob Waldrup, Jr., appeals his conviction of possessing a controlled substance, section 195.202,[1] challenging the trial court's denial of his motions to suppress evidence. The evidence was obtained from a search pursuant to his arrest for outstanding arrest warrants that were discovered after a computer check of his identification at a routine checkpoint. We reverse and remand.

Factual and Procedural Background

Mr. Waldrup and an acquaintance, Mr. Gerald Shields, were exiting off a highway. Mr. Waldrup was the passenger, and Mr. Shields was the driver. Missouri State Troopers were conducting a routine driver's license check at the end of the exit, stopping every vehicle at the

[1] Statutory references are to RSMo 2000 and the Cumulative Supplement 2006.

checkpoint. In the majority of the cases, once a driver produced his or her license, the troopers would send the driver on his or her way after verifying the information on the card matched the driver, without checking the license against police records. The troopers only requested identification from other vehicle occupants in certain circumstances.

As Mr. Shields's vehicle approached the exit, Trooper Seth Isringhausen and Trooper Greg Primm saw Mr. Waldrup "reaching for something or stuffing something down around his feet." Before Trooper Primm observed Mr. Waldrup reaching down, he observed Mr. Waldrup eyes open wide and his mouth hang open as if he were shocked. His "furtive movements" led the troopers to suspect a weapon was in the car, so they planned to "contact[] and investigate[] further to see what was going on." The car stopped at the stop sign, and the troopers implemented their plan.

Both occupants were asked to exit the vehicle. The troopers looked around the floorboard of the car for weapons in plain view. Upon request from Trooper Isringhausen, Mr. Shields produced his Kansas driver's license. Trooper Isringhausen then radioed Mr. Shield's information to dispatch, which reported his license was suspended. According to policy, if a driver's license is suspended, the driver receives a citation and police park the car nearby until someone with a valid license can drive it away. Mr. Shields was issued a citation.

While Trooper Isringhausen investigated Mr. Shields, Trooper Primm conducted a *Terry* pat-down search of Mr. Waldrup to check for weapons. During the pat down, Trooper Primm asked Mr. Waldrup "who he was and how he knew the driver." Because Mr. Waldrup did not have his license, Trooper Primm requested his birth date, full name, and social security number. At that time, the trooper did not perform a computer check of the information. After issuing a citation to Mr. Shields, Trooper Isringhausen took Mr. Waldrup's information from Trooper

Primm, then walked away to radio the information to dispatch. Trooper Primm stayed with Mr. Waldrup and spoke with him because Trooper Primm still considered him a safety threat. Mr. Waldrup had slow speech and limped. Trooper Isringhausen believed Mr. Waldrup had a mental or physical disability or was under the influence.

After ten minutes passed, Trooper Isringhausen returned to arrest Mr. Waldrup because dispatch revealed that he had several outstanding arrest warrants. Trooper Isringhausen thereafter searched Mr. Waldrup. Three hundred and sixty-five dollars was found in his sock and a white rock in a plastic bag was found underneath the cushion of his shoe. His limp improved once the white rock was removed from his shoe. Trooper Isringhausen searched Mr. Shields's vehicle and found a foil pipe. Chemical testing revealed the white rock was a cocaine-based substance. Subsequently, Mr. Waldrup was charged with possession of a controlled substance, section 195.202, as a persistent offender.

Mr. Waldrup filed pretrial motions to suppress the physical evidence and related testimony and to suppress statements Mr. Waldrup made at the scene and during interrogation. The trial court overruled all three motions. During the jury trial, Mr. Waldrup objected to the admission of the evidence, and the trial court maintained its previous rulings. Mr. Waldrup's testimony was the defense's only evidence. At the conclusion of the case, the jury returned a verdict of guilty. Mr. Waldrup filed a motion for new trial, raising the suppression issues and other claims. The trial court denied the motion for new trial and sentenced Mr. Waldrup to twelve years in prison. Mr. Waldrup appeals, challenging the denial of his motions to suppress the physical evidence and the testimonial evidence describing it.

Standard of Review

We review the trial court's denial of a motion to suppress to determine whether there was substantial evidence to support it, viewing facts and their reasonable inferences in the light most favorable to the ruling. *State v. Martin*, 79 S.W.3d 912, 915-16 (Mo. App. W.D. 2002). We reverse only if the decision is clearly erroneous. *Id.* at 915. Although we defer to the trial court's factual findings and credibility determinations, whether the Fourth Amendment to the United State Constitution has been violated is reviewed *de novo*. *Id.* at 916.

Legal Analysis

In his sole point, Mr. Waldrup argues that the trial court erred in overruling his motion to suppress all physical evidence because the evidence was unlawfully seized in violation of his rights under the Fourth and Fourteenth Amendments of the United States Constitution. He claims the evidence was unlawfully seized because the police went beyond the scope of the stop. According to Mr. Waldrup, his detention should have ceased after the driver was released and the troopers did not find any weapons. The State asserts that Mr. Waldrup's detention was separate and distinct from the detention of the driver because Mr. Waldrup's behavior gave rise to suspicion of criminal activity and the frisk and identification check were thus justified.

The Fourth Amendment guarantees "the people" the right to be free from unreasonable searches and seizures. *State v. Dixon*, 218 S.W.3d 14, 18 (Mo. App. W.D. 2007). A search without a warrant is *per se* unreasonable unless it fits within a well-defined exception. *State v. Moore*, 99 S.W.3d 579, 582 (Mo. App. S.D. 2003). The State has the burden to justify a warrantless search by showing it falls within one of the exceptions. *Id.* Here, the State justifies the warrantless search because it was incidental to the arrest. A search incident to arrest is a valid exception to the warrant requirement. *Id.* at 582 n.5. The custodial arrest, however, must

be valid. *State v. Blair*, 691 S.W.2d 259, 261 (Mo. banc 1985), *overruled on other grounds by State v. Mease*, 842 S.W.2d 98, 106 (Mo. banc 1992). An invalid arrest transforms the search into an unlawful act. *See Martin*, 79 S.W.3d at 917. Evidence confiscated from an unlawful search or seizure is inadmissible. *Id*. Because the search of Mr. Waldrup was incidental to his arrest for outstanding warrants, we must determine whether his arrest was invalid. This requires us to determine whether requesting his identification and then checking that information against police records constituted a seizure, and if so whether the seizure was unreasonable. *See Dixon*, 218 S.W.3d at 19, 22.

Mr. Waldrup argues that requesting his identification and checking the information against police records was an unlawful seizure because the investigations for the initial detention had been completed. Relying on *State v. Maginnis*, 150 S.W.3d 117 (Mo. App. W.D. 2004), Mr. Waldrup argues that the trooper's computer check of his identification went impermissibly beyond the scope of the stop because there was no objectively reasonable suspicion of criminal activity after the pat down dispelled the troopers' suspicion that he possessed a weapon and the driver was issued a citation. The State asserts that the identification check was "a fundamental part" of the investigation for the initial detention.

"When a valid stop has been made, officers may pat a suspect's outer clothing if they have reasonable, particularized suspicion that the suspect is armed." *State v. Haldiman*, 106 S.W.3d 529, 533 (Mo. App. W.D. 2003). Because the justification for the search is the protection of the police and individuals nearby, the scope of the search is limited to "an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Id.* Similarly, the scope of the detention is limited to its underlying justification so that the officer may verify or dispel his or her suspicions in a short period. *Maginnis*, 150 S.W.3d at

121 (citing *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1325-26 (1983)). "[I]f the detention extends beyond the time reasonably necessary to effect its initial purpose, the seizure may lose its lawful character unless a new factual predicate for reasonable suspicion is found during the period of lawful seizure." *Martin*, 79 S.W.2d at 916.

Here, Mr. Waldrup's behavior—his startled facial expression followed by his moving forward and then downward while sitting in the passenger seat as the car exited the ramp—gave the troopers reasonable suspicion that a weapon was in the car or on his person. Trooper Primm thus validly searched Mr. Waldrup for weapons by patting him down while Trooper Isringhausen conducted his investigation of Mr. Shields. However, after no weapons were found from the pat down, Trooper Primm's justification for detaining and searching Mr. Waldrup ended. Although Trooper Primm testified that he was not sure about Mr. Waldrup or the public's safety, he did not provide any "specific and articulable facts" upon which to base his judgment. Consequently, further detention of Mr. Waldrup to perform a computer check of his identification constituted an unlawful seizure absent new grounds for reasonable suspicion.

The State claims that new grounds for reasonable suspicion were not needed because the troopers had reasonable suspicion that Mr. Waldrup was engaged in criminal activity and requesting his identification was part of the investigation, relying on *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004), for support. The State reasons that because the Supreme Court decided that an officer may ask a suspect to identify himself in the course of a *Terry* stop, it would be reasonable for the officers to check the identification information received against police records to determine whether extra caution or additional action is required. We disagree.

The Supreme Court ruled that "questions concerning a suspect's identity are a routine and accepted part of many *Terry* stops." *Hiibel*, 542 U.S. at 186. However, *Hiibel* does not suggest that the investigation of a suspect, including running a computer check on identification received during a Terry Stop, can continue once the reasonable suspicion for that Terry stop has been eliminated. Thus, *Hiibel* does not support the State's reasoning.

Under Missouri law, a police officer may request identification and perform a computer check of that identification without a basis for reasonable suspicion "as long as the officer does not convey the message that compliance with his request is required." *Dixon*, 218 S.W.3d at 18-19. Otherwise, requesting identification and performing a computer check of the identification may constitute a seizure, thereby invoking constitutional protections. *See Martin*, 79 S.W.3d at 917 (holding that the officer had no authority "to further detain" the driver when he noticed the temporary vehicle tag because he no longer had reasonable suspicion that she was engaged in criminal conduct and her compliance with the officer's request was not consensual); *see also State v. Taber*, 73 S.W.3d 699, 707 (Mo. App. W.D. 2002) (deciding that requesting the driver to provide her identification after the suspicions for the *Terry* stop had been eradicated constituted a seizure that required reasonable suspicion for the officer's actions to be justified).

Here, although Trooper Primm properly requested information from Mr. Waldrup about his identification during the Terry stop, that information was not provided to Trooper Isringhausen to perform a computer check until **after** the suspicions for the *Terry* stop had been eradicated. We cannot conclude that Mr. Waldrup would have felt free to leave the scene during the time his identification was being checked on the computer. In fact, Trooper Primm testified that he stayed with Mr. Waldrup during this time, and continued to question him. We have already concluded that Trooper Primm's "suspicions" about Mr. Waldrup during this time did not

support a reasonable suspicion that Mr. Waldrup was engaged in criminal activity sufficient to warrant further detention of Mr. Waldrup. We must necessarily conclude, therefore, that Mr. Waldrup's detention while his identification was being checked on the computer was an unlawful seizure. To allow the reasonable suspicion that Mr. Waldrup had a weapon to also support continued investigation of Mr. Waldrup by performance of a computer check of his identification after no weapon was found would erode Fourth Amendment protections.

Fruits of an unlawful search and seizure are inadmissible. *Martin*, 79 S.W.3d at 917. The cocaine-based substance and the related testimony were thus fruits from the illegal seizure because the arrest was unlawful. Mr. Waldrup's sole point is granted.

Conclusion

Therefore, we reverse the conviction and remand the case for further proceedings consistent with this opinion.

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Thomas H. Newton, Chief Judge

Ellis and Martin, JJ. concur.