

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

STATE OF MISSOURI,	)	No. ED100009
	)	
Plaintiff/Respondent,	)	Appeal from the Circuit Court of
	)	St. Francois County
v.	)	
	)	
GARY L. FRANCIS, JR.,	)	Honorable Kenneth W. Pratte
	)	
Defendant/Appellant.	)	Filed: April 29, 2014

Gary L. Francis, Jr. (Appellant) appeals from the trial court’s judgment convicting him of possession of pseudoephedrine with intent to manufacture methamphetamine, Section 195.420 RSMo 2006. On appeal, Appellant argues (1) the evidence was insufficient to show he had knowledge or possession of the pseudoephedrine in the vehicle; (2) the trial court plainly erred in admitting evidence obtained from the vehicle because the arresting officer did not have probable cause to search his vehicle; and (3) the trial court erred and abused its discretion in admitting hearsay evidence of text messages received on a cellular phone in Appellant’s possession at the time of arrest.

REVERSED AND REMANDED.

Division Two Holds: The State presented sufficient additional incriminating circumstances from which a reasonable juror might have found Appellant was aware of the presence and nature of the pseudoephedrine and had constructive possession of the substance.

The trial court did not plainly err in admitting evidence obtained from the vehicle because the cumulative facts and information introduced at trial support an officer’s reasonable belief that an offense had been or was being committed, justifying the officer’s seizure of the incriminating evidence.

The trial court erred in admitting the text messages at trial, as the State failed to establish the outgoing messages were authored by Appellant, and thus were admissible as admissions of a party opponent, or that the incoming messages were admissible under an exception to the hearsay rule. Because there is a reasonable probability the jury relied on the improperly admitted evidence in convicting Appellant, reversal is required.

Opinion by: Sherri B. Sullivan, J.    Lawrence E. Mooney, P.J. and Robert G. Dowd, Jr., J.,  
concur.

Attorney for Appellant: Kent Denzel  
Attorneys for Respondent: Daniel N. McPherson

<b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b>
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