

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

STATE OF MISSOURI,	)	No. ED96435
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
INDIA M. MERCHANT,	)	Hon. Ellen Levy Siwak
	)	
Appellant.	)	FILED: December 20, 2011

Defendant India Merchant appeals from the circuit court’s judgment and sentence after a bench trial on a charge of possession of a controlled substance with intent to distribute. Defendant asserts two points of error: (1) that the doctrine of collateral estoppel barred the circuit court from denying her motion to suppress in the present case, brought by indictment, because the merits of the motion were resolved in her favor in a preliminary hearing on an earlier complaint before the associate circuit judge, and (2) that the circuit court should have granted Defendant’s motion to suppress because the arresting officer lacked a reasonable suspicion of criminal activity to justify a seizure.

AFFIRMED.

DIVISION ONE HOLDS: (1) Even assuming that the associate circuit judge implicitly granted Defendant’s motion to suppress at the preliminary hearing on the initial complaint, the doctrine of collateral estoppel did not preclude the circuit court from re-considering it at the trial on the subsequent indictment because a motion to suppress is interlocutory. The State may dismiss a case and re-file it at any time as long as double jeopardy has not attached (*i.e.*, until the trial commences by the swearing in of the jury). (2) The evidence supported the trial court’s determination that the arresting officer approached Defendant’s vehicle for a “community caretaking” safety check. Defendant was not seized when the officer pulled up near her vehicle or when he shined a spotlight on it. Defendant voluntarily rolled down her window, at which time the odor of marijuana gave the officer probable cause for the search.

Opinion by: Clifford H. Ahrens, P.J. Roy L. Richter, J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Janet M. Thompson

Attorney for Respondent: Chris Koster

**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.**