

Summary of SC90978, *State of Missouri v. Jacob Waldrup Jr.*

Appeal from the Clay County circuit court, Judge David Paul Chamberlain
Argued and submitted Dec. 7, 2010; opinion issued March 1, 2011

Attorneys: Waldrup was represented by S. Kathleen Webber of the public defender's office in Kansas City, (816) 889-7699; the state was represented by James B. Farnsworth of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of possession of a controlled substance challenges the validity of the trooper's stop and searches of him. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the trial court's decision that the stop, search and ultimate seizure of a rock of cocaine from the man were lawful. The troopers who detained the man did so properly within the confines of the Fourth Amendment and used the least intrusive means to determine whether the man was hiding weapons or other dangerous contraband. When a radio check of the man revealed there were outstanding warrants for his arrest, the troopers arrested the man and, incident to that arrest, permissibly performed the search of him during which they found the cocaine.

Facts: The vehicle in which Jacob Waldrup Jr. was a passenger was stopped at a driver's license checkpoint in November 2006 in Clay County. As the vehicle approached the checkpoint, the troopers saw Waldrup widen his eyes and let his mouth drop open as though concerned about their presence. They also saw him duck "very far" toward the floorboard, "reaching for something or stuffing something ... around his feet." Waldrup's actions – which the troopers believed could be trying to retrieve or hide a weapon or other contraband – caused them concern for their own safety and that of others in the vicinity. The driver gave the troopers his Kansas driver's license, which a radio check revealed was suspended. One trooper gave the driver a citation and then released the driver while the other asked Waldrup to exit the vehicle while the trooper looked inside for weapons. That trooper then patted Waldrup down to look for weapons on his person; elicited Waldrup's name, birth date and social security number; and learned from a radio check that Waldrup had several outstanding warrants for his arrest. The troopers then arrested Waldrup and gave him a full-body search, which revealed \$365 tucked into his right sock and a "white rock" of cocaine stuffed into his right shoe. They then transported Waldrup to the county detention center. Waldrup ultimately was charged with possession of a controlled substance. Before trial, Waldrup moved to suppress the "white rock," arguing that once the driver received his citation, the purpose of the stop had ended and the continued search of Waldrup was not justified. The trial court overruled the motion. The jury found Waldrup guilty, and the court sentenced him, as a prior and persistent drug offender, to 12 years in prison. Waldrup appeals.

AFFIRMED.

Court en banc holds: (1) The troopers properly detained Waldrup within the confines of the Fourth Amendment to the United States Constitution and used the least intrusive means to determine whether Waldrup was hiding weapons or other dangerous contraband without unnecessarily prolonging their investigation. *Terry v. Ohio*, 392 U.S. 1, 20 (1968), permits law enforcement officers to make a brief, investigatory stop if they can point to “specific articulable facts” that, taken together with the rational inferences from those facts, support a “reasonable suspicion” that illegal activity has occurred or is occurring. Based on the totality of the circumstances here, it was reasonable for the troopers to assume criminal activity was afoot from Waldrup’s behavior in widening his eyes, opening his mouth and reaching far down into the floorboard, as though he was trying to retrieve or hide a weapon or other contraband. Accordingly, reasonable suspicion supported their stop of Waldrup. Their testimony clearly indicates that their suspicion included their concern that Waldrup not retrieve a weapon or anything else that might pose a danger to the troopers or anyone else. Under *Terry*, the troopers were well within their authority to ask Waldrup to exit the vehicle and frisk him because they had a reasonable suspicion that he might be armed. *Terry* also permitted the troopers to ask questions to determine Waldrup’s identity and to do a radio check of his background, which revealed the outstanding warrants for his arrest. At no point during their minimally intrusive investigation were the troopers’ suspicions dispelled sufficiently to warrant Waldrup’s release.

(2) Substantial evidence supports the trial court’s ruling that the troopers obtained the cocaine from Waldrup lawfully, so no clear error exists. When the trooper received radio confirmation that there were several outstanding warrants for Waldrup’s arrest, he made the arrest, handcuffed Waldrup and performed a permissible search incident to the arrest. During that search, the trooper found the money and the rock of cocaine.