

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

v.

CHRISTOPHER TRIPLETT

APPELLANT,

RESPONDENT.

**DOCKET NUMBER WD73486
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 20, 2011

Appeal From:

Platte County Circuit Court
The Honorable Dennis Carl Eckold, Judge

Appellate Judges:

Division Three: Karen King Mitchell, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

Attorneys:

Ashley E. Webb and Mark Gibson, Platte City, MO, for **appellant**.

Jeffrey Scott Eastman, Gladstone, MO, for **respondent**.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

APPELLANT,

v.

CHRISTOPHER TRIPLETT,

RESPONDENT.

No. WD73486

Platte County

Before Division Three: Karen King Mitchell, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

Christopher Triplett was involved in a vehicular accident on I-29 in Platte County, Missouri. The incident occurred as he was passing a semi-tractor trailer on a snowy and ice-covered stretch of pavement.

An officer of the Highway Patrol detected a strong odor of alcohol coming from Triplett. Triplett acknowledged having "had, like, two beers" earlier at a restaurant and bar. The odor of alcohol, and the admission, prompted the officer to administer a series of field sobriety tests. Triplett acquiesced. The officer administered the horizontal gaze nystagmus ("HGN") test, an alphabet test, a counting-backward test, and a finger-pat test. The officer found indicators consistent with intoxication. On other field sobriety tests, Triplett performed without flaw. Also, Triplett gave no indicators of intoxication in his speech or manner of walking. A preliminary breath test indicated that Triplett had consumed some alcohol. The officer placed Triplett under arrest for driving while intoxicated.

The State charged Triplett with driving while intoxicated and operating a motor vehicle in a careless and imprudent manner. Triplett filed a motion to suppress all evidence obtained by the State during and subsequent to his allegedly unlawful stop and arrest. He combined that motion with a motion to dismiss the charge of driving while intoxicated. The motion to dismiss apparently was predicated upon the suppression of the evidence on the basis of an invalid arrest.

The trial court granted the motion to dismiss without prejudice based on its determination that the motion to suppress should be granted.

The State appeals the trial court's order dismissing, without prejudice, the driving while intoxicated charge filed against Triplett. The State argues that the trial court lacked authority to dismiss the case because there was no legal reason to dismiss the case and the State was therefore solely vested with the ability to charge and dismiss the case. The State is not (in this appeal) seeking interlocutory review of the trial court's order granting suppression but, instead, seeks reversal of the dismissal and remand of the case.

Triplett filed a Motion to Dismiss the State's Appeal. He contends that because the trial court entered a dismissal without prejudice in his driving while intoxicated case and this case is an appeal of the ruling on the motion to dismiss and not an appeal of the motion to suppress, the appellate court is without authority to hear the appeal because no final judgment was entered.

DISMISSED.

Division Three holds: The court grants Triplett's motion to dismiss the State's appeal. Because the trial court entered a dismissal without prejudice in Triplett's driving while intoxicated case and the State purported to appeal the ruling on the motion to dismiss and not the ruling on the motion to suppress, the court was without authority to hear the appeal because no final judgment had been entered. The ruling in question was a dismissal without prejudice prior to the introduction of evidence on the issue of the guilt of the defendant. The ruling on the suppression motion by the trial court was purely about the validity of the arrest, and the dismissal without prejudice was granted only in light of the court's grant of the suppression motion. The court found no reason to believe that the dismissal was tantamount to a final judgment, such that a final, appealable issue existed. Because the State's sole argument and professed reason for the appeal was to vacate the dismissal so that it could ask the court for more specific findings of fact and conclusions of law on remand—a request which the trial court does not have to grant—no practical controversy existed in the appeal.

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