

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Appellant,

v.

NICHOLAS CARR,

Respondent.

DOCKET NUMBER WD76623

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: September 9, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Kathleen A. Forsyth, Judge

JUDGES

Division I: Pfeiffer, P.J., and Hardwick and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
Todd T. Smith, Assistant Attorney General
Jefferson City, MO

Attorneys for Appellant,

Damien de Loyola, Assistant Appellate Defender
Kansas City, MO

Attorney for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
) **Appellant,**)
v.) **OPINION FILED:**
) **September 9, 2014**
NICHOLAS CARR,)
)
) **Respondent.**)

WD76623

Jackson County

Before Division I Judges: Mark D. Pfeiffer, Presiding Judge, and Lisa White Hardwick and Karen King Mitchell, Judges

The State of Missouri appeals the suppression ruling of the Circuit Court of Jackson County, Missouri, granting Nicholas Carr’s motion to suppress evidence obtained during Carr’s arrest by a police officer. On appeal, the State argues that the circuit court erroneously assumed that the police officer’s initial approach of Carr was a stop implicating the Fourth Amendment and concluded that it was without justification.

REVERSED AND REMANDED.

Division I holds:

The officer’s initial contact with Carr was not a stop implicating the Fourth Amendment. The officer was alone, on foot, and did not have his gun drawn when he approached Carr and said “I need to talk to you.” Officers are allowed to approach citizens to ask them questions, and had Carr acquiesced, it would have been a consensual encounter. Carr, however, neither acquiesced nor ignored the officer to continue about his business. Instead, Carr immediately made furtive motions that indicated to the officer, based upon his law enforcement experience, that Carr was reaching for a weapon. Accordingly, at the time that the officer actually apprehended Carr and searched him, he had probable cause to do so. Carr’s Fourth Amendment rights were thus not violated and the circuit court erred in suppressing the evidence.

Opinion by: Mark D. Pfeiffer, Presiding Judge

September 9, 2014

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.