

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

MARKUS MICHAEL A. PATTERSON

Appellant

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DOCKET NUMBER WD78203

DATE: May 10, 2016

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Appeal From:

Circuit Court of Saline County, MO  
The Honorable Dennis Allen Rolf, Judge

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Appellate Judges:

Division Two  
Victor C. Howard, P.J., Thomas H. Newton, and Karen King Mitchell, JJ.

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Attorneys:

Emmett Queener, Columbia, MO

Counsel for Appellant

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Attorneys:

Evan Buchheim, Jefferson City, MO

Counsel for Respondent

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

STATE OF MISSOURI, Respondent, v.  
MARKUS MICHAEL A. PATTERSON, Appellant

**WD78203**

**Saline County**

Before Division Two Judges: Howard, P.J., Newton, and Mitchell, JJ.

A police officer stopped Patterson after observing that a brake light on the vehicle he was driving was not working. Patterson could not produce a valid driver's license and tendered an expired insurance card. The officer asked Patterson to sit in the patrol car while the officer ran the vehicle registration and conducted other routine tasks associated with a traffic stop. Police radio traffic was heavy, so it took some time for the officer to learn that Patterson did not have any outstanding warrants. The officer also learned that Patterson lacked a valid driver's license and had a prior conviction for a narcotics-distribution violation. Patterson had been sweating heavily and acting nervously; he also appeared to have been in a fight.

The officer asked for permission to search the vehicle, and Patterson consented. During the search, the officer found a glass pipe with residue indicating that it could have been used to smoke methamphetamine. The officer arrested Patterson for possession of drug paraphernalia and read him his *Miranda* rights. As they traveled to the police station, Patterson repeatedly asked to use a restroom. During booking, the officer arranged to have Patterson's urine tested and took him to a holding cell with the testing kit. The officer suspected that Patterson had contraband in his possession not revealed during the traffic-stop pat-down, so he asked Patterson to remove his shoes. Patterson kicked one of the shoes out of the officer's line of sight, and the two began to scuffle to gain possession of a baggie with a number of small, white pills that had been concealed in Patterson's left shoe. Patterson attempted to swallow the baggie several times and eventually managed to flush it down the holding-cell commode. He may have swallowed some of the pills, because the baggie had broken open during the scuffle. Patterson said the pills were Vicodin and that he had purchased them to sell. Later, he claimed not to know the identity of the pills. His urine test was negative for hydrocodone, one of Vicodin's two active ingredients. Had the officer been able to seize the pills, he testified that he would have attempted to identify them by their appearance and they would have been tested in a police lab later.

The State charged Patterson with the class D felony of tampering with physical evidence under section 575.100 and the class A misdemeanor of unlawful use of drug paraphernalia under section 195.233. Patterson waived a jury trial, and the State proved that he was a prior and persistent felony offender. During the ensuing bench trial, Patterson did not ask to suppress evidence and did not object to the admissibility of any evidence. He was found guilty of felony tampering with physical evidence while police were investigating a felony: either possession of a controlled substance or possession of a controlled substance with intent to distribute. He was also found guilty of possession of drug paraphernalia with intent to use. The court sentenced

Patterson to six years for felony tampering and ninety days to be served concurrently for possession of drug paraphernalia. Patterson appeals from the felony judgment and sentence.

**AFFIRMED.**

**Division Two holds:**

In the first point, Patterson claims that his constitutional rights were violated by a conviction and sentence based on evidence obtained after a warrantless search of a vehicle stopped beyond the time required to investigate a vehicle-equipment violation. Because he did not raise the issue in a motion to suppress or by objection during the bench trial, we review the claim for plain error, which requires that we find manifest injustice or a miscarriage of justice resulting from the trial court's purported error. Patterson argues that the officer's stated reason for continuing to detain him—his nervousness, his demeanor, his continuing to sweat—falls short of the minimum level of justification to believe that criminal activity was taking place. Because the officer also attributed the duration of the detention to heavy police radio traffic that kept him from completing the checks incident to a routine traffic stop, we disagree. The information learned during this justifiable delay would have created an objectively reasonable suspicion that Patterson's sweating and nervousness had another cause. Patterson also consented to a search of the vehicle, and such consent is a valid exception to the warrant requirement for search and seizure under the Fourth and Fourteenth Amendments.

In the second point, Patterson argues that the evidence was not sufficient to support his conviction for felony tampering with physical evidence. Few cases have interpreted the felony tampering statute, section 575.100.2. The elements that must be proved beyond a reasonable doubt under this law are (1) altering, destroying, suppressing, or concealing any record, document, or thing, (2) with purpose (3) to impair its verity, legibility, or availability in any official proceeding or investigation, and this tampering (4) resulted in the impairment or obstruction of the prosecution or defense of a felony. The evidence was sufficient to show that Patterson intentionally destroyed pills to impair their availability in an official investigation. As to the fourth element, we turn to cases interpreting and applying felony resisting or interfering with arrest, section 575.150.4, for guidance on the evidence deemed sufficient to support a felony conviction under section 575.100. In those cases, the courts require that the alleged offender be charged with resisting or interfering with an arrest for a felony and that the evidence show beyond a reasonable doubt that the arrest underlying the resisting or interfering conduct is for a felony. While the underlying felony need not be proved, the evidence must show that law enforcement intended to arrest the offender or third party for a felony offense, when the resistance or interference occurred. Similarly, here, the evidence must show beyond a reasonable doubt that an offender intentionally tampered with physical evidence to impair its availability in an official proceeding or investigation and that this conduct obstructed the prosecution or defense of a felony. The trial court misspoke when it stated that the evidence showed that the investigation was for the purposes of investigating a felony. This is not what the statute requires. Still, we find that the evidence was sufficient to show that Patterson's tampering with physical evidence impaired the prosecution of the felony of possession of a controlled substance or possession of a controlled substance with intent to distribute, the crime with which he was charged. Patterson's actions were consistent with possession of a controlled substance in that he

had hidden the pills in a shoe, repeatedly asked to use a restroom to dispose of them, wrestled with a police officer to prevent him from seeing or seizing the pills, and when he could not swallow them, managed to destroy them. Patterson also told the officers that the pills were Vicodin and that he intended to sell them. With inconsistent evidence indicating that he had actually ingested any of the pills, we discount the urine test results under the standard of review requiring that we look to all of the evidence favorable to his conviction.

Therefore, we affirm.

Opinion by Thomas H. Newton, Judge

May 10, 2016

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