# IN THE MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Appellant,

v.

JESSE B. ALFORD,

Respondent.

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**DOCKET NUMBER WD**83177

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**DATE:** July 7, 2020

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**APPEAL FROM**

The Circuit Court of Randolph County, Missouri
The Honorable Mason R. Gebhardt, Judge

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**JUDGES**

Division Two: Pfeiffer, P.J., and Ahuja and Witt, JJ. CONCURRING.

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**ATTORNEYS**

Stephanie Luntsford, Prosecuting Attorney, and Randall J. Barron, Assistant Prosecuting Attorney, Huntsville, MO, Attorneys for Appellant.

Clark L. Jones, Columbia, MO, Attorney for Respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**STATE OF MISSOURI, Appellant,**
**v.**
**JESSE B. ALFORD, Respondent.**

**WD83177** **Randolph County**

**Before Division Two Judges:** Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Gary D. Witt, Judges

The State of Missouri (the "State") brings this interlocutory appeal, challenging the trial court's grant of Mr. Jesse Alford's ("Alford") motion to suppress evidence relating to a traffic stop and subsequent driving while intoxicated investigation.

On May 27, 2018, Master Sergeant Nicholas Berry of the Missouri State Highway Patrol was on duty during the early morning hours. In Sergeant Berry's probable cause statement, his report noted that at approximately 2:12 a.m., he noticed Alford's vehicle parked in the entrance to the parking lot of Felicia's Restaurant on the west side of Highway JJ. Sergeant Berry's probable cause statement did not indicate that he had observed any traffic violation to support his *Terry* stop and Sergeant Berry did not ticket Alford for a traffic violation regarding the location of his vehicle. Instead, Sergeant Berry indicated in his probable cause statement: "Concerned the driver may be might be [sic] experiencing mechanical difficulties, having an unknown emergency or needing assistance (community caretaker function), I approached the Alford [vehicle]."

Both in his deposition testimony and at trial, Sergeant Berry confirmed that he did not observe any mechanical difficulty with the Alford vehicle; he did not observe any malfunctioning equipment; he did not observe any flat tires; he did not observe any engine trouble and, in fact, confirmed that the engine was running at all relevant times; and, he did not observe any other evidence that the motorist in the Alford vehicle was in any distress. But, for the first time, at trial and in response to leading questions from the prosecuting attorney, Sergeant Berry stated that the Alford vehicle was not just "in the entrance to Felicia's Restaurant," but was actually "blocking the entrance" and was unlawfully parked in a state right-of-way in violation of section 300.440.1(2) RSMo. The trial court expressly found this belated assertion by Sergeant Berry to be "without merit" and "not credible."

Following making initial contact with Alford, Sergeant Berry investigated and subsequently arrested Alford for driving while intoxicated. Alford was then charged with DWI and subsequently filed a motion to suppress all evidence arising from the initial *Terry* stop on the grounds that it was not justified by reasonable suspicion of criminal activity or by Sergeant Berry's role as a community caretaker.

Following a hearing on July 17, 2019, the trial court sustained Alford's motion to suppress, expressly concluding that "the State has offered no evidence concerning what specific law or ordinance Defendant was violating," the State's argument that any traffic violation existed at the time of Sergeant Berry's *Terry* stop was "undermined by the fact that Defendant was not issued a ticket," Sergeant Berry's trial testimony was "not credible" as it conflicted with "his probable cause statement [and] his deposition" and finally, that "there were no facts from which one could reasonably infer that Defendant was in need of assistance." The State timely filed this interlocutory appeal.

**AFFIRMED.**

**Division Two holds:**

Because there is substantial evidence in the record to support the trial court's credibility finding and corresponding conclusion that the State did not meet its burden to demonstrate a traffic violation had occurred and, hence there was no "reasonable suspicion" in support of Sergeant Berry's investigative detention, and because deferring to the trial court's factual findings and credibility determinations, the entirety of the record in this case does not support a conclusion that the trial court clearly erred in finding that Sergeant Berry did not possess reasonable, articulable facts that justified his approaching Alford's vehicle for "community caretaker" safety reasons or for motorist assistance, Sergeant Berry's *Terry* stop was not constitutionally proper.

**Opinion by: Mark D. Pfeiffer, Presiding Judge** July 7, 2020

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