

Summary of SC95194, *State of Missouri v. Luis Zetina-Torres*

Appeal from the Saline County circuit court, Judge Dennis A. Rolf

Argued and submitted December 9, 2015; opinion issued March 1, 2016

Attorneys: Zetina-Torres was represented by Margaret M. Johnson of the public defender's office in Columbia, (573) 777-9977, and the state was represented by Dora A. Fichter 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 second-degree drug trafficking appeals. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the judgment. There was sufficient evidence to support the conviction. The state presented sufficient evidence to prove all the elements of second-degree drug trafficking as well as to support submitting its case on a theory of accomplice liability. The evidence also was sufficient to support the trial court's submission of the verdict-directing instruction to the jury.

Facts: For a "ruse" checkpoint on Interstate 70 in July 2010 in Saline County, signs informed drivers there was a drug checkpoint ahead when, in fact, no checkpoint existed – this was designed to cause drug traffickers to panic and exit the interstate before the "checkpoint" at a place where no motorist services were available. A truck exited at the target location, and a highway patrol officer followed it about 13 miles to the Marshall city limits. When the truck failed to slow down to the speed posted at the city limits, the officer stopped the truck. Luis Zetina-Torres was driving, and another man was in the passenger seat. The men appeared nervous and avoided eye contact with the officer. The officer smelled an overwhelming cologne-type air freshener, which he testified typically is used to mask the odor of drugs, and he saw a single key in the ignition, which he testified is used by drug traffickers so their personal keys are not passed off when they deliver the vehicle to another person. Zetina-Torres exited the truck and spoke with the officer, giving him one story about where the men were going and what they were doing. The passenger later gave the officer a different story. Zetina-Torres also gave the officer permission to search the truck. During the search, the officer found nearly 440 grams of methamphetamine under the truck's bed liner. He arrested both men, and both men ultimately were charged and tried in separate trials. Zetina-Torres was indicted in September 2010 for first-degree drug trafficking. Following a July 2011 jury trial, Zetina-Torres was convicted of second-degree drug trafficking and was sentenced to life in prison. An appeals court reversed that judgment and sent the case back to the trial court. Following a February 2014 retrial, Zetina-Torres again was convicted of second-degree drug trafficking. He appeals.

AFFIRMED.

Court en banc holds: (1) There was sufficient evidence to support Zetina-Torres' conviction for second-degree drug trafficking.

(a) The state proved all the statutory elements of second-degree drug trafficking. To prove a defendant possesses between 90 and 450 grams of a controlled substance as required by the statute, the state must show conscious and intentional possession of the substance – either actual or constructive – and awareness of the presence and nature of the substance. When there is joint control of a vehicle in which the controlled substance is found, the state must

demonstrate some further evidence or admission connecting the defendant with the illegal drugs. Based on the evidence presented at trial and after examining the totality of the circumstances, the state met its burden to show additional incriminating circumstances to support an inference of Zetina-Torres' knowledge of and control over the methamphetamine. Beyond the state presenting evidence that Zetina-Torres owned the truck, it also presented evidence that he succumbed to the ruse checkpoint by exiting the interstate prior to the checkpoint, that he used a single key, that the strong odor of cologne in the cab typically is used to mask drugs, and that the truck contained a substantial quantity of methamphetamine with a large monetary value. The evidence showed that Zetina-Torres made numerous false statements to the officer and lied about the truck's ownership; that the men gave inconsistent statements about their destination, the purpose of their trip and the length of their acquaintance; and that both men exhibited signs of nervousness and avoided eye contact.

(b) The state also presented sufficient evidence to submit the case to the jury on a theory of accomplice liability. The state charged Zetina-Torres with acting alone or knowingly, in concert with his passenger, to commit drug trafficking by transporting 90 grams or more of methamphetamine. Much of the evidence demonstrating Zetina-Torres possessed the methamphetamine equally supports a finding that his passenger possessed the drugs as well. Further, given that the GPS device was mounted on the passenger side, in clear view of the passenger, it was reasonable for a jury to infer that the passenger was directing or navigating Zetina-Torres' driving route for delivery. Under a state statute, it is immaterial that the passenger's conviction was vacated. Within the context of sufficient evidence demonstrating the passenger possessed the methamphetamine, the record amply supports a finding that Zetina-Torres acted together with or aided the passenger in committing second-degree drug trafficking, supporting the accomplice liability theory.

(2) The circuit court did not err in presenting the verdict-directing instruction to the jury. This instruction alleged that Zetina-Torres possessed the drugs and that he acted with or aided the passenger in committing second-degree drug trafficking. Zetina-Torres does not dispute the instruction was in the proper form, only that the evidence did not support its submission. But, as explained in paragraph 1, there was sufficient evidence to demonstrate that either Zetina-Torres or his passenger had knowledge of and control over the methamphetamine in the truck and that a jury reasonably could infer that Zetina-Torres acted with or aided his passenger to commit second-degree drug trafficking.