

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
LUIS ENRIQUE ZETINA-TORRES**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD74441

DATE: March 5, 2013

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Appeal From:

Saline County Circuit Court  
The Honorable Dennis A. Rolf, Judge

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Appellate Judges:

Special Division: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Zel M. Fischer,  
Special Judge

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Attorneys:

Timothy A. Blackwell, Jefferson City, MO, for respondent.

Rosemary E. Percival, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**LUIS ENRIQUE ZETINA-TORRES,**

**APPELLANT.**

No. WD74441

Saline County

Before Special Division: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Zel M. Fischer, Special Judge

Luis Enrique Zetina-Torres appeals the trial court's judgment convicting him of drug trafficking in the second degree. He asserts three points of error. First, he contends that the State's evidence was insufficient to support his conviction because the evidence did not establish beyond a reasonable doubt that he knew or was aware of the presence of methamphetamine in the truck. Second, Zetina-Torres asserts several errors relating to the late disclosure of evidence and late witness endorsement by the State. Third, Zetina-Torres argues that the trial court erred in allowing an inadmissible hearsay statement from a trooper.

**REVERSED AND REMANDED**

Special Division Holds:

The State made several crucial late disclosures of evidence and expert witnesses close to trial, which culminated in a new theory that Zetina-Torres shared the identity of Mardonio Benitez, the registered owner of the truck Zetina-Torres was driving at the time he was arrested. Zetina-Torres contests (1) the late endorsement of a records custodian and accompanying arrest records that included a picture of what appeared to be Zetina-Torres previously arrested under the name Benitez, (2) the testimony and report from a criminologist on fingerprint evidence from the prior arrest, again indicating that Zetina-Torres was Benitez, and (3) documents from Zetina-Torres's wallet, recovered by the State from the Sheriff's inmate property room, that indicated that Zetina-Torres and Benitez were the same person.

Zetina-Torres challenges the sufficiency of the evidence to prove that he possessed the drugs found in the bed of the pick-up he was driving. Zetina-Torres pulled off the highway on an exit with no services immediately after passing signs indicating a drug checkpoint ahead. He appeared nervous, gave a story inconsistent with his passenger as to the nature and destination of their trip, and had a moneygram and identification card in his possession that were not in his name. There was also evidence that he was the actual owner of the truck, even though it was in a different name, and that it contained a large quantity of drugs. Significant other evidence was presented from which a reasonable juror could have found him guilty beyond a reasonable doubt. Point denied.

The trial court erred in failing to grant Zetina-Torres's motion for a continuance or in the alternative failing to exclude the late-disclosed evidence. The records introduced by the records custodian included the identification of previously undisclosed potential witnesses that were not provided to defense counsel until late in the afternoon two days before trial. The timing left defense counsel with only one full day to try to locate witnesses on the crucial element of identity. That discovery violation was compounded by the late disclosure of a new expert fingerprint report matching Zetina-Torres's fingerprints to Benitez's from a different arrest and also by the complete non-disclosure of documents from Zetina-Torres's wallet that were in the State's possession and sprung on Zetina-Torres during cross-examination. Where the State had months to prepare its case, Zetina-Torres had less than 36 hours to investigate and develop a defense to key evidence. Because Zetina-Torres was not afforded sufficient time to prepare to address the new evidence, the trial court erred in denying his motion for a continuance or in the alternative excluding the late-disclosed evidence.

Opinion by Gary D. Witt, Judge

March 5, 2013

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