IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. SC 90971
	)	
MATTHEW GRAYSON,	)	
	)	
Respondent.	)	

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
TWENTY-FIFTH JUDICIAL CIRCUIT, DIVISION II
THE HONORABLE MARY W. SHEFFIELD, JUDGE

APPELLANT'S SUBSTITUTE REPLY BRIEF

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JURISDICTIONAL STATEMENT AND STATEMENT OF FACTS

Appellant, Matthew Grayson, adopts the Jurisdictional Statement and the Statement of Facts in his original brief.

POINT RELIED ON

The stop of Matthew Grayson's vehicle and his continued detention were not justified because the state failed to prove that either were based upon reasonable suspicion; the basis for the dispatch that the officer received was an anonymous tip, the officer received the name of a possible drunk driver and a description of the make and model of the vehicle the suspect was alleged to have been driving but instead pulled over Mr. Grayson, who was driving a different make of truck and did not display any signs of driving while intoxicated or any other criminal activity, and an anonymous tip that is vague as to its allegations of criminal activity cannot meet the state's burden of proving reasonable suspicion when the state presents no proof as to its source or reliability and the officer who received it fails to conduct any independent work or corroboration to determine if criminal activity is afoot, and once the officer walked up to the truck and realized that Mr. Grayson was not the suspect he sought the investigatory reason for the stop no longer existed, and the officer's knowledge that Mr. Grayson had been previously arrested on warrants is not sufficient to provide reasonable suspicion to detain him solely to check for warrants when the officer admitted he had no knowledge that a warrant existed at that time.

Terry v. Ohio, 392 U.S. 1 (1968);

State v. Franklin, 841 S.W.2d 639 (Mo. banc 1992);

State v. Miller, 894 S.W.2d 649 (Mo. banc 1995);

State v. Sund, 215 S.W.3d 719 (Mo. banc 2007); and

Section 542.296.

ARGUMENT

The stop of Matthew Grayson's vehicle and his continued detention were not justified because the state failed to prove that either were based upon reasonable suspicion; the basis for the dispatch that the officer received was an anonymous tip, the officer received the name of a possible drunk driver and a description of the make and model of the vehicle the suspect was alleged to have been driving but instead pulled over Mr. Grayson, who was driving a different make of truck and did not display any signs of driving while intoxicated or any other criminal activity, and an anonymous tip that is vague as to its allegations of criminal activity cannot meet the state's burden of proving reasonable suspicion when the state presents no proof as to its source or reliability and the officer who received it fails to conduct any independent work or corroboration to determine if criminal activity is afoot, and once the officer walked up to the truck and realized that Mr. Grayson was not the suspect he sought the investigatory reason for the stop no longer existed, and the officer's knowledge that Mr. Grayson had been previously arrested on warrants is not sufficient to provide reasonable suspicion to detain him solely to check for warrants when the officer admitted he had no knowledge that a warrant existed at that time.

The evidence should have been suppressed because the traffic stop of Matthew Grayson's vehicle was not based on reasonable suspicion, nor was his continued detention, and the officer's discovery of an arrest warrant during the course of these

constitutional violations is not sufficient to attenuate the evidence subsequently seized from the illegal taint. App. Brief at 11.

Officers may briefly stop a vehicle in order to investigate, but only if the stop is founded upon reasonable suspicion that that the occupant is or was involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *State v. Franklin*, 841 S.W.2d 639, 640 (Mo. banc 1992). Reasonable suspicion must be supported by a set of specific and articulable facts that warrant the intrusion. *Terry*, 392 U.S. at 21; *State v. Miller*, 894 S.W.2d 649, 651 (Mo. banc 1995). It must be based on more than an inarticulate suspicion or "hunch," and good faith on the part of the officer is not enough. *Terry*, 392 U.S. at 22.

Officer Lambert received a dispatch that a possible drunk driver had left a specific nearby address in a red Ford pickup, and that the suspect, who was identified by name, had a parole warrant out for him. (Tr. 9). The dispatch was based on a tip from an anonymous source.[1] (Supp. L.F. 1-14). Mr. Grayson argued in his brief for the motion to suppress evidence that the anonymous tip did not form any basis for reasonable suspicion to stop his vehicle. (Supp. L.F. 1-10). At the bench trial,

[1] The state claims it is unclear whether the tip was from an anonymous or a named source. Resp. Brief at 26. It seems the state conceded this in its response to the defendant's brief on the motion to suppress, when discussing the "anonymous tip in this case" and what it described. (L.F. 11-15).

counsel properly objected to the admission of all evidence and testimony that was sought to be suppressed. (Tr. 4-5, 15, 19, 20, 22, 27, 29).

An officer conducting an investigative stop does not need to have personally observed facts that amount to reasonable suspicion, as long as he is acting on information provided by another officer who is shown to have had reasonable suspicion to conduct the stop. *Miller*, 894 S.W.2d at 652, *citing United States v. Hensley*, 469 U.S. 221, 223 (1985). The test outlined in *Hensley* requires the state to show that 1) the dispatch objectively supported the officer's action; 2) the dispatch was issued on the basis of reasonable suspicion that the vehicle occupant is or was involved in criminal activity; and 3) the stop was no more intrusive than would have been permitted by the officer or dispatcher that originally communicated the information. *Franklin*, 841 S.W.2d at 643-44; *Hensley*, 469 U.S. at 223. If the information was obtained from an anonymous informant, courts examine whether the information was corroborated before making the stop. *Miller*, 894 S.W.2d at 653.

The state had the burden of going forward with the evidence to prove the basis of Officer Lambert's alleged reasonable suspicion that Mr. Grayson was involved in criminal activity. Section 542.296.6; *Miller*, 894 S.W.2d at 653. The state offered no evidence of the source of the anonymous tip. Resp. Brief at 26. Therefore, the stop must be held illegal unless the state showed that the collective information personally known by Officer Lambert amounted to reasonable suspicion. *Id.*

In *State v. Miller*, this Court found that the information known to officers did not rise to the level of reasonable suspicion to conduct a traffic stop, when a tip that

predicted a specific vehicle suspected in drug trafficking would be located in a certain area was shared by a detective with other officers who conducted the traffic stop. 894 S.W.2d at 654. This Court held that the tip did not display any special familiarity with its subject, and that it did not allow for sufficient corroboration by officers as to provide a basis for reasonable suspicion to pull over the defendant's vehicle. *Id.* at 654. Since the record was silent as to the source of information shared with the officers, because the detective who relayed the information did not testify, the state failed to meet its burden of showing that the stop was justified by reasonable suspicion. *Id.* at 652.

In Mr. Grayson's case, the anonymous tip did not contain any special familiarity with its subject, nor did it provide any predictive information or means by which the officer could test the reliability of the anonymous information. *See Florida v. J.L.*, 529 U.S. 266, 271 (2001). The tip provided the identity of the "possible" drunk driver, the exact make, model, and color of the vehicle, and the specific address that the car drove away from. (Tr. 9). Officer Lambert pulled over a vehicle that was in the same general area that was occupied by a different person and was of a different make, and which displayed no signs of driving while intoxicated. (Mot. Tr. 11; Tr. 17-18).

In the state's response to defendant's brief on the motion to suppress, counsel contended that tip had indicia of reliability since Officer Lambert corroborated the color and type of the vehicle, the vehicle was in the same general area from which the suspect had departed, and he testified that Mr. Grayson resembled the suspected

identified in the dispatch.[2] (Supp. L.F. 13). An anonymous tip, if corroborated by independent police work, may carry sufficient indicia of reliability to provide reasonable suspicion for an investigatory stop. *United States v. Cox*, 942 F.2d 1282, 1285 (8th Cir. 1991). But the corroboration of a few easily obtainable details from an unknown caller does not automatically justify a full-blown investigative stop of the driver of a moving vehicle. *See Cox*, 942 F.2d at 1285. An accurate description of a suspect's observable location and appearance is only reliable in that it will help the police correctly identify the person who is the subject of the tip, but it does not show that the tipster has any particular knowledge of criminal activity and does not amount to reasonable suspicion. *J.L.*, 529 U.S. at 272.

State's counsel cites this Court's opinion in *State. v. Deck* for the notion that "minimal corroboration can be sufficient." Resp. Brief at 27, *citing Deck*, 994 S.W.2d 527, 534-36 (Mo. banc 1999). The opinion actually states, "in general, a detention and search and seizure is unlawful if conducted solely on the basis of an anonymous tip." *Id.* at 536. Police may consider anonymous tips in conjunction with independent corroborative evidence suggesting criminal activity, which was not done in Mr. Grayson's case. *Id.* (emphasis added). And in *Deck*, the caller who was the

[2] Officer Lambert knew both Mr. Grayson and the suspect named in the dispatch. (Tr. 9, 10). The state presented no evidence as to whether these men bore a resemblance to one another or whether it was reasonable for the officer to mistake the identity of two persons with whom he was so familiar.

source of the dispatch identified himself, the officer did not seize the defendant when he walked up to his parked car, and the officer had indication that criminal activity was afoot because Deck was driving in a residential area late at night without having his lights on, and had a suspicious reaction to the officer when he first saw him. *Id.* at 535-36. The case is inapplicable.

Reasonable suspicion requires that a tip "be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *J.L.*, 529 U.S. at 272. An anonymous tip must provide sufficient information so that the officer can be certain that the vehicle stopped is the one identified by the tipster, *and* must provide a sufficient quantity of information to support an inference that the tipster has observed an actual violation warranting an immediate vehicle stop. *United States v. Wheat*, 278 F.3d 722, 733 (8th Cir. 2001) (emphasis added).

The tip relayed to Officer Lambert through dispatch named a specific person in a specific vehicle leaving from a specific address, but the tip merely stated that the man was a *possible* drunk driver, without any information as to why this was suspected or whether the caller personally observed any wrongdoing. (Tr. 9). Even if this Court were to assume that this was sufficient information, Officer Lambert did not make certain that he was conducting the traffic stop on the person identified. He followed Appellant's vehicle for at least a few blocks (Mot. Tr. 17; Tr. 10), yet did not call in his license plate or try to determine whether the truck was registered to the person named in the dispatch. He pulled over a vehicle of a different make. (Mot. Tr.

9; Tr. 17). And the officer did not observe any signs of illegality or wrongdoing that would arouse any reasonable suspicion for the stop. (Tr. 17).

Despite the unknown source of the tip and the lack of indicia of reliability thereof, and his failure to corroborate the identifying details of the tip or conduct any independent investigation to determine if its vague allegations of criminal activity were true, the officer conducted a traffic stop of Mr. Grayson's vehicle. (Tr. 17). Reasonable suspicion did not exist as to justify the investigatory stop. *See Miller*, 894 S.W.2d at 657. The law on this issue appears well-settled in this Court, as well as the United States Supreme Court.

The state also claims that Officer Lambert had reasonable suspicion to continue Mr. Grayson's detention after the unlawful stop. The state contends that the officer's knowledge of Mr. Grayson's past history gave him a basis to suspect that he "could have" outstanding warrants. Resp. Brief at 31.

A routine traffic stop based on an officer's observation of a violation of state laws is a reasonable seizure under the Fourth Amendment. *State v. Sund*, 215 S.W.3d 719, 723 (Mo. banc 2007), *citing State v. Barks*, 128 S.W.3d 513, 516 (Mo. banc 2004). Even if there is justification for the initial stop, the detention may only last for the time necessary for the officer to conduct a reasonable investigation of the violation. *See Sund*, 215 S.W.3d at 723.

Officer Lambert unjustifiably detained Mr. Grayson beyond the time necessary to investigate the tip received through dispatch. The officer testified that the sole reason he stopped Mr. Grayson was because he thought he resembled Terry

Reed, the man named in the dispatch. (Mot. Tr. 12). As soon as the officer walked up to the truck he saw that the driver was not Terry Reed, but that it was Mr. Grayson. (Mot. Tr. 9-10; Tr. 18). At this point, any investigatory purpose for the stop was complete. As soon as the officer completed the purpose of the initial traffic stop, he was required to let Mr. Grayson proceed without further questioning, unless specific, articulable facts created an objectively reasonable suspicion that he was involved in criminal activity. *See Sund*, 215 S.W.3d at 724. The state failed to prove that the officer had reasonable suspicion to continue the detention, although the initial stop was also unjustified.

Officer Lambert knew that Mr. Grayson had been arrested several times on warrants, which he indicated in his report. (Mot. Tr. 10, 13). But he had no knowledge of any outstanding warrants at the time he conducted the stop. (Mot. Tr. 13; Tr. 18). Mr. Grayson also committed no violations of any kind. (Mot. Tr. 11-12; Tr. 17). Knowledge of prior arrests is, alone, insufficient to give rise to reasonable suspicion. *United States v. Sandoval*, 29 F.3d 537, 542 (10th Cir. 1994), *citing United States v. Oates*, 560 F.2d 45, 59 (2nd Cir. 1977); and *United States v. Fields*, 458 F.2d 1194, 1198 (3rd Cir. 1972) (stating, "we do not sanction or in any way condone the stopping and harassing of persons merely because they have criminal records or bad reputations."). Appellant cannot find any case that suggests otherwise. *See Sandoval*, 29 F.3d at 542. If the officer's knowledge of Mr. Grayson's prior arrests is considered sufficient to justify this intrusion, as the state claims, then any individual

with a prior criminal history or prior arrest could be subject to being stopped and detained by law enforcement officers at any time.

The officer testified that he had no knowledge that Mr. Grayson had an active warrant. (Mot. Tr. 13). His suspicion that a warrant existed was unsupported by his actual knowledge. (Mot. Tr. 13; Tr. 10-11). Reasonable suspicion must be based on more than an inarticulate suspicion or "hunch." *Terry*, 392 U.S. at 22. The officer's knowledge of Mr. Grayson's prior arrests is insufficient.

This was not a consensual encounter. If a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and reasonable suspicion is not required. *Florida v. Bostick*, 501 U.S. 429, 434 (1991). An officer is not free to involuntarily detain a driver without reasonable suspicion under the guise of engaging in a voluntary conversation. *Sund*, 215 S.W.3d at 724. After pulling him over, the officer told Mr. Grayson that he was conducting an investigative stop and that he was looking for someone else, but then told him "I need to see your driver's license." (Tr. 12-13). One circumstance indicating that there may be a seizure includes use of language or tone of voice indicating that compliance with the officer's request might be compelled. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). The officer did not request Mr. Grayson's license, he demanded it. (Tr. 12-13). This was not a consensual encounter, and Mr. Grayson did not voluntarily hand over his license.

Few motorists would feel free to ignore a directive to pull over, or to leave the scene of a stop without being told they are allowed to do so. *Berkemer v. McCarty*,

468 U.S. 420, 436 (1984). It is for this reason, with the acknowledgment that a traffic stop significantly curtails the freedom of action of the driver, that stopping an automobile is considered a "seizure" regardless of how brief the detention might be. *Id.* at 437. Considering the totality of the circumstances, no reasonable person who had just been pulled over by an officer conducting an emergency stop, who then said "I need to see your license," would consider themselves free to deny the request or to leave. (Mot. Tr. 12-13). Officer Lambert also testified that Mr. Grayson was not free to leave. (Tr. 13). Mr. Grayson was unlawfully detained without reasonable suspicion, following the initial unjustified stop of his car, and the officer then demanded his license, took it back to his patrol car with him, and called in the information. (Mot. Tr. 18). It was only after all of these actions that the officer determined that there was a warrant for Mr. Grayson's arrest. (Mot. Tr. 18). The officer did not have a "good faith" believe that Mr. Grayson had warrants, because he admitted that he did not know if a warrant existed. Resp. Brief at 32; (Mot. Tr. 13; Tr. 18).

The state also brings up issues on appeal that were not raised below. The state asserts that the evidence was abandoned, and asks this Court to overrule precedent that states that evidence abandoned after an illegal detention is still fruit of the poisonous tree when the abandonment results from a Fourth Amendment violation. Resp. Brief at 21, n.7, *citing, e.g., State v. Solt*, 48 S.W.3d 677, 682 (Mo. App. S.D. 2001). Appellant can see no reason to overrule precedent stating that abandonment must be voluntary and will not be recognized when it is the result of illegal police

conduct. *Id.*; *see also United States v. Liu*, 180 F.3d 957, 961 (8th Cir. Mo. 1999); *United States v. Stephens*, 206 F.3d 914, 917 (9th Cir. 2000). There was no evidence presented regarding this issue to the trial court.

The state also contends that the dispatcher had knowledge as to every existing warrant in the area because the dispatcher's knowledge is contained within a computer system connected to MULES, and that this knowledge should be imputed to Officer Lambert without him having to confirm his belief that Mr. Grayson actually had an existing warrant prior to detaining him. Resp. Brief at 31. It seems quite a stretch to impute knowledge of an entire computer system to a dispatcher and claim that this alleged knowledge can amount to reasonable suspicion for every officer in the area to detain anyone with an existing warrant - without ever attempting to confirm the existence of one. Regardless, the state's burden of proof at a hearing on a motion to suppress is not a technicality. *Miller*, 894 S.W.2d at 652. The state failed to present any proof of this at the hearing on the motion to suppress, when it was its burden to do so. Section 542.296.6.

The state also proposes that this Court adopt decisions from other jurisdictions that have allegedly held that driving while intoxicated poses a sufficient threat to public safety that it justifies a traffic stop simply by corroborating that the vehicle stopped was the one described in the tip, without any independent observation by the officer that would corroborate claims of intoxication. Resp. Brief at 28. Those cases are distinguishable from Mr. Grayson's case and are inapplicable.

In *United States v. Wheat*, an officer received a tip that a tan and cream-colored Nissan Stanza with a license plate beginning with letters W-O-C was being driven erratically in the northbound lane of Highway 169 and the intersection of Highway 20, that it was cutting off cars, being driven on the wrong side of the road, and otherwise being driven as if by a "complete maniac." 278 F.3d 722, 731 (8th Cir. 2001). The Court held that the call provided a sufficient amount of innocent details so that the officer and the Court could be certain that the vehicle stopped was the one identified in the call, all of which were corroborated before the stop. *Id.* at 737. The Court also held that the tip contained a sufficient amount of information to support an inference that the caller witnessed a violation that called for an immediate traffic stop, even though the officer did not independently observe any violation. *Id.*

The Eighth Circuit found the following two considerations to be "integral" as to whether the anonymous tip alone, without corroboration, could amount to reasonable suspicion: 1) the tip must provide sufficient information, such as the make and model of car, license plates, location and bearing, and other similar innocent details, so the officer and the court can be sure the car stopped is the one identified, and 2) the tip must provide sufficient information "to support an inference that the tipster has witnessed an actual violation that compels an immediate stop." *Id.* at 731-32. The anonymous tip in Mr. Grayson's case did not contain any contemporaneous observations of erratic driving or anything supporting an inference that an immediate stop was needed. The dispatch tip said that a "possible" drunk driver had left an address on Fifth Street – that was all. (Tr. 9).

Like *Wheat*, the cases cited by the state in support of its argument that no corroboration was needed all involved anonymous tips that provided specific identifying details, all of which were fully corroborated by the officers, and the tips also provided specific examples of moving violations and erratic and dangerous driving that were being contemporaneously observed. Also, these cited cases all involved specific claims of erratic or dangerous driving on highways or major roadways where the risk of harm to other drivers was alleged – not a call of a possible drunk driver in a town with less than 500 people at 8:30 p.m. on a Tuesday night, during which time the state concedes very few vehicles would be on the road. (Tr. 9); Resp. Brief. 26-27.

The cited cases, and their distinguishing elements, are as follows. *See, e.g.*, *People v. Wells*, 38 Cal.4th 1078, 1088 (Cal. 2006) (an anonymous tipster's information regarding the car and its location on the highway were sufficiently precise and it reported contemporaneous observations that the car was "weaving all over the roadway," and all innocent details of the tip were corroborated prior to the traffic stop being conducted); *Bloomingdale v. State*, 842 A.2d 1212, 1213 (Del. 2004) (stop was justified when an anonymous caller gave make, model, color, license tag number, and specific location of vehicle and reported that it was "driving all over the roadway," and the officer followed the car just long enough to verify all factual allegations except those pertaining to the alleged criminal activity); *State v. Walshire*, 634 N.W.2d 625, 626 (Iowa 2001) (anonymous cell phone caller who was following vehicle gave license plate, make, and model of vehicle, and said it was driving on the

median of a highway, and officer corroborated identifying details before stop); *State v. Crawford*, 67 P.3d 115, 116-17 (Kan. 2003) (anonymous caller gave vehicle's make, model, style, color, state of origin of license plate, highway location, and direction of travel – all of which was corroborated by the officer before the stop – and alleged that the vehicle was driving recklessly on a four-lane highway that had a history of bad accidents); *State v. Scholl*, 684 N.W.2d 83, 84 (S.D. 2004) (caller reported seeing driver leaving a bar and stumbling and having trouble getting into his pickup, gave license plate, state of origin, color, and description of vehicle, and the caller followed vehicle onto the Interstate and continued to update dispatch on location); *State v. Boyea*, 765 A.2d 862 (Vt. 2000) (informant reported blue-purple Volkswagen Jetta with New York plates was traveling south on I-89 in between Exits 10 and 11 and was "operating erratically," the officer followed car until he identified it and stop was justified despite no observance of erratic driving); *State v. Prendergast*, 83 P.3d 714 (Hawaii 2004) (caller, who identified himself, gave vehicle made, model, color, license plate number, and reported that it had crossed over the center line on a highway and had almost caused several head-on collisions and almost hit a guardrail).

In comparison, this Court and many other jurisdictions have held that an anonymous tip without independent police corroboration is insufficient to amount to reasonable suspicion. *Miller*, 894 S.W.2d at 653; *McChesney v. State*, 988 P.2d 1071 (Wyo. 1999); *Washington v. State*, 740 N.E.2d 1241 (Ind. App. 2000), *transfer denied*, 753 N.E.2d 7 (Ind. 2001); *Wheat*, 278 F.3d at 731 (citing to several cases that

have held as such). The United States Supreme Court also recently rejected the idea of a "firearm" exception to the reliability requirement of anonymous tips on the basis that it posed an increased threat to public safety. *J.L.*, 529 U.S. at 272.

Mr. Grayson's situation differs in two major respects from *Wheat,* and the other cases cited for this proposition, *supra*. First, Officer Lambert did not ensure that the vehicle being stopped was the one sought; in addition to ignoring the make of the car, he failed to corroborate the most important identifying detail - the identity of the driver. Second, the cases cited involved allegations of driving while intoxicated that were much more specific, and showed a much greater threat to safety, than the vague tip in Mr. Grayson's case. (Tr. 9). *See, e.g., United States v. Monteiro,* 447 F.3d 39, 49 (1st Cir. 2006) (an anonymous tip which lacks an indication of an immediate threat to the public differentiates it from cases in which a stop has been based on a corroborated anonymous tip of ongoing criminal activity in which there were strong exigent rationales for quick police action, distinguishing *Wheat, supra*).

This Court has no need to determine the issue of whether it will find reasonable suspicion in the event an officer corroborates innocent details of an anonymous tip without corroborating any criminal activity, because the tip in this case contained insufficient information to bring it within this analysis even if the officer had actually corroborated all of the identifying details. Reasonable suspicion did not exist, and the stop was unjustified.

State v. Lamaster, relied upon by the state to show precedent in Missouri to support its argument that discovery of a warrant will justify a search after an initial

detention, is distinguishable. Resp. Brief at 17; 652 S.W.2d 885, 886 (Mo. App. W.D. 1983). Lamaster had walked away from an officer as she approached, and walked to a tavern even though the officer was calling for him to stop. *Id.* at 886. Lamaster did not challenge his initial stop and the frisk of his person, and the officer obtained his driver's license in this justified frisk and determined that he had given her a false name. *Id.* The officer arrested him for giving the false name, which was an illegal arrest because no such offense existed in state law. *Id.* She then checked his information and found an outstanding warrant, and arrested him. *Id.* at 886. The Court held that under these circumstances, the search was authorized as a valid search incident to arrest. *Id.* at 887.

But as state's counsel pointed out, "decisions of the Court of Appeals are not binding precedents upon this Court," and this is the issue upon which transfer was sought, and the circumstances of Mr. Grayson's case are very different. Resp. Brief at 13. Here, Officer Lambert repeatedly violated Mr. Grayson's rights without justification. The officer stopped Mr. Grayson's vehicle solely because he thought he resembled the man named in the dispatch, when the state presented no evidence regarding the source or the reliability of this dispatch, which was vague as to its allegations of criminal behavior and merely stated that the suspect "possibly" was intoxicated. (Mot. Tr. 12; Tr. 9). Mr. Grayson had not engaged in any suspicious activity prior to being detained. (Mot. Tr. 11; Tr. 17-18). Officer Lambert did not discover Mr. Grayson's license during a justified frisk, but by demanding it in the course of an unconstitutional stop and detention. (Mot. Tr. 9-10, 12-13; Tr. 10, 18).

And Officer Lambert demanded Mr. Grayson's license solely for the purpose of checking it for warrants based on a mere suspicion that he could have a warrant because he had been arrested on warrants in the past, when he had no knowledge that a warrant existed at the time. (Mot. Tr. 13; Tr. 10, 18). Attenuation cannot rest solely on the presence of an existing warrant as an allegedly intervening circumstance; the analysis must also focus on the temporal proximity and the purpose and flagrancy of the official misconduct. *Brown v. Illinois*, 422 U.S. 590, 591-91 (1974).

Finally, the state claims that suppression is unnecessary because it alleges there are substantial alternatives to the exclusionary rule to deter officers from conducting unjustified detentions in order to seek out previously unknown warrants, such as civil lawsuits by the aggrieved and potential discipline by their departments. Resp. Brief at 19, 20. Appellant respectfully but strongly disagrees that a civil lawsuit is a viable deterrent alternative, especially for indigent appellants who have no right to representation in civil cases for monetary damages and no means to obtain such representation.[3] (L.F. 23). Appellant recognizes that Congress intended to assist persons with no means to advance civil claims of constitutional violations through its fee award statute, 42 U.S.C. § 1988, but while this may make it possible for impecunious litigants to commence such civil lawsuits, it certainly provides no

[3] *See* Pamela S. Karlan, *Shoe-Horning, Shell Games, and Enforcing Constitutional Rights in the Twenty-First Century*, 78 UMKC L. Rev. 875 (2010) for a review of United States Supreme Court opinions limiting actions pursuant to 42 U.S.C. § 1983.

guarantee of representation. *American Civil Liberties Union/Eastern Missouri Fund, et al. v. Miller*, 803 S.W.2d 592, 598 (Mo. banc 1991).

Mr. Grayson did not assert that he had the right to be free from being arrested on a valid warrant, as the state claims. Resp. Brief at 13, 16. Mr. Grayson simply sought to have the seized evidence suppressed. (LF. 13-14). He contends that the government should not be permitted to benefit from evidence it obtained in unconstitutional activities, and that the officer's discovery of a warrant in the course of illegal behavior should not be deemed to attenuate evidence subsequently seized when the warrant itself was found as a direct result of the officer's flagrant and repeated violation of Mr. Grayson's constitutional rights. App. Brief at 21-22. To suppress this evidence would serve the deterrent purposes of the exclusionary rule very well, because it would encourage an officer to have actual knowledge of the existence of a warrant and a good faith reliance on the same *before* unjustifiably detaining people on a hunch that this might be the case. Mr. Grayson respectfully requests that the evidence and related testimony in this case be suppressed.

CONCLUSION

For the reasons presented in Point I of this brief, Appellant respectfully requests that his conviction be reversed, and the case remanded.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Alexa I. Pearson, hereby certify as follows:

The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, in 13 point Times New Roman font, and includes the information required by Rule 55.03. According to the word-count function of Microsoft Word, excluding the cover page, table of contents, the signature block, and this certificate of compliance and service, the brief contains 5,721 words, which does not exceed the 7,750 words allowed for an appellant's reply brief.

The floppy disks filed with this brief and served on opposing counsel contain a complete copy of this brief, and have been scanned for viruses using Symantec Endpoint Protection, which was updated in November of 2010. According to that program, these disks are virus-free.

On the 12th day of November, 2010, two true and correct copies of the foregoing brief and a floppy disk containing a copy thereof were mailed, postage prepaid, to the Office of the Attorney General, Criminal Appeals Division, 221 W. High Street, Jefferson City, MO 65102.

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Alexa I. Pearson