No. SC90971

In the
Supreme Court of Missouri

STATE OF MISSOURI,

Respondent,

v.

MATTHEW T. GRAYSON,

Appellant.

Appeal from Phelps County Circuit Court
Twenty-fifth Judicial Circuit
The Honorable Mary W. Sheffield, Judge

RESPONDENT'S SUBSTITUTE BRIEF

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ATTORNEYS FOR RESPONDENT
STATE OF MISSOURI

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JURISDICTIONAL STATEMENT

Appellant, Matthew Grayson, was convicted on January 8, 2009, by the Circuit Court of Phelps County, Missouri, after a trial to the court. L.F. 1, 3-4, 21-22.[1] Defendant had been found guilty by the trial court of the class C felony of possession of a controlled substance. L.F. 1, 4, Tr. 33.

Appellant was sentenced to seven years with the trial court retaining jurisdiction under Section 559.115. L.F. 1, 4, 21-22, S. Tr. 5-6.

After an opinion by the Missouri Court of Appeals, Southern District, this Court granted Appellant's Application for Transfer. Missouri Constitution, Article V, Section 10; Rule 83.04.

[1] References to the record shall be abbreviated as follows in this brief: "L.F." for references to the Legal File; "Supp. L.F." for references to the Supplemental Legal File; "Mot. Tr." for references to the Transcript from the Hearing on the Motion to Suppress; "Tr." for references to the Trial Transcript; and "Sent. Tr." for references to the Sentencing Transcript.

STATEMENT OF FACTS

On March 25, 2008, Deputy Paul Lambert of the Phelps County Sheriff's Department was on road patrol in Newburg, Missouri. Mot. Tr. 8-9, Tr. 8. Prior to going on duty, Deputy Lambert had checked his vehicle to make certain that nothing had been left in the vehicle by previous arrestees. Tr. 8.

While on patrol, Deputy Lambert received a dispatch regarding a red Ford pickup with an intoxicated driver. Mot. Tr. 9, Tr. 9. Dispatch also gave Deputy Lambert the name (Terry Reed) and a description of the driver, and also told Deputy Lambert that the driver had an outstanding parole warrant. Mot. Tr. 9, Tr. 9.

As Deputy Lambert was only a few blocks away from where that vehicle was supposed to be located, Deputy Lambert began to look for that vehicle. Mot. Tr. 9, Tr. 9. Deputy Lambert observed a red Mazda pickup with a driver who matched the description given by dispatch of the person with an outstanding warrant, but did not observe any traffic violations. Mot. Tr. 9, 11-12, Tr. 9. Knowing that sometimes witnesses make a mistake in identifying the make of a vehicle, Deputy Lambert stopped the vehicle to investigate. Mot. Tr. 9.

When Deputy Lambert reached the window of the vehicle, he recognized Appellant. Mot. Tr. 9-10, 12, Tr. 10. Until that point, Deputy Lambert thought that Terry Reed was the driver of the vehicle. Mot. Tr. 12. While Appellant was not the person mentioned by dispatch as having an outstanding warrant, Deputy Lambert knew that Appellant had previous arrests for outstanding warrants. Mot. Tr. 10, Tr. 10. As such, Deputy Lambert asked for Appellant's license and ran a check on Appellant for

outstanding warrants. Mot. Tr. 10, Tr. 10. That check indicated that Appellant had an outstanding warrant from the Newburg Municipal Court for possession of marijuana. Mot. Tr. 10, Tr. 10. Deputy Lambert detained Appellant until the warrant was confirmed and then placed him under arrest. Mot. Tr. 10.

When Deputy Lambert placed Appellant under arrest, he searched Appellant for possible weapons incident to the arrest and discovered a meth pipe in the pocket of Appellant's coat. Mot. Tr. 10, Tr. 18. Appellant was placed in the backseat of Deputy Lambert's patrol car. Tr. 11. Later, after Appellant was removed from the patrol car, Deputy Lambert noticed a plastic baggy of a white powder substance under the seat. Tr. 11. Appellant was the first person, other than Deputy Lambert, in the vehicle since the start of the shift. Tr. 11, 22.

Laboratory testing later confirmed that the white powder substance found in the baggy was methamphetamine weighing approximately 0.05 grams. Tr. 12-15, 25-29.

On June 20, 2008, an information was filed charging Appellant with the class C felony of possession of a controlled substance, specifically methamphetamine. L.F. 1, 6.

Appellant filed a motion to suppress evidence of contraband found on Appellant's person and in Deputy Lambert's patrol car. L.F. 13-14. Evidence was heard on this motion on September 11, 2008, and both sides filed briefs on the legal issues presented. L.F. 2-3, Supp. L.F. 1-15. The trial court denied the motion to suppress. L.F. 3.

On October 16, 2008, Appellant filed a written waiver of jury trial. L.F. 3, 15-16. Prior to commencing the trial, the trial court discussed that waiver with Appellant, and Appellant acknowledged that he was waiving his right to a jury trial. Tr. 5.

The trial court found Appellant guilty of possession of a controlled substance. Tr. 33.

On January 8, 2009, the trial court sentenced Appellant to seven years, but kept jurisdiction for consideration of probation under Section 559.115. L.F. 1, 4, 21-22, S. Tr. 5-6.

Appellant filed his notice of appeal to the Missouri Court of Appeals, Southern District. L.F. 23-26.

ARGUMENT

Point Relied On (Validity of Arrest)

The trial court did not err in denying Appellant's motion to suppress and admitting a baggie abandoned by Appellant in Deputy Lambert's patrol car because the arrest was valid as it was based on an outstanding warrant. Furthermore, to the extent that Appellant's detention prior to discovery of the outstanding warrant was invalid, the discovery of the outstanding warrant operates as an independent justification for Appellant's further detention attenuating any actions after the discovery of that warrant from any prior illegality. In addition, the initial detention was not invalid as Deputy Lambert was informed by dispatch that a particular individual had an outstanding warrant and, based on a tip, that individual was driving a vehicle on the streets of Newburg, Missouri, and was intoxicated, and Deputy Lambert stopped the vehicle driven by Appellant because Deputy Lambert initially believed that Appellant was the person who was the subject of the dispatch and was operating a vehicle of the general type and in the general location mentioned in the dispatch. Furthermore, the continued detention to check for outstanding warrants was permissible, in that Deputy Lambert, based on his prior knowledge of Appellant, had reason to believe that there may have been an outstanding warrant for Appellant.

A. Overview

On review of the ruling of a trial court on a motion to suppress, this Court looks at the evidence in the light most favorable to the trial court's ruling. *State v. Gaw,* 285

S.W.3d 318, 319-20 (Mo. banc 2008). This Court considers the evidence presented at both the motion to suppress and trial. *Id.*

In this case, Appellant alleged that, at two different spots during the investigation, Deputy Lambert detained Appellant in a manner that violated Appellant's Fourth Amendment rights.[2] Appellant's Brief at 12-14, 23-24. In particular, Appellant alleges that Deputy Lambert should not have stopped Appellant's vehicle at all. Appellant's Brief at 12-13. Appellant also alleges that Deputy Lambert should have released Appellant once Deputy Lambert realized that Appellant was not the person that Deputy Lambert was supposed to detain. Appellant's Brief at 23-24.

[2] Appellant's Brief only briefly discusses the claims of an improper stop and detention on the basis that these issues were resolved by the opinion below. Appellant's Brief at 12-13. However, on transfer, this Court conducts a full review of the entire case as if the case had been originally appealed to this Court, and the decision of the Court of Appeals is considered to be vacated and a nullity. See Mo. Const., art. V, § 10; *State ex rel. Safeco Insurance Co. v. Scott*, 521 S.W2d 448, 448 (Mo. banc 1975); *State v. Norman*, 380 S.W.2d 406, 407 (Mo. banc 1964); *State ex rel. Field v. Randall*, 308 S.W.2d 637, 638 (Mo. 1958). Such review is not limited to the reasons for which transfer was granted. *Cf. Buchweiser v. Estate of Laberer*, 695 S.W.2d 125, 127 (Mo. banc 1985) (transfer granted for one aspect of case, full review conducted). For the reasons discussed below, Respondent does not concede that the detention was improper.

Under the facts of this case, the decision to admit the evidence was proper for several reasons. First, intervening events between the discovery that Appellant was not the person that Deputy Lambert was supposed to detain and the actual discovery of the evidence prevent the evidence from being the fruit of the poisonous tree.[3] Second, the detention of Appellant was not improper.

B. Fruit of Poisonous Tree Inapplicable when Arrest based on Valid Warrant

In this case, Appellant was arrested on an outstanding arrest warrant. Mot. Tr. 10, Tr. 10. Appellant asserts that, even though an arrest for an outstanding warrant is normally valid, this Court should ignore that warrant because the officer learned about the warrant as part of an allegedly invalid stop. Appellant's Brief at 13-24. This argument is implicitly based on the doctrine of the fruit of the poisonous tree. *See State v. Miller*, 894 S.W.2d 649, 655 (Mo. banc 1995). However, as recognized in *Miller*, there are three major exceptions to that doctrine – the attenuation doctrine, the independent source rule, and the inevitable discovery rule. *Id.* at 655 n. 5. It is the State's position that a valid warrant implicates all three of these exceptions.

[3] Appellant does not assert any claim of independent constitutional violations in terms of the validity of the outstanding warrant, the search of Appellant's person pursuant to the arrest on that warrant, or the seizure of the baggie left by Appellant in Deputy Lambert's patrol car. Instead, Appellant's argument is based on the claim that these otherwise valid acts are tainted by alleged misconduct prior to discovering the existence of the outstanding warrant. Appellant's Brief at 15-23.

As the United States Supreme Court has noted, for a defendant seeking to invoke the exclusionary rule, it is insufficient to demonstrate that a constitutional violation was a "but for" cause of the discovery of the evidence. *Hudson v. Michigan*, 547 U.S. 586, 592, 126 S. Ct. 2159, 2164 (2005). As the Supreme Court noted in *Hudson*, one circumstance in which attenuation applies is when, even with a direct causal connection, the interest protected by the violated guarantee is not served by the suppression of the evidence. 547 U.S. at 593, 126 S. Ct. at 2164.

One of the primary interests served by limitations on warrantless seizures is the preference that law enforcement officers obtain warrants from neutral magistrates when possible. That interest is not served by invalidating an arrest of a defendant on a valid warrant.

Likewise, the principles underlying the independent source and inevitable discovery exceptions are implicated by the circumstances here. Assuming, for the sake of argument, that Deputy Lambert, should have let Appellant leave without asking for his driver's license, Deputy Lambert could still have radioed dispatch to check Appellant's warrant status and have followed Appellant's vehicle while waiting for that information. The Supreme Court has noted that these two exceptions are based on the policy that "while the government should not profit from its illegal activity, neither should it be placed in a worse position than it otherwise would occupy." *Murray v. United States*, 487 U.S. 533, 542, 108 S. Ct. 2529, 2535 (1987).

The situation in this case is analogous to the situation in *Segura v. United States*, 468 U.S. 796, 104 S. Ct. 3380 (1983). In that case, there was an initial illegal search, but

the evidence was discovered pursuant to a valid search warrant that did not use any information obtained during the illegal search. 468 U.S. at 801-02, 104 S. Ct. at 3383-84. In holding that the independent source doctrine applied and exclusion of the evidence was not appropriate, the Supreme Court noted evidence is not fruit of the poisonous tree merely because "it would not have come to light but for the illegal actions of the police." 468 U.S. at 815, 104 S. Ct. at 3391.

As was the case in *Segura,* Appellant's argument is implicitly based on the theory that Appellant could have gotten away and disposed of the drugs before Deputy Lambert discovered the warrant and started to look for Appellant. The Supreme Court in *Segura* rejected a constitutional right to destroy evidence. 468 U.S. at 815-16, 104 S. Ct. at 3391. Likewise, this Court should reject a constitutional right to avoid arrest on a valid arrest warrant.

In arguing against applying the attenuation, independent source, or inevitable discovery exceptions, Appellant relies on the decisions of the Western District in *State v. Taber,* 73 S.W.3d 699 (Mo. App. W.D. 2002), and *State v. Dixon,* 218 S.W.3d 14 (Mo. App. W.D. 2007), for the proposition that the doctrine of the fruit of the poisonous tree applies to circumstances like the one in this case. Appellant's Brief at 16-17. Aside from the fact that decisions of the Court of Appeals are not binding precedents on this Court, and that one of the purposes of transfer is to resolve conflicts between the districts of the Court of Appeals, neither decision actually addressed this issue on the merits, and, as such, should not even be considered to have any persuasive authority on this issue.

In *Taber,* the decision solely considered the issue of whether the defendant was seized while the officer performed a warrant check. 73 S.W.3d at 704-07. The Western District in *Taber* did not consider whether any exceptions to the doctrine of the fruit of the poisonous tree might apply when there was an active warrant for a defendant. *Id.* at 707.

Similarly, in *Dixon,* the sole issue was whether or not the defendant was seized while the officer performed a warrant check. 218 S.W.3d at 18, 20-22. As in *Taber,* the Western District in *Dixon* did not consider whether any exceptions to the exclusionary rule might apply when there was an active warrant. *Id.* at 22.

As the issue presently before this Court in this part was not raised in either *Dixon* or *Taber,* neither opinion offers any guidance on this issue.[4] In fact, the one Missouri case which did consider whether an arrest warrant justified a search incident to arrest despite an initially invalid stop found that the search was proper. *State v. Lamaster*, 652 S.W.2d 885, 886-87 (Mo. App. W.D. 1983).

Appellant also relies on *Illinois v. Brown,* 422 U.S. 590, 95 S.Ct. 2254 (1974). Appellant's Brief at 16. However, *Brown* involved the issue of whether the giving of a *Miranda* warning to a person who was arrested without a warrant or without probable cause (and thus was still being illegally detained during the course of the interview)

[4] For reasons discussed below, these two cases should be overruled to the extent that they suggest that a record check for warrants is not permissible under the circumstances of this case.

sufficiently attenuated the custodial interview from the illegal custody. 422 U.S. at 591-92, 95 S.Ct. at 2256. The Supreme Court did not adopt a per se rule in that case, but instead ruled that the mere giving of a *Miranda* warning was not, by itself, sufficient and that each case would need to be examined on the individual facts to determine if those facts when combined with a *Miranda* warning was sufficient to attenuate the continued illegal detention. 422 U.S. at 603-04, 95 S.Ct. at 2261-62. In the course of its discussion, the Supreme Court noted three factors to be considered in attenuation cases: 1) temporal proximity; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the official misconduct. *Id.*

This case poses the different issue about whether an event that occurs after a defendant is arrested on a warrant should be found to be tainted by any illegality that preceded the otherwise valid arrest. In other words, does the discovery of an arrest warrant provide that something else that was missing in *Brown* to break the link between the initial illegality and the subsequent obtaining of a piece of evidence?

One of the cases cited in *Brown* as an explanation of what might break the chain of custody was *Johnson v. Louisiana*, 406 U.S. 356, 92 S.Ct. 1620 (1972). *Brown*, 422 U.S. at 603-04, 95 S.Ct. at 2261-62. In *Johnson*, the defendant was required to participate in a line-up after an illegal arrest. 406 U.S. at 365, 92 S.Ct. at 1626. However, the Supreme Court rejected his claim that the line-up identification should have been excluded as the fruit of the poisonous tree of that illegal arrest because, between the time of the initial arrest and the line-up, a commitment order had been issued by the local magistrate judge. *Id.* As such, the Supreme Court has already recognized that a valid basis for holding a

defendant can attenuate an initially illegal detention even when, arguably, the defendant would never have been taken into custody but for the initial detention.

Appellant also cites to *New York v. Harris*, 495 U.S. 14, 110 S.Ct. 1640 (1989), but primarily focuses on the dissent. Appellant's Brief at 20-21. However, it is the actual opinion of the Supreme Court, not the rejected reason in the dissent that governs. In *Harris*, the police violated the defendant's right by a warrantless entry into the house. 495 U.S. at 15-17, 110 S. Ct. at 1642. However, despite that violation, the police had probable cause to arrest the defendant. *Id.* As such, the valid, but warrantless, arrest was deemed a sufficient break to permit the use of statements obtained after the arrest and removal of the defendant from the house because the interest in protecting the privacy of the house was distinct from the interest being asserted by the defendant – protection for statements found after a valid arrest. 495 U.S. at 17-21, 110 S. Ct. at 1643-44.

Similarly in the present case, the interests effectively being asserted by the defendant – the right to be free from being arrested on a valid warrant and to be able to be free from a search after an arrest on a valid warrant – are distinct from the interest in not being detained without a valid warrant or reasonable suspicion.

Despite the implications of the opinions in *Hudson* and *Segura*, Appellant attempts to distinguish those cases by claiming that they do not involve "but-for" causation. Appellant's Brief at 18-19. However, that distinction ignores the actual language of those cases, both of which addressed and rejected the theory that "but-for" causation prevented the application of the attenuation doctrine.

In *Hudson*, the Supreme Court stated, "[E]xclusion may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence. Our cases show that 'but-for' causality is only a necessary, but not sufficient, condition for suppression." 547 U.S. at 592, 126 S.Ct. at 2164. As the Supreme Court went on to explain, the attenuation doctrine concedes but-for causation and tests whether that but-for causation is sufficiently connected to the actual obtaining of the evidence to warrant suppression, including a weighing of the interests allegedly violated by the police misconduct. 547 U.S. at 592-93, 126 S.Ct. at 2164-65.

In *Segura*, the argument was made that there was but-for causation. 468 U.S. at 815-16, 104 S.Ct. at 3391. In response, the majority opinion, while rejecting the claim that there was but-for causation, referred to the attenuation doctrine as being designed to deal with such claims. *Id.* As was the case in *Segura*, the existence of the warrant in this case was not the product of any illegal detention of Appellant, and, thus, the allegedly illegal detention of Appellant prior to the execution of that warrant should not be seen as a basis for invalidating the execution of the warrant.

Besides the Western District in *Lamaster*, several other jurisdictions have considered the issue raised by this case. The holding in these cases has consistently been that a valid arrest warrant is a sufficient break to attenuate an initially unlawful detention in most or almost all circumstances. See, e.g., *People v. Brendlin*, 45 Cal.4th 262, 271-72, 195 P.3d 1074, 1080-81 (Cal. 2008) (discussing and following holdings in other jurisdictions). The general approach in these cases, as typified by *Brendlin* is to examine the three factors set forth in *Brown* – the time between the initial illegality and the

claimed attenuation, the presence of an intervening circumstance, and the flagrancy of the police misconduct. 45 Cal.4th at 269, 195 P.3d at 1078-79. In these cases, the various courts have typically held that the first factor is not applicable or relevant, that the finding of an arrest warrant is a significant intervening circumstance, and that, in the absence of something more, an invalid reason for the initial detention does not constitute the type of flagrant misconduct that would overcome the intervening circumstance.[5] 45 Cal.4th at 270-72, 195 P.3d at 1079-81.

The facts in this case are analogous to the facts in *Simpson.* In *Simpson,* the police officers, upon initially seeing the defendant, believed that the defendant was another person for whom there was an outstanding warrant. 439 F.3d at 492. In the present case, Deputy Lambert originally believed that Appellant was another person for whom there was an outstanding warrant. Mot. Tr. 9, 11-12, Tr. 9. In *Simpson,* it was only after the initial encounter that the officers discovered that the defendant was not the person that

[5] See also *United States v. Simpson,* 439 F.3d 490, 495-97 (8th Cir. 2006); *United States v. Green,* 111 F.3d 515, 521-23 (7th Cir. 1996); *People v. Hilyard,* 197 Colo. 83, 85, 589 P.2d 939, 940-41 (Colo. 1979); *State v. Frierson,* 926 So.2d 1139, 1143-45 (Fla. 2006); *State v. Page,* 140 Idaho 841, 846-47, 103 P.3d 454, 459-60 (Idaho 2004); *State v. Martin,* 285 Kan. 994, 1003-05, 179 P.3d 457, 462-64 (Kan. 2008); *State v. Hill,* 725 So.2d 1282, 1283-87 (La. 1998); *State v. Thompson,* 231 Neb. 771, 777, 438 N.W.2d 131, 137-38 (Neb. 1989); *Jacobs v. State,* 128 P.3d 1085, 1087-89 (Okla. Crim. App. 2006).

they knew had an outstanding warrant, but later discovered an outstanding warrant for the defendant. 439 F.3d at 492-93. The Eighth Circuit found that the mistake of fact and law as to the validity of the detention of the defendant did not rise to the level of flagrant misconduct necessary to outweigh the significance of the intervening circumstance of discovering an arrest warrant. *Id.* at 495-97. As was the case in *Simpson*, there was no indication in the record in this case that Deputy Lambert randomly detained Appellant with the intent of searching Appellant to discover evidence of criminal activity or other pretextual purposes.[6]

Appellant's bottom line is the unsupported assertion that suppression in this case is necessary because otherwise law enforcement will run rampant with unjustified traffic stops in the hope that an arrest warrant will be found. Appellant's Brief at 24. As the Supreme Court has noted, there are substantial alternative mechanisms besides the exclusionary rule to deter and prevent police misconduct, and an assumption that the police would, if an exception was found to the exclusionary rule, intentionally engage in

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[6] Appellant also cites to dicta from a Texas case, *Fletcher v. State*, 90 S.W.3d 419, 420-21 (Tex. App. 2002). Appellant's Brief at 22-24. The actual holding in *Fletcher* complied with the general rule that an arrest warrant does attenuate an improper initial detention. 90 S.W.3d at 420-21. In dicta, *Fletcher* mentioned that a purely random seizure conducted in the hopes of finding an arrest warrant might cause a different result. *Id.* at 421. Respondent would respectfully suggest, as discussed below, that the decision to detain Appellant in this case is not the circumstance that the *Fletcher* dicta concerned.

a pattern of conduct that disregards the right of individuals is not warranted. *Hudson,* 547 U.S. at 596-99, 126 S.Ct. at 2166-68; see also *Hudson,* 547 U.S. at 603-04, 126 S.Ct. at 2170-71 (Kennedy, J., concurring).

As noted in *Hudson,* officers who engage in illegal detentions are subject to potential discipline by their department as well as civil liability for the violation of the rights of the person who was detained. Additionally, in most random stops or other illegal detentions, an arrest warrant would not be found (or another attenuating fact would not occur), and any information gained during the detention would be suppressed. As such, there is a substantial deterrent to prevent officers from illegally detaining individuals. Appellant offers no support for his assumption that, in the very limited circumstance that an officer finds a valid arrest warrant for the detainee during the detention, the refusal to exclude evidence found after the discovery of the arrest warrant would dramatically undercut the existing deterrent to illegal detentions.

In short, the fact that Appellant had a valid warrant for his arrest was the ultimate and proximate cause of Appellant being taken into custody. This Court should hold that, under those circumstances, an Appellant may not use any illegality in the detention prior to the execution of such warrant to attack conduct which occurred after the execution of such warrant. *Cf. United States v. Alvarez-Machain,* 504 U.S. 655, 112 S. Ct. 2188 (1991) (illegal abduction of defendant from Mexico was not bar to trial on valid charges in United States). Either under the attenuation doctrine or as an independent source of

the basis for the arrest, an arrest warrant should serve as an exception to the exclusionary rule.[7]

Furthermore, there is also a basis for the application of the inevitable discovery doctrine. Even if, as Appellant argues, Deputy Lambert should have released Appellant instead of detaining him while running a record check, Deputy Lambert did suspect that Appellant might have an outstanding warrant. Mot. Tr. 10, Tr. 10. Section 575.180 creates an obligation on the part of law enforcement officers to serve a valid arrest warrant. As such, believing that Appellant had such a valid arrest warrant, Deputy Lambert had an obligation to run a record check. Thus, even if Deputy Lambert had released Appellant first and then run a warrant check, Deputy Lambert would still have taken steps to arrest Appellant upon receiving the result of that record check.

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[7] There is the additional fact that the evidence in this case was not found during a search of Appellant, but, rather, was abandoned in Deputy Lambert's patrol car. Tr. 11. There are some cases holding that the abandonment doctrine does not apply when property is abandoned after an illegal detention (i.e. that the abandoned evidence is still the "fruits" of the illegal detention). *See, e.g.*, *State v. Solt*, 48 S.W.3d 677, 682 (Mo. App. S.D. 2002). But the reasoning for such a restriction of the abandonment doctrine partakes of "but for" causation and is contrary to the express language of the Fourth Amendment. In this case, Appellant has no reasonable expectation of privacy in the patrol car of Deputy Lambert. This issue need not be reached in this case, however, as the arrest of Appellant was lawful.

Like in *Segura,* this Court should not permit Appellant to engage in an argument based on a theory that, given a momentary head start, he would have managed to flee from the officer and destroy the evidence prior to Deputy Lambert getting confirmation from dispatch that Appellant was properly subject to arrest. *Cf. State v. Young,* 991 S.W.2d 173, 177-78 (Mo. App. S.D. 1999) (noting that inevitable discovery doctrine would apply if State could show that Appellant would have been validly arrested).[8]

In *State v. Oliver,* 293 S.W.3d 437 (Mo. banc 2009), this Court considered the inevitable discovery doctrine in the context of the claim of an invalid consent to a search. In that context, this Court noted the fact that the officer had contacted another detective to start a search warrant application demonstrated that the evidence found pursuant to the consensual search would have been inevitably discovered as a search warrant would have been obtained if consent had not been given. *Id.* at 443. Likewise, the fact that Deputy Lambert felt the need to run a warrant check on Appellant rather than immediately releasing him supports the inference that Deputy Lambert would have pursued this information even if Deputy Lambert had to "temporarily" release and follow Appellant while waiting to obtain this information.

[8] The decision in *Young* and similar Missouri cases taking a narrow view of the exceptions to the fruit of the poisonous tree doctrine pre-date the decision of the U.S. Supreme Court in *Hudson.* As such, it is necessary to consider whether those cases are contrary to the ruling in *Hudson* that but-for causation is not sufficient to defeat those exceptions.

Because the record supports the finding that Appellant's arrest was due to the existence of a valid arrest warrant, that valid arrest warrant – whether under the independent source doctrine, the inevitable discovery doctrine, or the attenuation doctrine – creates a break that should immunize any search subsequent to the arrest from any taint associated with any alleged illegality of the initial detention. However, in this case, neither the initial stop nor the detention to run a record check was invalid.

C. Validity of Initial Stop

In this case, contrary to the holding of the Southern District in its opinion, the initial detention of Appellant was a valid detention. Whether or not a detention or arrest is reasonable is based on objective facts, and the actual subjective reason of the officer for the detention is not relevant to the validity of the detention. *Devenpeck v. Alford,* 543 U.S. 146, 152-56, 125 S.Ct. 588, 593-95 (2004). If there is any valid objective reason supporting the detention, the detention is valid even if the subjective reason of the officer for the stop is invalid. *Id.* There are two alternative reasons for the initial detention supported by the record.

The first and most significant is the existence of a parole warrant for Terry Reed. While on patrol, Deputy Lambert was told by dispatch about that warrant and was given a description of Terry Reed. Mot. Tr. 9. Even without the description, Deputy Lambert knew Terry Reed. Mot. Tr. 9.

While the dispatch also included an anonymous tip regarding the likely location and likely vehicle occupied by Terry Reed (and thus helped Deputy Lambert as to where he should patrol in an effort to find Terry Reed), Deputy Lambert's actions in patrolling

the streets of Newburg, Missouri, was not a violation of Appellant's (or Mr. Reed's) rights. Likewise, the fact of that tip would not convert an otherwise valid detention into an invalid detention.

As the Western District of the Court of Appeals has recently noted, when a law enforcement officer has information that there is an outstanding warrant for a person, that officer has reasonable suspicion to detain that person for the purpose of confirming the existence of a warrant. *State v. Johnson*, 316 S.W.3d 390 (Mo. App. W.D. 2010).

As the United States Supreme Court noted in *United States v. Hensley*, 469 U.S. 221, 105 S.Ct. 675 (1984), that "where police have been unable to locate a person suspected of involvement in a past crime, the ability to briefly stop that person, ask questions, or check identification in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice. Restraining police action until after probable cause is obtained would not only hinder the investigation, but might also enable the suspect to flee in the interim and remain at large." 469 U.S. at 229, 105 S.Ct. at 680. The Supreme Court went on to hold that the "law enforcement interests at stake in these circumstances outweigh the individual's interest to be free of a stop and detention that is no more extensive than permissible in the investigation of imminent or ongoing crimes." *Id.*

The evidence presented at the suppression hearing and at trial indicated that, upon seeing Appellant driving a red pickup truck, Deputy Lambert reasonably believed that he

had encountered Terry Reed.[9] Mot. Tr. 9, 11-12, Tr. 9. As this Court has previously noted, the validity of a seizure is determined at the time of the seizure, and is not based on the results of the seizure. *See, e.g., Miller,* 894 S.W.2d at 653. The fact that Deputy Lambert learned after stopping the pickup that he was mistaken in his belief that he recognized Terry Reed as the driver does not make his initial belief unreasonable. Even without considering the tip, Deputy Lambert had a reasonable basis for suspecting that the driver of the vehicle was Terry Reed,[10] and, as such, the brief stop of the vehicle to confirm whether or not the driver was Mr. Reed was not an illegal detention.

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[9] Apparently, Appellant and Mr. Reed look somewhat similar.

[10] As noted below in the discussion of the alternative grounds for the stop, the information contained in the tip, and the partial corroboration of that tip, would have provided additional information supporting reasonable suspicion. As the Supreme Court held in *United States v. Arvizu*, 534 U.S. 266, 122 S.Ct. 744 (2001), courts considering whether or not there was reasonable suspicion should consider all of the information available to the officer, and should not use an approach that considers whether or not each piece of information individually rises to the level of reasonable suspicion. 534 U.S. at 273-78, 122 S.Ct. at 751-53.

The alternative ground for the stop was provided by the phone call[11] received by the Sherriff's Department that a red Ford pick-up was being driven in an apparently intoxicated matter in Newburg, Missouri. Mot. Tr. 9, 11-12, Tr. 9, 16. According to the *Official Manual of the State of Missouri, 2007-2008,* Newberg has a population of less than 500. *Id.* at 884. The dispatcher then informed Deputy Lambert to try to stop that vehicle. Mot. Tr. 9. Dispatch also gave Deputy Lambert a physical description of the driver. Mot. Tr. 9. Deputy Lambert then observed a red pickup driven by a person who matched that description, and immediately proceeded to stop the vehicle. Mot. Tr. 9.

As was emphasized in *Alabama v. White*, 496 U.S. at 325-28, 110 S. Ct. at 2415-17, whether a source provides sufficient information to rise to the level of reasonable suspicion depends upon the totality of the circumstances, balancing the degree of information provided and the degree to which that information is corroborated. In this case, because the information was passed through a dispatcher, it is unclear which parts of the information came from the source and which came from the dispatcher.

[11] It is unclear whether this phone call was from an anonymous source or from a named source. As discussed in *Alabama v. White,* 496 U.S. 325, 328-32, 110 S. Ct. 2412, 2415-17 (1989), when the source of the call is known, the past reliability of the source may provide sufficient indicia of reliability to justify a stop. Likewise, there is a difference between a tip from a private citizen which is presumed to be reliable and a tip from an informant. *State v. Daniels,* 221 S.W.3d 438, 440 n.1 (Mo. App. S.D. 2007).

Assuming that all the information came from the source, there was information of the type that would tend to lend credibility that the source was in possession of inside information or was an eye witness to the events that the source was relaying, and, as such, sufficient information to allow law enforcement to determine whether or not the tip was reliable. The report provided to Deputy Lambert described not only the vehicle and its general location, but also the name of the driver and a description of the driver. Mot. Tr. 9.

Furthermore, given the circumstances of the case, Deputy Lambert significantly managed to corroborate the report. The dispatch in this case came at around 8:30 p.m. on a Tuesday night in a small town. That makes this case somewhat different from a report in the middle of the day in a big city. At noon in St. Louis, Kansas City, Springfield, Jefferson City, or Columbia the report of a red pickup on a major city street might not be sufficient to identify the vehicle in question. In the latter part of a weekday night in a small town with few vehicles on the street, that information will leave very few possibilities especially when combined with a description of the driver.[12]

Furthermore, one of the pieces of information provided by the tip was that Mr. Reed was driving while intoxicated. Mot. Tr. 9, Tr. 9. Several different jurisdictions have held that driving while intoxicated poses a sufficient threat to public safety that would justify allowing a stop merely upon adequate corroboration that the vehicle being

[12] Minimal corroboration can be sufficient. See *State v. Deck*, 994 S.W.2d 527, 534-36 (Mo. banc 1999).

stopped was the vehicle described in the tip without requiring any observation by a law enforcement officer of any detail corroborating the claim of impairment. *See, e.g.*, *United States v. Wheat,* 278 F.3d 722, 736-37 (8th Cir. 2001); *People v. Wells,* 38 Cal.4th 1078, 1084-87, 136 P.3d 810, 814-16 (Cal. 2006); *Bloomingdale v. State,* 842 A.2d 1212, 1218-22 (Del. 2004); *State v. Prendergast,* 103 Hawaii 451, 460-61, 83 P.3d 714, 723-24 (Hawaii 2004); *State v. Walshire,* 634 N.W.2d 625 (Iowa 2001); *State v. Crawford,* 257 Kan. 492, 496-97, 67 P.3d 115, 118-19 (Kan. 2003); *State v. Scholl,* 648 N.W.2d 83 (S.D. 2004); *State v. Boyea,* 171 Vt. 401, 765 A.2d 862 (Vt. 2000). As *Wheat* noted, a drunk driver poses an imminent and immediate threat to public safety under circumstances in which a brief stop of the vehicle to determine whether a driver is impaired is the least intrusive method to remedy that potential threat. 278 F.3d at 736-37. As such, these cases look at the adequacy and accuracy of the description of the vehicle, the driver, the general location, and the passage of time between the call and the stop to determine if there is sufficient corroborated information to justify reliance on the claim that a crime is in progress and to determine whether the officer has reasonable suspicion to stop the specific vehicle in question. *Wheat,* 278 F.3d at 731-32; *Wells*, 38 Cal.4th at 1088, 136 P.3d at 816; *Bloomingdale,* 842 A.2d at 1222; *Prendergast,* 103 Hawaii at 461, 83 P.3d at 724; *State v. Christofferson,* 756 N.W.2d 230, 232 (Iowa App. 2008); *Boyea,* 171 Vt. At 410, 765 A.2d at 868.

In the present case, the officer received information describing the vehicle by color, make, and type, the individual driving it by name and descriptors, and the location where the vehicle was observed. Mot. Tr. 9. Within minutes, Deputy Lambert found a

vehicle of the same color and type driven by an individual matching the physical description given by dispatch. Mot. Tr. 9. The only difference between the report and the vehicle stopped was that, instead of being a Ford pickup, the vehicle was a Mazda pickup and it was being driven on Main Street not Fifth Street. Mot. Tr. 9. However, the two locations are within approximately one-half mile of each other. As such, the description of the location is sufficiently accurate given the inherent mobility of a motor vehicle. Furthermore, Deputy Lambert testified as to his experience with the difficulty of witnesses accurately describing the make of the vehicle. Mot. Tr. 9. In short, Deputy Lambert had a reasonable basis to believe that he had found the vehicle described by dispatch. Given the risk imposed by drunk drivers, this Court should hold, as the Eight Circuit, Kansas, Iowa, and South Dakota have previously held, that Deputy Lambert could rely on the report that the driver of the vehicle was intoxicated and stop that vehicle for the purpose of determining whether the driver was in fact intoxicated.

Based on all of the above, a reasonable officer in Deputy Lambert's position, based on the information in his possession, would have stopped the vehicle driven by Appellant to determine if Mr. Reed was in that vehicle (or, alternatively, to determine if the driver was intoxicated) and, if so, to confirm if there was, in fact, an outstanding parole warrant for Mr. Reed. As such, the initial stop of Appellant's vehicle was supported by reasonable suspicion.

D. Continued Detention

Appellant claims that, notwithstanding the warrant for Mr. Reed, the detention was illegal because Appellant was held (after Deputy Lambert discovered that he was not Mr.

Reed) solely on the basis of Deputy Lambert's suspicion, based on Appellant's past history, that he may have warrants.[13] Appellant's Brief at 18-23. Contrary to Appellant's arguments, Deputy Lambert did have sufficient reasonable suspicions authorizing him to continue to detain Appellant pending a warrant check.

Reasonable suspicion is a lesser standard and does not require that police "know" that criminal activity has taken place. *Cf. State v. Goff*, 129 S.W.3d 857, 864 (Mo. banc 2004) ("An officer need not be certain that criminal activity is taking place . . . ."); *Daniels*, 221 S.W.3d at 442 ("The facts and inferences need not rule out all possibilities except criminal activity."). As the Southern District noted in *Daniels*, reasonable suspicion requires only "some minimal level of objective justification" and is less demanding than "a fair probability." *Id.* Furthermore, a detention may be lawfully extended based on a new reason for detention if that new reason is developed in the course of the original lawful detention. *See, e.g., State v. Hoyt*, 75 S.W.3d 879, 883 (Mo. App. W.D. 2002); *State v. Lord*, 43 S.W.3d 888, 891 (Mo. App. S.D. 2001).

Appellant was not a stranger to Deputy Lambert. Mot. Tr. 9-10, Tr. 10. In his experience, Deputy Lambert knew that Appellant had been arrested on multiple occasions for outstanding warrants, and that Appellant somewhat regularly had outstanding warrants. Mot. Tr. 10, 13, Tr. 10. While Deputy Lambert did not know for certain that

[13] In making this argument, Appellant ignores the alternative grounds for stopping the vehicle – the investigation of the potential driving while intoxicated – which Appellant merely assumes was improper. Appellant's Brief at 12-14, 23-24.

Appellant had outstanding warrants, Appellant's past history gave Deputy Lambert a reasonable basis to suspect that Appellant could have outstanding warrants.

Contrary to Appellant's argument, knowledge of past activity has previously been held to be a factor that can be considered in determining whether or not there was reasonable suspicion justifying an extended detention. *See, e.g., State v. Hawkins,* 137 S.W.3d 549, 558 (Mo. App. W.D. 2004). Appellant attempts to distinguish *Hawkins* on the grounds that other facts were also present in *Hawkins* to justify the detention. Appellant's Brief at 24. However, the nature of the investigation in *Hawkins* involved narcotics. 137 S.W.3d at 551-53. Respondent would respectfully submit that when the extended detention is limited to a brief warrant or record check, knowledge of past activity can be sufficient to justify such a limited extension.

Additionally, this Court has recognized that the facts to be considered in determining the validity of a detention are not limited to the personal knowledge of the officer conducting the detention. *State v. Goff*, 129 S.W.3d 857, 863 (Mo. banc 2004). In this case, the individuals from the Sheriff's Department with a nexus to the investigation would include the dispatcher. The knowledge of the dispatcher as to whom in the area has outstanding warrants is contained within a computer system that connects to MULES. Deputy Lambert had objective reasons to believe that Appellant may have had a warrant. Just, as in *Goff*, he should not be required to have confirmed that belief with the dispatcher prior to the detention.

As such, while one of the initial purposes of the stop – to detain Mr. Reed – might have expired when Deputy Lambert discovered that it was Appellant in the vehicle, that

discovery generated sufficient reason for Deputy Lambert to suspect that Appellant might have warrants authorizing a brief extension of the detention to run a warrant check on Appellant. As such, detaining Appellant for that limited purpose was a legitimate and permissible investigatory stop.

E. Summary

The bottom line in this case is that, when Deputy Lambert stopped Appellant, he had reasons to have a good faith belief that the occupant of the car had outstanding warrants. When he arrested Appellant, Deputy Lambert was acting in good faith on an outstanding warrant.

As the Supreme Court has recently re-affirmed in *Herring v. United States*, 129 S. Ct. 695 (2008), when officers act in good faith on a purportedly valid arrest warrant, the exclusionary rule is inapplicable even if the arrest warrant ends up being invalid. If the exclusionary rule is inapplicable when the arrest warrant ends up being invalid, it should also be held to be inapplicable when the arrest warrant supporting the ultimate arrest is valid but the initial encounter is based on erroneous information.

The purpose of the Fourth Amendment is not to invalidate arrests based on valid warrants but to encourage officers to obtain valid warrants. In this case, there was a valid warrant, and any complaints which Appellant may have about the actions of Deputy Lambert prior to the service of that warrant should not be used to undermine the warrant. Furthermore, neither of the complaints in this case are valid as, under the circumstances of this case, the information provided to Deputy Lambert was sufficient to authorize the stop of the vehicle driven by Appellant and, once Deputy Lambert discovered that Appellant was the

driver, Deputy Lambert's knowledge of Appellant's history justified a brief detention to run a warrant check on Appellant.

Appellant's Point Relied On should be denied.

CONCLUSION

The judgment of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 7,509 words, excluding the cover, certification and appendix, as determined by Microsoft Word 2003 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this 27th day of October, 2010, to:

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