

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
Associate Division 26

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1731-CR05171-01
)	
RICHARD ARTHUR RATHBUN,)	
)	
Defendant.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing on the record on Defendant’s Motion to Suppress Evidence. Defendant appeared in person and with his attorney, Christopher Hatley. The State appeared by Assistant Prosecuting Attorney Scott Lucy. Following the presentation of evidence, the Court took the matter under advisement.

Findings of Fact

The Court heard testimony from Officer Jordan Lilley of the Springfield Police Department. Officer Lilley testified that on June 10, 2016, he conducted a traffic stop. The Court finds the following from Officer Lilley’s testimony as credible:

1. The traffic stop was the result of a vehicle failing to display a valid license plate.
2. The driver of the vehicle was subsequently identified as Defendant, with the passenger in the vehicle being Defendant’s wife (Ms. Rathbun).
3. Defendant was not free to leave at any point during the stop nor did Officer Lilley ever advise Defendant that he could leave.
4. Defendant had no identification but identified himself verbally and admitted that he was driving on a suspended license.
5. Ms. Rathbun produced a valid Missouri driver’s license upon request.
6. No contraband was viewed by Officer Lilley in plain view and nothing during his interactions with Defendant and Ms. Rathbun made him feel that Defendant was somehow impaired or that either he or Ms. Rathbun were involved in any other criminal activity.
7. Officer Lilley then conducted additional investigation resulting in (a) finding that neither Defendant nor Ms. Rathbun had warrants for their arrest, (b) confirmation of

Defendant's identity and the fact that he did not have a valid driver license, and (3) finding that Defendant had previously "been arrested" for drugs, though no details of this information could be recalled by Officer Lilley.

8. After this additional investigation, Officer Lilley returned to Defendant's vehicle, asked Defendant to step out of the vehicle, and asked for consent to search Defendant's vehicle.
9. Defendant gave consent to Officer Lilley to search Defendant's vehicle.
10. Officer Lilley located a controlled substance during his search of Defendant's vehicle.

Conclusions of Law

A person aggrieved by an unlawful seizure made by an officer and against whom there is a pending criminal proceeding growing out of the subject matter of the seizure may file a motion to suppress the use in evidence of the property or matter seized. The motion to suppress may be based upon any one or more of the following grounds:

1. That the search and seizure were made without warrant and without lawful authority;
2. That the warrant was improper upon its face or was illegally issued, including the issuance of a warrant without proper showing of probable cause;
3. That the property seized was not that described in the warrant and that the officer was not otherwise lawfully privileged to seize the same;
4. That the warrant was illegally executed by the officer;
5. That in any other manner the search and seizure violated the rights of the Defendant under Section 15 of Article I of the Missouri Constitution, or the Fourth and Fourteenth Amendments of the U. S. Constitution.

Section 542.296(1) and (5), RSMo. The burden of going forward with the evidence and the risk of non-persuasion are upon the State to show by a preponderance of the evidence that the motion to suppress should be overruled. *Section 542.296(6), RSMo.* "The weight of the evidence and the credibility of the witnesses are for the trial court's determination." *State v. Kovach*, 839 S.W.2d 303, 307 (Mo. App. 1992). *State v. Avent*, 432 S.W.3d 249, 252 (Mo. App. 2014). In warrantless search cases, the burden is on the State to justify a warrantless search and to demonstrate that such falls within an exception to the warrant requirement. *State v. Burkhardt*, 795 S.W.2d 399, 404 (Mo. 1990).

The Fourth Amendment to the United States Constitution guarantees all citizens the right to be free from unreasonable searches and seizures. *State v. Granado*, 148 S.W.3d 309, 311 (Mo. banc 2004). "A routine traffic stop based on the violation of state traffic laws is a justifiable seizure under the Fourth Amendment." *State v. Barks*, 128 S.W.3d 513, 516 (Mo. banc 2004). The period

of detention, however, “may only last for the time necessary for the officer to conduct a reasonable investigation of the traffic violation.” *Granado*, 148 S.W.3d at 311. “Once the investigation of a traffic stop is concluded, the detainee must be allowed to proceed unless specific, articulable facts create an objectively reasonable suspicion that the individual is involved in criminal activity.” *State v. Dickerson*, 172 S.W.3d 818, 820 (Mo. App.2005). *State v. Jones*, 204 S.W.3d 287, 292 (Mo. App. 2006).

In this case, the purpose behind Officer Lilley’s initial stop of Defendant’s vehicle (an investigation of a vehicle which failed to display a valid license plate) was completely different than the purpose behind his search of Defendant’s vehicle (an attempt to discover contraband). Accordingly, while it was clearly established by the evidence that Defendant *consented* to the search of his vehicle, it must be ascertained whether Officer Lilley was in a lawful position to *request* consent to search.

It is the Court’s determination and conclusion from the evidence and the reasonable inferences drawn therefrom that once Officer Lilley had conducted the investigation referenced in *Findings of Fact 7*, his investigation of the traffic violation had been completed. At that point, one of three possible scenarios should have occurred:

1. Having determined there was no basis to issue citations to Defendant, there was nothing else for Officer Lilley to advise Defendant other than that he was free to leave.
2. Having determined there was basis to issue citations to Defendant, Officer Lilley would have written the citations and provided them to Defendant when he re-approached the vehicle.
3. Having determined that there was probable cause to arrest Defendant, Officer Lilley would have asked Defendant to exit the vehicle at which time he would have placed Defendant under arrest.

We know, however, that none of those scenarios took place and, instead, the State argues a fourth scenario was actually what occurred: that even after all his investigation, when he re-approached the vehicle Officer Lilley had *still* not decided whether he was going to issue citations to Defendant. The State in essence argues Officer Lilley’s purported period of continuing contemplation provided him the opportunity to ask Defendant for consent to search the vehicle. The Court does not find as credible that, at the time he requested Defendant for consent to search, Officer Lilley had not decided whether he was going to issue citations. Having made that determination, it was inherent on Officer Lilley to conclude the traffic stop; he did not do so.

The final possible argument by which Officer Lilley could have been in a lawful position to ask Defendant for consent to search the vehicle was if the officer possessed specific, articulable facts that created an objectively reasonable suspicion Defendant was involved in criminal activity. It is the obligation of the Court to determine whether there is evidence to support the existence of such specific, articulable facts. Not wishing to be repetitious, suffice it to say the Court considers in full all *Findings of Fact* made herein. This review naturally leads to the following question: “What else was there?” The only specific investigative fact known by Officer Lilley which could

be argued to be Defendant's involvement in criminal activity was that Defendant had *previously* "been arrested" for drugs. This Court concludes that this information alone did not create an objectively reasonable suspicion that Defendant was involved in criminal activity during what was an otherwise justifiable seizure. Without such objectively reasonable suspicion, Officer Lilley was not warranted in continuing to detain Defendant—a detention which Officer Lilley utilized to seek Defendant's consent to search the vehicle.

Order

Defendant's Motion to Suppress Evidence is granted.



Date: February 14, 2019

J. Ronald Carrier, Judge