

**IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
DIVISION IV**

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 305CF3235
)	
ROBERT L WEBER,)	
)	
Defendant.)	
)	

ORDER

On October 11, 2005, the Court took up for hearing Defendant's Motion to Suppress Evidence and Motion to Suppress Statements. The State appeared by Assistant Prosecuting Attorney Reggie Breshears. The Defendant appeared in person and by Attorney Christopher Hatley. The Court heard evidence and arguments on the matter; thereafter the Court took the matter under advisement.

FACTUAL FINDINGS

Deputy Johnson, Greene County Sheriff's Department, testified that he observed two vehicles traveling over the speed limit on I-44 with the second vehicle following the first too closely. He then observed the lead vehicle itself following another vehicle too closely. Deputy Johnson then attempted to get between the two vehicles he initially observed and was prevented from doing so by the vehicle in the rear. When he did get behind the vehicle Mr. Weber was driving the other vehicle pulled along side in the left lane, the driver communicated with Mr. Weber, and then continued on the interstate. Mr.

Weber pulled his vehicle onto the shoulder. Mr. Weber indicated that he was traveling with the other vehicle which had attempted to interfere with the Deputy Johnson's stop of Mr. Weber's vehicle. Mr. Weber also indicated that the vehicle he was driving did not belong to him but to a friend. Deputy Johnson testified that Mr. Weber had air freshener hanging from the rearview mirror, had maps on the seat, a cell phone, Lysol and more air freshener, bottled water, pop cans, and a blanket which covered up a large item in the rear portion of the vehicle. Deputy Johnson observed only one small duffel bag for clothing. Mr. Weber indicated that he had been in Arizona for the past week on spring break and was going home to Indiana. He avoided eye contact with Deputy Johnson and continued to tremble and act nervous throughout the stop.

Deputy Johnson testified that he, in his opinion, had probable cause of criminal activity at this point given the initial actions of both vehicles and drivers, his knowledge of I-44 as a drug corridor, his observations of Mr. Weber's borrowed vehicle and contents, and Mr. Weber's behavior during the stop.

Deputy Johnson testified that, even though he had given a verbal warning and the traffic stop was completed, he would not have allowed Mr. Weber to leave based upon the facts he had at that time. Deputy Johnson asked for permission to search the vehicle and it was granted. Twenty-three bundles of Marijuana wrapped in cellophane was discovered secreted in a large speaker or amplifier box in the rear of the vehicle.

Defendant, Mr. Weber, was subsequently charged with the class B felony of possession of a controlled substance with the intent to distribute.

CONCLUSIONS OF LAW

A. The Stop

A police officer is authorized to stop a vehicle observed violating the traffic laws of the state. *See State v. Smith*, 926 S.W.2nd 689, 692 (Mo.App.1996). Deputy Johnson had probable cause to stop Mr. Weber for violating the traffic laws of Missouri, so the initial stop was valid. “[S]o long as the police are doing no more than they are legally permitted and objectively authorized to do, [the resulting stop or] arrest is constitutional.” *State v. Malaney*, 871 S.W.2nd 634, 637 (Mo.App.1994) (quoting *United States v. Trigg*, 878 F.2nd 1037, 1041 (7th Circ.1989)).

B. The Search and Seizure

The Fourth Amendment to the United States Constitution guarantees the right of all citizens to be free from unreasonable searches and seizures. U.S. Const. Amend. IV. Missouri’s corresponding constitutional search and seizure provision, found in Mo. Const. Art. I, Section 15, is co-extensive with the Fourth Amendment. *State v. Deck*, 994 S.W.2nd 527, 534 (Mo. Banc 1999).

Regardless of its initial validity, “[a] vehicle stop to issue a [warning] is a seizure within the meaning of the Fourth and Fourteenth Amendments.” *State v. Stevens*, 845 S.W.2nd 124, 128 (Mo.App.1993). A routine traffic stop based on a violation of state traffic laws is a justifiable seizure under the Fourth Amendment. *State v. Slavin*, 944 S.W.2nd 314, 317 (Mo. App. 1997). “If the detention extends beyond the time reasonably necessary to effect its initial purpose, the seizure may lose its lawful character unless a new factual predicate for reasonable suspicion is found during the period of the lawful

seizure.” *Stevens*, 845 S.W.2nd at 128. Reasonable suspicion must be based upon a specific, articulable set of facts indicating that criminal activity is afoot, and not just an “inchoate and unparticularized suspicion or ‘hunch’.” *Terry v. Ohio*, 392 U.S. 1, 20, 88 S.Ct. 1868, 1879, 20 L.Ed.2nd 889 (1968). *State v. Martin*, 79 S.W.3rd 912, 916 (Mo.App.2002).

“Reasonable suspicion is determined by looking at the totality of the circumstances to determine if the content of the information possessed by the police and its degree of reliability is sufficient to create a ‘reasonable suspicion’ of criminal activity. *State v. Berry*, 54 S.W.3rd 668, 673 (Mo.App.2001). Factors that in and of themselves appear innocent may, when added together, amount to reasonable suspicion that would justify detaining an individual for a brief time to allow some investigation to be made. *State v. Bizovi*, 129 S.W.3rd 429 (Mo.App.2004).

It is true as the Defendant argues that a traffic detention “may only last for the time necessary for the officer to conduct a reasonable investigation of the traffic violation...including asking for driver’s license and registration, requesting the driver to sit in the patrol car, and asking the driver about his destination and purpose”. *State v. Barks*, 128 S.W.3rd 513, 516(Mo.banc 2004). And once these steps have been completed, the detainee must be permitted to go, absent reasonable suspicion that the person is involved in criminal activity based on specific, articulable facts that arose within the perimeters of the traffic stop itself. *Id.*[emphasis added].

In this case, based upon an examination of the totality of the circumstances, Deputy Johnson had reasonable suspicion that Mr. Weber was involved in criminal activity based upon specific, articulable facts that did arise within the perimeters of the

traffic stop itself. These facts distinguish Mr. Weber's case from the authority cited by Defense Counsel.

The Deputy therefore had authority to make further investigation, including asking Mr. Weber for consent to search the vehicle, which Mr. Weber granted. The resulting search and seizure of contraband, as well as statements made by the Defendant, were lawfully obtained.

IT IS THEREFORE ORDERED that the Defendant's Motion to Suppress Evidence and Motion to Suppress Statements are overruled.

Date

Thomas E. Mountjoy
Circuit Court Judge, Div. 4