Missouri Court of Appeals

[redacted]

Division [redacted]

STATE OF MISSOURI, Plaintiff - Respondent, vs. [redacted] Defendant - Appellant.	)	No. [redacted] Opinion filed: May 11, 2010

APPEAL FROM THE CIRCUIT COURT OF PHELPS COUNTY

Honorable Mary W. Sheffield, Circuit Judge

AFFIRMED

[redacted] ("Defendant") was convicted after a bench trial of possession of a controlled substance, a violation of section 195.202,[1] and received a seven year sentence.[2] Defendant asserts on appeal that the trial court erred by refusing to suppress evidence located after Defendant was arrested because the initial stop of Defendant's vehicle was not based on reasonable suspicion and because he was detained beyond the time necessary to accomplish the purpose of the initial investigatory stop. While we

[1] All statutory references are to RSMo 2000, unless otherwise noted.
[2] The sentence was executed under section 559.115, making Defendant eligible for release from the Department of Corrections after 120 days upon successful completion of the Shock Incarceration Program.

agree that Defendant was illegally stopped, the taint from that illegal seizure of his person was attenuated by the subsequent legal arrest of Defendant based on an outstanding warrant. Because any taint had dissipated before the evidence Defendant seeks to suppress was discovered, the trial court did not clearly err by refusing to apply the exclusionary rule and we affirm the conviction.

Factual and Procedural Background

On March 25, 2008, Officer [redacted] ("Officer [redacted]") of the Phelps County Sheriff's Department received a dispatch that indicated a possible drunk driver had left a nearby address in a red Ford pickup. The dispatcher also stated that the suspect was [redacted] ("Mr. [redacted]), a person Officer [redacted] was acquainted with and knew to have an outstanding parole warrant. It is undisputed that the information the dispatcher relayed had come from an anonymous tip.

While patrolling the general area indicated in the dispatch, Officer [redacted] saw a red Mazda pickup being operated by a driver who matched the description given in the dispatch. While the red pickup Officer [redacted] saw did not exactly match the dispatcher's description of the vehicle at issue, Officer [redacted] knew that witnesses sometimes made mistakes when identifying the make of a vehicle. Officer [redacted] followed the Mazda truck and observed no traffic violations or signs of intoxication. Despite this lack of a traffic violation or any indication that the driver of the vehicle might be intoxicated, Officer [redacted] decided to conduct an investigatory stop.

When Officer [redacted] approached the window of the vehicle, he realized that the driver was not Mr. [redacted] Instead, Officer [redacted] immediately recognized the driver as Defendant, a person he had known for several years and knew to have previously been

arrested on outstanding warrants. With this history in mind, Officer [redacted] asked Defendant for his driver's license and ran it for warrants. The warrant check revealed that Defendant had an outstanding arrest warrant issued by the Newburg Municipal Court relating to a possession of marijuana charge. After discovering the existence of the warrant, Officer [redacted] placed Defendant under arrest.

Incident to the arrest of Defendant on the outstanding warrant, Officer [redacted] searched Defendant for possible weapons and discovered a methamphetamine pipe in one of the pockets of Defendant's coat. After arriving at the jail, Officer [redacted] pulled Defendant out of his patrol car and had Defendant stand against the wall. Officer [redacted] then lifted up the backseat of his patrol car and found under it a small bag of a white powdery substance. Subsequent laboratory testing of that substance indicated it to be approximately 0.05 grams of methamphetamine. Officer [redacted] testified that he knew the methamphetamine belonged to Defendant because he had cleaned his patrol car before his shift began, and Defendant had been the only person in his car since that time.

After Defendant was charged with possession of a controlled substance, he filed a motion to suppress the evidence of contraband found on Defendant's person and in Officer [redacted] patrol car. The trial court heard evidence on the motion to suppress on September 11, 2008, and denied the motion. The trial court also admitted the challenged evidence at Defendant's trial.

Standard of Review

This Court's review of the trial court's decision not to suppress evidence is "limited to a determination of whether there was substantial evidence to support the ruling." ***State v. Hawkins***, 137 S.W.3d 549, 556 (Mo. App. W.D. 2004). We will reverse

only if we find the trial court's ruling on a motion to suppress was clearly erroneous. ***State v. Slavin***, 944 S.W.2d 314, 317 (Mo. App. W.D. 1997). "The trial court's ruling is clearly erroneous if this court is left with a definite and firm belief a mistake has been made." ***State v. Hoyt***, 75 S.W.3d 879, 882 (Mo. App. W.D. 2002).

To determine if sufficient evidence was presented, we review evidence adduced at the hearing on the motion to suppress as well as evidence presented at trial. ***State v. Breese***, 250 S.W.3d 413, 418 (Mo. App. S.D. 2008). The evidence is viewed in the light most favorable to the order challenged on appeal and we disregard all contrary evidence and inferences. ***Hoyt***, 75 S.W.3d at 882. While we defer to the trial court's factual findings and the inferences to be drawn therefrom, the issue of whether the Fourth Amendment has been violated is a legal question we review *de novo*. ***Ornelas v. United States***, 517 U.S. 690, 699 (1996).

Analysis

Defendant's first point alleges the trial court erred in overruling his motion to suppress and admitting the evidence found on his person and in Officer [redacted] patrol car at trial because the traffic stop was not based on reasonable suspicion in that the anonymous tip that provided the basis for the dispatch was uncorroborated and Defendant did not commit any traffic violations. Defendant's second point asserts the trial court erred in overruling his motion to suppress and admitting the evidence located on his person and in the patrol car because he "was detained beyond the investigatory purpose for the traffic stop without any reasonable suspicion[.]"

We agree with Defendant that the initial traffic stop was invalid, rendering moot his alternative claim that the initial stop was impermissibly extended. However, the fact

that a seizure based solely on an uncorroborated, anonymous tip is an unreasonable one under the Fourth Amendment does not end our inquiry. We must next determine whether the trial court clearly erred in refusing to apply the exclusionary rule as a means of deterring similar conduct by law enforcement officers in the future.

The Missouri constitution offers the same level of protection as the United States Constitution with respect to unreasonable searches and seizures. ***State v. Woods***, 284 S.W.3d 630, 634 (Mo. App. W.D. 2009). The Fourth Amendment of the United States Constitution reads, in its entirety, as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The right protected by the Fourth Amendment is the right of every citizen to be free from unreasonable searches and seizures. ***State v. Dye***, 272 S.W.3d 879, 881 (Mo. App. S.D. 2008).

"The Fourth Amendment is not offended when a law enforcement officer briefly stops a person or automobile to investigate if the officer has reasonable suspicion, based upon specific and articulable facts, that the person or occupant of the vehicle is involved in criminal activity." ***State v. King***, 157 S.W.3d 656, 662 (Mo. App. W.D. 2004) (citing ***State v. Franklin***, 841 S.W.2d 639, 641 (Mo. banc 1992), which in turn cited ***Terry v. Ohio***, 392 U.S. 1, 21 (1968) and ***United States v. Brignoni-Ponce***, 422 U.S. 873, 882 (1975)). The existence of reasonable suspicion is an objective determination to be made based on the totality of the circumstances. ***Hawkins***, 137 S.W.3d at 557. "A suspicion is reasonable when the officer is able to point to specific and articulable facts which, taken

together with rational inferences from those facts, reasonably warrant that intrusion." ***Woods***, 284 S.W.3d at 635.

In the instant case, the information that prompted Officer [redacted] to stop Defendant came from a dispatch that was based on an anonymous tip. "An anonymous tip by itself seldom, if ever, provides reasonable suspicion that a person has committed a crime warranting a *Terry*-stop." ***State v. Weddle***, 18 S.W.3d 389, 393 (Mo. App. E.D. 2000). However, if an anonymous tip is corroborated by independent police work, it may carry "sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." ***Florida v. J.L.***, 529 U.S. 266, 270 (2000). To provide reasonable suspicion, the tip must not only be reliable in its assertion of criminal activity, but it must also identify a definite person and be able to provide a wide range of details relating not just to easily obtained facts but also to future movements of the suspect. ***Id.*** at 272; ***State v. Roark***, 229 S.W.3d 216, 221 (Mo. App. W.D. 2007).

The State argues that Officer [redacted] had a reasonable basis on which to believe that he had located the vehicle described in the dispatch. This contention simply misses the point. Even if the vehicle stopped by Officer [redacted] had been an exact match for the vehicle described in the dispatch, that description was based on an uncorroborated, anonymous tip -- an insufficient basis on which to make a stop. In addition, as argued by Defendant, if the initial stop had been proper, it should have ceased as soon as Officer [redacted] realized the driver was not Mr. [redacted]

"If a detention continues '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 lawful seizure.'" ***Weddle***, 18 S.W.3d

at 394 (quoting ***State v. Stevens***, 845 S.W.2d 124, 128 (Mo. App. E.D. 1993)). An investigatory stop may not last any longer than is necessary to carry out the purpose of the stop. ***Florida v. Royer***, 460 U.S. 491, 500 (1983). In the case at bar, Officer [redacted] only stopped Defendant's car because he thought it was being driven by Mr. [redacted] an individual said to be subject to an immediate seizure of his person based on an outstanding parole warrant. Once Officer [redacted] realized that Defendant was not Mr. [redacted] he should have allowed Defendant to proceed without any further questioning unless he had observed other specific, articulable facts that would have supported an objectively reasonable suspicion that Defendant was involved in criminal activity. *See* ***Weddle***, 18 S.W.3d at 394. There is nothing in the record to indicate that Officer [redacted] had formed any such reasonable suspicion.

Admissibility of the Methamphetamine Evidence

The next issue this Court must address is whether the trial court clearly erred in refusing to suppress evidence located after the illegal stop had taken place. Specifically, we must determine whether the fact that there was an outstanding warrant for Defendant's arrest at the time he was stopped was sufficient to attenuate the taint of the unconstitutional seizure.

As a general rule, evidence discovered and later found to be the result of a Fourth Amendment violation must be suppressed as the "fruit of the poisonous tree." ***King***, 157 S.W.3d at 664. This general rule, however, is not absolute. ***Id.*** "The Court has never held that evidence is 'fruit of the poisonous tree' simply because 'it would not have come to light but for the illegal actions of the police.'" ***Segura v. United States***, 468 U.S. 796, 815 (1984) (quoting ***Wong Sun v. United States***, 371 U.S. 471, 487-88 (1963)).

In ***Hudson v. Michigan***, 547 U.S. 586 (2006), the Supreme Court further emphasized that "whether the exclusionary sanction is appropriately imposed in a particular case . . . is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.'" ***Hudson***, 547 U.S. at 591-92 (quoting ***United States v. Leon***, 468 U.S. 897, 906 (1984)). "Attenuation also occurs when, even given a direct causal connection, the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." ***Id.*** at 593. This means that exclusion cannot be based on the mere fact that a constitutional violation was the "but-for" cause of obtaining the evidence. ***Hudson***, 547 U.S. at 592; ***Segura***, 468 U.S. at 815. Instead, the appropriate analysis is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of the illegality or instead by means sufficiently distinguishable to be purged of the primary taint." ***Wong Sun***, 371 U.S. at 487-88.

In ***Hudson***, police obtained a warrant to search the home of Booker Hudson for drugs and firearms. ***Hudson***, 547 U.S. at 588. When the police arrived to execute the warrant, they announced their presence but entered the residence very quickly. ***Id.*** After entering, the police discovered inculpatory evidence. ***Id.*** Beginning at the trial level, the state of Michigan conceded that the failure of the police to wait a sufficient amount of time between announcing their presence and entering the residence was a violation of Hudson's Fourth Amendment rights under what has become known as the "knock-and-announce" rule. ***Id.*** at 590. Thus, the only issue before the Supreme Court was how that admitted violation affected the admissibility of the evidence thereafter seized pursuant to

a valid search warrant. ***Id.*** The Court held that the "knock-and-announce" rule has never protected a person's interest in preventing police officers from obtaining evidence pursuant to a valid search warrant. ***Id***. at 594. Based on this principle, the Court stated that because the interests violated in ***Hudson*** had nothing to do with the seized evidence, the exclusionary rule was inapplicable. ***Id***.

We believe the principle set forth in ***Hudson*** has application here. Defendant's Fourth Amendment right to be free from unreasonable seizure was violated when he was stopped and detained without a reasonable, articulable suspicion that he was engaged in criminal activity. However, the methamphetamine evidence found on Defendant's person and in Officer [redacted] police cruiser was not found because of the invalid stop. Instead, this evidence was found after a search incident to Defendant's arrest on a valid warrant. The existence of that outstanding arrest warrant meant that Defendant could be seized and arrested at any time by any law enforcement officer. To our knowledge, an absence of reasonable, articulable suspicion necessary to support a *Terry* stop has never protected a person from being seized based on a valid arrest warrant.

Defendant relies on ***State v. Taber***, 73 S.W.3d 699 (Mo. App. W.D. 2002), in arguing that the methamphetamine evidence must be suppressed as the fruit of the poisonous tree. While we acknowledge that ***Taber*** reached such a conclusion, it did so by relying on the "but-for" analysis since rejected in ***Hudson*** as insufficient. We are bound to follow the latest controlling decision from the United States Supreme Court concerning the proper application of the Fourth Amendment's exclusionary rule. *See* ***Beach v. State***, 220 S.W.3d 360, 365-66 (Mo. App. S.D. 2007).

The fact that Defendant would arguably not have been stopped by Officer [redacted] "but-for" the uncorroborated anonymous tip is not sufficient to mandate the imposition of the exclusionary rule. ***Hudson***, 547 U.S. at 592; ***Segura***, 468 U.S. at 815.

Thus, while we do not condone Officer [redacted] stop of Defendant's vehicle based on an uncorroborated, anonymous tip, we cannot say the trial court clearly erred by refusing to apply the exclusionary rule under the circumstances present here. The fact that Officer [redacted] arrested Defendant pursuant to an outstanding warrant before searching for any evidence attenuated any taint that evidence would otherwise carry.

The judgment of the trial court is affirmed.

Don E. Burrell, Judge

[redacted] J. - Concurs

[redacted].J. - Concurs

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