

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMIE LEE ANDERSON

APPELLANT

VS.

NO. 2008-KA-0601-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This appeal proceeds from a judgment of conviction from the Circuit Court of Neshoba County, Honorable Marcus D. Gordon presiding. Jamie Lee Anderson was convicted of possession of methamphetamine and sentenced, as a second drug offender, to twelve (12) years in the custody of the Mississippi Department of Corrections. C.P. 21-23, 26-27. After the denial of a post trial motion, Anderson appealed. C.P. 28-30.

ISSUE

- I. WHETHER THE TRIAL COURT ERRED IN DENYING
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE?**

STATEMENT OF THE FACTS

Acting in response to two (2) separate citizens' tips of possible criminal activity, Mississippi Bureau of Narcotics Agent Sistrunk and officers from the Neshoba County Sheriff's Department went to the home of Thomas Walden, a known convicted felon, to investigate. **T. 18-20, 23.** Upon arrival at the home, Agent Sistrunk observed Daniel Day asleep on the sofa with a handgun in close proximity. **T. 21- 22, 66.** Unable to waken Day through the glass storm door and knowing him to also be a convicted felon, the officers entered the home and found the defendant in a chair behind the door. **T. 23.** Upon securing Day and the handgun, the defendant was taken to Officer Truett on the front porch for safety purposes, as Deputy Sistrunk made a quick search for Walden in the trailer. **T. 21, 22, 67.** Defendant was compliant with the officers.

On the front porch, Deputy Truett conducted a pat-down search of the defendant for weapons and felt a pill bottle in the defendant's pants pocket. **T. 39-40** Truett removed the bottle from the defendant's pocket, looked into it without opening it, and saw contraband. **T. 40.** The defendant was arrested and eventually convicted by a jury of possession of methamphetamine in an amount of more than .10 grams but less than 2 grams. **C.P. 3-5, 21-22.**

SUMMARY OF THE ARGUMENT

Looking at the totality of the circumstances, reasonable suspicion existed to warrant a pat down weapons search of the defendant as permitted by *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). While conducting that search, Officer Truett could seize non-threatening contraband detected through the sense of touch, so long as the search did not exceed *Terry*.

ARGUMENT

When an appellate court reviews a trial court's ruling on a suppression hearing, it must determine whether the trial court's finding is supported by substantial evidence considering the totality of the circumstances. *Watts v. State*, 936 So.2d 377, 382 (Miss. Ct.App.2006) quoting *Reid v. State*, 825 So.2d 701,702 (Miss.Ct.App.2002). The admissibility of evidence lies within the trial court's discretion and the trial court will only be reversed if that discretion is abused. *Crawford v. State*, 754 So.2d 1211, 1215 (Miss.2000). With this standard in mind we examine Anderson's argument.

In his only assignment of error, the defendant argues that the search of his person exceeded the scope of a weapons pat-down allowed by *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). At trial, Anderson moved to suppress the methamphetamine seized during Deputy Truett's pat down. Outside the presence of the jury, an extensive suppression hearing was held, with testimony and argument by counsel. **T. 22-61.** After making a finding of fact and conclusions of law, Judge Gordon denied the defendant's motion to suppress the methamphetamine evidence. **T. 60.**

Defendant relies on *McFarlin v. State*, 883 So.2d 594 (Miss.App.,2004.) wherein the appellate court reversed and rendered McFarlin's conviction for possession of a controlled substance. In *McFarlin*, a police officer out of his jurisdiction spotted McFarlin slumped over the steering wheel of a car parked on the side of the road. Upon arousing McFarlin and conducting a *Terry* search, the officer felt a "nudge" in McFarlin's pants pocket. Believing the substance to be contraband the officer removed it from McFarlin's pocket and discovered it was. The *McFarlin* court found the officer was not authorized to do a pat-down search for weapons under *Terry*, and his identification of a small "knot like nudge" was unreasonable. The continued exploration of

McFarlin's pockets after determining that no weapon was present amounted to "the sort of evidentiary search that *Terry* expressly refused to authorize." *Minnesota v. Dickerson*, 508 U.S. 366, 378, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993) (citing *Terry*, 392 U.S. at 26, 88 S.Ct. 1868).

McFarlin can be distinguished from the case *sub judice* in that the officer in *McFarlin* was outside his jurisdiction and without authority to detain anyone much less conduct a search. Also, in *McFarlin*, the officer did not observe a crime being committed, nor did he know of a history of drugs and weapons as in the case *sub judice*.

The trial court correctly concluded that the detention and search of defendant were legal. Deputy Truett's search of defendant did not exceed the scope of a weapons pat down allowed by a *Terry* stop.

In *Tate v. State*, 946 So.2d 376, 384 (Miss.Ct.App.2006) the appellate court affirmed the trial court's denial of the defendant's motion to suppress evidence discovered in a *Terry* search. The court stated

The purpose of the limited search for weapons allowed under *Terry* is not to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence. *Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993)(quoting *Adams v. Williams*, 407 U.S. 143, 146, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972)). This protective search must be strictly "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." *Terry*, 392 U.S. at 26.

Anderson contends that, at the time the methamphetamine was discovered, Deputy Truett exceeded the scope of a protective search for weapons and was conducting an exploratory search. Defendant argues that the incriminating nature of the contraband was not readily apparent to Deputy Truett through "plain feel."

This court discussed the "plain feel" doctrine in *Tate*, 946 So.2d 376, citing *Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993) and *Edwards v. State*, 795

So.2d 554, 561-61 (¶29-30)(Miss.Ct.App.2001).

[W]hen an officer, during a lawful pat down search, “feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect’s privacy beyond that already authorized by the officer’s search for weapons,” *Id.* While an officer may extract a weapon during a pat down search based on reasonable suspicion, the “plain feel” exception to the warrant requirement for the discovery of contraband during a pat down search requires that the officer have probable cause to believe that the object is contraband. *Id.* at 562(30). “Probable cause exists where the facts and circumstances within the arresting officer’s knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Walker v. State*, 881 So.2d 820, 827 (15) (Miss.2004).

Agent Sistrunk and Deputy Truett testified that they had arrested Thomas Walden at his residence and executed several search warrants on the subject trailer with guns and drugs being found. **T. 24-25; 48-49.** Both Walden, the trailer’s owner, and Day, the individual asleep on the couch, had in fact been previously convicted of drug felonies. *Id.*

After a review of the evidence, the trial court correctly ruled that the officers had a right to enter the trailer, having seen Day, a convicted felon in possession of a firearm. Then having entered the trailer, the officers had the right to conduct a pat down search for weapons. Knowing one (1) weapon had already been found, knowing the history of the drugs and weapons found on the subject property, and knowing the criminal history of both Day and Walden, reasonable suspicion existed for Officer Truett to conduct a pat down search of the defendant. Based on a totality of the circumstances, when Officer Truett felt the bottle in the defendant’s pocket during the pat down, probable cause existed for him to reach into Anderson’s pocket and remove the contraband.

Under the rationale of *Minnesota v. Dickerson* and *Tate*, the discovery of the contraband in Anderson’s pocket did not exceed a *Terry* search. The trial court’s denial of Anderson’s motion to suppress is supported by substantial evidence considering the totality of the circumstances. This issue is without merit.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the jury's conviction of Jamie Lee Anderson for possession of cocaine and the sentence of the Circuit Court of Neshoba County.

Respectfully submitted,

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CERTIFICATE OF SERVICE

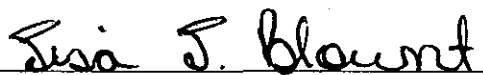
I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 5th day of December, 2008.



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