IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT SPURLOCK — APPELLANT

VS. — NO. 2009-KA-1728-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUE

I. THE STOP OF THE TRUCK IN WHICH SPURLOCK WAS A PASSENGER WAS A REASONABLE AND LAWFUL SEIZURE.

STATEMENT OF FACTS

On September 21, 2007, Mississippi Bureau of Narcotics officers assisted by local law enforcement were executing a search warrant at Willie Jefferson's Pike County home. T. 104. The officer found marijuana, ecstacy, and handguns during the search. T. 105. The marijuana was packaged in Hefty brand zip top storage bags, which Agent Billy Ray Warner, an experienced narcotics agent, had not seen prior to that time. T. 106. During the search of Jefferson's residence, Officer Todd Dillon answered Jefferson's telephone. T. 108. A man on the other end of the line asked, "Are you ready to re-up?" T. 108. Officer Dillon responded, "Bring it on." T. 109. The officers understood this exchange to mean that someone was coming over to deliver more drugs. T. 109. Officer Dillon informed the officers who were securing the perimeter of the house that someone would be approaching soon to deliver drugs. T. 109.

Ten to fifteen minutes later, a black truck approached the Jefferson residence. T. 110-111. The driver, Thomas Magee, was asked for identification. T. 181. Magee informed Deputy Derrick Carr that he did not have identification. T. 181. What Magee did have was an open container of beer between his legs and a strong aroma of marijuana emanating from his vehicle. T. 181. Both Magee and his passenger, Robert Spurlock, were asked if there were any weapons in the vehicle, to which they both responded that there were not. T. 167. However, as Magee complied with Deputy Carr's request to step out of the vehicle, an officer yelled, "gun, gun, gun" after seeing a gun under Spurlock's foot. T. 167, 182. Magee then consented to a search of his vehicle. T. 183. A black bag with a U.S. Army logo was found in the bed of the truck. T. 186. The bag contained five one gallon bags of marijuana. T. 186. The bags were identical to the Hefty zip top bag of marijuana seized in Jefferson's home. T. 113.

Magee was charged with and pleaded guilty possession of marijuana with intent to distribute. He testified at trial that approximately two weeks prior to his arrest, Spurlock met up with him and told him that he knew where to obtain a large quantity of marijuana. T. 131. Magee told Spurlock he knew someone who would buy it. T. 131. Magee then set up a deal for Spurlock with Willie Jefferson. T. 136. Spurlock went to Atlanta and brought back a ten pound brick of marijuana. T. 133. Magee met Spurlock in a motel room and helped him break the marijuana down and package it into ten one-pound-bags. T. 134. Magee then took Spurlock around Pike County to sell some of the marijuana. T. 136. The night before the arrest, Jefferson bought one pound of marijuana from Spurlock. T. 136. Jefferson called Magee later that night and said that he wanted three more pounds. T. 137. Magee told Jefferson that he and Spurlock would be back the next day. T. 138. Magee did not realize that he was speaking to a law enforcement officer the next day when he called Jefferson to tell him that he and Spurlock were coming over with the marijuana.

Spurlock testified on his own behalf. He acknowledged that he met up with Magee when he came into town from Georgia a week and a half to two weeks prior to his arrest. He agreed that he had returned to Atlanta then came back to Pike County two days before his arrest. He also admitted that he had stayed at a motel during that time. He denied, however, that he ever possessed marijuana or a black Army bag or that he knew Jefferson. He claimed that on the day of the arrest, he was riding with Magee to sell some rims, when they were stopped in front of Jefferson's house.

Spurlock was found guilty of possession of at least one kilogram but less than five kilograms of marijuana with intent to distribute and sentenced to fifteen years with five suspended.

SUMMARY OF ARGUMENT

Spurlock's failure to designate th transcript of the suppression hearing bars review of his single assignment of error on appeal. Additionally, Spurlock's claim is without merit because the stop of Magee's truck was based on reasonable articulable suspicion that a particular crime was going to be committed in a particular location.

ARGUMENT

I. THE STOP OF THE TRUCK IN WHICH SPURLOCK WAS A PASSENGER WAS A REASONABLE AND LAWFUL SEIZURE.

Spurlock's single issue on appeal, that he was unlawfully seized prior to the consensual search of Magee's vehicle, is procedurally barred because Spurlock failed to include the transcript of the suppression hearing in the record. A presumption of correctness attaches to all trial court rulings. *Juarez v. State*, 965 So.2d 1061, 1065 (¶12) (Miss. 2007). In addition to the burden of proving that the trial court committed reversible error, the appellant must also provide a record sufficient to support his assignments of error. *Id.* Where a motion hearing is conducted, and the appellant alleges that the trial court's ruling was erroneous but fails to include a transcript of the hearing on appeal, "the presumption that the judgment of the trial court was correct must prevail." *Id* at 1066. (quoting *Acker v. State*, 797 So.2d 966, 971 (Miss. 2001)). See also, *Roy v. State*, 878 So.2d 84, 88 (Miss. Ct. App. 2003); *Williams v. State*, 522 So.2d 201, 208 -209 (Miss. 1988). Because Spurlock failed to designate the transcript of the suppression hearing as part of the record on appeal and failed to supplement the record with said transcript, his single assignment of error is barred from appellate review.

In the event that this honorable Court finds that it can reach the merits of Spurlock's argument, the State offers the following to show that Spurlock's claim is also without merit. "A stop of any kind is a seizure, but such a seizure will be allowed if it is ruled to be a reasonable seizure." *Dale v. State,* 785 So.2d 1102, 1104 (¶5) (Miss. Ct. App. 2001) (citing *Brown v. Texas*, 443 U.S. 47, 50 (1979)). The primary purpose of a roadblock determines the constitutionality of such a seizure. *McLendon v. State*, 945 So.2d 372, 380 (¶19) (Miss. 2006) (citing *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000)). Police officers are allowed to conduct a brief

investigatory stop upon reasonable suspicion that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). The location involved is a relevant factor in determining whether circumstances are sufficiently suspicious to warrant a *Terry* stop. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). Without doubt, the stop of Magee's truck was a seizure, but it was a reasonable one under the circumstances. Officers had just seized a large quantity of drugs from Jefferson's residence when someone called and indicated that they were bringing more drugs over. These facts certainly gave rise to a reasonable articulable suspicion that criminal activity was afoot, thus justifying a brief investigatory stop of motorists approaching Jefferson's residence.

Spurlock claims that the stop of Magee's vehicle was an unconstitutional seizure because the police did not have particularized suspicion to stop Magee. Spurlock claims that the seizure in question is the same type of seizure proscribed by the United State Supreme Court in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). The checkpoint in the present case is easily distinguishable from the type of checkpoint proscribed by the *Edmond* court.

In *Edmond*, the city was setting up narcotics checkpoints at which police officers would stop a predetermined number of vehicles, inform the driver that he was being stopped briefly at a narcotics checkpoint, ask to see the driver's license and registration, look for signs of impairment, "conduct an open-view examination of the vehicle," and walk a drug detection dog around the vehicle. *Id.* at 450-51. The Supreme Court held that the checkpoints were unconstitutional because the primary purpose of the program was general interest in crime control and because of the lack of the lack of individualized suspicion of the persons seized. *Id.* at 454-55. In the present case, the police officers did not stop Magee because of a "possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Id.* at 455. Instead, the officers had probable cause to believe that a specific crime (the transfer of illegal drugs) was about to occur at

a specific place (Jefferson's residence). The *Edmond* court condemned checkpoints aimed at the general interest in crime control, not tailored checkpoints set up because police have probable cause to believe that a specific crime will be imminently committed a specific location.

Additionally, even if this Court were to find that the primary purpose of the stop was for the purpose of general crime control, rather than, as the State suggests, for the purpose of stopping a specific crime at a specific place, the seizure was still reasonable in accordance with *Edmond* because the officers did have individualized suspicion to stop Magee's truck. "When law enforcement authorities pursue general crime control purposes at checkpoints . . . stops can only be justified by some quantum of individualized suspicion." *Id.* at 457. The officers in the present case had some quantum of particularized suspicion to stop Magee's truck based on the telephone call intercepted at Jefferson's residence. Although the officers did not know that Magee and Spurlock were the precise individuals who would be delivering the drugs, they certainly had reasonable suspicion to believe that a motorist was imminently approaching with contraband. Certainly a law enforcement officer is not required to let a felony be committed under his nose simply because the caller did not leave his name and a description of the vehicle in which he would be transporting contraband.

The trial court's ruling denying Spurlock's motion to suppress was supported by substantial credible evidence and was not clearly erroneous. For the foregoing reasons, Spurlock's claim is procedurally barred and/or without merit.

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Spurlock's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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 6th day of August, 2010.

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