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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT SPURLOCK

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APPELLANT

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COURT OF APPEALS**

V.

NO. 2009-KA-1728-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

On Appeal from the Circuit Court of Pike County, Mississippi

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Robert Spurlock, Appellant
3. Honorable Dewitt (Dee) T. Bates, Jr., District Attorney
4. Honorable David H. Strong, Circuit Court Judge

This the 7th day of May, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

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BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUE

THE TRIAL COURT MISAPPLIED THE LAW WHEN IT DENIED SPURLOCK'S MOTION TO SUPPRESS THE SEIZED EVIDENCE FROM THE POLICE SEARCH. THE POLICE SET UP THE TRAFFIC SAFETY CHECKPOINT FOR THE MAIN PURPOSE OF FINDING ILLEGAL DRUGS. THIS PURPOSE WAS AN IMPERMISSIBLE VIOLATION OF SPURLOCK'S CONSTITUTIONAL RIGHT TO BE FREE FROM UNLAWFUL SEIZURE, THEREFORE THE COURT SHOULD HAVE PREVENTED THE JURY FROM HEARING THIS EVIDENCE.

STATEMENT OF THE CASE

A Pike County, Mississippi grand jury indicted Robert Eugene Spurlock and Thomas E. Magee for unlawful possession of at least one (1) kilogram but less than five (5) kilograms of marijuana with the intent to distribute, enhanced by possession of a firearm. [R.E. 3] Prior to trial, Magee pled guilty. As a condition of his plea agreement, Magee agreed to testify against Spurlock at his trial. [Tr. 144]

Following Spurlock's trial, the jury convicted him of unlawful possession of at least one (1) kilogram but less than five (5) kilograms of marijuana with the intent to distribute. [R.E. 16]

The Court sentenced Spurlock to serve fifteen (15) years in the custody of the Mississippi Department of Corrections (MDOC). [R.E.18] Spurlock was further ordered to serve the first ten (10) years in custody, with the remaining five (5) years to be served on post-release supervision.

Aggrieved, Spurlock filed a motion for a new trial and, in the alternative, a motion for J.N.O.V. [R.E. 19] The Court denied this motion. Spurlock then petitioned the court, pro se, for an out-of-time direct appeal. [R.E.22] The Court granted this request and Spurlock properly noticed this appeal. [R.E. 31, 34]

FACTS

Robert Spurlock was a young military veteran in his late twenties, who had served his country for over a decade in the Army and Army Reserves.[Tr. 208] He had served an activity duty tour in Iraq and returned to the United States to use his leadership and managerial skills in restaurant management. [Tr. 209-10] In the fall of 2007, he was employed as both a part-time soldier and a restaurant manager. [Tr. 210]

Although Spurlock lived in Georgia, he was raised for some time by his grandmother and aunt in Pike County, Mississippi. [Tr. 204] When he heard that his grandmother was nearing her last days, he immediately returned to Pike County to check on her. [*Id.*] While visiting his grandmother, Spurlock's old high school classmate, Thomas Magee, Jr., found Spurlock and they reunited. [Tr. 130] The two had not seen each other since they graduated - over ten years ago. The men caught up on old times. [Tr. 212]

One day, Spurlock was riding with Magee as Magee tried to sell a tire rim to his buddies to get some cash. [Tr. 215] Spurlock got into Magee's truck and the two rode toward the pool hall to find the potential buyer.

Magee drove away from the pool hall toward Sherman, Mississippi to find his friend that

would buy the tire rim. [Tr. 215] Meanwhile, not far from Magee and Spurlock, the police were executing a search warrant on Willie Jefferson's home at this time. Jefferson lived on Lazy Heifer Road. [Tr. 104-05] The MS Bureau of Narcotics (MBN), along with several officers from the local jurisdiction, the Department of Corrections, and the Pike County Sheriff's Office went to Jefferson's home to assist MBN with the search warrant. During their search, an unidentified person called Jefferson's phone. [Tr. 108] The police answered the phone and heard the caller ask, "Are you ready to re-up?" Believing that the caller was headed to Jefferson's home to sell narcotics, some of the officers securing the home set -up a checkpoint on the road in front of Jefferson's home. [Tr. 109]

The police stopped and checked one car and one vehicle and let those cars leave. [Tr. 166] Several minutes later, Magee drove his truck down Lazy Heifer Road. [Tr. 166] The police motioned for Magee to pull his truck to the side of the road. The police asked for Magee and Spurlock's driver's licenses. [Tr. 166-67] Spurlock readily complied with the police's requests and handed one of the officers his military ID. [Tr. 181-82] Magee, however, did not have a driver's license and the police noticed that he was driving with several open containers of beer in the car. [Tr. 181] According to Officer Derrick Carr, there was also a smell of marijuana coming from Magee's truck.

Shortly afterward, one of the officers noticed a handgun on the floorboard of the truck. [Tr. 167] The officers reported that the gun was found closest to Spurlock's feet, however Magee later acknowledged that he owned the registered gun. [Tr. 142]. After discovering Magee's gun, the police detained both Magee and Spurlock outside of the truck. [Tr. 167] Magee then gave police consent to search the truck. [Tr. 183]

The police found a black book-bag in the truck's bed, next a spare tire, a tool box and a

gas jug. [Tr. 185] The black bag had an Army logo. This bag was not an official, Army-issued military bag, but rather a bag used as a part of recruitment and promotional materials. [Tr. 197] The police did not search the bag for any identifying evidence to determine the bag's owner. [Tr. 123] They did not request that the MS Crime Lab perform any fingerprint or trace fibers analyzes on the bag. [Tr. 98-99] Inside the bag, however, the police found five (5) one pound (1lb) bags of marijuana. [Tr. 187] The marijuana was inside gallon-sized Hefty storage bags. [Tr. 114] The police also found small finger scales and several plastic sandwich bags. [Tr. 111-12]

One of officers noticed that the Hefty One-Zip bags of marijuana found in the bed of Magee's truck were similar to the Hefty One-Zip bag of drugs found in Jefferson's home by the police. [Tr. 114-15] Neither Magee nor Spurlock made any statements to the police about the marijuana. [Tr. 117]

Jefferson, Magee and Spurlock were arrested on that day. [Tr. 119] Although the police tried to give Spurlock a Notice of Seizure during processing for the \$1914.00 seized from the arrest, Spurlock did not sign the notice. It is unclear how the police attributed ownership of the money to Spurlock. MBN Agent Warner testified that Spurlock had some of the money in his pocket during the arrest and some of the money was on the truck's tailgate. [Tr. 111-12] However, Agent Warner did not witness the arrest and by the time he made it outside of the house, Magee and Spurlock had already been detained. Officer Kennis Montgomery, he did not discover any money on Spurlock when he patted him down his exterior clothing to search for weapons. [Tr. 174]

Prior to trial, Magee pled guilty and became a witness for the prosecution. [Tr. 144-45] However, he did not give an official statement until the week of trial. [Tr. 157] Magee testified at trial that Spurlock had come into town to visit his grandmother. Magee heard he was in town

and found him. [Tr. 130] While reminiscing about old times, Magee told Spurlock that he knew where Spurlock could get rid of some marijuana. [Tr. 131] Spurlock brought with him ten pounds of marijuana and the two men repackaged the drugs into one pound bags. [Tr. 137] The evening of September 20th, the men went to Jefferson's home and Spurlock sold Jefferson some of the drugs. [Tr. 136] Later on, Jefferson requested more drugs and Magee and Spurlock were headed back to Jefferson's home when they were stopped by police. [Tr. 141] Magee received a four year sentence in his plea agreement, as oppose to the forty year maximum sentence for the crime. [Tr. 144]

Prior to trial, Spurlock filed a motion to suppress the seized drugs because, he argued, the search was unlawful. In denying Spurlock's motion to suppress the evidence, the trial court found the following:

- Spurlock had no standing to object to the search of Magee's vehicle because, as a passenger, he had no legitimate expectation of privacy
- The police interception of the phone call to Jefferson's house did not constitute an illegal wiretap
- The police created the checkpoint for the purpose of searching for illegal narcotics. However, the phone call that the police intercepted from the unknown person created sufficient reasonable suspicion that an illegal act was about to occur. The court found that this was a permissible exception to an unreasonable Fourth Amendment search and seizure
- The resulting search of Magee's truck was lawful because it was a search incident to Magee and/or Spurlock's arrest and the odor of the marijuana was subject to the plain smell exception to the warrantless search.

[R.E. 7]

Spurlock subsequently filed a motion to reconsider the trial court's ruling, which the trial court also denied. [R.E. 11, 14]

SUMMARY OF THE ARGUMENTS

Robert Spurlock was a young man in the wrong place at the wrong time. Living in Georgia, he came home to visit his dying grandmother. [Tr. 210] He met an old friend while he was in town, Thomas Magee, Jr. [Tr. 211] One afternoon, while riding around as a passenger in Magee's truck, the police motioned for Magee to pull over at a traffic safety checkpoint that was set up for the sole purpose of finding illegal drugs. [Tr. 109, 166, 181, R.E. 8-9] The police believed drugs would be coming through the area but they did not have any individualized suspicion of the person they were anticipating. Because of the above reasons, the police's detention of Magee's truck was unreasonable and in violation of the Fourth Amendment. Spurlock, as a passenger of Magee's car, was also seized under the meaning of the Fourth Amendment.

Prior to trial, Spurlock's trial counsel filed a motion to suppress the seized evidence. [R.E. 5] The trial court denied this motion and Spurlock's subsequent motion to reconsider the order denying the motion. [R.E. 7, 14]

The trial court erred in finding that this pre-textual traffic safety checkpoint was a constitutionally protected intrusion on Spurlock's Fourth Amendment rights. The police had no individualized reasonable suspicion in this case and officers are prohibited from using traffic safety checkpoints as a means of general crime prevention. Likewise, this case should be reversed and remanded to the trial court for a new trial.

ARGUMENT

I. THE TRIAL COURT MISAPPLIED THE LAW WHEN IT DENIED SPURLOCK'S MOTION TO SUPPRESS THE SEIZED EVIDENCE FROM THE POLICE SEARCH. THE POLICE SEARCH WAS AN IMPERMISSIBLE VIOLATION OF SPURLOCK'S CONSTITUTIONAL RIGHT TO BE FREE FROM UNLAWFUL SEIZURE. THE EVIDENCE OBTAINED FROM THIS SEIZURE WAS THEREFORE UNLAWFUL AND THE COURT SHOULD HAVE PREVENTED THE JURY FROM HEARING THIS EVIDENCE.

i. Standard of Review

"The standard of review regarding the admission or exclusion of evidence is abuse of discretion." *Lattimer v. State*, 952 So.2d 206, 215 (¶ 24) (Miss. Ct. App. 2006). Errors in the admission or exclusion of evidence are grounds for reversal if the errors adversely affect a substantial right of a party. *Morris v. State*, 963 So. 2d 1170, 1175 (¶15) (Miss. Ct. App. 2007).

The police did not have proper authority to set up the traffic safety roadblock in front of Willie Jefferson's house and, because of this, the trial court should have granted Spurlock's motion to suppress the evidence seized during this traffic stop. The issue before this Court is (1) whether the traffic safety checkpoint that was setup for the purpose of searching illegal narcotics was valid, and, in the alternative, whether the police had reasonable, articulable suspicion to stop Magee's truck.

ii. The traffic safety checkpoint was an unreasonable seizure

Both the US and Mississippi Constitutions protect citizens from unreasonable searches and seizures by the government. *Dies v. State*, 926 So. 2d 910, 917-18 (¶21) (Miss. 2006). This includes automobile stops by police. "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of the Fourth Amendment." *Whren v. United States*, 517

U.S. 806, 809-10, 116 S. Ct. 1769, 1772 (1996). This protection against unreasonable seizures during automobile stops is available to both the driver of the car and its passengers. *Brendlin v. California*, 551 U.S. 249, 255-60, 127 S. Ct. 2400, 2405-09 (2007).

A search or seizure is generally considered unreasonable in the absence of individualized suspicion of wrongdoing. *Chandler v. Miller*, 520 U.S. 305, 308, 117 S. Ct. 1295, 1298 (1997). However, there are limited circumstances in which individualized suspicion is not required. The Supreme Court has found that fixed Border Patrol checkpoints designed to intercept illegal aliens, *See United States v. Martinez - Fuerte*, 428 U.S. 543, 561, 96 S. Ct. 3074, 3074 (1976), and sobriety checkpoints designed to secure the road from drunk drivers, *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481 (1990), are exceptions to the requirements of individualized suspicion. *Indianapolis v. Edmond*, 531 U.S. 32, 37, 121 S. Ct. 447, 452 (Miss. 2000).

Mississippi has also recognized that police checkpoints set up for the specific purpose of checking driver's licenses, valid tags, and insurance are valid suspicionless seizures as well. *Dale v. State*, 705 So. 2d 1102, 1105(¶8) (Miss. 2001). In finding the above roadblocks were constitutional, the courts applied a balancing test that considered: (a) the importance of the public concern served by the seizure, (b) the degree to which the seizure advances the public interest, and (c) the severity of the interference with the detainee's liberty. *Brown v. Texas*, 443 U.S. 47, 50-51, 99 S.Ct. 2637, 2637 (1979).

In Spurlock's case, the police created a safety traffic checkpoint for the purpose of intercepting a person they believed would be traveling to Jefferson's house to deliver illegal narcotics. [Tr. 109, 166, 181, R.E. 8-9] Although the officers titled the checkpoint a "traffic safety checkpoint" which would have allowed them to check driver's licenses and proof of insurance,

it is clear that the primary purpose of the roadblock was to intercept drugs that the officers believed would be coming through the area. [R. E. 8-9] While the Court utilizes a balancing test in most checkpoint challenges, the Court has yet to approve “ a checkpoint program whose primary purpose [is] to detect evidence of ordinary criminal wrongdoing.” *Indianapolis v. Edmond*, 531 U.S. 32, 41, 121 S.Ct. 447, 454 (2000). In *Edmund*, the Court found that the primary purpose of the challenged Indianapolis narcotics checkpoint program was to uncover evidence of ordinary criminal wrongdoing, and as such, the program violated the Fourth Amendment. *Id.* at 531 U.S. 42, 121 S. Ct 454 . The Court reasoned that “ [w]ithout drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.” *Id.*

The police’s checkpoint amounted to an unreasonable seizure and, as such the trial court should have granted Spurlock’s motion to suppress the seized evidence.

ii. The police did not have articulable suspicion to seize Spurlock

The police’s checkpoint was not a permissible exception to the suspicionless seizures exceptions so the police were required to have reasonable, articulable suspicion in order to seize Spurlock. *Rainer v. State*, 944 So. 2d 115, 118 (¶6) (Miss. Ct. App. 2006).

Police may conduct brief, investigatory stops without warrants when the police have reasonable suspicion that criminal activity is occurring. *Terry v. Ohio*, 392 U.S. 1, 30-31, 88 S.Ct. 1868 20 L.Ed.2d 889 (1968). The officer “must be able to point to specific and articulable facts” that justify the stop and these facts must be more than “inchoate and unparticularized suspicion or ‘hunches’ of criminal activity.” *Terry*, 392 U.S. at 21, 88 S.Ct. 1868; *Illinois v. Wardlow*, 528 U.S. 119, 123-24, 120 S.Ct. 673, 673 145 L.Ed.2d 570 (2000). The reasonableness of the officer’s suspicion is judged by the information the officer knew prior to initiating the search. *Florida v.*

J. L., 529 U.S. 266, 271, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000).

Without reasonable suspicion warranting such a stop, the person that is approached and detained by the police has the right “to ignore the police and go about his business.” *Wardlow*, 528 U.S. at 125, 120 S.Ct. 673. The person’s refusal to “cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.” *Id.* (quoting *Florida v. Bostick*, 501 U.S. 429, 437, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991)).

The police did not have specific and articulable facts which would justify their stop of Magee’s truck and the subsequent seizure of Spurlock. In its order denying the motion to suppress, the trial court found “the short phone conversation had between Officer Dillon and an unknown person gave these officers a reasonable suspicion that an illegal act was about to occur.” [R.E. 9] However, this phone conversation amounted to nothing more than an “unparticularized suspicion or ‘hunch’ or criminal activity”, the type of situation that the Court has consistently refused to sanction. *Terry*, 392 U.S. at 21.


Prior to the police detaining creating the roadblock, the officers did not have any idea what type of vehicle they were expecting to come to Jefferson’s home. The officers did not have a description of the person they were anticipating. As pointed out in Spurlock’s Motion to Reconsider the Denial of the Motion to Suppress, the officers had no absolutely no information about the person they sought to detain. Once the police seized Magee’s truck, they then found reason to detain him. The initial stop, however, remains unreasonable and the police were prohibited from this activity under the Fourth Amendment.

CONCLUSION

The exclusionary rule was created as a sanction to deter overreaching government conduct that is prohibited by the Fourth Amendment. *Davis v. Mississippi*, 394 U.S. 721, 723-24, 89 S.Ct. 1394, 1396 (Miss. 1969). Regardless of the trustworthiness or relevance of the evidence, illegally seized evidence is inadmissible at trial. *Id.* In this case, the police officers illegally seized the evidence from Magee's truck because their initial traffic stop of Magee's truck was an unreasonable seizure. As a passenger, Spurlock was also seized. The trial court abused its discretion in finding that the illegally seized evidence should be introduced at trial. For these reasons, this Court should reverse and remand this case for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Robert Spurlock, Appellant

By: 
ERIN E. PRIDGEN, MISS. BAR NO. [REDACTED]
STAFF ATTORNEY

CERTIFICATE OF SERVICE

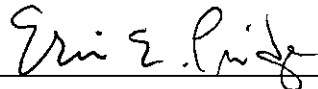
I, Erin E. Pridgen, Counsel for Robert Spurlock, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable David H. Strong
Circuit Court Judge
McComb, MS 39649

Honorable Dewitt (Dee) T. Bates, Jr.
District Attorney, District 14
284 East Bay Street
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This the 7th day of May, 2010.



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