FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 2 8 1997

JAMES W. PATTERSON
CLERK

THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DEAN CHARLES YEARY	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
v.	)	Case No. F-96-376
	)	
THE STATE OF OKLAHOMA	)	
	)	
Appellee.	)	

SUMMARY OPINION

LANE, J.:

Dean Charles Yeary was tried in a bench trial and convicted of Possession of Marijuana with Intent to Distribute in violation of 63 O. S. § 2-401(B)(2) and Unlawful Possession of Drug Paraphernalia in violation of 63 O. S. 1991, § 2-4051(B) in the District Court of Murray County consolidated cases CF-95-114 and CM-95-214. The Honorable John Scaggs sentenced Yeary to five years imprisonment, with four and one-half years of the sentence suspended for the felony, and court costs only for the misdemeanor.

Yeary raises the following propositions of error in support of his appeal.

1. The evidence used to convict Mr. Yeary should have been suppressed.

2. There was insufficient evidence to convict Mr. Yeary of the crime of Possession of Marijuana with Intent to Distribute.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of

the parties, we **REVERSE** judgment and sentence and remand to the district court with **INSTRUCTIONS TO DISMISS.**

This case arises out of a routine traffic stop on I-35 in Murray County. The Appellant was clocked at 71 mph in a 65 mph zone. Oklahoma Highway Patrol Trooper Flowers determined Yeary was not carrying identification, did not own the car, and appeared to be nervous. A driver's license check resulted in a report from Kansas that Yeary had a valid Kansas driver's license. Yeary told the Trooper that Mark Mutti owned the car and had given him permission to drive it. The Trooper testified a record check came back "not on file". This testimony was controverted by a certified record from the State of Kansas Department of Revenue showing the car was registered to Martin K. Mutti. (A telephone call to Mr. Mutti following Yeary's arrest confirmed Yeary's statements to the trooper.) The Trooper issued a written warning and advised Yeary he was free to go.

The Trooper then engaged Yeary in a consensual conversation and asked him, among other things, whether he had drugs in the car. When Yeary responded he did not, Trooper Flowers advised him that he would like to call a canine unit to confirm Yeary's statements. Yeary did not consent to being detained while the canine unit was called. Some twenty-five minutes later the canine unit arrived and the drug-sniffing dog hit on the driver's door and the trunk. A package of hand rolled

marijuana "roaches" was found in the door, and two packages of marijuana weighing approximately one pound each were found in the trunk. The Appellant moved to suppress this evidence on the grounds it was the fruit of an illegal seizure.

The narrow issue before us is whether the continued detention of Yeary for the purpose of summoning a drug-detecting dog after he was told he was free to go was supported by reasonable suspicion as required by *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). We find that while the initial traffic stop was properly supported, the enlarged investigation was not. Trooper Flowers apparently was satisfied the identification of the driver and the ownership of the vehicle were not sufficiently troublesome to warrant further investigation and told Yeary he was free to go. After releasing him, Trooper Flowers developed no new relevant facts, and detained Yeary on nothing more than a hunch. This is not sufficient to satisfy the requirements of the Fourth Amendment. *United States v. Fernandez*, 18 F.3rd 874, 878 (10th Cir.1994). The resulting evidence, obtained in violation of the Fourth Amendment of the United States Constitution, should have been suppressed.

There being no admissible evidence to support the conviction in this case, judgment and sentence is reversed and the matter is remanded to the district court with instructions to dismiss.

DECISION

The Judgment of the trial court **REVERSED** with **INSTRUCTIONS TO DISMISS.**

APPEARANCES AT TRIAL

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OPINION BY: LANE, J.:

CHAPEL, P.J.:	CONCURS
STRUBHAR, V.P.J.:	CONCURS
LUMPKIN, J.:	CONCURS IN RESULTS
JOHNSON, J.:	DISSENTS

RD

JOHNSON, JUDGE: DISSENTS

I would affirm. I consider the stop was valid due to the fact there was no proof of ownership. Although there was a time period involved, it was clear that the officer was acting in a proper fashion because, obviously, he had suspicion from the start. Therefore, I would affirm the conviction.