



**In the Missouri Court of Appeals
Eastern District**

DIVISION TWO

STATE OF MISSOURI,) No. ED104884
)
 Respondent,) Appeal from the Circuit Court of
) the City of St. Louis
vs.)
) Honorable Jimmie M. Edwards
EDWARD HUGHES,)
)
 Appellant.) Filed: October 24, 2017

Introduction

Edward Hughes was found guilty in a court-tried case in the circuit court of the City of St. Louis of two counts of possession of a controlled substance and one count of unlawful use of drug paraphernalia arising out of a search of Hughes's person and his drawstring bag that was next to him in the backseat of a car before he got out, was arrested and handcuffed. In his sole point on appeal, Hughes argues the trial court abused its discretion in denying his motion to suppress the evidence obtained from the search of his bag because he had already been handcuffed and the bag was outside of his control. We affirm.

Factual and Procedural Background

On September 9, 2015, Hughes was the sole passenger in the back of a vehicle stopped by police for a traffic violation. Officers Ryan Murphy and Tom Jeffries approached the vehicle and obtained identifying information from the three occupants. The officers ran a search of the

occupants' names and discovered the driver did not have a license and there was a warrant out for Hughes. The officers approached Hughes and asked him to step out of the vehicle. He complied. Officer Murphy handcuffed Hughes and placed him under arrest. Officer Murphy then searched Hughes and found drugs in his pants pocket. Hughes was standing between the officers and the vehicle he stepped out of. The officers saw a Nike drawstring bag was directly next to where Hughes was sitting before he was arrested. Officer Murphy asked Hughes if it was his bag; he responded it was. Officer Jeffries then retrieved the bag from the vehicle and searched it in front of Officer Murphy and Hughes and found drugs and drug paraphernalia. Hughes was taken into custody and the other two passengers were allowed to leave.

Hughes was charged with two counts of possession of a controlled substance, specifically heroin and cocaine base, and unlawful use of drug paraphernalia. Hughes filed a motion to suppress the evidence obtained from the search of the bag. The trial court took the motion with the case and denied it after hearing all of the evidence. The court found Hughes guilty of all charges and sentenced him to concurrent terms of seven years' imprisonment for the possession of controlled substance charges and thirty days' for the unlawful use of drug paraphernalia charge. This appeal follows.

Standard of Review

On direct appeal, we review for prejudice, not mere error, and will reverse only if the error was so prejudicial that it deprived the defendant of a fair trial. *State v. Marrow*, 968 S.W.2d 100, 106 (Mo.banc 1998). We review the facts in the light most favorable to the verdict. *Id.*

We review a trial court's ruling on a motion to suppress in the light most favorable to the ruling. *State v. Schroeder*, 330 S.W.3d 468, 472 (Mo.banc 2011). We defer to the trial court's

determinations of credibility. *Id.* The inquiry is limited to determining whether the decision is supported by substantial evidence. *Id.* We will reverse only if the trial court's decision is clearly erroneous. *State v. Oliver*, 293 S.W.3d 437, 442 (Mo.banc 2009).

Analysis

Hughes contends the trial court erred by denying his motion to suppress evidence obtained from the warrantless search of his Nike drawstring bag. Relying on the Missouri Supreme Court decision issued January 12, 2016, *State v. Carrawell*, 481 S.W.3d 833 (Mo. banc 2016), Hughes asserts the search of his bag was unlawful because it was not within his immediate control when searched. The State avers that *Carrawell* is factually distinguishable because Hughes was not secured in the police car before the search and the bag was within Hughes's reach, that the search was proper, and that even if the search was unlawful pursuant to *Carrawell's* precedent moving forward, the trial court did not abuse its discretion because *Carrawell* only applies to searches made after that decision was issued and the search here occurred before it. Based upon the State's final argument, we find the trial court did not err in admitting the evidence obtained from the search of the drawstring bag.

The Fourth Amendment to the United States Constitution guarantees citizens the right to be free from "unreasonable searches and seizures." U.S. CONST. amend. IV. Evidence discovered in violation of the Fourth Amendment must be excluded as fruit of the poisonous tree. *Oliver*, 293 S.W.3d at 442. Whether conduct violates the Fourth Amendment is an issue of law we review de novo. *Schroeder*, 330 S.W.3d at 472.

In *Carrawell*, the defendant parked his vehicle across the street from an apartment building where police officers were speaking with residents outside. As the defendant stepped out of his vehicle he stared at one of the officers, grabbed his crotch, spit in the officers'

direction, and said, “What the fuck are you looking at, bitch?” The defendant removed a white plastic grocery bag from the car and continued to utter vulgarities towards the officers. An officer approached the defendant and notified him that he was under arrest for peace disturbance. The defendant walked away from the officer and attempted to open an apartment door but the officer grabbed ahold of him. A struggle ensued as the officer attempted to handcuff the defendant and repeatedly asked him to drop the bag. Eventually the officer was able to rip the bag from the defendant’s hands and it fell to the ground, producing a “breaking” sound. The officer handcuffed the defendant, picked up the bag, and escorted the defendant to the police car. After securing the defendant in the police car, the officer searched the bag and found heroin.

The defendant was charged with drug possession. The defendant filed a motion to suppress evidence of the heroin, arguing that the search of the bag was unlawful. The trial court denied the motion and the defendant was convicted. On appeal, the Missouri Supreme Court considered whether the search of the defendant’s bag was a lawful search incident to arrest.

The Court explained that “[i]ncident to arrest, officers may lawfully search **‘the arrestee’s person and the area “within his immediate control”**—construing that phrase to mean the area from within he might gain possession of a weapon or destructible evidence.” *Id.* at 838 (emphasis added) (quoting *Chimel v. California*, 395 U.S. 752, 763 (1969)). The Court acknowledged our court of appeals had interpreted this to mean “that an arrestee’s personal effects (e.g., a purse or backpack) may be searched even when they are not within the immediate control of the arrestee because such a search qualifies as a search of the person—i.e., the personal effects are part of the person.” *Carrawell*, 481 S.W.3d at 838-39 (citing *State v. Ellis*, 355 S.W.3d 522, 524 (Mo. App. E.D. 2011); *State v. Rattler*, 639 S.W.2d 277, 278 (Mo. App. E.D. 1982)). But the Court held that “[t]his reasoning [was] based on a misunderstanding of law

and should no longer be followed.” *Carrawell*, 481 S.W.3d at 839. The Court pointed out that “[t]he court of appeals’ distinction for purses and other similar personal effects [was] not consistent with Supreme Court precedent.” *Id.* at 841.

The Court explained that there are only two justifications for the search-incident-to-arrest exception: 1) safety; and 2) evidence preservation. *Id.* at 839 (citing *United States v. Chadwick*, 433 U.S. 1, 14 (1977)). The Court emphasized that these justifications “hinge on the spatial location of an item to an arrestee *at the time of the search*, not at the time of arrest.” *Carrawell*, 481 S.W.3d at 843 (emphasis in original). “The fact that the item was once within the arrestee’s immediate control at the time of arrest has no impact on whether the justifications, or ‘exigencies,’ still persist at the time of the search.” *Id.* Thus, the general rule is that once an item is not within an arrestee’s reaching distance or immediate control, the justifications for a search incident to arrest are absent and there is no valid search incident to arrest. *Id.* at 839. “[A]ny search of that personal effect must be grounded in another exception to the warrant requirement, such as an inventory search or exigent circumstances.” *Id.* at 845.

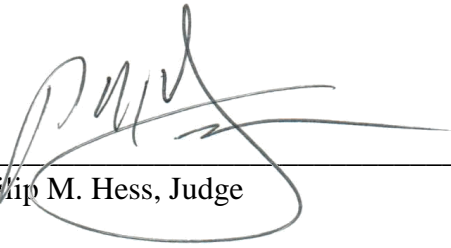
Applying these principles, the Court found that because the defendant was handcuffed and locked in the back of a police car at the time the officer searched the plastic bag, the bag was not within the defendant’s immediate control at the time of the search and therefore was not a valid search incident to arrest. *Id.* Despite finding the search unlawful, however, the Court still concluded that the trial court did not abuse its discretion in denying the defendant’s motion to suppress. *Id.* at 846. Relying on *State v. Johnson*, the Court stated that “[w]hen an officer conducts a search incident to arrest in “objectively reasonable reliance” on binding appellate precedent that is later overturned, the exclusionary rule does not suppress the evidence obtained as a result of that search.” *Carrawell*, 481 S.W.3d at 846 (quoting *Johnson*, 354 S.W.3d 627,

630 (Mo. banc 2011)). The Court noted that “[a]lthough such searches should no longer be deemed lawful,” the exclusionary rule did not apply because “there was court of appeals precedent authorizing officers to search an arrestee’s personal effects as a search incident to arrest, even if such items were not within the arrestee’s immediate control” at the time the defendant was searched. *Carrawell*, 481 S.W.3d at 846 (citing *Ellis*, 355 S.W.3d at 524-25).

Here, Hughes’s bag was searched after he was arrested and handcuffed but while he was still standing by the vehicle he got out of, in between the officers and the vehicle. Thus, this case is distinguishable from *Carrawell* in that Hughes was not in the back of the police car at the time of the search but rather was standing next to the vehicle he had just stepped out of. The issue is whether the bag was within Hughes’s immediate control at the time of the search. The State suggests the bag was still in Hughes’s immediate control, noting he was standing next to the vehicle and was in close proximity to the bag. Hughes argues the bag was not within his immediate control because he was handcuffed. We need not decide this issue, however, because the search here occurred before *Carrawell* became precedent. At the time Officer Jeffries made the search “there was court of appeals precedent authorizing officers to search an arrestee’s personal effects as a search incident to arrest, even if such items were not within the arrestee’s immediate control.” *Carrawell*, 481 S.W.3d at 846 (citing *Ellis*, 355 S.W.3d at 524-25); see also *Johnson*, 354 S.W.3d at 630. *Carrawell*, by its reasoning, only applies to searches occurring after *Carrawell* was decided. 481 S.W.3d at 846. Thus, like in *Carrawell*, we find no abuse of discretion by the trial court in denying Hughes’s motion to suppress. Point denied.

Conclusion

For the reasons stated above, we affirm the judgment of the trial court.



Philip M. Hess, Judge

Lisa P. Page, P.J. and
Roy L. Richter, J. concur.