IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER SESSION, 1995

STATE OF TENNESSEE,	)	**C.C.A. NO. 01C01-9502-CC-00040**
	)	
Appellee,	)	
	)	
	)	**ROBERTSON COUNTY**
VS.	)	
	)	**HON. ROBERT W. WEDEMEYER**
JAMES E. JOHNSON,	)	**JUDGE**
	)	
Appellant.	)	(Search of Automobile)

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF ROBERTSON COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is a direct appeal pursuant to Rule 37(b)(2) of the Tennessee Rules of Criminal Procedure from a plea of nolo contendere. In the Defendant's plea agreement, all charges were dropped except for one count of possession of a schedule II drug with intent to sell. He was sentenced to six years as a Range I offender. In his plea of nolo contendere, the Defendant expressly reserved a certified question of law that is dispositive of the case. The certified question of law stems from the trial court's denial of the defendant's motion to suppress. We affirm the judgment of the trial court.

The Defendant was pulled over for speeding. He was driving a rental car. The officer discovered that the Defendant's name was not included on the rental agreement as the primary driver or as an additional driver. The Defendant's driver's license was from Michigan, and the officer checked on the status of his license. The dispatcher related to the officer that the Defendant's license was suspended for a Michigan offense. The officer became suspicious. The officer asked the Defendant to come back to the patrol car so that he could explain the citation and the license suspension to the Defendant. The officer stated that the Defendant had been acting nervous throughout the stop. The officer asked the Defendant if he could look in the Defendant's car. The Defendant consented to the search. The officer found a paper bag under the driver's seat containing cocaine. The Defendant ran away while the officer was searching the car.

Our supreme court has set out prerequisites to the consideration of a certified question of law. These requirements are as follows:

> Regardless of what has appeared in prior petitions, orders, colloquy in open court or otherwise, the final order or judgment from which the time begins to run to pursue a T.R.A.P. 3 appeal must contain a

> statement of the dispositive certified question of law reserved by defendant for appellate review and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. For example, where questions of law involve the validity of searches and the admissibility of statements and confessions, etc., the reasons relied on by defendant in the trial court at the suppression hearing must be identified in the statement of the certified question of law and review by the appellate courts will be limited to those passed upon by the trial judge and stated in the certified question, absent a constitutional requirement otherwise. Without an explicit statement of the certified question, neither the defendant, the State nor the trial judge can make a meaningful determination of whether the issue sought to be reviewed is dispositive of the case. . . . Also, the order must state that the certified question was expressly reserved as part of a plea agreement, that the State and the trial judge consented to the reservation and that the State and the trial judge are of the opinion that the question is dispositive of the case. . . . No issue beyond that scope of the certified question will be considered.

State v. Preston, 759 S.W.2d 647, 650 (Tenn. 1988) (emphasis added).

The burden is on the Defendant to make sure that the certified question is preserved properly. Id. In the case sub judice, there is an "Order Reserving the Right to Appeal" included in the technical record. This order states that the certified question is "Was there a valid search after the traffic stop?" A defendant must state his reasons relied on in the trial court as to why his certified question should be decided in his favor. The certified question herein does not meet the requirements of Preston. However, because the precise issue was readily ascertained, we chose to address this issue on the merits.

The Defendant argues that valid consent was not given to search the car. The standard to measure valid consent was articulated by the United States Supreme Court in Florida v. Jimeno, 500 U.S. 248 (1991):

> [W]e have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. . . . The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness-what would the typical reasonable person have understood by the exhange between the officer and the suspect?

Id. at 250-51.

In Jimeno the officer pulled the defendant over for a routine traffic stop. The officer suspected that the Defendant was involved in a drug transaction. Id. at 249. He stated this to the Defendant and asked if he could search the car. The Defendant said he had nothing to hide and consented to the search. Id. The officer found a paper bag in the floor board of the car which contained cocaine. Id. at 250. The Supreme Court held that the defendant gave valid consent to search both the car and the paper bag. Id. at 251-52.

We have reviewed the record, which consists of a transcript of the hearing on the Defendant's motion to suppress and a videotape of the stop. The facts in the case sub judice are similar to those in Jimeno. The officer said to the Defendant in the case sub judice, "while I have you stopped, I would like to go ahead and take a look in the car. Is that all right?" The Defendant said "yes, sir." This exchange took place when both the officer and the Defendant were standing in front of the officer's car. The officer then said, "it's in the car, ain't it." The Defendant then indicated that there was nothing in the car. The officer then asked the Defendant," you got anything in here that you need to tell me about?" The Defendant responded, "Ah, no, I ain't got nothing in there I need to tell you about. Go ahead and look all you want." The officer said, "ain't got no guns or anything?" The Defendant responded, "No, sir." The officer then found a paper bag that contained cocaine on the floor under the driver's seat.

We conclude that a reasonable person would understand from that exchange that the officer had something in mind that he was looking for and that he intended to search the car. A defendant can limit the boundaries of a search. Id. at 252. If consent can reasonably be found to extend to a container, additional consent is not required. Id. The Defendant in this case did not make any attempts to limit the officer's

search. Furthermore, we conclude that a reasonable person would assume that in conducting a search of an automobile, an officer will search under the seat where the driver has been sitting. Therefore, we find that the officer's search of the Defendant's car was consensual, and the trial court's denial of the Defendant's motion to suppress was appropriate.

This issue has no merit.

We affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE

CONCUR:

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GARY R. WADE, JUDGE

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ROBERT E. CORLEW, III, SPECIAL JUDGE