IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER SESSION, l994

FILED

September 1, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE	)	
	)	NO. 0lC0l-9408-CC-00295
APPELLANT	)	
	)	ROBERTSON COUNTY
	)	
V.	)	HON. JAMES E. WALTON, JUDGE
	)	
	)	(Motion to Suppress)
CHARLES WILLIAM BARTRAM	)	
	)	
APPELLEE	)	

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AFFIRMED

OPINION FILED:_____

JERRY SCOTT, PRESIDING JUDGE

O P I N I O N

The defendant was indicted in a two count indictment for possession of marijuana with the intent to sell and deliver.[1] He filed a motion to suppress the marijuana, which the trial judge granted. The trial judge then entered an order of dismissal, noting that the suppression of the marijuana effectively terminated the prosecution. Much aggrieved by the judge's decision, the state has appealed, contending that the trial judge erred by granting the motion to suppress.

On September l7, l993, the appellant's wife, Jo Marie Bartram, called the police department concerning a domestic disturbance between her and her husband. A police officer responded and Mrs. Bartram explained to him that her husband had a drinking problem. She opened the refrigerator door to show the officer a can of beer, telling him, "here is his problem." According to her testimony, the officer opened the freezer door and, seeing the marijuana in the freezer, he seized the drug.[2]

Ricky Morris, an officer of the Springfield Police Department, responded to the call. According to Mr. Morris, he was "standing somewhere near the middle of the living room" when Mrs. Bartram "walked to the refrigerator, opened the door, pulled out a plastic bag and said - here is what he has been doing," after which she handed the bag of marijuana to Mr. Morris.[3]

The trial judge did not make any findings of fact or expound upon his reasons for granting the motion to suppress, but simply entered an order

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[1]His wife was also indicted as a co-defendant, but her case is not before this Court.

[2]According to Mrs. Bartram, the refrigerator was an upright that had the refrigerator on one side and a freezer on the other.

[3]According to Mr. Morris, another officer was present, but he was not called to testify.

granting the motion, "(b)ased upon Kelley v. State," l84 Tenn. l43, l97 S.W.2d 545, 546 (l946). In Kelley, as in this case, there was a domestic disturbance between the husband and wife. After the officers arrived, the defendant's wife took the officers into the house, telling them that she would show them where the defendant "kept his liquor." She then took them to a cabinet and showed them "two half gallons and eight pint jars of whiskey." l97 S.W.2d at 545. In that case, our Supreme Court, citing the Tennessee Constitution, held:

> We are of the opinion that in such circumstances the wife had no right to waive her husband's protection against unreasonable searches and seizures, any more than any other person would have had. Her whole attitude was contrary to his interests, and it could not be said that she was acting in any sense in the family interest with any authority to waive rights which might otherwise properly arise out of the relationship.

l97 S.W.2d at 546.

Thus was born in Tennessee search and seizure jurisprudence, "the angry spouse exception of Kelley." State of Tennessee v. George M. Jones, Tennessee Criminal Appeals, opinion filed at Nashville, August 9, l985.

Under the authority of Kelley, the decision of the trial court must be affirmed. Assuming the trial judge believed the officer, which is implicit from the judgment, the facts of this case are virtually identical to Kelley.

In its brief, the state cites a long litany of federal cases from which the state urges this Court to find that the federal law cited in Kelley is no longer valid and, therefore, to find that Kelley is no longer the law of this state. However, the cited language from Kelley followed specific reference to the Tennessee Constitution and was apparently based upon state constitutional principles, upon which our Tennessee Supreme Court, not the federal courts, is the final authority.

The Tennessee Supreme Court is "a direct creature of the [Tennessee]

Constitution and constitutes the supreme judicial tribunal of the state and is a court of last resort. All other courts are constitutionally inferior tribunals subject to the actions of the Supreme Court. Its adjudications are final and conclusive upon all questions determined by it, subject only to review, in appropriate cases by the Supreme Court of the United States." Barger v. Brock, 535 S.W.2d 337, 340 (Tenn. l976).

Therefore, we must point out again, as we so frequently must do to litigants on both sides of the issues, that this is an intermediate appellate court. We and all other inferior courts are bound by the decisions of the Tennessee Supreme Court. This Court is not free to disregard the law as announced by the Tennessee Supreme Court, even if it should be based upon an erroneous interpretation of State or federal law. Until such time as Kelley is overruled, the case constitutes the law of this state, binding upon this Court and the trial courts.

The judgment is affirmed.

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JERRY SCOTT, PRESIDING JUDGE

CONCUR:

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JOSEPH B. JONES, JUDGE

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PAUL G. SUMMERS, JUDGE