

No. 17-118640-A

**IN THE
COURT OF APPEALS OF THE STATE
OF KANSAS**

**STATE OF KANSAS,
Plaintiff-Appellant,**

vs.

**LEE SAWYZER SANDERS,
Defendant-Appellee**

REPLY BRIEF OF APPELLANT

Appeal from the District Court of Shawnee County, Kansas
Honorable Mark Braun, District Judge
District Court Case No. 16 CR 2341

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This is the State's reply brief in response to Sanders' Appellee Brief.

Issue: **The district court erred in granting Sanders' suppression motion.**

Application of Sup. Ct. R. 6.05 to Issue 1

Under Sup. Ct. R. 6.05, "a reply brief must include a specific reference to the new material being rebutted and may not include, except by reference, a statement, argument, or authority already included in a preceding brief."

The new material being rebutted is Sanders' argument that the attenuation doctrine and inevitable discovery should not be considered by this Court as they are were not "raised to the trial court." (See Appellee's Brief, 20-21.) Additionally, Sanders heavily relies on the judge's assessment that the officers' lacked credibility. (Appellee's Brief, 10-12.)

Purpose of having the issue first raised in district court.

In Kansas, issues not raised before the district court cannot generally be raised on appeal. *State v. Shopteese*, 283 Kan. 331, 153 P.3d 1208 (2007) The purpose of having the issue raised in district court is to give the district court an opportunity to rule on the issue. See *State v. Flynn*, 274 Kan. 473, 502, 55 P.3d 324 (2002) ("As a general rule, a party cannot raise an issue on appeal where no contemporaneous objection was made and where the trial court did not have an opportunity to rule.") This Court may consider the two

arguments regarding the attenuation doctrine and inevitable discovery because both were considered by the district court at the suppression hearing.

In *State v. Shadden*, 290 Kan. 803, 235 P.3d 436 (2010), the Kansas Supreme Court considered the issue of whether the defendant's objections to the motion in limine were timely. The *Shadden* court noted how "Shadden's objections revolved around the very purpose of the motion in limine." *Shadden*, 290 Kan. at 835. There, Shadden had made contemporaneous objections "on the bases of foundation or ultimate conclusion (province of the jury), both of which were discussed at the hearing on the motion in limine and **addressed by the judge**;" moreover Shadden made a standing objection at trial. *Shadden*, 290 Kan. at 835 (emphasis added).

Importantly, the *Shadden* court explained how appellate courts "generally refuse to consider an issue on appeal if it has not been raised in the district court." *Shadden*, 290 Kan. at 813. In that case, however, the court noted how – not only had the defendant's objections revolved around the "very purpose of the motion in limine" - but the objections were addressed by the judge.

Here, the necessary facts regarding Sanders' outstanding warrant - and thus his lawful arrest and inevitable discovery of the methamphetamine were established by the State in both Officer Belt's direct testimony as to why

Sanders was arrested and in the State's arguments to the court. (R. III, 11, 36.) The State questioned the officer about discovering that Sanders had an outstanding warrant. These questions were purposeful. And in arguing against the suppression of the evidence, the State noted the importance of the discovered warrant.

The State stressed that Officer Belt was going to arrest Sanders for the warrant and not for the methamphetamine or drug paraphernalia. And Officer Purney testified that Sanders had an outstanding warrant based on the running of his name on the identification provided to officers. (R. III, 26.) The warrant gave the officers justification to arrest Sanders.

Additionally, as in *Shadden*, the district court in this case, addressed the issue of the attenuation doctrine.

"I've tried to look at the fact of balancing whether the – I don't remember if it's **the Attenuation Doctrine**. You know, at some point, they find out that there's a warrant but my belief, counsel, is that the activity or that the whole issue of seizing the defendant, I have great difficulty with based on the testimony that I've heard."

(R. III, 41) (emphasis added).

Here, the district court was advised of the issue. In this instance, the district court considered the attenuation doctrine and declined to apply the doctrine. The district court stated so on the record. The district court's statement about the attenuation doctrine itself indicates the issue was raised and considered by the court.

The purpose of having an issue first raised in district court is to allow the district court to consider and rule on the issue at the trial level. That purpose was met in this case.

Inevitable discovery

The State argued inevitable discovery to the district court when the State argued how methamphetamine was found on Sanders after it was certain that Sanders was going to jail.

Once Sanders was lawfully arrested, the officers conducted a pre-incarceration inventory of the items found on Sanders' person and found the methamphetamine. The State presented this argument to the court, stating “after he [was] for sure going to jail that the methamphetamine was found inside the deck of cards, Your Honor.” (R. III, 36) (emphasis added.) The district court heard the State's argument that the drugs were found in a pre-incarceration search and later noted, “**the contact that the officer had in taking the defendant into custody[.]**” (R. III, 41.) (emphasis added.)

Inevitable discovery of the methamphetamine was raised by the State in both Officer Belt's direct testimony as to why Sanders was arrested and in the State's arguments to the court. (R. III, 11, 36.) Compare *State v. Hollingsworth*, 289 Kan. 1250, 1257, 221 P.3d 1122 (2009) (held because

defense's objection on one ground at trial and another ground on appeal, the issue was not preserved on appeal).

In comparison, in *State v. Mack*, 255 Kan. 21, 27–28, 871 P.2d 1265 (1994), the Kansas Supreme Court did not consider a defendant's effort to advance new reasons to support suppression for the first time on appeal. And in *State v. Johnson*, 293 Kan. 959, 963–64, 270 P.3d 1135 (2012), the Kansas Supreme Court would not consider a new Fourth Amendment argument, which had never been presented to either the district court or the appellate court.

This Court should not bar appellate review.

District court's assessment of officers' lack of credibility

On appeal, Sanders points to the judge's assessment of the officers' lack of credibility. (Appellee's Brief, 10.) Importantly, regarding a district court judge's credibility assessment, the Kansas Supreme Court has stated "As with any credibility assessment, **a district judge must weigh surrounding facts and circumstances** along with a witness' statements." *State v. Gray*, 306 Kan. 1287, 1302–03, 403 P.3d 1220 (2017) (emphasis added.)

Here, the district court's credibility determination of the officers cannot erase the surrounding facts and circumstances that support the finding of reasonable suspicion to detain Sanders. Namely, Sanders' suspicious actions

at the vehicle, Sanders two attempts to run from the officers who saw him by the vehicle and his attempts to conceal himself. (R. III, 6, 7, 22.) The surrounding facts and circumstances support the finding of reasonable suspicion.

Conclusion

This Court should reverse the district court's ruling that granted Sanders' suppression motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2018, a copy of this reply brief was served by email to Reid Nelson, #12726 at rnelson@sbids.org.

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