

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
August 18, 2015 Session

STATE OF TENNESSEE v. KENDALL MCKENZIE KIN EAYRS

Appeal from the Circuit Court for Sevier County
No. 18420II Richard R. Vance, Judge

No. E2014-02072-CCA-R3-CD – Filed December 22, 2015

TIMOTHY L. EASTER, J., concur.

Because of the manner in which the trial court terminated the presentation of evidence at the suppression hearing, I am hemmed in and must reluctantly agree with the majority.

I agree with the majority that the certified questions of law in this case were properly reserved. I further agree that the second and third certified questions are not dispositive because they were not “passed upon” by the trial judge. *State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988), *petition to rehear denied*. After review of the officer’s in car video, had the trial court heard all the testimony and arguments, and had those questions been passed upon by the trial court, my opinion would be wholly different.

The resolution of the issue that was passed upon by the trial court is somewhat distressing. I feel certain that the trial court, as I, will never forget that it is not a violation of the state statute to stop, park, or leave standing any vehicle, whether attended or unattended, upon a highway inside a business or residential district. *See* T.C.A. §55-8-158.

TIMOTHY L. EASTER, JUDGE