

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION II

CACR06-428

November 1, 2006

STUART THOMPSON  
APPELLANT  
V.  
STATE OF ARKANSAS  
APPELLEE

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[CR-2005-2020-1]

HONORABLE WILLIAM A. STOREY,  
JUDGE

DISMISSED

Officer Andy Lee, a member of the Bentonville Police Department, arrested appellant, Stuart Thompson, for driving while intoxicated. At the time of the arrest, Lee was working as an auxiliary law-enforcement officer at the University of Arkansas-Texas football game in Fayetteville, Arkansas. The case was submitted to the trial judge on stipulated facts and trial briefs. The trial judge found Thompson guilty. Thompson makes four arguments on appeal: (1) the trial court erred as a matter of law when it found that Officer Lee arrested him at the request of or with the permission of the municipal or county law enforcement agency having jurisdiction in the locale where the arrest was made; (2) the trial court erred as a matter of law when it found that a University of

Arkansas police officer had the authority equivalent to that possessed by a county or municipal police officer; (3) the trial court was clearly erroneous when it found that the Bentonville Police Department had a written policy on file regulating the actions of Officer Lee relevant to his arrest of appellant outside his territorial jurisdiction; (4) even if this court finds that Bentonville Police Department's General Order Number 15, Mutual Assistance, did apply to Officer Lee's activities relevant to his arrest of appellant outside his jurisdiction, then the trial court erred as a matter of law when it found that Officer Lee had authority to arrest appellant under this policy. We hold that this appeal must be dismissed.

It was stipulated that on September 11, 2004, Officer Andy Lee, Jr., of the Bentonville Police Department, was working an off-duty detail for the University of Arkansas Police Department during the Arkansas-Texas football game in Fayetteville, Arkansas, and that Officer Lee was working traffic control at the intersection of Cleveland Street and North Garland Avenue when he stopped Thompson, who was driving a four-wheeler, and arrested Thompson for driving while intoxicated. It was further stipulated "that [Thompson] was, in fact, driving while intoxicated under the law of the State of Arkansas, but the parties disagree as to whether or not Officer Lee had the jurisdictional authority to effectuate a valid arrest. That, should the Court determine that Officer Lee had the necessary jurisdictional power to effectuate an arrest, then the defendant should be found guilty. That, should the Court determine that Officer Lee did

not have the jurisdictional power to effectuate an arrest, then the defendant should be adjudged not guilty.”

The briefs that were submitted to the trial court were not in Thompson’s addendum, but they are in the record. In the first paragraph of his trial brief, Thompson stated:

Officer Andy Lee, Jr., a Bentonville police officer working for the University of Arkansas, was outside his territorial jurisdiction when he detained and arrested the defendant in Fayetteville, Arkansas. Further, Officer Lee was without any other statutory or other official power which might have allowed him to arrest the defendant outside of his jurisdiction. Accordingly, evidence obtained subsequent to the unlawful detention and illegal arrest of the defendant is a direct result of an unreasonable seizure in violation of defendant’s rights under the 4<sup>th</sup> Amendment to the U.S. Constitution, and should be suppressed and excluded from evidence at trial, resulting in a dismissal of charges against defendant.

Although Thompson alleged in his trial brief that evidence was obtained as a result of an illegal arrest and that evidence should be suppressed, he never filed a motion to suppress evidence. Furthermore, Thompson never clarified what evidence was obtained that must be suppressed. The trial judge informed the parties by letter opinion of his decision finding Thompson guilty and setting the date of the sentencing hearing.

The judgment and commitment order in this case indicates that Thompson voluntarily, intelligently, and knowingly entered a negotiated plea of guilty; the same order states that Thompson was informed of his right to appeal. These words seem to indicate that Thompson was attempting to enter a conditional plea of guilty – that if the trial court found that Officer Lee had the authority to make the arrest, Thompson was guilty of driving while intoxicated. However, Thompson failed to properly enter a

conditional plea of guilty. Rule 24.3(b) of the Arkansas Rules of Criminal Procedure provides:

With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement. If the defendant prevails on appeal, the defendant shall be allowed to withdraw the conditional plea.

When the express terms of Rule 24.3(b) are not complied with, this court does not acquire jurisdiction to hear an appeal from a conditional plea. *Hancock v. State*, 90 Ark. App. 473, \_\_\_ S.W.3d \_\_\_ (2005). Conditional pleas pursuant to Rule 24.3(b) are limited to review by the appellate courts “solely with respect to adverse rulings on motions to suppress illegally obtained evidence.” *Berry v. City of Fayetteville*, 354 Ark. 470, 472, 125 S.W.3d 171, 172 (2003) (citing *Payne v. State*, 327 Ark. 25, 937 S.W.2d 160 (1997)). In this case, Thompson did not file a motion to suppress; therefore, this court cannot entertain a conditional plea of guilty under Rule 24.3(b).

Even if Thompson’s trial brief could be construed as a motion to suppress, it would still fail because (i) there was no written reservation of the right to appeal entered contemporaneously with the plea, which is also required in order to enter a conditional plea under Rule 24.3(b), *see Grupa v. State*, 83 Ark. App. 389, 128 S.W.3d 470 (2003); and (ii) there is no indication that the prosecuting attorney acquiesced in the conditional plea, which is a further requirement. *See Bristow v. State*, 82 Ark. App. 145, 119 S.W.3d 527 (2003).

Appeal dismissed.

PITTMAN, C.J., and GRIFFEN, J., agree.