Cite as 2011 Ark. App. 405

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-579

	Opinion Delivered JUNE 1, 2011
TERRY PENISTER APPELLANT	APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT, SOUTHERN DISTRICT [NO. CR-2009-24]
V.	HONORABLE DAVID G. HENRY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Terry Penister conditionally pled guilty to theft of property and received a ten-year sentence in the Arkansas Department of Correction. On appeal, he contends that the trial court erred in denying his suppression motion. We disagree and affirm.

At the hearing on appellant's motion to suppress evidence, Mr. Daniel Cupples testified that on April 26, 2009, he drove by the business of A & B Sales in DeWitt, Arkansas, around 8:20 p.m., when he saw a man putting some car wheels in a ditch. Mr. Cupples then went to his father's house, where he called the police. David Scott Malone, a police officer for the City of DeWitt, testified that he received a call regarding a theft in progress, drove over to A & B Sales, and saw appellant's vehicle coming from the road beside the store. Officer Malone further stated that he stopped the vehicle because he had some suspicion that the car

was involved in the theft. At the time of the stop, Officer Malone had no information about the suspect or about a vehicle.

James "Dude" Paxton, a DeWitt police officer, testified that, after appellant was stopped and detained by Officer Malone, he arrived with Mr. Cupples, who identified appellant as the man with the wheels. Officer Paxton then opened the trunk, and the wheels were in plain sight. Appellant was arrested and later conditionally pled guilty to theft of property, with the right to appeal the denial of his motion to suppress. The trial court granted appellant's motion for a belated appeal. On appeal, this court ordered rebriefing due to deficiencies in the appellant's brief. *See Penister v. State*, 2011 Ark. App. 121. Before us is appellant's corrected brief in compliance with this court's opinion.

In reviewing the denial of a motion to suppress evidence, our appellate courts conduct a de novo review based upon the totality of the circumstances, reversing only if the circuit court's ruling is clearly against the preponderance of the evidence. *Stokes v. State*, 375 Ark. 394, 291 S.W.3d 155 (2009). Issues regarding the credibility of witnesses testifying at a suppression hearing are within the province of the circuit court. *Id.* Any conflicts in the testimony are for the circuit court to resolve, as it is in a superior position to determine the credibility of the witnesses. *Id.*

A law-enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of

forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. *See* Ark. R. Crim. P. 3.1 (2010). The justification for the investigative stop depends upon whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating that the person may be involved in criminal activity. *Hill v. State*, 275 Ark. 71, 628 S.W.2d 284, *cert. denied*, 459 U.S. 882 (1982). "Reasonable suspicion" means a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion. Ark. R. Crim. P. 2.1 (2010).

Rule 14.1 of the Arkansas Rules of Criminal Procedure (2010), provides in pertinent part that an officer who has reasonable cause to believe that a moving or readily movable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is on a public way. Ark. R. Crim P. 14.1(a)(i). Rule 2.2(a) of the Arkansas Rules of Criminal Procedure (2010), provides that a law-enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The rule allows that an officer may request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request. Ark. R. Crim. P. 2.2(a).

Appellant claims that his constitutional right against unreasonable search was violated when officers conducted the stop and warrantless search of his vehicle. Appellant contends that Officer Malone's testimony was that appellant had not violated any traffic laws; that he knew there was a theft in progress, but had no information about the suspect or the vehicle; that he stopped appellant's vehicle because it was at the scene; and that he did not have anything more than a mere suspicion when he made the traffic stop. Appellant argues that probable cause was necessary for the officer to stop and search his vehicle without a warrant. He claims that Officer Malone did not have reasonable or probable cause to stop and detain him, as appellant had committed no traffic violation.

Appellant argues that Officer Malone did not comply with the spirit of Rule 2.2(a) when he made the stop. He contends that there is no evidence of Officer Malone asking appellant any questions or requesting information concerning the alleged crime. Appellant also contends that Officer Malone made no indication, or take reasonable steps to inform appellant that he had no legal obligation to furnish such information. Further, appellant argues that Officer Malone did not meet the requirements of reasonable cause contained in Rule 14.1, or those of reasonable suspicion in Rule 2.1. He claims that Officer Malone stopped him merely because he happened to drive down a public road close to the alleged crime scene, not because he was violating any law that would have triggered the traffic stop. Appellant asserts that it was not until Officer Paxton arrived with the witness that Officer Malone had more

than a suspicion. Therefore, appellant contends that his constitutional rights were violated, and the evidence should be suppressed.

The State claims that the only issue preserved for appeal is whether the initial stop of appellant was lawful because appellant conceded at trial that "once the witness was brought to the scene to identify the driver and other information was shared with the officers, the search could lawfully be conducted." We agree. A party is limited to the scope and nature of their arguments made below. *See, e.g.*, *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997). Therefore, we will only examine appellant's arguments related to the initial stop.

As noted by the trial court's ruling denying appellant's motion to suppress, Rule 2.2(a) of the Arkansas Rules of Criminal Procedure allows a police officer to request information from any person or ask them to cooperate during the investigation of a particular crime. An officer's approach of a citizen pursuant to an investigation must be reasonable under the circumstances. *E.g.*, *Sanders v. State*, 76 Ark. App. 104, 61 S.W.3d 871 (2001).

The State compares *Baxter v. State*, 274 Ark. 539, 626 S.W.2d 935 (1982), with the instant case. In *Baxter*, police officers heard the broadcast of a robbery and immediately began patrolling a city park, one-fourth of a mile from the scene of the robbery. *Id.* at 541, 626 S.W.2d at 936. An officer met Baxter's car, turned around, followed it, and then stopped it. *Id.* The court held that the stop was lawful because the scene of the crime was nearby; the time sequence was such that it was likely that the vehicle in the park had been involved in the robbery—it being the only vehicle in the park; the intrusion was minimal compared to the

government interest; the crime under investigation, a felony, was serious; and the initial encounter was not aggressive. *Id*. at 544, 626 S.W.2d at 937.

In the instant case, Officer Malone arrived on the scene less than thirty seconds after the police broadcast. Appellant was seen driving away from the scene. Appellant's vehicle was the only one in the area. The stop was brief, which was a minimal intrusion compared to the government's substantial interest in investigating a serious crime. Finally, the stop was nonaggressive, as appellant was not placed in custody until after he and the vehicle were identified by the witness. Accordingly, we affirm.

Affirmed.

HART and ABRAMSON, JJ., agree.