

Cite as 2009 Ark. App. 636

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR09-160PEDRO ESPINOZA & JUAN PABLO
ESPINOZA

APPELLANTS

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 30, 2009APPEAL FROM THE POPE
COUNTY CIRCUIT COURT
[CR-08-258]HONORABLE DENNIS CHARLES
SUTTERFIELD, JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellants, Pedro Espinoza and Juan Espinoza, appeal from their October 29, 2008 judgment and commitment/disposition orders. The judgments were entered in accordance with their conditional plea agreements pursuant to Rule 24.3(b) of the Arkansas Rules of Criminal Procedure, whereby appellants entered pleas of *nolo contendere* to the charge of possession of marijuana with intent to deliver. They challenge the trial court's denial of their motions to suppress evidence, contending: 1) the trial court erred in finding that the warrantless vehicular search could continue after consent had been withdrawn despite the fact that no contraband had been found prior to the consent having been withdrawn; 2) there was no probable cause to stop appellants' vehicle. We affirm.

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In reviewing the denial of a motion to suppress evidence, this court conducts 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, ___ S.W.3d ___ (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.*

At the October 27, 2008 suppression hearing, Trooper Chris Goodman testified that on April 25, 2008, around 3:07 p.m., he observed the vehicle occupied by the appellants engage in the traffic violations of making an unsafe lane change, driving onto the highway shoulder, and careless driving. He made a traffic stop on that basis. They were in a Dodge pickup truck with an Arizona license plate. Trooper Goodman described them both as extremely nervous. Juan was identified as the owner/driver of the vehicle and Pedro, the passenger. Trooper Goodman testified that he asked Juan whether there were any weapons in the truck and that Juan responded, "No, go ahead and check the truck." Before checking the truck, Trooper Goodman went back to his patrol vehicle and ran appellants' names through the NCIC and then issued Juan, the driver, a warning. He stated that "contemporaneously issuing a warning, I said is it okay if I check the truck," and, with Juan's consent, he then began checking the truck. But first, Pedro, the passenger, was removed and patted down for weapons. Juan was already out of the vehicle. According to Trooper Goodman, appellants were cooperative and cordial, but their demeanor was still nervous.

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Trooper Goodman checked the cab area first and did not find any weapons. He then checked the bed of the truck and found that the entire bed was a false compartment. He immediately noticed that the bed liner also had several screws across the back of it, preventing it from being lifted up as with a normal bed liner.

Trooper Goodman stated that he attempted to call for back up, but that nobody arrived. He then asked Juan if he would follow him to a shop. When Juan declined, citing the need to leave, Trooper Goodman told appellants that was fine but that the truck was staying there because he knew there was a compartment in it. He said that he then directed appellants to the front of the truck while he tried to take the screws out of the bed liner. However, they came back while he was working on the bed liner, and he became concerned because he was by himself. He then made them get in the backseat of his patrol vehicle. Several minutes later, Corporal David Smothers showed up. Corporal Smothers then kept an eye on appellants while Trooper Goodman drilled into the compartment, finding approximately 120 pounds of marijuana. Trooper Goodman testified that through his training and experience he knows that false compartments are utilized to conceal contraband from the police; that he drilled into the truck bed because it was a false compartment; and that the false compartment gave him probable cause to believe that it contained contraband. According to Trooper Goodman, Juan's consent was not withdrawn prior to Goodman's finding the false compartment, but that he had not yet found the actual contraband. Corporal Smothers's testimony adds nothing to the issues presented.

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Juan Espinoza’s testimony confirmed three critical factual statements of Trooper Goodman: Espinoza gave consent (“I just voluntarily . . . told him he could look inside the vehicle”), he did not revoke his consent until after the trooper discovered the false compartment (“[t]he reason for my coming over to the officer was I thought he was damaging my truck so I asked him to stop”), and he cut another vehicle off (“Yeah, I cut somebody off but I mean I wasn’t — it wasn’t close. It wasn’t that close but I did cut somebody off”).

Probable Cause to Search

Under this point, appellants argue that because consent was withdrawn prior to the marijuana actually being found, the contraband should have been suppressed. The State counters that the search was good because the officer found the false compartment before consent was withdrawn and thus had probable cause to continue the search. The State’s position is correct.

Rule 14.1 of the Arkansas Rules of Criminal Procedure addresses vehicular searches and provides in pertinent part:

(a) 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:

(i) on a *public way* or waters or other area open to the public[.]

(Emphasis added.)

Trooper Goodman testified that he discovered the existence of a false compartment before Juan withdrew his consent to the search, and that based upon his training and

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experience he knew that such compartments are used to transport drugs. Juan's testimony did not significantly contradict him. As an additional factor, Trooper Goodman had already noticed that both appellants displayed extremely nervous demeanors. Thus, prior to Juan withdrawing his consent to search, Trooper Goodman clearly had reasonable cause to believe that the truck contained things subject to seizure, rendering the warrant requirement void. See *Turner v. State*, 94 Ark. App. 259, 229 S.W.3d 588 (2006).

Probable Cause to Stop

Finally, appellants dispute the fact that Trooper Goodman had probable cause to stop their vehicle, asserting that they were the victims of racial profiling. We disagree.

Juan clearly confirmed Trooper Goodman's testimony by acknowledging that "Yeah, I cut somebody off but I mean I wasn't — it wasn't close. It wasn't that close but I did cut somebody off." We find no basis for concluding that the traffic stop was not valid.

Affirmed.

HENRY, J., agrees.

GLADWIN, J., concurs.

GLADWIN, J., concurring. I agree with the majority that this case should be affirmed, but write separately because I do not believe that *Turner v. State*, the case upon which the majority relies, is exactly on point. In that case, appellant Turner argued that the police officer's search of the exterior of the truck, after the search of the interior yielded no evidence of contraband, exceeded the scope of the consent given by appellant. This court held that the

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search of the vehicle's exterior was within the scope of the consent granted. *Turner v. State*, 94 Ark. App. 259, 229 S.W.3d 588 (2006). We went on to state that the police officer's observations of modifications beneath the bed of the truck were indicative of a false compartment for the concealment of contraband and gave rise to probable cause to perform a more intrusive search of drilling holes in the truck's bed. *Id.* This dicta seems to state that the hidden compartment alone is enough for probable cause to continue the search without a warrant.

The Tenth Circuit Court of Appeals has set out a two-pronged test, which seems to also state that the hidden compartment is enough to create probable cause. *See United States v. Stephenson*, 452 F.3d 1173 (10th Cir. 2006). However, I believe that the Tenth Circuit's declaration that evidence of a hidden compartment when coupled with other suspicious circumstances can contribute to probable cause to search a vehicle is a better statement of the law. *See United States v. Vasquez-Castillo*, 258 F.3d 1207, 1213 (10th Cir. 2001).

If the mere presence of a hidden compartment without other circumstances equals probable cause to search in this state, it should be stated by our supreme court.