NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-821

	Opinion Delivered May 6, 2009
JEREMIAH JAMES HARRIS APPELLANT	APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT [NO. CR-07-186]
V.	HONORABLE DAVID BURNETT JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOSEPHINE LINKER HART, Judge

After entering a conditional guilty plea to the crime of possession of a controlled substance, appellant, Jeremiah James Harris, appeals from the circuit court's denial of his motion to suppress. He argues that the police lacked probable cause to make a traffic stop, that the police lacked probable cause or reasonable suspicion to detain him and search his vehicle, and that, contrary to the assertion of the police, he did not consent to a search of his vehicle. We affirm.

At the hearing on the motion to suppress, Jimmy Evans of the West Memphis Police Department testified that while on duty on February 9, 2007, he observed appellant "hit his brakes," causing appellant's car to "do a nose dive." Evans followed appellant and saw him "do the same thing," so Evans activated his blue lights and conducted a traffic stop. Evans observed appellant "reaching for something," and when Evans made his way up to the driver's side of the vehicle, appellant was "still fiddling with something in the center of the car in the

center console."

Evans asked appellant for his driver's license, registration, and proof of insurance. Evans described appellant as "real nervous, " as appellant stuttered and had to be asked "two or three times for his stuff." Evans asked appellant to step out of the car. Evans asked appellant if he had any weapons on him and patted him down for weapons. Evans further testified that as appellant opened the door, he smelled burnt marijuana coming from the car. Evans walked appellant to the back of the car, and another officer, Mark McDougal, arrived.

Evans further testified that "at that time I asked him, have you got anything in the car that I need to know about." Appellant said no. Evans asked appellant if he minded if he looked. According to Evans, appellant said, "Go ahead and search it. I ain't got nothing in there." McDougal testified that he heard appellant say, "Yeah, go ahead . . . I have nothing to hide." Evans testified that after receiving permission, he "went straight in the car to the center console." There, he found a white powdery substance, cocaine. Evans then placed appellant in custody, handcuffed him, and put him inside the police vehicle.

Evans testified that he cited appellant for operating an unsafe vehicle, because appellant's taillights were not working. He also testified that when he ran appellant's name and date of birth, appellant was still in his own car, and when he asked appellant to step out of the car, he had not written the citation at that time. Evans opined that appellant was nervous, "a fish out of water," that he "couldn't do anything right." Evans testified that he "didn't know if he had a weapon or what he had in the car," and he wanted appellant "out of the car to finish the traffic stop." Further, he testified that appellant "was nervous, still fidgeting in the

car. I didn't know if he had a weapon on him, in the car or what, so I wanted to remove him from the car as my backup was showing up to make sure I was safe on the traffic stop." Evans admitted that he did not find marijuana, nor did he test appellant. Evans also testified that appellant told him that he smoked marijuana but did not use cocaine.

Appellant presented the testimony of Dawn Morgan from the Justice Network, who testified that appellant was drug tested on March 7, 2007, and the results were negative for marijuana, cocaine, and methamphetamine. Appellant then took the stand and testified that when he was pulled over, Evans came up to the vehicle and asked him for his license and registration. Appellant testified that he asked Evans why he had pulled him over, and Evans stated that he pulled him over because he had no brake lights. According to appellant, he explained to Evans that he had his car serviced on February 7, 2007, and he had a printout showing that all of his lights "tested good." Appellant further testified that he gave the paper to Evans, and appellant introduced into evidence a copy of the printout. Also, appellant testified that when he was released from jail, the brake lights still worked.

Appellant further testified that Evans had him exit the car, and he was searched, handcuffed, and placed in a police car. Appellant also testified that when Evans asked to search the car, he told Evans "no" because he did not have a search warrant or probable cause, but Evans nevertheless conducted a search. Appellant stated that the officers searched the vehicle for twenty-five to thirty minutes. Further, he testified that Evans did something inside the front of the officer's vehicle, went to appellant's vehicle, and returned to the police car with the white powdery substance. He also testified that the console only had a cup holder, and

there was nothing in the console that lifted or opened up. Further, he testified that the charge for not having brake lights was dismissed.

On appeal, appellant argues that Evans did not have probable cause to make a traffic stop. He asserts that the taillights worked properly two days prior to the stop and on the day he was released from jail. Second, he argues that Evans did not have probable cause or reasonable suspicion to detain him and search the vehicle. He asserts that after he provided the requested information to Evans, the officer had no further reason to detain him, as the purposes of the initial traffic stop were complete. Appellant asserts that nervousness alone does not give rise to reasonable suspicion, and he questions Evans's testimony that he smelled marijuana, noting that Evans did not find any evidence of marijuana in the car and that he tested negative for marijuana in a drug test taken less than thirty days after the arrest. Third, he asserts that he did not consent to the search of the car, and there is no written consent form or audio or video to back up Evans's testimony.

In reviewing a circuit court's denial of a motion to suppress evidence, the appellate court conducts a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the circuit court. *Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004). The circuit court's ruling is reversed only if it is clearly against the preponderance of the evidence.[1] *Nelson v. State*, 365

[1]We observe that while explaining his ruling, the circuit judge said, "When you resolve the conflict between the defendant's testimony and the officer, that is for a jury to decide. At this point, I'm going to weigh the evidence in its best light for the state. You

Ark. 314, 229 S.W.3d 35 (2006).

In order for a police officer to make a traffic stop, he must have probable cause to believe that the vehicle has violated a traffic law. *Sims*, *supra* (holding that there was probable cause to stop based on a defective brake light and taillight). While appellant argues that Evans did not have probable cause, there was testimony from which the circuit court could conclude that Evans had probable cause to stop appellant based on his conclusion that appellant violated a traffic law in that his taillights were not functioning. While appellant disputes the officer's assertion, we cannot say that the court's conclusion was clearly against the preponderance of the evidence.

With regard to appellant's argument that Evans did not have probable cause or reasonable suspicion to detain appellant and search the vehicle, we note that a police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle. *See Wright v. State*, 327 Ark. 558, 940 S.W.2d 432 (1997). Furthermore, after making a valid traffic stop, the police officer may detain the motorist while the officer completes routine tasks, including the writing up of a citation or warning. *Sims*, *supra*. During this process, the officer may ask whether the officer may search the vehicle. *Id.* Accordingly, we need not consider whether Evans had probable cause or reasonable suspicion or to detain appellant after the traffic stop ended, because Evans had not completed the traffic stop. Evans testified that

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might convince a jury that they framed him. . . ." The question of whether the circuit judge was merely resolving conflicts in testimony, or whether he was erroneously viewing the evidence in the light most favorable to the State, was not an issue raised either at the hearing or on appeal.

he had not written the citation, and given appellant's demeanor, he wanted appellant out of the car to ensure his safety on the traffic stop. It was at this time that Evans asked appellant if he could search the car, and appellant consented.

Appellant further asserts that he did not consent. As for the question of consent to the search, when the testimony of an officer and an appellant are in direct conflict, the decision amounts simply to the question of which witness to believe, which is a decision left to the trier of fact. *Nelson*, *supra*. The circuit court specifically found that Evans gave the more credible testimony regarding whether consent was given. Thus, the decision of the circuit court was not clearly against the preponderance of the evidence.

Affirmed.

GLADWIN and KINARD, JJ., agree.