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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-1084

BRUCE BLOUNT APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered March 3, 2010 APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. CR-2008-859-1] HONORABLE BERLIN JONES, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

Bruce Blount pleaded guilty to possession of a controlled substance (methamphetamine) and possession of drug paraphernalia, for which he was sentenced to six years in the Arkansas Department of Correction. Pursuant to Arkansas Rule of Criminal Procedure 24.3(b), he reserved the right to appeal from the denial of his motion to suppress. He now comes before this court, arguing that the police did not have the right to conduct a pat-down search at the time they found the contraband on his person. We affirm.

On the morning of November 14, 2008, Sheriff's Deputies Alvin McMiller and Vince Edwards went to a Jefferson County residence to serve a misdemeanor hot-check warrant on Robert Roberts. They went to the front door of the residence, and a young girl told them that Roberts was not there. As the two deputies began to leave the premises, they saw other

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individuals (two men and one woman) at the north end of the house. The individuals appeared to be trying to hide from the deputies. The deputies approached the men to determine if either of them were Roberts. One of the men, Earl Winford, had a bulge in his pocket. According to McMiller, the bulge was big enough to be a gun or a knife. McMiller was unsure, but the object made him concerned about his physical safety. A subsequent search of Winford yielded a knife and a baggie with a white substance. While the deputies were addressing the three individuals, another person, later identified as Blount, came out of a shed on the premises. Smoke was coming from the shed when Blount exited. Blount held his hands up and said, "I ain't did nothing. I ain't did nothing wrong." McMiller thought that Blount was on some type of drug. McMiller explained that he became suspicious because Blount was approaching him hastily. Blount also had some bulges in his front pockets. He instructed Blount to keep his hands up for officer safety and told Blount that he was going to pat him down for weapons. During the pat-down search, McMiller felt two syringes in Blount's front right pocket. A full search of his person yielded a couple of small pocket knives, two hypodermic needles containing a white liquid, and two small clear containers. On cross-examination, McMiller stated that Blount did not put his hands in his pockets or interfere with his dealings with the other subjects. However, he told the court that he felt threatened during the incident. Edwards's testimony was similar to McMiller's.

After hearing the testimony, the court concluded that the deputies had the right to pat Blount down because the deputies' safety was at issue. Thus, the motion to suppress was denied.

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Blount then pleaded guilty to possession of controlled substance and possession of drug paraphernalia. A third charge, possession of drug paraphernalia with intent to manufacture, was nolle prossed. Pursuant to Arkansas Rule of Criminal Procedure 24.3(b), his plea was conditioned upon him reserving the right to appeal from the denial of his motion to suppress the evidence found in the pat-down search.

Generally, a defendant who pleads guilty has no right to appeal. Ark. R. App. P.—Crim. 1(a). However, with the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress seized evidence. Ark. R. Crim. P. 24.3(b). Blount has complied with the rule, thereby allowing this court to review the denial of the motion to suppress.

When reviewing the denial of a motion to suppress evidence, the appellate courts conduct 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 trial court. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003). Issues regarding the credibility of witnesses testifying at a suppression hearing are within the province of the circuit court. *Stokes v. State*, 375 Ark. 394, 291 S.W.3d 155 (2009). 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.* This court will only reverse the trial court's ruling on a motion to suppress if that ruling is clearly against the

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preponderance of the evidence. *Yarbrough v. State*, 370 Ark. 31, 257 S.W.3d 50 (2007).

Blount does not challenge his initial encounter with police. However, he contends that the deputies had no reasonable suspicion to believe that he was armed and dangerous, thereby justifying the pat-down search. Arkansas Rule of Criminal Procedure 3.1 permits a law enforcement officer to stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit a felony or 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. If a law enforcement officer who has detained someone pursuant to Rule 3.1 reasonably suspects that a person is armed and presently dangerous, that officer may search the outer clothing of such a person and seize any weapon or other dangerous thing which may be used against the officer and others. Ark. R. Crim. P. 3.4. A pat-down search is only justified when the officer has a reasonable suspicion that the detainee is armed. *Pettigrew v. State*, 64 Ark. App. 339, 984 S.W.2d 72 (1998) (citing *Ybarra v. Illinois*, 444 U.S. 85 (1979)). While the officer need not be absolutely certain that the individual is armed, the basis for the frisk must lie in a reasonable belief that the officer's safety or that of others is at stake. *Id.* (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

"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

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imaginary or purely conjectural suspicion. Ark. R. Crim. P. 2.1. In this case, the trial court did not err in finding that the deputies had reasonable suspicion to believe that Blount was armed and dangerous. Immediately prior to their encounter with Blount, the deputies were dealing with three individuals who appeared to be hiding from them, one of whom had a weapon on his person. Blount approached the deputies unprovoked and appeared to be under the influence of a drug. Finally, the deputies saw a bulge in Blount's pants, and they saw this soon after finding a knife on another suspect after seeing a similar bulge. *See also Stout v. State*, 304 Ark. 610, 614, 804 S.W.2d 686, 689 (1991) (stating that the officer was justified in frisking a suspect "[i]f for no other reason . . . to determine that the obvious bulge in [the appellant's] jacket was not a weapon"). In light of these circumstances, we affirm the denial of Blount's motion to suppress.

Affirmed.

HART and GLADWIN, JJ., agree.