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Cite as 2010 Ark. App. 696

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 10-324

SEAN ROBERT NICHOLAS APPELLANT	**Opinion Delivered** October 20, 2010
V.	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. CR-2009-1042-1]
STATE OF ARKANSAS APPELLEE	HONORABLE ROBIN FROMAN GREEN, JUDGE
	DISMISSED

COURTNEY HUDSON HENRY, Judge

Appellant Sean Robert Nicholas purportedly entered a conditional plea of guilty, pursuant to Arkansas Rule of Criminal Procedure 24.3(b), to driving while intoxicated (DWI), second offense, and speeding, and the court sentenced him to ninety days in jail, with eighty-three days suspended, conditioned upon having no additional alcohol-related offenses for one year. The court also ordered appellant to pay a fine of $750. Prior to his conditional plea of guilty, appellant filed two motions to suppress all evidence obtained as a result of an allegedly unlawful stop, and the circuit court denied appellant's motions. For reversal, appellant argues that the circuit court erred in denying his motions to suppress. We dismiss the appeal because it does not involve a suppression issue contemplated by Rule 24.3(b).

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On November 8, 2008, at approximately 4:00 a.m., Officer John Alexander of the Rogers Police Department operated a laser-based, speed-detection device, known as LIDAR. While patrolling an area near the intersection of Financial Parkway and West New Hope Road, Officer Alexander noticed appellant's vehicle traveling below the legal speed limit, activated the LIDAR device, and verified that appellant was driving at the rate of forty-seven miles per hour in a fifty-mile-per-hour zone. However, as appellant passed the officer, Officer Alexander heard appellant "rev up" his engine and saw him rapidly accelerate his vehicle. Officer Alexander estimated by sight that appellant accelerated to sixty miles per hour and, with the LIDAR, verified appellant's rate of sixty-three miles per hour. The officer locked appellant on the device, which showed a final reading of sixty-six miles per hour at a distance of three hundred feet. Officer Alexander conducted a traffic stop and arrested appellant for DWI and speeding.

Appellant entered a guilty plea in Rogers District Court to DWI, second offense, and speeding. Appellant appealed to Benton County Circuit Court and filed a motion to suppress followed by a supplemental motion. In his motions, appellant argued that Officer Alexander stopped him for speeding without just cause, requested that the court suppress all evidence from the stop, and alleged that Officer Alexander utilized a LIDAR device that had not been approved in Arkansas and that the State must prove its reliability and accuracy.

The circuit court conducted a suppression hearing, where Officer Alexander testified that he demonstrated proficiency and was certified as a LIDAR operator. The officer stated

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that he calibrates the LIDAR every day before its use and again when he returns to the police station. Officer Alexander testified that, in order to check the calibration, he stands at one sign outside the police department and measures the distance to another sign. He also stated that he records in a field notebook whether the machine was properly calibrated. Officer Alexander further testified that, on the morning of November 8, 2008, he checked the device at 3:30 a.m., stopped appellant at 4:09 a.m., and rechecked the device at 5:27 a.m. The officer stated that this LIDAR reading served as the basis for the stop. During Officer Alexander's testimony, the State introduced and the court received into evidence a photocopy of a certificate showing that Officer Alexander was qualified as a "Certified Police Traffic Radar Operator" and a certificate from the Rogers Police Department certifying that Officer Alexander successfully completed a LIDAR-operator course. Defense counsel argued that Officer Alexander's testimony was insufficient to prove that he was qualified to operate a LIDAR and that the evidence obtained by the LIDAR device was inadmissible. The court withheld its ruling until a later hearing.

The circuit court later considered appellant's motions to suppress the LIDAR evidence and ruled that the evidence was admissible based upon Officer Alexander's training in and certification for the operation of the LIDAR unit. Subsequent to the adverse ruling on appellant's motion to suppress evidence, appellant entered a conditional plea of guilty, pursuant to Rule 24.3(b), to second-offense DWI and speeding. The court accepted appellant's guilty plea and, in addition to a $750 fine, imposed a sentence of ninety days in jail,

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with eighty-three days suspended, conditioned upon his having no additional alcohol-related offenses for a period of one year. Appellant timely filed his notice of appeal.

For the sole point on appeal, appellant argues that the circuit court erred in denying his motion to suppress the evidence obtained by the officer's use of LIDAR. Specifically, appellant asserts that Officer Alexander's reliance upon the LIDAR device was improper because the State did not show that the officer properly calibrated the instrument or that the officer was properly trained to use it.

As a general rule, a defendant who pleads guilty has no right to appeal. Ark. R. App. P.–Crim. 1(a). However, Rule 24.3 provides a procedure for an appeal from a guilty plea. *Payne v. State*, 327 Ark. 25, 937 S.W.2d 160 (1997). Rule 24.3(b) states:

> 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 of 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.

The supreme court requires strict compliance with Rule 24.3(b) to convey appellate jurisdiction, and if the parties do not comply with the express terms of the rule, the appellate court acquires no jurisdiction to hear an appeal from a conditional plea. *McMullen v. State*, 79 Ark. App. 15, 82 S.W.3d 827 (2002).

The supreme court has interpreted the language of Rule 24.3(b) to permit review of conditional guilty pleas solely with respect to adverse rulings on motions to suppress illegally obtained evidence. *Payne*, *supra*. In *Payne*, the appellant entered a conditional plea of guilty

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to DWI, fourth offense, and attempted to appeal the circuit court's ruling admitting his prior DWI convictions into evidence. The supreme court dismissed the appeal for lack of jurisdiction, finding that Rule 24.3(b) permits review of conditional guilty pleas solely with respect to adverse rulings on motions to suppress illegally obtained evidence and that it does not apply to evidence that is alleged to have been wrongfully admitted. *See also Pickett v. State*, 301 Ark. 345, 783 S.W.2d 854 (1990) (dismissing an appeal from a plea of nolo contendere to DWI, third offense, because appellant contested on appeal the admissibility of prior DWI convictions due to ineffective waivers of counsel); *Jenkins v. State*, 301 Ark. 20, 781 S.W.2d 461 (1989) (dismissing an appeal from appellant's motion in limine to suppress the use of prior convictions due to lack of proper waiver of counsel and holding that the motion sought to suppress the admissibility of evidence rather than evidence illegally obtained).

In the present case, appellant improperly argues on appeal that the LIDAR evidence was wrongfully admitted into evidence because of Officer Alexander's alleged failure to calibrate the LIDAR unit according to its manufacturer's recommendations and the officer's alleged lack of qualification in training and certification to operate the LIDAR device. Thus, appellant's arguments to this court fall outside the ambit of Rule 24.3(b) because they concern the *admissibility of evidence* as distinguished from any *evidence illegally obtained* as the basis for an alleged unlawful traffic stop. *See Pickett*, *supra*. Because Rule 24.3(b) does not provide for an appeal following a conditional plea of guilty where the admissibility of evidence is challenged,

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we dismiss the appeal. Therefore, we decline to address the merits of appellant's arguments on appeal.

Dismissed.

ABRAMSON and BROWN, JJ., agree.