

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CACR05-931

April 12, 2006

ALISA WYNN

APPELLANT

APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT
[NO. CR-2004-40]

V.

HONORABLE DENNIS CHARLES
SUTTERFIELD, CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant, Alisa Wynn, entered a conditional plea of guilty to the crime of possession of methamphetamine and was placed on probation for five years. She appeals from the circuit court's denial of her motion to suppress evidence seized by law enforcement following a traffic stop. On appeal, appellant does not challenge the propriety of the initial stop. Rather, she contends that, because the officer lacked reasonable suspicion to detain her after the conclusion of the traffic stop, the circuit court erred by refusing to suppress items seized following her detainment for the arrival of a drug-detection dog. We affirm.

Justin Phillips, a patrolman with the Ozark Police Department, testified that around 6:05 p.m. on February 7, 2004, he stopped a truck driven by appellant because it did not have a functional license-plate lamp. When Phillips asked if he could see her driver's license, she replied, "Yes, ma'am." According to Phillips, appellant appeared nervous—she was shaking as she was getting her wallet and would not make eye contact with him. He also noticed that appellant was grinding her teeth horizontally in a "manner that's consistent—that I'm

familiar with as people that are on methamphetamine or some sort of narcotic of that nature.” He also noted that it was cold outside, but appellant was sweating profusely. He also observed that appellant had sores on her face and neck that were consistent with sores he had seen on persons that were under the influence of methamphetamine.

Phillips called in appellant’s driver’s license, returned it to her, and issued a verbal warning for not having a functioning lamp. He testified that he asked her to exit her vehicle because, based on her demeanor, he “knew she was under the influence of something,” and he wanted to conduct a field-sobriety test. He also testified that he did not feel comfortable with her driving the vehicle, further stating on cross-examination that he would not have allowed her to drive “whether I searched or not searched her.” He did not, however, conduct the test.

He asked for consent to search her truck, which she refused. Phillips testified that he asked to search her vehicle because he opined that appellant’s behavior was consistent with being under the influence of methamphetamine, again noting her grinding of her teeth, her sweating profusely when it was cold, the sores on her face and neck, her nervous demeanor as far as calling him “ma’am,” her not being able to make eye contact, and her thumbing through her wallet for her license. He further testified—on cross-examination—that he determined that appellant was under the influence of narcotics within thirty seconds of first coming into contact with her.

He called to the scene an officer who had a drug-detection dog, and the dog alerted to narcotics on the driver’s side door. After Phillips told appellant that he was about to search the truck, appellant told him not to do so and pulled a syringe out of her shoe and a quarter gram of methamphetamine out of her wallet, which had been in the truck. He

testified that he did not charge her with possession of drug paraphernalia or continue his investigation of whether she was driving while intoxicated because he “felt sorry for her.”

In order to conduct a canine sniff of a motorist’s vehicle after the legitimate purpose for the initial traffic stop has terminated, Rule 3.1 of the Arkansas Rules of Criminal Procedure requires the officer to possess reasonable suspicion—before the legitimate purpose of the traffic stop has ended—that the person is committing, has committed, or is about to commit a felony or a misdemeanor involving danger to persons or property. *Malone v. State*, ___ Ark. ___, ___ S.W.3d ___ (Nov. 17, 2005). The existence of reasonable suspicion 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. *Id.* We conduct a de novo review based on the totality of the circumstances, reviewing findings of historical fact for clear error and determining whether those facts give rise to reasonable suspicion, giving due weight to inferences drawn by the trial court. *Id.*

Appellant asserts that the purpose of the traffic stop ended when Phillips returned appellant’s license and issued a warning. Assuming appellant is correct, the question here is whether, based on the totality of the circumstances and giving due weight to inferences drawn by the trial court, the observations Phillips made prior to the end of the traffic stop supported a reasonable suspicion that appellant was under the influence of methamphetamine and thereby driving while intoxicated. Here, Phillips, who testified that he made this determination within thirty seconds of stopping appellant, opined that appellant’s behavior (considering her grinding of her teeth, her sweating profusely when it was cold, the sores on her face and neck, her nervous demeanor as far as calling him “ma’am,” her not being able to make eye contact, and thumbing through her wallet for her license) was consistent with

being under the influence of methamphetamine. Phillips's observations, which were made prior to the end of the traffic stop, provided him with a reasonable suspicion that appellant was driving while intoxicated. *See Hilton v. State*, 80 Ark. App. 401, 96 S.W.3d 757 (2003) (relying in part on a police officer's observation of the defendant's physical characteristics consistent with intoxication to support *probable cause* to arrest for driving while intoxicated). Furthermore, appellant's own testimony supported the reasonableness of Phillips's suspicion, as appellant admitted that grinding teeth, sweating, and nervousness all occur with methamphetamine use. Consequently, we conclude that the circuit court properly denied appellant's motion to suppress the items seized from appellant.

Affirmed.

ROBBINS and GLOVER, JJ., agree.