

DIVISIONS IV & I

CACR06-1381

NOVEMBER 14, 2007

PATRINA COBBS

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FIRST DIVISION,
[NO. CR2005-1619 & CR2001-938]

V.

STATE OF ARKANSAS

APPELLEE

HON. MARION A. HUMPHREY,
JUDGE

AFFIRMED

Patrina Cobbs was convicted of first-degree forgery and identity fraud in a bench trial in Pulaski County Circuit Court, her probation was revoked in a revocation hearing conducted simultaneously with the trial, and her previously filed motion to suppress evidence was denied. Cobbs was sentenced to concurrent sentences of sixty months' imprisonment for the convictions and the revocation. The charges against her resulted from events that occurred at Best Buy in North Little Rock and from the search of her vehicle by an off-duty city police officer after she left the store. The forgery charge was based on the State's allegation that she presented a fraudulent driver's license and represented herself to be Veronica George.¹ The financial-identity charge alleged that Cobbs accessed the financial resources of Raymond George by use of his checking account number.

¹Other forgery charges against Cobbs either were nol prossed or resulted in acquittal.

Cobbs raises three points on appeal. She contends that the circuit court erred in denying her motion to suppress evidence as the result of an illegal search and seizure, in refusing to grant her motion for directed verdict, and in refusing to grant her motion for a new trial. We affirm the convictions and the probation revocation.

Sufficiency of the Evidence

Although Cobbs presents this issue as her second point on appeal, double-jeopardy considerations require us to examine the sufficiency of the evidence before addressing other allegations of error. *Nelson v. State*, 365 Ark. 314, 229 S.W.3d 35 (2006). Cobbs moved for a directed verdict at the conclusion of the State's case. The motion was denied, and Cobbs testified in her own defense. The parties then made closing arguments, during which Cobbs argued that she had no intent to commit a crime and that the State failed to produce the check that she uttered. Cobbs contends on appeal that the State failed to prove that she forged any document or offered a forged instrument at Best Buy.

A criminal defendant may challenge the sufficiency of the evidence by raising a motion to dismiss or a motion requesting a directed verdict, but a motion for dismissal or directed verdict made during a closing argument instead of at the close of evidence does not preserve a sufficiency argument for appellate review. *Maxwell v. State*, 359 Ark. 335, 197 S.W.3d 442 (2004); *McClina v. State*, 354 Ark. 384, 123 S.W.3d 883 (2003); see Ark. R. Crim. P. 33.1(b) and (c) (2006).² Here, because Cobbs failed to make her motion at the close

²This court recently discussed the terminologies used in motions for directed verdict and motions for dismissal:

of all evidence and before closing arguments, she did not preserve her sufficiency challenge for appellate review.

The Motion to Suppress

In suppression cases, 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 trial court. *Baird v. State*, 357 Ark. 508, 182 S.W.3d 136 (2004); *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003). The appellate court defers to the superior position of the trial judge to evaluate the credibility of witnesses who testify at the suppression hearing. *Dickerson v. State*, 363 Ark. 437, 214 S.W.3d 811 (2005).

State's witness Shanekia Parker testified that she was a cashier at Best Buy in January 2005 and became suspicious of a check that a woman wrote to pay for merchandise. The woman, whom Parker identified at trial as Cobbs, presented to Parker a driver's license identifying herself as Veronica George and bearing a picture that looked like the presenter.

The bench and bar often refer to a "directed verdict" during a non-jury case. This is a misnomer. Because no jury is in the box, no verdict will be given. The proper motion to challenge the sufficiency of an opponent's evidence in a non-jury case is a motion to dismiss. Ark. R. Civ. P. 50(a).

But there is truth in this common misnomer because the circuit court must use the same legal standard in evaluating a motion to dismiss as it would in evaluating a motion for a directed verdict. The court must decide "whether, if it were a jury trial, the evidence would be sufficient to present to the jury."

Rymor Builders, Inc. v. Tanglewood Plumbing Co., Inc., ___ Ark. App. ___, ___, ___ S.W.3d ___, ___ (Oct. 10, 2007) (citation omitted).

Parker immediately recognized the check as fake because of its size and paper and because it was drawn on the Bank of Ouachita, which she had never heard of. The lamination of the driver's license was not like that of a normal license, and the edges were square instead of rounded. Parker took the check and ID to her supervisor.

At trial Parker identified Veronica George's "license" as the one that Cobbs had handed her. Parker said that State's Exhibit No. 1 was a check similar but not identical to the check that Cobbs had written, with the same format and color, the name Veronica George, and "same everything" except for being on a different bank. Parker acknowledged that her statement to police reflected that she initially remembered only the name Veronica with a last name starting with "G," and that she (Parker) was able to testify to the last name because checks had been shown to her just before trial.

Officer Tommy Norman of the North Little Rock Police Department testified that he had seen Cobbs enter and leave Best Buy while he was working off-duty there on January 23, 2005. After helping her put an entertainment center into her SUV, he received information from Best Buy employee Ebony Kelly, a customer service specialist, about a possible incident that had taken place inside the store.³ Because of this information, Norman became concerned about "who [Cobbs] was and what ID she had." He got into his patrol car and caught up with the SUV a block away. He turned on his blue lights, pulled the car

³Kelly did not testify at trial.

over, and asked Cobbs for her driver's license. She provided a license showing her name, her picture, and an expired date in October 2004.

Although Norman referred in his testimony to a "traffic stop," he also said that there was no traffic violation and that his reason for stopping Cobbs was to question her about the incident at Best Buy. Norman said that he asked Cobbs to return to Best Buy because he wanted to question her about the attempted transaction, that she drove back to the store's parking lot, and that he did not consider her under arrest when she exited the car with her two passengers. Norman testified that he and other officers searched the car because North Little Rock Police policy at the time was to impound a vehicle if the driver's license was expired. He also testified that his initial investigation was for a fraud committed inside the store. Although officers did not locate the check allegedly used in the incident, they found under the passenger seat identification for Veronica George, blank Federal Credit Union checks with the name Veronica George, and a Bank of America check with the name Brandi Woods, made out to Best Buy.

Norman said that Cobbs informed him that she had a current license and that he was "pretty sure" he "called in and verified that," but he also testified that he was "not sure" what response he had received. Misty Jezierski, another witness for the State and an employee of the Department of Finance and Administration, testified that records showed Patrina Cobbs to have had a valid driver's license on January 23, 2005.

Raymond George testified and identified Federal Credit Union checks presented by the State as checks that had been stolen from him in late December 2004. He said that he

did not know Patrina Cobbs and that she did not have authority to possess his checks or to use his address. Furthermore, although his address was shown on the driver's license for Veronica George, he testified that she did not live there and that he did not know her.

Cobbs made the following motion at the conclusion of the State's evidence:

First, we'd ask the court to grant our motion suppressing the search that was conducted of the vehicle driven by Ms. Cobbs on that date. The basis being that under Rule 3.1, an officer is permitted to stop a vehicle but only for a traffic stop, and only if he has particular information pointing toward a traffic violation.

The court denied the suppression motion, ruling that under the totality of the circumstances the police had "specific particularized and articulable reasons" indicating that Cobbs was involved in criminal activity.

Cobbs asserted to the circuit court that its ruling was wrong. She noted Officer Norman's testimony that he made a traffic stop without witnessing a traffic violation, and she argued that he had no sufficient basis to believe that she had committed a crime because he did not know the weight or truth of the information that he received from the store. The State countered that the officer clarified through his testimony that he pulled Cobbs over to investigate allegations of fraud and forgery. The court observed that, although Norman at one point characterized the stop as a traffic stop, it was clear to the court that the basis of the stop was not a traffic violation.

Cobbs also argued that Norman had ascertained that Cobbs in fact had a valid driver's license and that he conducted an illegal search to look for evidence of a crime. The State responded that Cobbs did not have a valid license on her person, that it was unclear whether

Norman had found out if she had one at all, and that the inventory search was pursuant to the North Little Rock Police Department's then-current policy to impound a vehicle at that point. The court again denied Cobbs's suppression motion, observing that she had no valid driver's license at the time of the stop, that Norman proceeded with the impoundment and inventory, and that the search would not have been conducted had she had a valid license on her person.⁴

Cobbs contends on appeal that the trial court erred in denying her motion to suppress evidence that was discovered as the result of an illegal search and seizure of her vehicle. She presents three arguments in support of this point: that the initial seizure was unjustified and unlawful because the purported traffic stop was not pursuant to reasonable suspicion of a traffic violation, that the "informant tip" upon which Officer Norman relied did not justify the seizure and search, and that the mandatory impoundment order upon which the officer acted was an improper basis for the search.

Arkansas Rule of Criminal Procedure 3.1 (2006) provides:

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary

⁴The State points out that some items found in the SUV pertained to charges of which Cobbs was not convicted. The State also notes that Shanekia Parker's testimony, wholly apart from Officer Norman's testimony that a "Veronica George" license was found in his inventory search, supports the forgery conviction. Thus, we agree with the State that the only possible prejudice resulting from the search concerns the crime of financial-identity fraud.

either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

The trial court ruled that the basis of the stop was not a traffic violation and that, under the totality of the circumstances, the police had "specific particularized and articulable reasons" indicating that Cobbs was involved in criminal activity.

When this court reviews a trial court's denial of a motion to suppress, it makes an independent determination based on the totality of the circumstances, but will reverse only if the trial court's decision was clearly against the preponderance of the evidence. *Blockman v. State*, 69 Ark. App. 192, 11 S.W.3d 562 (2000). Rule 3.1 does not require that an officer personally witness criminal activity before stopping or detaining a person suspected of engaging in such activity. *E.g., Dowty v. State*, 363 Ark. 1, 13, 210 S.W.3d 850, 857 (2005). Any conflicts in testimony as to the reason for the stop are for the circuit court to resolve. *E.g., Dickerson v. State, supra*.

Cobbs argues that the "informant tip upon which the officer relied" was unreliable, uncorroborated, and insufficient to justify the seizure and search of her SUV. We agree with the State that Cobbs confuses the law pertaining to information provided by ordinary citizens and that provided by confidential informants. Officer Norman stopped Cobbs and asked her to return to Best Buy so that he could question her about the incident reported to him by an employee of the store, not by a confidential informant. Moreover, no rule or statute prevents

officers from “following through and investigating any information received by them whether by confidential informant or otherwise,” and they can even act on information received from anonymous sources. *Fouse v. State*, 73 Ark. App. 134, 143, 43 S.W.3d 158, 164 (2001) (quoting *Toland v. State*, 285 Ark. 415, 417, 688 S.W.2d 718, 720 (1985)); *Hammons v. State* 327 Ark. 520, 527, 940 S.W.2d 424, 428 (1997). *Cf.* Ark. R. Crim. P. 13.1(b) (stating that when an affidavit for a search warrant or testimony is based in whole or in part on hearsay, “the affiant or witness shall set forth particular facts bearing on the informant’s reliability and shall disclose, as far as practicable, the means by which the information was obtained”).

Forgery of a written instrument that is issued by a government constitutes first-degree forgery under Ark. Code Ann. § 5-37-201 (Repl. 2006). Here, Officer Norman was working as Best Buy’s security officer when he received information from an employee that called into question Cobbs’s identity, the identification that she had presented, and a check allegedly presented. Norman was not required to ascertain the reliability of the employee before investigating the information that Cobbs had committed a felony by presenting the fake driver’s license, a forged government instrument.

The reviewing court makes an independent determination of a trial court’s suppression ruling based on the totality of the circumstances, reversing only if the trial court’s ruling was clearly against the preponderance of the evidence. *McKenzie v. State*, 69 Ark. App. 186, 12 S.W.3d 250 (2000). We will affirm the trial court if it reaches the right result, but gives a different reason for doing so. *Id.* We hold that the circuit court did not err in denying

Cobbs's motion to suppress because Officer Norman had probable cause to arrest her at the time he searched her car.

Under Arkansas Rule of Criminal Procedure 4.1(a)(i), a law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that the person has committed a felony. Reasonable cause to arrest without a warrant does not require the degree of proof sufficient to sustain a conviction. *Id.* Reasonable, or probable, cause for a warrantless arrest exists when there is reasonably trustworthy information within an officer's knowledge sufficient to permit a person of reasonable caution to believe that a felony offense has been committed by the person to be arrested. *Id.*; *State v. Bell*, 329 Ark. 422, 948 S.W.2d 557 (1997). A search incident to a lawful arrest is valid even if conducted before the arrest, provided that the arrest and search are substantially contemporaneous and that probable cause to arrest existed prior to the search. *McKenzie, supra.*

Although Officer Norman testified that he did not consider Cobbs under arrest before he searched her car, the issue of probable cause to arrest or detain is a matter of law to be determined by the appellate court. *Addison v. State*, 298 Ark. 1, 10, 765 S.W.2d 566, 570 (1989). In making the determination of probable cause, we are liberal rather than strict. *See id.* Here, Officer Norman had probable cause to arrest Cobbs after receiving information from a Best Buy employee that Cobbs had committed a felony in the store. Because there was probable cause to arrest her, the officer also had authority to conduct a search incident to that arrest. *See Ark. R. Crim. P. 12.1.* The evidence discovered in Cobbs's vehicle thus was not the result of an illegal search and seizure.

Cobbs also argues that the mandatory impoundment policy of the North Little Rock Police Department was an “improper basis” for the search of her vehicle. Because we hold that the search and seizure of Cobbs’s vehicle were not illegal, we need not decide the propriety of the inventory search pursuant to the department’s policy of impoundment and Cobbs’s showing Officer Norman only an expired driver’s license. Thus, we affirm the trial court’s denial of the motion to suppress the evidence that was found in the search of Cobbs’s car.

Motion for a New Trial

Cobbs asserted in a motion for a new trial that Officer Norman had violated the policy of the North Little Rock Police Department for the impoundment of vehicles. Attached to her motion were the department’s “Mandatory Vehicle Impoundment” policy and documents indicating that, in March 2005, the district court rescinded impoundment orders subject to that policy while the city researched the relevant law. Cobbs asserts on appeal that the policy, “even though illegal,” most clearly did not mandate impoundment of her vehicle “for lack of having a driver’s license on one’s person.” She asserts that Officer Norman lacked a good, fair reliance upon a failed and unconstitutional policy.

As discussed in the previous point, our decision turns on the legality of the search of Cobbs’s car pursuant to her arrest on suspicion of having committed a felony, not on the propriety of the inventory search pursuant to the police department’s impoundment policy. Therefore, we need not address the merits of these arguments as presented in the motion for new trial.

Affirmed.

PITTMAN, C.J., and HART, MARSHALL, HEFFLEY, and MILLER, JJ., agree.