ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION I

CACR07-1273

September 10, 2008

	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT,
DANNY CARROLL RAY APPELLANT	FOURTH DIVISION [CR07-1224]
V.	HONORABLE JOHN LANGSTON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Following the denial of his motion to suppress, appellant, Danny Carroll Ray, entered a conditional plea of guilty as an habitual offender to the offenses of possession of cocaine and possession of drug paraphernalia with intent to use while in the course of and in furtherance of a felony drug offense. He brings this appeal pursuant to Rule 24.3 of the Arkansas Rules of Criminal Procedure and contends that the trial court erred in denying his motion to suppress because the officer conducting the search lacked reasonable suspicion to believe that he was armed and presently dangerous. We disagree and affirm.

On July 5, 2007, a hearing was held on appellant's motion to suppress. Officer Jay Boody of the North Little Rock Police Department testified that on March 6, 2007, he was

on patrol and came into contact with appellant. In his initial direct examination, Boody explained:

> I came into contact with Mr. Ray [because] we had been working a call about a stolen vehicle from 2301 Division, which is out of the Heritage House. The guy who made the original report said his car was down in the parking lot. Stephan Alexandro went down with him to go see the car, make sure it was there. I walked in there, made contact with the defendant. He was in – he was at the trunk. The trunk was open at the vehicle. At the time we placed him into custody. He was standing at the trunk. The trunk door was open. The trunk lid was open, standing at the trunk, moving objects around inside the trunk. This was the same vehicle that was reported stolen. Him and another gentleman.
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> I was with the person that reported it stolen. When we saw him, we told him just stand where he was at so we could make contact with the two people at the car. When I made contact with Mr. Ray, we placed him in custody. They're not allowed to leave 'cause he was at a stolen car. So, we want to make sure that, that way he couldn't leave. I made it clear to him that he was in custody [because] I told him he wasn't allowed to leave. We ended up placing handcuffs on him.
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> When we place somebody in custody, we place 'em in handcuffs, do a pat-down search for our safety. He said he had two knives on him. I believe I did find those knives. I found them in one of his pockets. I don't remember which ones. When I stuck my hand into his pocket to get the knives is when I pulled out two of the suspected crack pipes.
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> Well, he was originally going to be under arrest for the car. The gentleman that had first reported the car stolen, like so many times they do in the past, he didn't want nothing done. He just wanted his car back. Evidently they were friends or associates. But at that point we'd already found the crack pipes, so I advised him of that and then I also found a – – he had a silver key chain that is a container. I opened it up and found a baggie of suspected cocaine. Looking through the key chain is something that I would [do] pursuant to an arrest of somebody when they are in custody. Spending as much time on the street that I have, it's been my knowledge in the past that people can hide stuff in there, illegal substances.

Standard of Review

In *Jones v. State*, 101 Ark. App. 226, 228, ____ S.W.3d ____, ____ (2008), our court explained:

> In reviewing a circuit court's denial of a motion to suppress evidence, we 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 circuit court and proper deference to the circuit court's findings. *Yarbrough v. State*, 370 Ark. 31, ___ S.W.3d ___ (2007). We reverse only if the circuit court's ruling is clearly against the preponderance of the evidence. *Id.*

In challenging the trial court's denial of his motion to suppress, appellant contends that Officer Boody's seizure of cocaine from appellant was illegal because the officer "lacked reasonable suspicion to believe that Appellant Ray was armed and presently dangerous." In making the argument, appellant relies upon Rule 3.4 of the Arkansas Rules of Criminal Procedure:

> Search for weapons.
>
> If a law enforcement officer who has detained a person under Rule 3.1 reasonably suspects that the person is armed and presently dangerous to the officer or others, the officer or someone designated by him may search the outer clothing of such person and the immediate surroundings for, and seize, any weapon or other dangerous thing which may be used against the officer or others. In no event shall this search be more extensive than is reasonably necessary to ensure the safety of the officer or others.

Rule 3.1 is under the section of the rules entitled, "Dentention Without Arrest," and it provides:

> Stopping and detention of person: time limit.
>
> 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 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.

Rules 12.1 and 12.2 of the Rules of Criminal Procedure provide:

Rule 12.1. Permissible purposes.

An officer who is making a lawful arrest may, without a search warrant, conduct a search of the person or property of the accused for the following purposes only:

(a) to protect the officer, the accused, or others;

(b) to prevent the escape of the accused;

(c) to furnish appropriate custodial care if the accused is jailed; or

(d) to obtain evidence of the commission of the offense for which the accused has been arrested or to seize contraband, the fruits of crime, or other things criminally possessed or used in conjunction with the offense.

Rule 12.2. Search of the person: permissible scope.

An officer making an arrest and the authorized officials at the police station or other place of detention to which the accused is brought may conduct a search of the accused's garments and personal effects ready to hand, the surface of his body, and the area within his immediate control.

In *Pyles v. State*, 55 Ark. App. 201, 205, 935 S.W.2d 570, 572 (1996), our court explained:

Arkansas Rule of Criminal Procedure 12.1(d) is also applicable to the facts of this case. While it is true that state law may offer greater protection than the United States Supreme Court holds that our federal constitution requires, Arkansas cases have interpreted Rule 12.1(d) in the same manner and used the same rationale as the

> Supreme Court in [*United States v.*] *Robinson*. In *Baxter v. State*, 274 Ark. 539, 626 S.W.2d 935 (1982), our supreme court held that *a search incident to arrest requires no additional justification, finding that a search of containers, whether open or closed, may be conducted pursuant to a lawful custodial arrest. Our supreme court has also said that Rule 12.1(d) allows officers to search for evidence of any crime, not just the crime for which an accused is being arrested.* In *Stout v. State*, 304 Ark. 610, 615, 804 S.W.2d 686, 689 (1991), the supreme court stated, "[P]ursuant to Ark. R. Crim. P. Rule 12.1(d), a police officer who makes a lawful warrantless arrest is authorized to search the person or property of the accused to look not only for weapons but also fruits and instrumentalities of crime. Even if the fruits and instrumentalities of any other crime are found, those are properly seized."

(Emphasis added.)

The gist of appellant's argument is based on his contention that the search by Officer Boody should have been conducted under Rule 3.4, rather than as a search incident to an arrest, as the State asserts was done. In making the argument to the trial court, appellant noted discrepancies between the officer's testimony on direct examination and the arrest report that he prepared. According to the line of questioning by appellant, the officer stated in his report that on "contact" with appellant he conducted the search that yielded the cocaine and that appellant was arrested based on the cocaine. Apparently no mention was made in the report of the stolen vehicle and that appellant was initially arrested for that offense. At the suppression hearing, the officer explained that he arrested appellant based on the report of a stolen vehicle and the fact that appellant was standing at the vehicle in question, rummaging through the open trunk. He explained that the person reporting the vehicle stolen did not want appellant arrested on that charge because they apparently knew each other, but that once the drugs were found he had to arrest appellant.

As noted by the State, appellant did not argue that the officer did not have probable cause to arrest him, which if the officer's testimony is credited, it seems clear that the officer did because he was responding to a report of a stolen vehicle, the owner identified the vehicle as belonging to him, and appellant was found rummaging through the open trunk of the identified stolen vehicle. The trial court clearly credited the officer's testimony that the search was one conducted incident to the arrest concerning the stolen vehicle and that the drugs were found as a result of that arrest. Viewing the totality of the circumstances, we find no clear error in the trial court's conclusion.

Affirmed.

VAUGHT and BAKER, JJ., agree.