

NOT DESIGNATED FOR PUBLICATION  
DIVISION I  
**ARKANSAS COURT OF APPEALS**

No. CACR07-399

ROBERT WASHINGTON  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** NOVEMBER 28, 2007

APPEAL FROM THE COLUMBIA  
COUNTY CIRCUIT COURT  
[NO. CR-2006-83-5]

HON. LARRY CHANDLER, JUDGE

AFFIRMED

**SAM BIRD, Judge**

Robert Washington entered a conditional plea to possession of a firearm by certain persons and possession of marijuana with intent to deliver. The items that led to these charges were discovered as a result of his arrest for driving without a license. Washington raises two points on appeal regarding the circuit court's denial of his motion to suppress evidence seized from him on April 2, 2006. He contends that the evidence should have been suppressed because it was obtained during an unlawful stop of his vehicle and an unlawful arrest. We do not agree, and we affirm.

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. *Omar v. State*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Sept. 12, 2007). Due weight is given to inferences drawn by the trial court, whose ruling is reversed only if it is

clearly against the preponderance of the evidence. *Id.*; *Yarborough v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (May 10, 2007).

Patrolman Derek Avery of the Magnolia Police Department testified that in March 2006 he issued a traffic citation to Washington, who was driving a pick-up truck with a headlight out. Washington presented to Avery a learner's permit rather than a driver's license, and a check of the A.C.I.C. revealed that Washington had no driver's license on that date. There was no one else in his car, and Avery informed him of the permit's requirement that a licensed driver twenty-one years or older be with him. Avery stated that, had there been someone else, he would have checked to see if the person was a licensed driver over twenty-one in order to determine if Washington "was violating the learning permit."

Sgt. Corey Sanders testified that, within the forty-eight hours preceding April 2, 2006, he had been told to be on the lookout for Washington's vehicle and had learned through a driver's license check that Washington had no valid license. Sanders also had pulled up Washington's name and photograph in the computer system CrimeStar, which revealed the citation that Avery had issued to Washington for having no driver's license. Neither of the checks, however, revealed that Washington had a learner's permit.

On April 2 a suspicious-person call was relayed to Sanders from a Buzz Buy store: employees there reported that Washington, who had been frequenting the store for several days, was in his car in the parking lot with another gentleman. Sanders followed the vehicle out of the parking lot, shined his light into the driver's seat, and could clearly see that Washington was driving. Sanders then conducted a traffic stop.

Sanders testified that, when he approached the car, it was apparent that Washington was angry. Sanders explained to Washington that he was being stopped and arrested for having no driver's license. Sanders grabbed Washington's wrist and he became rigid. When Sanders told Washington a second time that he was under arrest, he said that he was pulling away because he wanted to show Sanders his learner's driving permit. Sanders handcuffed Washington, who complained that the cuffs were too tight. Washington asked that his left wrist be undone so that he could get his learner's permit out of his left rear pocket, but, rather than loosen Washington's wrists, Sanders looked in Washington's pocket and found no permit there.

Sanders acknowledged under cross-examination that Defense Exhibit No. 1, an instruction permit issued to Washington on March 7 and expiring on September 7, 2006, was valid on the date that Sanders arrested him for having no license. Sanders reiterated that he had not been able to find the permit after Washington said that he had one. Sanders said that he made no effort to determine whether the person with Washington was a licensed driver. In redirect examination Sanders said that he was concerned for his safety when Washington was pulling away, that Washington was trying to get to his left side with his hands, and that there was a loaded handgun tucked into the waistband on the left side of his body.

Washington testified in his own defense that he had his instruction permit with him in his wallet on the date of his arrest. He agreed that the permit required that he have a licensed driver over twenty-one in the car with him. He admitted that he had no proof that the person with him that night was a licensed driver of the proper age.

At the conclusion of the case by the defense, the trial court orally ruled as follows:

[A]t the time Officer Sanders stopped Mr. Washington, he had a very legitimate reason to stop him, because the check of the records that he had made indicated that Mr. Washington had no license, and so he had every reason to stop him.

I also think that he had every reason to secure Mr. Washington, given the testimony of Officer Sanders as to the demeanor of the Defendant and the actions taken by the Defendant, becoming rigid and trying to pull away.

I have no explanation as to why the officer didn't find the permit, other than I can only assume that he didn't go through the wallet to see if there was a permit there. I find that not to be a particularly relevant element in this matter because even if he had it, he did not have a licensed driver in the car with him as the permit required, so I think the officer has reasonable probable cause to stop the vehicle and to arrest Mr. Washington for the offense of driving without a valid driver's license.

On appeal Washington contends that the evidence seized from him was the result of an unlawful stop and an unlawful arrest. He argues that the reasonable-suspicion criteria for a Rule 3.1 stop were not met because driving without a driver's license is a misdemeanor not involving "danger of forcible injury to persons or of appropriation of or damage to property." *See Ark. R. Crim. P. 3.1.* He argues that his arrest was improper because he had a valid learner's permit and an individual over the age of twenty-one with him. He also complains that Sanders did not actually determine if Washington had a permit and if its conditions were met, nor did Sanders follow proper procedures to determine a violation of the terms of the permit.

A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that the person has committed any violation of law in the officer's presence. *Ark. R. Crim. P. 4.1(a)(iii).* Officer Sanders observed Washington driving a car

and knew that he did not have a driver's license; therefore, Sanders had reasonable cause to believe that Washington was committing a violation of the law. Furthermore, Sanders could not locate Washington's driver's permit in his left rear pocket, where Washington told Sanders that it was located. The status of the passenger in the car was irrelevant because the permit was not located, and we need not examine on appeal Sander's procedure of investigating the permit's requirement that a licensed twenty-one-year-old driver be present.

We agree with the State that the facts of this case gave rise to both reasonable suspicion and probable cause to stop and arrest Washington for driving without a license; the traffic stop for driving with no license was made in order to place him under arrest for that offense. Thus, the trial court correctly ruled that there was "reasonable probable cause to stop the vehicle and to arrest [Washington] for the offense of driving without a valid driver's license," and the denial of the motion to suppress was not clearly against a preponderance of the evidence.

Affirmed.

GLADWIN and HEFFLEY, JJ., agree.