ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION III

CACR07-739

JUNE 4, 2008

BRODERICK E. JACKSON

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CR 06-3939]

HONORABLE JOHN LANGSTON, JUDGE

AFFIRMED

A jury in Pulaski County Circuit Court convicted appellant Broderick E. Jackson of simultaneous possession of drugs and firearms, possession with intent to deliver cocaine, possession with intent to deliver marijuana, and possession with intent to deliver Xanax. He was sentenced to forty-nine years' imprisonment in the Arkansas Department of Correction. On appeal, appellant asserts that the trial court erred in denying his motion to suppress because the officer did not have probable cause to stop appellant's vehicle. We disagree and affirm.

At a pre-trial hearing on appellant's motion to dismiss, Don McElhaney, a former police officer with the Little Rock Police Department, testified that he was on patrol shortly after midnight on May 31, 2006. As he approached an intersection, going approximately twenty to twenty-five miles per hour, he passed appellant's vehicle, which was going in the opposite direction. When McElhaney passed appellant's vehicle, appellant's window was down; McElhaney's window was

also down. McElhaney noticed the smell of marijuana as appellant passed. When he looked in his rear-view mirror, McElhaney noticed that the light above appellant's license plate was not working. McElhaney turned his vehicle around, confirmed that appellant's tag light was not working, and initiated a traffic stop. As he approached appellant's vehicle, he observed smoke coming from appellant's window and again noticed the strong odor of marijuana. He also observed appellant moving around inside the vehicle and saw appellant bend down to possibly put "something underneath the seat." McElhaney explained that when he made contact with appellant, "the smell of marijuana would have knocked you over." Appellant also had "marijuana residue" on his shirt. McElhaney asked appellant to step out of the vehicle, at which point the officer conducted a pat-down search. McElhaney arrested appellant and placed him in the patrol car. McElhaney read appellant his rights, and appellant indicated that he understood those rights. An inventory search of the vehicle revealed a .44 magnum handgun underneath the seat, Xanax pills, marijuana, and cocaine, and a search of appellant's person revealed $2191 in cash. At the conclusion of the hearing, the trial court denied appellant's motion to suppress.

At trial, McElhaney testified again as to the details of the stop and search of appellant's vehicle. He also testified that he observed "something come out of the window" of appellant's vehicle as he was initiating the stop. Officer John Lott also testified. He stated that he was the second or third officer on the scene. He too testified that he could smell marijuana as he approached appellant's vehicle. When he arrived, McElhaney was engaged in a search of appellant's vehicle. Lott testified that the items that were recovered from appellant's vehicle were turned over to the state crime lab. Officer Kenny Baer also testified that he was with McElhaney when McElhaney approached the vehicle. Officer Baer could also smell the marijuana coming from the vehicle. Officer Baer approached the vehicle on the passenger side while McElhaney approached the driver's

side of the vehicle. Officer Baer testified that appellant's window was rolled down and that when McElhaney approached appellant's vehicle, he spoke to appellant through the window frame.

Mr. Frederick Phillips testified for the defense. He testified that in the summer of 2005, he sold appellant a 1998 Chevrolet Malibu. He recalled that when appellant purchased the vehicle, the windows were in poor condition. Tashawna Davis also testified for the defense. She testified that appellant was the father of her child and that she and appellant were in a relationship at the time of appellant's arrest on May 31, 2006. She also testified that earlier in 2006, she drove appellant's 1998 Chevy Malibu (the vehicle he was driving at the time of his arrest) to the store. She explained that when she rolled the window down, it malfunctioned and would not roll back up. She testified that the window did not work again after that day. Ms. Davis also testified that the morning after appellant's arrest, she retrieved the vehicle from impound. That evening, she drove the vehicle to the grocery store, and on her way home from the store, she was pulled over by police. The officer told her that he pulled her over because the light on her license plate was not working. The officer did not give her a citation and let her go.

At the conclusion of the trial, the jury found appellant guilty of the various drug charges. Appellant filed a timely notice of appeal.

Appellant's sole point on appeal is that the trial court erred in denying his motion to suppress because the officer did not have probable cause to stop appellant's vehicle. 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 fact 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. *See Davis v. State*, 351 Ark. 406, 413, 94 S.W.3d 892, 896 (2003). This court defers to the credibility determinations made by the trial judge when weighing and resolving

the facts and circumstances in the matter. *Id.* In order for a police officer to make a traffic stop, he must have probable cause to believe that the vehicle has violated a traffic law. *Meraz-Lopez v. State*, 92 Ark. App. 157, 211 S.W.3d 564 (2005) (citing *Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004)). Probable cause is defined as "facts or circumstances within a police officer's knowledge that are sufficient to permit a person of reasonable caution to believe that an offense has been committed by the person suspected." *Burks v. State*, 362 Ark. 558, 210 S.W.3d 62 (2005).

Arkansas Code Annotated section 27-36-215(c)(1)(A) (Repl. 2008) provides that "[e]ither a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible for a distance of fifty feet (50') to the rear." A violation of the statute is a misdemeanor pursuant to Ark. Code Ann. § 27-50-305 (Repl. 1994). Here, Officer McElhaney testified that when he passed appellant at a very low rate of speed, he could smell marijuana. Both Officer McElhaney and appellant had the driver's side windows down. Moreover, in McElhaney's rear-view mirror, he could see that appellant's license plate was not properly illuminated, which is a traffic violation under the laws of this state. While appellant may have presented evidence contradicting Officer McElhaney's testimony that appellant's window was in fact rolled down, the court found Officer McElhaney's testimony to be credible. It is the province of the trial court, not this court, to determine the credibility of witnesses. *Welch v. State*, 364 Ark. 324, 219 S.W.3d 156 (2005). Therefore, we hold that the trial court did not err in denying appellant's motion to suppress.

Affirmed.

ROBBINS and GRIFFEN, JJ., agree.