

**ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE**

DIVISION IV

CACR05-774

September 27, 2006

RALPH MILLER		APPEAL FROM THE CLAY COUNTY
	APPELLANT	CIRCUIT COURT, WESTERN
		DISTRICT [NO. CR-04-27]
V.		HON. JOHN N. FOGLEMAN,
		JUDGE
STATE OF ARKANSAS		
	APPELLEE	AFFIRMED

The appellant in this criminal case entered a conditional plea of guilty to possession of methamphetamine with intent to deliver. On appeal, he argues that the trial court erred in denying his motion to suppress. We affirm.

When reviewing a trial court's denial of a motion to suppress, 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 trial court. *Russell v. State*, 85 Ark. App. 468, 157 S.W.3d 561 (2004). Our de novo review of the record shows that a police officer observed appellant committing a traffic violation. After an interval, the police officer stopped appellant's vehicle to issue a citation, whereupon the officer noticed a large dagger in plain

view near the driver's seat. The officer ordered appellant to get out of his vehicle. After another knife was observed sheathed on appellant's belt, appellant was directed to sit in the front seat of the squad car. After running a driver's license and warrant check that disclosed appellant did not have the mandatory insurance on his vehicle, the officer asked appellant if he had any other weapons in the car. Appellant stated that there was a pistol under the driver's seat. This was located and appellant was arrested for weapon possession. A subsequent search of the vehicle resulted in the discovery of the methamphetamine.

For reversal, appellant argues that the trial court clearly erred in denying his motion to suppress the methamphetamine and his statement that there was a pistol under the driver's seat. Appellant first argues that the evidence should have been suppressed because the traffic stop was pre-textual. This argument lacks merit. The constitutionality of a traffic stop does not depend on the actual, subjective motivations of the individual police officers involved under either the Federal or the Arkansas Constitution. *Whren v. United States*, 517 U.S. 806 (1996); *State v. Harmon*, 353 Ark. 568, 113 S.W.3d 75 (2003). The question, instead, was whether there was a valid reason for the traffic stop, and this appellant does not dispute. After observing a large knife in plain view near the driver's seat, it was reasonable for the officer to conduct a pat-down and direct appellant to sit in the patrol car while he checked his identification. Appellant's statement to the police officer that there was a pistol under the driver's seat and the subsequent discovery of that pistol justified his custodial arrest on weapons charges, which in turn permitted the search of the vehicle resulting in the discovery

of the methamphetamine. Based on a review of the totality of the circumstances, we cannot say that the trial court's denial of the motion to suppress was clear error.

Appellant also argues that the evidence should be suppressed because it was discovered as a result of non-consensual custodial interrogation. However, brief detention during a routine traffic stop does not implicate *Miranda*. In *Lopez v. State*, 29 Ark. App. 145, 778 S.W.2d 641 (1989), a case involving similar circumstances, we said that

We also do not agree with the appellant's contention that the appellant was unreasonably detained, or that the detection of the odor of marijuana resulted from an interrogation and information received without *Miranda* warnings having been given. In *Berkemer v. McCarty*, 468 U.S. 420 (1984), the Supreme Court held that persons temporarily detained pursuant to a routine traffic stop are not “in custody” for the purposes of *Miranda*. See also, *Pennsylvania v. Bruder*, 488 U.S. 9, 109 S.Ct. 205 (1988). The Court reasoned that *Miranda* was not implicated in these situations as the stop is presumptively temporary and brief, it is in public, and that the atmosphere surrounding an ordinary traffic stop is substantially less “police dominated” than that surrounding the kinds of interrogation at issue in *Miranda*. It was held that a motorist detained pursuant to a traffic stop is entitled to a recitation of his rights only when he is “subjected to treatment that renders him ‘in custody’ for practical purposes.” 468 U.S. at 440. The Court also said that the officer may ask the detained a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions.

Lopez, 29 Ark. App. at 151–52, 778 S.W.2d at 644. On this record, we do not think appellant was “in custody” for practical purposes prior to the officer’s question regarding other weapons, and we affirm.

Affirmed.

GLADWIN and GLOVER, JJ., agree.

