

**ARKANSAS COURT OF APPEALS**DIVISION II  
No. CACR11-1028

DAVID LEE WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 9, 2012

APPEAL FROM THE HEMPSTEAD  
COUNTY CIRCUIT COURT,  
[NO. CR-10-162-1]HONORABLE DUNCAN  
CULPEPPER, JUDGE

AFFIRMED

**CLIFF HOOFFMAN, Judge**

Appellant David Williams appeals the trial court's denial of his motion to suppress evidence. On appeal, he argues that he was illegally stopped and searched without reasonable suspicion. Because the evidence was not the fruit of a search, we affirm.

Williams was charged with possession of cocaine. Prior to trial, he filed a motion to suppress evidence, specifically, the alleged cocaine and statements he made after being taken into custody. Williams argued that he was stopped and searched without reasonable suspicion and thus, all evidence seized was inadmissible.

At the suppression hearing, Officer Daniel Steward of the Hope Police Department testified that on the afternoon of March 3, 2010, he observed Williams leaving a residence that is known to him and other officers as a residence where illegal narcotics are sold. Steward said that he was on patrol when he saw Williams notice his police unit and start walking to the other side of the road as if he was trying to avoid Steward. Steward lost contact with

Williams, drove around the block, and then observed Williams walking down the middle of Greening Street. At that point, Steward drove towards Williams. Steward saw Williams turn around and look at him and then walk over to the right side of the road before returning to the center of the road. Steward said he pulled in front of Williams, stopped, got out of his unit, and made casual conversation with him. Steward testified that he stated, “How you doing, sir? Can I speak with you for a little bit?” As Steward was speaking with him, he noticed that Williams started sweating profusely and acting nervous as if he did not want to be around Steward. Steward testified that his behavior indicated that he was up to something wrong. Steward asked Williams for consent to search his person, which was granted. Steward did not locate any illegal narcotics in his search, but he did locate white tissue paper in the front pocket of Williams’s sweatshirt. Steward said that one of the corners of the paper was torn off and not there.

Steward testified that Williams could have declined his request for consent to search and could have declined to speak with him at all. After the search was complete, with nothing illegal being found, Williams was released and continued to walk down the street. Steward testified that he then retraced Williams’s steps and walked back to the area where he had seen Williams walk off to the right side of the road. Steward said this was about two houses back from where they had been talking. In the area on the right side of the road, Steward found in the grass a torn piece of white tissue paper with two off-white, rock-like substances wrapped inside. Steward then attempted to locate Williams but could not, so he advised his sergeant of the situation. Steward testified that the large piece of tissue paper

found on Williams's person and the small piece found on the side of the road appeared to come from the same original tissue.

On cross-examination, Steward testified that he did not see Williams carrying anything, that he did not see him throw anything on the ground, and that he did not see him do anything wrong. He testified that he was not investigating a crime at the time he approached Williams and that he did not know Williams before that afternoon. The only reason Steward approached Williams was because he left a house where drugs were known to be sold.

Williams testified that on the day in question, he was doing electrical work outside for the man who owns the alleged drug house. He said that as he was working, he noticed a police car sitting in a lot near an intersection. Williams said the car never moved, so at one point he stopped his work, looked at the car, and it drove off down the street. Williams said that when he finished his work, he began walking down Greening Street. He heard a car driving behind him so he stepped to the side to see if the officer was going to speak to him. Williams said that Steward asked him his name and "stuff like that." Williams said he told Steward he was on his way to his job at a grocery store. He testified that he agreed to the search, and he said he had been walking fast to make it to work by 5:00 p.m.

The State argued that this encounter was a consensual conversation between the police and a citizen; thus, it did not raise a constitutional concern. Alternatively, the State argued that the encounter was justified under Arkansas Rule of Criminal Procedure 3.1 because Officer Steward had reasonable suspicion to detain Williams based on his gait, manner, and the fact that he was leaving a known drug house. The defense responded that Rules 2.2 and

3.1 had been violated, but the trial court denied the motion to suppress “based on *Terry* [*v. Ohio*, 392 U.S. 1 (1968)] and the Rules of Procedure.” Williams entered a conditional plea of no contest on the charge of possession of a controlled substance. He was sentenced to five years’ probation and filed a timely notice of appeal.

In reviewing the denial of a motion to suppress, an appellate court conducts a de novo review based upon 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. *Franklin v. State*, 2010 Ark. App. 792, --- S.W.3d ---. The appellate court defers to the superior position of the circuit judge to pass upon the credibility of witnesses and will reverse only if the circuit court’s ruling is clearly against the preponderance of the evidence. *Id.*

Williams argues that Officer Steward did not have reasonable suspicion to stop and search him. He contends that this case is very similar to *Jennings v. State*, 69 Ark. App. 50, 10 S.W.3d 105 (2000), where this court held that the police had no justification to stop the defendant for merely being in a known drug area when there was no indication he was committing a crime and there was no testimony that the officer was investigating or preventing a crime when she encountered the defendant. Williams notes that Steward testified that he had not seen Williams do anything wrong and that he was not investigating a crime. Williams argues that all evidence seized as a result of his illegal seizure is inadmissible because it is “fruit of the poisonous tree.”

The State argues that the initial investigation was justified pursuant to Arkansas Rule

of Criminal Procedure 2.2 (2011),<sup>1</sup> as Steward merely engaged in consensual conversation with Williams to determine if he was involved in criminal activity. The State also argues that even if it is assumed that the alleged seizure was illegal, Williams fails to demonstrate a connection between the illegal seizure and the discovery of the cocaine. The State notes that only evidence that is discovered or seized by exploitation of an illegality can be suppressed as fruit of the poisonous tree. The State argues that Officer Steward's actions of retracing Williams's steps and finding the cocaine had no causal connection to his contact with or search of Williams.

We conclude that the discovery of the cocaine was not the fruit of a seizure, illegal or not, because Williams abandoned the cocaine prior to being detained. In *Simmons v. State*, 83 Ark. App. 87, 118 S.W.3d 136 (2003), a police officer was chasing the defendant, who threw drugs underneath a car before being apprehended. On appeal from the trial court's denial of his motion to suppress, the defendant argued that the drugs were the fruit of an illegal detention because his detention was not authorized under Rule 2.2 or 3.1. This court held, however, that the trial court did not err in denying the motion to suppress the

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<sup>1</sup> Rule 2.2 provides as follows:

(a) A law enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The officer may request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request.

(b) In making a request pursuant to this rule, no law enforcement officer shall indicate that a person is legally obligated to furnish information or to otherwise cooperate if no such legal obligation exists. Compliance with the request for information or other cooperation hereunder shall not be regarded as involuntary or coerced solely on the ground that such a request was made by a law enforcement officer.

contraband because it was not the fruit of a detention by the officer, as Simmons abandoned it before he was seized. The court concluded as follows:

By throwing the cocaine on the ground, he abandoned any reasonable expectation of privacy to the cocaine. And because he abandoned the cocaine before he was seized, the contraband was not the product of a seizure. Thus, since the cocaine was not the fruit of a seizure, we need not determine whether the officer's detention of appellant was illegal under either Rule 2.2(a) or Rule 3.1. Consequently, we affirm the circuit court's denial of appellant's motion to suppress.

*Id.* at 93, 118 S.W.3d at 140.

Here, Williams abandoned the cocaine when he realized he was being followed by the police, but he had not yet been seized at that time. The cocaine, therefore, was not fruit of his detention, and we need not determine whether his detention was illegal. We affirm the denial of the motion to suppress.

Affirmed.

ROBBINS and MARTIN, JJ., agree.