

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR11-917

WILLIAM JOHNSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 12, 2012APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. CR2010-415]HONORABLE VICTOR L. HILL,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

William Johnson appeals from the judgment and commitment order entered after the trial court denied his motion to suppress. He argues that the trial court erred in denying his motion because the items he sought to suppress were located during a search that was the result of an illegal traffic stop. We affirm the judgment of the trial court.

On April 28, 2010, appellant was charged by information with possession of a controlled substance, cocaine, with intent to deliver and possession of drug paraphernalia with intent to use. At the time appellant was alleged to have committed these offenses, he was on parole from the Arkansas Department of Correction. The conditions of his release required that he submit his person, place of residence, and motor vehicle to search and seizure at any time, day or night, with or without a search warrant, whenever requested to do so by any Department of Community Punishment officer. In January 2011, appellant filed a motion

to suppress evidence. At the hearing on appellant's motion, Officer Blake Bristow with the Jonesboro Police Department testified that an informant who had previously provided information to him contacted him and informed him that appellant was going to be involved in a drug deal that day. Officer Bristow assumed that appellant would go to his apartment prior to the transaction, and he had Officer Rick Guimond stationed along appellant's route to conduct a traffic stop of appellant. Officer Bristow informed Officer Guimond that he wanted to conduct a traffic stop of appellant in order to protect his informant. Officer Bristow also contacted Michelle Earnhart, appellant's probation officer, and requested that she assist Officer Guimond.

Officer Guimond stopped appellant and returned appellant to his apartment at Earnhart's request. When appellant was returned to his apartment, Ms. Earnhart requested that Officer Bristow perform a strip search of appellant. During the search, Officer Bristow discovered cocaine. He also found a large amount of cash in appellant's couch. Officer Bristow admitted on cross-examination that he had applied for a search warrant but did not mention receiving information from a confidential informant in the affidavit. He further admitted that there was no mention of a confidential informant in his report following the arrest.

Officer Guimond testified that he performed a traffic stop on appellant on March 1, 2010. He stated that Officer Bristow had asked him to stop the vehicle. Officer Guimond testified that there were several items hanging from appellant's rearview mirror, and he based his stop on an obstructed windshield and interior. He stated that he believed that he would

have been justified in issuing a citation for the items hanging from the rearview mirror. During the stop, he asked permission to search appellant and his vehicle and appellant refused. Ms. Earnhart then told Officer Guimond that they were going to appellant's apartment to perform a parole search. Officer Guimond stated that appellant was walking in an unusual manner, as though he were attempting to hide something in his buttocks or crotch area. Officer Guimond admitted on cross-examination that he did not mention Officer Bristow's request that he stop appellant in his report. He stated that he left his discussion with Officer Bristow out of his report in order to protect Officer Bristow's confidential informant.

Michelle Earnhart testified that the police contacted her and requested that she assist with a search of appellant. She stated that appellant was walking in an unusual manner, and she asked Officer Bristow to search appellant.

At the conclusion of the hearing, the trial court stated that, due to appellant's status as a parolee, he had no expectation of privacy from a search by Ms. Earnhart or any other agent of the Department of Correction and that it was denying the motion to suppress. The trial court entered a written order denying the motion to suppress on May 31, 2011. On that same day, appellant entered a conditional plea of guilty. The trial court sentenced appellant to 120 months' imprisonment followed by five years' suspended imposition of sentence. This appeal followed.

Following the denial of his motion to suppress, appellant entered a conditional plea of guilty under Arkansas Rule of Criminal Procedure 24.3, which allows a criminal defendant who enters a conditional plea of guilty to appeal from the denial of a motion to suppress

evidence. Thus, the only issue on appeal is whether the trial court erred in denying appellant's motion to suppress. In reviewing the denial of a motion to suppress, an appellate court conducts 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. *Williams v. State*, 2012 Ark. App. 337. The appellate court defers to the superior position of the circuit judge to pass on the credibility of witnesses and will reverse only if the circuit court's ruling is clearly against the preponderance of the evidence. *Id.*

Appellant contends on appeal that the stop of his vehicle was illegal. Appellant argues that Officer Guimond did not have probable cause to stop his vehicle and that the drugs found during the parole search by Officer Bristow should be suppressed as fruit of the illegal stop.

Only evidence that is discovered as a result of an officer's exploitation of an illegality is subject to suppression as the fruit of the poisonous tree. *Hudspeth v. State*, 349 Ark. 315, 78 S.W.3d 99 (2002). The search that yielded the evidence appellant sought to suppress was not done in connection with the traffic stop. That search was a parole search performed by Officer Bristow at the request of appellant's probation officer. The terms of appellant's parole required him to submit to a search by an officer of the Department of Community Punishment at any time. Although Officer Bristow was the one who actually performed the search, both this court and our supreme court have held that a parole officer may enlist the aid of police, and a police officer may act at the direction of the parole officer without overreaching the scope of the search. *Cherry v. State*, 302 Ark. 462, 791 S.W.2d 354 (1990);

Hatcher v. State, 2009 Ark. App. 481, 324 S.W.3d 366.

The trial court denied appellant's motion to suppress after ruling that the search that yielded the drugs was a permissible parole search. Appellant has failed to demonstrate that the search during which the evidence was discovered was impermissible. We hold that the trial court's denial of the motion to suppress was not clearly erroneous and affirm the judgment of the trial court.

Affirmed.

BROWN, J., agrees.

GLOVER, J., concurs.

Stanley Law Firm, by: *Bill Stanley*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., for appellee.