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SUPREME COURT OF ARKANSAS

No. CR10-476

STATE OF ARKANSAS

APPELLANT

VS.

DEMETRICE JENKINS

APPELLEE

Opinion Delivered January 13, 2011APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
NO. CR2007-331,
HON. JOHN NELSON FOGLEMAN,
JUDGE,APPEAL DISMISSED.**JIM HANNAH, Chief Justice**

The State brings an interlocutory appeal, pursuant to Arkansas Rule of Appellate Procedure–Criminal 3 (2010), and contends that the circuit court erred in suppressing the statement of appellee Demetrice Jenkins. The State, as it must do under Rule 3(c), asserts in its jurisdictional statement that the correct and uniform administration of justice requires our review of this matter. Because we do not agree with the State that the correct and uniform administration of justice is at issue in this case, we dismiss the appeal.

The record reveals the following facts. Jonesboro police officers were investigating possible drug activity at an apartment occupied by Jenkins’s brother. On February 8, 2007, while conducting surveillance of the apartment, Sergeant John Redman and Corporal John McGee saw two vehicles arrive there at approximately the same time. One of the vehicles, a green Ford Ranger pickup truck, was occupied by two white males. The other vehicle, a

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gold Ford pickup truck, was occupied by Jenkins, a black male. Jenkins and the passenger from the green truck got out of their trucks and entered the apartment.

Shortly thereafter, the white male left the apartment with a large bulge under his coat, got back into the green truck, and left the residence. Redman and McGee followed the vehicle for a short time and noticed that it had crossed the center line a couple of times, so they contacted Officer Blake Bristow and asked him to make a traffic stop. Bristow stopped the vehicle, and a search revealed marijuana in the glove compartment of the vehicle. The driver told officers that he had taken the passenger to a residence where he purchased marijuana.

Meanwhile, Redman returned to the apartment to continue surveillance, and McGee went to the police station to type up a search warrant for the apartment. Approximately two hours later, while watching the apartment, Redman saw the gold truck return to the apartment, and he saw Jenkins leave the vehicle and enter the apartment. Redman notified McGee that Jenkins had returned, and McGee told Redman that he was on his way to the apartment with a search warrant. Before McGee arrived, Jenkins left the apartment, got back in his truck, and drove away. Redman followed him to a residence on Clover Street, where Jenkins parked in the driveway.

Redman pulled his unmarked police car into the driveway behind Jenkins's truck. He got out of his car and identified himself as a police officer to Jenkins, who had gotten out of his truck. Redman testified that he informed Jenkins that police officers were executing a

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search warrant on the apartment Jenkins had just left. Redman asked Jenkins if he had anything illegal in his vehicle and Jenkins responded that, while he did have something illegal in the vehicle, it did not belong to him. Redman handcuffed Jenkins and asked him where the illegal item was located. Jenkins responded that it was in the back of the vehicle underneath some clothes. Redman then searched the vehicle and found a Dollar General bag containing a pistol, two sets of scales, and a Deli Crisps box. Inside the box was a bag containing cocaine.

Jenkins was charged with possession of a controlled substance with intent to deliver, possession of drug paraphernalia, simultaneous possession of drugs and a firearm, and failure to appear. Jenkins filed a motion to suppress, alleging that all evidence found in the vehicle was recovered in a warrantless search without probable cause, in absence of exigent circumstances, and in violation of the Fourth Amendment. He also asked the circuit court to suppress his statement—that there was something illegal in the vehicle but that it was not his—because he had not been Mirandized when he made the statement. After a hearing on the motion, the circuit court denied the motion to suppress the physical evidence recovered from the vehicle but ordered suppression of the statement based upon the finding that Jenkins was subjected to a custodial interrogation and thus entitled to *Miranda* warnings when Redman asked him if there was anything illegal in his vehicle.

The State now brings this interlocutory appeal and asserts as an error of law the circuit court's ruling that Jenkins was in custody for purposes of *Miranda v. Arizona*, 384 U.S. 435

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(1966). Therefore, the State claims that the order suppressing Jenkins's statement should be reversed.

This court must first consider whether it has jurisdiction of the State's appeal. *See, e.g., State v. Gray*, 319 Ark. 356, 891 S.W.2d 376 (1995) (noting that this court has a duty to raise the issue of the propriety of the State's appeal, even where neither party raises the issue, because it is a matter of subject-matter jurisdiction). While criminal defendants may appeal their convictions as a matter of right, the State may only appeal under the constraints of Arkansas Rule of Appellate Procedure—Criminal 3. *See, e.g., State v. Nichols*, 364 Ark. 1, 216 S.W.3d 114 (2005). Section (a) of the rule outlines the permissive grounds for State interlocutory appeals in criminal cases. If, upon review of the trial record, the Attorney General "is satisfied that error has been committed to the prejudice of the state, and that the correct and uniform administration of the criminal law requires review by the Supreme Court, he may take the appeal" to this court. Ark. R. App. P.—Crim. 3(c). This court, however, has made it clear that where we do not agree with the State that the correct and uniform administration of justice is at issue, we will dismiss the appeal. *See, e.g., State v. Harris*, 315 Ark. 595, 868 S.W.2d 488 (1994).

As a matter of practice, this court only reviews State appeals that are narrow in scope and involve the interpretation of law. *See, e.g., State v. Jones*, 369 Ark. 195, 252 S.W.3d 119 (2007). We do not permit State appeals merely to demonstrate that the circuit court erred. *Id.* Moreover, this court will not accept an appeal by the State where the circuit court has

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acted within its discretion after making an evidentiary decision based on the particular facts of the case or even a mixed question of law and fact, as those appeals do not require interpretation of our criminal rules with widespread ramifications. *See, e.g., State v. Guthrie*, 341 Ark. 624, 19 S.W.3d 10 (2000).

In its sole point on appeal, the State contends that the circuit court erred in ruling that Jenkins was in custody for purposes of *Miranda* and, as such, the order suppressing Jenkins's statement should be reversed. The issue of whether a person is in custody for purposes of *Miranda* is a mixed question of law and fact. *See Thompson v. Keohane*, 516 U.S. 99 (1995).

The United States Supreme Court has explained that

[t]wo discrete inquiries are essential to the ["in custody"]determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (quoting *Mathiason*, 429 U.S. at 714). The first inquiry, all agree, is distinctly factual. . . . The second inquiry, however, calls for application of the controlling legal standard to the historical facts. This ultimate determination, we hold, presents a "mixed question of law and fact". . . .

Thompson, 519 U.S. at 112–13 (footnote omitted).

In the instant case, the State frames its argument in terms of whether the circuit court misinterpreted *Miranda* when it determined that Jenkins was in custody when he answered Sergeant Redman's question about illegal contents in the vehicle. But the resolution of that issue turns on the circuit court's consideration of the facts surrounding Redman's interaction

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with Jenkins. Here, the issue on appeal is a mixed question of fact and law and thus is not a permissive ground for an appeal by the State. Therefore, the appeal must be dismissed.

Appeal dismissed.