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SUPREME COURT OF ARKANSAS

No. CR 12-412

STATE OF ARKANSAS APPELLANT V. NATASHA JONES APPELLEE	**Opinion Delivered** December 6, 2012 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, [NO. CR-11-824] HONORABLE JAMES O. COX, JUDGE APPEAL DISMISSED.

COURTNEY HUDSON GOODSON, Associate Justice

Pursuant to Rule 3(a)(1) of the Arkansas Rules of Appellate Procedure–Criminal (2012), the State of Arkansas filed this interlocutory appeal from an order of the Sebastian County Circuit Court granting a motion to suppress evidence filed by appellee Natasha Jones. For reversal, the State argues that the circuit court erred as a matter of law by ruling that reasonable grounds for a parole search must exist and by finding that more-than-minimal police involvement was necessary in the parole search at issue. We must dismiss for lack of a proper State appeal.

Appellee's husband, Rodney Jones (Jones), resided in Sebastian County as a parolee. On March 10, 2008, pursuant to the terms of his parole, he signed a "Conditions of Release" form, agreeing to a search of his person, place of residence, or vehicle at any time with or without a warrant. On August 23, 2011, Sergeant George Lawson, the narcotics-division supervisor at the Fort Smith Police Department, received information about possible narcotics

trafficking at appellee's residence. Appellee's neighbor complained about heavy traffic in and out of the home, and an individual who had been arrested indicated that Jones possessed narcotics inside the residence. After determining that Jones was on parole, Lawson transferred the case to Detective Ray Whitson, who contacted the parole office. Detective Whitson then spoke with Parole Agent Jonathan Stroud, who determined that a parole search of Jones's residence was warranted and asked Whitson for the police department's assistance with the search.

On August 23, 2011, Officer Stroud and several members of the Fort Smith Police Department went to appellee's residence. Stroud stated that "we made contact with [appellee]," who answered the door and stated that Jones was not there. She further told Stroud that appellee was working out-of-state and had obtained permission from the parole officer prior to taking an out-of-state job. According to Stroud, appellee was not surprised that the officers intended to search, and she did not object to the search. Detective Greg Napier testified that he searched the master bedroom, which both appellee and her husband occupied. Detective Napier found a small plastic baggie containing a crystal substance inside a "non-feminine" jewelry box in a night stand on the right side of the bed. After Officer Napier read *Miranda* warnings to appellee, she stated that the bag contained methamphetamine and that she had placed it in the box the previous night. She further stated that the methamphetamine belonged to her and that her husband did not have knowledge of it. The Arkansas State Crime Laboratory confirmed that the baggie contained methamphetamine.

Subsequently, the State filed a felony information charging appellee with possession of

methamphetamine and possession of drug paraphernalia. Prior to trial, appellee filed a motion to suppress, alleging that police officers conducted the search without a warrant, without consent, and without reasonable cause. She argued that the search violated her constitutional rights guaranteed by the United States and Arkansas Constitutions and the Arkansas Rules of Criminal Procedure. She further claimed that her arrest exceeded the authority of Stroud, the parole officer; that the police officers could not have acquired such authority from Stroud; and that any evidence obtained as a result of the alleged illegal search should have been suppressed. The State responded that, even though reasonable grounds for the search were not necessary because of Jones's parole agreement, reasonable grounds for the search did exist based on the information obtained by law enforcement regarding the presence of narcotics and potential drug trafficking at appellee's residence. The State also asserted that the parole officer directed the search and was assisted by local police. The circuit court held a hearing on appellee's motion to suppress and declined to rule from the bench on the arguments from suppression, but the court stated that reasonable grounds for the parole search were required. On March 21, 2012, the circuit court entered an order granting appellee's motion to suppress, and the State timely filed a notice of appeal. From that order, the State brings its interlocutory appeal.

We first must consider whether we have jurisdiction of the State's appeal. *State v. Nichols*, 364 Ark. 1, 216 S.W.3d 114 (2005). There is a significant and inherent difference between appeals brought by criminal defendants and those brought on behalf of the State. The former is a matter of right, whereas the latter is not derived from the Constitution, nor is it a matter of right, but is granted pursuant to Rule 3. *State v. Pruitt*, 347 Ark. 355, 64

S.W.3d 255 (2002). Pursuant to Rule 3(a), the State may take an interlocutory appeal "only from a pretrial order in a felony prosecution which . . . grants a motion under Ark. R. Crim. P. 16.2 to suppress seized evidence . . . ." Further, Rule 3(c) provides as follows:

> (c) When a notice of appeal is filed pursuant to either subsection (a) or (b) of this rule, the clerk of the court in which the prosecution sought to be appealed took place shall immediately cause a transcript of the trial record to be made and transmitted to the attorney general, or delivered to the prosecuting attorney, to be by him delivered to the attorney general. If the attorney general, on inspecting the trial record, 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 by filing the transcript of the trial record with the clerk of the Supreme Court within sixty (60) days after the filing of the notice of appeal.

(Emphasis added.)

We accept appeals by the State when our holding would be important to the correct and uniform administration of the criminal law. *State v. Warren*, 345 Ark. 508, 49 S.W.3d 103 (2001); *State v. Thompson*, 343 Ark. 135, 34 S.W.3d 33 (2000). As a matter of practice, we have taken only appeals that are narrow in scope and involve the interpretation of the law. *State v. Pittman*, 360 Ark. 273, 200 S.W.3d 893 (2005). We do not permit State appeals merely to demonstrate the fact that the trial court erred. *Pittman*, *supra*. Where the resolution of the issue on appeal turns on the facts unique to the case, the appeal is not one requiring interpretation of our criminal rules with widespread ramification, and the matter is not appealable by the State. *State v. Williams*, 348 Ark. 585, 75 S.W.3d 684 (2002). This court has noted that it will not even accept mixed questions of law and fact on appeal by the State. *State v. Hagan-Sherwin*, 356 Ark. 597, 158 S.W.3d 156 (2004); *State v. Hart*, 329 Ark. 582, 952 S.W.2d 138 (1997). Thus, this court must determine whether the issue subject to appeal is

one involving the *interpretation* of a rule or statute, as opposed to one involving the *application* of a rule or statute. *Pruitt*, *supra*.

Here, the present appeal does not involve the correct and uniform administration of the criminal law because the circuit court considered the unique facts of the case when making its ruling. At the suppression hearing, the circuit court held its ruling in abeyance, stating as follows:

> I've got to decide what Detective Sergeant Lawson knew in the way of a debriefing from an arrestee and a complaint gives rise to a probable – a reasonable grounds to search. And I'm going to read this *Cherry* case and the *Hatcher* case, and since I have got some things that weren't in the briefs, I'm going to take a couple days to review those additional items. And I've accepted into evidence the lab results of whatever material this was, methamphetamine. . . . So I've got the exhibits. I have got the additional case law, arguments of counsel, and significant testimony. I'll review this, and I will give you an order in the next few days.

While the circuit court couched these statements in terms of the reasonableness of the officers' search, the court's ruling necessarily turned on the application of the law to the facts. Notably, in its order, the circuit court simply granted the motion to suppress without providing a ruling on any particular interpretation of law.

On appeal, the State frames its argument that the circuit court misconstrued our case law, particularly the holding of *Cherry v. State*, 302 Ark. 462, 791 S.W.2d 354 (1990) (holding that a parolee's consent-in-advance is not a violation of the parolee's constitutional rights because the supervision of parolees and probationers is a special need of the State). However, the resolution of this consent-in-advance issue hinged on the facts surrounding the search of appellee's residence. Thus, the State's appeal does not concern the *interpretation* of a rule or statute, but involves the *application* of a rule or statute. *See Pruitt*, *supra*.

More significantly, the determination of appellee's third-party consent, like other factual determinations relating to searches and seizures, must be judged against an objective standard. *Illinois v. Rodriguez*, 497 U.S. 177 (1990). Either way, each analysis requires the circuit court's consideration of the facts, making it a mixed question of law and fact. This court has repeatedly explained that, "[w]here the trial court acts [on] a *mixed question of law and fact, this court will not accept an appeal*" pursuant to Rule 3. *State v. Howard*, 341 Ark. 640, 648, 19 S.W.3d 4, 10 (2000) (emphasis added). For these reasons, we hold that the matter is not appealable by the State, and accordingly, we dismiss the appeal.

Dismissed.

Dustin McDaniel, Att'y Gen., by: *Kathryn Henry*, for appellant.

Ray Hodnett, for appellee.