Cite as 2011 Ark. App. 311

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-1025

	Opinion Delivered April 27, 2011
CHARLES KENNETH MURRELL, JR. APPELLANT	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. CR-2009-874-2]
V.	HONORABLE DAVID CLINGER, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

DAVID M. GLOVER, Judge

Appellant Charles Murrell, Jr. entered a conditional plea of guilty to the offense of driving while intoxicated after the trial court's denial of his motion to suppress. In this appeal pursuant to Rule 24.3 of the Arkansas Rules of Criminal Procedure, he contends that the trial court erred in denying his motion to suppress because the evidence was seized pursuant to an unlawful traffic stop in violation of the Fourth Amendment. We affirm the trial court's denial of appellant's motion.

Standard of Review

In reviewing the denial of a motion to suppress evidence, our appellate courts conduct a de novo review based upon the totality of the circumstances, reversing only if the circuit

court's ruling is clearly against the preponderance of the evidence. *Moss v. State*, 2011 Ark. App. 14, 380 S.W.3d 479.

Background

Officer John Alexander testified that he was on duty the evening of December 19, 2008. He explained that, at approximately 9:46 p.m., his attention was drawn to a GMC Sonoma vehicle, which was traveling northbound on South Eighth Street in Rogers, Arkansas. He stated that the vehicle was driving approximately ten miles below the speed limit and that it was drifting within its lane. He testified that he learned at the law-enforcement training academy that extremely slow driving and drifting are indications of a possibly intoxicated driver.

Officer Alexander explained that he started to follow the vehicle and pulled up behind it to "run" the vehicle's tag. He stated that it came back with "no return." He said that he told the dispatcher that it was an Indian Nations tag from Muscogee and that the dispatcher told him when they ran the tag out of Oklahoma, it came back with two returns, one out of the state and one out of Indian Nations, and that there was no return from either in this case.

Officer Alexander testified that he was not able to see the decal on the tag clearly enough to determine if it was a valid year; that he made the traffic stop and talked to appellant about the tag; that appellant had an expired vehicle registration with him but not a current one; that the license sticker did say 2009, showing that it was valid at the time; however, when he tried to run the tag, he was unable to get any type of return off the tag number out of Oklahoma. He said that appellant told him the car belonged to his father-in-law. Officer

Alexander acknowledged that he could see the 2009 sticker clearly in the courtroom, but stated that he could not read it that night and that he was not familiar with the colors of Oklahoma tags.

Following the initial hearing, the submission of briefs, and a follow-up hearing, the trial court denied appellant's motion to suppress, concluding that the officer had probable cause to stop the vehicle because of an apparent invalid license tag. At a hearing on June 16, 2010, appellant agreed with the asserted factual basis for his guilty plea, which included the following facts: after Officer Alexander stopped the car, he noticed appellant was extremely loud and slurring his words a little bit; he smelled of intoxicants; and he failed the field-sobriety tests administered to him by Officer Alexander. The trial court accepted appellant's conditional plea, and this appeal followed.

In *Reeves v. State*, 20 Ark. App. 17, 21–22, 722 S.W.2d 880, 882 (1987), our court explained:

> The Fourth Amendment to the Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." That protection extends to persons driving down the street. If the police stop a vehicle and detain its occupants, a seizure has occurred. Whenever practicable, the police are required to obtain advance judicial approval of searches and seizures through the warrant procedure. That process turns on the question of "probable cause." However, it has been held that, consistent with the Fourth Amendment, the police may stop persons on the street or in their vehicles in the absence of either a warrant or probable cause under limited circumstances. *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Hensley*, 469 U.S. 221 (1985); and *Leopold v. State*, 15 Ark. App. 292, 692 S.W.2d 780 (1985). One of those limited circumstances involves cases such as the present one—the investigatory stop.
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> In determining whether an investigatory stop has been made consistent with the mandates of the Fourth Amendment, we balance the nature and quality of the

> intrusion against the importance of the governmental interests alleged to justify that intrusion. *Van Patten v. State*, 16 Ark. App. 83, 697 S.W.2d 919 (1985). Where felonies or crimes involving a threat to public safety are concerned, the government's interest in solving the crime and promptly detaining the suspect outweighs the individual's right to be free from a brief stop and detention. That policy has been codified in Rule 3.1 of the Arkansas Rules of Criminal Procedure[.]

Rule 3.1 of the Arkansas Rules of Criminal Procedure provides:

> Stopping and detention of person: time limit.
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> A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he *reasonably suspects* is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

(Emphasis added.) In *Wright v. State*, 327 Ark. 558, 563, 940 S.W.2d 432, 434 (1997), our supreme court explained, "While this court has not been called upon to decide if a possible DWI offense falls within the language of Rule 3.1, our Court of Appeals has held, and we believe correctly, that a DWI violation carries with it the danger of forcible injury to others." Consequently, while "reasonable suspicion" to stop and detain under Rule 3.1 is limited to the two listed situations—a felony or a misdemeanor involving the danger of forcible injury to persons or appropriation of/damage to property—our courts have determined that a possible DWI offense falls within the ambit of the rule. *Id.*

Here, Officer Alexander testified about appellant weaving within his lane and driving under the speed limit and then explained how his observations of appellant's driving fit within

his academy training about signs of driving while intoxicated. Even though it is clear that weaving within one's own lane alone will not support reasonable suspicion of DWI, *Barrientos v. State*, 72 Ark. App. 376, 39 S.W.3d 17 (2001), we conclude that the officer's testimony went beyond that—particularly tying the weaving and the low-speed driving into his academy DWI training. In reviewing the totality of the circumstances in this case, we hold that on the basis of this testimony alone, the officer established a sufficient basis for concluding that he had reasonable suspicion to believe that appellant was driving while intoxicated, thereby justifying the stop under Rule 3.1 to further investigate. Moreover, because we determine that this testimony from Officer Alexander is sufficient in establishing reasonable suspicion to stop appellant's vehicle, we find it unnecessary to address appellant's challenges to the trial court's decision, which the trial court based on probable cause. We can affirm a trial court when the right result is reached, if an alternative basis exists for the trial court's decision. *See Cain v. State*, 2010 Ark. App. 30, 373 S.W.3d 392.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.