

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-914

HOWARD LYNN CROWDER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 8, 2012

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT
[No. CR-2010-372]

HONORABLE ROBERT EDWARDS,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

In this criminal case, appellant Howard Lynn Crowder entered a conditional guilty plea, pursuant to Arkansas Rule of Criminal Procedure 24.3(b), to possession of a controlled substance and possession of drug paraphernalia. He appeals, arguing that the circuit court erred in denying the motion to suppress evidence found in his vehicle as the result of an allegedly unlawful search. We affirm.

At the suppression hearing, Officer James Armstrong, a certified patrol officer for the City of Beebe testified that he began following Crowder (a known seller of narcotics) at the intersection of Dewitt and Main Streets in downtown Beebe. After following Crowder for about a mile and a half, Armstrong ran an Arkansas Crime Information Center (ACIC) check on Crowder to verify prior information regarding his criminal history and to verify that he was the driver of the vehicle. The ACIC search showed that Crowder was on parole for various narcotics crimes. While following him, at 6:57 p.m., Armstrong observed Crowder make an illegal



right-hand turn. Armstrong activated his emergency equipment, and Crowder pulled over into a gas-station parking lot at approximately 6:58 p.m.

On approach of the vehicle, Armstrong asked for Crowder's license and registration. As he tendered the requested documents, Armstrong observed that Crowder was extremely nervous, had unsteady hands, and was sweating profusely. Because Armstrong found Crowder's behavior to be suspicious, he radioed for an additional officer to join him at the scene. While waiting for his fellow officer, Armstrong returned to Crowder's vehicle and informed him that he was receiving a citation for making an improper turn. Crowder then waited on a curb in the lot while Armstrong prepared the ticket.

In addition to the back-up officer, Randy Reed, a canine officer with the White County Sheriff's department had been notified. Armstrong continued working on the citation and was "still in the process" of working on the citation at 7:11 p.m., when the canine officer arrived at the scene. The canine alerted only two minutes later—at 7:13 p.m. A search of the vehicle produced narcotics, and Crowder was arrested and placed in the back of a patrol car. Once in the car, his paperwork was returned, and he was given an improper-turn citation.

On appeal, Crowder does not challenge the initial stop. Instead, relying primarily on *Menne v. State*, 2010 Ark. App. 806,¹ he asserts that he was detained without reasonable suspicion after the legitimate purpose of the traffic stop had ended to allow for the arrival of a canine officer. In *Menne*, we held that the legitimate purpose of the traffic stop had ended within nine-and-a-half minutes, when the trooper received, verified, and returned all of Menne's

¹ This case was accepted for review by our supreme court on January 8, 2011. Our decision was vacated on February 2, 2012, and the circuit court was affirmed.



documents. In reaching the decision, we noted that the trooper specifically testified that he had completed the speeding investigation and had written the warning ticket during that time frame. We further held that the trooper's failure to return the completed ticket was simply a stalling tactic to allow additional time for the drug dog to arrive. However, our approach in *Menne* was specifically rejected in the supreme court's majority opinion² that found the continued detention to be legitimate. *Menne v. State*, 2012 Ark. 37, 386 S.W.3d 451. As such, to any extent our holding in *Menne* assisted in Crowder's instant appeal or argument, the opinion has been vacated. However, even had it not, we see no merit to Crowder's argument as the circumstances of his stop did not produce the same concerns as those we articulated in *Menne v. State*, 2010 Ark. App. 806 (vacated on February, 2, 2012).

Here, Armstrong had not completed writing the ticket (the legitimate purpose of the stop) when the canine arrived. The dog arrived only thirteen minutes after the initial stop and alerted fifteen minutes after the initial stop. We have specifically found that a stop completed in less than a fifteen-minute time period is constitutionally reasonable. *Willoughby v. State*, 76 Ark. App. 329, 332, 65 S.W.3d 453, 456 (2002). In this case, Armstrong was still in the process of conducting the investigation when the dog arrived. In fact, the canine not only arrived, but alerted, in less than the presumptively reasonable fifteen-minute time period. Therefore, because the legitimate purpose of the traffic stop had not ended prior to the canine alerting, the trial court properly denied Crowder's motion to suppress the evidence recovered in the search.

Affirmed.

ABRAMSON and HOOFMAN, JJ., agree.

² There were two dissenting opinions filed in *Menne v. State*, 2012 Ark.. 37, 386 SW.3d, 451.



Cite as 2012 Ark. App. 114

Chad M. Green, for appellant.

Dustin McDaniel, Att’y Gen., by: *Kathryn Henry*, Ass’t Att’y Gen., for appellee.