

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR10-588

JAMIE LEIGH JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 26, 2011

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[NO. CR2009-1519-I]

HONORABLE WILLIAM A. STOREY,  
JUDGE

REVERSED AND REMANDED

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## RAYMOND R. ABRAMSON, Judge

Jamie Leigh Jones entered a conditional guilty plea to the crime of DWI, first offense. The circuit court sentenced Jones to one day in the county jail (with credit for time served), ordered her to pay \$300 in court costs, and fined her \$1000 (the court suspended \$500 of the fine conditioned upon Jones not committing a similar offense within one year). On appeal, Jones challenges the circuit court's denial of her motion to suppress the evidence of her intoxication. More specifically, Jones argues that officers did not have reasonable suspicion to perform a traffic stop under Arkansas Rule of Criminal Procedure 3.1. We reverse and remand.

When reviewing the circuit court's denial of a motion to suppress, we conduct a *de novo* review, looking at the totality of the circumstances. *Mhoon v. State*, 369 Ark. 134, 136, 251 S.W.3d 244, 246 (2007). In doing so, we review the circuit court's historical factual

findings for clear error. *Id.* We then analyze whether those facts give rise to reasonable suspicion or probable cause, always giving due deference to the inferences drawn by the circuit court. *Id.*

The question here is whether officers had reasonable suspicion to stop Jones's vehicle under Arkansas Rule of Criminal Procedure 3.1. That rule provides, in pertinent part, as follows:

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.

Ark. R. Crim. P. 3.1. Reasonable suspicion is defined as "suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion." Ark. R. Crim. P. 2.1. It is an objective inquiry and "due weight must be given to the specific reasonable inferences an officer is entitled to derive from the situation in light of his experience as a police officer." *Summers v. State*, 90 Ark. App. 25, 31, 203 S.W.3d 638, 642 (2005) (quotation omitted).

The legislature has provided factors for the circuit court to consider in its analysis: (1) the demeanor of the suspect; (2) the gait and manner of the suspect; (3) any knowledge the officer may have of the suspect's background or character; (4) whether the suspect is carrying anything, and what he or she is carrying; (5) the manner in which the suspect is dressed,

including bulges in clothing, when considered in light of all of the other factors; (6) the time of the day or night the suspect is observed; (7) any overheard conversation of the suspect; (8) the particular streets and areas involved; (9) any information received from third persons, whether they are known or unknown; (10) whether the suspect is consorting with others whose conduct is reasonably suspect; (11) the suspect's proximity to known criminal conduct; (12) the incidence of crime in the immediate neighborhood; (13) the suspect's apparent effort to conceal an article; and (14) the apparent effort of the suspect to avoid identification or confrontation by a law enforcement officer. Ark. Code Ann. § 16-81-203 (Repl. 2005).

On July 25, 2009, off-duty West Fork Police Officer Clay Hungate was driving along Highway 71 in his personal vehicle with his family. He passed an area known as Red Gate, which he described as a "party place" on the White River. He noticed three vehicles parked as though they were about to come out onto the highway—two of the vehicles were trucks and one was a red car. Several of the passengers were standing outside the vehicles. Officer Hungate saw a man standing near the lead truck, which was black in color, making an obscene gesture at the passengers of the other two vehicles. Officer Hungate radioed Kenneth Ingalls, a fellow West Fork Police Officer, and told him about the incident.

Ingalls testified that Hungate told him that there appeared to be some sort of roadside altercation going on. Ingalls headed toward Red Gate, which Ingalls said was "pretty synonymous for a lot of drinking and controlled substances" and where "a fight a time or two [had] broken out." When Ingalls arrived, however, no one was there. Officer Ingalls continued north on Highway 71 toward Greenland and radioed ahead to Greenland Police

Officer Michael Huber, telling him to be on the lookout for vehicles matching Officer Hungate's description.

After getting the call from Officer Ingalls, Officer Huber headed south on Highway 71 from Greenland to see if he could intercept the vehicles. Soon after, he met a black pickup truck being followed closely by a red Mustang and another black pickup truck. Officer Huber turned around and began to follow the vehicles. He asked Officer Ingalls whether the car Officer Hungate had seen was a red Mustang, and Officer Ingalls thought it "possibly was," though Officer Ingalls testified that the only vehicle description he had received from Officer Hungate was that two black trucks and one red car were involved. Officer Huber testified that his main concern was the Red Gate disturbance, or, as he described it, "possible road rage." He engaged his emergency lights, pulled up beside each of the vehicles, and motioned for the drivers to pull over. The driver of the lead truck pulled into a business parking lot, and the drivers of the other two vehicles pulled into the parking lot of a nearby apartment complex. Officer Huber went to the lead truck, informed Officer Ingalls that he had pulled the vehicles over, and told him to tend to the other two vehicles.

Officer Ingalls arrived on the scene shortly thereafter. Officer Ingalls made contact with the driver of the red Mustang, Jones, and told her that he had gotten word of some kind of roadside altercation back at Red Gate. According to Officer Ingalls, only about five minutes had elapsed since he had received the initial call from Officer Hungate. According to the incident report, Jones smelled of alcohol and had blood shot, watery eyes. The report

further states that Jones's initial, portable breath test registered .09 and that her second, certified breath test registered .11.

Below, the circuit court found that the officers had reasonable suspicion to stop Jones's car. We disagree. An off-duty officer observed a man, standing near the lead vehicle in a group of three vehicles, making an obscene gesture at the people in the other two vehicles. The area where this occurred is known for alcohol and controlled substances consumption and as a place where "a fight a time or two [had] broken out." Three vehicles matching the observing officer's general description—two black trucks and a red car—were seen a few minutes later following each other closely as they came into Greenland. Witnessing no traffic violations, the officer stopped the vehicles for "possible road rage." No one ever saw an actual fight or had any indication that one was about to erupt (other than the initial incident). And no one had reported anything specific about Jones.

Looking at the totality of the circumstances, these facts do not give rise to reasonable suspicion. See *Stewart v. State*, 332 Ark. 138, 145–46, 964 S.W.2d 793, 797 (1998); *Summers*, 90 Ark. App. at 36, 203 S.W.3d at 645; *Anderson v. State*, 79 Ark. App. 286, 291, 86 S.W.3d 403, 406 (2002); *Van Patten v. State*, 16 Ark. App. 83, 86, 697 S.W.2d 919, 920–21 (1985). Because the officers did not have reasonable suspicion to stop Jones, the results from her subsequent breath tests should have been suppressed as fruit of the poisonous tree. *Keenom v. State*, 349 Ark. 381, 390–91, 80 S.W.3d 743, 748–49 (2002) (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)).

Reversed and remanded.

VAUGHT, C.J., and GRUBER, J., agree.