NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 08-831

WENDELL CHAMPLIN APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** March 18, 2009 APPEAL FROM THE GRANT COUNTY CIRCUIT COURT, [NO. CR-2007-52-2A] HONORABLE PHILLIP SHIRRON, JUDGE AFFIRMED

COURTNEY HUDSON HENRY, Judge

A jury in Grant County found appellant Wendell Champlin guilty of possession of drug paraphernalia with intent to manufacture methamphetamine, for which he received a sentence of fifteen years in prison. Appellant raises four issues for reversal. He argues that: (1) the trial court erred in denying his motions for a directed verdict; (2) the trial court erred in refusing to suppress evidence; (3) the trial court erred in refusing to suppress the statements he made to police officers; and (4) the trial court erred by allowing the State to cross-examine him about a subsequent arrest. We find no error and affirm.

The prosecuting attorney charged appellant with possession of drug paraphernalia with intent to manufacture methamphetamine following a search of the vehicle appellant was driving.[1] Immediately upon the stop, the police arrested John Jackson, the passenger in the

[1] Appellant's aunt owned the vehicle.

vehicle. The officers arrested appellant after the search yielded items allegedly associated with the manufacture of methamphetamine. Appellant made an inculpatory statement to the officers at the scene, and he made a similar statement to an officer at the jail. Appellant moved to suppress the items seized in the search and the statements he made to the officers. The trial court denied the motion to suppress, and the case proceeded to trial on February 13, 2008.

The record of trial reveals that on April 3, 2007, Leslie Irons was working as a pharmacist at Wal-Mart in Sheridan. On that day, she sold to appellant and John Jackson pseudoephedrine pills in separate transactions that took place several minutes apart. Ms. Irons identified the men because, by law, purchasers of pseudoephedrine are required to produce identification. Also, Ms. Irons was familiar with appellant because appellant had bought insulin syringes and pseudoephedrine pills on a number of occasions in the past nine months. She knew that pseudoephedrine is used to manufacture methamphetamine, and based on experience, she was aware that those involved in the manufacture of methamphetamine purchased pseudoephedrine in small groups of people. Ms. Irons also noticed that the men came from out of town and lived in the same area. With these things in mind, Ms. Irons became suspicious of appellant based on the frequency of appellant's purchases of pseudoephedrine and the fact that he never bought insulin when he purchased the syringes. Consequently, she contacted Detective David Holland of the Sheridan Police Department by calling his cell phone.

As a result, Detective Holland performed a criminal background check of appellant and Jackson and found that Jackson had an active warrant for his arrest from Lonoke County. Holland drove to Wal-Mart and waited for appellant's vehicle to exit the parking lot before initiating a stop. Officers Brent Cole and Everett Wilkerson arrived at the scene soon thereafter. Holland placed Jackson under arrest and transported him to jail.

Officer Cole testified that he obtained appellant's consent to search the vehicle. In the trunk, Cole found a one-pound box of salt and a box of pseudoephedrine pills in a bag from Wal-Mart. Officer Wilkerson searched the passenger compartment of the vehicle and discovered two empty blister packages of pseudoephedrine, an empty pseudoephedrine box, twenty unpackaged pseudoephedrine pills contained in a sack, and two packages of lithium batteries. The officers testified that lithium extracted from the batteries, along with salt and pseudoephedrine, are used in the process of manufacturing methamphetamine.

According to Cole, he advised appellant of his rights and asked appellant if he was making methamphetamine. Cole said that appellant looked at the ground but did not answer this question. Cole then asked appellant if he was exchanging pseudoephedrine pills for methamphetamine, and Cole testified that appellant responded, "Yes, sir." Officer Wilkerson interviewed appellant later at the jail after advising appellant of his rights. Wilkerson testified that appellant told him that he was planning to trade the pills he purchased for methamphetamine and that he had done so on several occasions in the past.

John Jackson also testified for the State. He first recounted his criminal history that began in his teenage years. Jackson also explained that the warrant for his arrest out of

Lonoke County arose from his failure to appear at the sentencing hearing following his convictions in 2006 for possession of a controlled substance and possession of drug paraphernalia. He also stated that, in exchange for his truthful testimony, the prosecuting attorney had offered a negotiated plea of ten years in prison based on his involvement with appellant. Jackson testified that he and appellant agreed to buy pseudoephedrine on April 3, 2007, for the purpose of trading the pills for methamphetamine.

After the State rested, appellant moved for a directed verdict, which the trial court denied. Appellant then took the witness stand and gave the following testimony. He admitted that he pled guilty to possession of drug paraphernalia with intent to manufacture methamphetamine in 2002 and that he was on probation at the time of his arrest on the present charges. Appellant explained this conviction by saying that the drug paraphernalia belonged to his estranged wife and that he pled guilty only to protect his wife and children. He stated, however, that he had no other "brushes with the law" since then. Appellant maintained that the testimony given by Jackson and Officers Cole and Wilkerson was not truthful. He testified that he bought pseudoephedrine that day because he and his aunt did not feel well. He denied that he and Jackson planned to exchange the pills for methamphetamine. Appellant further testified that he did not give Officer Cole permission to search the vehicle. He denied that he told either Officer Cole or Officer Wilkerson that he intended to trade the pills for methamphetamine. Appellant also said that he had no knowledge of the lithium batteries that the police found in the vehicle. On cross-examination, and over appellant's objection, the prosecuting attorney questioned appellant

about his pending charges of manufacturing methamphetamine and a battery involving a police officer that were based on conduct that occurred after appellant's arrest for the present offense.

Following his testimony, appellant renewed his motion for a directed verdict. The trial court denied the motion and submitted the case to the jury, which found appellant guilty of possessing drug paraphernalia with the intent to manufacture methamphetamine. As his first issue on appeal, appellant argues that sufficient evidence does not support the jury's verdict. Specifically, he contends that the evidence is insufficient because the items he possessed had legitimate uses that are not associated with manufacturing methamphetamine.

We do not reach the merits of appellant's argument because it is not preserved for appeal pursuant Rule 33.1 of the Arkansas Rules of Criminal Procedure. In a jury trial, a defendant challenges the sufficiency of the evidence by moving for a directed verdict at the close of the evidence offered by the prosecution and at the close of all of the evidence. Ark. R. Crim. P. 33.1(a). Appellant met this requirement, but Rule 33.1(a) also requires a motion for a directed verdict to "state the specific grounds therefor." When a motion for a directed verdict does not identify particular or specific elements of proof that are missing from the State's case, the motion fails to properly apprise the trial court of the asserted error. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2006). A general motion that merely asserts that the State has failed to prove its case is not adequate to preserve the issue for appeal. *Davis v. State*, 97 Ark. App. 6, 242 S.W.3d 630 (2006). The reason underlying this requirement is that it allows the trial court the option of either granting the motion or, if justice requires, allowing

the State to reopen its case to supply the missing proof. *Pinell v. State*, 364 Ark. 353, 219 S.W.3d 168 (2005). A further reason that the motion must be specific is that the appellate court may not decide an issue for the first time on appeal and cannot afford relief that is not sought in the trial court. *Lamb v. State*, 372 Ark. 277, 275 S.W.3d 144 (2008).

Appellant's attorney made the following motion for a directed verdict after the State rested:

> [A]t this time, the defense respectfully moves for a directed verdict on the ground that the - what the State has proven, if they've proven anything, is not sufficient to support the information and the charge of possession of drug paraphernalia with intent to manufacture meth or to prove any other charge at all.

At the close of all the evidence, appellant's attorney stated:

> And we renew our motion for a directed verdict and again state that the evidence that the State has adduced and the defendant has adduced is not sufficient to sustain a conviction of the charge of possession with intent to manufacture or on any charge whatsoever.

Because appellant's motions were not specific and did not inform the trial court of any particular deficiency in the State's proof, the issue that appellant raises on appeal is not preserved for our review. Accordingly, we cannot decide appellant's argument challenging the sufficiency of the evidence.

Appellant's second argument on appeal concerns the trial court's refusal to suppress the evidence that the officers seized from the vehicle. He contends that the stop of the vehicle was pretextual and not supported by probable cause. As his third point on appeal, he asserts that the trial court erred by not suppressing the statements he made to Officers Cole and

Wilkerson. This argument is built on the previous assertion that the stop of the vehicle was illegal and that the statements are "fruits of the poisonous tree." As these issues are related, we will discuss them together.

The trial court in this instance denied the motion to suppress based on a finding that the information provided by the pharmacist gave the officers reasonable cause to stop appellant's vehicle. Rule 3.1 of the Arkansas Rules of Criminal Procedure provides:

> 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.

The term "reasonable suspicion" means a suspicion based on facts and 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.

In reviewing the denial of a motion to suppress, appellate courts conduct a *de novo* review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determine whether those facts give rise to a reasonable suspicion or probable cause, giving due weight to the inferences drawn by the trial court. *Lawson v. State*, 89 Ark. App. 77, 200 S.W.3d 459 (2004). We also defer to the superior position of the trial judge to decide the credibility of witnesses and to resolve evidentiary conflicts. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003).

In his argument, appellant concedes that our supreme court has held that pretextual stops are not impermissible under either the federal or Arkansas Constitution and thus do not invalidate an otherwise lawful stop of a vehicle. *See State v. Harmon*, 353 Ark. 568, 113 S.W.3d 75 (2002). Instead, he argues that there was no probable cause for the stop because he committed no traffic violation. Other than this statement, he makes no argument and cites no authority to support the assertion that the stop was not legally justified.

To be certain, a police officer may stop and detain a motorist where the officer has probable cause to believe that a traffic violation has occurred. *Laime v. State*, 347 Ark. 142, 60 S.W.3d 464 (2001). However, an officer's authority to stop a vehicle for a traffic violation is unrelated to and is in addition to an officer's authority to stop and detain a motorist based on reasonable suspicion of felonious activity pursuant to Rule 3.1 of the Arkansas Rules of Criminal Procedure. *Flores v. State*, 87 Ark. App. 327, 194 S.W.3d 207 (2004). In other words, the absence of a traffic violation is of no consequence where there is reasonable suspicion for a stop pursuant to Rule 3.1 that the motorist is committing, has committed, or is about to commit a felony. The trial court based its decision on Rule 3.1,[2] but appellant has made no argument contesting the legality of the stop under that rule. Assignments of error, unsupported by convincing argument or pertinent authority, will not be considered on appeal unless it is apparent without further research that they are well taken. *Drake v. State*, 103 Ark. App. 87, ___ S.W.3d ___ (2008). As it stands, appellant's argument on appeal provides no

[2] We also note that the officers knew that there was a warrant for Mr. Jackson's arrest, and under Rule 4.2 of the Arkansas Rules of Criminal Procedure, any law enforcement officer may arrest a person pursuant to a warrant in any county in the state.

basis for the reversal of the trial court's decision. Therefore, we affirm the trial court's denial of the motion to suppress both the evidence seized by the officers and the statements appellant made to the officers.

Appellant's final issue is that the trial court erred by allowing the State to cross-examine him concerning subsequent bad acts. This issue concerns the State's inquiry into appellant's subsequent arrest on charges of manufacturing methamphetamine and battery upon a police officer. Appellant does not challenge the evidence under Rule 404(b) of the Arkansas Rules of Evidence. His argument is that the evidence was not admissible under Rule 403 of the Arkansas Rules of Evidence.

Rule 403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." The supreme court has noted that evidence offered by the State is often likely to be prejudicial to the accused, but the evidence should not be excluded unless the accused can show that it lacks probative value in view of the risk of unfair prejudice. *Morris v. State*, 367 Ark. 406, 240 S.W.3d 593 (2006). We review a trial court's decision to admit evidence over a Rule 403 objection under an abuse-of-discretion standard. *Allen v. State*, 374 Ark. 309, ___ S.W.3d ___ (2008).

As a general rule, proof of other crimes or bad acts is never admissible when it is only relevant to show that the accused is a bad person. *Ross v. State*, 96 Ark. App. 385, 242 S.W.3d 298 (2006). However, when the accused raises the issue of his pertinent character

trait, then the State is permitted to introduce rebuttal evidence concerning that trait, and evidence that is otherwise inadmissible may become admissible. *Smith v. State*, 334 Ark. 190, 974 S.W.2d 427 (1998). Here, appellant opened the door to the State's cross-examination by testifying that, although he pled guilty to a similar charge in 2002, he was actually innocent of that charge and that he had no other "brushes with the law" since then. Consequently, appellant placed his good character in issue, and thus the State was permitted to rebut that testimony with cross-examination showing that appellant stands accused of committing other offenses. Accordingly, the State's rebuttal possessed probative value, and we cannot conclude that the probative value was substantially outweighed by the danger of unfair prejudice. We find no abuse of discretion in the trial court's decision.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.