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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-346

WILLIAM ROCKWARD, APPELLANT V. STATE OF ARKANSAS, APPELLEE	**Opinion Delivered** FEBRUARY 3, 2010 APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO. CR2007-417-3 HONORABLE GRISHAM A. PHILLIPS, JR., JUDGE, AFFIRMED

KAREN R. BAKER, Judge

A Saline County jury found appellant William Rockward guilty of possession of marijuana with intent to deliver. He was sentenced to six years' probation and fined $3,000. On appeal, appellant challenges the trial court's refusal to suppress evidence obtained as the result of an unlawful search. We affirm.

At a hearing on appellant's motion to suppress, Arkansas State Police Trooper Dale Donham testified that he initiated a traffic stop of appellant after witnessing the vehicle that appellant was driving change lanes into a lane where a tractor-trailer rig was traveling. The trooper saw the brake lights of the tractor-trailer rig and characterized the change of lanes as unsafe. The trooper identified the unsafe change of lanes as the reason for the traffic stop.

The vehicle appellant was driving was a rented vehicle. The rental agreement in the

vehicle had another individual's name listed as the person who rented the vehicle, and when the trooper asked appellant about the discrepancy, appellant stated that he did not have a credit card required by the company for the rental. During the course of the traffic stop, the trooper confirmed with the rental-car company that appellant was authorized to use the rented vehicle. The trooper also noticed in the front passenger seat a small overnight bag with a military uniform draped over the front seat. After confirming that appellant had lawful possession of the vehicle, the trooper asked appellant where he was headed. The trooper testified that appellant "told me he was headed to Cleveland, Ohio for a funeral for a fallen comrade out of Iraq, which I had no doubt or no reason to disbelieve that." At that point, with appellant secured in the backseat of the patrol car, the officer asked appellant if he would mind if the trooper searched the vehicle. Appellant verbally consented.

During the search, the trooper discovered a change of clothing and items appropriate for a short trip inside the small bag. He opened the trunk and saw a speaker box with no wires connected to it. He testified that he had never seen a speaker box in a rental vehicle. Inside the trunk, screws were lying all around and some screws were missing from the speaker box. According to the trooper, when screws are missing from appliances, drugs are often found inside those items. Previous to his encounter with appellant, the trooper had found drugs inside speaker boxes in other situations. When he shook the speaker, he believed he could feel something inside the box. He explained that he returned to his car to get a screwdriver because it was necessary to continue his search.

Appellant's interactions with the trooper were polite and respectful throughout this process. As the trooper explained, when he returned to his car, appellant addressed him as "Sir" in requesting information as to the progress of the trooper's search. When the trooper responded with "hang on just a second, I'll be right back," appellant exited the police vehicle. The trooper described his concern that appellant had been able to voluntarily leave the vehicle and expressed his fear of harm from appellant knowing that he was a United States Marine and well trained in combat. He also characterized appellant's approach as "charging" him. The trooper stated that he began to draw his gun on appellant, ordering appellant to the ground. When appellant complied by lying on the ground, the trooper placed him under arrest for his own safety. At that point, appellant stated, "Sir, it's over with. It's over with. You can't do anything else at this point."

The trooper then described a scuffle with appellant, who was resisting being handcuffed. Appellant continued to struggle with the trooper down the road embankment to the ditch where appellant broke away from the trooper and attempted to flee on foot. Appellant was chased and tackled by another military officer who had happened upon the scene. Appellant was eventually subdued, handcuffed and placed in the back of the patrol car with this military officer's assistance. After appellant was handcuffed and placed into the backseat of the patrol car, the trooper removed the final screws from the speaker, looked inside, and saw three bags of marijuana.

The Supreme Court in *Ornelas v. United States,* 517 U.S. 690 (1996), held that determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search should be reviewed de novo on appeal; in conducting a de novo review, the reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by judges and law-enforcement officers. The Court further held that the principal components of a determination of reasonable suspicion or probable cause will be the events that occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause. *Id.* The first part of the analysis involves only a determination of historical fact, but the second is a mixed question of law and fact. *Id*; *see also Clark v. State*, 374 Ark. 292, 297-98, 287 S.W.3d 567, 571 (2008).

Appellant does not challenge the constitutionality of the traffic stop. As part of a valid traffic stop, a police officer may detain a traffic offender while the officer completes certain routine tasks, such as computerized checks on the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or a warning. *Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004). During this process, the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle, and he may act on whatever information is volunteered. *Id.* However, after those routine checks are completed, unless the officer has a reasonable articulable suspicion for

believing that criminal activity is afoot, continued detention of the driver may become unreasonable. *Id.*; *United States v. Mesa*, 62 F.3d 159 (6th Cir. 1995). In the absence of a reasonable, articulable suspicion of some drug-related criminal activity, once the purpose of the traffic stop is completed, the operator of the vehicle should be allowed to proceed on his way, without being subject to further delay by police for additional questioning. *See Sims v. State*, *supra*; *United States v. Wood*, 106 F.3d 942 (10th Cir. 1997).

Appellant does not argue that the trial court erred because his extended detention was without reasonable suspicion and accordingly in violation of his rights. *See Lilly v. State*, 362 Ark. 436, 208 S.W.3d 785 (2005) (reversing trial court's denial of suppressionmotionholding that officer did not have reasonable suspicion that defendant was committing a crime and, thus, was not justified in detaining defendant after legitimate purpose of traffic stop had ended). Neither does he argue that his consent to search was invalid.

Rather, appellant's argument focuses upon the withdrawal of his consent to search. Our analysis, therefore, is limited to the question of whether the trial court erred in denying appellant's motion to suppress because appellant withdrew his consent.

In reviewing the denial of a motion to suppress evidence, this court conducts 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. *Stokes v. State*, 375 Ark. 394, 291 S.W.3d 155 (2009). Issues regarding the credibility of witnesses testifying at a suppression hearing are within the province of the circuit court. *Id.* Any conflicts in the testimony are for

the circuit court to resolve, as it is in a superior position to determine the credibility of the witnesses. *Id.*

Rule 14.1 of the Arkansas Rules of Criminal Procedure addresses vehicular searches and provides in pertinent part:

> (a) An officer who has reasonable cause to believe that a moving or readily movable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:
>
> (i) on a public way or waters or other area open to the public[.]

Ark. R. Crim. P. 14.1(a).

Trooper Donham testified that before appellant withdrew his consent to search, the trooper had discovered the speaker box. The trooper observed indications that the box had been opened inside the trunk with screws missing from the box and lying in the trunk. In addition he determined that the screws had been replaced enough to secure the box to prevent the box from opening, and that something shifted inside the box when he picked it up, which was inconsistent with the ordinary contents of a speaker box. He explained that based upon his training and experience he knew that speaker boxes are sometimes used to conceal drugs and had previously found contraband hidden in similar speaker boxes. Accordingly, the trooper already had reasonable cause to believe that the speaker box contained contraband prior to appellant's withdrawal of his consent to the search. Trooper Donham therefore had reasonable cause to believe that the trunk contained things subject to

seizure, establishing an exception to the warrant requirement. *See Turner v. State*, 94 Ark. App. 259, 229 S.W.3d 588 (2006). Because Trooper Donham had reasonable cause to search before appellant withdrew his consent, the trial court did not err in failing to suppress the evidence.

Affirmed.

HENRY and BROWN, JJ., agree.