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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-18-118

MICHAEL DYE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: November 7, 2018

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17CR-17-670]

HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

KENNETH S. HIXSON, Judge

Appellant Michael Dye was convicted in a bench trial of possession of methamphetamine, possession of drug paraphernalia, and being a felon in possession of a firearm.¹ For his possession-of-methamphetamine conviction, he was sentenced to ten years in prison followed by a five-year suspended imposition of sentence. Dye was given a fifteen-year suspended imposition of sentence for the remaining two convictions.

On appeal, Dye argues that the consent obtained by the officers to search his home was invalid. Dye also argues that the trial court erred in denying his motion to suppress the incriminating evidence because the police search of his home was unlawful. Finally, Dye challenges the sufficiency of the evidence to support his convictions. We affirm.

¹It is undisputed that Dye is a convicted felon, having been convicted of multiple felonies, prior to these proceedings.

Although listed as appellant's last point on appeal, we must first address the sufficiency of the evidence prior to any other alleged trial court error. *Johnson v. State*, 2014 Ark. App. 567, 444 S.W.3d 880. In a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the State and consider only the evidence that supports the convictions. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). Evidence is sufficient if it is of such character and force that it, with reasonable certainty, compels a conclusion one way or the other without resort to speculation or conjecture. *Id.* On appeal, we view all the evidence that supports the conviction, including evidence that may have been erroneously admitted. *Scroggins v. State*, 312 Ark. 106, 848 S.W.2d 400 (1993).

The trial court held the suppression hearing and the bench trial simultaneously. Officer Andy Jones of the Van Buren Police Department was the first witness to testify. According to Officer Jones, the police had received complaints of trespassing on private property where a gas well was located. Jones testified that around midnight on January 14, 2017, he was patrolling in an area of "extra patrol" on Industrial Park Road.

Officer Jones testified that while on patrol he observed two vehicles parked next to each other at the gate entrance to the gas well. There were two occupants in a truck and a single occupant in a car. Due to the previous reports of trespassing and because it was late at night, Officer Jones pulled in behind the vehicles to identify the occupants and investigate why they were there.

As Officer Jones pulled in, a man named Mr. Watkins exited the truck from the driver's side. Appellant, Michael Dye, remained seated in the passenger seat of the truck.² Dye had cash in his hand and told the officer that Watkins was giving him a ride to the store to buy cigarettes. Officer Jones observed a black pouch containing loose baggies in between the driver's seat and the passenger's seat of the truck.³ Officer Jones asked for identification from Watkins and Dye, which they each provided. Additional police cars containing Officers Hammer and Bradford had pulled up to the scene. While Officer Jones was in his patrol car running the identification cards, Watkins fled the scene on foot. Officers Hammer and Bradford unsuccessfully searched for Watkins for about ten minutes. Officer Jones learned from the identification check that appellant Dye had prior methamphetamine convictions.

Officer Jones asked appellant Dye if he knew where Watkins would have gone. Appellant replied that Watkins was staying with him at his residence, which was on property adjacent to the gas well about fifty feet from where the truck was parked. Officer Jones asked appellant if they could check his home for Watkins, and appellant replied "yes." In addition to giving verbal consent to search his house, appellant Dye signed a consent-to-search form provided to him by Officer Hammer.

Officer Jones acknowledged that during his conversation with Dye, Dye's speech was slurred, his eyes were glassy, and he was unsteady on his feet. Although Officer Jones

²The occupant of the car was Alicia Cordova, and the record does not contain any other evidence regarding Cordova or her vehicle.

³When Officer Jones searched the truck after Dye's arrest, one of the baggies in the black pouch was found to contain a small measuring spoon with a white-powder residue.

did not smell alcohol on appellant Dye's breath, he believed Dye was under the influence of a narcotic. However, Officer Jones testified that Dye appeared to understand what they were asking him and appeared to know what was going on. Officer Jones stated that, although he did not ask appellant about a dog, Dye volunteered to him that there was a dog in the house and warned that it was potentially violent toward officers. Dye also volunteered to Officer Jones that there was an unloaded shotgun in the first bedroom on the right propped up next to his bed. Appellant gave the officers the key to his house.

Officer Bradford testified that when he and Officer Hammer arrived at the scene, he observed Officer Jones speaking with a man who was outside the truck, and that the man left the scene shortly thereafter. Officers Bradford and Hammer searched the area for about ten minutes but were unable to find the man. Officer Bradford then spoke with Officer Jones, who informed him that the man they were looking for was staying in appellant Dye's residence on the adjacent property and that Dye had given his permission to enter the residence. Officer Bradford was given the information that there was a dog and a firearm in the residence. Dye signed a consent-to-search form that was witnessed by Officers Jones and Hammer.

Based on the consent the police obtained from appellant Dye, Officer Bradford entered the residence using the key provided by Dye. Officer Bradford observed a pit bull mix dog lying on the couch in the living room. He also found a glass pipe, which he assumed was used to smoke methamphetamine, on the living-room table. Officer Bradford entered the bedroom where Dye said the gun was located and found an unloaded shotgun in the bedroom closet. There were shotgun shells directly above the gun. On the top of

the headboard of the bed was a spoon containing a crystal-like substance, which subsequently tested positive for methamphetamine at the crime lab. Officer Bradford also found some straws that contained a powdery substance.

Officer Bradford also testified as to the chronology of these events. Bradford stated that within five minutes of the initial encounter by Officer Jones, Watkins had fled the scene. Then Officers Bradford and Hammer searched for Watkins for about ten minutes. Shortly thereafter, upon obtaining appellant Dye's consent to search, Officer Bradford searched Dye's residence. Officer Bradford estimated that it was about twenty minutes between the time he arrived on the scene and the time he began the search, and after that it took about five minutes to discover all the contraband.

We first address appellant Dye's argument on appeal that there was insufficient evidence to support his convictions. Appellant initially contends that there was nothing to connect him with the paraphernalia found in the truck, noting that there was no evidence as to who owned the truck and the paraphernalia was concealed in a pouch between the two front seats. Dye further argues that there was insufficient evidence to link him with the items seized from the residence because it was never clearly established that he occupied the residence. Alternatively, Dye argues that, at most, the State showed that he occupied the residence jointly with Watkins, and that there were no additional factors linking him to possession of the contraband. For these reasons, appellant Dye argues that his convictions should be reversed.

Appellant's argument as to the items seized from the truck is misplaced because the State's allegations against Dye were based on the contraband seized from Dye's residence;

not the truck. Thus, it is irrelevant whether appellant was in possession of the items seized from the truck. On the evidence contained in the record, we hold that there was substantial evidence to support the trial court's finding that appellant was in possession of the methamphetamine, the drug paraphernalia, and the firearm found in his residence.

Constructive possession can be inferred when the contraband is found in a place immediately and exclusively accessible to the defendant and subject to his control. *Harjo v. State*, 2017 Ark. App. 337, 522 S.W.3d 839. Constructive possession can also be inferred when the contraband is in the joint control of the accused and another. *Id.* However, joint occupancy alone is not sufficient to establish possession or joint possession; there must be some additional factor linking the accused to the contraband. *Id.* In such cases, the State must prove that the accused exercised care, control, and management over the contraband and that the accused knew the matter possessed was contraband. *Id.* Control over the contraband can be inferred from the circumstances, such as the proximity of the contraband to the accused, the fact that it is in plain view, and the ownership of the property where the contraband is found. *Nichols v. State*, 306 Ark. 417, 815 S.W.2d 382 (1991).

Contrary to appellant's argument, there was evidence that he occupied the house and that it was his residence. Upon inquiry by the police, Dye stated that Watkins was staying with him at *his residence*. Dye orally consented to the search of his residence and provided the police with the key that opened the front door. Dye also signed the written consent form, which stated that the house to be searched, 4616 Industrial Park Road, was "my house." Finally, Dye voluntarily informed the police about a potentially dangerous dog in the house and a shotgun in his bedroom, both of which were found by the police

after they entered the house. Therefore, the State sufficiently established that this was appellant Dye's house.

After the police entered the house, they found the contraband in appellant Dye's bedroom. Dye had told the police they would find a shotgun in a bedroom near his bed. The shotgun was located in the bedroom closet. In plain view in the headboard area of the bed the police found a spoon, which was later confirmed to contain methamphetamine, and some straws with white residue.

This evidence was sufficient to prove that appellant Dye constructively possessed the contraband. The contraband was found in his house and in his bedroom, which were factors linking him to possession of the items. Therefore, we conclude that there was substantial evidence to support appellant's convictions for possession of methamphetamine, possession of drug paraphernalia, and being a felon in possession of a firearm.

Appellant next argues, for various reasons, that the contraband seized from his house should have been suppressed because it was illegally obtained. First, he claims that the initial encounter by law enforcement was not authorized by Rule 2.2 of the Arkansas Rules of Criminal Procedure. Next, he argues that, even if the initial encounter had been lawful, his subsequent and continued detention was not authorized under Rule 3.1.⁴ Finally, he argues that even if the encounter and continued detention had been lawful, the consent obtained by the officers to search his house was invalid because it was obtained without *Miranda* warnings and was not given freely and voluntarily because he was under the influence of

⁴Although appellant mistakenly refers to Rule 3.3 in his brief, it is clear from the context of his argument that he means Rule 3.1.

drugs at the time of his consent. For each of these reasons, Dye contends that the contraband seized from the residence was fruit of the poisonous tree.

In reviewing the denial of a motion to suppress evidence, this court conducts a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *Pickering v. State*, 2012 Ark. 280, 412 S.W.3d 143. A finding is clearly erroneous when, even if there is evidence to support it, the appellate court, after review of the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.* We defer to the superiority of the trial court to evaluate the credibility of witnesses who testify at a suppression hearing. *Id.*

In *Lewis v. State*, 2017 Ark. 211, at 6, 521 S.W.3d 466, 471–72, the Arkansas Supreme Court articulated three types of encounters with law-enforcement officers:

Police-citizen encounters have been classified into three categories. The first category is contemplated by Rule 2.2 of the Arkansas Rules of Criminal Procedure. The authority for a police officer to act in a nonseizure encounter is recognized in Rule 2.2(a) which provides,

A law enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The officer may request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request.

This type of nonseizure encounter occurs when an officer merely approaches an individual on a street and asks if he is willing to answer some questions. *Thompson v. State*, 303 Ark. 407, 797 S.W.2d 450 (1990). This encounter is consensual and does not constitute a seizure. *Scott v. State*, 347 Ark. 767, 67 S.W.3d 567 (2002). A seizure of a person occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. *Id.*, 67 S.W.3d 567. The initially consensual encounter is transformed into a seizure when, considering all the circumstances, a reasonable person would believe that he is not free to leave.

Id., 67 S.W.3d 567. The second category is contemplated by Rule 3.1 of the Arkansas Rules of Criminal Procedure. *Thompson*, 303 Ark. 407, 797 S.W.2d 450. This second type of encounter occurs when the officer justifiably restrains an individual for a short period of time because the officer has a reasonable, articulable suspicion that the person has committed or is about to commit a crime. *Thompson*, 303 Ark. 407, 797 S.W.2d 450. The final category is the full-scale arrest, which must be based on probable cause. *Scott*, 347 Ark. 767, 67 S.W.3d 567.

Appellant argues that the initial encounter by law enforcement was unjustified under Rule 2.2. Our supreme court has held that an encounter under Rule 2.2 is permissible only if the information or cooperation sought is in aid of an investigation or the prevention of a particular crime. *Hammons v. State*, 327 Ark. 520, 940 S.W.2d 424 (1997). Appellant contends that in this case, Officer Jones was not investigating any crime but was merely trying to find out what Dye and the others were doing on the property.

We disagree with appellant's claim that the initial encounter was unlawful. Dye asserts that he was approached under the same flawed reasoning employed by the officer in *Jennings v. State*, 69 Ark. App. 50, 10 S.W.3d 105 (2000). However, *Jennings* is distinguishable. In *Jennings*, the police officer stopped the appellant and his companion on a public street corner of a known drug area to "check them out" and see if they were doing anything wrong. This court held that because there was no testimony that the officer was investigating or preventing a crime when she encountered appellant and his companion, the stop was not justified under Rule 2.2. However, in this case, Officer Jones testified that he was on "extra patrol" late at night in an area where there had been complaints of trespassing on private property. He encountered two vehicles parked next to each other on the private gas-well property. This was the same gas-well property where the prior trespassing had been reported. We conclude under these circumstances that the initial encounter was lawful

under Rule 2.2 because, unlike *Jennings*, the appellant was not on a public street but rather on private property where there had been complaints of trespassing. Because Officer Jones was investigating the potential crime of trespass he was authorized under Rule 2.2 to stop and request that Dye cooperate in the investigation or prevention of crime.

We next turn to appellant's argument that the encounter was transformed into the second category—one of a seizure where he was being restrained by the officer—without the officer having the requisite reasonable suspicion under Rule 3.1 and for a longer time period than is authorized under this rule. Arkansas Rule of Criminal Procedure 3.1 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. 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.

Reasonable suspicion depends on whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating that the person may be involved in criminal activity. *Smith v. State*, 343 Ark. 552, 39 S.W.3d 739 (2001).

The State argues that there was no evidence that appellant was not free to leave and that the consensual encounter never transformed into a seizure of his person. We do not agree. In *Lewis, supra*, the supreme court held that a consensual encounter with law enforcement is transformed into a seizure when, considering all the circumstances, a reasonable person would believe that he is not free to leave. In this case, within minutes of

the consensual police-citizen encounter, Watkins fled the scene. During the next ten minutes officers searched for Watkins, during which time Officer Jones remained with Dye at the truck and ultimately asked Dye for permission to search for Watkins in Dye's residence. We believe a reasonable person in Dye's position would not believe he was free to leave during this time frame, as demonstrated by the officers' reaction when Watkins left the scene. The police search for Watkins, coupled with one officer remaining with appellant and requesting to search Dye's residence, amounted to a show of authority that prevented Dye from leaving the scene. Therefore, we hold that appellant Dye was being detained as contemplated by Rule 3.1.

Having concluded that appellant was being detained, the next inquiry under Rule 3.1 is whether the police had reasonable suspicion that appellant was committing, had committed, or was about to commit a felony or misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property. We conclude that Officer Jones had reasonable suspicion to detain Dye pursuant to Rule 3.1.

Arkansas Code Annotated section 16-81-203 (Repl. 2005) provides that the following are among the factors to be considered in determining if the officer has grounds to reasonably suspect:

- (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 the other factors;
- (6) *The time of 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.

(Emphasis added.) The supreme court has stated that this section is merely illustrative, and not exhaustive, of the types of factors that may be considered in forming reasonable suspicion. *Laine v. State*, 347 Ark. 142, 60 S.W.3d 464 (2001).

The factors that combined to give Officer Jones reasonable suspicion that Dye was engaged in criminal activity are (a) there had been reports of trespassing on the private gas-well property where Dye was located, resulting in extra police patrol in the area; (b) it was approximately midnight; (c) the truck occupied by Dye was parked side-by-side with another vehicle; (d) Dye was holding cash in his hand;⁵ (e) there was a black pouch containing plastic baggies in plain sight between the front seats of the truck; (f) Officer Jones determined that Dye had prior methamphetamine convictions; and (g) Dye's co-occupant fled the scene shortly after the officers' arrival. We conclude on these facts that Officer Jones had specific, particularized, and articulable reasons that Dye may be involved in criminal activity. *See Smith, supra*. Although any one of these factors, standing alone, may not have been enough to lead to reasonable suspicion, viewing the totality of these circumstances, we cannot say the trial court clearly erred in determining that the police had reasonable suspicion to detain appellant. *See Menne v. State*, 2012 Ark. 37, 386 S.W.3d 451.

⁵We acknowledge that Dye told the police that the cash in his hand was to buy cigarettes, a lawful product. However, Dye's explanation of the cash does not rule out reasonable suspicion in light of the other factors present.

Our remaining inquiry under Rule 3.1 is whether the duration of the police detention was within the time constraint allowed by the rule. Appellant argues that because the detention exceeded fifteen minutes, it was excessive and he should have been permitted to leave. We disagree.

According to the plain language of the rule, the alternative time period allowed the officer to detain appellant for “such time as [was] reasonable under the circumstances” and was not restricted to a specific number of minutes. *Johnson v. State*, 2012 Ark. App. 167, 392 S.W.3d 897. In *Omar v. State*, 99 Ark. App. 436, 262 S.W.3d 195 (2007), we held that a thirty-seven minute detention was not unreasonable. In this case, appellant was detained for about twenty minutes from the time of the initial stop until the time the police began searching his house. In light of the suspicious information known to the officers and the fact that they were still actively searching for appellant’s companion, we hold that this time period was not unreasonable.

Appellant’s final point in support of his motion to suppress is that (1) the police obtained his consent to search without *Miranda* warnings, and (2) his consent was not voluntarily and willingly given because he was under the influence of drugs at the time it was given. We are not persuaded by either of these contentions.

In this case, the police obtained appellant’s consent to search his house both verbally and in writing. The written consent form specifically advised appellant of his constitutional right to refuse consent, and with this information, appellant chose to sign the form consenting to the search. This consent was validly obtained by the officers, and appellant offers no authority that *Miranda* warnings were required to obtain his consent. Dye also

argues that any incriminating statements he made should have been suppressed. However, the only incriminating statement appellant gave to the police was that there was a gun in his bedroom, and this statement was not the result of a police interrogation. Rather, it was a spontaneous, voluntary statement. A *Miranda* warning is not required for spontaneous, voluntary statements. *Miranda v. Arizona*, 384 U.S. 436 (1966).

With regard to appellant's argument that his consent was involuntary, we recognize that under Aransas Rule of Criminal Procedure 11.1, it is the State's burden to prove by clear and positive evidence that consent to search was freely and voluntarily given and that there was no duress or coercion. There was no evidence of any duress or coercion in obtaining appellant's consent, and Officer Jones testified that appellant appeared to understand what was going on and what was being asked of him. Appellant also gave officers the key to his house and voluntarily advised the police of some of its contents. Based on Officer Jones's testimony, we hold that there was no error in the trial court's finding that appellant's consent was freely and voluntarily given.

Having concluded that there was sufficient evidence to support appellant's convictions and that the trial court's denial of appellant's motion to suppress was not clearly erroneous, appellant's convictions are affirmed.

Affirmed.

KLAPPENBACH and WHITEAKER, JJ., agree.

Lisa-Marie Norris, for appellant.

Leslie Rutledge, Att'y Gen., by: *Amanda Jegley*, Ass't Att'y Gen., for appellee.