

Cite as 2022 Ark. App. 420
ARKANSAS COURT OF APPEALS
DIVISION II
No. CR-22-64

ERIC L. JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 26, 2022

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. 43CR-20-498]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant Eric Jackson was convicted by the Lonoke County Circuit Court of driving while intoxicated—fourth offense. On appeal, he argues that the circuit court erred in denying his motion to suppress evidence obtained as a result of his unlawful stop and detention. He contends that the officer who stopped and detained him was acting outside of his territorial jurisdiction and no statutory exception applied to allow the officer to act outside his jurisdiction. We disagree and affirm.

On October 26, 2020, the State filed a felony information charging appellant with multiple offenses: driving while intoxicated (DWI), fifth or subsequent offense; possession of a controlled substance, schedule one or two; possession of drug paraphernalia to ingest; driving with a suspended license; and violation of the open-container law. Appellant waived

his right to a jury trial on June 8, 2021. The felony information was amended on June 11 to reflect that the DWI offense was a fourth offense.

Appellant filed a motion to suppress on September 28, 2021, alleging that (1) he was stopped and detained by a member of the Sherwood Police Department in Cabot, Arkansas; (2) those cities do not have any cross-jurisdictional agreements between the two municipalities; (3) the Sherwood police officer made no attempt to contact Jacksonville Police Department, Cabot Police Department, or the Lonoke County Sheriff's Department; and (4) Officer Anderson was outside his territorial jurisdiction, and none of the statutory exceptions applied to allow for an officer to act outside his jurisdiction. As a result, appellant argued, the stop and subsequent detention were in violation of the Fourth Amendment, and the search of his person and vehicle were without his consent, without probable cause, and without a warrant in violation of both the United States Constitution and the Arkansas Constitution.

The suppression hearing took place on September 29. The facts pertinent to the motion to suppress are as follows. On October 4, 2020, Sherwood Police Officer Charles Anderson was driving home to Cabot after getting off his midnight shift around 6:30 a.m. He was traveling northbound on Highway 67/167 when he spotted appellant's vehicle, which was also traveling northbound. Officer Anderson observed appellant's vehicle go from the far right lane over to the left, describing appellant's car as "all over the road." Officer Anderson stated there was a car to his right that kept pointing at appellant's car, and at that point, appellant's car almost struck the highway retaining wall around five times. When

Officer Anderson radioed dispatch to inform them that he was behind a possible intoxicated driver, he was told that the Arkansas State Police did not have any troopers available. Appellant was still “running off the road,” and Officer Anderson notified dispatch that he was going to conduct a traffic stop and to notify the Cabot Police Department. He indicated that he “feared for the lives of others.” The Sherwood Police Department’s report introduced at the suppression hearing indicates that the Arkansas State Police advised that they did not have troopers available or in the area at 6:39:48 and that the Cabot Police Department was notified at 6:40:33.

Officer Anderson activated his blue lights, but appellant did not stop immediately. Appellant stopped when he reached a red light after exiting Highway 67/167. When appellant stopped, Officer Anderson jumped out of his vehicle, ran to appellant’s car, and ordered him to turn off his engine and step out of the car. Officer Lindsey of the Cabot Police Department arrived almost immediately because he was across the street at a gas station. Officer Lindsey questioned appellant, conducted a field-sobriety test, and arrested him for driving while intoxicated. The State introduced the Sherwood Police Department mutual-assistance agreement between the Sherwood and Cabot Police Departments as well as other jurisdictions.

At the conclusion of suppression hearing, the court orally denied the motion, concluding that Officer Anderson had the authority to stop appellant. The court noted that Officer Anderson called dispatch before he stopped appellant; the Sherwood Police

Department has an emergency mutual-aid agreement with neighboring agencies; and there was an emergency based on appellant's driving.

The bench trial followed the suppression hearing. Officer Lindsey testified that he conducted additional field-sobriety tests at the Cabot Police Department as well as a breathalyzer test that determined appellant's blood-alcohol level to be .082. At the conclusion of the bench trial, the circuit court found appellant guilty of DWI (fourth offense) and sentenced him to two years' imprisonment with an additional two years' suspended imposition of sentence (SIS). The remaining charges were nolle prossed. Appellant filed a timely notice of appeal on November 1, 2021, from the October 6 sentencing order.

In reviewing a circuit court's denial of a motion to suppress evidence, we conduct 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. *Jackson v. State*, 2013 Ark. 201, at 5-6, 427 S.W.3d 607, 611. Due weight is given to inferences drawn by the circuit court, and proper deference is given to the circuit court's findings. *Id.* A finding is clearly erroneous, even if there is evidence to support it, when the appellate court, after review of the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.*

Appellant argues that Officer Anderson was without authority to stop appellant because he was outside his territorial jurisdiction, and absent statutory authority, an officer outside his territorial jurisdiction has no authority to apprehend an offender. Appellant argues that as a result, the circuit court erred in denying the motion to suppress.

In *Perry v. State*, 303 Ark. 100, 102, 794 S.W.2d 141, 142 (1990), the supreme court stated that it was well-established black-letter law that a “local peace officer acting without a warrant outside the territorial limits of the jurisdiction under which he holds office is without official power to apprehend an offender, unless he is authorized to do so by state statute.” Citing various statutes, *Perry* recognized four instances in which the State of Arkansas has authorized local police officers to act outside their territorial jurisdiction and found that none of them applied. These four instances recognized in *Perry* have been repeated over time. See, e.g., *Pickering v. State*, 2012 Ark. 280, 412 S.W.3d 143. One of the statutes referenced is Ark. Code Ann. § 16-81-106 (Supp. 2021). The relevant portion of the statute currently provides:

(c)(1) A certified law enforcement officer who is outside his or her jurisdiction may arrest without warrant a person who commits an offense within the officer’s presence or view if the offense is a felony or a misdemeanor.

(2)(A) A certified law enforcement officer making an arrest under subdivision (c)(1) of this section shall notify the law enforcement agency having jurisdiction where the arrest was made as soon as practicable after making the arrest.

(B) The law enforcement agency shall then take custody of the person committing the offense and take the person before a judge or magistrate.

(3) Statewide arrest powers for a certified law enforcement officer will be in effect only when the certified law enforcement officer is working:

(A) Outside his or her jurisdiction at the request of or with the permission of the municipal or county law enforcement agency having jurisdiction in the locale where the certified law enforcement officer is assisting or working by request; or

(B)(i) As part of a child abduction response team.

(ii) As used in subdivision (c)(3)(B)(i) of this section, “child abduction response team” means a multiagency or multi-jurisdictional composite of community professionals who are trained and equipped to respond in the search and recovery of an abducted or endangered child.

(4) Any law enforcement agency exercising statewide arrest powers under this section must have a written policy on file regulating the actions of its employees relevant to law enforcement activities outside its jurisdiction.

We hold that Ark. Code Ann. § 16-81-106(c)(1)–(2) applies to the present case and gave Officer Anderson authority to act outside his jurisdiction. Although the circuit court’s denial of the motion to suppress appeared to be based on Ark. Code Ann. § 16-81-106(c)(3)–(4), appellate courts can also affirm when the right result is reached for the wrong reason. *Cain v. State*, 2010 Ark. App. 30, at 5, 373 S.W.3d 392, 395 (citing *Mamo Transp., Inc. v. Williams*, 375 Ark. 97, 289 S.W.3d 79 (2008)).

Here, Officer Anderson was outside his territorial jurisdiction when he personally observed appellant driving “all over the road,” indicating that appellant’s car was in the third lane and “shot” to the “number one lane.” Another driver to Officer Anderson’s right side was pointing to appellant’s car when Officer Anderson saw appellant almost hit the highway retaining wall five times. Suspecting that appellant was driving while intoxicated, he called dispatch and was notified that no state troopers were in the area. Because Officer Anderson feared for the lives of others and appellant was “still running off the road,” he told dispatch that he was going to conduct a traffic stop in Cabot and to notify the Cabot Police Department. When appellant exited Hwy 67/167 in Cabot and stopped at the red light, Officer Anderson jumped out of his vehicle and ran to appellant’s car and told him to turn off the engine, get out of the car, and talk to the Cabot police officer who was on the scene almost immediately. Officer Lindsey of the Cabot Police Department performed the field-sobriety test and arrested appellant.

In light of these facts, we cannot say that the circuit court erred in denying the motion to suppress.

Affirmed.

VIRDEN and VAUGHT, JJ., agree.

Robert M. “Robby” Golden, for appellant.

Leslie Rutledge, Att’y Gen., by: *Adam Jackson*, Ass’t Att’y Gen., for appellee.