

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR11-1110

RONALD T. JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 19, 2012

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT,
[NO. CR11-15-2]HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

At a bench trial, appellant Ronald Jackson was convicted of possession of marijuana with intent to deliver, and the court sentenced him to five years' imprisonment in the Arkansas Department of Correction. This appeal follows from the trial court's denial of Jackson's motion to suppress evidence based on Arkansas Rule of Criminal Procedure 3.1 and the Arkansas and United States Constitutions, his motion to suppress statements obtained in violation of *Miranda*, and his motion to suppress evidence based on an unreasonable search and seizure. We affirm.

On October 26, 2010, Corporal Trenton Behnke of the Arkansas State Police stopped a vehicle traveling east on Interstate 40 for an improper lane change and following too closely. The vehicle contained three people: Leonard Maysonet, the driver; Ronald Jackson, the front-seat passenger; and John Fykes, the back-seat passenger. After approaching the

vehicle, Trooper Behnke asked for Maysonet's identification and registration. Maysonet provided his driver's license and a vehicle-rental agreement that showed appellant Jackson as the renter of the vehicle. During this initial encounter, Trooper Behnke observed that the vehicle, a four-door pickup truck, contained fast-food wrappers, a large road atlas, and a single small suitcase. Additionally, he noticed that according to the rental agreement the vehicle was due back at the rental company on October 25, the day before.

Trooper Behnke then questioned Maysonet, who said the trio were on their way back to Memphis after visiting a cousin for a few days in Dallas. Next, Trooper Benkhe questioned the appellant, who corroborated Maysonet's account that they were returning from Dallas. Then he took both Maysonet's and the appellant's driver's licenses to determine whether either had active warrants. While waiting for the database search results, the trooper became suspicious and asked the appellant for consent to search the vehicle, which the appellant refused to give. At that point, the trooper deployed his drug dog, Major, around the vehicle. Major alerted Trooper Behnke that the vehicle contained narcotics, and Behnke searched the vehicle. Before the search, the appellant stated that there were four to five pounds of marijuana inside. At that point Trooper Behnke arrested the appellant and read him his *Miranda* rights. During the search, Trooper Behnke found five clear Ziploc bags filled with marijuana in the suitcase. All three men were then transported to the sheriff's office, where they were again provided their *Miranda* rights on a written form. After being read his rights, the appellant said, "There's nothing for me to say because you already have my weed."

At the suppression hearing, the trial court suppressed the statement the appellant made at the scene about there being four to five pounds of marijuana in the car, finding that the appellant was in custody but was not informed of his rights. However, the court denied both the motion to suppress the physical evidence under Rule 3.1 and the Fourth Amendment and the motion to suppress the appellant's statement at the sheriff's office.

In reviewing a trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing 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 and proper deference to the trial court's findings. *Yarbrough v. State*, 370 Ark. 31, 257 S.W.3d 50 (2007). We reverse only if the trial court's ruling is clearly against the preponderance of the evidence. *Id.*

The initial stop of the vehicle was valid, a fact the appellant conceded at the suppression hearing. Instead, Jackson asserts that the trooper illegally detained him after the purpose of the stop had concluded and that the trooper lacked reasonable suspicion to continue the investigation. Rule 3.1 of the Arkansas Rules of Criminal Procedure provides the following:

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 person 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.

Additionally, a law-enforcement officer, as part of a valid traffic stop, may detain a traffic offender while completing certain routine tasks, such as computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or 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 these routine checks are completed, unless the officer has a reasonably articulable suspicion for believing that criminal activity is afoot, continued detention of the driver can become unreasonable. *Id.*

Here, the purpose of the traffic stop was ongoing. Trooper Behnke testified he was still waiting for the results of a database search on the appellant. While waiting for those results, he asked for consent to search the vehicle, which the appellant refused to give. The trooper then deployed the drug dog. Officers do not need additional suspicion to allow the dog to sniff the exterior of the car. *Cain v. State*, 2010 Ark. App. 30, ___ S.W.3d ___. Moreover, our supreme court has found that "a stop is not complete until the warning citation and other documents are delivered back to the driver." *Menne v. State*, 2012 Ark. 37, at 5–6, ___ S.W.3d ___, ___. Because Trooper Behnke was still waiting for the criminal-history check when the drug dog was deployed, his routine tasks were not concluded. He was also processing the warning citation for the traffic violation. While we are troubled by both the scope and basis of the officer's investigation—as pointed out in the concurring

opinion—we find that the legitimate purpose of the stop was ongoing when the drug dog alerted to narcotics in the vehicle. Because we find that the legitimate purpose of the stop was ongoing, additional reasonable suspicion was not required.

The appellant also argues that the drug dog was unreliable and, even if the stop were permitted, the subsequent search of the vehicle based on the dog's indication was unreasonable. The trial court rejected this argument, and so do we. An indication by a reliable drug dog constitutes probable cause to conduct a warrantless search of a vehicle under the automobile exception. See *State v. Thompson*, 2010 Ark. 294, ___ S.W.3d ___ (2010); see also *Miller v. State*, 81 Ark. App. 401, 102 S.W.3d 896 (2003) (holding that once a canine dog alerts, an officer has probable cause to suspect the presence of illegal contraband). Reliability of the drug dog can be established by an affidavit stating that the dog has been trained and certified to detect drugs; no track record or educational background is required. *Thompson, supra* (citing *United States v. Sundby*, 186 F.3d 873 (8th Cir. 1999)).

According to the appellant, the drug dog's history of false alerts suggests that it is unreliable. At the suppression hearing, Trooper Behnke provided both his and his dog's training and certification records. This is all that is required to establish the dog's reliability. Therefore, the dog's positive drug indication gave Trooper Behnke probable cause to search the vehicle, and the subsequent search was reasonable.

Finally, the appellant argues that the trial court should have suppressed his statements given at the sheriff's office as "fruit of the poisonous tree." That is, the appellant told the trooper at the scene that there were four to five pounds of marijuana in the vehicle. Later,

at the sheriff's office and after being read his *Miranda* rights, the appellant said, "There's nothing else for me to say because you already have my weed." According to the appellant, admitting this statement is improper under the doctrine articulated by the United States Supreme Court in *Missouri v. Seibert*, 542 U.S. 600 (2004). In *Seibert*, the defendant was interrogated by police at the station without being read her rights. She confessed; then, after a twenty-minute break, the officer read her *Miranda* rights, and she confessed again. *Id.* According to the officer, this was a conscious tactic to question first, then read the *Miranda* rights, and then question again until he gets the answer he wants. *Id.* The Supreme Court excluded both the pre- and post-*Miranda* statements, finding that the "question-first tactic effectively threatens to thwart *Miranda's* purpose of reducing the risk that a coerced confession would be admitted." *Id.* at 617. According to the court, the key inquiry in a subsequent confession scenario is whether the warnings, when given, "function 'effectively' as *Miranda* requires." *Id.* at 611–12.

No evidence of coercion exists in this case. Rather, the appellant's statements at the scene were given in response to the trooper's request to search the vehicle. The situation is dissimilar from the one in *Seibert*. There, the suspect was questioned the entire time at the police station. Here, the appellant was questioned briefly on the side of the road. Then, he was transported to the sheriff's office, read his rights for a second time, and confessed again. Whether the second set of warnings was effective depends, in part, on the timing and setting of the two interrogations. *Seibert, supra*. Additionally, there is no evidence that the statement given by the appellant at the scene resulted from a "question-first" policy like the one given

in *Seibert*, where the officer admitted that the confession resulted from a conscious strategy to withhold the *Miranda* warnings. Accordingly, the denial of his motion to suppress the subsequent statement at the sheriff's office was proper.

We affirm the trial court's denial of the appellant's motion to suppress physical evidence and motion to suppress his statement at the sheriff's office. Those rulings were not clearly against the preponderance of the evidence.

Affirmed.

ROBBINS, J., agrees.

VAUGHT, C.J., concurs.

LARRY D. VAUGHT, Chief Judge, concurring. I agree that this case should be affirmed based on our standard of review and the accompanying level of deference we afford a trial court in making factual determinations. In an appropriate appellate resolution of this case, I cannot vote to reverse. However, I will not vote to affirm without at least balancing my vote by expressing the myriad of troubling turns in this case.

First, the bulk of the officer's time spent during the stop involved his investigation of the validity of a rental contract and its accompanying coverage. A contract concerns civil law, not criminal law. It is inappropriate for the government to use its immense Fourth Amendment powers to investigate a contract.

Second, for an officer to claim (and worse, for a trial court to accept) that it is reasonable to be suspicious that criminal activity is afoot because the officer observed a road atlas in a vehicle traveling out of state on an interstate highway is ludicrous. To the contrary, having an

atlas (or some sort of global-positioning system) is to be expected and offers not even a hint of criminality.

Third, I have watched the video recording of this stop. I saw the dog circle the vehicle several times. I heard the officer encouraging the dog that he could find it. I did not, however, see any indication that the dog alerted or altered its behavior in anyway. In fact, the officer's last words to the dog were confirming that the dog had not alerted. However, the trial court saw the same tape and reached a different factual conclusion.

I believe my interpretation of the dog search is validated by what happened after the dog "alerted." Although the officer at that point would have probable cause to search, he did not do so. Instead, he further interrogated appellant. In what I think is best described as a probable-cause "bluff," the officer claimed that the dog had alerted then encouraged appellant to "help" the dog out and admit if there were drugs in the vehicle. This led to the roadside statement, which the court later found inadmissible. If the dog had alerted, and the officer believed it then (as he claimed that he did at trial), the dog would need no "help" from appellant to initiate a search. That's rather the point of the dog alerting.

Robert M. "Robby" Golden, for appellant.

Dustin McDaniel, Att'y Gen., by: *Lauren Elizabeth Heil*, Ass't Att'y Gen., for appellant.