

SIGNIFICANT ARKANSAS DECISIONS

IN THE ARKANSAS SUPREME COURT

APPELLATE PROCEDURE

REED V. STATE, No. CR 05-1000 (10-27-05) (Not Designated for Publication):

The Supreme Court will not generally consider an appeal from a plea of nolo contendere unless the plea is conditional, based upon a denial of a motion to suppress.

The two exceptions to this rule are where evidence is objected to that arises in a sentencing hearing, after the plea. The second category of cases is when the appeal is based upon a denial of a post-trial motion that challenges the validity or length of the sentence itself.

The result in this case was that the court had no jurisdiction to hear the appeal from the no-contest admission of the charges.

CRIMINAL LAW

DAVIS V. BREWER, CLASSIFICATION ADMINISTRATOR, ARKANSAS

DEPARTMENT OF CORRECTION (No. 05-843) (10-27-05) (Per Curiam) (Not Designated for Publication):

Defendant's petition for a writ of mandamus was denied in the trial court, and he filed a notice of appeal while incarcerated in the Department of Correction. The Clerk of the Supreme Court, however, refused to lodge the record since the Notice of Appeal was filed more than 30 days from the entry of the order appealed from.

The Defendant alleged that he placed the Notice of Appeal in the mail at the penitentiary, but the Supreme Court noted that the "prison 'mailbox rule'" is inapplicable in Arkansas,

although some states have recognized it. Arkansas law requires that the notice of appeal is filed when the trial court clerk receives it and stamps it. Placing it in the mail is insufficient to toll the thirty day period from the date of the order appealed from, in which to file a notice of appeal.

IN THE ARKANSAS COURT OF APPEALS

CRIMINAL LAW

DURDEN V. STATE, No. CA CR 05-191 (10-26-05):

Defendant testified that an eyewitness could corroborate his testimony. In closing argument, the prosecutor noted the witness' absence from the courtroom, over objection. On appeal, Defendant claimed that this comment improperly shifted the burden of proof to the Defendant. The trial court further refused his request for a jury admonishment.

There are opposite views in some jurisdictions, but Arkansas adheres to the rule that the State may comment on the missing evidence to rebut Defendant's claim of corroborating evidence. The prosecutor's closing statement was an attack upon the Defendant's credibility and was proper, the appeals court ruled. As to any error, the opinion noted that the jury is instructed at the close of the case that comments of counsel are not evidence, so this would cure any prejudice -- even if a jury could consider the comments to be a shifting of the burden of proof.

WEATHERFORD V. STATE, No. CA CR 05-364 (10-26-05):

In affirming the trial court's denial of a motion to suppress, the Court of Appeals took an opportunity to review criteria for a traffic stop based upon information from a confidential informant. In this case, an informant identified Defendant as carrying a quantity of narcotics and met with an investigating officer for an hour. The informant later advised law enforcement that Defendant was leaving a body shop, where officers suspected drugs were being transacted. The

officers were aware that the shop's owner had previously admitted manufacturing drugs. It was under surveillance.

After the Defendant left the shop, the informant again met the officer, accusing the Defendant of having drugs and a gun in the vehicle. Defendant's car was then stopped based on the informant's statements, and the trial court ruled that there was sufficient cause to do so.

This opinion reviewed the criteria for a confidential informant to give information sufficient for a reasonable suspicion to detain a suspect's vehicle. Three factors were examined, which were found here to support the Defendant's conviction of possession of methamphetamine with intent to deliver, and related charges.

First, the informant must be exposed to criminal or civil prosecution if he gives a false report. This was established since officers knew the informant giving the information. Second, the report must be based upon personal observation, which also was satisfied. Third, the officer's personal observations must have corroborated those of the informant. The officer in this case identified the Defendant leaving the body shop, so the traffic stop was justified.

TORTS

LARSEN V. FAMILY DOLLAR STORES OF ARKANSAS, INC., No. CA 05-157 (10-26i-

05) (Not Designated for Publication)

Defendant retailer won a summary judgment motion on the Plaintiff former employee's tort suit for malicious prosecution and defamation that followed unsuccessful criminal charges. The decision noted that there is generally no liability for a private person to assist law enforcement investigators, and it is only when the informant gives false information, or exerts improper pressure for the prosecution that there is potential civil liability.

Family Dollar's store burned, and money was missing. Law enforcement investigators

questioned store management, and ultimately theft and arson charges were filed against Defendant, who was its manager. The charges were later dropped by the prosecutor.

The Plaintiff then sued her former employer, alleging malicious prosecution and defamation. The trial court granted summary judgment for the Defendant. The reason was that the store employees only answered questions asked of them, and secondly the investigator stated by affidavit as well that it was his decision to take the information to the prosecutor.

In affirming summary judgment on the malicious prosecution count, the appellate court noted with approval comment g to the Restatement (Second) of Torts, § 653:

“When a private person gives to a prosecuting officer information that he believes to be true, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable . . . even though the information proves to be false and his belief was one that a reasonable man would not entertain.”

In order to succeed in this claim, one must prove: (1) a proceeding was started or continued by the defendant against the plaintiff; (2) that the action was terminated in favor of the plaintiff; (3) that there was no probable cause for the proceeding against the plaintiff; (4) that the defendant had malice, and (5) that damages resulted.

The appeals court also affirmed summary judgment granted for Defendant on a defamation count, noting that the Plaintiff could not prove what was spoken. Defendant noted store employees huddled and suspected defamatory statements were made, but this was insufficient. Defamation requires proof of (1) a defamatory statement of fact; (2) that the statement was directed about the plaintiff; (3) that the defendant published the statement; (4) the Defendant was at fault in publishing the statement; (5) that the statement is shown to be false, and (6) damages.

WORKERS' COMPENSATION

BELL V. IDEAL CONSTRUCTION, No. CA 05-196 (10-26-05) (Not Designated for

Publication):

The Arkansas Workers' Compensation Commission, which reviews de novo the ruling of the Administrative Law Judge, must make findings of fact in support of its ruling.

While denying some benefits, the Commission did not make findings for the benefits it denied.

The Court of Appeals remanded the entire appeal back for additional findings before it would hear the remainder of the appeal.