

THE SUPREME COURT OF ARKANSAS HOLDS THAT
REASONABLE SUSPICION OF CRIMINAL ACTIVITY BASED ON
FACTORS NOT DEVELOPED DURING A TRAFFIC STOP
NEVERTHELESS SUPPORT PROLONGING THE STOP.

In *Menne v. State*¹, the Supreme Court of Arkansas held that a police officer had developed a reasonable suspicion of criminal activity that supported detaining the defendant for a longer period of time² and that evidence presented at trial supported the argument that the defendant voluntarily consented to the search of her vehicle.³ Therefore, the denial of the motion to suppress evidence was affirmed.⁴

Appellant Menne was pulled over for speeding by Trooper Phillip Roark with the Arkansas State Police on October 19, 2008, outside of Walnut Ridge.⁵ The affidavit that Roark filed after the stop reported that Menne ““appeared nervous”” and had one passenger, Christopher Smith.⁶ Roark’s affidavit asserted that he had arrested Smith the previous month in the same vehicle for DWI–Drugs and Possession of Marijuana, that drugs were found in the vehicle during that arrest, and that Walnut Ridge Police Department had provided information that Menne was a suspected drug dealer.⁷ Roark stated that, with those considerations, he asked for and was granted consent by Menne to search the vehicle.⁸

During the search of the vehicle, Roark “found .0536 grams of marijuana, .0348 grams of methamphetamine, and a prescription bottle with the label torn off.”⁹ “Menne was charged with possession of marijuana, possession of drug paraphernalia, and possession of metamphetamine, a felony.”¹⁰ Menne sought to suppress the items seized by arguing that the search was illegal.¹¹ At the suppression hearing, Roark testified that she provided him with all of the documentation that he requested, but he called for a K-9 unit because he thought she appeared nervous, he had information she was a suspected drug dealer, and he had previously arrested Smith in the same vehicle for drugs.¹²

1. 2012 Ark. 37, 386 S.W.3d 451.

2. *Id.* at 7–8, 386 S.W.3d 455.

3. *Id.* at 8, 386 S.W.3d 456.

4. *Id.* at 1, 386 S.W.3d 452.

5. *Id.*

6. *Menne*, 2012 Ark. 37, at 1 386 S.W.3d 452.

7. *Id.* at 1–2, 386 S.W.3d 452.

8. *Id.* at 2, 386 S.W.3d 452–53.

9. *Id.*, 386 S.W.3d 453.

10. *Id.*

11. *Id.*

12. *Menne*, 2012 Ark. 37, at 2, 386 S.W.3d 453.

During cross-examination, Roark testified that he had not observed anything illegal and that he found out Menne had a criminal record after running her driver's license.¹³ However, he could not remember what her criminal record consisted of, and he admitted that the dispatcher did not say anything about a criminal record when he called in her driver's license.¹⁴

After about nine to ten minutes into the stop, Roark had determined that Menne's driver's license was valid and the vehicle was properly registered.¹⁵ He testified that after verifying Menne's documentation, there was nothing left to do with the traffic stop except give her back her paperwork and the warning citation that he had already written that she still needed to sign.¹⁶ At about thirteen minutes into the stop, Roark asked Menne to step out of the vehicle, and he requested to search the vehicle at about fourteen minutes.¹⁷ He testified that at one time she stated, "this is harassment," but she then said he could "go ahead and look."¹⁸ He then found the drugs in the truck.¹⁹ "Roark testified that he had not returned Menne's vehicle registration to her and that he had not had her sign the warning ticket before asking for consent to search the vehicle."²⁰

Menne testified that Roark had returned all of her documents after eight or nine minutes into the stop and that she asked him what he wanted to search the vehicle for and why.²¹ She testified that Roark responded that he had probable cause to search the vehicle because Smith was with her.²² Menne stated that she told Roark four times that she felt harassed and that she had never consented to the search.²³ She denied saying, "no I don't guess I do" after Roark asked her if she cared if he searched the vehicle.²⁴ The prosecutor played video and audio of the stop made by Roark that asserted that conversation took place.²⁵ Menne testified in response that Roark had asked, "do you have anything in your vehicle," which she responded by saying, "no, I guess I don't."²⁶

13. *Id.*

14. *Id.*

15. *Id.* at 3, 386 S.W.3d 453.

16. *Id.*

17. *Id.*

18. *Menne*, 2012 Ark. 37, at 3 386 S.W.3d 453–54.

19. *Id.*, 386 S.W.3d 453.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 4, 386 S.W.3d 453.

24. *Menne*, 2012 Ark. 37, at 4, 386 S.W.3d 454.

25. *Id.*

26. *Id.*

The circuit court denied the motion to suppress without reason or explanation.²⁷ At the jury trial that followed, Menne was found guilty, was fined, and was sentenced to probation.²⁸ Menne appealed, and the court of appeals reversed the circuit court’s ruling.²⁹ The Supreme Court granted the State’s petition for review.³⁰

Menne argued “that she was illegally detained after the purpose of the traffic stop was complete in contravention of this state’s case law and Arkansas Rule of Criminal Procedure 3.1.”³¹ Neither party contested whether the initial stop was legal.³² The first issue the Court was confronted with was whether the purpose of the traffic stop had ended prior to Roark requesting Menne’s consent to search the vehicle.³³ The second issue was whether Roark had developed reasonable suspicion during the stop to detain Menne longer.³⁴ Both parties agreed that a warning citation had not been given at the time consent to search was requested.³⁵ Menne’s documentation had also not been returned to her.³⁶ The Court noted that case law supports that traffic stops are not complete until citations have been given and documentation has been returned.³⁷ However, Menne claimed that the only reason these steps were not completed was that Roark was waiting for the K-9 unit to arrive.³⁸ The Court did not resolve this issue because it held that Roark had reasonable suspicion to detain Menne pursuant to Arkansas Rule of Criminal Procedure Rule 3.1.³⁹

“Rule 3.1 requires the officer to possess reasonable suspicion that the person is committing, has committed, or is about to commit a felony or a misdemeanor involving danger to persons or property.”⁴⁰ The reasonable suspicion must be developed prior to when the legitimate purpose of the traffic stop has ended.⁴¹ Reasonable suspicion must be determined by look-

27. *Id.*

28. *Id.*

29. *Id.*

30. *Menne*, 2012 Ark. 37, at 4, 386 S.W.3d 454 (“When this court grants review, we do so as if the matter had been originally appealed to this court.” *Brookshire v. Adcock*, 2009 Ark. 207, 307 S.W.3d 22.).

31. *Id.* at 5, 386 S.W.3d 454.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Menne*, 2012 Ark. 37, at 6, 386 S.W.3d 454 (citing to *Yarbrough v. State*, 370 Ar. 31, 257 S.W.3d 50 (2007)).

38. *Id.*, 386 S.W.3d 455.

39. *Id.*

40. *Id.*, 386 S.W.3d 455 (citing to *Malone v. State*, 364 Ark. 256, 262–63, 217 S.W.3d 810, 814 (2005)).

41. *Id.*, 386 S.W.3d 455.

ing at the totality of the circumstances and depends on whether the police has “specific, particularized, and articulable reasons indicating that the person may be involved in criminal activity.”⁴²

In this case, the Court found that several factors contributed to Roark’s reasonable suspicion including his previous arrest of Smith in the same vehicle, Menne’s criminal record, information from local police that Menne was a suspected drug dealer, Menne’s nervousness, and the time.⁴³ Based on the totality of the circumstances, the Court held it could not say that the circuit court erred in denying the motion to suppress.⁴⁴ The Court referred to statute as support for this holding and stated that nothing in the statute required the police officer to personally observe any of the factors that led to his reasonable suspicion.⁴⁵ The Court also held that Roark’s search took place within the fifteen minute timeframe required by Rule 3.1 and that the fifteen minutes did not start until Roark had completed the routine tasks involved in the stop.⁴⁶ Therefore, the Court held that Menne was legally detained when the search request took place.⁴⁷

The Court also stated that it could not say that the circuit court erred when it found Menne’s consent was voluntarily and not given due to harassment.⁴⁸ The State had the burden of proving this by clear and positive evidence pursuant to Arkansas Rule of Criminal Procedure Rule 11.1, and both Roark’s testimony and video and audio evidence supported this proposition.⁴⁹

There were two dissents in this case.⁵⁰ Chief Justice Hannah stated that the search was illegal for two reasons: “(1) a law enforcement officer may not extend a traffic stop beyond the time necessary to complete the stop by withholding the citation and personal documents and (2) because no reasonable suspicion was discovered during the traffic stop to justify the detention after the purpose of the traffic stop was completed.”⁵¹ Chief Justice Hannah disagreed with the majority holding that the stop is completed only when the citation is given and documents are returned.⁵² Instead, citing to Supreme Court of the United States cases, Chief Justice Hannah found that the legal stop had turned into an illegal stop because the purpose of the stop had been

42. *Id.*, 386 S.W.3d 455 (citing to *Malone v. State*, 364 Ark. at 263, 217 S.W.3d at 814).

43. *Menne*, 2012 Ark. 37, at 7, 386 S.W.3d 455.

44. *Id.*

45. *Id.*, 386 S.W.3d 455 (citing to ARK. CODE ANN. § 16-81-203).

46. *Id.* at 7–8, 386 S.W.3d 455.

47. *Id.* at 8, 386 S.W.3d 455–56.

48. *Id.* at 8–9, 386 S.W.3d 456.

49. *Menne*, 2012 Ark. 37, at 9, 386 S.W.3d 456.

50. *Id.* at 9–10, 386 S.W.3d 456–57 (Chief Justice Hannah and Justice Baker both dissented.).

51. *Id.* at 11, 386 S.W.3d 457 (Hannah, J., dissenting).

52. *Id.*

completed and the probable cause justifying the initial stop no longer existed.⁵³

Furthermore, nothing occurred during the stop that gave rise to the reasonable suspicion required to detain Menne for longer pursuant to Rule 3.1.⁵⁴ Chief Justice Hannah disagreed that the factors enumerated in the majority opinion were enough to give rise to the reasonable suspicion and stated that only one of the factors even took place during the stop, which is one of the requirements.⁵⁵ The majority, however, rejected this argument and stated that any ulterior motive that the dissent claimed kept Roark from issuing the citation was not supported by the record and that Menne did in fact have reasonable suspicion to prolong the stop based on the enumerated factors.⁵⁶

Justice Baker's dissenting argument was also rejected.⁵⁷ Justice Baker's dissent focused on the timing of events involved in the stop and found that there was no reasonable suspicion developed during the stop that would justify prolonging the stop.⁵⁸ A police officer can detain an offender while completing routine tasks as part of a valid traffic stop.⁵⁹ However, unless something arises during the stop that generates reasonable suspicion, once the purpose of the stop is completed, the officer is not allowed to detain the vehicle and occupants.⁶⁰ "In this case, the record shows that the purpose of the otherwise valid traffic stop had ended before the request to search was made."⁶¹

Justice Baker noted that Roark did not provide any explanation as to why the documentation was not returned or the citation issued, which was the basis for the majority's holding that the traffic stop was not completed.⁶² Once the legitimate purpose of the stop has ended, an officer may not extend the stop simply by not carrying out the basic functions of a traffic stop without developing reasonable suspicion.⁶³ Though agreeing with the standard

53. *Id.* at 11–12, 386 S.W.3d 457 (citing to *Illinois v. Caballes*, 543 U.S. 405, 407 (2005) and *Florida v. Royer*, 460 U.S. 491, 500 (1983)).

54. *Id.* at 12, 386 S.W.3d 458.

55. *Menne*, 2012 Ark. 37, at 13, 386 S.W.3d 458. Additionally, Chief Justice Hannah found that reasonable suspicion had to be more than just "bare suspicion or conjecture." *Id.*, 386 S.W.3d 458 (citing ARK. R. CRIM. P. 2.1).

56. *Id.* at 10, 386 S.W.3d 456.

57. *Id.*

58. *Id.* at 14, 386 S.W.3d 458–59 (Baker, J., dissenting).

59. *Id.* at 14, 386 S.W.3d 459 (citing to *Laime v. State*, 347 Ark. 142, 60 S.W.3d 464 (2001)).

60. *Menne*, 2012 Ark. 37, at 15, 386 S.W.3d 459 (citing to *Yarbrough v. State*, 370 Ark. 31, 38–39, 257 S.W.3d 50, 56–57 (2007)).

61. *Id.*, 386 S.W.3d 459.

62. *Id.* at 16, 386 S.W.3d 459–60.

63. *Id.*, 386 S.W.3d 460 (referring to ARK. R. CRIM. P. 3.1).

for developing reasonable suspicion, Justice Baker disagreed with the majority's application of the standard.⁶⁴ Pointing to three previous cases that used the defendant's nervousness as a factor supporting reasonable suspicion, Justice Baker held that the majority's reliance on this idea was misguided and showed only a bare suspicion.⁶⁵ "[N]one of the factors in this case, in totality, gave rise to specific, particularized, and articulable reasons to believe that Menne might have been involved in criminal activity when the purpose of the traffic stop was completed."⁶⁶

The majority rejected the argument that Roark extended the traffic stop intentionally because Menne did not focus her argument on this idea and, to the extent that she did argue this in her brief, she did not cite to authority that supported the argument.⁶⁷ Thus, the majority would not raise it *sua sponte*.⁶⁸ The majority also rejected Justice Baker's argument that Roark did not have reasonable suspicion to detain Menne because the purpose of the stop had ended.⁶⁹ Because Roark had not issued the citation, the majority held that the stop had not ended.⁷⁰ Finally, the majority found that Justice Baker's conclusion that Roark's reasonable suspicion "did not pass muster" was not the standard of review that the Court was to use.⁷¹ Instead, "after a de novo review of the totality of the circumstances," the Court could not say that the circuit court erred in denying the motion to suppress.⁷²

Menne v. State upholds the concept that an officer during a traffic stop can prolong the stop as long as he has developed a reasonable suspicion for doing so, even if the factors that led to the reasonable suspicion are not developed during the stop itself. This decision gives law enforcement wide discretion in prolonging traffic stops if there are factors that can be pointed to supporting a reasonable suspicion of criminal activity, regardless of when that information is gathered, which may also lead to more denials of criminal defendants' motions to suppress evidence obtained during these stops.

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64. *Id.* at 17, 386 S.W.3d 460.

65. *Id.* at 17–18, 386 S.W.3d 460.

66. *Menne*, 2012 Ark. 37, at 20, 386 S.W.3d 461.

67. *Id.* at 9, 386 S.W.3d 456.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Menne*, 2012 Ark. 37, at 10, 386 S.W.3d 456.