

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1845

STATE OF LOUISIANA

VERSUS

RAYMOND LOUIS STACK

—
**On Appeal from the 21st Judicial District Court
Parish of Livingston, Louisiana
Docket No. 23118, Division "C"
Honorable Robert H. Morrison, III, Judge Presiding**
—

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Raymond Louis Stack**

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered May 6, 2011

PARRO, J.

The defendant, Raymond Louis Stack, was originally charged by bill of information with possession of four hundred or more grams of a Schedule II controlled dangerous substance, cocaine, in violation of LSA-R.S. 40:967(F)(1)(c). See also LSA-R.S. 40:964, Schedule II(A)(4). The defendant entered a plea of not guilty. The trial court denied the defendant's motion to suppress the evidence. Pursuant to a plea agreement, the state amended the charge to attempted possession of four hundred or more grams of cocaine, a violation of LSA-R.S. 14:27 and LSA-R.S. 40:967(F)(1)(c). Cf. LSA-R.S. 40:979. The defendant withdrew his former plea of not guilty and pled guilty to the amended charge pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976), reserving the right to appeal the denial of his motion to suppress. The defendant was sentenced to five years of imprisonment at hard labor.¹ The defendant now appeals, challenging the trial court's denial of his motion to suppress the evidence. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On or about June 15, 2008, Louisiana State Police Trooper Paul Chamorro stopped a vehicle (Kia Rondo) travelling eastbound on I-12 in Livingston Parish at a rate of 76 miles per hour in a 70 mile-per-hour speed zone. The defendant, who was the driver and sole occupant of the vehicle, produced an Illinois driver's license. According to Trooper Chamorro, the defendant exhibited nervousness and provided answers that were inconsistent with the circumstances. Trooper Chamorro ultimately requested consent to search the vehicle, and the defendant initially gave oral consent. After Trooper Chamorro read the Louisiana State Police consent-to-search form to the defendant and explained the search procedure to him, the defendant rescinded his oral agreement and refused to consent. Trooper Chamorro then summoned a canine unit. Within five minutes, Trooper Jason St. Romain arrived with a trained canine. Once deployed, the canine performed a "free-air sniff" of the vehicle and gave a positive

¹ The trial court suspended execution of the sentence until July 29, 2010.

alert. Troopers Bellue and Fontenot assisted Trooper Chamorro in a full search of the vehicle. The officers recovered four kilograms of cocaine wrapped in black tape from the inner lining of an insulated cooler located in the back of the vehicle. The defendant was placed under arrest and his **Miranda** rights were read.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant challenges the trial court's denial of his motion to suppress the evidence. The defendant contends that he was detained at the time of the search and should have been arrested for the speeding violation. Relying on **Arizona v. Gant**, ___U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), the defendant notes that he was surrounded by four troopers and argues that it was unreasonable to believe that he might access the vehicle during the search, or that the vehicle contained evidence of the speeding offense.² The defendant concludes that no exception to the warrant requirement was met in this case.

The Fourth Amendment to the United States Constitution and Article I, Section 5 of the Louisiana Constitution protect persons against unreasonable searches and seizures. A defendant adversely affected may move to suppress any evidence from use at a trial on the merits on the ground that it was unconstitutionally obtained. LSA-Cr.P. art. 703(A). However, the state bears the burden of proving admissibility when a defendant files a motion to suppress evidence seized without a warrant. LSA-Cr.P. art. 703(D). A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Jones**, 01-0908 (La. App. 1st Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 02-2989 (La. 4/21/03), 841 So.2d 791. Reviewing courts should defer to the credibility findings of the trial court unless its findings are not adequately supported by reliable evidence. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 281. However, a trial court's legal findings are

² In **Arizona v. Gant**, the search of the defendant's vehicle following his arrest for driving with a suspended license was held to be unreasonable where the defendant and the two other suspects were handcuffed and secured in separate patrol cars before the officers conducted the search. The United States Supreme Court held that the police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. **Arizona v. Gant**, 129 S.Ct. at 1723.

subject to a de novo standard of review. See **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751.

The authority and limits of the Fourth Amendment apply to investigative stops of vehicles. **United States v. Sharpe**, 470 U.S. 675, 682, 105 S.Ct. 1568, 1573, 84 L.Ed.2d 605 (1985). In a state proceeding, the stopping of a vehicle and the detention of its occupants constitute a seizure within the meaning of the Fourth and Fourteenth Amendments. **Delaware v. Prouse**, 440 U.S. 648, 653, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660 (1979). The standard for evaluating a challenge to a routine warrantless stop for violating traffic laws is the two-step formulation articulated in **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The court must determine "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." **Terry v. Ohio**, 392 U.S. at 20, 88 S.Ct. at 1879.

For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred or is about to occur, before stopping the vehicle. **State v. Hunt**, 25 So.3d at 753. When determining whether an investigatory stop was justified by reasonable suspicion, a reviewing court must consider the totality of the circumstances, giving deference to the inferences and deductions of a trained police officer. **State v. Huntley**, 97-0965 (La. 3/13/98), 708 So.2d 1048, 1049 (per curiam). The determination of reasonable suspicion for an investigatory stop, or probable cause for arrest, does not rest on the officer's subjective beliefs or attitudes, but turns on a completely objective evaluation of all the circumstances known to the officer at the time of the challenged action. **State v. Landry**, 98-0188 (La. 1/20/99), 729 So.2d 1019, 1020 (per curiam). When an officer observes what he objectively believes is a traffic offense, the decision to stop the vehicle is reasonable. **Whren v. U.S.**, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996).

In the instant case, Trooper Chamorro's radar detected the defendant travelling six miles per hour above the visibly posted speed limit. The vehicle passed Trooper

Chamorro, and a gold Toyota followed at a lower speed.³ Consequently, Trooper Chamorro activated his emergency blue lights and pulled over the vehicle being driven by the defendant. The stop occurred at approximately 1:23 a.m. According to Trooper Chamorro, the defendant's right leg was shaking excessively at the time of the stop. Also, the defendant's Illinois driver's license raised the attention of Trooper Chamorro, because the gold Toyota travelling behind the defendant had an Illinois license plate. Trooper Chamorro asked the defendant if a vehicle was travelling with him and he said, "No." Trooper Chamorro also inquired about the nature of his trip, and the defendant stated that he was coming from Houston and was going home to East St. Louis. The defendant further explained that he and a mechanic went to Texas to purchase a truck that needed mechanical repairs. The part for the truck would take two or three days to come in, and the defendant was using a vehicle rented by a named third party. When Trooper Chamorro discovered the name given by the defendant did not match the rental agreement, the defendant stated that the named individual's spouse, whose name he could not remember, rented the vehicle. The defendant further stated that he was in Houston for one day and left because he wanted to spend Father's Day with his father. Additionally, the defendant stated that he had never been under arrest, but Trooper Chamorro determined that information to be false and confirmed the defendant had been arrested twice. Trooper Chamorro further indicated that the defendant avoided eye contact with him and remained nervous.

Trooper Chamorro also stated that the nature of the trip, as described by the defendant, was questionable. Trooper Chamorro noted that several pieces of clothing were hanging in the back seat, although the defendant stated that he went to Texas for only one day. Trooper Chamorro also questioned the supposed purpose of the trip, since the defendant was not driving the truck back to Illinois. According to the defendant's account, the mechanic was checking the truck for defects and was going to drive it back. The defendant denied transporting anything illegal in the vehicle, and

³ Trooper Chamorro did not testify at the hearing. However, the parties agreed to the admission of his police report.

when Trooper Chamorro initially asked for consent to search the vehicle, the defendant stated, "Sure." As Trooper Chamorro read the consent-to-search form, the defendant started to appear more nervous and asked why the search would be conducted. After an explanation by Trooper Chamorro, the defendant then refused to consent, and Trooper Chamorro called Trooper St. Romain.

Trooper St. Romain testified that when Trooper Chamorro called him and informed him that he had a refuse-to-consent stop in progress, he was in the area and arrived at 1:38 a.m., within "[a]t the most, five minutes." He specified that the stop took place at mile post 28 on I-12, and he was located somewhere between mile posts 26 and 32 at the time of the call and drove directly to the location of the stop. Upon arrival, Trooper St. Romain walked his German Shepherd to the defendant's vehicle, and the trained canine alerted to the rear hatchback, in the area of the door seam, by biting and scratching on the bumper. This indicated to the troopers that the canine detected an odor of narcotics inside the vehicle. The troopers then proceeded to search the vehicle.

Pursuant to LSA-Cr.P. art. 215.1(D), during the detention of an alleged violator of any provision of the motor vehicle laws of this state, an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and the issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity. Article 215.1(D) does not preclude a police officer, who may lack reasonable suspicion of other criminal activity, from engaging a motorist in conversation while investigating a routine traffic violation. The officer may also compel or instruct the motorist to comply with the administrative or other legal requirements of Title 32 or Title 47 of the Louisiana Revised Statutes of 1950. Therefore, an officer is allowed to conduct a routine driver's license and vehicle registration check and may engage in conversation with the driver and any passenger while doing so. **State v. Lopez**, 00-0562 (La. 10/30/00), 772 So.2d 90, 92-93 (per curiam).

Clearly, the initial stop was proper and is not contested. Concerning the length of the detention, Trooper Chamorro was within his rights to continue the conversation

and questioning of the defendant after he was stopped for speeding and produced the out-of-state driver's license. The defendant exhibited nervous behavior and provided answers that were inconsistent with the circumstances, creating reasonable suspicion of additional criminal activity. Therefore, Trooper Chamorro did not need probable cause to call Trooper St. Romain for an open-air canine sniff of the vehicle. Trooper St. Romain arrived at 1:38 a.m., within five minutes of Trooper Chamorro's call for a canine unit. Thus, there was only a short time span between the stop at 1:23 a.m. and the canine's alert. A "canine sniff" does not constitute a "search" within the meaning of the Fourth Amendment. See **United States v. Place**, 462 U.S. 696, 707, 103 S.Ct. 2637, 2645, 77 L.Ed.2d 110 (1983). Once the canine alerted to the presence of drugs in the vehicle, the troopers had probable cause to search the vehicle without first obtaining a warrant. See **State v. Gant**, 93-2895 (La. 5/20/94), 637 So.2d 396, 397 (per curiam). Consequently, the evidence seized resulted from a lawful search and we find that the trial court did not err in denying the motion to suppress. Moreover, we conclude that **Arizona v. Gant** is not applicable to this case. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.