NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1214

STATE OF LOUISIANA

VERSUS

YASMIN E. FUENTES

DATE OF JUDGMENT: FEB 10 2012

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 496119, DIV. F, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE MARTIN E. COADY, JUDGE

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Yasmin E. Fuentes, was charged by bill of information with possession with intent to distribute marijuana, a violation of La. R.S. 40:966(A)(1). She initially pled not guilty and, alleging an unlawful stop, filed a motion to suppress evidence seized from her vehicle. Following a hearing, the motion to suppress was denied. Thereafter, defendant withdrew her former plea of not guilty and entered a plea of guilty as charged, reserving the right to appeal the trial court's ruling on her motion to suppress pursuant to ***State v. Crosby***, 338 So.2d 584 (La. 1976). Defendant was sentenced to ten years at hard labor, with all but one year suspended, and placed on five years probation with special conditions upon her release. For the following reasons, we affirm the conviction and sentence.

FACTS

Louisiana State Trooper Chad Guidry was the only witness to testify at defendant's motion to suppress hearing. On July 28, 2010, at 11:21 p.m., Trooper Guidry activated his emergency lights to conduct a traffic stop on a tractor-trailer that was traveling eastbound on Interstate 12 in St. Tammany Parish. As Trooper Guidry pulled his patrol vehicle behind the tractor-trailer on the shoulder of the road, he observed defendant's vehicle also pull over behind his own. Trooper Guidry maneuvered his vehicle to place it behind defendant's vehicle as a safety precaution. At this time, Trooper Guidry exited his vehicle, called defendant out of her vehicle, identified himself, and asked her why she had stopped. Defendant replied that she thought Trooper Guidry had intended to pull her over, but Trooper Guidry informed defendant that he had not.

During his initial encounter with defendant, Trooper Guidry noticed that her vehicle and that of the tractor-trailer both had Florida license plates and that defendant appeared nervous. Trooper Guidry asked defendant to retrieve her driver's license and rental agreement from her car, and he also asked defendant about her origin and destination of travel. Defendant informed Trooper Guidry that she was traveling from Houston, Texas, but Trooper Guidry noticed that her rental agreement only allowed travel between Florida and Louisiana, and defendant would not tell Trooper Guidry her reasons for visiting Houston. Trooper Guidry used defendant's driver's license to check her criminal history, and he discovered that defendant had an April 2010 arrest for possession of narcotics. Trooper Guidry asked defendant for consent to search her vehicle, but she refused. Immediately thereafter, at 11:30 p.m., Trooper Guidry deployed his canine, which had been in his own vehicle at the time he stopped the tractor-trailer, to conduct an exterior sniff of defendant's vehicle. The canine alerted to the presence of drugs within defendant's vehicle by scratching and biting. Trooper Guidry's incident report, which was introduced as evidence at defendant's motion to suppress hearing, indicated that the police ultimately seized fifteen pounds of marijuana from defendant's vehicle.

ASSIGNMENT OF ERROR

In her sole assignment of error, defendant contends that the trial court erred in denying her motion to suppress because Trooper Guidry detained her for an investigatory purpose without any basis to believe that she had committed, was committing, or was about to commit an illegal act.

When a motion to suppress is denied, the trial court's factual and credibility determinations will not be reversed on appeal unless such ruling is not supported by the evidence. ***State v. Green***, 94-0887 (La. 5/22/95), 655 So.2d 272, 281. However, a trial court's legal findings are subject to a *de novo* standard of review. ***State v. Hunt***, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751.

The Fourth Amendment to the United States Constitution and Article I, §5 of the Louisiana Constitution protect people against unreasonable searches and seizures. Measured by this standard, La. C.Cr.P. art. 215.1, as well as federal and state jurisprudence, recognizes the right of a law enforcement officer to temporarily detain and interrogate a person whom he reasonably suspects is committing, has committed, or is about to commit a crime. Reasonable suspicion for an investigatory detention is something less than probable cause and must be determined under the specific facts of each case on the basis of whether the officer had sufficient knowledge of facts and circumstances to justify an infringement on the individual's right to be free from governmental interference. ***State v. Robertson***, 97-2960 (La. 10/20/98), 721 So.2d 1268, 1269.

The purpose of the Fourth Amendment, however, is not to eliminate all contact between the police and the citizenry, but to prevent arbitrary and oppressive interference by enforcement officials with the privacy and security of individuals. ***United States v. Mendenhall***, 446 U.S. 544, 553-54, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497 (1980); ***State v. Lanter***, 391 So.2d 1152, 1154 (La. 1980). Police officers do not need probable cause to arrest or reasonable suspicion to detain each time they attempt to converse with a citizen. ***Lanter***, 391 So.2d at 1154. "[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions." ***Florida v. Bostick***, 501 U.S. 429, 434, 111

S.Ct. 2382, 2386, 115 L.Ed.2d 389 (1991). Even when officers have no basis for suspecting a particular individual of criminal activity, they may generally ask questions of that individual as long as the police do not convey the message that compliance with their requests is required. ***Bostick***, 501 U.S. at 435, 111 S.Ct. at 2386; ***State v. Long***, 2003-2592 (La. 9/9/04), 884 So.2d 1176, 1184, cert. denied, 544 U.S. 977, 125 S.Ct. 1860, 161 L.Ed.2d 728 (2005). So long as a reasonable person would feel free "to disregard the police and go about his business," the encounter is consensual and no reasonable suspicion is required. ***Bostick***, 501 U.S. at 434, 111 S.Ct. at 2386; see also ***Long***, 884 So.2d at 1184. The test for whether a "seizure" has occurred, then, "is whether a reasonable person would feel free to decline the officer's request or otherwise terminate the encounter." ***Long***, 884 So.2d at 1184.

In ***State v. Ponder***, 607 So.2d 857 (La. App. 2d Cir. 1992), the Second Circuit held that there was no "stop" for purposes of the Fourth Amendment where deputies approached the driver of a vehicle they had been surveilling when that vehicle had pulled to the side of the road due to car trouble. The Second Circuit stated that once the defendant in ***Ponder*** stopped his car, "the deputies were free to stop behind him and offer assistance or ask him questions. [The defendant] was under no obligation to remain at the scene, nor was he under any obligation to answer questions." ***Ponder***, 607 So.2d at 860. Prompted by the deputies' discovery of a stolen rifle in the possession of a passenger in his car, Ponder ultimately consented to a search of his home, where stolen goods were found. The Second Circuit found that the deputies' initial approach of the defendant did not rise to the level of a seizure, so no reasonable suspicion was needed.

In the instant case, it is clear that Trooper Guidry's initial encounter with defendant was not the result of an investigatory stop supported by reasonable suspicion. Instead, defendant pulled her vehicle to the shoulder of the interstate, behind Trooper Guidry's vehicle, apparently as a result of a mistaken belief that she was being stopped. Based on this behavior by defendant and out of concern for his own safety, Trooper Guidry was entitled to approach defendant and to inquire about her reasons for pulling to the side of the road without a need for reasonable suspicion. Further, Trooper Guidry's request that defendant retrieve her driver's license and rental papers from her vehicle did not turn the encounter into a forcible detention. An officer's request for identification does not turn the encounter into a forcible detention unless the request is accompanied by an unmistakable show of official authority indicating to the person that he or she is not free to leave. See ***Florida v. Royer***, 460 U.S. 491, 501-02, 103 S.Ct. 1319, 1326, 75 L.Ed.2d 229 (1983); see also ***I.N.S. v. Delgado***, 466 U.S. 210, 216, 104 S.Ct. 1758, 1762, 80 L.Ed.2d 247 (1984) ("[I]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure."). Here, Trooper Guidry had informed defendant that she was not being pulled over, and he testified that had defendant asked if she was free to go, she would have been allowed to leave. Trooper Guidry testified that defendant appeared as if she wanted to leave, but that observation was simply his perception, and defendant never asked if she could leave the scene. Thus, Trooper Guidry's initial encounter with defendant did not rise to the level of a "stop" or seizure that would implicate Fourth Amendment protections.

As Trooper Guidry conversed with defendant, he began to grow suspicious of her behavior. He noticed that her vehicle and the tractor-trailer both had

Florida license plates. In his training and experience as a drug interdiction officer, Trooper Guidry had come to be aware of "trail vehicles" that follow other vehicles transporting a load of narcotics in order to draw away potential police attention. Trooper Guidry further noticed that defendant appeared nervous and that her voice tones changed from polite to angry. Additionally, defendant stated that she had traveled to Houston, but her rental agreement only allowed travel between Florida and Louisiana, and she was evasive when asked why she had gone to Houston. Lastly, a check of defendant's criminal history indicated to Trooper Guidry that defendant had at least one recent narcotics arrest. In light of these facts, we find that Trooper Guidry had reasonable suspicion to believe that defendant might have been engaged in activity related to the transport of narcotics. The fact that Trooper Guidry later learned that defendant's vehicle was not connected with the tractor-trailer has no bearing on Trooper Guidry's state of mind at the time he developed reasonable suspicion.

When a police officer has a specific suspicion of criminal activity, he may detain an individual while he diligently pursues a means of investigation likely to quickly confirm or dispel the particular suspicion. ***United States v. Sharpe***, 470 U.S. 675, 686, 105 S.Ct. 1568, 1575, 84 L.Ed.2d 605 (1985). A canine search is not a "search" within the meaning of the Fourth Amendment. ***United States v. Place***, 462 U.S. 696, 707, 103 S.Ct. 2637, 2644-45, 77 L.Ed.2d 110 (1983); see also ***State v. Gant***, 93-2895 (La. 5/20/94), 637 So.2d 396 (per curiam).

In the instant case, Trooper Guidry asked defendant for consent to search her vehicle. When defendant declined to give consent, Trooper Guidry deployed his canine, which was already on-site, to perform an exterior sniff of defendant's vehicle. This canine sniff was performed within nine minutes of Trooper Guidry's

initial encounter with defendant. It is clear, then, that Trooper Guidry acted diligently to quickly confirm his suspicions that defendant might be engaged in activity related to the transportation of narcotics.

Based on our review of the record, we find no error or abuse of discretion in the trial court's ruling denying defendant's motion to suppress. Defendant's initial encounter with Trooper Guidry was not a seizure, but Trooper Guidry later developed reasonable suspicion to support a brief detention of defendant while he deployed his canine to sniff defendant's vehicle. Under the totality of the circumstances, no unreasonable seizure or detention of defendant occurred in this case. See ***State v. Martin***, 2011-0082 (La. 10/25/11), ___ So.3d ___.

This assignment of error lacks merit.

DECREE

For these reasons, we affirm the conviction and sentence of defendant, Yasmin E. Fuentes.

CONVICTION AND SENTENCE AFFIRMED.