

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 0220

STATE OF LOUISIANA

VERSUS

JOSEPH BROWN

Judgment Rendered: SEP 24 2014

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOCKET NUMBER 11-09-0662, SECTION 3

HONORABLE MICHAEL R. ERWIN, JUDGE

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BEFORE: PARRO, McDONALD, AND CRAIN, JJ.

McDONALD, J.

The defendant, Joseph Brown, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1.¹ The defendant pled not guilty and, following a jury trial, he was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

On December 20, 2003, Xuan Doung, the owner of Peter T's Grocery Store on Baton Rouge Avenue, was shot and killed during a robbery. There were no witnesses to the shooting, but forensic evidence revealed that two people were involved in the robbery. Bloody hand prints and shoe prints were left throughout the store. One of the fingerprints at the scene was a match for Marlon Washington.

The police were not able to locate Washington; they learned later, however, that Washington knew the defendant. Accordingly, the police periodically surveilled the defendant's (his parents') house on Nicholson Drive. On January 16, 2004, the police received information that Washington was at the defendant's house. Police officers observed two men leave the defendant's house and drive away in a gray Cadillac. Officer Brian Higginbotham, with the Baton Rouge Police Department, was on patrol in the Nicholson Drive area. He was contacted and told to be on the lookout for a gray Cadillac where either the driver or passenger may be Marlon Washington, a homicide suspect. Officer Higginbotham was familiar with Washington and knew what he looked like.

Officer Higginbotham parked near Nicholson Drive in his marked unit and,

¹ The indictment charged Marlon Washington as a codefendant. The motion to sever trials was granted December 8, 2010.

moments later, the gray Cadillac drove past him. Officer Higginbotham observed that neither the driver nor the passenger was wearing his seatbelt. Unable to determine if either person was Washington, Officer Higginbotham followed the vehicle. While following, Officer Higginbotham observed that the license plate did not have proper illumination. He decided to effect a traffic stop for the two violations. Before stopping the vehicle, he ran a check on the license plate. When he received information that the vehicle had not been stolen, he turned on his emergency lights. By this time, they were already on the Mississippi River Bridge heading toward West Baton Rouge Parish. With no place to pull over on the bridge, Officer Higginbotham used his P.A. system to tell the driver to pull over once he was off the bridge. The driver, later identified as the defendant, pulled over.² Officer Higginbotham asked the defendant for his name and driver's license. The defendant identified himself as Traveyon Springer and informed the officer he did not have a license. Officer Higginbotham asked the defendant if he could search the vehicle, and the defendant replied that he had no problem with the officer checking the vehicle. Officer Higginbotham searched the trunk of the Cadillac and therein found a loaded Smith & Wesson .40 caliber semi-automatic pistol and a box of ammunition that appeared to be Winchester rounds for a handgun. The defendant revealed his true identity and was arrested on outstanding warrants.

Several .40 caliber Winchester spent bullet casings and jackets found at the grocery store were tested and determined to have come from the .40 caliber handgun found in the trunk. A blood stain from the defendant's left shoe that he

² There was little to no testimony developed at trial (or the motion to suppress hearing) regarding the identity of the passenger of the vehicle.

was wearing at the time of his arrest was determined, through DNA testing, to be a mixture of the defendant's blood and Xuan Doung's blood. The defendant did not testify at trial.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in denying his motions to suppress. Specifically, the defendant contends that Officer Higginbotham did not stop him within his jurisdiction; the officer's detention of the defendant exceeded the scope of the stop; and the defendant did not give consent to search the vehicle.

Officer Higginbotham testified at the first motion to suppress hearing, and Joseph Peyton, the defendant's father, testified at the second motion to suppress hearing. When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. See 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. See State v. Hunt, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751.³

The Fourth Amendment to the federal constitution and Article I, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. However, the right of law enforcement officers to stop and interrogate one reasonably suspected of criminal conduct is recognized by La. Code Crim. P. art. 215.1, as well as by both state and federal jurisprudence. Reasonable cause for an investigatory detention is something less than probable cause and must be determined under the facts of each case by whether the officer had sufficient

³ In determining whether the ruling on defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n.2 (La. 1979).

knowledge of facts and circumstances to justify an infringement on the individual's right to be free from governmental interference. The right to make an investigatory stop and question the particular individual detained must be based upon reasonable cause to believe that he has been, is, or is about to be engaged in criminal conduct. **State v. Belton**, 441 So.2d 1195, 1198 (La. 1983), cert. denied, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984).

As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. The standard is a purely objective one that does not take into account the subjective beliefs or expectations of the detaining officer. Although they may serve, and may often appear intended to serve, as the prelude to the investigation of much more serious offenses, even relatively minor traffic violations provide an objective basis for lawfully detaining the vehicle and its occupants. **State v. Waters**, 2000-0356 (La. 3/12/01), 780 So.2d 1053, 1056 (per curiam).

Officer Higginbotham testified at the motion to suppress hearing and the trial that when the defendant drove past him in the 1992 gray Cadillac he was looking out for, neither the defendant nor his passenger were wearing seat belts. When Officer Higginbotham pulled behind the defendant to follow him, he observed that the license plate light was not working. Accordingly, Officer Higginbotham had probable cause to believe traffic violations had occurred and, as such, had an objectively reasonable basis for stopping the defendant's vehicle. See La. Code Crim. P. art. 215.1; La. R.S. 32:295.1 & 32:304(C); **Waters**, 780 So.2d at 1056; **Whren v. United States**, 517 U.S. 806, 812-13, 116 S.Ct. 1769, 1774, 135 L.Ed.2d 89 (1996).

The defendant asserts in his brief that Officer Higginbotham, as a Baton Rouge police officer, did not have the authority to stop the defendant in West Baton

Rouge Parish. According to the defendant, it was “impossible from this record to determine just where the parties were when the pursuit began and the boundary between East and West Baton Rouge Parishes occurs at a point on the bridge [sic].” This assertion is baseless. Officer Higginbotham testified at the motion to suppress hearing and the trial that he was on Nicholson Drive in Baton Rouge (East Baton Rouge Parish) when the defendant drove past him. Officer Higginbotham immediately pulled out behind the defendant and observed the faulty license plate light. At this point, Officer Higginbotham ran a license plate check to gather as much information about the vehicle and the driver as he could before stopping the vehicle. The officer explained that he had already determined that he was stopping the vehicle for the traffic violations, but waited for the results of the license plate check before effecting a traffic stop for safety reasons. When asked at the motion to suppress hearing why he did not pull over the vehicle the instant he observed the violations, Officer Higginbotham explained, “Because I was running the plate, which is something I do every time whenever I try to pull a car, ah, I want to know what I’m getting into before I stop somebody.”

When Officer Higginbotham received information that the vehicle had not been stolen, he turned on his emergency lights to effectuate a traffic stop. At this point, the defendant “was already getting onto the bridge.” Officer Higginbotham was referring to the new Mississippi River Bridge connecting Baton Rouge and West Baton Rouge Parish (toward Port Allen). Once both vehicles were on the bridge, there was no place for the defendant to pull over. Officer Higginbotham testified that with his P.A. system, he instructed the defendant to continue across the river and to pull over on the shoulder once off the bridge. The defendant complied and pulled over on LA. Hwy. 1.

While Officer Higginbotham stopped the defendant outside of his

jurisdiction in West Baton Rouge Parish, the officer was on duty and located within his territorial jurisdiction when he first observed the defendant's vehicle. Further, Officer Higginbotham was within his territorial jurisdiction when he initiated procedures to effect the traffic stop. As such, the location of the stop is not of controlling significance. See **State v. Merchant**, 490 So.2d 336, 339 (La. App. 1st Cir.), writ denied, 496 So.2d 326 (La. 1986). In **State v. Bickham**, 404 So.2d 929, 932 (La. 1981), the Louisiana Supreme Court construed La. Code Crim. P. art. 215.1 as authorizing an officer in close pursuit to leave the jurisdiction to make an investigatory stop, when, as herein, the officer initiated his pursuit for the purpose of stopping while within his jurisdiction. See also **Merchant**, 490 So.2d at 339. Accordingly, the defendant's argument regarding jurisdiction is meritless.

The defendant also argues in his brief that Officer Higginbotham exceeded the scope of the stop when he asked questions unrelated "to the purpose and itinerary of the trip" that impermissibly extended the duration of the stop without developing reasonable suspicion of additional criminal activity. An officer may temporarily detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. **United States v. Sokolow**, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989). Louisiana Code of Criminal Procedure article 215.1(D) states, in pertinent part, that in conducting a traffic stop "an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity."

If an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop. **United States v. Sharpe**, 470 U.S. 675, 685, 105 S.Ct. 1568, 1575, 84 L.Ed.2d 605 (1985). An extensive detention can

invalidate consent to search even after a valid traffic stop. See State v. Bunnell, 517 So.2d 439, 441-42 (La. App. 1st Cir. 1987). In determining whether a detention is too lengthy to be considered as an investigatory stop, it is appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. **Sharpe**, 470 U.S. at 686, 105 S.Ct. at 1575.

Before even seeing the vehicle drive past him, Officer Higginbotham had been informed that a possible homicide suspect (Marlon Washington) might be in the gray Cadillac that was heading his way. When Officer Higginbotham pulled the Cadillac over and asked the defendant for his driver's license, he learned the defendant did not have a license, registration, or proof of insurance. When the defendant told Officer Higginbotham his name was Traveyon Springer, the officer was suspicious about his true identity since the defendant had nothing to show who he was. During this brief time, Officer Higginbotham had the right to conduct a routine license check and to engage respondent in conversation as he did so. See State v. Lopez, 2000-0562 (La. 10/30/00), 772 So.2d 90, 92-93 (per curiam). At this point, Officer Higginbotham obtained oral consent from the defendant to search the vehicle.

Given the lawfulness of the initial stop, the reasonableness of the escalating encounter between the defendant and Officer Higginbotham hinged on whether the actions undertaken by the officer following the stop were reasonably responsive to the circumstances justifying the stop in the first place, as augmented by information gleaned by the officer during the stop. The defendant's lack of any identification, and the fact Officer Higginbotham could have arrested the defendant

on the spot for driving without a license led to a shift in Officer Higginbotham's focus that was neither unusual nor impermissible. Officer Higginbotham obtained oral consent from the defendant to search the vehicle only moments after the defendant was initially stopped. The time between the consent to search and the discovery of the gun in the vehicle was perhaps a few minutes. Officer Higginbotham, thus, diligently pursued his investigation and the brief duration of the traffic stop and consensual search was reasonable under the Fourth Amendment. See State v. Miller, 2000-1657 (La. 10/26/01), 798 So.2d 947, 949-51 (per curiam) (where a fifty-three-minute investigatory stop was found to be reasonable). Accordingly, we find meritless the defendant's contention that he was unlawfully detained.

Finally, the defendant argues in his brief that he did not freely consent to have the vehicle searched. Officer Higginbotham did not need probable cause to search since a search conducted pursuant to consent is one of the specifically established exceptions to the requirements of both a warrant and probable cause. As discussed, the defendant gave the officer oral consent to search the vehicle. Officer Higginbotham did not need any degree of reasonable suspicion to ask for, and receive, the defendant's consent to search the vehicle. See State v. Strange, 2004-0273 (La. 5/14/04), 876 So.2d 39, 42 (per curiam). The validity of such consent is dependent upon it having been given voluntarily, free of duress or coercion, either express or implied. State v. Montgomery, 432 So.2d 340, 343 (La. App. 1st Cir. 1983). See State v. Tennant, 352 So.2d 629, 633 (La. 1977), cert. denied, 435 U.S. 945, 98 S.Ct. 1529, 55 L.Ed.2d 543 (1978). Oral consent is valid. State v. Ossey, 446 So.2d 280, 287 (La.), cert. denied, 469 U.S. 916, 105 S.Ct. 293, 83 L.Ed.2d 228 (1984). Officer Higginbotham's testimony at the motion to suppress hearing and trial established that the defendant's consent was neither

forced nor coerced, and was clearly given voluntarily. Moreover, once the search began, the defendant never tried to stop it, revoke his consent, or complain about the length or method of the search. Accordingly, the defendant's voluntary consent rendered the search and seizure of the handgun and ammunition found in the trunk constitutionally valid. See **Montgomery**, 432 So.2d at 343.

We find no legal error or abuse of discretion in the trial court's denial of the defendant's motions to suppress. Accordingly, the assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.