Judgment rendered March 4, 2020.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 53,413-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA Appellee

versus

BRANDON BELL-BRAYBOY Appellant

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court No. 093273

Honorable Michael Owens Craig, Judge

* * * * *

HARVILLE LAW FIRM, LLC Counsel for Appellant
By: Douglas Lee Harville

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District Attorney

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* * * * *

Before GARRETT, STONE, and STEPHENS, JJ.

Garrett, J., dissents with written reasons.

STONE, J.

This criminal appeal arises from the 26th Judicial District Court, Parish of Webster, the Honorable Michael O. Craig, presiding. The defendant, Brandon Bell-Brayboy ("Bell-Brayboy"), entered a *Crosby* plea to possession with intent to distribute 400 grams or more of CDS, Schedule II, cocaine, and possession with intent to distribute CDS, Schedule I, heroin. Defendant was sentenced to 15 years' hard labor on both counts. Defendant now appeals. For the following reasons, we reverse Bell-Brayboy's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

On Tuesday evening, February 21, 2017, Bell-Brayboy was stopped for a traffic violation on I-20 in Webster Parish, Louisiana. During that traffic stop, law enforcement completed a K-9 search of defendant's vehicle and found 24 pounds of cocaine and heroin. Initially, defendant was prosecuted in the United States District Court for the Western District of Louisiana for conspiracy to possess with intent to distribute cocaine and heroin. Defendant filed a motion to suppress, and a hearing was held on that motion on July 19, 2017. On November 3, 2017, in accordance with the recommendation of the magistrate judge, the federal district court granted defendant's motion, finding the search of defendant's vehicle unconstitutional, and suppressed all evidence recovered as result of the search, including defendant's incriminating statements. As such, the federal charges for conspiracy to possess with intent to distribute cocaine and heroin were subsequently dismissed.

Then, on November 7, 2017, the 26th Judicial District Court, Parish of Webster, issued an arrest warrant for Bell-Brayboy for the charge of

possession with intent to distribute cocaine and heroin, found as a result of the February 21, 2017 search. On December 6, 2017, defendant was charged by bill of information with: (1) Count One: possession with intent to distribute 400 grams or more of CDS, Schedule II, cocaine, in violation of La. R.S. 40:967(F)(1)(c); and (2) Count Two: possession with intent to distribute CDS, Schedule I, heroin, in violation of La. R.S. 40:966(A)(1). The defendant waived formal arraignment and pled not guilty.

On January 3, 2018, the state filed an opposition to defendant's motion to suppress arguing there was reasonable suspicion of criminal activity during the stop.[1] On September 13, 2018, defendant filed a motion to suppress arguing that there was no probable cause for defendant's traffic stop, and that law enforcement unconstitutionally extended the stop so that a K-9 unit could search defendant's vehicle.

On October 5, 2018, a hearing was held on the motion to suppress. At that hearing, the state introduced a transcript of the hearing on the motion to suppress held in the U.S. District Court.[2] The following testimony was elicited at the July 19, 2017 hearing in U.S. District Court. Louisiana State Trooper George Strickland ("Tpr. Strickland") testified that on the evening of February 21, 2017, he was positioned on the shoulder of I-20 east in Webster Parish, near mile marker 38. Tpr. Strickland testified that he observed a 2005 Toyota Solara pass his location traveling in the right lane.

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[1] The record indicates that the State filed its opposition to defendant's motion to suppress before defendant filed the motion.

[2] The transcript was introduced as State's Exhibit 2 ("S.E. 2"). The state indicated that the trial court would need to read that transcript prior to ruling, and that "some of the testimony is probably not going to make sense to you until you read the federal transcript." Defendant agreed to the introduction of S.E. 2, and the trial court referenced S.E. 2 throughout its written ruling. Therefore, that transcript will be summarized first.

Tpr. Strickland stated that when the Solara passed him it was traveling at about 70 mph, and as it passed him, it slowed down to approximately 65 mph.

Tpr. Strickland testified that he pulled out to further observe the vehicle, and saw it use the left lane to pass several tractor-trailers. Tpr. Strickland stated that, upon catching up to the vehicle, he began running its Georgia license plate. Tpr. Strickland testified that when the vehicle moved back into the right lane, it crossed the fog line. Tpr. Strickland testified that he then confirmed that that the vehicle had not been stolen. Tpr. Strickland testified that he then initiated a traffic stop at which point his dash cam was activated. Tpr. Strickland testified that he asked for defendant's driver's license and identified him as Brandon Bell-Brayboy. Tpr. Strickland stated that the vehicle was registered to a female in Georgia, the inside of the vehicle was very clean, and there were no personal effects inside the vehicle except a backpack in the backseat that had "University of Alabama" on it.

Tpr. Strickland stated that defendant told him he had been in Houston since Friday, where he had been exercising with his trainer. Tpr. Strickland stated that defendant was holding on to his cell phone during their interaction, and defendant kept breaking eye contact to stare at the blank cell phone screen. Tpr. Strickland stated that he found it odd that defendant had been in Houston from Friday to Tuesday, but the only luggage in the passenger compartment of the car was a backpack. Tpr. Strickland testified that as he continued to speak with defendant, defendant received a call on his cell phone, which he answered. Tpr. Strickland testified that he asked defendant to put down the phone and tell the person he was speaking with that he would call him back. Tpr. Strickland stated that defendant said he

was only letting his friend know where he was located. Tpr. Strickland stated that the phone number that appeared on the screen of defendant's phone did not have a name attached to it, which he found odd, because defendant stated he was speaking with a friend.

Tpr. Strickland stated that defendant put his phone down, and the two continued to talk. Tpr. Strickland stated that defendant said he was headed back to school in Tuscaloosa, and that he played football for the University of Alabama. Tpr. Strickland stated that he then believed defendant was being deceptive with his answers, and he suspected defendant was engaged in criminal activity. Tpr. Strickland testified that he then told defendant that he was going back to his police vehicle to check defendant's driver's license and defendant should wait in his vehicle.

Tpr. Strickland stated that he then checked defendant's criminal history *and* checked on whether he was listed on the University of Alabama football team's roster. Tpr. Strickland testified that he could not find defendant's name on the current roster for the university's football team, but he had found it listed on a prior year's team or maybe the spring roster. Tpr. Strickland testified that he suspected defendant had been engaged in some type of criminal activity, so he contacted two other troopers to provide backup for a consent-search of defendant's vehicle. Tpr. Strickland testified that once another Tpr. arrived, he had defendant step out of his vehicle. Tpr. Strickland stated that he did not issue defendant a citation at that point, or return his driver's license.

Tpr. Strickland stated that he explained to defendant that he worked on the interstate every day and saw a lot of bad things happen, he then asked to search defendant's vehicle. Tpr. Strickland testified that defendant did

not consent to having his vehicle searched. Tpr. Strickland stated that defendant was not free to leave. Tpr. Strickland testified that he told defendant it was within his rights to refuse, but that he had the right to call a K-9 unit to the scene to "run around his vehicle."

Tpr. Strickland stated that by then a third trooper had arrived, and that trooper then contacted a K-9 unit with the Minden Police Department. Tpr. Strickland testified that the K-9 unit the state troopers ordinarily worked with was not available that day, so they were working with a local K-9 unit. Tpr. Strickland testified that once the available K-9 unit was contacted, they arrived 20-22 minutes later. Tpr. Strickland testified that he gave a brief description to the K-9 officer of what was going on, the officer had the canine perform an open-air search of defendant's vehicle, and he was then told by the K-9 officer that there was a positive alert on both rear quarter panels of the vehicle.

Tpr. Strickland stated that he then began a search of the vehicle. Tpr. Strickland stated that he found two after-market compartments in the rear quarter panels on both sides of defendant's vehicle. Tpr. Strickland stated that the plastic shell on the inside that covered the quarter panels included electronic compartments that would swing open to allow for contraband to be placed inside. Tpr. Strickland stated that he was able to pull back the plastic shells and see the contraband, which consisted of duct tape wrapped packages inside the passenger side.

Tpr. Strickland stated that he then placed defendant under arrest and moved the vehicle to a safe location to recover the contraband. Tpr. Strickland testified that the contraband consisted of ten grey duct-taped packages that included cocaine, and one black duct-taped package that

included heroin; the packages were field tested for CDS. Tpr. Strickland stated that the CDS amounted to 11 kilograms of narcotics.

On cross examination, Tpr. Strickland stated that he was aware that the day before defendant was arrested, Monday, February 20, 2017, was President's Day, making the weekend prior to defendant's arrest a three-day weekend. Tpr. Strickland stated that on February 21, 2017, he was working "stationary patrol" as a part of criminal interdiction. Tpr. Strickland stated that he was looking for traffic violations and doing drug interdiction, but he did not pull over every traffic offense he witnessed, because "we would be there all night." Tpr. Strickland stated that the posted speed was 70 mph along the part of I-20 where defendant was stopped. Tpr. Strickland stated that he did not find it suspicious that defendant's vehicle slowed when he saw a state trooper vehicle, but that it caught his attention. Tpr. Strickland stated that he typed defendant's license plate into his computer while he was driving to confirm the vehicle was not stolen.

Tpr. Strickland testified that defendant stated that the vehicle belonged to his sister, but he did not ask defendant the name of his sister. Tpr. Strickland acknowledged that a check of the license plate provided a woman's name, which fit with defendant saying the car belonged to his sister. Tpr. Strickland then stated, "But at the same time, normally if he borrowed his sister's car, I'm sure he didn't clean it up for her. The inside was immaculate. It had no personal property." Tpr. Strickland was unable to recall whether he asked for or received the registration for the vehicle. Tpr. Strickland stated that there was a white bag in the front seat of the vehicle with chips and snacks in it which was consistent with defendant's story that he was driving from Houston to Tuscaloosa.

Tpr. Strickland testified that he thought it was suspicious that defendant had been on a three to four-day trip with only a backpack. Tpr. Strickland stated that it did not appear that the backpack would hold enough if defendant was exercising every day as he told Tpr. Strickland. Tpr. Strickland acknowledged that he had not yet looked in the trunk to determine if defendant had additional luggage. Tpr. Strickland testified that he did not ask defendant about his luggage.

Tpr. Strickland stated that when he returned to his patrol car with defendant's driver's license, he checked defendant's criminal history and he check the Automated License Plate Recognition System ("ALPR"), a license plate reader system. Tpr. Strickland stated that defendant did not have any outstanding warrants, but he did have a prior assault charge in Houston. Tpr. Strickland stated that ALPR showed that the vehicle had been on I-10 traveling westbound from Lake Charles into Texas on Monday, February 20, 2017. Tpr. Strickland stated that he does not check the ALPR system for every person he pulls over, only those he found to be deceptive, and he found defendant to be deceptive. Tpr. Strickland testified that based on his training and experience, "I know something is not adding up here."

Tpr. Strickland then testified that he found the following facts suspicious:

1. Defendant's travel itinerary-that he was in Houston training for the football team.

2. Defendant's assertion that he played football for the University of Alabama. Tpr. Strickland acknowledged that he did find defendant's name on the team's roster in a prior year.

3. Third-party owner of the vehicle. Tpr. Strickland testified that there being a third-party owner for vehicle defendant was driving was not suspicious alone, but taken with the other factors it was. Tpr.

Strickland acknowledged that he never asked defendant about the owner of the vehicle.

4. Defendant's statement that he left Tuscaloosa on Friday for Houston, and was returning on Tuesday.

5. Defendant was traveling on I-20, which Tpr. Strickland stated was not the fastest route from Houston to Tuscaloosa.

6. The ALPR system showed the car was on I-10 in Lake Charles the day before defendant was arrested.

Tpr. Strickland stated that that he did not know what particular crime in which he believed defendant to be was involved, but he thought it was probably narcotics. Tpr. Strickland stated that while waiting for the K-9 unit to arrive, one officer patted down defendant and took his cell phone. Tpr. Strickland then testified that while waiting for the K-9 unit, the defendant and officers were standing around discussing football, and that defendant was calm, relaxed, and answering questions.

Officer Clint Smith ("Ofc. Smith"), with the Minden Police Department, testified that he is part of a K-9 unit, and was present during the search of defendant's vehicle. Ofc. Smith stated that he was at home in Minden when he received a call from a state trooper to bring his canine, Harley, to where defendant's vehicle was stopped on I-20. Ofc. Smith testified that, upon receiving the call, he dressed and left the house and drove immediately to the scene. Ofc. Smith verified that Harley alerted upon smelling each of the rear quarter panels of defendant's car.

Louisiana State Police Officer O.H. Hank Haynes ("Tpr. Haynes"),[3] testified that he served on the Drug Enforcement Administration Task Force for 16 years. Tpr. Haynes contacted defendant after he was brought to the

[3] The testimony does not state what rank Tpr. Haynes holds with the state police.

Minden Police Department. Tpr. Haynes testified that he *Mirandized* defendant, and he stated that he understood his rights. Tpr. Haynes stated that the defendant said that he was being paid to drive from Houston to Atlanta, he did not know what was inside the vehicle, but he knew it was illegal. Tpr. Haynes testified that defendant gave him permission to get his cell phone out of the vehicle, and gave the officer the code to access the phone. Tpr. Haynes testified that the phone showed there were numerous missed calls, and that defendant agreed to cooperate and make phone calls to the person who was calling his phone. Tpr. Haynes stated that defendant referred to the person responsible for the CDS in the car by the nickname "Pop."

Tpr. Haynes testified:

> [Defendant] was paid by an unknown male which goes by the nickname of "Pop." [Defendant] said Pop flew him from Atlanta, Georgia, to Houston, Texas, where he was picked up by another unknown black male, which [defendant] only knew as a nickname, driving a blue SUV. He said it was approximately 30 or 40 minutes from the airport where this unkown black male picked him up, carried him to a motel, where [defendant] told me that he went up to the valet parking and received the keys to this Toyota and he was on his way back driving it to Atlanta, Georgia. Once he arrived at Atlanta, Georgia, he was supposed to call Pop. Pop would tell him where to park his vehicle and he would have to get his own ride back to his Chrysler 300 that was parked at the Atlanta airport.
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> [Defendant] was willing to attempt a controlled delivery. We contacted agents in Atlanta, Georgia; just couldn't get everything together. And later on, that night, it was determined that we would not attempt a controlled delivery because we didn't have enough information.

The "Report and Recommendation" signed by the magistrate judge for the U.S. District Court for the Western District of Louisiana, and the order signed by the U.S. district judge granting defendant's motion to suppress in the U.S. district court were included in the record. The "Report

and Recommendation" stated that defendant driving a third-party vehicle provided little to no weight in determining reasonable suspicion, and that Tpr. Strickland could have, but did not, verify that the name defendant gave as his sister's matched what was on the registration. The report stated that having a clean car was not indicative of criminal activity, defendant had a bag of snacks and his backpack inside the car, which was indicative of a long trip, and Tpr. Strickland did not inquire if defendant had luggage in the trunk. The report stated that the only basis for finding defendant nervous was Tpr. Strickland's testimony, and the magistrate judge did not see "excessive nervousness beyond that normally associated with an uninvited encounter" with law enforcement, which does not suffice to establish reasonable suspicion.

The report stated that Tpr. Strickland was unable to explain how defendant receiving a phone call from a friend whose number was not saved in his contacts was suggestive of criminal activity. The report stated that defendant's statement that he played football for the University of Alabama "indicated nothing more than useful aggrandizement" meant to impress Tpr. Strickland in the hopes that he would not issue defendant a traffic citation. The report noted that Tpr. Strickland did not ask defendant any questions regarding the discrepancy between his stated travel plans and what was recorded by the ALPR system, and that defendant was not taking the most direct route from Houston to Tuscaloosa. The report stated that Tpr. Strickland could not articulate what crime defendant may have committed or provide specific facts for why he suspected defendant of criminal activity. The report stated that none of the factors indicated by Tpr. Strickland,

individually or collectively, amounted to reasonable suspicion of criminal activity beyond defendant crossing the fog line which led to the stop.

On October 5, 2018, Tpr. Strickland testified again at the hearing on defendant's motion to suppress at the 26th Judicial District Court, providing the following testimony in addition to what he testified to in the U.S. District Court. Tpr. Strickland stated that in his drug interdiction work he typically saw drugs travel from "hub" cities, such as Dallas and Houston, toward cities in the eastern United States. Tpr. Strickland testified that people who are traveling the speed limit do not typically slow down when they see a police vehicle, as defendant did. Tpr. Strickland testified that he stopped defendant because he crossed the fog line, and also because he wanted to know why defendant decreased his speed when he saw Tpr. Strickland.

Tpr. Strickland stated that defendant's car looked like a rental car, because it was so clean and defendant had few personal effects inside. Tpr. Strickland stated that most of the time in traffic stops he gets eye contact, and that a lack of eye contact, like he saw with defendant, is due to nervousness. Tpr. Strickland stated that it is very common in drug trafficking for the person who is transporting the drugs to have to repeatedly check in with the person for whom they are transporting the drugs while traveling. Tpr. Strickland stated that, while he was speaking with defendant, he was holding his phone like he was expecting a call, and during his interaction with defendant he got a call and tried to answer.

Tpr. Strickland testified that according to the ALPR system, on Monday, February 20, 2017, at 4:05 a.m., defendant's vehicle was in Gulfport, Mississippi heading westbound. Tpr. Strickland stated that defendant's car was later recorded by the ALPR system as being in

Hammond, Louisiana, then Lafayette, Louisiana, and, finally, in Lake Charles, Louisiana.[4]. Tpr. Strickland stated he thought defendant was engaged in a "turn-around trip," where a person trafficking narcotics will travel to where the drugs are located, pick them up, and immediately drive them to another destination. Tpr. Strickland stated that he believed defendant was transporting narcotics.

On cross examination, Tpr. Strickland stated that defendant had not been driving erratically, but he did cross the fog line when he passed vehicles and returned to the right lane. Tpr. Strickland affirmed that he had no idea that if defendant had luggage or not, because he did not see inside the trunk of defendant's vehicle. Tpr. Strickland testified that he has pulled people over before who had their phone on their person, but with defendant it was the only time he had seen someone focus on a blank phone screen. When asked if it was reasonable that defendant's friend who was to call him used a different person's phone, and that was why there was no contact name associated with the phone number that appeared on the defendant's phone when he received a call, Tpr. Strickland stated, "I guess anything is possible." Tpr. Strickland stated that most people are a little nervous initially when he pulls them over, but once he starts talking to them, they relax and engage with him if they are not engaged in criminal activity.

Tpr. Strickland testified that it is common for persons transporting narcotics to have a car that travels ahead of the one transporting the drugs, in order to warn them of police presence. Tpr. Strickland testified that he did not see any other cars that appeared to be interested in defendant's vehicle.

[4] When Tpr. Strickland testified before the U.S. District Court, he only mentioned defendant's car being recorded by the ALPR system in Lake Charles, Louisiana.

Tpr. Strickland stated that the ALPR system is designed to take pictures of the license plates and the cars that are associated with the plate numbers. Tpr. Strickland stated that sometimes the ALPR system will get pictures of the person driving a car, but he did not testify that there was a photo of defendant driving the Toyota the day before his arrest, when the car was photographed traveling along I-10 west between Gulfport and Houston. Tpr. Strickland testified that he did not write defendant a ticket, and he did not know if he would have without having found narcotics in the car.

The state entered a video of the stop and arrest, recorded by the camera located in Tpr. Strickland's dashboard. The video sound quality is poor, particularly when Tpr. Strickland spoke with the defendant while he was still in his car, which was pulled over to the side of I-20, as multiple vehicles passed defendant's vehicle throughout the video. Tpr. Strickland engaged defendant about one minute into the video, and asked him questions for about two and a half minutes, before returning to his patrol car. Tpr. Strickland stood on the passenger side of the car when questioning defendant, while defendant remained in the car.

After returning to his patrol car, Tpr. Strickland can be heard stating on the video, "He was getting pretty choked up when I was asking questions." At approximately 13 minutes into the video, Tpr. Strickland asks defendant to exit the car, and then asks the defendant if he can search his vehicle. The defendant refuses to give consent. Around 14 minutes into the video, Tpr. Strickland states that he will call for a K-9 unit, and they then proceed to wait for the unit to arrive. During that time, defendant can be seen standing in front of Tpr. Strickland's patrol car, and can be heard discussing football and Toyota vehicles with one of the troopers present. At

approximately 36 minutes into the video, the K-9 unit arrives and conducts the search, alerting to the presence of narcotics.

On October 16, 2018, the trial court denied the motion to suppress. The trial court provided the following reasons:

> In this case, Tpr. Strickland had probable cause to pull over the defendant due to improper lane usage, in violation of [La. R.S.] 32:79. Tpr. Strickland also had reasonable suspicion that the defendant had committed a crime, or was about to commit a crime. Reasonable suspicion requires a weighing of the totality of the circumstances. Here, Tpr. Strickland acted in good faith and reasonably concluded based on all the factors corroborated in his testimony that the defendant was involved in criminal activity. The obvious next step in his investigation was to request a K-9 unit to conduct a roadside open-air sniff. The time it took for the K-9 unit to arrive to the scene and conduct the sniff (20-22 minutes) was not an unreasonable time frame based on the location of the traffic stop.
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On June 17, 2019, defendant entered a guilty plea pursuant to *State v. Crosby*, 338 So. 2d 584 (La. 1976), reserving the right to appeal the trial court's ruling on the motion to suppress. After defendant waived all delays, the trial court sentenced defendant to (1) Count One: 15 years at hard labor; and (2) Count Two: 15 years at hard labor without benefits. The trial court stated that the sentences were to run concurrently, and defendant was given credit for time served. The trial court advised defendant that he had the right to appeal the ruling on the motion to suppress, but not his sentence; the trial court also advised defendant of his post-conviction relief time limits. Defendant now appeals.

DISCUSSION

On appeal, the defendant asserts a single assignment on the issue of whether there were reasonable, articulable grounds for his arrest when he was seized illegally for 22 minutes before the initial free air dog sniff. The

defendant argues that Tpr. Strickland did not have sufficient information to dispel or confirm any suspicions he had regarding defendant's alleged criminal activity. He maintains that the trial court did not make individual findings supporting reasonable suspicion of criminal activity, but the U.S. District Court did, and avers Tpr. Strickland "cherry-picked" those facts that he considered suspicious and acted on a hunch. Defendant states that once he has exhausted his remedies in state court, he will be able to seek federal *habeas* review, and the federal courts would likely grant him relief. Bell-Brayboy argues the evidence recovered in the search and his subsequent incriminating statements should be suppressed.

The state, on the other hand, argues that the traffic stop at issue in this case did not violate defendant's Fourth Amendment rights, and that Tpr. Strickland had reasonable suspicion to believe criminal activity was afoot. The state argues the automobile exception to the warrant requirement allowed Tpr. Strickland to search defendant's car, and thus, his conviction and sentence should be affirmed.

Applicable law

This Court reviews the trial court's ruling on a motion to suppress under the manifest error standard in regard to factual determinations, as well as credibility and weight determinations, while applying a *de novo* review to findings of law. *State v. Manning*, 51,450 (La. App. 2 Cir. 8/9/17), 244 So. 3d 600, *writ denied*, 17-1575 (La. 5/18/18), 242 So. 3d 575 ("*State v. Manning* II"). A trial court's denial of a motion to suppress is afforded great weight and will not be set aside unless a preponderance of the evidence clearly favors suppression. *Id.*; *State v. Prince*, 50,548 (La. App. 2 Cir. 04/13/16), 195 So. 3d 6.

The right of every person to be secure in his person, house, papers and effects against unreasonable searches and seizures is guaranteed by the Fourth Amendment to the United States Constitution and by Article I, § 5, of the 1974 Louisiana Constitution. It is well settled that a search and seizure conducted without a warrant issued on probable cause is *per se* unreasonable unless the warrantless search and seizure can be justified under one of the narrowly drawn exceptions to the warrant requirement. *State v. Thompson*, 02–0333 (La. 4/9/03), 842 So. 2d 330; *State v. Tatum*, 466 So. 2d 29 (La. 1985); *State v. Manning*, 50,591 (La. App. 2 Cir. 5/18/16), 196 So. 3d 626, *writ denied*, 17-1575 (La. 5/18/18), 242 So. 3d 575 ("*State v. Manning* I"); *State v. Lawrence*, 45,061 (La. App. 2 Cir. 3/3/10), 32 So. 3d 329, *writ denied,* 10–0615 (La. 10/8/10), 46 So. 3d 1265. The purpose of limiting warrantless searches to certain recognized exceptions is to preserve the constitutional safeguards provided by a warrant, while accommodating the necessity of warrantless searches under special circumstances. *Donovan v. Dewey,* 452 U.S. 594, 101 S. Ct. 2534, 69 L. Ed. 2d 262 (1981); *State v. Thompson*, *supra*; *State v. Manning* I, *supra.*

The authority and limits of the Fourth Amendment apply to investigative stops of vehicles. *United States v. Sharpe*, 470 U.S. 675, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985); *United States v. Hensley*, 469 U.S. 221, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985). The stopping of a vehicle and the detention of its occupants is a seizure within the meaning of the Fourth Amendment. *State v. Manning* I, *supra*; *State v. Burney*, 47,056 (La. App. 2 Cir. 05/23/12), 92 So. 3d 1184, *writ denied,* 12–1469 (La. 1/11/13), 106 So. 3d 548. The standard for evaluating a challenge to a routine warrantless stop for violating traffic laws is a two-step formulation: 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. 1, 20, 88 S. Ct. 1868, 1879, 20 L. Ed. 2d 889 (1968); *State v. Pena*, 43,321 (La. App. 2 Cir. 7/30/08), 988 So. 2d 841.

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. *U.S. v. Sharpe*, *supra*; *State v. Burney*, *supra*. If a police officer observes a traffic infraction, the subsequent stop for that offense is clearly legal; the standard is a purely objective one that does not take into account the subjective beliefs or expectations of the detaining officer. *State v. Manning* I, *supra*; *State v. Lee*, 46,742 (La. App. 2 Cir. 12/14/11), 79 So. 3d 1278.

This objective standard is indifferent to the relatively minor nature of a traffic violation. *Id.* In Louisiana, as in other jurisdictions, a car which partially leaves its lane of travel and crosses the fog line either at the center of a divided highway or on the right-hand shoulder of the road provides the police with probable cause to believe that a traffic violation for improper lane use has occurred. *State v. Waters*, 00–0356 (La. 3/12/01), 780 So. 2d 1053.

In stopping a vehicle on reasonable suspicion, an officer has the right to conduct a routine license and registration check and may engage in conversation with the driver and any passenger while doing so. *State v. Lee*, *supra*. If a police officer has a specific suspicion of criminal activity, he may further detain the individual or the property while he diligently pursues a means of investigation likely to quickly confirm or dispel the particular

suspicion. *State v. Burney, supra.* In order to further detain a suspect, however, the officer must have articulable facts giving rise to a reasonable suspicion of some separate illegal activity that would justify further detention of the suspect. *State v. Williams,* 47,750 (La. App. 2 Cir. 4/10/13), 112 So. 3d 1022; *State ex rel. Williams v. State,* 13–1394 (La. 12/2/13), 126 So. 3d 502.

In making that determination, the totality of the circumstances must be taken into account. *Id.* The circumstances must be judged by an objective standard such that the facts available to the officer at the moment of seizure or the search would warrant a man of reasonable caution in the belief that the action taken was appropriate. *State v. Lee, supra.* There is no bright line rule for when a detention lasts too long and each instance must be assessed in view of the surrounding circumstances. *Id.* Factors which may give rise to reasonable suspicion include the demeanor of the suspect and unlikely and inconsistent accounts regarding travel. *State v. Miller,* 00–1657 (La. 10/26/01), 798 So. 2d 947; *State v. Lee, supra.*

In *Rodriguez v. United States*, 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015), the officer stopped the defendant's vehicle for driving on the shoulder. The officer completed the traffic stop and issued a citation in about 21 minutes. However, the defendant was detained for an additional eight minutes, waiting for a second officer to arrive in order to conduct a dog sniff of the defendant's car. The *Rodriguez* Court declined to address whether reasonable suspicion of criminal activity justified detaining the defendant beyond completion of the traffic infraction investigation and remanded the case for further proceedings on the issue. In holding that

absent reasonable suspicion, police may not extend an otherwise-completed traffic stop in order to conduct a dog sniff, the Supreme Court explained:

> Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate that purpose." Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed ....
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> An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.

Rodriguez v. United States, *supra*.

La. C. Cr. P. art. 215.1(D) codifies the directive of the United States Supreme Court in *Rodriguez* and provides 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."

In *State v. Manning* I, *supra*, and *State v. Manning* II, *supra*, this Court considered Manning's motions to suppress, and whether he was detained for longer than necessary during a stop related to a traffic violation. Manning was driving east on I-20 in Bossier Parish. Louisiana State Tpr. Sharbono observed Manning cross the white fog line, and signaled him to pull over. Two other adults and a child were passengers in the car. Manning did not have a driver's license or any paperwork for the car he was driving; it had been rented by his sister, who was not present.

After hearing the story of Manning's travel itinerary and checking his driving record and criminal history, Tpr. Sharbono called for assistance from the canine unit. Manning refused to consent to a search of the car, and the canine unit conducted a sniff of its exterior. The free air sniff of the exterior of the car by the canine officer was conducted approximately 24 minutes after the traffic stop began. After the dog alerted, the troopers searched the interior of the car and found a bag of assorted colored pills under the front passenger seat. Manning was arrested.

Tpr. Sharbono testified at a hearing on Manning's motion to suppress and stated that he observed Manning cross the fog line. He then signaled Manning to pull over by turning on his lights, and simultaneously began video recording the traffic stop. Tpr. Sharbono stated that it was not his practice to immediately write a citation when a stop was made, but instead he would talk with the driver prior to issuing a citation. After speaking with the passengers, Tpr. Sharbono checked Manning's driving record and criminal history. He noted that the car had been rented in Texas, and stated that because the person who rented the car was not present and Manning was unable to produce any paperwork related to the rental, he was unable to determine if Manning had authority to operate the car or if the car was authorized for out-of-state travel. Tpr. Sharbono stated the reason he asked for Manning's consent to search the vehicle was because of his suspicions that other criminal activity might be taking place based on Manning's lack of identification, "not normal" travel arrangements, the lack of paperwork for the Ford Taurus, and Manning's criminal record.

Tpr. Sharbono further testified that it is standard practice for backup to respond when a criminal history search is requested. He stated that the K-

9 unit was probably at the scene as the backup unit, even before Manning refused consent to search. Tpr. Sharbono denied that the canine alert was the sole basis for a search of the car, again citing Manning's suspicious travel itinerary, lack of paperwork for the car, lack of personal identification, and criminal history. However, Tpr. Sharbono admitted that, without the canine alert, he would not have had probable cause to conduct the search of the car's interior.

The trial court stated in its ruling:

> Mr. Manning had no identification. He stated he caught a ride to Houston.... The rental papers of the car and the person who rented the car was not there. There was no documentation. There was no paperwork on the car or a rental agreement according to Tpr. Sharbono's testimony. He did a criminal records check; found that Mr. Manning had several prior arrests. And he believed that based on Mr. Manning's statements and all the surrounding information that there was a possibility that a crime had been committed. He stated he did not know if the car had been stolen, taken across Texas lines without the proper rental agreement. Stated he did not know if there was other possibilities of other crimes. *State v. Manning* I, *supra*.

This Court affirmed the trial court's ruling, finding the search constitutional. *Id.*; *State v. Manning* II, *supra*. If evidence is derived from an unreasonable search or seizure, the proper remedy is exclusion of the evidence from trial. *State v. Benjamin*, 97-3065 (La. 12/1/98), 722 So. 2d 988. In *State v. Brock*, 47,005 (La. App. 2 Cir. 3/7/12), 91 So. 3d 1003, *writ denied*, 12-0784 (La. 9/28/12), 98 So. 3d 826, *citing*, *Herring v. United States*, 555 U.S. 135, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009), this Court stated that the exclusionary rule is designed to safeguard Fourth Amendment rights generally through its deterrent effect.

Analysis

The state argues that, based on the totality of circumstances, the following facts amount reasonable suspicion justifying the defendant's continued detention:

1. The interior of defendant's car was clean and devoid of personal effects, save a backpack in the back seat and a bag of snacks in the front passenger seat. Tpr. Strickland stated he did not find that consistent with defendant's assertion that he had been training with his personal trainer in Houston over the previous weekend.

2. The car was registered to a third party, whom defendant identified as his sister.

3. Defendant claimed to be a football player at the University of Alabama, and Tpr. Strickland was not able to confirm that defendant was on the current (spring 2017) team roster.

4. Defendant answered a phone call from a friend whose name was not saved in his phone's contacts.

5. Defendant appeared nervous during the stop.

6. Defendant's stated travel itinerary was inconsistent with what Tpr. Strickland discovered through a search of the ALPR system, that defendant's vehicle was photographed on I-10 the day before his arrest.

7. Defendant was not taking the most direct route from Houston, Texas to Tuscaloosa, Alabama.

We are not persuaded and find the state's arguments are without merit. The defendant's car appearing clean is not a fact, which alone or accompanied with the other facts in this case, would have provided Tpr. Strickland with reasonable suspicion sufficient to detain defendant once the traffic stop had concluded. A clean car is not suggestive of criminal mischief, as many people keep clean cars. Likewise, the fact that the car contained few personal items is also not, in and of itself, indicative of criminal behavior. Here, Bell-Brayboy merely had a bag of snacks and his

backpack in the passenger compartment. Tpr. Strickland assumed that that was all defendant carried with him, without questioning defendant about his luggage or whether he had additional effects in the trunk of the car. Considering the length of the stop, it is extremely evident Tpr. Strickland had the time and opportunity to make this inquiry.

Prior to speaking with defendant, Tpr. Strickland knew the car was registered to a female in Georgia, and defendant stated the car belonged to his sister. Tpr. Strickland failed further question defendant about the car's ownership, verifying what his sister's name was, and whether her name matched that on the vehicle's registration. People drive the cars of third parties frequently, and the fact that defendant was driving a car that belonged to another does not weigh in favor of reasonable suspicion.

Moreover, the defendant's claim that he was football player for the University of Alabama also does not provide reasonable suspicion. Tpr. Strickland stated that he was able to confirm that defendant had played football for the university in a prior year, but could not confirm that he played on the current roster in 2017. Defendant was stopped in February of 2017, and college football season had ended weeks before. Tpr. Strickland did not further question defendant about the discrepancy, or ask defendant exactly what he meant when he said that he was on the team. Defendant's statements might have warranted further questioning, but do not rise to the level of reasonable suspicion.

Following this further, the defendant receiving a phone call from a nameless number, referring to the caller as a friend during the stop, does not rise to the level of reasonable suspicion justifying continued detention. The term "friend" is not always used literally or with sincerity. Such use of the

term could be seen as an attempt to dismiss a phone call that was unimportant. Furthermore, not everyone saves a person's phone number to their contacts, and the person calling defendant may have used third-party phone to contact him.

The fact that the defendant appeared nervous during the traffic stop does not sufficiently provide reasonable suspicion. Being pulled over by law enforcement is an anxiety-inducing event for many people, which may result in nervous behavior, such a lack of eye contact. Some people simply are not comfortable with eye contact.

Additionally, the fact that Bell-Brayboy's travel itinerary did not match what Tpr. Strickland discovered through a search of the ALPR system, while this fact may have merited further questioning, it did not rise to the level of reasonable suspicion justifying further detention. Tpr. Strickland did not question defendant further about why his car's license plate was recorded on I-10 the day before (Monday), when defendant stated he had been in Houston over the weekend. Moreover, Tpr. Strickland did not testify that defendant stated *he himself drove* to Houston, and Tpr. Strickland did not question him about his mode of travel to Houston.

Similarly, the fact that the defendant was not taking the most direct route between Houston and Tuscaloosa does not provide reasonable suspicion. Tpr. Strickland did not inquire of defendant why he was taking I-20 to get to Tuscaloosa, instead of taking I-10, the shorter route. Motorists often take longer routes between destinations, for various innocent reasons, and defendant doing so here did not justify lengthening defendant's detention without further information.

In the matter *sub judice*, we find there are *too many innocuous explanations* for the facts that the state claims provided Tpr. Strickland with reasonable suspicion to detain defendant and prolong the stop beyond the Tpr.'s tasks related to defendant's traffic infraction. The state analogizes this search to the facts in the *Manning* cases, arguing that the instant search in this case was constitutional. However, in *State v. Manning* I, *supra*, the free air sniff of the exterior of the car by the K-9 officer was conducted approximately 24 minutes after the traffic stop *began*. Here, the traffic stop had concluded and defendant was made to wait an additional 20-22 minutes for the K-9 unit to arrive. The free air dog sniff of defendant's vehicle was not a means of investigation likely to quickly confirm or dispel Tpr. Strickland's suspicions about defendant's potential criminal activity. Questioning defendant for a few more minutes probably would have accomplished either goal much more expediently as opposed to making defendant wait more than 20 minutes after the traffic stop had concluded for a K-9 unit to arrive.

Furthermore, the defendant in *State v. Manning* I, *supra* was driving a rented car with no paperwork, had no driver's license, and had an extensive criminal history. Here, defendant had registration for the car, had his driver's license, and had only one prior arrest, not conviction, for assault. In this case there were not enough facts, even when considered as a whole, that provided the requisite reasonable suspicion for detaining Bell-Brayboy beyond the time it took for Tpr. Strickland to conclude the traffic stop. In *Rodriguez, supra*, the Supreme Court stated that an additional eight minutes added to Rodriguez's detention was too long "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." Here,

defendant was detained an additional 20-22 minutes after initially being stopped by Tpr. Strickland.

Furthermore, as defendant correctly stated in his brief, he is likely entitled to federal *habeas* relief once he has exhausted his state remedies. A defendant in state custody may seek federal *habeas* relief on the grounds that he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2254. As seen in the "Report and Recommendation" and order from the U.S. District Court for the Western District of Louisiana, the federal court has already ruled that the search of defendant's car was unconstitutional and ordered the evidence and its derivative incriminating statements excluded in his federal prosecution. The federal district court is unlikely to countermand that decision on *habeas* relief.

Error Patent

We note that the record reveals one error patent – the trial court failed to sentence defendant on count one to a prison term without benefits as required by La. R.S. 40:967(G). We find that because the defendant's conviction and sentence be reversed, this sentencing error is now moot, pretermitting any further discussion.

CONCLUSION

For the foregoing reasons, the defendant, Brandon Bell-Brayboy's conviction and sentence are hereby reversed.

CONVICTION AND SENTENCE REVERSED.

GARRETT, J., dissents.

I respectfully dissent. The defendant claimed that the evidence against him should be suppressed because it was obtained after a prolonged traffic stop without reasonable suspicion to believe that he had committed another offense. After hearing all the evidence and having an opportunity to observe and assess the credibility of Trooper Strickland, the trial court issued a lengthy and well-reasoned written opinion denying the motion to suppress. Based upon the totality of the evidence in this record, it does not appear to me that the trial court erred in that decision. What occurred here was permissible under La. C. Cr. P. art. 215.1(D).

The defendant was pulled over when Trooper Strickland observed him cross the fog line on I-20 in Webster Parish, while he was driving in an easterly direction. It is undisputed that the officer had probable cause to stop the defendant for improper lane usage, a violation of La. R.S. 32:79. The record also shows that Trooper Strickland had reasonable suspicion to believe that the defendant was transporting illegal narcotics, warranting a prolongation of the traffic stop until a drug dog could be brought to the scene to conduct an air sniff. When the dog arrived, it alerted and a massive amount of cocaine and heroin was found in the rear quarter panels of the vehicle.

The defendant later confessed that he had flown from Atlanta to Houston earlier that same day, where he was provided with the car he was driving. He was driving it back to Atlanta, where he would be paid. This, of course, was inconsistent with the story he originally gave to law enforcement that he had driven the car from Tuscaloosa, Alabama, to Houston the previous Friday for “training sessions” in connection with his

"football career" at the University of Alabama and was en route back to Tuscaloosa.

The defendant was initially charged with a federal crime and the federal court dismissed the case after a motion to suppress the evidence was granted. The defendant was then charged in state court, where he again filed a motion to suppress the evidence against him. I have carefully reviewed the transcripts and the records from both the federal hearing and the second hearing held in state court. At the second hearing, the prosecutor presented additional evidence relating to the extensive training and experience of Trooper Strickland, who has been a law enforcement officer since 2004, after graduating from college. His curriculum vitae was introduced as an exhibit. His testimony was more fully developed as to drug trafficking on interstate highways and his experience in this area, including his training and work with the Drug Interdiction Assistance Program ("DIAP").

The more fully developed record presented to the state trial court established that, based upon his training and experience, Trooper Strickland had the requisite reasonable suspicion that the defendant was engaged in some other criminal activity to justify prolonging the stop until a K-9 unit could arrive and conduct an air sniff test. Trooper Strickland more fully explained why he found certain behaviors by the defendant to be significant and indicative of drug trafficking. Trooper Strickland explained that drugs go east on interstates from hubs like Houston and the money goes back west. He said that transporters avoid I-10 because there is a more significant law enforcement presence in south Louisiana. He noted that taking I-20 from Houston to Tuscaloosa would not be the most direct route. He also stated that, even though the defendant said he had been in Houston for five days,

Trooper Strickland had access in his vehicle to the Automated License Plate Recognition System, which showed that the car was observed on the interstate in Gulfport, Mississippi, headed west, and then in Hammond and Lake Charles, Louisiana, the day before the stop. Accordingly, he had confirmation that the defendant was not being truthful about his whereabouts. Trooper Strickland noted that the defendant was nervous in the vehicle, kept looking at his cell phone, and eventually received a call from a "friend." However, no name showed up on the screen. According to Trooper Strickland, the trafficker is usually observed by someone in another car and monitored by phone. Trooper Strickland also stated that it was significant that the defendant did not appear to have any luggage, despite being on a five-day trip. The majority opinion criticizes the trooper for not questioning the defendant about luggage. In reviewing the dash cam video of the stop, the trunk was eventually opened after the K-9 dog had alerted. It does not appear that there was any luggage in the trunk when the officer was in the process of removing the spare tire. Although this, of course, occurred after the defendant had been arrested, it again illustrates that Trooper Strickland's reasonable suspicion, based on his training and experience, proved to be correct.

I agree with the ruling made below. The totality of the evidence and the rational inferences made by the trooper, based on his training and experience, support the trial court's finding that the trooper had reasonable suspicion to believe that the defendant was engaged in drug activity. The trial court obviously found Trooper Strickland to be a credible witness, and we must give deference to the trial court's credibility determinations.

I am also not persuaded that the defendant will be automatically entitled to habeas relief in federal court if we affirm the conviction, as suggested by the majority opinion. In my view, the federal court will need to consider the additional evidence presented in the state court hearing on the motion to suppress and the lengthy and cogent opinion written by the state trial court judge.