

STATE OF LOUISIANA

NO. 17-KA-274

VERSUS

FIFTH CIRCUIT

DONALD BARDELL

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 16-2714, DIVISION "P"
HONORABLE LEE V. FAULKNER, JR., JUDGE PRESIDING

November 15, 2017

ROBERT A. CHAISSON
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Robert A. Chaisson

**AFFIRMED; REMANDED FOR CORRECTION OF THE
COMMITMENTS**

RAC

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CHAISSON, J.

Defendant, Donald Bardell, appeals his conviction and sentence for possession with intent to distribute cocaine and specifically challenges the trial court's denial of his motion to suppress evidence. Having found no merit to the arguments presented on appeal, we affirm defendant's conviction and sentence and remand the matter to the district court for correction of the commitments.

PROCEDURAL HISTORY

On May 4, 2016, the Jefferson Parish District Attorney filed a bill of information charging defendant with possession with intent to distribute cocaine, in violation of La. R.S. 40:967(A). At his arraignment, defendant pled not guilty. Following resolution of some pretrial motions, defendant proceeded to trial before a twelve-person jury on November 29, 2016, and was found guilty as charged.

Defendant thereafter filed a motion for post-verdict judgment of acquittal, arrest of judgment, and alternatively, a motion for new trial. On December 13, 2016, the trial court denied defendant's motion and sentenced him to four years in the Department of Corrections with the first two years of the sentence to be served without benefit of probation, parole, or suspension of sentence. Defendant now appeals.

FACTS

In the evening hours of March 9, 2016, pursuant to information received from a confidential informant, Detective Christopher Cade and other officers with the Jefferson Parish Sheriff's Office Narcotics Division set up surveillance in the area of East William David and Ursuline Street in Metairie. Specifically, the informant relayed that a narcotics transaction involving a black male known as "Donald" would occur in that area and that the subject would be driving a dark blue Acura sedan with dark tinted windows.

At approximately 9:45 p.m., during the time frame specified by the informant for the transaction, Detective Cade observed a car matching the description arrive in the area and pull to the side of the road. Shortly thereafter, a white female approached, leaned into the vehicle for about twenty seconds, and then departed. The Acura also left the area, at which point assisting detectives picked up surveillance of the vehicle. Detective Randy Picarella, one of the officers following the car, relayed on the radio that the driver of the car was making “countersurveillance movements,” including driving at a slow rate of speed, signaling to turn but then failing to turn, and taking an indirect route. Further, Detective Picarella observed that the driver failed to use his turn signal.

Based on the officers’ observations and the traffic violation, Detective Cade initiated a traffic stop and approached the driver’s side of the vehicle. After explaining to defendant, the driver and sole occupant, the reason for the stop, Detective Cade asked defendant to exit the vehicle. As defendant stepped out, the dome light illuminated the interior of the vehicle, and Detective Cade observed a small off-white rock-like object consistent with cocaine wrapped in a clear plastic bag in the center console. Defendant was then handcuffed and advised of his *Miranda*¹ rights.

Thereafter, the officers searched his vehicle, and in the back ashtray of the center console, discovered a bag containing fourteen individually packaged off-white rock-like objects and seven individually wrapped bags of white powder substance.² In addition, a search of defendant yielded \$240.00 and a cell phone. As a result of this stop, defendant was arrested for possession with intent to

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)

² Detective Cade conducted chemical field testing on the substances found in defendant’s car, which yielded positive results for the presence of cocaine. In addition, Brian Schulz, a forensic drug analyst with the Jefferson Parish Sheriff’s Office Crime Lab, analyzed the substances recovered from defendant’s vehicle. At trial, Mr. Schulz testified that the substances tested positive for cocaine.

distribute cocaine³ and was issued traffic citations for failure to use a turn signal, illegal window tint, failure to have proof of insurance, and no driver's license on person.

MOTION TO SUPPRESS EVIDENCE

In his sole assignment of error, defendant challenges the trial court's denial of his motion to suppress evidence. He specifically contends that prior to stopping him, the police officers did not sufficiently corroborate the confidential informant's tip and further did not observe any criminal activity. Therefore, he was illegally detained, and the evidence recovered as a result of that illegal detention should have been suppressed by the trial court. For the reasons that follow, we find no merit to defendant's arguments.

The Fourth Amendment to the United States Constitution and Article 1, § 5 of the Louisiana Constitution protect individuals against unreasonable searches and seizures. If evidence is derived from an unreasonable search or seizure, the proper remedy is to exclude the evidence from trial. *State v. Burton*, 11-1023 (La. App. 5 Cir. 5/22/12), 98 So.3d 375, 379, *writ denied*, 12-1422 (La. 1/11/13), 106 So.3d 547.

In a hearing on a motion to suppress, the State bears the burden of proof in establishing the admissibility of evidence seized without a warrant. La. C.Cr.P. art. 703(D). The trial court's decision to deny a motion to suppress is afforded great weight and will not be set aside unless the preponderance of the evidence clearly favors suppression. *State v. Lewis*, 12-902 (La. App. 5 Cir. 6/27/13), 121 So.3d 128, 134, *writ denied*, 13-1926 (La. 4/17/14), 138 So.3d 618.

The right of law enforcement officers to stop and interrogate those reasonably suspected of engaging in criminal activity is recognized by La. C.Cr.P.

³ At trial, Sergeant Joshua Collins, accepted as an expert in the field of possession, distribution, packaging, and pricing of narcotics, testified that the quantity of the narcotics in this case and the manner of packaging were consistent with street level distribution.

art. 215.1, as well as by state and federal jurisprudence. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *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). The *Terry* standard, as codified in La. C.Cr.P. art. 215.1, authorizes police officers to stop a person in a public place whom they reasonably suspect is committing, has committed, or is about to commit an offense and demand that the person identify himself and explain his actions. *State v. Lewis*, 121 So.3d at 135. Reasonable suspicion is something less than probable cause to arrest, though it is more than an officer's mere unparticularized suspicion or hunch of criminal activity. In making the determination of whether a police officer had reasonable suspicion, a reviewing court must take into consideration the totality of the circumstances and give deference to the inferences and deductions of a trained police officer that might elude an untrained person. *State v. Molette*, 11-384 (La. App. 5 Cir. 11/29/11), 79 So.3d at 484, 489.

An informant's tip may provide reasonable suspicion for an investigatory stop if the tip accurately predicts the suspect's future conduct in sufficient detail to support a reasonable belief that the informant possessed reliable information regarding the suspect's illegal activity. The ability to predict the suspect's future behavior goes towards reliability because it demonstrates inside information and a special familiarity with the suspect's affairs. Moreover, in applying the totality of the circumstances analysis, independent corroboration by police investigation of the details of an informant's tip is valuable. *State v. Francois*, 04-1147 (La. App. 5 Cir. 3/29/05), 900 So.2d 1005, 1010; *State v. Sierra*, 11-161 (La. App. 5 Cir. 12/28/11), 83 So.3d 239, 246.

At the suppression hearing, Detective Cade testified about the circumstances surrounding the stop of defendant. According to Detective Cade, on March 9, 2016, defendant became the target of a narcotics investigation based on

information received by a registered and reliable confidential informant, who in the past had provided information leading to the arrest of drug traffickers and the seizure of narcotics. Specifically, the informant advised Detective Cade that “Donald” would arrive in the area of East William David and Ursuline Street in Metairie at approximately 9:45 p.m. to conduct a drug transaction. The informant also relayed that defendant would arrive in a dark blue Acura with four doors and tinted windows. Pursuant to this information, Detective Cade and assisting officers established surveillance in the described location and observed the described vehicle arrive within the approximated time frame. They then observed activity consistent with that described by the confidential informant. Specifically, Detective Cade described that a white female approached and leaned into defendant’s car though he did not know what had transpired between the two.

Detective Cade and other detectives continued surveillance of the blue Acura as it departed the area. According to Detective Cade, Detective Picarella was located behind defendant’s vehicle and observed activities consistent with countersurveillance movements, including driving lower than the average speed limit, signaling to turn but then failing to turn, and making several unnecessary turns. Detective Cade recalled that in addition to observing the vehicle’s evasive maneuvering, Detective Picarella observed that defendant failed to use a turn signal. At this point, the officers conducted a traffic stop.

Defendant now contends that this stop was not justified because the officers did not sufficiently corroborate the informant’s tip and did not observe any criminal activity prior to stopping him. He asserts that the tip was vague and lacked any specific details except the description of the car and its location and further notes that the officers did not observe any criminal activity when the white female approached defendant’s car.

Having reviewed the applicable law and jurisprudence, as well as the circumstances surrounding defendant's stop as presented at the suppression hearing and the trial,⁴ we find no error in the trial court's denial of defendant's motion to suppress evidence. In the present case, the informant advised Detective Cade that at approximately 9:45 p.m., "Donald" would arrive in the area of East William David and Ursuline Street in Metairie in a dark blue Acura with four doors and tinted windows to conduct a drug transaction. We find that this tip contained predictive information from which the officers could reasonably determine that the informant had inside information or special familiarity with defendant's affairs. Further, the record shows that the information provided by the informant was sufficiently corroborated by the officers during surveillance when they observed the described vehicle arrive at the specified location and time and further observed a white female approach and lean into defendant's car though they did not see what occurred inside the car.

Despite this corroboration of the informant's tip, the officers did not stop defendant at this point. Rather, they conducted mobile surveillance of defendant as he left the area. Detective Picarella, who was located behind defendant's vehicle, observed activities consistent with countersurveillance movements, including driving lower than the speed limit, signaling to turn but then failing to turn, and making several unnecessary turns. In addition to this evasive maneuvering, Detective Picarella observed defendant commit a traffic violation when he failed to use a turn signal. *See* La. R.S. 32:104.

It is well settled that a violation of a traffic regulation provides reasonable suspicion to stop a vehicle. Police officers may make an initial traffic stop after

⁴ In determining whether the trial court's ruling on a defendant's motion to suppress is correct, an appellate court is not limited to the evidence adduced at the suppression hearing but may also consider the evidence presented at trial. *State v. Robinson*, 11-12 (La. App. 5 Cir. 12/29/11), 87 So.3d 881, 903, *writ denied*, 12-279 (La. 6/15/12), 90 So.3d 1059. In this case, the trial testimony regarding the circumstances surrounding the stop of defendant was consistent with that presented at the suppression hearing.

observing a traffic infraction, even if the stop is a pretext to investigate for controlled dangerous substances. *State v. Lewis*, 121 So.3d at 135. Generally, the decision to stop a vehicle is reasonable where the police have probable cause to believe that a traffic violation has occurred, and the standard is purely objective, without taking into consideration the subjective beliefs or expectations of the detaining officer. *State v. Cole*, 13-540 (La. App. 5 Cir. 12/12/13), 131 So.3d 931, 937. 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. Davis*, 09-452 (La. App. 5 Cir. 1/26/10), 31 So.3d 513, 517, *writ denied*, 10-2201 (La. 10/21/11), 73 So.3d 373. Thus, in the present case, even without corroboration of the informant's tip, the violation of a traffic violation alone provided the officers with a reasonable basis to stop defendant. *See State v. Cole, supra*, and *State v. Turner*, 12-855 (La. App. 5 Cir. 5/16/13), 118 So.3d 1186, 1191 (where the defendants' failure to use a turn signal provided the officers with reasonable cause to stop the vehicles for traffic violations).

Following the lawful traffic stop, the officer was authorized to order defendant to exit the vehicle. *State v. Cole*, 131 So.3d at 938. When defendant exited the vehicle, Detective Cade observed what he believed to be narcotics in plain view in the center console. Under the plain view exception to the warrant requirement, if the police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. *State v. Wolff*, 09-508 (La. App. 5 Cir. 12/29/09), 30 So.3d 897, 903. Because the cocaine was in plain view, Detective Cade lawfully seized it and thereafter had probable cause to arrest defendant for a narcotics violation. The officers were then

justified in searching defendant's vehicle pursuant to either the automobile⁵ or search incident to a lawful arrest⁶ exception to the warrant requirement, and thus, the evidence seized as a result of the search of the vehicle was legally obtained.

In his appellate brief, defendant relies on *State v. Robertson*, 97-2960 (La. 10/20/98), 721 So.2d 1268, to support his argument that the police were not justified in stopping him because they did not sufficiently corroborate the informant's tip and did not observe any criminal activity. In that case, the Louisiana Supreme Court reversed the trial court's denial of the defendant's motion to suppress finding that the police officers lacked reasonable grounds to believe that the informant possessed reliable information about the defendant's illegal activities and thus lacked reasonable suspicion to detain the defendant based on information received in an anonymous tip. The circumstances presented in the *Robertson* case are clearly distinguishable from those presented herein. In *Robertson*, the tip by an anonymous informant failed to contain predictive information, whereas in the instant case, the tip came from a reliable confidential informant that "Donald" would arrive in a blue Acura at a specified location and time to engage in a narcotics transaction. Further, unlike *Robertson*, the officers in this case corroborated certain aspects of the informant's tip and then conducted surveillance of the vehicle, during which the officers observed unusual or suspicious behavior when defendant performed countersurveillance movements and further observed defendant commit a traffic violation.

Based on the foregoing, we find that defendant's detention and the subsequent seizure of evidence from his vehicle were justified; therefore, the trial court properly denied his motion to suppress evidence.

⁵ The Fourth Amendment allows police to search a vehicle absent a warrant if a car is readily mobile and probable cause exists to believe it contains contraband. *State v. Molette*, 79 So.3d at 491.

⁶ In a search incident to a lawful arrest, the police officer can search the suspect's person and the area within his immediate control in order to remove weapons and prevent destruction of evidence. *State v. Leonard*, 11-363 (La. App. 5 Cir. 11/15/11), 80 So.3d 535, 544, writ denied, 12-14 (La. 8/22/12), 97 So.3d 356.

ERRORS PATENT REVIEW

We have reviewed the record for errors patent, according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5th Cir. 1990). We first note that the transcript indicates that the trial court failed to advise defendant of the two-year prescriptive period for filing an application for post-conviction relief as required by La. C.Cr.P. art. 930.8. By means of this opinion, we correct this error and inform defendant that no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922. *State v. Oliver*, 14-428 (La. App. 5 Cir. 11/25/14), 165 So.3d 970, 978, *writ denied*, 14-2693 (La. 10/9/15), 178 So.3d 1001.

Second, we note that the minute entry/commitment and the State of Louisiana Uniform Commitment Order are inconsistent with the transcript. Specifically, the sentencing transcript reflects that defendant's sentence for possession with intent to distribute cocaine was imposed without benefit of probation, parole, or suspension of sentence for the first two years; however, neither the commitment nor the Uniform Commitment Order reflects the restriction of parole. While the statutory restriction of benefits is self-activating,⁷ we nonetheless remand the matter and direct the district court to correct the minute entry/commitment and the Uniform Commitment Order to reflect that two years of defendant's sentence is to be served without benefit of parole, probation, or suspension of sentence as required by La. R.S. 40:967(B). We further instruct the Clerk of Court for the 24th Judicial District Court to transmit the original of the amended commitments to the officer in charge of the institution to which defendant has been sentenced and the Department of Corrections' Legal

⁷ La. R.S. 15:301.1; *State v. Williams*, 00-1725 (La. 11/28/01), 800 So.2d 790, 799

Department. *See State v. Griffin*, 14-251 (La. App. 5 Cir. 3/11/15), 169 So.3d 473, 492.

Based on the foregoing, we affirm defendant's conviction and sentence and remand the matter to the district court for correction of the commitments.

AFFIRMED;
REMANDED FOR
CORRECTION OF THE
COMMITMENTS

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 15, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-KA-274

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HON. LEE V. FAULKNER, JR. (DISTRICT JUDGE)

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