NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 1712

STATE OF LOUISIANA

VERSUS

ROBERT LOUIS WILSON, JR.

On Appeal from the 32nd Judicial District Court
Parish of Terrebonne, Louisiana
Docket No. 545,233, Division "E"
Honorable Randall L. Bethancourt, Judge Presiding

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BEFORE: PARRO, WELCH, AND KLINE,[1] JJ.

Judgment rendered APR 2 9 2013

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[1] **Judge William F. Kline, Jr., retired, is serving as judge ad hoc by special appointment of the Louisiana Supreme Court.**

PARRO, J.

The defendant, Robert Louis Wilson, Jr., was charged by bill of information with one count of possession with intent to distribute crack cocaine, a violation of LSA-R.S. 40:967(A), and one count of possession with intent to distribute powder cocaine, a violation of LSA-R.S. 40:967(A). The defendant pled not guilty. A hearing was held on a motion to suppress evidence filed by the defendant. The trial court denied the motion. Following a jury trial, the defendant was found guilty of the responsive offenses of attempted possession with intent to distribute crack cocaine and attempted possession with intent to distribute powder cocaine, violations of LSA-R.S. 40:967(A), LSA-R.S. 40:979(A), and LSA-R.S. 14:27. For each count, the defendant was sentenced to fifteen years of imprisonment at hard labor, with the sentences to run concurrently with each other. As a result of prior convictions of possession of cocaine and distribution of cocaine, the defendant was subsequently adjudicated a fourth-felony habitual offender. The fifteen-year sentences were vacated, and the defendant was resentenced on each count to thirty years of imprisonment at hard labor, without benefit of probation or suspension of sentence. The sentences were ordered to run concurrently with each other. The defendant now appeals, designating one assignment of error. We affirm the convictions, habitual offender adjudications, and sentences.

FACTS

On April 26, 2009, Agent Russell Madere, with the Terrebonne Parish Sheriff's Office, and his partner, were patrolling near midnight on Jennings Lane in Houma. Agent Madere observed the defendant driving in reverse toward him. The defendant quickly backed into a driveway and parked. Agent Madere effectuated a traffic stop and approached the defendant. Upon further discussion and investigation, Agent Madere learned that the defendant was driving a rental vehicle and that the defendant had a suspended driver's license. The defendant was arrested for driving without a valid license.

Sergeant Ronald McKay, with the Terrebonne Parish Sheriff's Office Canine Division, was driving in the area when he heard the traffic stop on his radio. Sergeant McKay, whose role was to provide backup, contacted Agent Madere and arrived at the

scene a few minutes later. Sergeant McKay swept the rental vehicle with his drug-sniffing canine. The dog alerted to the presence of narcotics on the driver's side of the vehicle. Agent Madere searched the vehicle and found several bags of crack cocaine and powder cocaine in a small compartment next to the steering wheel. Agent Madere determined that the amount of crack cocaine was 10.82 grams, and the amount of powder cocaine was 2.86 grams. Agent Madere testified at trial that he searched the vehicle pursuant to an inventory search before having the vehicle towed. Agent Madere explained that when his department makes an arrest, a towing company is contacted. The officer then does an itemized list of the personal contents inside the vehicle in case anything is stolen before the owner can retrieve the vehicle after being towed. The rental vehicle was in fact towed, and the defendant was issued a traffic citation.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends that the search of the vehicle was improper as either a search incident to arrest or an inventory search.

Trial courts are vested with great discretion when ruling on a motion to suppress. **State v. Long**, 03-2592 (La. 9/9/04), 884 So.2d 1176, 1179, cert. denied, 544 U.S. 977, 125 S.Ct. 1860, 161 L.Ed.2d 728 (2005). 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, 280. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751.

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). Based on the defendant's improper backing of his vehicle on the street, Agent Madere had probable cause to believe a traffic violation had occurred. Accordingly, he had an

objectively reasonable basis for stopping the defendant's vehicle. See LSA-C.Cr.P. art. 215.1; LSA-R.S. 32:281.

The defendant argues that the subsequent search of his vehicle following the stop cannot be justified as either a search incident to arrest or an inventory search. According to the defendant, he was handcuffed as he stood in the driveway while his vehicle was being searched. Thus, the defendant contends that, under **Arizona v. Gant**, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), the search of the vehicle incident to arrest was illegal, since the defendant could not access his vehicle. The defendant further argues that since his vehicle was safe and secure in the driveway, the inventory search was invalid, because the state failed to show impoundment of the vehicle was necessary.

Because the warrantless search of the vehicle in the instant matter was valid pursuant to the alert of a drug-sniffing dog, the seizure of the drugs was proper. Neither the search incident to arrest exception to the warrant requirement nor the inventory search exception to the warrant requirement requires analysis for resolution of this matter, and, as such, we address the relevant Fourth Amendment precepts as they pertain to this case.

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." 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 consider whether the police are acting in a swiftly developing situation, and in such cases the court should not

indulge in unrealistic second-guessing. **United States v. Sharpe**, 470 U.S. 675, 686, 105 S.Ct. 1568, 1575, 84 L.Ed.2d 605 (1985).

According to his testimony at the motion to suppress hearing and trial,[2] Agent Madere, who had been a narcotics officer for over four years, was on a street in a high-crime area when he observed the defendant's vehicle backing toward him. When the defendant backed into a driveway and got out of his vehicle, Agent Madere activated his lights, announced his presence, and attempted to stop the defendant with verbal commands. The defendant ignored Agent Madere and continued to walk away. Agent Madere hurriedly approached the defendant, explained why he stopped him, and asked for his driver's license. When the agent took the license, the defendant became argumentative, agitated, and excited. For safety reasons, Agent Madere handcuffed the defendant, and ran a license check. Upon discovering the license was suspended, Agent Madere promptly arrested the defendant. A short period of time later, Sergeant McKay, in a backup capacity, arrived at the scene with his drug-sniffing canine unit. Upon an exterior sweep of the vehicle, the canine alerted to the presence of drugs. Agent Madere testified at trial that from his experience and training, he regularly observes the use of rental vehicles for transporting narcotics.

Based on the foregoing, Agent Madere clearly had the right to conduct a routine license check and to engage the defendant in conversation as he did so. See **State v. Lopez**, 00-0562 (La. 10/30/00), 772 So.2d 90, 92-93 (per curiam). Moreover, when Agent Madere learned the defendant was driving without a valid driver's license, he placed the defendant under arrest. A peace officer may arrest a person without a warrant when the "peace officer has reasonable cause to believe that the person to be arrested has committed an offense." LSA-C.Cr.P. art. 213(3);[3] see **State v. Sherman**, 05-0779 (La. 4/4/06), 931 So.2d 286, 295-97; LSA-R.S. 32:402(B)(1). See also **State v. Billiot**, 370 So.2d 539, 543 (La. 1979), cert. denied, 444 U.S. 935, 100 S.Ct. 284, 62 L.Ed.2d 194 (1979).

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[2] In determining whether the ruling on the defendant's motions to suppress was correct, an appellate court is not limited to the evidence adduced at the hearing on the motion. The court may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n.2 (La. 1979).

[3] Reasonable cause under LSA-C.Cr.P. art. 213 is consonant with the probable cause concept. See **State v. Weinberg**, 364 So.2d 964, 969 (La. 1978).

The record suggests that the defendant was not detained for any length of time before the vehicle was searched. Shortly after the defendant's arrest, Sergeant McKay had arrived at the scene with his canine unit. The use of a drug-detection dog within minutes of the stop afforded Agent Madere the opportunity to pursue a means of investigation that was likely to confirm or dispel suspicions quickly regarding the presence of drugs, during which time it was necessary to detain the defendant. See **Sharpe**, 470 U.S. at 686, 105 S.Ct. at 1575; **State v. Miller**, 00-1657 (La. 10/26/01), 798 So.2d 947, 949-51 (per curiam) (where a fifty-three-minute investigatory stop was found to be reasonable). The dog's sniffing around the exterior of the vehicle did not itself constitute a search, **United States v. Place**, 462 U.S. 696, 707, 103 S.Ct. 2637, 2644-45, 77 L.Ed.2d 110 (1983), and its subsequent alert, consistent with the defendant's agitation and excitement, gave Agent Madere probable cause to search for contraband. See **Lopez**, 772 So.2d at 93; see also **State v. Kalie**, 96-2650 (La. 9/19/97), 699 So.2d 879 (per curiam). When the dog alerted to the presence of narcotics, Agent Madere searched the vehicle and found the cocaine.

In sum, we find Agent Madere had probable cause to first stop the defendant and then arrest him for, respectively, a traffic violation and driving with a suspended license. When the canine unit alerted to the presence of narcotics in the vehicle, Agent Madere then had probable cause to search the vehicle. While Agent Madere testified at trial that it was customarily the policy of his department to tow a vehicle following the arrest of the sole occupant of that vehicle, we do not pass on the validity *vel non* of the inventory search, since the seizure of the cocaine was proper, despite the ostensible inventory search (or search incident to arrest).

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

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.