

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 KA 1793

STATE OF LOUISIANA

VERSUS

DARRYL RUFFIN

Judgment Rendered: JUN 07 2013

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On Appeal from the  
16th Judicial District Court,  
In and for the Parish of St. Mary,  
State of Louisiana  
Trial Court No. 2010-182134

The Honorable Edward M. Leonard, Jr., Judge Presiding

\* \* \* \* \*

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BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

**CRAIN, J.**

The defendant, Darryl Ruffin, was charged by bill of information with one count of possession with intent to distribute cocaine (count I), a violation of Louisiana Revised Statute 40:967A(1); one count of possession with intent to distribute marijuana (count II), a violation of Louisiana Revised Statute 40:966A(1); and one count of failure to signal when turning (count III), a violation of Louisiana Revised Statute 32:104B. He initially pled not guilty, then moved to suppress the items seized from the vehicle he was driving. Then, in exchange for an agreed upon sentence, the State's agreement not to pursue habitual offender proceedings against him, and the State's agreement to dismiss counts II and III, he withdrew his not guilty plea and pled guilty on count I. He was sentenced to fifteen years at hard labor. The defendant reserved his right to challenge the trial court's ruling on the motion to suppress pursuant to *State v. Crosby*, 338 So. 2d 584 (La. 1976).

The defendant first appealed contending that the trial court failed to rule on his motion to suppress. *State v. Ruffin*, 11-1698 (La. App. 1 Cir. 5/3/12) (unpublished). We remanded with instructions. *Id.* On remand, the trial court denied the motion to suppress. The defendant now appeals contending the trial court abused its discretion in denying the motion to suppress.<sup>1</sup> We affirm the conviction and sentence.

**FACTS**

While patrolling the Siracusaville area in St. Mary Parish, narcotics agents observed the defendant driving a vehicle and "loop around the block." The maneuver was suspicious due to a known high volume of narcotics traffic and was commonly used by people looking for narcotics. The agents then observed the vehicle fail to signal before turning at an intersection and a traffic stop was initiated.

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<sup>1</sup> On appeal, the State argues that the instant appeal is untimely. We have reviewed the record and find no merit to the State's argument.

When confronted by the agents, the defendant, the driver of the vehicle, claimed he was looking for a friend who was walking. No one was on the streets, and the agents noted the defendant was "physically shaking in a nervous manner." The agents told the defendant why he had been stopped, and asked why he was so nervous. Breathing heavily, the defendant said the police made him nervous.

The agents asked if anything illegal was in the vehicle. The defendant replied "there shouldn't be" or "not that I'm aware of." The agents then asked for consent to search the vehicle and the defendant said it was his girlfriend's car. He was told he had control of the vehicle and could consent to a search. The defendant then consented to a search of the vehicle.

Several small black bags of marijuana and a Doral cigarette pack were found in the center console. The cigarette pack contained a cellophane bag containing several rocks of crack cocaine, a cellophane bag containing powdered cocaine, and a wad of paper with two large rocks of crack cocaine. The defendant was advised of his *Miranda*<sup>2</sup> rights. He denied any knowledge of the drugs.

### **MOTION TO SUPPRESS**

In his motion to suppress, the defendant argued that the search of the vehicle was not voluntary and was conducted in violation of the state and federal constitutions. The trial court denied the motion. The defendant now argues the search was not voluntary, he was illegally detained beyond the initial traffic stop, and the trial court abused its discretion in denying the motion to suppress.

The Fourth Amendment to the United States Constitution and Article I, Section 5 of the Louisiana Constitution protect persons against unreasonable searches and seizures. A defendant adversely affected may move to suppress any evidence from use at trial on the ground that it was unconstitutionally obtained.

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

La. Code Crim. Pro. art. 703A. Because the trial court has the opportunity to observe the witnesses and weigh the credibility of their testimony, its ruling on a motion to suppress evidence is entitled to great weight. *State v. Jones*, 01-0908 (La. App. 1 Cir. 11/8/02), 835 So. 2d 703, 706, *writ denied*, 02-2989 (La. 4/21/03), 841 So. 2d 791. When a motion to suppress is denied, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, that is, unless such ruling is not supported by the evidence. *See, State v. Green*, 94-0887 (La. 5/22/95), 655 So. 2d 272, 280-81. 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.

Pursuant to the investigatory stop recognized by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), a police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or is about to be, engaged in criminal conduct or is wanted for past criminal acts. *State v. Caples*, 05-2517 (La. App. 1 Cir. 6/9/06), 938 So. 2d 147, 154, *writ denied*, 06-2466 (La. 4/27/07), 955 So. 2d 684. Louisiana Code of Criminal Procedure article 215.1A provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. However, reasonable suspicion is insufficient to justify custodial interrogation even though the interrogation is investigative. *Caples*, 938 So. 2d at 154.

Generally, 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 purely objective and 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 more serious offenses, even relatively minor traffic violations provide an objective basis for lawfully detaining a vehicle

and its occupants. *State v. Waters*, 00-0356 (La. 3/12/01), 780 So. 2d 1053, 1056 (*per curiam*).

During the detention of an alleged violator of the motor vehicle laws, an officer may not detain a motorist for a time longer than reasonably necessary to complete the investigation of the violation and to issue a citation, absent reasonable suspicion of additional criminal activity. La. Code Crim. Pro. art. 215.1D.

Due to the fact-intensive nature of the inquiry into whether a detention constitutes an investigatory stop or an arrest, courts have been unable to develop a bright-line test to determine when police-citizen encounters exceed the bounds of mere *Terry* stops. Because there is no scientifically precise formula that enables courts to distinguish between valid investigatory stops and other detentions that the law deems sufficiently coercive to require probable cause, a court inquiring into the nature of a forcible detention must examine “whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” *United States v. Sharpe*, 470 U.S. 675 (1985) (citations omitted). 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.” *Id.*; *State v. Miller*, 00-1657 (La. 10/26/01), 798 So. 2d 947, 949 (*per curiam*).

A search conducted pursuant to consent is an exception to the requirements of both a warrant and probable cause. *State v. Young*, 06-0234 (La. App. 1 Cir. 9/15/06), 943 So. 2d 1118, 1122, *writ denied*, 06-2488 (La. 5/4/07), 956 So. 2d 606. Informing a suspect of his right to refuse consent to a search is not required, and the lack of such a warning is only one factor in determining the voluntary nature of consent to a search. *See, State v. Parfait*, 96-1814 (La. App. 1 Cir.

5/9/97), 693 So. 2d 1232, 1240, *writ denied*, 97-1347 (La. 10/31/97), 703 So. 2d 20.

The trial court did not abuse its discretion in denying the defendant's motion to suppress. The traffic stop was supported by probable cause to believe the defendant had violated Louisiana Revised Statute 32:104B. Upon stopping the defendant, the agents reasonably suspected additional criminal activity. The defendant was in a high narcotics traffic area, had been circling the block, consistent with looking for drugs, claimed he was looking for a friend on the streets, but no one was walking on the streets, and was so nervous that he was shaking and breathing heavily. The agents then pursued their investigation of whether or not the defendant was involved in drug activity. Their actions were reasonably responsive to the circumstances justifying the stop in the first place, as augmented by information gleaned during the stop. *See, Miller*, 798 So. 2d at 950. The physical intrusiveness of the defendant's detention did not intensify as the duration of the stop expanded to accommodate the growing suspicion of criminal activity. The duration of the stop was reasonable and did not transform the encounter into a *de facto* arrest. The defendant then voluntarily consented to a search of the vehicle, and the drugs were found.

The assignments of error are without merit.

#### **REVIEW FOR ERROR**

The defendant's request that we examine the record for error under Louisiana Code of Criminal Procedure article 920(2) is unnecessary, since we review the record for such errors as a matter of routine. We are limited to reviewing errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we find no reversible errors.

**CONVICTION AND SENTENCE AFFIRMED.**