NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0654

STATE OF LOUISIANA

VERSUS

VERONIQUE ALLEN

Judgment Rendered: DEC 23 2014

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On Appeal from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Trial Court No. 534862

Honorable Martin E. Coady, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McClendon, J. Concurs

HIGGINBOTHAM, J.

Defendant, Veronique Allen, was charged by amended bill of information with possession of cocaine (four hundred grams or more), a violation of La. R.S. 40:967(F)(1)(c). She initially pled not guilty and filed a motion to suppress the tangible evidence against her. Following a hearing and the trial court's denial of that motion to suppress, defendant withdrew her former plea of not guilty and pled guilty as charged, reserving her right under **State v. Crosby**, 338 So.2d 584 (La. 1976), to appeal the trial court's denial of her motion to suppress. The trial court subsequently sentenced defendant to eighteen years imprisonment at hard labor, with the first two years of that sentence to be imposed without benefit of parole, probation, or suspension of sentence. Defendant was also fined fifty thousand dollars. She filed a motion to reconsider sentence, but the trial court denied that motion. Defendant now appeals, alleging two assignments of error. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

On April 29, 2013, Louisiana State Police Trooper Charles Robertson was on routine patrol, traveling northbound on U.S. Hwy. 190, approaching La. Hwy. 21. He noticed a car, a red Toyota Venza, fitting a be-on-the-lookout alert ("BOLO") about a vehicle which was potentially involved in criminal activity. Trooper Robertson turned onto La. Hwy. 21 and began to follow the vehicle.

As Trooper Robertson followed the vehicle, he noticed that it began to swerve and drift within its lane. Trooper Robertson's contemporaneous observations, heard on his dashboard camera recording, were that the vehicle had rolled over both the middle, yellow lane marker and the solid, white fog line of the roadway. Concerned that the driver might be intoxicated, Trooper Robertson turned on his emergency lights and conducted a stop of the vehicle.

Trooper Robertson made contact with defendant, the driver of the vehicle, and asked her where she was traveling. Defendant stated that she was headed to Bogalusa for her grandmother's funeral, but Trooper Robertson was unable to corroborate defendant's story through an obituary search. Trooper Robertson then asked for, and received, defendant's signed consent to search her vehicle. In his ensuing search, Trooper Robertson discovered a box of Tide detergent in the vehicle's back seat. While the box did not appear to have been opened, Trooper Robertson observed that it felt heavier than normal and that it did not compress like a normal box of detergent would when squeezed. He ripped open the box to find a substance later identified as 2.4 kilograms of cocaine. He immediately placed defendant under arrest.

MOTION TO SUPPRESS

In her first assignment of error, defendant contends that the trial court erred in denying her motion to suppress. Specifically, defendant argues that Trooper Robertson had no reasonable suspicion to conduct the initial traffic stop of her vehicle, and that Trooper Robertson exceeded the scope of her consent when he ripped open the box of Tide detergent.

A defendant adversely affected may move to suppress any evidence from use at a trial on the merits on the ground that it was unconstitutionally obtained. La. Code Crim. P. art. 703(A). The state bears the burden of proof when a defendant files a motion to suppress evidence obtained without a warrant. See La. Code Crim. P. art. 703(D). A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Jones**, 2001–0908 (La. App. 1st Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 2002–2989 (La. 4/21/03), 841 So.2d 791. Reviewing courts should defer to the credibility findings of the trial court unless its findings are not adequately

supported by reliable evidence. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 281. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751.

Initial Stop

The Fourth Amendment to the United States Constitution and Article 1, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. Measured by this standard, La. Code Crim. P. art. 215.1, as well as federal and state jurisprudence, recognizes the right of a law enforcement officer to temporarily detain and interrogate a person whom he reasonably suspects is committing, has committed, or is about to commit a crime. See **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); **State v. Robertson**, 97-2960 (La. 10/20/98), 721 So.2d 1268, 1269; **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). Reasonable suspicion for an investigatory detention is something less than probable cause and must be determined under the specific facts of each case by whether the officer had sufficient knowledge of facts and circumstances to justify an infringement on the individual's right to be free from governmental interference. **Belton**, 441 So.2d at 1198.

In the instant case, Trooper Robertson testified that he stopped defendant's vehicle because he had observed it swerving within its own lane, touching both the middle and outside lane markings with its tires. As a result, he believed the driver of the vehicle might be intoxicated. Trooper Robertson can be heard expressing these same concerns on the recording from his dashboard camera. While the resolution of that video recording makes it difficult to determine the particular instances in which defendant's vehicle rolled over the lane markings, her vehicle clearly drifts in its lane and in the vicinity of each lane marking several times. The

trial court obviously believed Trooper Robertson's testimony that defendant's car rolled over these markings. On these facts, Trooper Robertson had probable cause that defendant had committed the offense of improper lane use, as proscribed by La. R.S. 32:79. Therefore, the trial court did not err or abuse its discretion in ruling that Trooper Robertson's stop of defendant was lawful.

Defendant also argues in her brief that Trooper Robertson actually stopped her vehicle not because of any observed traffic violation, but because of the BOLO he had received. Regardless of whether Trooper Robertson was suspicious of the vehicle because of the BOLO, his decision to stop defendant was reasonable because he had probable cause to believe that a traffic violation had occurred. See **Whren v. U.S.**, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996). The standard for evaluating a stop is a purely objective one that does not take into account the subjective beliefs or expectations of the detaining officer. See **State v. Waters**, 2000-0356 (La. 3/12/01), 780 So.2d 1053, 1056 (per curiam). Thus, despite any subjective intentions he may have had, Trooper Robertson had the right to stop defendant for her traffic violation.[1]

Consent to Search

Although he determined with relative quickness that she did not appear to be intoxicated, Trooper Robertson became suspicious when he could not corroborate defendant's story about her grandmother's funeral. Believing that defendant's car might be the vehicle mentioned in the BOLO, Trooper Robertson asked for her permission to conduct a search. Defendant was initially hesitant to give consent, asking Trooper Robertson whether she had to sign the consent-to-search form. Trooper Robertson told defendant that she did not have to consent to the search, but she ultimately signed the form and granted consent.

[1] While not itself determinative of probable cause, we note also that Trooper Robertson issued defendant a traffic citation for improper lane use.

As Trooper Robertson began to search the vehicle, defendant stood on the shoulder of the roadway with another, unidentified officer. Trooper Robertson testified that he ultimately found a box of Tide detergent in the vehicle's back seat, behind the driver's seat. Although the box did not appear to have been opened, Trooper Robertson believed it to feel heavier than normal and to exhibit less "give" when he squeezed it. Upon ripping open the box of detergent, Trooper Robertson discovered cocaine wrapped in two plastic bags. Trooper Robertson admitted at the suppression hearing that he could not tell exactly what was inside the Tide box until he opened it. Defendant did not withdraw or limit her consent throughout the duration of the search.

A consent search is a recognized exception to the warrant requirement. See **Schneckloth v. Bustamonte**, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043-44, 36 L.Ed.2d 854 (1973); **State v. Ludwig**, 423 So.2d 1073, 1076 (La. 1982); **State v. Musacchia**, 536 So.2d 608, 610-11 (La. App. 1st Cir. 1988). Consent is valid when it is freely given by a person who possesses common authority or other sufficient relationship to the premises or effects sought to be inspected. **United States v. Matlock**, 415 U.S. 164, 171, 94 S.Ct. 988, 993, 39 L.Ed.2d 242 (1974); **Musacchia**, 536 So.2d at 611. When the state seeks to rely upon consent to justify a warrantless search, it has the burden of proving that the consent was freely and voluntarily given. Whether consent was given voluntarily is an issue of fact to be determined by the fact finder in light of the totality of the circumstances. The trier of fact may consider the credibility of the witnesses, as well as the surrounding circumstances, in determining the issue of voluntariness. On appeal, the fact finder's determination is entitled to great weight. **State v. Edwards**, 434 So.2d 395, 397 (La. 1983).

In the instant case, defendant does not argue that she did not voluntarily consent to the search of her vehicle. Rather, she argues that Trooper Robertson

exceeded the scope of that consent when he ripped open the box of Tide detergent that appeared to be sealed.

In reviewing the record, we find that defendant's consent to search her vehicle was not qualified in any way. The consent-to-search form that defendant signed stated that she granted Trooper Robertson consent to search her vehicle "and its contents[.]" (Exhibit A). Moreover, nothing in the record indicates that defendant ever withdrew or limited her consent. The scope of a search is generally defined by its expressed object. Here, defendant granted Trooper Edwards permission to search her vehicle, and she did not place any explicit limitations on the scope of the search. See **Florida v. Jimeno**, 500 U.S. 248, 251, 111 S.Ct. 1801, 1804, 114 L.Ed.2d 297 (1991). Once he was granted consent to search defendant's vehicle, Trooper Edwards did not need to separately request permission to search individual containers found within that vehicle. See **Jimeno**, 500 U.S. at 252, 111 S.Ct. at 1804. The trial court did not err or abuse its discretion in finding that Trooper Robertson's search fell within the scope of defendant's consent.

This assignment of error is without merit.

EXCESSIVE SENTENCE

In her second assignment of error, defendant argues that the trial court erred in imposing an unconstitutionally excessive sentence. Specifically, defendant contends that her eighteen-year sentence is "sufficiently close" to the maximum sentence to make it improper in this case.

Pursuant to this court's review for error under La. Code Crim. P. art. 920(2), we note two sentencing errors before our discussion of the instant assignment of error. Having been convicted of possession of cocaine (four hundred grams or more), defendant was subject to a sentence of imprisonment at hard labor for not fewer than fifteen years, nor more than thirty years, and subject to a fine of not less

than two hundred fifty thousand dollars, nor more than six hundred thousand dollars. See La. R.S. 40:967(F)(1)(c). Under La. R.S. 40:967(G), defendant is not eligible for parole, probation, or suspension of sentence until she has served the minimum sentence provided in the relevant provision of Subsection F. Thus, in this case, defendant's sentence should have restricted the benefits of parole, probation, and suspension of sentence for fifteen years. However, defendant's eighteen-year sentence restricts the benefits of parole, probation, and suspension of sentence for only the first two years. The sentence also imposes only a fifty-thousand-dollar fine. Therefore, it is illegally lenient. Nevertheless, because neither the state nor defendant have complained of these errors and because these errors are not inherently prejudicial to defendant, we decline to correct this sentence. See **State v. Price**, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277. We turn next to the argument presented in defendant's assignment of error.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. See **State v. Hurst**, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962. A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Hogan**, 480 So.2d 288, 291 (La. 1985). A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it

should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Lobato**, 603 So.2d 739, 751 (La. 1992).

At the time of defendant's plea, the trial court ordered a presentence investigation report ("PSI"). At sentencing, the trial judge relied upon the contents of the PSI, and he noted that the instant offense was defendant's first. In imposing the eighteen-year sentence, the trial court indicated that defendant had accepted the plea with the "ceiling" of eighteen years, which he then imposed.

Defendant argues on appeal that her sentence is excessive because she is a first offender and because it is "sufficiently close" to the maximum sentence she could have received for her offense. We note first that the trial court clearly considered defendant's lack of prior criminal history in imposing the instant sentence. Further, while defendant argues that her instant sentence is near the maximum sentence she could have received, it actually skews toward the lower range of the potential sentences for the instant offense. Finally, as noted above, defendant actually received an extremely lenient sentence in light of the fact that the benefits of parole, probation, and suspension of sentence were restricted for only two years. Considering these factors, we conclude that defendant's sentence is not excessive.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.