NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 KA 0151

STATE OF LOUISIANA

VERSUS

MICHAEL DEWAYNE PRATT

Judgment rendered OCT 0 1 2015

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 09-11-0334
Honorable Richard "Chip" Moore, Judge

* * * * * *

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BEFORE: PETTIGREW, HIGGINBOTHAM, AND CRAIN, JJ.

Higginbotham, J. dissents in part and concurs in part with reasons.
Crain J, dissents in part and assigns reasons

PETTIGREW, J.

The defendant, Michael Dewayne Pratt, was charged by bill of information with driving while intoxicated ("DWI"), fourth or subsequent offense, a violation of Louisiana Revised Statutes 14:98E (prior to amendment by 2014 La. Acts No. 385, §1).[1] He entered a plea of not guilty and filed an original and supplemental motion to suppress the evidence. After a hearing, the district court granted the defendant's motion to suppress. The State filed a writ application with this court, seeking review of the district court's ruling. We granted the State's writ application with the following language:

> **WRIT GRANTED.** The trial court's ruling granting defendant's motion to suppress is reversed, the motion is denied, and this matter is remanded to the district court for further proceedings. Louisiana Code of Criminal Procedure article 214 allows the arrest of a person by a private person when the person arrested has committed a felony, whether in or out of the presence of the person making the arrest. See **State v. Jackson**, 584 So.2d 266, 268 (La. App. 1st Cir.), writ denied, 585 So.2d 577 (La. 1991). Defendant's erratic driving, which was witnessed by Darryl D. Sanders, was sufficient to justify a stop and arrest for the felony offense of aggravated obstruction of a highway of commerce. See La. R.S. 14:96. A stop by a private citizen, acting in his capacity as a private citizen, is not prohibited by the Fourth Amendment because the amendment only protects individuals against actions by government agents. See **United States v. Jacobsen**, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984). Moreover, there is no indication that Sanders was acting under color of state law when he stopped defendant's vehicle. After Sanders observed the defendant driving erratically, swerving, and causing two other vehicles to move over in the roadway, Sanders's motivation for his actions was concern for the public and his own safety.

State v. Pratt, 2012-0845 (La. App. 1 Cir. 7/2/12) (unpublished writ action). The defendant then sought review with the Louisiana Supreme Court, but his writ application was not considered, as it was not timely filed. See **State v. Pratt**, 2012-1803 (La. 11/2/12), 99 So.3d 659.

After trial, the defendant was found guilty as charged. He was sentenced to fifteen years at hard labor to run consecutively with any time he had

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[1] The defendant's predicate convictions are: (1) November 9, 2000, DWI, second offense, conviction under 19th Judicial District Court ("JDC") docket number 10-00-0632; (2) November 9, 2000, DWI, fourth offense, conviction under 19th JDC docket number 11-99-0554; (3) April 28, 2003, DWI, fourth offense, conviction under 23rd JDC docket number 13939; (4) May 7, 2002, DWI, third offense, conviction under 20th JDC docket number 02-CR-453; and (5) May 29, 2007, DWI, fourth offense, conviction under 19th JDC docket number 01-06-0213.

remaining to serve, and with the first two years to be served without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, arguing in a counseled and pro se brief that this court erred in granting the State's writ application and denying the defendant's motion to suppress. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On June 18, 2011, at approximately 1:00 a.m., Detective Darryl Sanders, a detective with the Baton Rouge Fire Department, Arson Division, was on duty and was driving a marked fire department SUV equipped with beacon lights.[2] Detective Sanders was headed northbound on Plank Road toward Baker, Louisiana. As he approached a red light at the intersection of Harding Boulevard and Plank Road, he observed a white, two-door Ford Ranger traveling northbound a short distance ahead of him. At the red light, the Ranger was in between lanes and left-of-center. When the light changed, the Ranger proceeded to travel north, but veered into an oncoming vehicle's lane of travel, causing that vehicle to pull onto the shoulder. The Ranger continued driving north and "caught up with another vehicle." It then started driving right of center, causing that vehicle to pull off to the side of the road. Detective Sanders turned on his lights and pulled the Ranger over. The driver of the Ranger, the defendant, exited the vehicle, appeared "kind of wobbly," and spoke with "a little slurred speech." After Detective Sanders stopped the vehicle, he called the sheriff's department dispatcher and requested that a unit be dispatched. While he was on the phone with the dispatcher, the defendant approached Detective Sanders. Detective Sanders told the defendant that the next time the defendant moved, he was going to be "on the ground." The defendant pushed Detective Sanders and attempted to head back toward Plank Road, but fell down. As Detective Sanders went to grab the defendant, he turned onto his back and began to kick Detective Sanders. Detective Sanders tried to detain the defendant and told him to stop resisting,

[2] Detective Sanders' duties with the fire department include investigating fires, assisting other agencies in fire investigations, and prosecuting arson throughout East Baton Rouge Parish. Detective Sanders is also a reserve officer for the Baton Rouge City Police Department.

but did not attempt to place the defendant into handcuffs. The defendant told Detective Sanders, "I'm not giving up until ... the police get here." When the sheriff's deputy arrived on the scene, the defendant threw his hands in the air. Detective Sanders prepared a voluntary statement after the incident, but did not participate in any other aspect of the investigation.

East Baton Rouge Parish Sheriff's Office Deputy John Roberts was dispatched to assist Detective Sanders. When he arrived at the scene, Deputy Roberts observed the defendant on the ground and Detective Sanders standing behind the defendant. He detained the defendant in his police unit. Because the defendant had an abrasion on his head and a scratch on one of his arms, Deputy Roberts called for emergency medical services ("EMS"), which arrived on the scene and treated the defendant. Deputy Roberts testified that the defendant spoke with slurred speech, had watery bloodshot eyes, and had a very strong odor of an alcoholic beverage emanating from his breath. Because Deputy Roberts was not certified to administer field sobriety tests, he contacted East Baton Rouge Parish Sheriff's Office Deputy Charles Scott Courrege. When Deputy Courrege arrived at the scene, only Deputy Roberts, the defendant, and EMS were there. Deputy Courrege performed the horizontal gaze nystagmus test on the defendant, and the defendant displayed nystagmus in both eyes. Deputy Roberts transported the defendant to the Baker Police Department. Upon arrival, Deputy Courrege administered more field sobriety tests, and the defendant displayed further clues of intoxication. Deputy Courrege determined that the defendant was "extremely impaired." The defendant refused to submit to the Intoxilyzer 5000 test. The defendant was subsequently placed under arrest for DWI.

MOTION TO SUPPRESS

In a counseled and pro se assignment of error, the defendant contends that this court erred in denying his motion to suppress. Specifically, he contends that Detective Sanders exceeded the scope of his authority when he pulled the defendant over and later "[took] him to the ground." The defendant argues that Detective Sanders had no knowledge or cause to believe that the defendant had committed any felony.

The Fourth Amendment to the United States Constitution and Article I, § 5, of the Louisiana Constitution protect individuals from unreasonable searches and seizure. Notably, a search or seizure by a private citizen, acting in his capacity as a private citizen, is not prohibited by the Fourth Amendment because the amendment only protects individuals against actions by government agents. See **Jacobsen**, 466 U.S. at 113, 104 S.Ct. at 1656 (the Fourth Amendment proscribes only governmental action -- it is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any government official). Louisiana Code of Criminal Procedure article 214 allows the arrest of a person by a private person when the person arrested has committed a felony, whether in or out of the presence of the person making the arrest. See **Jackson**, 584 So.2d at 268.

A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. La. Code Crim. P. art. 703A. The burden of proof is on the defendant to prove the ground of his motion. However, the State has the burden of proving the admissibility of a purported confession or statement by the defendant or of any evidence seized without a warrant. See La. Code Crim. P. art. 703D.

The State contends that because this issue was previously addressed by this court in a writ application, the "law of the case" doctrine precludes review of this issue on appeal. When an appellate court considers a question of admissibility of evidence in a supervisory writ application in advance of trial, the conclusions by the writ panel are not binding on the judges who later consider the case on appeal, at which time the issues may have been more clearly framed by the evidence adduced at trial. Nevertheless, judicial efficiency demands that this court accord great deference to its pretrial decisions on admissibility, unless it is apparent, in light of the subsequent trial record, that the determination was patently erroneous and produced an unjust result. Therefore, we are not precluded from reviewing the defendant's assigned error. **State v. Humphrey**, 412 So.2d 507, 523 (La. 1982) (on rehearing). Moreover, the defendant contends that

Sanders "mentioned alleged facts at trial that he never mentioned before" and that his trial testimony was inconsistent with that at the hearing on the motion to suppress.

The defendant's first motion to suppress alleged that his submission or refusal to submit to the Intoxilyzer 5000 test, his field sobriety testing and other observations by the arresting officers, and his responses to custodial interrogation should be excluded from trial because Detective Sanders was not inside the corporate limits of the City of Baton Rouge, and his seizure of the defendant was not authorized. A second and supplemental motion to suppress was filed by the defendant alleging that Detective Sanders "lacked authority to seize him for any offense for which he had probable cause or reasonable suspicion to do so at the time of the initial seizure."

After the hearing on the motions, the district court granted the defendant's motion to suppress and read its reasons for judgment in open court. The court's most pressing concern was Detective Sanders' "decision to give chase when the defendant attempted to flee after being told he was being detained," and stated, "[w]hile this court appreciates [Detective Sanders'] efforts to interfere with a potentially dangerous situation on the roadways, it cannot find that [Detective Sanders] legally detained the defendant." According to the court, Detective Sanders should have made an effort to ensure that the defendant could no longer operate the vehicle and then waited for officers to arrive on the scene to handle the incident. The court further found that Detective Sanders "blurred the lines between State actor and private citizen by pursuing the defendant, and detaining, and arresting." It found that there were significant differences in this case as opposed to the facts laid out in **State v. Lavergne**, 2008-0044 (La. App. 1 Cir. 5/2/08), 991 So.2d 86, writ denied, 2008-1459 (La. 2/20/09), 1 So.3d 494.

The State disagreed and, in its writ application to this court, argued that the facts of the instant case are analogous to **Lavergne.** In **Lavergne**, a volunteer firefighter from Texas was traveling on I-10 in Baton Rouge when he observed a vehicle driving erratically. The firefighter's passenger called the local police to report the reckless driving, while the firefighter engaged the sirens and strobe lights equipped on his personal vehicle and conducted a stop. The vehicle stopped, and after brief questioning by the firefighter,

the driver of the vehicle indicated that he needed to urinate. When the driver walked away to relieve himself, the firefighter removed the keys from the vehicle and did not return the keys until he observed the police nearby. A Louisiana State Trooper was dispatched to investigate the stop. Once the trooper arrived on the scene, the firefighter provided a written statement regarding his observations and left the scene. Following on-the-scene field sobriety tests, the driver was arrested and charged with DWI, third offense. **Lavergne**, 2008-0044 at 3, 991 So.2d at 88.

On appeal, the driver-defendant argued that the firefighter was acting under the color of State law when he activated his emergency lights and sirens and conducted the stop. The defendant asserted that since he reasonably believed that the firefighter was a law enforcement official, the firefighter's actions should be attributable to the State. The defendant further argued that the seizure of his person by the firefighter violated the Fourth Amendment of the United States Constitution. **Lavergne**, 2008-0044 at 3-4, 991 So.2d at 88-89.

This court first had to determine if there was government action, noting that although the Fourth Amendment is designed to protect against governmental intrusion, in certain situations, private citizens can be considered to have acted as agents of the government. Useful criteria in determining whether an individual was acting as a private party or as an instrument or agent of the government are: (1) whether the government knew of and acquiesced in the intrusive conduct; (2) whether the private party's purpose in conducting the search was to assist law enforcement agents or to further its own ends; (3) whether the private actor acted at the request of the government; and (4) whether the government offered the private actor a reward. **Lavergne**, 2008-0044 at 4-5, 991 So.2d at 89.

Applying the criteria noted above, this court rejected the defendant's argument that the firefighter was acting under color of State law when he stopped the defendant's vehicle. Specifically, this court noted there was no evidence that the firefighter acted under the instruction of law enforcement, the firefighter explained his motivation for his actions (concern for public safety), and the firefighter never spoke with or was directed by

law enforcement. This court found these factors supported the district court's conclusion that the firefighter acted as a private citizen and not as a government agent when he stopped the defendant's vehicle. The first governmental action occurred when the trooper arrived, questioned the defendant in connection with the citizen's report, and performed the field sobriety tests. This court ruled that absent any governmental action in connection with the initial stop, the Fourth Amendment did not apply. **Lavergne**, 2008-0044 at 5-6, 991 So.2d at 89-90.

The defendant in **Lavergne** also argued in his appeal that Article 214 did not give a private citizen the authority to conduct a stop and seizure for a suspected DWI offense. This court agreed with the State's argument that the erratic driving witnessed by the firefighter was sufficient to justify a stop for the felony offense of aggravated obstruction of a highway of commerce. The testimony at the suppression hearing reflected that the defendant's erratic driving caused drivers of other vehicles on the interstate to take evasive maneuvers to avoid him. This court ruled that the defendant did, in fact, commit a felony, which authorized the firefighter, a private person, to make an arrest for aggravated obstruction of a highway of commerce. See La. R.S. 14:96. It was further noted that the firefighter used only the force that was necessary to detain the defendant until the police arrived and to insure the safety of other drivers. **Lavergne**, 2008-0044 at 6-8, 991 So.2d at 90-91.

In the instant case, there are two separate seizures at issue: the stop of the defendant's vehicle and the seizure of the defendant after the stop. Despite the fact that Detective Sanders was an arson investigator and commissioned as a reserve officer, there is no indication that Detective Sanders was acting under color of State law when he stopped the defendant's vehicle. Specifically, there is no evidence that Detective Sanders acted under the instruction of law enforcement when he decided to stop the defendant's vehicle. Detective Sanders testified that he was not patrolling for drunk drivers on the night of the incident and did not receive a bonus for pulling over the defendant. According to Detective Sanders, he stopped the defendant's vehicle after observing him driving erratically, swerving, and causing two other vehicles to move over in the roadway

to avoid the defendant's vehicle. When asked what his motivation was for pulling the defendant over, Detective Sanders stated, "when I see something relative to helping someone or possibly stopping someone from hurting someone[,] I have a duty to act." Thus, he was concerned for the public and his own safety. Although Detective Sanders did contact the police, and he did speak with a dispatcher, his actions were not directed by law enforcement. Thus, Detective Sanders was acting as a private citizen when he stopped the defendant.

The next issue is Detective Sanders' detention of the defendant at the scene of the stop. Although Detective Sanders was on the phone with the dispatcher after the stop, he never received instructions from the dispatcher. In addition, Detective Sanders neither told the defendant that he was under arrest nor did he intend to arrest him, according to his testimony at trial. Although Detective Sanders stated at the hearing on the motion to suppress that he grabbed a set a handcuffs, at trial, he insisted, "I never tried or attempted to put him in handcuffs. I didn't even have handcuffs on my person at that point in time. They were actually inside of my door." Given those facts, Detective Sanders' decision to detain the defendant did not convert the stop to governmental action such that he was acting under color of state law.

Moreover, the defendant's erratic driving, which was witnessed by Detective Sanders, was sufficient to justify a stop for the felony offense of aggravated obstruction of a highway of commerce. In pertinent part, aggravated obstruction of a highway of commerce, "is the intentional or criminally negligent ... performance of any act, on any ... road, highway, thoroughfare ... wherein it is foreseeable that human life might be endangered." Whoever commits this offense shall be imprisoned, with or without hard labor, for not more than fifteen years. See La. R.S. 14:96 (prior to amendment by 2014 La. Acts No. 791, §7). Testimony at trial established that the defendant's erratic driving caused drivers of other vehicles on Plank Road to take evasive maneuvers to avoid colliding with him. Therefore, despite any suspicions of impairment, the testimony reflects that the defendant committed a felony, which authorized Detective Sanders, a private person, to arrest the defendant for aggravated obstruction of a highway of

commerce. Detective Sanders used the force necessary to keep the defendant out of the roadway until the police arrived.

Considering the foregoing, we adhere to our original conclusion on supervisory review that Detective Sanders was not acting under the color of State law when he stopped the defendant's vehicle, and the district court erred in granting the defendant's motion to suppress. Accordingly, the defendant's counseled and pro se assignments of error challenging the motion to suppress are without merit.

REVIEW FOR ERROR

In accordance with Louisiana Code of Criminal Procedure article 920(2), all appeals are reviewed for errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. **State v. Price**, 2005-2514, p. 18 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277. After a careful review of the record, we have discovered two sentencing errors.

Except as otherwise provided in La. R.S. 14:98E(4)(b), a person who is convicted of a fourth or subsequent DWI offense shall be imprisoned with or without hard labor for not less than ten years nor more than thirty years and shall be fined five thousand dollars. Two years of the sentence shall be imposed without the benefit of probation, parole, or suspension of sentence. See La. R.S. 14:98E(1)(a) (prior to amendment by 2014 La. Acts No. 385, §1).

Under the applicable version of Section 14:98E(4)(b):

> If the offender has previously received the benefit of suspension of sentence, probation, or parole as a fourth offender, after serving the mandatory sentence required by Subparagraph (E)(1)(a), no part of the remainder of the sentence may be imposed with benefit of suspension of sentence, probation, or parole, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

The defendant was sentenced to fifteen years at hard labor, with the first two years to be served without the benefit of probation, parole, or suspension of sentence. The two-year restriction on benefits under Section 14:98E(1)(a) is unavailable to defendants who have previously received the benefit of suspension of sentence,

probation, or parole as fourth offenders. The defendant previously received such benefits under 23rd JDC docket number 13939, for his April 28, 2003, DWI, fourth offense, conviction. Thus, because the defendant previously received the benefit of suspension of sentence, probation, or parole as a fourth offender, his entire sentence should have been imposed without the benefit of suspension of sentence, probation, or parole. Additionally, the sentencing transcript and minutes indicate that the district court failed to impose the mandatory fine. Accordingly, the defendant's sentence, which restricted the benefit of probation, parole, and suspension of sentence for only two years and did not include the fine, is illegally lenient. However, since the sentence is not inherently prejudicial to the defendant, and neither the State nor the defendant has raised these sentencing issues on appeal, we decline to correct this error. See **Price**, 2005-2514 at 18-22, 952 So.2d at 123-125.

CONVICTION AND SENTENCE AFFIRMED.

STATE OF LOUISIANA

VERSUS

MICHAEL DEWAYNE PRATT

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 KA 0151

CRAIN, J., dissenting in part.

I agree that the defendant's conviction should be affirmed. However, I dissent from that portion of the majority opinion affirming the defendant's sentence.

The trial court's failure to impose the entirety of the defendant's sentence without the benefit of parole, probation, or suspension of sentence is not a "patent error" that this court can decline to correct under the authority of *State v. Price*, 05-2514 (La. App. 1 Cir. 12/28/06), 952 So. 2d 112, 123 (*en banc*), *writ denied*, 07-0130 (La. 2/22/08), 976 So. 2d 1277. The restrictions are statutorily deemed to be part of the defendant's sentence pursuant to the self-activating provisions of Louisiana Revised Statute 15:301.1. *See State v. Williams*, 00-1725 (La. 11/28/01), 800 So. 2d 790, 799. The majority's reliance on *Price* to decline to correct the error is incorrect and may mislead the defendant into believing that his sentence is with benefits, which it is not. *See State v. Carvin*, 14-1017 (La. App. 1 Cir. 1/15/15), 2015WL224063; *State v. Ponce*, 10-1446 (La. App. 1 Cir. 3/25/11), 2011WL2520184, *writ denied*, 11-0833 (La. 11/14/11), 75 So. 3d 938 (where this court noted the same sentencing error and stated that the sentence was deemed to contain the provisions of the DWI sentencing statute that required that no part of the sentence may be imposed with benefits).

Even with the restriction on benefits, the defendant's sentence is illegally lenient because it does not include the $5000.00 fine mandated by Louisiana Revised Statute 14:98E(4)(b). The defendant has no constitutional or statutory

right to an illegally lenient sentence. *See State v. Williams*, 00-1725 (La. 11/28/01), 800 So. 2d 790, 797; *see also State v. Kondylis*, 14-0196 (La. 10/3/14), 149 So. 3d 1210, 1211. Unless the sentence is imposed pursuant to Louisiana Code of Criminal Procedure statute 890.1 or a downward departure is mandated under *State v. Dorthey,* 623 So. 2d 1276 (La. 1993), I believe that allowing an illegally lenient sentence to remain uncorrected violates the Louisiana constitution and statutory law, and results in the judicial usurpation of legislative authority. *See State v. Odom,* 12-1163 (La. App. 1 Cir. 3/22/13), 2013WL1189404 (Crain dissenting); *State v. Hollingsworth*, 12-1035 (La. App. 1 Cir. 2/15/13), 2013WL595926 (Crain dissenting).[1]

The Louisiana Supreme Court has stated that it will not ignore patent errors favorable to a defendant when the State does not complain about them. *See State v. Campbell*, 03-3035 (La. 7/6/04), 877 So. 2d 112, 116. Recently, in *State v. Kondylis*, 14-0196 (La. 10/3/14), 149 So. 3d 1210, a case in which the State did not object to an illegally lenient sentence that was not prejudicial to the defendant, the supreme court remanded the matter to the trial court, ordering that it impose the statutorily mandated life sentence unless it determined that the sentence had been imposed pursuant to Louisiana Code of Criminal Procedure article 890.1. I would correct the sentence by imposing the mandatory fine. *Cf. State v. Gregoire*, 13-0751 (La. App. 1 Cir. 3/21/14), 143 So. 3d 503, 510, *writ denied*, 14-0686 (La. 10/31/14); *State v. Passow*, 13-0341 (La. App. 1 Cir. 11/1/13), 136 So. 3d 12, 15.

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[1] The majority does not find that the trial court made a determination that a downward departure from the mandated minimum sentence was warranted pursuant to *Dorthey*, and I find no basis for such a departure on the facts presented. Nor does the record indicate that the fine was omitted from the sentence pursuant to Article 890.1.

STATE OF LOUISIANA

COURT OF APPEAL

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STATE OF LOUISIANA

VERSUS

MICHAEL DEWAYNE PRATT

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TMH

HIGGINBOTHAM, J. dissenting in part, and concurring in part.

In my opinion, the trial court correctly granted Mr. Pratt's pre-trial motion to suppress, and the state's writ application filed with this court should have been denied.

At the conclusion of the hearing on the motion to suppress, the trial court gave extensive reasons for granting the motion. The trial court correctly found that Mr. Sanders, referred to throughout the trial as Detective Sanders, blurred the lines between state actor and private citizen by pursuing the defendant and detaining him. The trial court pointed out that there were inconsistencies in the testimony of Mr. Sanders when compared to his report about when he actually called dispatch.

Unlike the volunteer firefighter in **State v. Lavergne**, who simply made the stop, removed the driver's keys from the vehicle when the driver walked away, and waited for officers to arrive, Mr. Sanders gave chase to Mr. Pratt when he attempted to flee and "took [Mr. Pratt] down." Additionally, when Mr. Pratt resisted, Mr. Sanders continued to detain him. Mr. Sanders' actions went significantly further than the volunteer firefighter in **Lavergne**. See **State v.**

Lavergne, 08-0044 (La. App. 1st Cir. 5/2/08), 991 So.2d 86, writ denied, 08-1459 (La. 2/20/09), 1 So.3d 494.

Considering the trial court's great discretion in granting the motion to suppress, I would have upheld its granting of the motion to suppress. For these reasons, I respectfully dissent from the majority opinion regarding Mr. Pratt's conviction.

Because the majority opinion affirms Mr. Pratt's conviction, I concur with the portion of the opinion declining to correct the illegally lenient sentence and affirming Mr. Pratt's sentence.