

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0592

STATE OF LOUISIANA

VERSUS

ARTHUR D. TAYLOR, JR.

Judgment Rendered: November 9, 2011

On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 477374

The Honorable William J. Crain, Judge Presiding

Jerry L. Fontenot
Covington, La.

Counsel for Defendant/Appellant,
Arthur D. Taylor, Jr.

Walter P. Reed
District Attorney
Covington, La.
Kathryn W. Landry
Special Appeals Counsel
Baton Rouge, La.

Counsel for Appellee,
State of Louisiana

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

BJC
RH
TMH

CARTER, C.J.

The defendant, Arthur D. Taylor, Jr., was charged by bill of information with possession of cocaine, a violation of Louisiana Revised Statutes Annotated section 40:967C. The defendant filed a motion to suppress the evidence. Following a hearing on the matter, the motion to suppress was denied. The defendant pled not guilty and, following a jury trial, was found guilty as charged. The defendant was sentenced to five years of imprisonment at hard labor. The State filed a multiple offender bill of information. Following a hearing on the matter, the defendant was adjudicated a fourth-felony habitual offender. The trial court vacated the previously imposed five-year sentence and resentenced the defendant to twenty-five years of imprisonment at hard labor without benefit of probation or suspension of sentence. The defendant now appeals, designating four assignments of error. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On the evening of September 2, 2009, Detective John Cole, with the Slidell Police Department, was contacted by a confidential informant, who told Detective Cole that he had arranged to buy crack cocaine from the defendant at a Texaco gas station in Slidell. Detective Cole notified his supervisor, Sergeant Fred Ohler. Sergeant Ohler was closer to the defendant's location, so he followed the defendant in an unmarked unit. Sergeant Ohler observed the defendant pick up a passenger and then notified Patrol Officers Michael Giardina and Brad Hoopes, both with the Slidell Police Department, that a blue truck driven by the defendant was heading in their direction. Officer Giardina was riding with Officer Hoopes, who was Officer Giardina's field training officer.

When the defendant passed Officers Hoopes and Giardina, they observed that the defendant's license plate was not visible and, accordingly, effected a traffic stop. Detective Cole was directly behind Officers Hoopes and Giardina. Sergeant Ohler testified at trial that as he arrived at the scene moments later, he observed Detective Cole and Officer Hoopes standing by the driver's side of the defendant's truck. Sergeant Ohler approached the passenger's side. Sergeant Ohler testified that after the defendant exited the truck, Detective Cole and Officer Hoopes had the defendant open his mouth. Detective Cole testified at trial that as he approached the vehicle, he observed the defendant through the driver's window chewing very fast. When the defendant exited the truck, Detective Cole asked the defendant to open his mouth. The defendant complied, and Detective Cole observed on the defendant's tongue a slimy white substance that looked like crack cocaine.

After the passenger got out of the vehicle, Detective Cole shined a flashlight in the truck cab, and he and Sergeant Ohler observed a torn cellophane bag on the front seat near where the driver's right front pants pocket would have been. The bag contained smaller pieces of what appeared to be crack cocaine. Detective Cole retrieved the bag, which held .01 grams of cocaine.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends that no probable cause existed for the stop and that no testimony was provided to demonstrate the reliability of the confidential informant.

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, 280-81. However, a trial court's legal conclusions 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 Fourth Amendment to the federal constitution and Article I, Section 5 of the state constitution protect people against unreasonable searches and seizures. However, the right of law enforcement officers to stop and interrogate one reasonably suspected of criminal conduct is recognized by Louisiana Code of Criminal Procedure Annotated article 215.1, as well as by both state and federal jurisprudence. *State v. Belton*, 441 So. 2d 1195, 1198 (La. 1983), *cert. denied*, 466 U.S. 953 (1984). Reasonable cause for an investigatory detention is something less than probable cause and must be determined under the 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. 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. *Belton*, 441 So. 2d at 1198.

At the motion to suppress hearing, in lieu of testimony, defense counsel stipulated that if the police officers were called to testify, they would testify according to the reports that were submitted into evidence. The reports consisted of four exhibits: a probable cause determination by Detective Cole that indicates the defendant's vehicle was stopped for failure to signal a left turn; a supplemental arrest narrative that indicates the defendant's vehicle was stopped for a burned out right brake light; a supplemental narrative by Detective Cole that indicates Officers

Hoopes and Giardina conducted a traffic stop on the defendant's vehicle for not having a visible license plate; and a booking information sheet that indicates the defendant was booked for possession of a schedule II controlled dangerous substance, expired driver's license, and suspended driver's license. Only the defendant testified at the motion to suppress hearing.

In his brief, the defendant questions whether he was stopped for a legitimate traffic offense, since three different traffic violations were listed in the exhibits at the motion to suppress hearing. The defendant asserts that although he stipulated that the officers would testify according to the reports, no stipulation was made as to the credibility of the officers or the reliability of the testimony. In determining whether the ruling on the defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. *State v. Chopin*, 372 So. 2d 1222, 1223 n.2 (La. 1979). We may consider all pertinent evidence given at the trial of the case. *Chopin*, 372 So. 2d at 1223 n.2. At trial, Detective Cole made clear on cross-examination that the defendant was stopped for more than one traffic violation and that he (Detective Cole) and Sergeant Ohler communicated several traffic violations via radio to the marked police unit that was near the intersection when the defendant was stopped. Any officer observing the failure to signal a left turn, the burned out right brake light, or the failure to maintain a visible license plate had probable cause to believe a traffic violation or violations had occurred. Accordingly, any of these traffic offenses provided an objectively reasonable basis for stopping the defendant's vehicle. *See* La. Code Crim. Proc. Ann. art. 215.1; *State v. Waters*, 00-0356 (La. 3/12/01), 780 So. 2d 1053, 1056 (*per curiam*). Thus, when asked for which of these violations the defendant was stopped, Detective Cole responded, "All of the above."

The defendant suggests in his brief that the credibility of the officers is at issue because they did not list the same traffic offense as the reason the defendant was stopped. However, any suggestion by the defendant as to the real motives of the officers for stopping him is irrelevant. The United States Supreme Court in *Whren v. United States*, 517 U.S. 806, 812-13 (1996), addressed the issue of the subjective intent of law enforcement officers when making a stop or arrest:

Not only have we never held, outside the context of inventory search or administrative inspection . . . that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary. In *United States v. Villamonte-Marquez*, 462 U.S. 579, 584, n.3, 103 S. Ct. 2573, 2577, n.3, 77 L. Ed. 2d 22 (1983), we . . . flatly dismissed the idea that an ulterior motive might serve to strip the agents of their legal justification. In *United States v. Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973), we held that a traffic-violation arrest (of the sort here) would not be rendered invalid by the fact that it was "a mere pretext for a narcotics search," *id.*, at 221, n.1, 94 S. Ct., at 470, n. 1[.] . . . And in *Scott v. United States*, 436 U.S. 128, 138, 98 S. Ct. 1717, 1723, 56 L. Ed. 2d 168 (1978), . . . we said that "[s]ubjective intent alone . . . does not make otherwise lawful conduct illegal or unconstitutional." We described *Robinson* as having established that "the fact that the officer does not have the state of mind which is hypothesized by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." 436 U.S., at 136, 138, 98 S. Ct., at 1723. . . . Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.

The defendant further asserts in his brief that there was no testimony to establish the reliability of the confidential informant. This assertion is erroneous. An informant's tip can provide a police officer with reasonable cause to support a *Terry*¹ stop. *Adams v. Williams*, 407 U.S. 143, 147 (1972); *State v. Thomas*, 583 So. 2d 895, 898 (La. App. 1st Cir. 1991). In *Illinois v. Gates*, 462 U.S. 213, 230-31 (1983), a case that dealt with an anonymous tip in the probable cause context, the United States Supreme Court abandoned an inflexible application of the "two-

¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

pronged” test of *Aguilar v. Texas*, 378 U.S. 108 (1964) and *Spinelli v. United States*, 393 U.S. 410 (1969) in favor of a “totality of the circumstances” analysis in determining whether an informant’s tip establishes probable cause. The *Gates* court held that the informant’s “basis of knowledge” and his “veracity” or “reliability,” factors that had been critical under *Aguilar* and *Spinelli*, remained highly relevant in determining the value of the informant’s report. *Alabama v. White*, 496 U.S. 325, 328 (1990) (dealing with an anonymous tip in the reasonable suspicion context). The “basis of knowledge” and “veracity” or “reliability” of an informant are factors that also are relevant in the reasonable suspicion context; however, in applying these factors in the reasonable suspicion context, allowance must be made for the lesser showing required to justify an investigatory stop. *White*, 496 U.S. at 328-29; *Thomas*, 583 So. 2d at 898-99.

In *White*, 496 U.S. at 330-31, the Court stated:

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. *Adams v. Williams*, *supra*, demonstrates as much. We there assumed that the unverified tip from the known informant might not have been reliable enough to establish probable cause, but nevertheless found it sufficiently reliable to justify a *Terry* stop. 407 U.S., at 147, 92 S. Ct., at 1923-24. Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality—are considered in the “totality of the circumstances—the whole picture,” *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621 (1981), that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable. The *Gates* Court applied its totality-of-the-circumstances approach in this manner, taking into account the facts known to the officers from personal observation, and giving the anonymous tip the weight it deserved in light of its indicia of reliability as established through independent police work. The same approach applies in the

reasonable-suspicion context, the only difference being the level of suspicion that must be established.

In the instant matter, the information provided to Detective Cole was furnished by a confidential informant whom Detective Cole had known for several months. Detective Cole testified at trial that he had worked multiple cases with this confidential informant, and the cases led to multiple arrests. According to Detective Cole, the confidential informant knew the defendant was distributing illegal narcotics in the Slidell area. The confidential informant provided Detective Cole with information regarding the defendant's name; that the defendant would be traveling from Daney Street and 6th Street, the general area of Lincoln Park Subdivision; the type of vehicle the defendant would be in, namely, an older model blue pickup truck without a license plate; and that the defendant would be traveling to the Texaco gas station located on Fremaux Avenue and 7th Street to sell crack cocaine. All of this information provided by the confidential informant was corroborated by independent police observation. Police officers observed the defendant driving a blue pickup without a license plate in the area of Lincoln Park subdivision. When the defendant turned onto 6th Street, about two blocks from the Texaco gas station, he was stopped by the police. As Detective Cole approached the defendant's truck, he saw the defendant quickly chewing suspected crack cocaine. Detective Cole then observed a cellophane bag in plain view on the defendant's truck seat, which appeared to have crack cocaine residue inside.

We find that the information given to Detective Cole by a confidential informant of proven reliability carried a relatively high degree of reliability. Detective Cole testified at trial that the defendant was stopped only 15 to 25 minutes after the confidential informant's initial call. Considering the quality and quantity of the information known by the police and the corroboration of that

information in quickly unfolding circumstances, we find that there was reasonable suspicion to stop the defendant.

The stop and subsequent search of the defendant's truck were lawful. Accordingly, we find no legal error or abuse of discretion in the trial court's denial of the defendant's motion to suppress the evidence.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues the trial court erred in adjudicating him a fourth-felony habitual offender. Specifically, the defendant contends the State did not prove he had any prior convictions.

The predicate convictions listed in the multiple offender bill of information were possession with intent to distribute cocaine (docket number 280401); distribution of counterfeit narcotics (docket number 299158); and possession of cocaine (docket number 346890). All three convictions were from the 22nd Judicial District Court, St. Tammany Parish.

To prove a defendant a habitual offender, the State must prove, among other things, that the defendant was convicted of a prior felony. *Prima facie* proof of a prior felony conviction may be established by compliance with Louisiana Revised Statutes Annotated section 15:529.1F. However, Section 15:529.1F is not the exclusive method of proving a prior felony conviction; any other competent evidence may be used to establish such proof. *State v. Moten*, 510 So. 2d 55, 63 (La. App. 1st Cir.), *writ denied*, 514 So. 2d 126 (La. 1987).

In order to obtain a multiple offender conviction, the State is required to establish both the prior felony conviction and that the defendant is the same person convicted of that felony. *State v. Payton*, 00-2899 (La. 3/15/02), 810 So. 2d 1127,

1130. In attempting to do so, the State may present: (1) testimony from witnesses; (2) expert opinion regarding the fingerprints of the defendant when compared with those in the prior record; (3) photographs in the duly authenticated record; or (4) evidence of identical driver's license number, sex, race, and date of birth. *Payton*, 810 So. 2d at 1130-31. The Habitual Offender Act does not require the State to use a specific type of evidence, such as fingerprints, to carry its burden at a habitual offender hearing. *Payton*, 810 So. 2d at 1132. Prior convictions may be proved by any competent evidence. *Payton*, 810 So. 2d at 1132.

At the habitual offender hearing, Deputy Lloyd Morse, an expert in fingerprint analysis with the St. Tammany Parish Sheriff's Office crime lab division, was the only witness to testify for the State. Deputy Morse testified that the defendant's fingerprints, which were taken at the habitual offender hearing, matched the fingerprints found on each of the three bills of information of the defendant's predicate convictions. In his brief, the defendant asserts that the only evidence introduced at the habitual offender hearing were the three bills of information, the defendant's fingerprint card, and a single page of an appeal record. According to the defendant, there was no testimony or evidence submitted at the habitual offender hearing as to whether he was ever convicted and, if so, whether by trial or by plea.

The defendant's assertion is erroneous. At the conclusion of Deputy Morse's testimony, the prosecutor introduced into evidence the defendant's fingerprint card (S1) and "the entire clerk's file" as State's Exhibits 2 through 5. The trial court admitted the State's documents into evidence and informed the parties that it was going to take the multiple offender ruling under advisement and review the record.

State's Exhibit 2 consisted of a bill of information charging "Arthur Dewitt Taylor Jr." with possession with intent to distribute cocaine on October 29, 1997, in St. Tammany Parish (Docket No. 280401), the defendant's fingerprints, the minutes of the guilty plea, and the transcript of the guilty plea hearing on September 14, 1998, where the defendant had counsel and was properly *Boykinized*.² State's Exhibit 3 consisted of a bill of information charging "Arthur Taylor" with distribution of an imitation or counterfeit controlled dangerous substance (cocaine) on December 4, 1998, in St. Tammany Parish (Docket No. 299158), the defendant's fingerprints, the minutes of the guilty plea, and the transcript of the guilty plea hearing on January 4, 2000, where the defendant had counsel and was properly *Boykinized*. State's Exhibit 4 consisted of a bill of information charging "Arthur Taylor" with possession of cocaine on December 5, 2001, in St. Tammany Parish (Docket No. 346890), the defendant's fingerprints, the minutes of the guilty plea, a guilty plea waiver of rights form initialed, dated, and signed by the defendant on September 15, 2003, and the transcript of the guilty plea hearing on September 15, 2003, where the defendant had counsel and was properly *Boykinized*.

There was a discrepancy regarding the defendant's social security number on the bill of information charging the defendant with distribution of an imitation or counterfeit controlled dangerous substance (Docket No. 299158) and the bill of information charging the defendant with possession of cocaine (Docket No. 346890).³ At the habitual offender hearing, the defendant testified that the social security number on the latter bill of information (Docket No. 346890) is not his.

² See *Boykin v. Alabama*, 395 U.S. 238 (1969).

³ There is no social security number listed on the third bill of information.

The defendant further testified that none of the fingerprints on the bills of information are his.

While the social security numbers do not match on two of the bills of information, we do not find that such a discrepancy is sufficient to support the claim that the person identified in each of the three predicate convictions is not the same person as the defendant. Each of the three exhibits submitted by the State contained fingerprints that an expert in fingerprint analysis testified matched the defendant's fingerprints taken at the habitual offender hearing; the three bills of information had the defendant's correct date of birth (August 2, 1970); and the minutes, record pleadings, and *Boykin* hearing transcripts in State's Exhibits 2 and 4 identified the defendant by his full name, "Arthur Dewitt Taylor Jr." In the record pleadings of State's Exhibit 3, the defendant is identified by his full name, "Arthur Dewitt Taylor Jr." In the *Boykin* hearing of State's Exhibit 3, the defendant is identified as "Arthur Taylor." In the minutes of State's Exhibit 3, the defendant is identified as "Arthur Dewitt Jr Taylor."

The evidence introduced by the State at the habitual offender hearing was sufficient to establish that the defendant was the same person convicted of the three prior felonies listed in the multiple offender bill of information. Accordingly, this assignment of error is without merit.

ASSIGNMENTS OF ERROR NOS. 3 AND 4

In these assignments of error together, the defendant argues that the trial court erred by denying his motions for specific discovery and that the trial court erred in denying his motion for a continuance, thereby depriving him of a fair trial.

Regarding the discovery issue, the defendant was provided with open file discovery; however, the defendant claims he was entitled to know the identity of

the confidential informant. As a general rule, the State is not required to divulge the name of a confidential informant to the accused. La. Code Evid. Ann. art. 514. However, an exception is made when the confidential informant was a participant in an illegal drug transaction. *State v. Buffington*, 452 So. 2d 1313, 1313 (La. App. 1st Cir. 1984). The burden is on the defendant to show exceptional circumstances warranting disclosure of the name of a confidential informant, and the trial court is afforded great discretion in making this determination. *State v. Clark*, 05-61 (La. App. 5 Cir. 6/28/05), 909 So. 2d 1007, 1015, *writ denied*, 05-2119 (La. 3/17/06), 925 So. 2d 538. The confidential informant in the instant matter was in phone contact with the defendant; however, he did not participate in a drug transaction with the defendant because no drug transaction ever took place. The defendant was stopped in his truck before the exchange of any drugs or money. Accordingly, since the confidential informant's contact with the defendant did not constitute a drug transaction, the participant exception is inapplicable, and the State was not required to divulge the name of the confidential informant.

Defense counsel also moved for a continuance at the pretrial hearing because one of the police officers involved in the defendant's stop was out of the country on military leave and would not be able to testify at trial. Defense counsel asserted that this unavailable police officer was a necessary and indispensable witness because he made the stop and he saw the defendant chewing something. The prosecutor informed the trial court that four police officers were involved in the stop and that he was ready for trial with the witnesses he had. The trial court denied the motion to continue.

The decision whether to grant or refuse a motion for a continuance rests within the sound discretion of the trial judge, and a reviewing court will not disturb

such a determination absent a clear abuse of discretion. La. Code Crim. Proc. Ann. art. 712; *State v. Strickland*, 94-0025 (La. 11/1/96), 683 So. 2d 218, 229. A motion for a continuance based upon the absence of a witness must state facts to which the absent witness is expected to testify, showing the materiality of the testimony and the necessity for the presence of the witness at the trial. La. Code Crim. Proc. Ann. art. 709(1). At the pretrial hearing, defense counsel failed to show the materiality of the unavailable officer's testimony, as well as the necessity of this officer's presence at trial. The unavailable witness was the State's witness, and it was the prosecutor who felt he could prove his case without this witness. Ironically, the unavailable witness ostensibly would have testified that he saw the defendant chewing what was thought to be crack cocaine. How this was a necessary witness for the defense is unclear. As the trial court opined, "I'm trying to figure out why you want the guy who apparently says he's going to testify that he chewed up the drugs."

The defendant has made no showing that the unavailable officer's presence at trial was a necessity. Accordingly, the trial court did not abuse its discretion in denying the motion for continuance.

These assignments of error are without merit.

CONCLUSION

Finding no merit in the defendant's assignments of error, we affirm the conviction, habitual offender adjudication and sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.