

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

NUMBER 2011 KA 0294

STATE OF LOUISIANA  
VERSUS  
CARLOS G. MONTANO

Judgment Rendered: September 14, 2011

\*\*\*\*\*

Appealed from the  
Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany, Louisiana  
Trial Court Number 480,956

Honorable Reginald T. Badeaux, III, Judge

\*\*\*\*\*

Walter P. Reed, District Attorney  
Covington, LA  
and  
Kathryn W. Landry  
Baton Rouge, LA

Attorneys for  
State – Appellee

Mary E. Roper  
Baton Rouge, LA  
and  
Juan C. Labadie  
Anthony J. Angelette, Jr.  
Gretna, LA

Attorneys for  
Defendant – Appellant  
Carlos G. Montano

\*\*\*\*\*

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Carlos G. Montano, was charged by bill of information with possession of four hundred grams or more of cocaine, a violation of La. R.S. 40:967(F)(1)(c). The defendant pled not guilty. The defendant filed a motion to suppress the evidence and, following a hearing on the matter, the motion was denied. Thereafter, the defendant withdrew his prior plea of not guilty and, at a **Boykin** hearing, entered a **Crosby** plea of guilty to the charge, reserving his right to challenge the trial court's ruling on the motion to suppress. See State v. Crosby, 338 So.2d 584 (La. 1976). The defendant was sentenced to fifteen years at hard labor without benefit of probation, parole, or suspension of sentence. The trial court imposed a fine of \$250,000.00, then suspended the fine due to the defendant's poverty. The defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

#### FACTS

On November 14, 2009, at about 1:30 a.m., Louisiana State Trooper Timothy Mannino was patrolling the I-12 eastbound in St. Tammany Parish in a marked unit when he observed the defendant in a Dodge Journey cross the center line several times. Based on improper lane usage, Trooper Mannino effected a traffic stop. The defendant, who was driving alone in a rental car, was from Columbia, South America, and had been in the United States for six years. He spoke both Spanish and English and could read Spanish.

Trooper Mannino requested the defendant's driver's license and asked him where he was going. The defendant said he was driving from Texas to New York to visit his parents. Trooper Mannino noticed that the defendant was very nervous, his voice was trembling, and his hands were shaking. Trooper Mannino asked the defendant if he could search the vehicle. The defendant gave the trooper both oral and written consent to search. The top part of the consent to search form was

written in English, and the bottom part of the form was written in Spanish. Trooper Mannino filled out both parts of the form, and the defendant signed the bottom part that was in Spanish. Trooper Mannino observed a suitcase in the cargo area of the vehicle. The trooper opened the suitcase and found three bags of cocaine in black packaging. The gross weight of the three bags of cocaine was 3,322.25 grams.

### **ASSIGNMENT OF ERROR NUMBER ONE**

In his first assignment of error, the defendant argues the trial court erred in denying his motion to suppress. Specifically, the defendant contends he did not violate any traffic laws and, therefore, Trooper Mannino did not have reasonable suspicion to stop him.

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, p. 11 (La. 5/22/95), 655 So.2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. **State v. Hunt**, 2009-1589, p. 6 (La. 12/1/09), 25 So.3d 746, 751.

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect individuals 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 La. C.Cr.P. art. 215.1, as well as by both state and federal jurisprudence. Reasonable suspicion 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. The right to make an investigatory stop and question the particular individual detained must be based

upon reasonable suspicion 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).

At the motion to suppress hearing, Trooper Mannino testified that he stopped the defendant because he observed him cross the center line several times. Trooper Mannino issued the defendant a traffic citation for improper lane usage pursuant to La. R.S. 32:79. Louisiana Revised Statutes 32:79(1) provides that a “vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.” In his brief, the defendant asserts that crossing the center line “in and of itself cannot constitute reasonable suspicion to conduct a traffic stop.” According to the defendant, La. R.S. 32:79 does not proscribe the act of crossing the center line, but rather “doing so without first ascertaining that it is safe to do so.”

We do not agree. The defendant’s crossing the line several times provided Trooper Mannino with sufficient probable cause to stop the defendant. As noted by Trooper Mannino, the defendant failed to maintain his lane of travel. This manner of driving is inherently unsafe. At 1:30 a.m., the defendant could have been crossing the center line for a myriad of reasons. As Trooper Mannino testified, aside from the *per se* violation of La. R.S. 32:79, he also stopped the defendant to see if he was intoxicated, too tired to drive, or needed medical attention. Based on these considerations, Trooper Mannino had probable cause to stop the defendant for a traffic violation. Accordingly, Trooper Mannino had an objectively reasonable basis for stopping the defendant’s vehicle. See La. R.S. 32:79; **State v. Waters**, 2000-0356 (La. 3/12/01), 780 So.2d 1053 (per curiam); see also La. C.Cr.P. art. 215.1.

This assignment of error is without merit.

## ASSIGNMENT OF ERROR NUMBER TWO

In his second assignment of error, the defendant argues that the trial court committed legal error in denying this motion to suppress because Trooper Mannino detained him longer than was reasonably necessary to complete the investigation of the violation and to issue a citation.

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.”

If an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop. **United States v. Sharpe**, 470 U.S. 675, 685, 105 S.Ct. 1568, 1575, 84 L.Ed.2d 605 (1985). An extensive detention can invalidate consent to search even after a valid traffic stop. See State v. Bunnell, 517 So.2d 439, 441-42 (La. App. 1<sup>st</sup> Cir. 1987). 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 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. **Sharpe**, 470 U.S. at 686, 105 S.Ct. at 1575.

Trooper Mannino testified that when he stopped the defendant and initially approached him, he advised the defendant why he stopped him and asked for his driver's license. As the defendant reached for his license, Trooper Mannino

observed that the defendant's hands were shaking. When they spoke, the defendant's voice was trembling. Trooper Mannino testified that the defendant "showed extreme signs of nervousness." According to Trooper Mannino, the defendant's nervousness was more unusual than other normal traffic stops he had had. Trooper Mannino then questioned the defendant about where he was coming from and going to. The defendant told him he was driving from Texas to New York to see his parents. The defendant was driving a rental car. He was stopped by Trooper Mannino early Saturday morning. Trooper Mannino reviewed the rental car agreement, and discovered the rental car had to be returned that weekend. As such, Trooper Mannino believed the defendant would have had only 24 hours to stay in New York before having to leave to return the rental car. Trooper Mannino felt that four days of driving for a one-day visit was not a cost-effective trip. Accordingly, he became suspicious of the defendant's story. Trooper Mannino then obtained oral and written consent from the defendant to search the vehicle.

Given the lawfulness of the initial stop, the reasonableness of the escalating encounter between the defendant and Trooper Mannino hinged on whether the actions undertaken by Trooper Mannino following the stop were reasonably responsive to the circumstances justifying the stop in the first place, as augmented by information gleaned by Trooper Mannino during the stop. See State v. Miller, 2000-1657, p. 3 (La. 10/26/01), 798 So.2d 947, 949-50 (per curiam). The suspicious nature of the defendant's trip, coupled with the defendant's extreme nervousness, trembling voice, and shaking hands, led to a shift in Trooper Mannino's focus that was neither unusual nor impermissible. See Miller, 2000-1657 at p. 4, 798 So.2d at 950. The traffic stop occurred at about 1:30 a.m. The defendant signed the consent to search form at about 1:45 a.m. Thus, only fifteen minutes after the initial stop, the defendant granted consent to search the vehicle.

During this brief time, Trooper Mannino had the right to conduct a routine license check and to engage respondent in conversation as he did so. See State v. Lopez, 2000-0562, p. 3 (La. 10/30/00), 772 So.2d 90, 92-93 (per curiam). Trooper Mannino diligently pursued his investigation, and the relatively brief duration of the traffic stop and consensual search was reasonable under the Fourth Amendment. See Miller, 2000-1657 at pp. 3-5, 798 So.2d at 949-51 (where a fifty-three-minute investigatory stop was found to be reasonable). Accordingly, we find no merit to the defendant's argument that he was unlawfully detained.

Regarding the search of the vehicle, the defendant, as noted, gave the trooper both oral and written consent to search the vehicle. Trooper Mannino did not need any degree of reasonable suspicion to ask for, and receive, the defendant's consent to search the vehicle. See State v. Strange, 2004-0273, p. 6 (La. 5/14/04), 876 So.2d 39, 42 (per curiam). A search that is conducted pursuant to consent is one of the specifically established exceptions to the requirements of both a warrant and probable cause. The validity of such consent is dependent upon it having been given voluntarily, free of duress or coercion either express or implied. See State v. Montgomery, 432 So.2d 340, 343 (La. App. 1<sup>st</sup> Cir. 1983); see also State v. Tennant, 352 So.2d 629, 633 (La. 1977), cert. denied, 435 U.S. 945, 98 S.Ct. 1529, 55 L.Ed.2d 543 (1978). Oral consent is valid. State v. Ossey, 446 So.2d 280, 287 (La.), cert. denied, 469 U.S. 916, 105 S.Ct. 293, 83 L.Ed.2d 228 (1984). Our review of the recording of the traffic stop indicates the defendant's consent was neither forced nor coerced, and was clearly given voluntarily. Accordingly, the defendant's voluntary consent rendered the search and seizure of the cocaine constitutionally valid. See Montgomery, 432 So.2d at 343.

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

## **CONCLUSION**

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

**CONVICTION AND SENTENCE AFFIRMED.**