Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KP-572

STATE OF LOUISIANA

versus

SCOTTY LIRETTE, JR.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 24,920372, DIVISION "E"
HONORABLE LAUREN D. ROGERS, JUDGE PRESIDING

March 27, 2026

JUDE G. GRAVOIS

JUDGE

Panel composed of Judges Jude G. Gravois,
Scott U. Schlegel, and Timothy S. Marcel

CONVICTION AND SENTENCE AFFIRMED; WRIT DENIED

JGG
SUS
TSM

COUNSEL FOR DEFENDANT/RELATOR,
SCOTTY LIRETTE, JR.
Atoundra P. Lawson

GRAVOIS, J.

By this writ application, defendant/relator, Scotty Lirette, Jr., seeks supervisory review of his misdemeanor conviction for driving while intoxicated, second offense. For the following reasons, on the showing made, we affirm defendant's conviction and sentence and deny this writ application.

FACTS AND PROCEDURAL HISTORY

On June 30, 2024, at around 3:00 p.m., defendant/relator Scotty Lirette arrived at the home he shared in Destrehan with his girlfriend, Ms. Jade Berteau, their children, and her father. Ms. Berteau called 9-1-1 on her cell phone, but hung up before the call went through. Officers responded to the call nonetheless, approximately six minutes after it was placed. They found Ms. Berteau and defendant at home; defendant was clearly intoxicated, and Ms. Berteau was angry with him. The officers separated the two of them, thinking a domestic incident might follow. Defendant failed to follow the instructions of one of the officers, whereupon he was restrained and placed in the police unit while officers spoke to Ms. Berteau, who said that defendant was drunk and had just driven home. Defendant also admitted being intoxicated. Home security footage was given to the officers by Ms. Berteau, after some initial problems with her remembering the password and being able to download it. The interactions of defendant and Ms. Berteau with the officers were captured on their bodycams, the footage of which was played at trial. Defendant was arrested and charged with driving while intoxicated, second offense.

On September 16, 2024, the St. Charles Parish District Attorney filed a bill of information charging defendant with driving while intoxicated (DWI), second offense, in violation of La. R.S. 14:98(A)(1).[1] According to the official record, defendant pled not guilty on September 18, 2024.

[1] In that bill of information, the State alleged that defendant previously pled guilty on July 12, 2016 to operating a motor vehicle while under the influence of alcoholic beverages with a blood alcohol level of .08 or above, a controlled

Before trial on September 17, 2025, defendant filed a motion to suppress, arguing that all evidence obtained after his unlawful arrest must be excluded because the officers lacked probable cause at the time he was seized. He further contended that statements made by officers on the scene, such as "we have to have something," show that the subsequent questioning was conducted solely to justify the arrest after the fact.

The court simultaneously held a hearing on defendant's motion to suppress and a bench trial on the charged offense. At the conclusion of the hearing/trial, the court denied defendant's motion to suppress and found him guilty as charged. Immediately thereafter, the record reflects defense counsel objected to the verdict and indicated his intent to appeal. The trial court thereupon sentenced defendant to six months in jail, suspended, and placed him on supervised probation for one year.[2]

According to the official record, on October 15, 2025, defendant filed a Motion and Notice of Writ application. The judge set a return date of November 21, 2025.[3] On November 21, 2025, defendant filed a motion for extension of time. On that same date, the trial court granted the motion and set the return date for November 26, 2025.

On November 26, 2025, defendant filed the instant writ application. However, defendant failed to include necessary documentation in his writ application. On December 16, 2025, this Court ordered defendant to provide at his expense a certified copy of the district court record in "District Court Case No. 2024-DWI-920372, *State v. Lirette*, including any and all transcripts of court hearings; any and all exhibits admitted into evidence; and any notices of intent, requests for return date, and requests for extension thereof." This Court

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dangerous substance, or both, in docket number 718770 in the 32nd Judicial District Court for the Parish of Terrebonne.

[2] The court also imposed additional conditions in its sentencing of defendant, none of which are germane to the issues raised in this writ application.

[3] The return date of November 21, 2025, issued by the trial court, exceeds the thirty-day time prescribed by Rule 4-3 of the Uniform Rules of Louisiana Courts of Appeal. Defendant's sentencing occurred on September 17, 2025. *See Barnard v. Barnard*, 96-859 (La. 6/24/96), 675 So.2d 734 (where the Louisiana Supreme Court found that a litigant should not be penalized for the trial court's failure to follow Rule 4-3).

ordered that such supplementation shall be made on or before January 15, 2026, or the writ application would be considered and ruled upon without supplementation.

On January 15, 2026, defendant filed a Motion for Extension of Time to Supplement Record, requesting that this Court grant an additional ten days for supplementation of the record. The next day, this Court granted the motion, ordering the supplementation be made on or before January 30, 2026, or the writ application shall be considered and ruled upon without the supplementation. As of the date of this disposition, defendant has not supplemented the writ application. Accordingly, we consider the writ application on the showing made.

From the outset, defendant's writ application is deficient in several aspects. Defendant's writ application does not include the Motion and Notice of Writ Application.[4] Also the copy of the September 17, 2025 transcript appears to be missing a page. Additionally, that transcript reflects that exhibits were admitted at the motion to suppress hearing and bench trial.[5] However, defendant failed to include those exhibits in the writ application as required by Rule 4-1 of the Uniform Rules of Louisiana Courts of Appeal,[6] or to timely supplement the record as requested by this Court. Defendant assigns error as to the sufficiency of the evidence and to the trial court's ruling

[4] Although defendant included a copy of the Motion for Extension of Time with the writ application, that copy is unstamped and does not reflect a return date or an order granting the motion. Consequently, there is no documentation of a return date with relator's writ application as required by Uniform Rules – Courts of Appeal, Rule 4-3., which states, in pertinent part: "The application for writs shall contain documentation of the return date and any extensions thereof; any application that does not contain this documentation may not be considered by the Court of Appeal."

[5] Specifically, the following exhibits were admitted: State's Exhibit 1 (fingerprints); State's Exhibit 2 (conviction packet); State's Exhibit 3 (body-worn camera footage of Deputy White); State's Exhibit 5 (Deputy White's report); State's Exhibit 6 (breathalyzer test results); State's Exhibit 7 (transcript of the July 1, 2024 seventy-two-hour hearing); and State's Exhibit 8 (body-worn camera footage of Deputy Gonzalez).

[6] Rule 4-1 of the Uniform Rules of Louisiana Courts of Appeal, provides:

> Unless filed electronically, an application for writs of any kind, and all documents and exhibits in connection therewith, shall be filed with the clerk of the Court of Appeal as an original and such number of copies as the local rule of each court requires.

on the motion to suppress. The following analysis and ruling are based on the writ application as filed.[7]

ASSIGNMENT OF ERROR NUMBER THREE[8]

Sufficiency of the Evidence

Defendant concedes that he was intoxicated and does not dispute the evidence establishing his level of intoxication. He argues, however, that there was insufficient evidence to prove that he was operating a vehicle while under the influence. Defendant maintains that the evidence was unreliable because law enforcement failed to secure or authenticate the original security camera footage and took no forensic steps to ensure that the footage had not been altered during the period in which Ms. Berteau accessed the system. He further argues that absent the highly questionable footage depicting him driving on the same day, there was no evidence establishing that he was intoxicated at a proximate time to when he allegedly operated a vehicle. He avers that after reaching the privacy of his home, he consumed additional alcohol and remained in police custody for approximately twenty minutes prior to testing, resulting in peak levels of intoxication and explaining his failure of sobriety testing. According to defendant, the only remaining evidence of driving consisted of statements from his girlfriend, whom he characterizes as unreliable. Defendant contends that the State failed to establish the required proximate connection between intoxication and operation of a vehicle and that the evidence was therefore insufficient to support the conviction.

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[7] La. C.Cr.P. art. 912.1(C)(1) states:

> In all other cases not otherwise provided by law, the defendant has the right of judicial review by application to the court of appeal for a writ of review. This application shall be accompanied by a complete record of all evidence upon which the judgment is based unless the defendant intelligently waives the right to cause all or any portion of the record to accompany the application.

[8] When the issues on appeal relate to both sufficiency of the evidence and one or more trial errors, the reviewing court should first determine the sufficiency of the evidence by considering the entirety of the evidence. *State v. Hearold*, 603 So.2d 731, 734 (La. 1992).

The constitutional standard for sufficiency of the evidence is whether, upon viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find that the State proved all of the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Magee*, 24-435 (La. App. 5 Cir. 7/16/25), 420 So.3d 158, 173. This standard of review applies to both direct and circumstantial evidence. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. *Id*.

When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 mandates that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." This is not a separate test from the standard set forth in *Jackson*, but rather provides a helpful basis for determining the existence of reasonable doubt in cases involving circumstantial evidence. Ultimately, all evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. *Magee*, 420 So.3d at 173 (citing to *State v. Wooten*, 99-181 (La. App. 5 Cir. 6/1/99), 738 So.2d 672, 675, *writ denied*, 99-2057 (La. 1/14/00), 753 So.2d 208).

The reviewing court must defer to the trier of fact's rational credibility calls, evidence weighing, and inference drawing and may not overturn a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *State v. Monterroso*, 22-390 (La. App. 5 Cir. 4/26/23), 361 So.3d 1177, 1189, *writ denied*, 23-745 (La. 11/21/23), 373 So.3d 447. Indeed, the resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *State v. Lavigne*, 22-282 (La. App. 5 Cir. 5/24/23), 365 So.3d 919, 940. Thus, in the absence of internal contradiction or irreconcilable conflict with physical evidence, the testimony of a single witness, if believed by the trier of fact, is sufficient to support a

conviction. *State v. Sly*, 23-60 (La. App. 5 Cir. 11/2/23), 376 So.3d 1047, 1072, *writ denied*, 23-1588 (La. 4/23/24), 383 So.3d 608.

In the present case, defendant was convicted of operating a vehicle while intoxicated, second offense. At the time of the offense, La. R.S. 14:98 provided in pertinent part:

> A.(1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle ... when any of the following conditions exist:
>
> (a) The operator is under the influence of alcoholic beverages.
>
> (b) The operator's blood alcohol concentration is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood.

In order to convict an accused of driving while intoxicated, the State must prove that the defendant was operating a vehicle and was under the influence of alcohol or drugs. *State v. Horton*, 24-298 (La. App. 5 Cir. 4/2/25), 413 So.3d 1190, 1196 (citing to *State v. Cowden*, 04-707 (La. App. 5 Cir. 11/30/04), 889 So.2d 1075, 1082, *writ denied*, 04-3201 (La. 4/8/05), 899 So.2d 2). To convict a defendant of driving while intoxicated, second offense, the State must also show that the defendant had one other valid conviction of driving while intoxicated. *State v. Mouton*, 22-444 (La. App. 5 Cir. 12/29/22), 358 So.3d 106, 115.

La. R.S. 14:98 does not require proof that the defendant was driving a vehicle, and the jurisprudence recognizes that the term "operating" is broader than the term "driving." *Horton*, 413 So.3d at 1196 (citing *State v. Winstead*, 16-217 (La. App. 5 Cir. 5/26/16), 193 So.3d 565, 571). However, in order to operate a motor vehicle, the defendant must have exercised some control or manipulation over the vehicle, such as steering, backing, or any physical handling of the controls for the purpose of putting the car in motion. *Id.* It is not necessary that these actions have any effect on the engine, nor is it essential that the car move in order for the State to prove the element of operation. *Id.* A person begins to operate the instant he begins to manipulate the machinery of the vehicle for the purpose of putting the

car in motion. *State v. Barber*, 19-286 (La. App. 5 Cir. 10/2/19), 282 So.3d 347, 351, *writ denied*, 19-1634 (La. 5/14/20), 296 So.3d 607.

Defendant does not contest in this writ application that he was intoxicated on the day of his arrest or the proof of a prior conviction for driving while intoxicated. Rather, he argues that the State did not present sufficient evidence that he was operating a vehicle while under the influence of alcohol on June 30, 2024. The writ application includes the transcript of the trial on September 17, 2025, wherein testimony was taken from Sergeant Giovanni Tarullo, Deputy James White, Deputy Christopher Gonzalez (who responded to the incident), and Ms. Jade Berteau, defendant's girlfriend.

In *State v. Anderson*, 00-1737 (La. App. 1 Cir. 3/28/01), 784 So.2d 666, 675-78, *writ denied*, 01-1558 (La. 4/19/02), 813 So.2d 421, the defendant was convicted of fourth offense driving while intoxicated based on his operation of a watercraft. On appeal, he argued that the State failed to prove he was intoxicated at the time of operation, asserting that he consumed alcohol only after returning home. *Id*. at 675-76. There, an eyewitness observed the defendant operating the boat shortly before law enforcement contact and noted signs of intoxication, including unsteadiness and slurred speech. *Id*. at 670-71. The defendant was later encountered at his residence, where a breath alcohol test registered .245 percent, and the defendant admitted consuming alcohol. *Id*. at 671-75. Although the defendant and his wife testified that he drank after returning home, the First Circuit emphasized that the jury was entitled to credit evidence indicating intoxication at the time of operation and to reject the defendant's alternative hypothesis. *Id*. at 677. Viewing the evidence in the light most favorable to the State, the court held that a rational trier of fact could find beyond a reasonable doubt that the defendant was intoxicated when he operated the watercraft. *Id*. at 678.

In *State v. Ellender*, 18-891 (La. App. 3 Cir. 6/5/19), 274 So.3d 144, 150-53, *writ denied*, 19-1110 (La. 5/1/20), 295 So.3d 942, the defendant was convicted of driving while intoxicated, fifth offense, and argued on appeal that the evidence was insufficient because the State

failed to disprove the reasonable hypothesis that he became intoxicated only after returning home, where officers later found him. *Id.* at 150-51. The trial court rejected this argument, as did the Third Circuit. An eyewitness identified the defendant as the driver shortly after a hit-and-run incident, and officers encountered the defendant at his residence approximately thirty minutes later exhibiting clear signs of intoxication. The court emphasized that the defendant's recorded statement, which was played for the jury, included an admission that he had consumed two bottles of whiskey earlier in the afternoon, and that his confused and inconsistent timeline undermined his claim that he became intoxicated only after returning home. *Id*. at 151-52. Viewing the evidence in the light most favorable to the State, the court concluded that a rational trier of fact could find beyond a reasonable doubt that the defendant was intoxicated at the time he operated the vehicle. *Id*. at 152-53.

Based solely on the contents of the writ application, we find that the evidence, viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant operated a vehicle while intoxicated. The State presented evidence that deputies arrived at the residence within minutes of the 9-1-1 hang-up and immediately observed defendant exhibiting multiple signs of impairment, including slurred speech, difficulty standing, agitation, and glossy, red eyes. The trial judge also viewed body-camera footage capturing Ms. Berteau's contemporaneous statements describing defendant as extremely intoxicated and referencing his recent driving. While officers were present, Ms. Berteau accessed the home surveillance system and displayed footage that Deputy White testified depicted defendant operating a vehicle and arriving at the residence approximately five to six minutes before law enforcement contact.

Testimony further established that defendant made statements acknowledging that he had consumed alcohol earlier in the evening. Deputy White testified that defendant admitted he had been drinking prior to driving, including that his last drink occurred before he went to RaceTrac, and that he later made statements during field sobriety

testing, including, "I'm drunk, dude." Defendant's observed impairment shortly after arrival, his poor performance on standardized field sobriety tests, his admissions regarding alcohol consumption, testimony indicating that he had driven shortly before officers arrived, and a breath test result administered shortly thereafter provided evidence from which the trier of fact could reasonably infer intoxication at a time proximate to vehicle operation.

At trial, Ms. Berteau recanted portions of her prior statements and testified that she had been angry, overwhelmed, and did not intend for defendant to get into trouble. She acknowledged that she regretted what she told officers on the night of the incident and explained that some of her statements were made in the heat of the moment. The trial judge specifically found, though, that Ms. Berteau did not appear overwhelmed or coerced on the body camera footage, but rather appeared angry at relator. The resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *Lavigne*, 365 So.3d at 940. As such, the trial judge, as the trier of fact, could rationally credit Ms. Berteau's contemporaneous statements to law enforcement over her later trial testimony.[9]

As discussed above, the record before this Court is incomplete, and the writ application does not include all exhibits reviewed by the trial court, including body-camera footage referenced during the trial court's ruling. In light of the limited record presented and based solely on the contents of the writ application as filed, the application does not support a conclusion that the evidence was insufficient. Viewed in the light most favorable to the prosecution, we conclude that the evidence available in the writ application permitted a rational trier of fact to conclude that defendant operated a vehicle while intoxicated, second

[9] *See State v. Trahan*, 17-1060 (La. App. 3 Cir. 5/2/18), 246 So.3d 585, 589-90, *writ denied*, 18-851 (La. 12/3/18), 257 So.3d 196 (where the Third Circuit rejected a sufficiency challenge despite a witness's recantation, finding that the jury could reasonably conclude the witness was telling the truth when he initially identified the defendant as the shooter, rather than when he later testified at trial).

offense. Accordingly, based on the showing made, the State presented sufficient evidence to support the conviction.

ASSIGNMENTS OF ERROR NUMBER ONE AND TWO

Denial of Motion to Suppress

Defendant argues that his Fourth Amendment rights were violated by both an unlawful search and an unlawful detention. He contends that although a homeowner allegedly consented to a search of the residence, defendant was the owner of the secured digital account at issue and expressly refused consent when asked by Sergeant Agnelly. Defendant asserts that the heightened privacy protections afforded to password-protected digital data required officers to obtain a warrant. He further argues that officers violated his rights by directing Ms. Berteau to access the secured account despite his refusal. Defendant contends that his detention constituted an unlawful arrest unsupported by reasonable suspicion or probable cause. He maintains that once officers were informed that no domestic violence had occurred, they lacked a lawful basis to continue detaining him. According to defendant, officers nonetheless handcuffed, detained, and *Mirandized* him while attempting to obtain evidence to justify an arrest that had already occurred. Citing *Terry v. Ohio*,[10] defendant contends that the detention exceeded the scope of a permissible investigative stop and amounted to an illegal arrest. He asserts that the trial court erred in denying the motion to suppress and that the conviction should be reversed.

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution prohibit unreasonable searches and seizures. If evidence is derived from an unreasonable search or seizure, the proper remedy is exclusion of the evidence from trial. *State v. Key*, 23-167 (La. App. 5 Cir. 12/27/23), 379 So.3d 96, 115. A defendant who is adversely affected may move to suppress

[10] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. La. C.Cr.P. art. 703(A).

As a general rule, searches and seizures must be conducted pursuant to a validly executed search warrant or arrest warrant. *Key*, 379 So.3d at 115. Warrantless searches and seizures are *per se* unreasonable unless justified by one of the exceptions to the warrant requirement. *State v. Fuentes*, 22-89 (La. App. 5 Cir. 11/2/22), 353 So.3d 911, 915. When the constitutionality of a warrantless search or seizure is placed at issue by a motion to suppress the evidence, the State bears the burden of proving the admissibility of any evidence seized without a warrant. La. C.Cr.P. art. 703(D); *Fuentes*, 353 So.3d at 915. A trial court is afforded great discretion when ruling on a motion to suppress, and its ruling will not be disturbed absent an abuse of that discretion. *State v. Jaramillo*, 23-322 (La. App. 5 Cir. 2/28/24), 382 So.3d 1072, 1079, *writ denied*, 24-367 (La. 10/8/24), 394 So.3d 267. When a trial court makes findings of fact based on the weight of the testimony and the credibility of the witnesses, a reviewing court owes those findings great deference and may not overturn those findings unless there is no evidence to support those findings. *State v. Thompson*, 11-915 (La. 5/8/12), 93 So.3d 553, 563.

At the outset, the record reflects that the defense argued in the trial court that defendant was unlawfully arrested inside his home without probable cause and that the body-camera footage after the twenty-minute mark should be suppressed. The record reflects that the trial court ruled on those arguments, expressly finding that the video was voluntarily provided and that no duress occurred, and admitting the body-camera footage into evidence. In the writ application, the defense again asserts that defendant was arrested without probable cause and that the search leading to the recording of the surveillance video was unlawful.

To the extent the writ advances a separate warrant requirement under *Riley v. California*,[11] that specific argument does not appear to

[11] *See Riley v. California*, 573 U.S. 373, 401, 134 S.Ct. 2473, 2477, 189 L.Ed.2d 430 (2014), where the United States Supreme Court held that police generally may not, without a warrant search digital information on a cell phone

have been raised or ruled upon below. Articulating a new basis for the motion to suppress for the first time on appeal is prohibited under La. C.Cr.P. art. 841, since the trial court would not be afforded an opportunity to consider the merits of the particular claim. *State v. Berroa-Reyes*, 12-581 (La. App. 5 Cir. 1/30/13), 109 So.3d 487, 496 (citing *State v. Harris*, 414 So.2d 325 (La. 1982)). Louisiana courts have long held a defendant may not raise new grounds for suppressing evidence on appeal that he did not raise at the trial court in a motion to suppress. *State v. Montejo*, 06-1807 (La. 5/11/10), 40 So.3d 952, 967, *cert. denied*, 562 U.S. 1082, 131 S.Ct. 656, 178 L.Ed.2d 513 (2010). *See also* La. C.Cr.P. art. 841(A) ("An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence.").[12] Therefore, defendant has waived any argument as to the additional basis to suppress the evidence.

There are three tiers of interaction between the police and citizens as it relates to the Fourth Amendment. *State v. Williams*, 20-46 (La. App. 5 Cir. 12/30/20), 308 So.3d 791, 825, *writ denied*, 21-316 (La. 5/25/21), 316 So.3d 2 (citing *State v. Fisher*, 97-1133 (La. 9/9/98), 720 So.2d 1179, 1182. The first tier is mere communication between officers and citizens where there is no coercion or detention. Such communication does not implicate the Fourth Amendment. *Id*.

The second tier is the investigatory stop where the police may briefly seize a person if the officer has reasonable suspicion that the person is, or is about to be, engaged in criminal conduct, or is wanted for past criminal acts. *Id*. *See Terry v. Ohio*, *supra*. The *Terry* standard, as codified in La. C.Cr.P. art. 215.1, authorizes police officers to stop a person in a public place whom they reasonably suspect is committing, has committed, or is about to commit an offense, and

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seized from an individual who has been arrested. Here, the record is unclear as to whether Ms. Berteau entered a password to defendant's computer or to the home surveillance camera system. It does not appear that this case involved a cell phone. Testimony in the record also suggests that defendant may have provided a password to law enforcement at some point.

[12] Additionally, Uniform Rules, Courts of Appeal, Rule 1-3 states in pertinent part: "The Courts of Appeal shall review issues that were submitted to the trial court and that are contained in specifications or assignments of error, unless the interest of justice requires otherwise."

demand that the person identify himself and explain his actions. *State v. Abrego*, 21-166 (La. App. 5 Cir. 12/1/21), 334 So.3d 883, 888, *writ denied*, 21-1949 (La. 2/22/22), 333 So.3d 450. "[T]he threshold of one's dwelling ... as is the yard surrounding the house," are public places under the cases interpreting the Fourth Amendment. *State v. Parnell*, 07-37 (La. App. 5 Cir. 5/15/07), 960 So.2d 1091, 1098, *writ denied*, 07-1417 (La. 1/7/08), 973 So.2d 733.

Finally, the third tier is a custodial arrest where the police must have probable cause to believe that the person has committed a crime. *Williams*, 308 So.3d at 825. Probable cause, also referred to as reasonable cause, necessary to validly make a full custodial arrest, requires more than the "reasonable suspicion" needed for a brief investigatory stop. *Id.*

An arrest occurs when the circumstances indicate intent to affect an extended restraint on the liberty of the accused, rather than at the precise time an officer tells an accused he is under arrest. *Id.*at 825-26. However, arrest-like features such as the use of drawn weapons and handcuffs may, but do not invariably render the seizure a *de facto* arrest. *Id* at 826. Whether a person has been arrested is determined by an objective test; neither the person's subjective impression, nor the lack of formality of the arrest resolves the issue. *Id*. The determination depends on whether, under the totality of the circumstances, a reasonable person would not consider himself free to leave. *Id.*

In the instant case, the record reflects that law enforcement officers responded to the residence in response to a 9-1-1 hang-up call and arrived without knowing the nature of the underlying incident. Upon making contact at the residence, Deputy White testified that defendant appeared intoxicated and that Ms. Berteau immediately stated that defendant was "beyond drunk" and referenced his recent driving, while officers were attempting to determine what had occurred.

The record further reflects that the officers asked defendant to step outside in order to separate the parties and assess the situation, and defendant was later placed in handcuffs by Sergeant Agnelly. Deputy White testified that he was not the officer who applied the handcuffs

and stated that he was inside the residence at the time Sergeant Agnelly restrained defendant. According to Deputy White, defendant was "detained" because he would not follow Sergeant Agnelly's directions and because officers were still attempting to determine why they had been dispatched to the residence. Deputy White further testified that defendant was not free to leave while officers were still investigating why they were present.

However, the record does not clearly establish defendant's precise physical location at the time he was placed in handcuffs or clearly reflect the sequence of certain investigative steps, including when surveillance footage was reviewed and when *Miranda* warnings were administered. In addition, the trial court's ruling reflects that the court viewed body-camera footage depicting additional statements and conduct at the scene, including Ms. Berteau's statements that defendant had been driving while intoxicated and had gotten in her face. Those portions of the body-camera footage are referenced in the trial court's ruling, but are not included in the writ materials, which limits our ability to fully evaluate the encounter based solely on the record before us.

Under these circumstances, based on the information available to the officers at the time, including the 9-1-1 hang-up call, defendant's apparent intoxication, and Ms. Berteau's statements, the officers' actions may be viewed as supported by reasonable suspicion, and as the investigation progressed, sufficient to establish probable cause. In light of these limitations of the writ application as filed (and not supplemented) and the deference afforded to the trial court's findings and credibility determinations, the writ application does not support the conclusion that the trial court abused its discretion in denying the motion to suppress on this basis based on the showing made.

We next consider, based on the contents of the writ application as filed, whether the search conducted at the residence and the officers' viewing and recording of the surveillance video were lawful. One exception to the warrant requirement is where voluntary consent has been obtained, either from the property owner or from a third party who possesses common authority over the premises. *State v. Simmons*, 08-

269 (La. App. 5 Cir. 10/28/08), 996 So.2d 1177, 1184, *writ denied*, 09-15 (La. 9/25/09), 18 So.3d 81 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990)).

Consent may be given by one having "common authority" over the premises sought to be searched. Common authority is based on "mutual use of the property by persons generally having joint access or control for most purposes." *State v. Gettridge*, 08-786 (La. 6/6/08), 987 So.2d 247. Oral consent is sufficient. *State v. Gross*, 14-110 (La. App. 5 Cir. 6/24/14), 145 So.3d 521, 529, *writ denied*, 14-1516 (La. 2/27/15), 159 So.3d 1065 (citing *State v. Ossey*, 446 So.2d 280, 287 n.6 (La. 1984), *cert. denied*, 469 U.S. 916, 105 S.Ct. 293, 83 L.Ed.2d 228 (1984)).

When the facts do not support a finding of actual authority, a search is reasonable within the meaning of the Fourth Amendment if the consent giver apparently has actual authority. *State v. Reyes*, 47,918 (La. App. 2 Cir. 5/15/13), 114 So.3d 547, 551 n.2, *writ denied*, 13-1336 (La. 12/2/13), 126 So.3d 500. A warrantless search may be valid even if consent was given by one without authority, if the facts available to police officers at the time of entry justified the officers' reasonable, albeit erroneous, belief that the one consenting to the search had authority over the premises. *State v. Cambre*, 04-1317 (La. App. 5 Cir. 4/26/05), 902 So.2d 473, 482, *writ denied*, 05-1325 (La. 1/9/06), 918 So.2d 1039.

In order to rely on consent to justify a warrantless search, the State has the burden of proving that consent was given freely and voluntarily. *State v. Gant*, 16-389 (La. App. 5 Cir. 12/28/16), 209 So.3d 1084, 1092; *State v. Joseph*, 04-1240 (La. App. 5 Cir. 4/26/05), 901 So.2d 590, 597, *writ denied*, 05-1700 (La. 2/3/06), 922 So.2d 1176. Voluntariness is a question of fact to be determined by the trial judge under the totality of the circumstances. *Id.*

As previously discussed, this Court's review is limited to the materials included in the writ application, which do not contain the body-camera footage reviewed by the trial court. Because that footage is not before this Court, we are unable to determine the precise sequence

of events depicted, including when certain actions occurred in relation to Ms. Berteau's access to the surveillance system and the circumstances surrounding what happened.

The writ application further reflects some ambiguity regarding the nature of the password that was entered while officers were present. Deputy White initially testified that Ms. Berteau entered the correct password "into the computer," but then corrected himself to state that it was "into the camera system." The writ materials do not clearly establish whether the password referenced pertained to a general computer system or the home surveillance camera system. Additionally, testimony reflects that at some point officers went outside and obtained a password from defendant, after which Ms. Berteau was able to access the surveillance footage. Ms. Berteau testified that officers left the room to obtain the password from defendant and that she subsequently accessed the system while officers were in the next room. This testimony could be viewed as implicating that defendant provided a password to law enforcement, which supports an inference of consent. However, given the absence of the relevant body-camera footage and the limited record before us, the precise circumstances surrounding the password entry and access to the surveillance footage are not fully developed in the writ application.

Nonetheless, even assuming *arguendo* that the trial court erred in denying defendant's motion to suppress, the error was harmless. An erroneous denial of a motion to suppress is subject to a harmless error analysis. *State v. Bone*, 12-34 (La. App. 5 Cir. 9/11/12), 107 So.3d 49, 67, *writ denied*, 12-2229 (La. 4/1/13), 110 So.3d 574. An error is harmless if it is unimportant in relation to the whole and the verdict rendered was surely unattributable to the error. *Id.* at 67-68. Factors to be considered include the importance of the evidence to the State's case, the presence or absence of additional corroboration, and the overall strength of the State's case. *Id.* at 68.

In the instant case, the surveillance footage was not the sole evidence considered by the trial court. Deputy White testified that officers responded to a 9-1-1 hang-up call and immediately observed

defendant exhibit slurred speech, agitation, difficulty maintaining his balance, and other indicators of intoxication. Deputy White further testified that Ms. Berteau stated upon opening the door that defendant was "beyond drunk" and had been driving shortly before the officers arrived. Although Ms. Berteau later recanted aspects of her statements, the trial court considered the officers' testimony regarding her initial contemporaneous statements at the scene. In addition to those observations and statements, Deputy White testified that defendant admitted to drinking prior to driving, performed poorly on multiple field sobriety tests, and later registered a breath-alcohol concentration of .141. Under these circumstances, even if the surveillance footage captured on the body cameras was excluded, we find that the trial court's ruling was surely unattributable to any assumed error in denying the motion to suppress.

CONCLUSION AND DECREE

For the foregoing reasons, on the showing made, relator's conviction and sentence are affirmed. This writ application is denied.[13]

CONVICTION AND SENTENCE AFFIRMED; WRIT DENIED

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[13] Generally, an errors patent review is not conducted on misdemeanor convictions. Nevertheless, this Court has on occasion considered a "misdemeanor appeal" as an application for supervisory review of the case and has conducted an errors patent review. *See State v. Jones*, 12-640 (La. App. 5 Cir. 10/30/13), 128 So.3d 436, 443 n.4. *See also State v. Dufrene*, 20-290 (La. App. 5 Cir. 12/9/20), 307 So.3d 1182; *State v. Harmon*, 19-55 (La. App. 5 Cir. 5/22/19), 274 So.3d 705. A complete record of this case was not provided. Thus, a review for errors patent according to La. C.Cr.P. art. 920, *State v. Oliveaux*, 312 So.2d 337 (La. 1975), and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990), was conducted with the information provided in the writ application. Based on the limited record contained in the instant writ application, the transcript does not show that defendant was advised pursuant to La. C.Cr.P. art. 930.8. La. C.Cr.P. art. 930.8 states in pertinent part: "No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922."

Relator is hereby informed of the above provisions of La. C.Cr.P. art. 930.8, as well as that he may only file for post-conviction relief while he is in custody for the offense, as per La. C.Cr.P. art. 924.

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MARCH 27, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-KP-572

E-NOTIFIED
29TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE LAUREN D. ROGERS (DISTRICT JUDGE)
ATOUNDRA P. LAWSON (RELATOR)

MAILED
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