

# Fifth Circuit Court of Appeal State of Louisiana

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No. 26-K-242

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STATE OF LOUISIANA

*versus*

KENDELL GALE

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**IN RE KENDELL GALE**

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT, PARISH OF ST JAMES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE STEVEN C. TUREAU, DIVISION "D", No. 93,79

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**TRUE COPY**

June 04, 2026



LINDA TRAN  
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,  
John J. Molaison, Jr., and Scott U. Schlegel

## **WRIT GRANTED IN PART; DENIED IN PART; REMANDED WITH INSTRUCTIONS**

In this criminal matter, the defendant/relator, Kendall Gale, seeks review of the trial court's denial of his "Motion to suppress and oral motion for improper venue." We grant the writ, in part, and deny the writ, in part, and remand with instructions for the following reasons.

### **Procedural history**

According to the application, the relator is charged with one count of being a felon in possession of a firearm, in violation of La. R.S. 14:95.1, and one count of careless operation of a motor vehicle, a violation of La. R.S. 32:58.<sup>1</sup> The relator

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<sup>1</sup> The application is deficient under Uniform Rules, Courts of Appeal, Rule 4-5(C)(8) because it does not contain a copy of the bill of information that we can use to verify the relator's charges.

filed a motion to suppress, which was heard and denied by the trial court on April 13, 2026.<sup>2</sup> The trial court also denied the relator's oral motion for improper venue made on that same date. The court issued reasons for judgment on May 10, 2026, and set a return date of May 28, 2026, for the relator to file his application.

### **Assignments of error**

1. The trial court erred in finding probable cause based solely on alleged marijuana odor.
2. The trial court erred in upholding a warrantless search.
3. The trial court erred in finding valid consent.
4. The trial court erred in allowing a search outside the officer's jurisdiction.

### **Law and analysis**

#### *Improper venue*

We first address the defendant's motion to quash the bill of information based on improper venue<sup>3</sup> and find the issue was not properly before the trial court. La. C.Cr.P. art. 615 provides that a challenge of improper venue "shall be raised in advance of trial by motion to quash..." La. C.Cr.P. art. 536 states, in relevant part:

A motion to quash shall be in writing, signed by the defendant or his attorney, and filed in open court or in the office of the clerk of court.

This Court has previously held that a motion to quash is a procedural vehicle for challenging an indictment or a bill of information that must be in writing. *State v. Jago*, 16-346 (La. App. 5 Cir. 12/28/16), 209 So.3d 1078, 1081 [citations omitted], *writ denied*, 17-0183 (La. 11/17/17), 228 So.3d 1218.

The application before us confirms that the relator did not seek to challenge the venue of trial by way of a written motion to quash but instead raised the issue

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<sup>2</sup> The application does not contain a copy of the State's response to his motion, which could be used to supply the State's arguments in opposition to the relator's motion to quash.

<sup>3</sup> The relator argued, in summary, that although Detective Marler began following the relator in St. James Parish, he was outside of his jurisdiction when he stopped and searched the relator's vehicle in St. John Parish.

verbally during the hearing on his motion to suppress.<sup>4</sup> Because La. C.Cr.P. art. 615 requires venue to be challenged in a motion to quash and La. C.Cr.P. art. 536 makes it mandatory for the motion to be in writing, his oral motion on April 13, 2026, was not sufficient to merit the trial court's consideration.

Accordingly, we grant the writ, in part, and vacate the portion of the trial court's judgment that denied the relator's motion related to venue. We remand with instructions to permit the relator to file a written motion to quash for improper venue.

### *Motion to suppress*

In this assignment, the relator argues that the trial court erred in finding that probable cause existed for a warrantless search of his vehicle based on the investigating officer's detection of marijuana odor, when the defendant did not consent to a search.

The Fourth Amendment to the United States Constitution and Article I, §5, of the Louisiana Constitution protect people against unreasonable searches and seizures. A defendant may move to suppress any evidence from use at trial on the basis that it was unconstitutionally obtained. La. C.Cr.P. art. 703(A). A search and seizure conducted without a warrant issued on probable cause is *per se* unreasonable unless the State can affirmatively show that the warrantless search and seizure was justified by one of the narrowly drawn exceptions to the warrant requirement. *State v. Surtain*, 09-1835 (La. 3/16/10), 31 So.3d 1037, 1043. The trial court's ruling on the matter is given great weight and will not be set aside unless there is an abuse of discretion. *State v. Wells*, 08-2262 (La. 7/6/10), 45 So.3d 577, 581. When a trial court makes findings of fact based on the credibility of the witnesses, a reviewing court owes those findings great deference and may

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<sup>4</sup> Counsel for the relator indicated at the hearing that he would file a written motion to quash based on venue, but there is no evidence in the application that he did so.

not overturn those findings unless there is no evidence to support those findings. *State v. Carter*, 20-1193 (La. 1/26/21), 309 So.3d 333, 336 (quotations omitted).

At the hearing on the relator's motion to suppress, Detective Victor Marler testified that he was in Vacherie working in the Special Investigations Division of the St. James Sheriff's Office on January 24, 2025, when he watched a vehicle in front of him driving carelessly. Specifically, Detective Marler saw the vehicle change lanes without signaling, cross the centerline and the fog line, and travel well below the speed limit. Based on his observations, Detective Marler conducted a traffic stop of the vehicle, which was driven by the relator, Kendell Gale.<sup>5</sup>

As a general matter, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Carter*, 309 So.3d at 336-37, quoting *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996). Although they may serve as the prelude to the investigation of much more serious offenses, even relatively minor traffic violations provide an objective basis for lawfully detaining the vehicle and its occupants. *Id.*, citing *State v. Waters*, 00-356 (La. 3/12/01), 780 So.2d 1053, 1056 (*per curiam*). Here, we find that Detective Marler's testimony sufficiently established that he had probable cause to stop the defendant's vehicle based upon the multiple traffic violations he had personally witnessed.

#### *Search of the relator's vehicle*

Detective Marler also testified that he identified the odor of burning marijuana and saw smoke emitting from the open windows of the defendant's vehicle before and during the stop. Under the well-established "automobile exception" to the warrant requirement, police officers who have probable cause to

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<sup>5</sup> Although defense counsel questioned Detective Marler about a written report detailing the stop, the report was not entered into evidence and is not a part of the writ application.

believe that a vehicle contains evidence of a crime may search it without first obtaining a warrant. *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). Louisiana courts have consistently held that the odor of marijuana provides an officer with probable cause to conduct warrantless searches of vehicles. *State v. Ladmirault*, 26-127 (La. 2/12/26), 427 So.3d 731, 732; *State v. Simmons*, 22-232 (La. App. 5 Cir. 7/6/22), 346 So.3d 349, 355. Similarly, in this case, we find that the odor of burning marijuana provided probable cause for Detective Marler to search the relator's vehicle. Also, after he pulled the defendant over, Detective Marler observed marijuana "crumbs and debris" in plain view inside of the relator's vehicle. After probable cause to search was established, Detective Patrick Hall found the gun behind the driver's seat within reach of the driver.

The relator contends that he did not consent to a full search of the vehicle and only permitted officers to retrieve his license and registration. However, once probable cause for the search of a vehicle exists, a police officer has the authority to search those places in the vehicle in which there is probable cause to believe the object searched for may be found. *California v. Acevedo*, 500 U.S. 565, 570, 111 S.Ct. 1982, 1986, 114 L.Ed.2d 619 (1991). Given that probable cause existed for the vehicle search in this case based on the smell of marijuana, whether the relator consented to the search was irrelevant.<sup>6</sup>

On the record presented, we find no abuse of discretion in the trial court's conclusion that the warrantless search of the defendant's vehicle, which yielded the

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<sup>6</sup> *Accord*, *State v. Gant*, 93-2894 (La. 5/20/94), 637 So.2d 396, 397, "Without regard to the validity of the consent form signed by the defendant, the trial court correctly ruled that the search of the car and the arrests of defendant and Jackson were legal, and that the subsequent statements made by Jackson were also lawfully obtained." *See also*, *State v. Davis*, 583 So.2d 891, 894 (La. App. 1 Cir. 6/27/91), *writ denied*, 588 So.2d 103 (La. 1991), "Since the officers had seen the marijuana in the suitcase, clearly they had probable cause to believe that Mr. Davis carried contraband in his truck. Accordingly, they could search the suitcase as thoroughly as if they had a warrant; Davis's consent or lack thereof was not a factor in the determination of the validity of the search."

firearm in the defendant's possession, did not violate the relator's Fourth Amendment rights.

**CONCLUSION**

For the reasons stated, we grant the writ, in part, vacate the portion of the trial court's judgment related to the improper venue issue, and remand with instructions. In all other respects, the writ application is denied.

Gretna, Louisiana, this 4th day of June, 2026.

**JJM  
FHW  
SUS**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
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JUDGES



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**NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/04/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**26-K-242**

**E-NOTIFIED**

23rd Judicial District Court (Clerk)  
Honorable Steven C. Tureau (DISTRICT JUDGE)  
Travis J. Turner (Relator)

**MAILED**

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