APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 20-3601

United States of America,

Plaintiff - Appellee,

v.

Kra Deangelo Brooks, (originally named Kra Brooks),

Defendant - Appellant.

Appeal from United States District Court
for the Eastern District of Arkansas - Central

Submitted: September 24, 2021
Filed: January 6, 2022

Before LOKEN, COLLOTON, and BENTON, Circuit Judges.

COLLOTON, Circuit Judge.

Investigators obtained a warrant to search Kra Brooks's home and uncovered evidence of drug trafficking. Brooks argues that the affidavit in support of the warrant included information that resulted from a violation of his Fourth Amendment rights. He contends that once that information is redacted, the remaining material is

insufficient to establish probable cause for the search. The district court[1] agreed that some portions of the affidavit should have been redacted, but concluded that the remainder established probable cause, and that evidence seized under the warrant thus should not be excluded. Brooks entered a conditional guilty plea, and appeals the order denying his motion to suppress evidence. We conclude that evidence seized under the warrant should not be excluded, and therefore affirm.

I.

On the morning of January 23, 2017, Brooks arrived at a checkpoint operated by the Transportation Security Administration at the Clinton National Airport in Little Rock, Arkansas. He intended to board a flight bound for California. As Brooks's carry-on bag passed through the x-ray machine, a TSA agent noticed a "large organic mass" inside.

To evaluate a possible threat, the agent escorted Brooks and his bag to a secondary screening area. Inside the bag, the agent found a pair of large manilla envelopes labeled "Legal Documents." He opened the envelopes and discovered what turned out to be $112,230 of cash that was vacuum-sealed and rubber-banded together in separate bundles. Consistent with TSA policy, the agent contacted his supervisor.

At 7:36 a.m., two police officers were dispatched to the TSA screening area. An airport dispatcher informed the officers that the TSA had discovered "bulk cash." When the officers arrived, TSA agents showed them Brooks's bag, which was sitting open on the screening-area desk. A police officer testified that the envelopes inside the bag also were open and that he "could see all the cash was vacuum-packed." The officer found the manner of packaging suspicious.

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[1]The Honorable Brian S. Miller, United States District Judge for the Eastern District of Arkansas.

The police officer contacted detectives from the police department to suggest further investigation of Brooks. Shortly before 8:00 a.m., he asked Brooks to accompany him to the security office inside the airport. Brooks agreed to do so.

Roughly 15 minutes later, two detectives, Hudson and Flannery, arrived and began to question Brooks about the currency. Brooks claimed that the cash came from a two-year-old legal settlement and from his personal earnings. During the meeting, Brooks turned over another $4,115 in cash from his front pocket and a hydrocodone pill from a canister tied around his waist. The detectives also found two bottles of "promethazine with codeine" in Brooks's personal belongings. The detectives then placed Brooks's suitcase alongside several other suitcases in the hallway outside the office. Detective Hudson walked his drug-sniffing dog alongside the luggage. When the dog alerted to Brooks's suitcase, Hudson opened it. The interior smelled strongly of marijuana, but Hudson did not find any narcotics. The detectives arrested Brooks for possession of hydrocodone and promethazine without a valid prescription.

Another officer transported Brooks to the police department's Northwest Division office, about 12 miles away from the airport. They arrived at around 9:00 a.m. An hour later, Detective Flannery for the first time advised Brooks of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). Brooks waived his rights and agreed to answer questions. Brooks suggests that the post-*Miranda* interview began a few minutes after 9:00 a.m., but the district court found without clear error that Brooks's post-*Miranda* statements came "at least an hour" after he was arrested and after he signed the waiver form at 10:00 a.m. R. Doc. 70, at 14; *see* R. Doc. 63, at 142.

Brooks was then interviewed by Hudson, Flannery, and two special agents from the Department of Homeland Security. During the conversation, Brooks admitted that he structured large cash withdrawals from various branches of Bank of America in an effort to avoid currency reporting requirements.

A month after the airport incident, a special agent from the Drug Enforcement Administration applied for a warrant to search Brooks's residence for evidence of drug trafficking. In his affidavit supporting the warrant, the agent focused on three sources of information.

First, the affidavit detailed Brooks's connections to Roderick Smart, a known drug trafficker. Smart relied on a California-based network to supply marijuana to central Arkansas. Smart's bank accounts had been closed after a drug investigation at his residence, but his girlfriend maintained an account at Bank of America. A bank representative informed agents that he began to notice suspicious activities involving the girlfriend's account after Smart's accounts were closed. The banker said that four men, one of whom was later identified as Brooks, made deposits of $20 bills that smelled like "marijuana, cheap perfume, or baby powder" into the girlfriend's account. Sometime later, Brooks entered the same bank carrying a backpack filled with currency and asked to exchange $20 bills for $100 bills. When an employee asked for identification, Brooks became agitated and departed. On other occasions, Brooks purchased cashier's checks payable to Smart's business. He also made cash deposits into bank accounts belonging to others in California and elsewhere.

Second, the affidavit described the airport incident and the evidence obtained by the detectives who interviewed Brooks. This discussion explained that Brooks was carrying large amounts of cash in vacuum-sealed bags and offered no plausible explanation for the source of the funds. The affidavit further stated that a drug-sniffing canine had alerted to Brooks's bag at the airport, that Brooks had been arrested at the airport for possession of hydrocodone and promethazine without a valid prescription, and that Brooks had admitted to structuring cash transactions.

Third, the affidavit recounted an earlier episode involving Brooks at the Little Rock airport. On November 6, 2016, a man arrived at the Southwest Airlines baggage claim and asked to claim luggage for Julie Harrison. Harrison was a

suspected drug smuggler; she was banned from doing business with Southwest after she repeatedly purchased tickets in California, checked luggage, and then left the airport without boarding a flight. Through this method, Harrison successfully sent luggage to other parties across the United States. In November 2016, when a Southwest employee asked to see the man's identification, he refused to provide it. The man then walked over to the baggage conveyor belt, grabbed two bags, and ran out of the airport. After the January 2017 airport incident, DEA agents reviewed Little Rock airport records and identified Brooks as the man who took the bags sent by Harrison in November 2016.

A judge issued a search warrant for Brooks's residence on February 15, 2017. The ensuing search discovered $168,832 in cash, two firearms, ammunition, a pound of marijuana, and six heat-sealed bags with marijuana residue.

Brooks filed two motions to suppress. In one motion, he argued that the officers lacked reasonable suspicion to detain him at the airport after the discovery of the money. As a result, he asserted, any evidence obtained after that detention was unlawfully obtained and could not serve as the basis for issuing a later warrant. In the other, he alleged that his statements at the airport were made while he was in custody and without the benefit of *Miranda* warnings. He maintained that his statements to police, both before and after receiving *Miranda* warnings, were also fruit of his unlawful detention. Brooks urged that after the disputed evidence was redacted from the affidavit in support of the warrant, the remaining information did not establish probable cause for a search.

The district court granted the motions in part. The court concluded that Brooks's detention at the airport was an unlawful seizure. Accordingly, the court excised from the affidavit any information concerning (1) Brooks's pre-*Miranda* warning statements to the detectives, (2) the positive canine alert to Brooks's bag, and (3) the prescription drugs seized from Brooks. But the court concluded that Brooks's

post-*Miranda* warning statements at the Little Rock police station were properly included because they were sufficiently attenuated from the unlawful seizure at the airport. The court also did not redact any information about the discovery of the vacuum-sealed currency itself, because it was discovered during a valid administrative search by the TSA. Finally, the court concluded that after redacting the tainted information, the remaining facts in the affidavit established probable cause for the search of Brooks's residence, so the evidence seized from the home was admissible.

Based on evidence seized at his home, Brooks entered a conditional guilty plea to one count of possession of a firearm in furtherance of drug trafficking, reserving the right to appeal the district court's order on the motions to suppress. *See* Fed. R. Crim. P. 11(a)(2). We review the district court's factual findings for clear error and its legal determinations *de novo*. *United States v. Harris*, 795 F.3d 820, 821 (8th Cir. 2015).

II.

To search a person's home, government agents generally must obtain a warrant based on probable cause. *Payton v. New York*, 445 U.S. 573, 589-90 (1980). If an affidavit in support of a warrant contains information that was obtained in violation of the Fourth Amendment, the reviewing court must redact that information and evaluate whether the remainder establishes probable cause. *United States v. Karo*, 468 U.S. 705, 719 (1984); *United States v. Swope*, 542 F.3d 609, 614 (8th Cir. 2008). Brooks contends that the district court failed to redact information that was fruit of his unlawful detention at the airport. The government argues that the airport detention was not unlawful, but that even if the airport seizure was not justified, the district court properly declined to suppress evidence obtained under the warrant. We will assume for the sake of analysis that the district court was correct about the unlawfulness of the airport detention.

First, Brooks argues that the court should have redacted the portion of the affidavit that detailed the discovery of the bulk cash. That paragraph explained that on January 23, 2017, the Little Rock office of Homeland Security Investigations "received a notification from the National Bulk Cash Smuggling Center." The notification stated that Brooks's bag had been flagged at TSA screening and that a subsequent search had discovered "a large amount of U.S. currency that was heat sealed in plastic wrap." Brooks claims that the district court assumed without evidence that this information came from TSA agents who acted independently of the unlawful detention. It is at least possible, he argues, that the information might have stemmed from his detention by the Little Rock police.

The record supports the district court's implicit finding that the disputed information was independent of any unlawful seizure. Brooks concedes that the initial search of his bag was a lawful administrative search. That search was conducted by a TSA agent at a TSA screening area. A TSA supervisor then contacted TSA managers, who notified the Little Rock police officers stationed at the airport that an agent had discovered bulk cash. When the officers arrived, Brooks's bag was open and the cash bundles were in plain view. All of this occurred before any seizure of Brooks by the police. The discovery of the vacuum-sealed cash was thus independent of any constitutional violations that may have later occurred.

Brooks next contends that the court should have redacted information about the taking of Julie Harrison's luggage from the Southwest baggage claim area in November 2016. The district court implicitly found that this information was discovered independent of the airport detention of Brooks. Brooks theorizes, however, that his disputed seizure at the airport inspired the agents to review airport records and find the connection between him and Harrison's luggage.

The district court's inference to the contrary is supported by the record. At a 2017 hearing, the affiant from the DEA testified that his investigation of Roderick

Smart began in January 2015. Brooks's name came up around August 2016 when the Bank of America representative reported that Brooks deposited cash into the account of Smart's girlfriend. While the dog alert and scent of marijuana at the airport may have bolstered investigators' suspicions, the more germane discovery was that Brooks had attempted to transport bulk cash in a manner consistent with drug trafficking via the Little Rock airport. It is reasonable to infer that once Brooks's suspicious activities with currency were tied to the airport, investigators would review airport records on that basis alone to determine whether Brooks had engaged in other suspicious activity at the airport. The court thus did not err in finding that investigators independently discovered the baggage incident from November 2016.

Finally, Brooks asserts that his post-*Miranda* warning statements at the police station were unlawfully obtained and should have been redacted from the search warrant affidavit. In particular, Brooks contests the inclusion of his admission that he structured bank transactions to avoid currency reporting requirements, as well as some general information about his businesses. Brooks maintains that his statements to police were the fruit of an airport seizure that the district court declared unlawful. Although neither the district court nor the parties address the subsequent arrest of Brooks, it seems evident that probable cause for the arrest was based on evidence of narcotics found during the airport detention. Therefore, we will assume for the sake of analysis that Brooks was questioned at the police station after an unlawful detention and arrest.

Even so, exclusion of evidence "may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence." *Hudson v. Michigan*, 547 U.S. 586, 592 (2006). In the case of disputed statements, a reviewing court must consider whether investigators procured the statement "by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). Evidence is not subject to suppression, and may be relied upon in a warrant affidavit, "when the

connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance." *Utah v. Strieff*, 579 U.S. 232, 238 (2016).

In determining whether statements are sufficiently attenuated from an illegal seizure, we consider the "temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct." *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975) (internal citation omitted). Whether the officers warned the suspect under the *Miranda* rule is also an important factor, though not a dispositive consideration. *Rawlings v. Kentucky*, 448 U.S. 98, 107 (1980).

Before Brooks made the disputed admissions, detectives informed him of his right to remain silent, warned that his statements could be used against him, and advised him of his right to an attorney. Brooks acknowledged his rights and agreed to answer questions. That he was warned and voluntarily waived his rights is an important factor that weighs against suppression of the evidence. *Id.*; *United States v. Yorgensen*, 845 F.3d 908, 914 (8th Cir. 2017).

There was also sufficient passage of time and intervening change in circumstances to purge the taint of an unlawful seizure. At least an hour passed between the airport detention and Brooks's arrival at the Little Rock police station. Another hour went by before investigators questioned Brooks. There was a change of scenery and an introduction of new law enforcement personnel who did not make the initial seizure and arrest. The questioning thus did not come hard on the heels of an unlawful arrest, but rather after a period of time that allowed for pause and reflection. These factors support a conclusion that Brooks's statements were a product of his free will and militate against exclusion of the evidence. *See Yorgensen*, 845 F.3d at 914-15 (questioning by an officer with no involvement in the Fourth Amendment violation); *United States v. Whisenton*, 765 F.3d 938, 941-42 (8th

Cir. 2014) (questioning after passage of time); *United States v. Riesselman*, 646 F.3d 1072, 1080 (8th Cir. 2011) (questioning after change in location).

To the extent the officers' conduct at the airport was unlawful, it was not flagrantly so. The district court deemed it "a close call" whether Brooks had consented to the police officer's request to accompany him to the security office and to undergo questioning. "For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure." *Strieff*, 579 U.S. at 243. If the conduct of the officers indeed crossed the sometimes hazy line between a request for voluntary consent and an implicit command that amounts to a seizure, it was not the sort of serious misconduct that warrants suppression of voluntary statements made later.

Under all of the circumstances, we conclude that even if the detention of Brooks at the airport was unlawful, Brooks's voluntary and warned statements to investigators at the police station were sufficiently disconnected from the unlawful seizure to make them admissible. Accordingly, it was proper for the district court to consider Brooks's statements from that interview about structuring cash withdrawals in evaluating whether the search warrant affidavit established probable cause to search Brooks's home.

After redacting from the affidavit evidence that resulted from the airport detention, we conclude that the remaining information established probable cause to search. That is, the evidence demonstrated a fair probability that contraband or evidence of a crime would be found in the place to be searched. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983). The redacted affidavit from February 2017 provided that Brooks deposited cash smelling of marijuana into a bank account belonging to the girlfriend of a known California drug trafficker in August 2016, picked up luggage that a suspected drug smuggler sent to the Little Rock airport in November 2016, attempted to board a flight to California in January 2017 with $112,230 in cash

packaged in a manner "consistent with known narcotics concealment methods," and admitted structuring cash withdrawals from multiple bank locations to avoid currency transaction reports. Under the totality of the circumstances, this information raised a fair probability that Brooks was involved in the cash business of drug trafficking, and that his residence would contain evidence of a drug trafficking offense.

* * *

The judgment of the district court is affirmed.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA **PLAINTIFF**

v. **CASE NO. 4:17-CR-00046 BSM**

KRA DEANGELO BROOKS **DEFENDANT**

ORDER

Defendant Kra Brooks's motions to suppress [Doc. Nos. 49, 50] are granted in part. His pre-*Miranda* statements and the drugs obtained at the airport are suppressed, and his motions are denied in all other respects.

I. BACKGROUND

Brooks was indicted for conspiracy to distribute and to possess with the intent to distribute marijuana, possession with the intent to distribute less than 50 kilograms of marijuana, possession of a firearm in furtherance of a drug trafficking crime, and being a felon in possession of a firearm. *See* Doc. No. 21. The events leading up to the seizure of evidence at issue against Brooks are as follows:

On January 23, 2017, Brooks arrived at the Little Rock airport intending to board a flight. After checking in, he proceeded to the Transportation Security Administration ("TSA") security checkpoint. Brooks placed his carry-on suitcase on the conveyor and the TSA agent working the x-ray machine observed an anomaly inside Brooks's suitcase.

TSA Agent Christensen was immediately notified, and he took control of the bag and escorted Brooks to a secondary screening area located near the x-ray machine. Christensen

searched the bag. He observed two large manila envelopes labeled "Legal Documents." He opened them and found a large amount of cash, later determined to be $112,230, which was vacuumed sealed and separated in bundles. He asked Brooks a few questions about the money. Because TSA agents are trained to notify their supervisors when observing an amount of cash that they believe exceeds $10,000, Christensen promptly called his supervisor. His supervisor, in turn, alerted Little Rock Police Department ("LRPD") Officer Mitchell MacIntire.

MacIntire arrived at the scene with another officer. After confirming that the luggage and money belonged to Brooks, MacIntire asked Brooks how much money was in the envelopes and why it was packaged that way. Brooks responded that he did not know how much money there was, but he stated that he packaged the money this way to keep it "neat." MacIntire then called LRPD detectives to find out whether they would like to question Brooks, and he asked Brooks to accompany him to the airport security office. Brooks agreed. After they went to the security office, MacIntire asked Brooks whether he would wait until the LRPD detectives arrived, and Brooks agreed to do so.

MacIntire testified that he did not order Brooks to accompany him to the office or to wait for additional officers to arrive, and he did not handcuff Brooks or ever place Brooks under arrest. While it appears that MacIntire took control of the cash, the rest of Brooks's possessions, including his identification and boarding pass, were returned to Brooks. MacIntire did not question Brooks while waiting for the detectives. Although MacIntire

never said that Brooks was unable to leave, he also did not say that Brooks was free to leave. MacIntire, however, testified that had Brooks asked to leave, he would have been allowed to do so.

Fifteen to twenty minutes later, LRPD Detectives Ryan Hudson, Barry Flannery, and Debra Attkisson arrived at the office and began questioning Brooks about the money. Detective Hudson also noticed a bulge in Brooks's front pocket and a small black pouch around Brooks's waist, and he asked Brooks about them. In response, Brooks stood up and revealed that the bulge in his pocket was more cash, approximately $4,000, and he explained that the pouch contained medicine. Brooks removed a hydrocodone pill from the pouch, but he could not produce a valid prescription for it. LRPD detectives also found two bottles marked "Promethazine with Codeine" in Brooks's belongings, and only one bottle was prescribed to Brooks.

Hudson had a police dog sniff Brooks's suitcase and other bags next to Brooks's suitcase, and the dog gave a positive alert for the odor of narcotics from Brooks's suitcase. Brooks was subsequently arrested on suspicion of possession of controlled substances. He was patted down, handcuffed, and taken to the LRPD Northwest Division office, where he signed a *Miranda* waiver and gave a statement.

II. DISCUSSION

Brooks argues that his pre- and post-*Miranda* statements should be suppressed because they were products of an unlawful detention. He also argues that, absent these

statements and the evidence obtained at the airport, the subsequent search warrant for his residence was not supported by probable cause.

While his pre-*Miranda* statements and the drugs obtained at the airport are products of an illegal detention and will be suppressed, his post-*Miranda* statements and the evidence resulting from it are sufficiently attenuated from the illegal stop and will not be suppressed. Because there was sufficient probable cause to support the warrant, the evidence from the search of Brooks's residence will not be suppressed.

A. Consent

Although it is a close call, the government has not met its burden in demonstrating that the encounter between the LRPD and Brooks at the airport was consensual.

A person is "seized" for the purposes of the Fourth Amendment when, under the totality of the circumstances, a reasonable person would have believed he was not free to leave. *See United States v. Johnson*, 326 F.3d 1018, 1021 (8th Cir. 2003). Courts look to various factors to make this determination, including the following: (1) whether the officers position themselves in a way that limits the person's freedom of movement, (2) whether several officers are present, (3) whether the officers physically touch the person, (4) whether the officers use language or tone indicating that compliance is required, (5) whether the officers retain the person's property, and (6) whether the officers indicate that the person is the target of an investigation. *See id.* at 1021–22 (citations omitted).

Brooks does not contest the initial or secondary screening of his bag by TSA agents.

See, e.g., *United States v. Aukai*, 497 F.3d 955, 959–63 (9th Cir. 2007) (en banc) (noting that airport screening searches are administrative searches exempt from the warrant and probable cause requirements so long as they are "reasonable"); *United States v. Rosales*, No. 10-399-PJS/JJK, 2011 WL 6003941, at *5–6 (D. Minn. Oct. 28, 2011) (same). Rather, Brooks argues that he was unconstitutionally seized after MacIntire arrived at the checkpoint and asked Brooks to go to the airport security office.

Importantly, Brooks's encounter with MacIntire began when Brooks's freedom of movement was restricted. Indeed, MacIntire approached Brooks and started questioning him while Brooks was at the secondary screening area. Although it is unclear whether Brooks was free to leave his bag and depart the security checkpoint after Christensen brought him to the secondary screening area, common sense and the case law suggest that he was not. *See, e.g.*, *United States v. $90,000 in U.S. Currency*, No. 07–4744 JRT/FLN, 2009 WL 6327469, at *4 (D. Minn. Sept. 23, 2009) (report and recommendations) ("[Claimant] was not free to leave the screening area until the screening process was complete. Had [claimant] tried to leave prior to its completion, [TSA] would have been required to call the police."). Even if Brooks was actually free to walk away and return downstairs to the check-in area, a reasonable person in Brooks's position would not have perceived himself as free to do so after his bag was alerted and upon being escorted to the secondary screening area.

This fact colors the entirety of Brooks's interaction with MacIntire and distinguishes this case from *United States v. Mendenhall*, 446 U.S. 544 (1990); *United States v. Va Lerie*,

424 F.3d 694 (8th Cir. 2005); and *United States v. Wallruff*, 705 F.2d 980 (8th Cir. 1983). In each of those cases, a passenger was otherwise free to go about their business when a law enforcement officer approached them and started asking questions. *See $90,000 in U.S. Currency*, 2009 WL 6327469, at *12. By contrast, Brooks was effectively detained by TSA and turned over to MacIntire. *See id.*; *see also* Hr'g Tr. 15:23–25 ("[A]t that point it's basically a turnover of responsibility.").

Therefore, Brooks's interaction with TSA and his interaction with MacIntire are not two separate and independent events—his encounter with MacIntire was a product of the administrative search by the TSA. *See $90,000 in U.S. Currency*, 2009 WL 6327469, at *11 (noting that a "reasonable person in [defendant's] position would not perceive" a distinction between the TSA detention and subsequent interaction with police officers).

Accordingly, the issue presented is whether something about Brooks's interaction with MacIntire could change a reasonable person's perception that Brooks was not free to terminate the encounter and continue with his journey.

1. MacIntire's Conduct

MacIntire's conduct during the encounter does not strongly support a finding that it was either consensual or nonconsensual.

Several facts support a finding that it was consensual. MacIntire was accompanied by another officer, and nothing in the record suggests that either one made a show of force, drew their weapon, or used language or a tone of voice indicating that compliance was

required. *See Johnson*, 326 F.3d at 1021–22. MacIntire also did not tell Brooks that he was the target of an investigation. *See id.* Instead, after asking Brooks a few questions that were already put to him by Christensen, MacIntire asked Brooks whether he would accompany the officers to the airport security office. Brooks agreed. After they arrived at the office, MacIntire asked him only whether he would wait for approximately fifteen minutes for the LRPD detectives to arrive. Again, Brooks agreed to do so. Thus, Brooks was implicitly free to say no and terminate the encounter. *See Va Lerie*, 424 F.3d at 710.

Other facts, however, suggest that Brooks was detained. MacIntire never advised Brooks that he was free to leave. While MacIntire was not required to do so, such a warning would tend to support a finding that Brooks was not in custody, particularly in light of the fact that the encounter began at a mandatory security checkpoint. *See United States v. Pena-Saiz*, 161 F.3d 1175, 1177 (8th Cir. 1998). Further, MacIntire testified that he typically calls LRPD detectives to ask whether they want to question a passenger stopped by TSA for carrying a significant amount of money—if they do, then MacIntire takes the passenger to the security office. This testimony was corroborated by Detective Flannery, who stated: "And I've been contacted where it seemed legitimate to me and I didn't want them held up missing a flight, so, you know, they were allowed to continue on their journey." Hr'g Tr. 162:13–16. Although MacIntire testified that he would have allowed Brooks to leave had Brooks requested to do so, this is inconsistent with his procedure of contacting LRPD detectives for instructions on whether to "allow" an individual to continue their trip.

2. Interrogation by the LRPD Detectives

Similarly, the circumstances surrounding Brooks's interrogation by the LRPD detectives do not weigh strongly in favor of finding that it was a consensual or nonconsensual encounter.

Again, some facts support the government's position that the encounter was consensual. Brooks was seated closest to the exit of the room, and for the reasons discussed below, he had possession of his belongings other than the cash. Nothing in the record indicates that the detectives made a show of force, used a threatening tone, or told Brooks that he was unable to leave. Further, they did not frisk him or place him in handcuffs until they arrested him at the end of the encounter. They were also wearing plain clothes.

At the same time, other facts suggest it was nonconsensual. The interrogation was heavily dominated by police—three LRPD detectives conducted it, and they brought a police dog. It took place in a relatively small police office that was not accessible by members of the public. Finally, none of the detectives told Brooks he was free to leave, and they had the police dog sniff Brooks's luggage.

3. Brooks's Belongings

The parties dispute whether Brooks's personal belongings were returned to him. *See, e.g.*, *Florida v. Royer*, 460 U.S. 491, 501–02 (1983) (detectives took possession of defendant's boarding pass and identification when moving the encounter to another location). Although the testimony from the hearing on this point is not as clear as the government

argues, it appears that Brooks retained possession of his belongings, except for the cash.

Christensen testified that Brooks would have initially placed all of his belongings through the x-ray machine, including his boarding pass and identification. Hr'g Tr. 12:24–13:1, 23:15–24:22. He also testified that once Brooks's suitcase alerted the TSA and a search of that bag was requested, the TSA took control of that bag. *Id.* 13:1–3. Brooks would have been allowed to retrieve his other items, *id.* 13:6–11, 14:25–15:13, but Christensen was not sure what ultimately happened to them. *Id.* 27:2–14. Christensen further stated that his supervisor likely would have made copies of Brooks's identification and boarding pass, which means that Brooks may have lost possession of these items at some point. *Id.* 13:15–18, 27:15–28:9. Finally, Christensen stated that he would have turned over the bag, and possibly some of Brooks's other possession, to MacIntire when he arrived.

MacIntire testified that he believed he took only the cash from Brooks, leaving Brooks to take the rest of his possessions with him to the security office. *Id.* 57:14–21, 58:11–18. He also stated that because TSA agents had made copies of Brooks's boarding pass and identification, he had copies of these documents and did not remember ever having the originals. *Id.* 57:22–58:6. When pressed about this on cross-examination, MacIntire stated again that he believed that Brooks had all of his belongings, except for the cash, when they walked to the security office, though he acknowledged it had been over two years since these events took place. *Id.* 80:11–17.

In short, the gist of Christensen's and MacIntire's testimony is that if the "correct" or

"usual" procedures were followed, then Brooks would have held on to all of his possessions except for the cash. MacIntire credibly testified that he believed such procedures were followed here. His recollection was also supported by the testimony of Detectives Hudson and Flannery. Hudson stated that he also never had Brooks's identification and was only given a copy of it from MacIntire. *Id.* 108:15–24. Flannery testified that when he arrived at the security office, Brooks's possessions were located immediately next to Brooks and that Brooks had his cell phone with him. *Id.* 169:16–20.

For these reasons, Brooks's personal belongings, other than the cash, were returned to him after he left the TSA checkpoint. This fact distinguishes this case from *Royer*, in which the police officer's retention of the defendant's ticket and driver's license was a factor in finding that the encounter was nonconsensual. 460 U.S. at 504.

4. Conclusion

Although some facts point in favor of finding that this was a consensual encounter, including the fact that Brooks retained possession of his belongings except for the cash, the government has not met its burden. Brooks was located at the TSA secondary screening area and confronted by two officers who, after briefly questioning Brooks, requested that he follow them to the security office. *See $90,000 in U.S. Currency*, 2009 WL 6327469, at *11. They did not tell Brooks that he was free to leave. Under the totality of these circumstances, a reasonable person in Brooks's position would not have felt free to leave.

B. *Terry* Stop

The government next tries to characterize the encounter as a *Terry* stop. *See Terry v. Ohio*, 392 U.S. 1 (1968). Even assuming that MacIntire had reasonable suspicion to initiate a *Terry* stop, it was unlawful because it exceeded the scope of a routine, investigatory detention.

"An investigatory, or *Terry*, stop without a warrant is valid only if police officers have a reasonable and articulable suspicion that criminal activity may be afoot." *United States v. Navarrete–Barron*, 192 F.3d 786, 790 (8th Cir. 1999) (citation omitted). To qualify as a *Terry* stop, the police officer's detention of the suspect must employ "the least intrusive means reasonably available to verify or dispel . . . suspicion in a short amount of time." *United States v. Seelye*, 815 F.2d 48, 50 (8th Cir. 1987) (quoting *Royer*, 460 U.S. at 500). If the detention exceeds the scope of *Terry*, then it becomes an arrest that must be supported by probable cause. *Id.*

There is not a bright-line rule for determining whether a detention is too long or intrusive, *see United States v. Morgan*, 729 F.3d 1086, 1090 (8th Cir. 2013), but the Eighth Circuit has identified multiple factors to guide this analysis. *See Peterson v. City of Plymouth, Minn.*, 945 F.2d 1416, 1419–20 (8th Cir. 1991). They include: (1) the number of officers involved, (2) the nature of the crime and whether there is reason to believe the suspect is armed, (3) the strength of the officer's articulable, objective suspicions, (4) the need for immediate action by the officer, (5) the presence or lack of suspicious behavior or

movement by the person under observation, and (6) whether there was an opportunity for the officer to have made the stop in less threatening circumstances. *Id.*

MacIntire did not employ the least intrusive means to reasonably verify or dispel suspicion. In fact, he did very little investigative work after he arrived at the TSA checkpoint. He asked Brooks only whether the bags belonged to him, how much money was in the bag, and why it was packaged that way. Hr'g Tr. 68:14–16, 68:21–23. MacIntire then escorted Brooks to the airport security office, where he sat with Brooks until the detectives arrived. MacIntire did not ask Brooks why he had so much money in his bag, and he stated on cross-examination that it was not his job to investigate further. *Id.* 64:3–16.

Although it appears that LRPD detectives take the lead in investigating these incidents, MacIntire cannot abandon his constitutional obligations under *Terry*. MacIntire could have asked about the source of the money, reviewed the documents found with the cash, inquired about the nature of Brooks's trip and whether his ticket was round-trip or one-way, and radioed in Brooks's information to check for outstanding warrants and his criminal history. This is particularly true in light of the fact that possession of a large amount of cash, while suspicious, is not illegal—therefore, the strength of the suspicion for the stop was not all that great. Further, MacIntire indicated that Brooks was not otherwise acting suspiciously, Hr'g Tr. 74:5–14, and because Brooks had just gone through the TSA screening, there was also no reason to believe that Brooks was armed. There was also another uniformed officer with MacIntire. Finally, it is unlikely that there was a pressing

need for immediate action—Flannery testified that they occasionally let suspects with bulk cash continue with their travels, and MacIntire had Brooks's information. *See, e.g., id.* 162:8–21. MacIntire, however, simply took Brooks to the security office and waited for fifteen to twenty minutes for LRPD detectives to arrive.

After the detectives arrived, they questioned Brooks for nearly forty-five minutes. Although it appears that Brooks produced a hydrocodone pill without a prescription relatively early in his interactions with the detectives, it is nonetheless troubling that he had already been detained for fifteen to twenty minutes. In other words, the scope of *Terry* was exceeded before the detectives arrived at the security office.

C. Illegal Detention at the Airport

For the reasons discussed above, the government has not satisfied its burden in showing that Brooks consented to go to the airport security office or that he was validly detained under *Terry*. Accordingly, Brooks's pre-*Miranda* statements given at the airport are products of an illegal detention and shall be suppressed. *See United States v. Hernandez-Hernandez*, 384 F.3d 562, 565 (8th Cir. 2004) ("Statements that result from an illegal detention are not admissible."). Similarly, the drugs discovered at the airport are also suppressed.

D. Attenuation Doctrine

Although Brooks moves to suppress his post-*Miranda* statements as fruits of the poisonous tree, they are sufficiently attenuated from the illegal detention at the airport.

The attenuation doctrine permits the introduction of evidence when there is only a remote connection between the evidence at issue and the unlawful police conduct. *See United States v. Dickson*, 64 F.3d 409, 410–11 (8th Cir. 1995). "Evidence showing statements after an illegal search were voluntary is a means of demonstrating the evidence is attenuated from the taint." *United States v. Reisselman*, 646 F.3d 1072, 1080 (8th Cir. 2011) (citing *United States v. Vega–Rico*, 417 F.3d 976, 979 (8th Cir. 2005)). To determine whether such statements are voluntary, courts look to whether a *Miranda* warning was given, the temporal proximity of the illegal action and the statements, any other intervening circumstances, and the purpose and flagrancy of the official misconduct. *Id.* (citing *United States v. Lakoskey*, 462 F.3d 965, 975 (8th Cir. 2006)); *see also Hernandez-Hernandez*, 384 F.3d at 565.

All of these factors tend to support a finding that Brooks's post-*Miranda* statements were sufficiently attenuated from the illegal detention at the airport. *See also Hernandez-Hernandez*, 384 F.3d at 565, 567. First, Brooks was given a *Miranda* warning, *see United States v. Yorgensen*, 845 F.3d 908, 914 (8th Cir. 2017), and at least one hour had passed from the time he was placed under arrest and when he signed the *Miranda* waiver. *See United States v. Whisenton*, 765 F.3d 938, 941–42 (8th Cir. 2014) ("Under our precedent, fifteen minutes is sufficient to demonstrate an attenuation of the illegality.") (citations omitted); *United States v. Herrera-Gonzalez*, 474 F.3d 1105, 1112 (8th Cir. 2007). Therefore, there was ample time for Brooks to contemplate his situation and the consequences of answering

the officers' questions. Second, Brooks had been transported to a new location and was interviewed by additional officers who had not been present at the airport. *See Yorgensen*, 845 F.3d at 914 (finding an intervening circumstance when agents who were not present during the Fourth Amendment violation conducted the interview); *Riesselman*, 646 F.3d at 1080 (finding that "a change in location" constituted an intervening circumstance). Finally, because it appears that officers reasonably believed that their encounter with Brooks at the airport was consensual, there is no evidence of "flagrant" misconduct. *See, e.g.*, *Yorgensen*, 845 F.3d at 915 ("An unreasonable mistake alone is not sufficient to establish flagrant misconduct.").

E. Search Warrant

Finally, suppression of the evidence obtained from Brooks's residence is inappropriate because, even after excising the unlawfully obtained information, the warrant contained sufficient information to establish probable cause. *See United States v. Swope*, 542 F.3d 609, 616–17 (8th Cir. 2008).

"A search warrant is valid under the Fourth Amendment if it establishes probable cause." *United States v. Carpenter*, 422 F.3d 738, 744 (8th Cir. 2005). Probable cause exists when there is a "fair probability that contraband or evidence of a crime will be found in a particular place" looking at the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *see also United States v. Donnelly*, 475 F.3d 946, 954 (8th Cir. 2007); *United States v. Horn*, 187 F.3d 781, 785 (8th Cir. 1999).

If the suppressed statements and evidence are stricken, the affidavit supporting the warrant application is still sufficient to establish probable cause. It is unclear how much information actually needs to be excised—Brooks's post-*Miranda* statement is not being suppressed, and he may have reiterated his account for the source of the income and the purpose of his trip. This means that this information need not be stricken from the affidavit. Assuming, however, that all of paragraphs twenty-two and twenty-three are stricken, probable cause still exists because of the following: (1) Brooks was affiliated with Roderick Smart, a known drug trafficker, (2) Brooks had been engaging in suspicious banking activity, (3) the TSA observed Brooks trying to carry a large amount of currency through the Little Rock airport, which was vacuumed sealed and in envelopes labeled "legal document," and (4) Brooks's alleged theft of luggage from a known marijuana source. Further, Special Agent Hensley discussed his investigatory knowledge concerning drug trafficking and his belief that Brooks was connected with Smart. This is sufficient to establish a "fair probability" that evidence of a crime would be located at Brooks's residence.

Finally, even with the excised information, the search warrant was not stale. "A warrant becomes stale if the information supporting it is not sufficiently close in time to the issuance of the warrant and the subsequent search conducted so that probable cause can be said to exist as of the time of the search." *United States v. Davis*, 867 F.3d 1021, 1028 (8th Cir. 2017) (quotations omitted). The factors are context-specific and "include the lapse of time since the warrant was issued, the nature of the criminal activity, and the kind of property

subject to the search." *United States v. Estey*, 595 F.3d 836, 841 (8th Cir. 2010) (quoting *United States v. Gibson*, 123 F.3d 1121, 1124 (8th Cir. 1997)).

Brooks was stopped at the airport on January 23, 2017, and the warrant was executed on February 15, 2017—a mere 23 days after the incident at the airport. *See, e.g.*,*United States v. Smith*, 266 F.3d 902, 905 (8th Cir. 2001) ("In investigations of ongoing narcotic operations, intervals of weeks or months between the last described act and the application for a warrant [does] not necessarily make the information stale.") (alteration in original) (quotations omitted); *United States v. Johnson*, 848 F.3d 872, 877 (8th Cir. 2017) ("A lapse of time is least important when the suspected criminal activity is continuing in nature and when the property is not likely to be destroyed or dissipated.") (quotations omitted). Moreover, after Brooks's arrest, investigators learned that, on another occasion, Brooks had retrieved a suitcase from a known marijuana origination point and hastily departed from the airport. Accordingly, the information in the warrant was not stale.

III. CONCLUSION

For these reasons, Brooks's motions to suppress [Doc. Nos. 49, 50] are granted in part. The pre-*Miranda* statements and the drugs obtained at the airport shall be suppressed, and the motions are denied in all other respects.

IT IS SO ORDERED this 17th day of June 2019.

Brian S Miller

UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-3601

United States of America

Appellee

v.

Kra Deangelo Brooks, (originally named Kra Brooks)

Appellant

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:17-cr-00046-BSM-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 11, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix C