

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

SHARROD JUANEL ROWE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

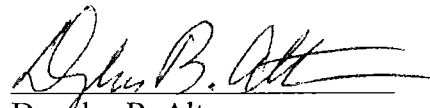
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner, Sharrod Juanel Rowe, by his attorney, Douglas B. Altman, respectfully moves for leave to proceed in forma pauperis in this case.

The undersigned was appointed under the Criminal Justice Act of 1964, as amended, to represent Petitioner in the Eighth Circuit Court of Appeals.

Dated: March 14, 2018

Altman & Izek

A handwritten signature in black ink, appearing to read "Douglas B. Altman", with a horizontal line drawn underneath it.

Douglas B. Altman
Attorney for Petitioner
901 North Third Street
Suite 140
Minneapolis, MN 55401
(612) 335-3700
Attorney I.D. No. 13854X

NO. _____

In the
Supreme Court of the United States

SHARROD JUANEL ROWE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ALTMAN & IZEK
Douglas B. Altman
Counsel of Record
901 North Third Street
Suite 140
Minneapolis, MN 55401
(612) 335-3700

Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

The Eighth Circuit erred in concluding that the District Court did not violate Mr. Rowe's Due Process and Confrontation Clause rights by relying on evidence adduced at a prior hearing involving Mr. Rowe's codefendants without providing Mr. Rowe with the opportunity to cross - examine non - present witnesses.

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED FOR REVIEW	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
OPINION BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE.....	3
REASONS WHY CERTIORARI SHOULD BE GRANTED	4
CONCLUSION.....	9
APPENDIX.....	10

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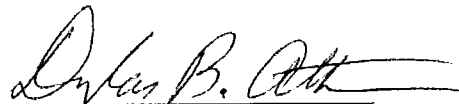
FOR THE EIGHTH CIRCUIT

The Clerk will enter my appearance as Counsel of Record for Sharrod Juanel Rowe, who is in this Court as Petitioner.

I certify that I am a member of the Bar of the Supreme Court of the United States.

Dated: March 14, 2018

Altman & Izek



Douglas B. Altman
Attorney for Petitioner
901 North Third Street
Suite 140
Minneapolis, MN 55401
(612) 335-3700
Attorney I.D. No. 13854X

TABLE OF AUTHORITIES

CASES:	<u>Page</u>
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	7
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1976).....	7
<i>Pennsylvania v. Ritchie</i> , 480 U.S. 39 (1987).....	7
<i>United States v. Raddatz</i> , 447 U.S. 667 (1980)	7
<i>United States v. Rowe</i> , No. 16-4102 (8 th Cir. December 26, 2017).....	1,6
<i>United States v. Thompson</i> , 533 F.3d 964 (8th Cir. 2008).....	8
 OTHER AUTHORITY:	
U.S. Const. amend. V.....	3,7,8
U.S. Const. amend. VI	3,6,8
21 U.S.C. §846.....	2,3
21 U.S.C. §841(a)(1).....	2,3
Sup. Ct. R. 10.....	4

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

The petitioner Sharrod Juanel Rowe respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled proceeding on December 26, 2017.

OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit has yet to be reported, and is reprinted in the Appendix, pp. 1-10 in slip opinion form, United States v. Rowe, No. 16-4102 (8th Cir. December 26, 2017).

The judgment of the Court of Appeals for the Eighth Circuit is reprinted in the Appendix, p. 11.

JURISDICTION

Petitioner Sharrod Juanel Rowe was found guilty by a jury of conspiracy to distribute cocaine, a violation of 21 U.S.C. §§ 841(a)(1) and 846. He was sentenced to 60 months' imprisonment by the Honorable David S. Doty, Senior Judge of the United States District Court for the District of Minnesota.

The United States Court of Appeals for the Eighth Circuit affirmed in an opinion filed on December 26, 2017.

The jurisdiction of this Court to review the judgment of the Eighth Circuit is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

On September 29, 2015, a Federal grand jury returned a superseding indictment charging Mr. Rowe with conspiracy to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. On April 12, 2016, a jury returned a verdict of guilty. Mr. Rowe was sentenced to 60 months' imprisonment on October 19, 2016 and filed a timely appeal.

In his appeal, Mr. Rowe made three arguments. First, he argued that the district court's reliance on extrajudicial evidence to decide Mr. Rowe's suppression motion violated his Due Process and Confrontation Clause rights.

Second, he argued that his statements should have been suppressed as a product of an unconstitutional detention.

Third, he argued that he was entitled to a reduced United States Sentencing Guidelines offense level in recognition of his lesser role in the criminal enterprise.

The 8th Circuit rejected all three arguments. Mr. Rowe seeks certiorari on the Due Process and Confrontation Clause argument.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Pursuant to Rule 10 of the Supreme Court Rules, Mr. Rowe asserts that the 8th Circuit has decided an important federal question, namely its determination that a court may rely on prior testimony, from a suppression hearing in which a defendant did not appear and had no ability to cross examine, to assist in its decision of the defendant's subsequent motion to suppress. In fashioning this unwarranted extension, Mr. Rowe suggests that the Eighth Circuit decided an important question of Federal law that should be decided by this Court. For this reason, Mr. Rowe asserts that the grant of a petition for a writ of certiorari is warranted.

On November 30, 2014, Mr. Rowe was stopped by a Minnesota state trooper who had been alerted to the fact that a particular car with a particular license number may be transporting illegal drugs from Arizona to Minnesota. After the stop, which involved a dog sniff alerting to the presence of drugs, Mr. Rowe was released. He was indicted in a superseding indictment for conspiracy to distribute cocaine on September 29, 2015.

Some months before, two of his codefendants, one of them Houston Oliver, the owner of the car Mr. Rowe was driving, had been indicted for conspiracy to distribute cocaine involving the same facts. On August 25, 2015, about a month before the return of the superseding indictment against Mr. Rowe, the District Court held a suppression hearing for Mr. Rowe's codefendants Oliver and Green (August 2015 Hearing). After some wrangling over whether or not Oliver had standing to challenge the November 2014 stop, the magistrate judge heard testimony about the legality of the stop from Minnesota Trooper Megan Thul and Minneapolis Police officer Danielle Evans, who acted as a co-

case agent. Since Mr. Rowe had not yet been charged, he was obviously not present to cross examine.

Mr. Rowe's suppression hearing was held on January 13, 2016 (January 2016 Hearing). In connection with the suppression motion, the Government produced Trooper Thul, but replaced Officer Evans with Sergeant John Biederman of the Minneapolis Police, a co-case agent. There was considerable discussion about the use of testimony from the August 2015 Hearing. The first proposal floated was that the Government would stand on the testimony from the August 2015 Hearing and that the defense would cross - examine Thul and Biederman. That proposal foundered since the parties had differing views about the scope of the hearing and since the defense objected to the Government's ability to conduct re - direct examination of Thul and Biederman after the defense examination. At that point the magistrate judge ruled "what I'm going to do is let's just do it the regular way because it'll help me, it'll help everyone. We're not going to be dealing more with ground rules than just getting to it this afternoon." At that point, the magistrate judge instructed the Government to call its first witness (Transcript of January 2016 Hearing, p. 41; hereafter 2016 Transcript).

After the defense examinations of Biederman and Thul, the Court requested the following confirmation from defense counsel:

I would just like to confirm that defense counsel has been able to ask this witness any questions on cross - examination that may relate to the earlier testimony that is part of this case because the Court may refer to the earlier testimony, and I just want to make sure to the extent you need to examine a witness on those topics that you've had that opportunity.

The defense assented as to Biederman, but not to Thul (2016 Transcript, pp. 65, 113). Following Thul's testimony, the defense and the court again discussed the use of the testimony from the August 2015 Hearing, with the defense now taking the position that the earlier testimony should not be "admissible for purposes of this hearing" and "(A)nd so our position is that the Court, unless there's some other authority, the Court shouldn't refer to the other testimony" (2016 Transcript 116, 118). Ultimately, in denying Mr. Rowe's motion to suppress, the District Court used testimony from the August 2015 Hearing.¹

In its opinion, United States v. Rowe, No. 16-4102 (8th Cir. December 26, 2017), the Eighth Circuit took the unusual step of discussing its arguments regarding the constitutional issues before it discussed the facts. Finding that the District Court initially stated that it would not rely on the earlier testimony, but then "appeared to maintain its intention to review" the August 2015 testimony, the Eighth Circuit found that "it was equivocal at best as to how, if at all, the August testimony would be used." The Court then concluded that any facts "recited by the district court that were solely adduced at the August hearing were not legally significant in the final analysis" and that it was entirely within the purview of the District Court to "review evidence adduced at the August hearing." Despite this sanction of the use of the prior testimony, the Eighth Circuit then limited its recitation of the facts to the January 2016 Hearing, before affirming the District Court.

¹ For its part, the Government tried to skirt the issue by arguing that the testimony in the two hearings was virtually identical, a contention that the Eighth Circuit rejected.

The Confrontation Clause of the Sixth Amendment protects a defendant's trial right to conduct cross examination. *Pennsylvania v. Ritchie*, 480 U.S. 39, 51 (1987). While it may be a trial right, the courts also safeguard the right to cross examination at the suppression hearing because the aims and interests involved at the suppression hearing are just as pressing as those in the actual trial. While it is true that in some circumstances hearsay evidence may be admitted at a suppression hearing, "the guarantees of due process call for 'a hearing appropriate to the nature of the case.'" *United States v. Raddatz*, 447 U.S. 667, 677 (1980), quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1976). This standard requires an examination of the (1) private interest implicated, (2) the risk of error from the process employed, and (3) the burden in using enhanced procedures. *Raddatz*, 447 at 677, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Here, Mr. Rowe's liberty interest was the private interest implicated. While "the interests at stake in a suppression hearing are of a lesser magnitude than those in the criminal trial itself," they are nevertheless substantial because "the resolution of a suppression motion can and often does determine the outcome of the case." *Raddatz*, 447 at 677-678. In Mr. Rowe's case, if he wins the stop issue, he goes home.

Concerning the risk of error, the lowest risk would have been to hold a completely new hearing with the same witnesses, with a pronouncement that no use would be made of the earlier testimony.² The risk of error was the greatest in the procedure employed by

² There was no discussion in the record as to why the Government called Biederman rather than Evans.

the District Court, namely allowing a new witness to testify and having shifting ground rules for the use of testimony from the August 2015 Hearing.

Finally, conducting a new hearing without consideration of the August 2015 Hearing would have been a light burden on the District Court and the prosecution.

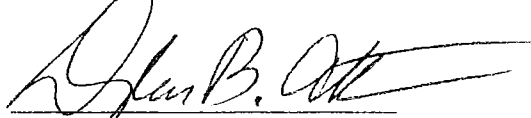
Confronting Mr. Rowe was not the court's ability to consider hearsay. *United States v. Thompson*, 533 F.3d 964, 969 (8th Cir. 2008). What confronted Mr. Rowe was the District Court's determination to consider earlier testimony at a different hearing unattended by him and to place him in a position of relying on a codefendant to defend him. This scenario implicates 5th and 6th Amendment concerns, which the Eighth Circuit implicitly recognized by limiting its opinion's factual recitation to the January 2016 Hearing.

CONCLUSION

For the foregoing reasons, Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit.

Dated: March 14, 2018

Altman & Izek

A handwritten signature in black ink, appearing to read "Douglas B. Altman", is written over a horizontal line.

Douglas B. Altman
Attorney for Petitioner
901 North Third Street
Suite 140
Minneapolis, MN 55401
(612) 335-3700
Attorney I.D. No. 13854X

PETITIONER'S APPENDIX

1. Opinion of the Eighth Circuit Court of Appeals
2. Judgment of the Eighth Circuit Court of Appeals

United States Court of Appeals
For the Eighth Circuit

No. 16-4102

United States of America

Plaintiff - Appellee

v.

Sharrod Juanel Rowe

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: October 19, 2017

Filed: December 26, 2017

Before LOKEN, BEAM, and COLLOTON, Circuit Judges.

BEAM, Circuit Judge.

Sharrod Juanel Rowe, who was convicted following a jury trial of conspiracy to distribute cocaine, challenges the district court's¹ pretrial denial of his motion to

¹The Honorable David S. Doty, United States District Judge for the District of Minnesota, adopting the report and recommendation of the Honorable Becky R. Thorson, United States Magistrate Judge for the District of Minnesota.

suppress as well as the court's later Guidelines calculation and resulting sentence. We affirm.

I. BACKGROUND

The genesis of this case is the stop of the vehicle Rowe was driving on November 30, 2014, in the Minneapolis area. Although discussing arguments at the outset may be unconventional, the source of the facts themselves are disputed in this case so we begin by addressing the legal arguments on the disputed factual issues. Rowe made his initial appearance on the same day the magistrate judge issued a report and recommendation denying motions to suppress of Rowe's previous codefendants. Thus, Rowe entered these proceedings *after* a hearing took place covering the stop and seizure. Rowe then moved on his own behalf to suppress evidence and statements related to the stop of the BMW.

A hearing was held on Rowe's motion on January 13, 2016. During Rowe's hearing, the parties discussed whether the court could, or would, consider evidence and testimony adduced at the August 25, 2015, hearing held on the codefendants' motions.² Although Rowe's counsel initially agreed to the use of the August hearing testimony, and seemingly reiterated that intention more than once, both parties also asserted reluctance and objections to the magistrate judge at the January hearing regarding its use. The court intimated at one time early in the hearing that it would not rely upon the August testimony but ultimately appeared to maintain its intention to review testimony from the August suppression hearing involving the exact same stop. Accordingly, it was equivocal at best as to how, if at all, the August testimony would be used. At each hearing—August and January—the government offered only two witnesses. The officer who initiated the stop, Trooper Thul, testified at both

²Appellant's Motion to Supplement the Record on Appeal to include the transcript from the August 25, 2015, hearing is granted.

hearings but different investigators offered the additional testimony—Officer Evans in August and Officer Biederman in January. As is evident from the report and recommendation of the magistrate judge on Rowe's motion to suppress, it did in fact reference evidence adduced at the August hearing.

Rowe first claims that the magistrate judge and the district court violated his Due Process and Confrontation Clause rights by relying on evidence adduced at a prior hearing involving Rowe's codefendants without providing Rowe the opportunity to ask any questions or cross-examine any non-present witnesses. U.S. Const. amends. V, VI. The government responds first, that the district court did not in fact rely upon evidence adduced at the earlier hearing but rather only included the August hearing in its citation list as additional support. It claims the facts set forth by the court were adduced in their entirety during the January hearing—that the two hearings were essentially identical. Second, the government argues that even if the court relied in part on evidence from the August hearing, it was entitled to do so.

Having thoroughly reviewed both hearing transcripts, we find that there were in fact some differences in the testimony adduced and the two hearings were not "identical" as the government claims. However, any facts recited by the district court that were solely adduced at the August hearing were not legally significant in the final analysis. Importantly, at both hearings, the government offered the search warrant and the two police videos of Rowe's stop, all of which provide extensive information regarding the investigation, the stop, and the ultimate search. The district court appropriately ruled upon the motion to suppress before it. Too, at Rowe's trial, both investigating officers—Evans and Biederman—testified.

No matter the comparison of the evidence adduced at both hearings, it was not erroneous for the district court to review evidence adduced at the August hearing. Although denying the right to cross-examine a witness at trial "would be constitutional error of the first magnitude" in most instances, the right of

confrontation is not absolute. United States v. Boyce, 797 F.2d 691, 692-93 (8th Cir. 1986) (quoting Brookhart v. Janis, 384 U.S. 1, 3 (1966)). Courts may consider hearsay evidence at suppression hearings and it is not uncommon for different officers to testify at these hearings in various capacities. United States v. Thompson, 533 F.3d 964, 969 (8th Cir. 2008) ("Although not admissible at trial, the district court may rely on hearsay evidence at a suppression hearing."). "[E]vidence consisting of the out-of-court statements of persons not testifying at trial may be admitted even though the defendant has no opportunity to either confront or cross-examine the declarants." Boyce, 797 F.2d at 693. Thus, had any of the facts solely adduced at the August hearing been legally significant in the court's analysis, the court did not err in relying on that testimony.

Even though it was not erroneous for the district court to rely upon evidence from the earlier hearing, we recite the facts limited to those known *solely* as a result of the testimony and exhibits admitted at Rowe's January hearing. Stated earlier, any factual differences between the two hearings that were allegedly relied upon by the district court were not legally significant, but we limit our recitation only to the January hearing to make that readily apparent.

In the fall of 2014, a confidential informant (CI) who had for years provided accurate, timely and verifiable information to the police, informed Minneapolis police that Houston Oliver was coordinating the shipment of cocaine from Arizona to Minneapolis via two-day priority mail. He stated that the cocaine would be packaged in silverware boxes from a particular post office in Maricopa, Arizona. Minneapolis police, along with the cooperation of the Minneapolis postal inspector, successfully intercepted a shipment of cocaine mailed from Arizona to Minnesota based upon this information. The CI implicated three individuals in the shipment of the cocaine, one of whom cooperated with the police following the interception of the package. This man confirmed his role in the scheme, and confirmed the information provided by the

CI regarding the packaging and shipment of the drugs, and the names of the two others involved. Rowe was not named at that time.

The CI additionally told officers that Oliver was going to transport a large quantity of cocaine from Arizona to Minnesota in a gray BMW with Minnesota license plates on November 30. The CI provided the approximate arrival time but did not know the identity of the person transporting the cocaine. A subsequent records check revealed that Oliver was the registered owner of a 2002 BMW 745Li with Minnesota license plates, just as the CI stated. Sergeant Biederman of the Minneapolis Police Department worked on this case with the mail information and again when the CI gave information about the BMW transport. He was the CI's primary contact and the officer who coordinated the stop and later search of the vehicle.

Based on the CI's information the Minneapolis police issued an alert about Oliver's BMW's possible involvement in narcotics trafficking and law enforcement officials, including Minnesota State Trooper Thul, surveilled Interstate 35 in an effort to intercept the car. After being advised that officers involved in the ongoing investigation had located the suspected vehicle, and requested that she stop it, Trooper Thul ultimately spotted it and pulled it over. Despite the information she received from dispatch, and her knowledge that the vehicle would be impounded if discovered, Trooper Thul developed her own probable cause to stop the vehicle and pulled the BMW over for excessive window tint. She claimed it was her regular practice to develop her own probable cause for a traffic stop even when she has other information regarding possible criminal activity.

Trooper Thul pulled Rowe over at about 9:45 p.m. and was joined by other officers. Thul approached the BMW and questioned Rowe, the sole occupant of the vehicle. This initial conversation lasted about four minutes with Thul asking routine questions. Rowe initially told Thul that he was traveling to his home in Eagan,

Minnesota (a city in the opposite direction) but changed his answer to state that he was going to his girlfriend's house. He also explained that the BMW belonged to "Houston." Thereafter, Trooper Thul returned to her vehicle to perform routine traffic stop checks and as she did so, a second officer approached Rowe and talked to him. The officers conferred after these interactions and noted inconsistencies in Rowe's answers that substantiated the initial information they had received. Accordingly, they called a narcotics K9 and Thul continued to complete her routine checks and paperwork.

Trooper Thul never issued a citation for excessive window tint. About the time the narcotics K9 arrived, officers removed Rowe from the vehicle, handcuffed him and placed him in the back of a squad car. Officers put Rowe in the squad car because of the location of the stop (on a busy roadway), the weather (frigidly cold), and the impending dog sniff; and they handcuffed him for officer safety. While in the patrol car, Rowe can be heard on the vehicle's recording system stating, "Somebody told on us. Somebody told on us." Rowe asked to use the restroom and he was transported to the police station and allowed to do so. He was not arrested that night. At the scene, while Rowe was in the back of the squad car, a drug dog alerted to the presence of narcotics near the trunk of the vehicle, and the officers towed and impounded the vehicle. Officers ultimately searched the vehicle on December 2, 2014, pursuant to a warrant and discovered six packages of cocaine.

Rowe moved to dismiss the indictment and to suppress the evidence and the "statements" he made in the squad car. The magistrate judge recommended denial of both and the district court adopted the report and recommendation.

II. DISCUSSION

A. Stop and Seizure

In our review of the district court's denial of a motion to suppress evidence, we review the district court's findings of fact for clear error, and review de novo whether the search violated the Fourth Amendment. United States v. Peralez, 526 F.3d 1115, 1119 (8th Cir. 2008). The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. "A traffic stop constitutes a seizure under the Fourth Amendment," and must be supported by either probable cause or an articulable suspicion that a violation of law has occurred. Peralez, 526 F.3d at 1119; United States v. Herrera-Gonzalez, 474 F.3d 1105, 1109 (8th Cir. 2007).

Rowe's arguments on appeal challenge the stop and his detention on constitutional grounds, focusing on Trooper Thul's stated reason for the stop, the excessively tinted windows. Rowe argues that the traffic stop was unconstitutionally expanded beyond its initial purpose and that he was de facto arrested without probable cause. However, discussing only Thul's reason for the stop does not tell the whole story and we do not review this stop in a vacuum. The collective knowledge of the investigating officers and the officers at the scene paints a different picture and demands an alternative analysis.

Probable cause for the stop and search of this vehicle may be based on the collective knowledge of all law enforcement officers involved in the investigation and need not be based solely upon information within knowledge of the officer(s) on the scene if there is some degree of communication. United States v. Shackelford, 830 F.3d 751, 753-54 (8th Cir. 2016). "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." Whren v. United States, 517 U.S. 806, 813 (1996) (relying on years of precedent to foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the

individual officers involved); United States v. Morales, 238 F.3d 952, 954 (8th Cir. 2001) (probable cause may be based on collective knowledge of all officers involved in the investigation and need not be based solely on the information within the knowledge of the officer on the scene, if there is some degree of communication). Given the collective knowledge of the investigating officers, including the corroborated CI tips both previously and ongoing, the alert, and the request by officers for Trooper Thul to stop the identified vehicle, the stop itself was supported by probable cause. United State v. Hambrick, 630 F.3d 742, 747 (8th Cir. 2011) ("To support a probable cause determination, officers may rely on an informant's tip if the informant has provided reliable information in the past or if his tip is independently corroborated.").

Investigating officers received information from a confidential reliable source regarding the drug dealings of Houston Oliver, and others, specifically alerting them to a large shipment of drugs on November 30 coming from Arizona to Minnesota in a BMW specifically described by the CI. The CI conveyed this information on the heels of telling officers about the shipment via mail of cocaine from the same individual that resulted in a successful interception. Based on this information, the alert went out via dispatch on November 30 and thus alerted Trooper Thul to the possibility that this BMW would be on the roadway that night. Before she identified the vehicle, however, she received a call from investigators working the case that they had spotted the car and asked that she conduct a stop. Once pulled over, Rowe himself corroborated the information provided by the CI. Rowe affirmed that he was driving "Houston's" car from Arizona to Minnesota as indicated by the informant.

The district court held that despite Trooper Thul's explanation that she pulled the car over for the overly tinted windows, the probable cause that already existed from the CI's information was enough in this case. Specifically, the court held that "[b]ased on this probable cause to believe that the BMW contained cocaine, the police were authorized under the automobile exception to stop, search, and seize the

vehicle without a warrant." Based on our de novo review of the record, we also conclude that the collective knowledge of the officers support the stop and detention of Rowe, as well as the later search of the impounded vehicle. United States v. Vore, 743 F.3d 1175, 1179 (8th Cir. 2014); United States v. Castaneda, 438 F.3d 891, 894 (8th Cir. 2006).

There was in fact probable cause to arrest Rowe, although he was not arrested that night, as he was the sole occupant in a vehicle likely transporting a large shipment of cocaine. Officer Biederman's observation that a drug dealer is not likely to allow an unwitting or unknowing individual to transport a large drug shipment was relevant in this probable cause determination. The court correctly held that the probable cause to believe that the car contained cocaine, coupled with Rowe's status as the vehicle's driver, gave the officers reasonable grounds for believing that he "had knowledge of, and exercised dominion and control over, the cocaine." Maryland v. Pringle, 540 U.S. 366, 372 (2003) (holding that officers had probable cause to arrest an occupant of a car containing cocaine because it would have been "entirely reasonable" to infer that he "had knowledge of, and exercised dominion and control over, the cocaine").

The error in Rowe's argument is his focus on the fact that Trooper Thul effectuated an investigatory stop based only on the excessive window tint. The stop was not unconstitutionally expanded given that the entire basis for the stop was the drug interdiction, despite the trooper's alternate reasoning offered. Rowe's argument that the officers exceeded the scope of their authority and thus converted the seizure into a de facto arrest is inapposite. Rowe cites to jurisprudence dealing with investigative stops, which we do not have in this case on the facts before us. Even if we were to entertain that argument, "[t]his is not the case to wrestle with the boundaries of detentions and arrests," because as we have already determined, probable cause supported the officers' actions and thus any arrest that might have occurred was not unlawful and was warranted on these facts. United States v.

Guevara, 731 F.3d 824, 831-32 (8th Cir. 2013). "A warrantless arrest is consistent with the Fourth Amendment if it is supported by probable cause" Ulrich v. Pope Cnty., 715 F.3d 1054, 1059 (8th Cir. 2013) (quoting Borgman v. Kedley, 646 F.3d 518, 522-23 (8th Cir. 2011)); United States v. Martinez, 462 F.3d 903, 907 (8th Cir. 2006) (holding in the alternative that even if handcuffing a suspect did convert the detention into an arrest, the arrest was justified by probable cause). Accordingly, the actions of the officers that night were supported by probable cause.

B. Guidelines Calculation

Finally, Rowe argues that the district court committed procedural error by denying him a mitigating role reduction pursuant to § 3B1.2 of the sentencing Guidelines. U.S.S.G. § 3B1.2 The district court's grant or denial of a mitigating role reduction is a factual finding reviewed for clear error. United States v. Salazar-Aleman, 741 F.3d 878, 880 (8th Cir. 2013). "The defendant bears the burden of proving that he is entitled to this reduction." Id. Rowe argues that, at best, he was a drug courier in Houston Oliver's drug trafficking operation and was less culpable than his coconspirators. Rowe fails in his burden, however. "[T]he Eighth Circuit has never found someone's role as a courier in and of itself sufficient to warrant a mitigating role reduction." Id. at 881. There was no clear error here.

III. CONCLUSION

We affirm the district court's denial of Rowe's motion to suppress and Rowe's resulting sentence.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 16-4102

United States of America

Plaintiff - Appellee

v.

Sharrod Juanel Rowe

Defendant - Appellant

Appeal from U.S. District Court for the District of Minnesota - St. Paul
(0:15-cr-00164-DSD-4)

JUDGMENT

Before LOKEN, BEAM and COLLOTON, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

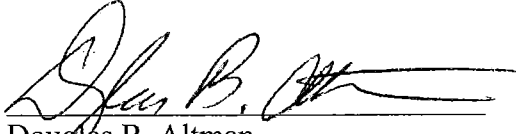
December 26, 2017

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

CERTIFICATE OF SERVICE

Douglas B. Altman, a member of the Bar of this Court, certifies that on the 15th day of March, 2016, he caused to be served by first class U.S. mail, a copy of Sharrod Juanel Rowe's Petition for Writ of Certiorari, enclosed in an envelope, postage prepaid and by depositing same in the post office at Minneapolis, Minnesota directed to the Solicitor General of the United States at Room 5614, Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530-0001.


Douglas B. Altman