STATE OF LOUISIANA	*	**NO. 2013-KA-1149**
VERSUS	*	**COURT OF APPEAL**
DOMINICK V. ALLEN A/K/A "VONTELLE ALLEN"	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

* * * * * * *

BONIN, J., CONCURS WITH REASONS

I concur but write separately to discuss our review of the trial court's denial of Mr. Allen's motion to suppress.

In our review of a district judge's decision to deny or grant a petitioner's motion to suppress, we first look to the factual findings underlying that judge's decision. We afford great deference to these findings of fact, and will "not overturn [them] unless there is *no evidence* to support those findings." *State v. Wells,* 08-2262, p. 4 (La. 7/6/10), 45 So. 3d 577, 580 (emphasis added). *See also State v. Morgan,* 09-2352, p. 5 (La. 3/5/11), 59 So. 3d 403, 406 ("a reviewing court must give due weight to factual inferences drawn by resident judges."). This extremely heightened deference is rooted in the limitations of our appellate jurisdiction set forth in La. Const. art. 5, § 10(B), which provides: "In criminal cases, jurisdiction extends only to questions of law." This limited scope of review also stems from the "complementary role of trial courts and appellate courts," *State v. Love,* 00-3347, p. 9 (La. 5/23/03), 847 So. 2d 1198, 1206, as district judges have the unique "opportunity to observe the witnesses and weigh the credibility of their testimony." *Wells,* 08-2262, p. 5, 45 So. 3d at 581.

Applying the district judge's supported findings of fact, we next review the district judge's holdings on questions of law, including the reasonableness of

governmental conduct under the Fourth Amendment, *de novo. See Id.,* 08-2262, p. 4, 45 So. 3d at 580; *State v. Pham,* 01-2199, p. 3 (La. App. 4 Cir. 1/22/03), 839 So. 2d 214, 218. If we find no reversible legal error in the determination of reasonableness, we then review the district judge's decision on a motion to suppress for abuse of discretion, *see Wells,* 08-2262, p. 5, 45 So. 3d at 581, as the ruling as to whether the exclusionary rule is being properly applied under Fourth Amendment doctrine is a mixed question of law and fact. *See Pham,* 01-2199, p. 3, 839 So. 2d at 218. *See also State v. Lewis,* 11-0889, p. 11 (La. App. 4 Cir. 2/1/12), 85 So. 3d 150, 157-158.

In this case, the trial judge clearly found the testimony of Officer Wright more credible than the testimony of Mr. Wilson, the hotel manager. The trial judge's finding that Mr. Allen answered the door to the hotel room and allowed the officers to enter is supported by evidence and should not be reviewed any further by us. At the point that the officers entered the hotel room, Officer Wright testified that he could see several pieces of identification and a red bag on the bed, putting the evidence seized in "plain view." "If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy" under the Fourth Amendment. *Horton v. California*, 496 U.S. 128, 133 (1990). In order to be applicable, the "plain view" doctrine has two requirements. *See State v. Washington*, 12-2203, p. 7 (La. 11/16/12), 104 So. 3d 401, 405.

First, law enforcement officers must not violate the Fourth Amendment "in arriving at the spot from which the observation of the evidence is made." *Kentucky v. King*, 131 S.Ct. 1849, 1858 (2011) (citing *Horton*, 496 U.S. at 136-140). The trial court found that Officer Wright came upon this evidence through Mr. Allen's consent to enter the hotel room. *See Id*. at 1858 ("[O]fficers may seek consent-based encounters if they are lawfully present in the place where the consensual encounter occurs."). Additionally, Officer Wright's intentions when he

accompanied Mr. Wilson to the door of the hotel room, even if with the "hope of being able to view and seize the evidence," are irrelevant. *Id*. at 1858 (citing *Horton*, 496 U.S. at 138). It is clear that Officer Wright was lawfully present in the hotel hallway and was then permitted by Mr. Allen to enter the hotel room.

Second, the evidence's incriminating character must be "immediately apparent." *Horton*, 496 U.S. at 136 (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 466. The "plain view" doctrine, however, does not require a police officer to be certain that the object in plain view is incriminating; it simply requires that the officer have probable cause to believe that the item in question is evidence. *See Texas v. Brown*, 496 U.S. 128, 135-136 (1983). Here, the officer was investigating a suspect for the unauthorized use of a credit card. When Mr. Allen answered the door, the officer noticed a red bag and several forms of identification on the bed. The incriminating nature of this evidence was apparent in the context of this investigation. Officer Wright had probable cause to believe that those forms of identification and the red bag were evidence.

Because both of these factors are met, Officer Wright had a lawful right to access the object and effect a warrantless seizure of the evidence. Thus, the trial judge did not abuse her discretion in denying Mr. Allen's motion to suppress.