NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 2060

STATE OF LOUISIANA

VERSUS

JEFFERY DANIELS

Judgment Rendered: JUN - 8 2012

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On Appeal from the 20th Judicial District Court
In and For the Parish of East Feliciana
Trial Court No. 11-CR-364, Division "B"

The Honorable William G. Carmichael, Judge Presiding

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Samuel C. D'Aquilla
District Attorney
Kathryn Jones
Assistant District Attorney
Clinton, Louisiana

and

Stewart B. Hughes
Special Assistant District Attorney
Clinton, Louisiana

Counsel for Appellee
State of Louisiana

Margaret Sollars
Appellate Counsel
Thibodeaux, Louisiana

Counsel for Defendant/Appellant
Jeffery Daniels

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

The defendant, Jeffery Daniels, was charged by bill of information with possession of a Schedule II controlled dangerous substance (cocaine), a violation of LSA-R.S. 40:967(C). The defendant initially pled not guilty and filed a motion to suppress evidence. After the trial court denied the defendant's motion to suppress, the defendant withdrew his former plea of not guilty and entered a plea of nolo contendere, reserving his right to appeal the denial of his motion to suppress under **State v. Crosby**, 338 So.2d 584 (La. 1976). The trial court imposed a suspended sentence of three years at hard labor, placed the defendant on supervised probation for five years, and ordered the defendant to pay a $1000.00 fine. The defendant now appeals, alleging one assignment of error. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

The facts are taken from the testimony of Jackson Deputy Marshall Rick Martin, the only witness to testify at the defendant's motion to suppress hearing. Shortly after midnight on April 12, 2011, Martin was patrolling La. Highway 10 in Jackson when he observed the defendant walking on the shoulder of the road. Martin stopped his patrol vehicle near the defendant and, at that time, he recognized the defendant as a person who had previously had encounters with law enforcement. Martin asked the defendant whether he had any outstanding warrants and whether he had any weapons or narcotics on his person. The defendant responded negatively, and Martin went inside his vehicle to run the defendant's name for warrants. When a search returned no outstanding warrants for the defendant's arrest, Martin exited his vehicle and again approached the defendant. At that time, the defendant voluntarily reached into his pocket and removed a pack of cigarettes and a lighter. The defendant placed those items on the hood of Martin's car and announced that those items were all he had in his possession.

Martin picked up the pack of cigarettes to look inside, but he did not see anything. However, when Martin started to hand the pack of cigarettes back to the defendant, he heard something rattle inside. After closer inspection, Martin discovered an object inside the cigarette pack which appeared to be a rock of crack cocaine. Martin immediately placed the defendant under arrest and advised him of his **Miranda**[1] rights.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to suppress evidence. Specifically, the defendant contends that the evidence of his drug possession was gathered as a result of an illegal seizure that was unsupported by reasonable suspicion or probable cause.

The State bears the burden of proving the admissibility of any evidence seized without a warrant when the legality of a search or seizure is placed at issue by a motion to suppress evidence. See LSA-C.Cr.P. art. 703(D). When a motion to suppress is denied, the trial court's factual and credibility determinations will not be reversed on appeal in the absence of a clear abuse of the trial court's discretion, *i.e.*, unless such ruling is not supported by the evidence. **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 281. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751.

The Fourth Amendment to the United States Constitution and La. Const. art. 1, § 5 guarantee citizens the right to be free from unreasonable searches and seizures. The Fourth Amendment provides that the people shall "be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures...." La. Const. art. 1, § 5 provides in pertinent part: "Every person shall be secure in his

[1] **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy."

Clearly, not all encounters between law enforcement and individual citizens constitute "seizures." See **Terry v. Ohio**, 392 U.S. 1, 19 n.16, 88 S.Ct. 1868, 1879 n.16, 20 L.Ed.2d 889 (1968). Federal jurisprudence has concluded that a "seizure" occurs "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." **Id.** The Louisiana Supreme Court has held that under Louisiana's slightly broader definition of the term, a seizure may also occur when the police come upon an individual with such force that, regardless of the individual's attempts to flee or elude the encounter, an actual stop of the individual is virtually certain to occur. See **State v. Sylvester**, 2001–0607 (La. 9/20/02), 826 So.2d 1106, 1108 (per curiam); **State v. Tucker**, 626 So.2d 707, 712 (La. 1993).

The United States Supreme Court has recognized three distinct types of police-citizen interactions with accompanying levels of justification to establish that the government action was reasonable or necessary: (1) arrest, which must be supported by probable cause, see **Maryland v. Pringle**, 540 U.S. 366, 370, 124 S.Ct. 795, 799, 157 L.Ed.2d 769 (2003); (2) brief investigatory stops, which must be supported by reasonable articulable suspicion, see **Terry**, 392 U.S. at 21, 88 S.Ct. at 1880; and (3) brief encounters between police and citizens, which require no objective justification, see **Florida v. Bostick**, 501 U.S. 429, 434, 111 S.Ct. 2382, 2386, 115 L.Ed.2d 389 (1991). Under Louisiana law, the same levels of justification are needed to find reasonable each of these three types of police-citizen interactions. See **State v. Anthony**, 98–0406 (La. 4/11/00), 776 So.2d 376, 389, cert. denied, 531 U.S. 934, 121 S.Ct. 320, 148 L.Ed.2d 258 (2000) (probable cause needed for arrest); LSA-C.Cr.P. art. 215.1(A) (reasonable suspicion needed for temporary investigatory stop); and **State v. Sherman**, 05–0779 (La. 4/4/06),

931 So.2d 286, 291 (mere communication implicates no Fourth Amendment concerns).

In this case, the State contends that the facts show a consensual encounter between a law enforcement officer and a pedestrian that did not implicate any constitutional protections. The defendant disagrees and argues that there was no "inherently suspicious behavior" that would justify what he characterizes as an investigatory stop.

At the outset, we note that a law enforcement officer may approach any person and ask simple questions without a requirement of reasonable suspicion of criminal activity. See **State v. Herrera**, 2009–1783 (La. 12/18/09), 23 So.3d 896, 897 (per curiam); **Sherman**, 931 So.2d at 291. In addition, "[a]n officer's request for identification does not turn the encounter into a forcible detention unless the request is accompanied by an unmistakable show of official authority indicating to the person that he or she is not free to leave." **Sherman**, 931 So.2d at 291.

In **State v. Martin**, 2011-0082 (La. 10/25/11), ___ So.3d ___, the Louisiana Supreme Court addressed a case with facts similar to those in the instant case. In **Martin**, a police officer encountered the defendant as they crossed paths at a convenience store. Because the officer recognized the defendant as a person who had previously been in trouble with law enforcement, he asked the defendant for his identification to check for outstanding warrants. At some point, the officer determined that the defendant had no outstanding warrants, but the "small talk" between the officer and the defendant continued. Eventually, the police officer asked the defendant whether he had anything illegal on him, and the defendant responded that he had four Soma pills in his pocket. The defendant was placed under arrest for possession of a Schedule IV controlled dangerous substance.

On appeal, the appellate court reversed the trial court's denial of the defendant's motion to suppress, finding that the defendant's encounter with the

police officer evolved from what was initially a consensual encounter to an intrusion upon the defendant's liberty when the police officer asked for the defendant's identification without any reasonable suspicion. The supreme court reversed the appellate court and reinstated the trial court's ruling denying the defendant's motion to suppress. The court first rejected a per se rule for determining whether an unreasonable seizure or detention had occurred and instead reiterated its commitment to a totality of the circumstances test for this determination. The court then concluded that nothing in the conduct of the police officer decisively changed the consensual nature of the officer's brief encounter with the defendant into a detention. Among the circumstances considered by the court were the brief nature of the encounter, the fact that the warrant check was completed quickly, and the defendant's voluntary answer to a potentially incriminating question.

In the instant case, Deputy Marshall Martin stated that he pulled his car over to the side of the road partly to check on the safety of the defendant, who was a pedestrian on a highway at a late hour. From Martin's testimony, it appears that the encounter was brief, and the defendant's warrant check was completed quickly. Further, although not dispositive in themselves, we note that Martin never activated his emergency lights, nor did he handcuff or restrain the defendant in any other way. Thus, there appears to have been no unmistakable show of official authority indicating to the defendant that he was not free to leave. See **Sherman**, 931 So.2d at 291. Finally, the defendant's act of removing his pack of cigarettes and lighter from his pocket and placing them near Martin on the hood of his patrol vehicle is not altogether different from the defendant in **Martin** admitting that he was in possession of drugs. Here, the defendant's own unsolicited actions led to Martin's discovery of the crack cocaine inside of the pack of cigarettes.

Based on our review of the record, we find no error or abuse of discretion in the trial court's ruling denying the defendant's motion to suppress. Under the totality of the circumstances, no unreasonable seizure or detention of the defendant occurred in this case. See **State v. Martin**, 2011-0082 (La. 10/25/11), ___ So.3d ___. This assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.