NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 0825

STATE OF LOUISIANA

VERSUS

IAN JONES

On Appeal from the 22nd Judicial District Court
Parish of Washington, Louisiana
Docket No. 10-CR5-111242, Division "B"
Honorable August J. Hand, Judge Presiding

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BEFORE: PARRO, WELCH, AND KLINE,[1] JJ.

Judgment rendered FEB 19 2013

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[1] Judge William F. Kline, Jr., retired, is serving as judge pro tempore by special appointment of the Louisiana Supreme Court.

PARRO, J.

The defendant, Ian Jones, was charged by bill of information with production and manufacture of a Schedule II controlled dangerous substance (CDS), methamphetamine, a violation of LSA-R.S. 40:967(A)(1) (count 1); creation or operation of a clandestine laboratory, a violation of LSA-R.S. 40:983 (count 2); and possession of a Schedule II CDS, methamphetamine, a violation of LSA-R.S. 40:967(C) (count 3).[2] He initially entered a plea of not guilty and filed motions to suppress evidence and his statement, which the district court denied. The defendant then moved to quash count 3. Following the district court's grant of his motion to quash, he pled guilty to counts 1 and 2 pursuant to a plea agreement with the state, reserving his right to appeal. **See State v. Crosby**, 338 So.2d 584, 588 (La. 1976). According to the plea agreement, the state would bill the defendant as a habitual offender on count 1 only, and the district court would sentence the defendant initially to eighteen years at hard labor on count 1, with the first ten years to be served without benefit of parole, probation, or suspension of sentence,[3] and to fifteen years on count 2, both sentences to run concurrently. Pursuant to the plea agreement, the district court sentenced the defendant to eighteen years at hard labor on count 1, with the first ten years to be served without the benefit of parole, probation, or suspension of sentence. He was also sentenced to fifteen years at hard labor on count 2, and the sentences were ordered to run concurrently.

At this stage of the proceeding, the state filed a multiple offender bill of information. The defendant was then adjudicated a second-felony habitual offender on count 1, and the district court vacated its previously-imposed sentence on that count and resentenced the defendant to eighteen years at hard labor,[4] to be served concurrently with his previously imposed sentence on count 2. The defendant now

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[2] The defendant's brother, Robin Jones, was charged by the same bill of information. His charges were severed, and he was tried separately. He has filed a separate appeal with this court. See **State v. Jones**, 12-0824 (La. App. 1st Cir. 2/19/13) (unpublished opinion).

[3] See LSA-R.S. 40:967(B)(3)(a).

[4] See LSA-R.S. 15:529.1(A)(1) and LSA-R.S. 40:967(B)(3)(a).

appeals, arguing that the district court erred in denying his motion to suppress the evidence.[5] For the following reasons, we affirm the defendant's convictions, habitual offender adjudication, and sentences.

FACTS

On October 15, 2010, the defendant was riding in a car with his girlfriend, Peggy Temple, and his brother and co-defendant, Robin Jones. Temple was driving the vehicle and was involved in a motor vehicle accident. After the accident, Temple left the scene and drove to a lighted area of a nearby parking lot.

Sergeant Chad Dorset with the Franklinton Police Department responded to a call reporting a hit-and-run and arrived at the parking lot where the defendant was located shortly thereafter. He conducted a plain view search of the vehicle and saw items consistent with a methamphetamine lab, including coffee filters, drain cleaner, funnels, and empty bottles. Sergeant Dorset then searched the passenger compartment of the vehicle and found a Ziploc bag containing a clear liquid and white powder, which he suspected to be methamphetamine and methamphetamine products. The defendant, his brother, and Temple were placed under arrest and transported to the Franklinton Police Department.

MOTION TO SUPPRESS

In his sole assignment of error, the defendant argues that the district court erred in denying his motion to suppress the evidence. Specifically, he contends that he did not consent to the search of his vehicle.

On the trial of a motion to suppress, the burden of proof is on the defendant to prove the ground of his motion, except that the state shall have the burden of proving the admissibility of any evidence seized without a warrant. LSA-C.Cr.P. art. 703(D). A search conducted without a warrant issued upon probable cause is per se unreasonable, subject only to a few specifically established and well-delineated exceptions. **State v. Aucoin**, 613 So.2d 206, 208 (La. App. 1st Cir. 1992). The officer who searched the defendant's vehicle did not have a search warrant. However, one of

[5] The defendant does not contest the denial of the motion to suppress his statement.

the specifically established exceptions to the requirements of both a warrant and probable cause is a search conducted pursuant to consent. Consent is valid when it is freely and voluntarily given by a person who possesses common authority or other sufficient relationship to the premises or effects sought to be inspected. **State v. Brumfield**, 05-2500 (La. App. 1st Cir. 9/20/06), 944 So.2d 588, 593, writ denied, 07-0213 (La. 9/28/07), 964 So.2d 353. When the state seeks to rely upon consent to justify a warrantless search, it has the burden of proving that the consent was freely and voluntarily given. Whether consent was voluntarily given is an issue of fact to be determined by the fact finder in light of the totality of the circumstances. The trier of fact may consider the credibility of witnesses, as well as the surrounding circumstances, in determining the issue of the voluntariness. **Aucoin**, 613 So.2d at 208-09. When a district court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the district court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 280-81. As a general rule, this court reviews district court rulings under a deferential standard with regard to factual and other trial determinations, while legal findings are subject to a *de novo* standard of review. **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751.

At the hearing on the motion to suppress the evidence, the three occupants of the vehicle testified and gave similar accounts of the factual circumstances surrounding the search of the vehicle. According to their testimony, a police officer asked Temple whether she was the driver of the vehicle, and when she responded affirmatively, he asked for her consent to search. Temple responded that the vehicle did not belong to her. The officer then asked Robin for consent to search, and he told the officer that the vehicle did not belong to him. After Temple and Robin denied ownership of the vehicle, Sergeant Craig James stated, "I don't care whose car it is. Search it anyway." The officers never asked the defendant for his consent.

The officer who searched the vehicle, Sergeant Dorset, also testified at the hearing on the motion to suppress. He stated that, after observing items in plain view

consistent with a methamphetamine lab, he asked Temple for consent to search. She stated that the vehicle belonged to the defendant. Sergeant Dorset then asked the defendant for consent to search, and the defendant responded, "Go ahead." Sergeant Dorset testified that he did not threaten, coerce, or in any way promise the defendant anything in exchange for his consent. He testified that the three occupants were cooperative and did not try to stop him from searching the vehicle. Sergeant Dorset never heard Sergeant James say, "I don't care whose vehicle it is, search it anyway."

Sergeant James testified at the hearing on the motion to suppress. He was present when Sergeant Dorset obtained the defendant's consent to search the vehicle. According to Sergeant James, the three occupants were extremely cooperative, and the defendant did not recant his verbal consent to search the vehicle. He corroborated Sergeant Dorset's testimony that the defendant was not coerced, threatened, or promised anything in exchange for his consent. He denied saying, "I don't care whose vehicle it is, search it anyway."

After observing the witnesses and weighing their credibility, the district court credited the testimony of Sergeants Dorset and James and rejected that of the defendant and the other two occupants of the vehicle. There is no basis in the record to overturn that credibility determination. According to both officers, the defendant gave consent to search and did not attempt to stop them from searching his vehicle. As pointed out by the district court, it was "telling" that the occupants gave accounts of the facts similar to that of the officers relative to the questioning of Temple and Robin, yet testified that the officers, knowing of the defendant's identity as owner of the vehicle, dismissed the requirement of asking him for consent.

Considering all of the above, we find no error or abuse of discretion in the district court's denial of the motion to suppress the evidence. Accordingly, this assignment of error is without merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED.