NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0613

STATE OF LOUISIANA

VERSUS

LAVON MARKEE BULLOCK

Judgment Rendered: November 1, 2013

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, State of Louisiana
Trial Court Number 527608

Honorable Reginald T. Badeaux, III, Judge Presiding

* * * * * * * * * *

Walter P. Reed
Covington, LA

Counsel for Appellee,
State of Louisiana

Kathryn W. Landry
Baton Rouge, LA

Mary E. Roper
Baton Rouge, LA

Counsel for Defendant/Appellant,
Lavon Markee Bullock

* * * * * * * * * *

BEFORE: WHIPPLE, C.J., WELCH AND CRAIN, JJ.

WHIPPLE, C.J.

The defendant, Lavon M. Bullock, was charged by Twenty-Second Judicial District Court bill of information number 527608 with one count of possession of heroin (a schedule I controlled dangerous substance), a violation of LSA-R.S. 40:966(C)(1), and moved to suppress evidence and statements.[1] Following a hearing, the motions to suppress were denied, and the defendant pled guilty, reserving his right to challenge the rulings on his motions to suppress. See North Carolina v. Alford, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162 (1970) and State v. Crosby, 338 So. 2d 584 (La. 1976). He was sentenced to five years at hard labor. He now appeals, contending: (1) the trial court abused its discretion in denying the motions to suppress, and (2) the trial court erred in accepting a guilty plea where the date of the offense established at the hearing on the motions to suppress differed from the date listed on the bill of information. For the following reasons, we affirm the defendant's conviction and sentence.

MOTION TO SUPPRESS

In assignment of error number 1, the defendant argues the trial court erred in denying the motions to suppress because there was no reasonable suspicion articulated to justify the intrusion into the privacy of the occupants of the vehicle.

A three-tiered analysis governs the Fourth Amendment's application to interactions between citizens and police. At the first tier, mere communications between officers and citizens implicate no Fourth Amendment concerns where there is no coercion or detention. State v. Caples, 2005-2517 (La. App. 1st Cir. 6/9/06), 938 So. 2d 147, 154, writ denied, 2006-2466 (La. 4/27/07), 955 So. 2d 684.

---

[1]The defendant separately appealed from his guilty plea under Twenty-second Judicial District Court bill of information #520513. See State v. Bullock, 2013-0612 (La. App. 1st Cir. 11/1/13) (unpublished), also rendered this date.

At the second tier, the investigatory stop recognized by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or is about to be, engaged in criminal conduct or is wanted for past criminal acts. Louisiana Code of Criminal Procedure article 215.1(A) provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. However, reasonable suspicion is insufficient to justify custodial interrogation even though the interrogation is investigative. Caples, 938 So. 2d at 154.

Lastly, at the third tier, a custodial "arrest," the officer must have "probable cause" to believe that the person has committed a crime. Louisiana Code of Criminal Procedure article 213(3) uses the phrase "reasonable cause."[2] The "probable cause" or "reasonable cause" needed to make a full custodial arrest requires more than the "reasonable suspicion" needed for a brief investigatory stop. Caples, 938 So. 2d at 154.

The Louisiana Supreme Court has recognized that in regard to brief investigatory stops, the level of suspicion required to justify the stop need only rise to the level of some minimal level of objective justification. In determining whether sufficient suspicion existed for the stop, a reviewing court must consider the totality of the circumstances, giving deference to the inferences and deductions of a trained

[2]The "reasonable cause" standard of Article 213(3) is equivalent to "probable cause" under the general federal constitutional standard. To read Article 213 as allowing an arrest on less than probable cause would put the article afoul of the Fourth Amendment. Caples, 938 So. 2d at 154 n.3.

police officer that might well elude an untrained person, while also weighing the circumstances known to the police, not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. Caples, 938 So. 2d at 154-55.

The touchstone of the analysis under the Fourth Amendment is always the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security. For purposes of the Fourth Amendment, the reasonableness of any intrusion on an individual's privacy interests depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers. The inquiry is a purely objective one that does not take into account the subjective intent or beliefs of the police. State v. Kelley, 2005-1905 (La. 7/10/06), 934 So. 2d 51, 54 (per curiam), cert. denied, 549 U.S. 1065, 127 S. Ct. 691, 166 L. Ed. 2d 536 (2006).

A search conducted pursuant to consent is an exception to the requirements of both a warrant and probable cause. State v. Young, 2006-0234 (La. App. 1st Cir. 9/15/06), 943 So. 2d 1118, 1122, writ denied, 2006-2488 (La. 5/4/07), 956 So. 2d 606. Informing a suspect of his right to refuse consent to a search is not required. Instead, the lack of such a warning is only one factor in determining the voluntary nature of consent to a search. State v. Parfait, 96-1814 (La. App. 1st Cir. 5/9/97), 693 So. 2d 1232, 1240, writ denied, 97-1347 (La. 10/31/97), 703 So. 2d 20.

St. Tammany Parish Sheriff's Office Deputy Matthew Rowley, Jr. testified at the hearing on the motions to suppress. On February 29, 2012, at 2:35 p.m., he was patrolling Parkline Boulevard, a desolate area known for illegal drug activity and for illegal dumping. He drove up to a parked blue Hyundai with two occupants. The

vehicle was parked by "a bunch of trash," and the nearest house was one hundred yards away. No other police officers were present. Deputy Rowley approached the occupants of the vehicle. Dominique Chauvin was the driver, and the defendant was the passenger. Chauvin indicated the vehicle belonged to her. Deputy Rowley recognized the defendant as someone he had previously arrested. Chauvin and the defendant both claimed they were looking for rental property. According to Deputy Rowley, there were no rental properties in the area, there was only an old burnt-down or demolished house nearby, and there were no for sale signs on the nearby properties. Deputy Rowley asked Chauvin and the defendant to exit the vehicle, placed Chauvin at the rear of the vehicle, and placed the defendant at the front of the police unit. Neither of them was handcuffed. He patted down Chauvin for weapons. The defendant was very nervous. Deputy Rowley told Chauvin he wanted to search the vehicle for weapons and illegal narcotics because she was parked on the side of the road with the defendant in a "high drug area." Chauvin gave Deputy Rowley permission to search her vehicle. Deputy Rowley advised Chauvin she could stop the search of the vehicle at any time. She never withdrew consent for the search.

Prior to searching the vehicle, for purposes of officer safety, Deputy Rowley asked the defendant whether there was anything in the vehicle, such as open needles or firearms, that Deputy Rowley needed to know about. The defendant stated, "there's a pipe underneath my seat." Thereafter, Deputy Rowley recovered a glass pipe from the front passenger seat and a bottle containing white pills from Chauvin's purse.[3] Deputy Rowley testified that, based on his knowledge and

[3]The State and the defendant stipulated there was a factual basis to support the charge of possession of heroin in the instant case.

experience, he was familiar with crack cocaine and recognized it in the pipe. The defendant claimed the pipe belonged to Chauvin, but she stated the pipe belonged to the defendant.

The trial court denied the motions to suppress, noting Deputy Rowley was patrolling an area known for illegal drug activity and illegal dumping and saw a car in a desolate area, at least one hundred yards from the nearest house. He approached the car to engage in a brief conversation with the occupants and to see what they were doing. Thereafter, the driver and owner of the car consented to a search of the vehicle, and the defendant freely and voluntarily, without duress, threats, or promises stated there was a pipe under his seat.

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial 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. However, a trial court's legal findings are subject to a *de novo* standard of review. State v. Hunt, 2009-1589 (La. 12/1/09), 25 So. 3d 746, 751.

The trial court did not err or abuse its discretion in denying the motions to suppress. Deputy Rowley's conduct was a reasonable intrusion on the defendant's privacy. Deputy Rowley needed neither reasonable suspicion for an investigatory stop nor probable cause for an arrest to approach the defendant and Chauvin and inquire why they were parked on the side of the road. See Kelley, 934 So. 2d at 54. Further, viewing the facts objectively, it was reasonable for Deputy Rowley to suspect criminal activity. The defendant and Chauvin were stopped in a vehicle, near a pile of trash, in a desolate area known for illegal drug activity and for illegal dumping. Deputy Rowley recognized the defendant as someone he had previously

arrested. Additionally, the defendant and Chauvin claimed they were looking for rental property, but there was no property for sale or rent in the area. Deputy Rowley asked the defendant and Chauvin to exit their vehicle and noticed the defendant was nervous. The physical intrusiveness of the defendant's detention did not intensify as the duration of the stop expanded to accommodate the growing suspicion of criminal activity. He was not handcuffed or restrained, circumstances which might have suggested during the lengthening delay that a *de facto* arrest had taken place. See State v. Miller, 2000-1657 (La. 10/26/01), 798 So. 2d 947, 950 (per curiam). Thereafter, Chauvin consented to a search of her vehicle, and the defendant voluntarily stated, "there's a pipe underneath my seat." The illegal drugs were recovered pursuant to a consensual search.

This assignment of error is without merit.

INCORRECT DATE ON BILL OF INFORMATION

In assignment of error number 2, the defendant argues the trial court erred in accepting a guilty plea where the date of the offense established at the motion to suppress hearing differed from the date listed on the bill of information.

The bill of information charged that the offense occurred on or about October 14, 2012. At the hearing on the motion to suppress, however, Deputy Rowley indicated the incident occurred on February 29, 2012.

Initially, we note the defendant pled guilty without raising the issue of the correctness of the date of the offense listed on the bill of information. A defendant waives his right to review of a non-jurisdictional pre-plea error unless, at the time of his plea, he expressly stipulates that he does not waive his right to review of it, the normal consequence of a guilty plea. See Crosby, 338 So. 2d at 591.

Moreover, the date of commission of the offense was not essential to the

offense. If the date or time is not essential to the offense, an indictment shall not be held insufficient if it does not state the proper date or time, or if it states the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day. LSA-C.Cr.P. art. 468.

This assignment is without merit.

CONVICTION AND SENTENCE AFFIRMED.