NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 1587

STATE OF LOUISIANA

VERSUS

ROBERT DEAN MILLER

Judgment Rendered: MAY - 2 2014

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On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Livingston
State of Louisiana
No. 28371

Honorable Jerome M. Winsberg, Judge Ad Hoc Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Defendant, Robert Dean Miller, was charged by bill of information with creation or operation of a clandestine laboratory, a violation of LSA-R.S. 40:983B (count one), and possession of a Schedule II controlled dangerous substance (oxycodone), a violation of La. R.S. 40:967C (count two). He initially pled not guilty and filed a motion to suppress. Following the trial court's denial of his motion to suppress, defendant withdrew his former pleas of not guilty and pled guilty as charged to both offenses. Defendant entered these guilty pleas pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976), reserving his right to appeal the trial court's denial of his motion to suppress. The trial court sentenced defendant to five years at hard labor on each count, with the sentences ordered to run concurrently. Defendant now appeals, challenging only the trial court's denial of his motion to suppress. For the following reasons, we affirm defendant's convictions and sentences.

FACTS

Because defendant pled guilty, the facts of his case were not developed at trial. The following recitation of facts is taken from the testimony given at defendant's motion to suppress hearing.

On August 6, 2012, Deputy Leo Barthelemy, of the Livingston Parish Sheriff's Office, conducted a traffic stop of a vehicle on Range Avenue. Deputy Barthelemy's justification for the traffic stop was that the vehicle did not appear to have a properly displayed license plate.[1] Deputy Barthelemy and an assisting officer, a Deputy Turner,[2] approached the vehicle to speak with its occupants. As they neared the vehicle, they observed the passenger (identified at the hearing as defendant) moving swiftly within the vehicle – bending down and appearing to reach underneath seats. Ultimately, Deputy Barthelemy made contact with the driver, a Ms. Smith, and Deputy Turner made contact with

[1] Upon his actual approach to the vehicle, Deputy Barthelemy later noticed that a temporary tag was located in the rear window of the vehicle, but that the temporary tag was obstructed by the vehicle's dark tint.

[2] Deputy Turner is referred to in the record as both "Deputy Woody Turner" and "Deputy Willie Turner." To eliminate any confusion, we refer to him simply as "Deputy Turner."

defendant. The deputies asked both Ms. Smith and defendant to exit the vehicle.

On the basis of defendant's suspicious movements, Deputy Turner conducted a frisk of defendant's person. During the frisk, Deputy Turner found a syringe "stuck in between [defendant's] pants." As a result, Deputy Turner detained defendant at that time. Simultaneously, Deputy Barthelemy spoke with Ms. Smith and informed her of the reason for the stop. He also asked for, and received, verbal consent to search the vehicle. In the ensuing search, Deputy Barthelemy located another syringe under the seat where defendant had been sitting. That syringe contained a clear, liquid substance. He also located several closed bags in the backseat of the vehicle. Upon opening the bags, Deputy Barthelemy discovered that they contained ground-down Sudafed, camping fuel, tubing, gloves, Drano fluid, and coffee filters, all of which are common precursors used to make methamphetamine. Deputy Barthelemy then spoke to defendant, who admitted that he was going to use the items to produce methamphetamine. After he had been transported to the Livingston Parish Jail, defendant told Deputy Barthelemy that he would take responsibility for everything.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant contends that the trial court erred in denying his motion to suppress. As support for this position, defendant makes two specific arguments. First, defendant alleges that Deputy Turner's frisk was not made pursuant to any reasonable suspicion that he might be armed. Second, defendant contends that the search of the bags in the rear of the vehicle was made without permission from himself or Ms. Smith, thus rendering it an illegal search. On these bases, defendant seeks to suppress the syringe found on his person, the contents of the closed bags, and his incriminating statement regarding their plans to cook methamphetamine.

A defendant adversely affected may move to suppress any evidence from use at a trial on the merits on the ground that it was unconstitutionally obtained.

LSA-C.Cr.P. art. 703A. The state bears the burden of proof when a defendant files a motion to suppress evidence obtained without a warrant. See LSA-C.Cr.P. art. 703D. A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Jones**, 01-0908 (La.App. 1 Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 02-2989 (La. 4/21/03), 841 So.2d 791. Reviewing courts should defer to the credibility findings of the trial court unless its findings are not adequately supported by reliable evidence. See **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**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751.

The Fourth Amendment to the United States Constitution and Article 1, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. Measured by this standard, LSA-C.Cr.P. art. 215.1, as well as federal and state jurisprudence, recognizes the right of a law enforcement officer to temporarily detain and interrogate a person whom he reasonably suspects is committing, has committed, or is about to commit a crime. **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); **State v. Robertson**, 97-2960 (La. 10/20/98), 721 So.2d 1268, 1269; **State v. Belton**, 441 So.2d 1195, 1198 (La. 1983), cert. denied, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984). Reasonable suspicion for an investigatory detention is something less than probable cause and must be determined under the specific facts of each case by whether the officer had sufficient knowledge of facts and circumstances to justify an infringement on the individual's right to be free from governmental interference. **Belton**, 441 So.2d at 1198.

When a law enforcement officer has stopped a person for questioning pursuant to Article 215.1 and reasonably suspects that he is in danger, he may frisk the outer clothing of such person for a dangerous weapon. If the law enforcement officer reasonably suspects the person possesses a dangerous weapon, he may search the person. See LSA-C.Cr.P. art. 215.1B. Under the

"plain feel" exception to the warrant requirement, if a police officer pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity as contraband immediately apparent, the officer may seize the item without a warrant. **Minnesota v. Dickerson**, 508 U.S. 366, 373-77, 113 S.Ct. 2130, 2136-37, 124 L.Ed.2d 334 (1993); see also **State v. Mangrum**, 95-0926 (La.App. 1 Cir. 5/10/96), 675 So.2d 1150, 1153.

Defendant's first argument in this assignment of error is that Deputy Turner erred in performing a weapons frisk because he lacked any reasonable suspicion that defendant might be armed. However, the testimony from the motion to suppress hearing reveals that, as they approached the vehicle, Deputies Barthelemy and Turner both witnessed defendant engage in swift, suspicious movements wherein he appeared to bend down and reach underneath car seats. Under similar circumstances, we have previously concluded that a police officer could reasonably suspect that an individual engaging in such actions might have been reaching for a dangerous weapon. In **State v. Walters**, 464 So.2d 1052, 1057 (La.App. 1 Cir. 1985), we upheld an officer's frisk of a defendant after he reached under the front seat of his vehicle to retrieve an item. We noted that such an action could have caused the officer to reasonably suspect that the defendant was actually reaching for a weapon. Other courts have held similarly. See **State ex rel. C.S.**, 12-1376 (La. 1/11/12), 106 So.3d 93, 93-94 (per curiam) (a passenger's action in bending over and reaching for the floorboard, combined with the officer's experience, caused the officer to believe with a high probability that firearms or drugs were present); see also **State v. Williams**, 489 So.2d 286, 289 (La.App. 4 Cir. 1986) (a passenger's action in starting to reach down to the floorboard was sufficient to cause officers to fear for their safety).

Considering the above, we find that the trial court did not err or abuse its discretion in denying the motion to suppress with respect to Deputy Turner's frisk of defendant. Deputies Barthelemy and Turner witnessed defendant engage in suspicious reaching movements inside the vehicle immediately prior to

their contact with him. Those movements alone justified Deputy Turner's weapons frisk of defendant. During the frisk, Deputy Turner lawfully seized the syringe, both due to its potential as a dangerous weapon and to its apparent nature as potential drug paraphernalia.

Defendant's second argument alleges that Ms. Smith's consent to search the vehicle did not extend to allow officers to search the bags located in the backseat, which he contends were owned solely by him. However, a consent search is a recognized exception to the warrant requirement. See **Schneckloth v. Bustamonte**, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043-44, 36 L.Ed.2d 854 (1973); **State v. Ludwig**, 423 So.2d 1073, 1076 (La. 1982); **State v. Musacchia**, 536 So.2d 608, 610 (La.App. 1 Cir. 1988). Consent is valid when it is freely given by a person who possesses common authority or other sufficient relationship to the premises or effects sought to be inspected. **United States v. Matlock**, 415 U.S. 164, 171, 94 S.Ct. 988, 993, 39 L.Ed.2d 242 (1974); **Musacchia**, 536 So.2d at 611. 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 given voluntarily 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 the witnesses, as well as the surrounding circumstances, in determining the issue of voluntariness. On appeal, the fact finder's determination is entitled to great weight. **State v. Edwards**, 434 So.2d 395, 397 (La. 1983).

The authority that justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements. Rather, it rests on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that others have assumed the risk that one of their number might permit the common area to be searched. A person's expectation of privacy is severely limited by the

joint dominion or authority over the property. **State v. Rawls**, 552 So.2d 764, 765-66 (La.App. 1 Cir. 1989) (citations omitted).

In **Rawls**, the defendant was a passenger in a vehicle of which neither he nor the driver could demonstrate ownership. During a traffic stop, the stopping officer secured consent to search the vehicle from the driver. The officer searched the passenger compartment of the vehicle, but found no contraband or weapons. He then searched the trunk and found a large, blue luggage bag. He opened the bag and found two garbage bags that, together, contained approximately sixteen pounds of marijuana. Both the driver and the defendant were placed under arrest, and the defendant later made a spontaneous statement in which he indicated the approximate weight of the contraband and admitted he was the owner thereof. See **Rawls**, 552 So.2d at 766-67.

On appeal, the defendant argued that the driver's consent to search did not extend to the defendant's luggage located in the trunk of the vehicle. However, this court noted that an owner (and, in the absence of any evidence as to ownership, an operator) has the authority to consent to a vehicle search. Finding further that neither the driver nor the defendant had objected to the search of the luggage, this court upheld the trial court's denial of the motion to suppress and affirmed the defendant's conviction and sentence. See **Rawls**, 552 So.2d at 767.

In the instant case, Deputy Barthelemy secured consent to search the vehicle from Ms. Smith who was, without question, the owner of the vehicle. In granting consent, Ms. Smith did not attempt to restrict either the scope or duration of the search. Similarly, defendant did not object to Deputy Barthelemy's search of the closed bags in the backseat. Therefore, pursuant to a consent search, Deputy Barthelemy lawfully recovered the bags' contents. The trial court did not err or abuse its discretion in denying defendant's motion to suppress related to these items.

Citing **Wong Sun v. U.S.**, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), defendant further contends that his statement admitting ownership of

the bags was "fruit of the poisonous tree" that resulted from an illegal search of the bags. However, having found that the search was valid, we also find that the trial court did not err or abuse its discretion in denying defendant's motion to suppress with respect to these statements.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.