NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 0289

STATE OF LOUISIANA

VERSUS

CEDRIC SPEARS

DATE OF JUDGMENT: SEP 19 2014

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 08-13-0840, SECTION 11, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE RICHARD D. ANDERSON, JUDGE

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Hillar C. Moore III District Attorney Dylan C. Alge Assistant District Attorney Baton Rouge, Louisiana	Counsel for Appellee State of Louisiana
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Cedric Spears Marksville, Louisiana	Defendant-Appellant In Proper Person

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BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

The defendant, Cedric Deon Spears, was charged by bill of information with possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1.[1] (R 7) He initially entered a plea of not guilty. Upon the trial court's denial of his motion to suppress the evidence, the defendant withdrew his not guilty plea and entered a plea of guilty as charged, pursuant to a plea agreement. (R 3-4, 55-55, 128-37) In accordance with ***State v. Crosby***, 338 So.2d 584 (La. 1976), the defendant reserved the right to appeal the denial of his motion to suppress. (R 3, 131) The trial court sentenced the defendant to eighteen years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence and a fine of one thousand dollars. (R 4, 137) The defendant now appeals, assigning error to the trial court's denial of the motion to suppress the evidence in one counseled and two *pro se* briefs. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

The facts of the instant offense were not fully developed because the defendant ultimately entered a guilty plea. The following facts are based on the testimony presented at the motion to suppress hearing, the preliminary examination hearing, and the affidavit of probable cause (APC).

On June 17, 2013, the Baton Rouge Police Department (BRPD) received an anonymous tip that the defendant was trafficking cocaine at his residence and was in possession of a firearm. (R 6, 74, 104) The informant also provided a description of the defendant's vehicle. Officer Nicholas Collins and Detective Richard McCloskey obtained the defendant's criminal history, which confirmed that he was a convicted felon, and subsequently proceeded to his residence located

[1] The defendant also was charged in count two of the bill of information with possession of cocaine, a violation of La. R.S. 40:967(C). However, the state dismissed count two at the time of the defendant's guilty plea to the instant offense.

in an apartment complex. (R 75, 112-14) Between 11:30 p.m. and midnight, after observing a vehicle outside the apartment fitting the description provided by the informant, the officers decided to approach the apartment. As they approached, the defendant opened the door. Detective McCloskey observed several occupants, including the defendant, and a firearm within arm's reach approximately two feet from the defendant. (R 74-76) The officers asked the occupants to position themselves in a central location and searched them for weapons. The defendant was handcuffed and read his ***Miranda***[2] rights. (R 76-78) The officers also recovered a clear plastic baggie of suspected cocaine (a white powder substance) and a digital scale.[3] (R 6, 79, 116-17) After being advised of his rights, the defendant admitted that he resided in the apartment and that the firearm belonged to him, but denied ownership of the suspected cocaine.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant contends that the trial court erred in denying his motion to suppress the evidence. The defendant asserts that his "initial detention" was unjustified because it was based on a vague, uncorroborated, anonymous tip. Pointing out that the police did not observe any illegal behavior before confronting him at his home, he argues this case is an example of the type of police profiling that could subject common people to harassment if found legal under the Fourth Amendment. In addition to arguing that there was no probable cause for the arrest and that the police search was illegal, the defendant also contends in his original and supplemental *pro se* briefs that the APC was inaccurate, that the police intentionally misrepresented the facts,

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[2] ***Miranda v. Arizona***, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966).

[3] According to the APC, the suspected cocaine was located by Detective McCloskey in a bedroom at of the defendant's apartment. (R 6) However, at both the preliminary examination hearing and the suppression hearing, Officer Collins testified that the suspected cocaine actually was recovered from a hallway table located approximately ten feet from the apartment's front door. Officer Collins explained that the inconsistency resulted from an inadvertent error he made in preparing the APC. (R 79, 86-89, 115-18)

and that the police had no legal justification for coming to his home. In support of these contentions, he alleges that the testimony presented by the State was inconsistent regarding when the police performed the criminal background check on him and whether they met face-to-face with the informant.

The Fourth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. See also La. Const. art. IV, § 5; ***Mapp v. Ohio***, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961). A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. La. C.Cr.P. art. 703(A). The State bears the burden of proof when a defendant files a motion to suppress evidence obtained without a warrant. La. C.Cr.P. art. 703(D). Searches and seizures conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.

One such exception to the search-warrant requirement is the plain-view exception. Two conditions must be satisfied to trigger the applicability of the doctrine: (1) there must be a prior justification for an intrusion into the protected area; and (2) it must be immediately apparent without close inspection that the items are evidence or contraband. "Immediately apparent" requires no more than probable cause to associate the property with criminal activity. ***State v. Howard***, 01-1487 (La. App. 1st Cir. 3/28/02), 814 So.2d 47, 53, writ denied, 02-1485 (La. 5/16/03), 843 So.2d 1120. Further, another traditional exception to the warrant requirement is a search incident to a lawful arrest based upon probable cause. ***United States v. Robinson***, 414 U.S. 218, 224, 94 S.Ct. 467, 471, 38 L.Ed.2d 427 (1973).

An anonymous tip may provide probable cause for an arrest or reasonable suspicion for an investigatory stop if it accurately predicts future conduct in sufficient detail to support a reasonable belief that the informant had reliable information regarding the suspect's illegal activity. See ***Alabama v. White***, 496 U.S. 325, 332, 110 S.Ct. 2412, 2417, 110 L.Ed.2d 301 (1990); ***State v. Smith***, 00-1838 (La. 5/25/01), 785 So.2d 815, 816 (*per curiam*). However, an unverified tip alone might be insufficient to establish reasonable cause for the stop of the defendant. ***White***, 496 U.S. at 331, 110 S.Ct. at 2417.

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***, 05-2517 (La. App. 1st Cir. 6/9/06), 938 So.2d 147, 154, writ denied, 06-2466 (La. 4/27/07), 955 So.2d 684.

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. ***Caples***, 938 So.2d at 154. 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.

Lastly, at the third tier, a custodial "arrest," the officer must have "probable cause" to believe that the person has committed a crime. ***Caples***, 938 So.2d at 154. Louisiana Code of Criminal Procedure article 213(3) uses the phrase "reasonable cause." 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.[4] ***Caples***, 938 So.2d at 154. Probable cause to arrest exists when the facts and circumstances known to the arresting officer, and of which he has reasonable and trustworthy information, are sufficient to justify a man of ordinary caution in the belief that the accused has committed an offense. ***State v. Parker***, 06-053 (La. 6/16/06), 931 So.2d 353, 355 (*per curiam*). After making an arrest, an officer has the right to thoroughly search a defendant and his wingspan, or lunge space, for weapons or evidence incident to a valid arrest. ***State v. Conway***, 07-2009 (La. App. 1st Cir. 6/6/08), 992 So.2d 494, 496.

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. 1st Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 02-2989 (La. 4/21/03), 841 So.2d 791. Correspondingly, 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. See ***State v. Hunt***, 09-1589 (La. 12/1/09), 25 So.3d 746, 751. In evaluating alleged violations of the Fourth Amendment, reviewing courts must undertake an objective assessment of an officer's actions in light of the facts and circumstances then known to the officer. ***State v. Cooper***, 05-2070 (La. App. 1st Cir. 5/5/06), 935 So.2d 194, 198, writ denied, 06-1314 (La. 11/22/06), 942 So.2d 554. When reviewing a trial court's ruling on a motion to suppress, the entire record may be considered. ***State v. Martin***, 595 So.2d 592, 596 (La. 1992).

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[4] 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.

Lieutenant Tim Browning, the supervisor of the BRPD Narcotics Division, was present during the pre-patrol briefing at which Detective McCloskey noted that the department had received a tip from an anonymous caller indicating that the defendant was in possession of a firearm and distributing drugs from his residence. At the briefing, Detective McCloskey further informed Lieutenant Browning that he had confirmed the defendant's status as a convicted felon and that he wanted to go to the defendant's apartment that night based on the information received. (R 104, 107, 109)

According to Officer Collins, both he and Detective McCloskey personally spoke to the informant before going to the defendant's apartment. At the suppression hearing, Officer Collins indicated that after the informant called, they talked to the caller in person, and then obtained the defendant's criminal record and a photograph of him.[5] (R 113-14) The criminal record and photograph were viewed on Officer Collins' laptop with a program called the Integrated Criminal Justice Information System (ICJIS). (R 101-02, 112-13) Officer Collins admitted that neither the police report nor the APC noted that a criminal background check was performed prior to the officers' arrival at the defendant's apartment. However, he testified consistently, both at the preliminary examination hearing and at the suppression hearing, that the background check confirming the defendant's status as a convicted felon was performed prior to the officers' arrival at defendant's apartment. (R 6, 82, 114, 121)

As to what occurred when the officers arrived at the apartment complex, Officer Collins further testified that after they pulled into the parking lot, they observed the vehicle described by the informant. After remaining in the parking lot for several minutes, they decided to knock on the defendant's door. The

[5] Officer Collins did not testify about meeting the informant in person at the preliminary examination hearing and was not cross-examined about the meeting at the suppression hearing. Detective McCloskey did not testify at either hearing.

defendant opened the door just before Detective McCloskey could knock on it. Officer Collins testified that the defendant appeared "startled" and stood there with a "puzzled face." (R 75-76, 83) The interior of the apartment was illuminated and the porch light was on. Detective McCloskey informed Officer Collins that a firearm was in plain view within reach of the defendant. Officer Collins specifically testified that the gun was located on the back of the sofa that was nearest the door. According to Officer Collins, the police entered the apartment only after Detective McCloskey advised him of seeing the gun. (R 85-86)

Officer Collins further testified that the defendant was the only occupant near the gun when it was first observed. (R 77) When questioned as to the specific statements the defendant made after being advised of his ***Miranda*** rights, Officer Collins testified, "I asked him was the firearm for him. He said it was. And I said even though you're a convicted felon, you understand you can't have one. He said he understood that, he just needed it for his protection." (R 80) After the defendant's arrest, a copy of a printout of the defendant's criminal record was placed in Lieutenant Browning's records, as routinely done in other cases. (R 110-11)

Initially, we note that there was no necessity in this case to establish the reliability of the informant at the suppression hearing. The officers approaching the defendant's door to knock violated no right of privacy; that single action did not infringe on defendant's the "right to be let alone." See ***State v. Sanders***, 374 So.2d 1186, 1189 (La. 1979). The facts of this case do not involve an investigatory stop. A clear distinction exists between the police detaining a suspect on the street, as authorized by La. C.Cr.P. art. 215.1, and the police knocking on a suspect's door. ***Sanders***, 374 So.2d at 1188. The testimony in this case reveals that the defendant opened his door as the police officers approached, prior to any search or seizure occurring. Before entering the apartment, the officers, who were aware of

the defendant's status as a convicted felon, observed a firearm within the defendant's reach inside the apartment. Thus, the gun was evidence in plain view inadvertently discovered by the police when they were in a position where they had a right to be, and could lawfully be seized and introduced in evidence. ***Howard***, 814 So.2d at 53.[6]

Moreover, probable cause justified the warrantless arrest of the defendant and the seizure of the gun. In addition to the information received from the tip regarding the defendant's possession of a firearm, the testimony presented at the preliminary examination and suppression hearings consistently indicates that the defendant's criminal background was checked before the officers went to his apartment. Considering the prior information known to the police and the observations they made when the defendant opened his apartment door, the officers corroborated the information received from the tip. Thus, the facts and circumstances known to the officers before entering the apartment and arresting the defendant, consisting of reasonable and trustworthy information, were sufficient to justify the belief that the defendant was a convicted felon in possession of a firearm.

Finally, despite the contentions in the defendant's *pro se* briefs, there is no indication of intentional misrepresentations or deliberate deception in this case. The person executing an APC is not required to have firsthand knowledge of the offense alleged to have been committed. The affiant need only specify to the best of his knowledge and belief the basic details of the crime alleged to have been committed. See ***State v. Jenkins***, 338 So.2d 276, 280 (La. 1976). See also La. C.Cr.P. art. 202(A). In denying the motion to suppress, the trial court obviously

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[6]We further note that exigent circumstances (particularly the possibility of a violent confrontation that could cause injury to the officers and the public) justified the warrantless entry into the defendant's residence in this case. See ***Payton v. New York***, 445 U.S. 573, 586-90, 100 S.Ct. 1371, 1380-82, 63 L.Ed.2d 639 (1980); ***State v. Farber***, 446 So.2d 1376, 1380 (La. App. 1st Cir.), writ denied, 449 So.2d 1356 (La. 1984).

accepted the testimony presented by the State regarding the circumstances surrounding the search and seizure at issue. When a trial court denies a motion to suppress, it's 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. 1995), 655 So.2d 272, 281; ***State v. Dunham***, 12-0826 (La. App. 1st Cir. 12/21/12), 111 So.3d 1095, 1097. Considering the foregoing, we find that the trial court did not err or abuse its discretion in denying the motion to suppress.

The defendant's sole assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.