

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0497

STATE OF LOUISIANA

VERSUS

DEREK KIRK DUPONT

Judgment Rendered: NOV 07 2014

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On Appeal from the  
22nd Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
Trial Court No. 536465

Honorable Raymond S. Childress, Judge Presiding

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\* \* \* \* \*

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

## **HIGGINBOTHAM, J.**

The defendant, Derek Kirk Dupont, was charged by bill of information with possession of heroin, a violation of La. R.S. 40:966(C).<sup>1</sup> The defendant pled not guilty. The defendant filed a motion to suppress the evidence and, following a hearing on the matter, the motion was denied. The defendant subsequently withdrew his not guilty plea and pled guilty to the charge, reserving his right under **Crosby**<sup>2</sup> to appeal the trial court's ruling on the motion to suppress. At the **Boykin**<sup>3</sup> hearing, the State also filed a habitual offender bill of information. The defendant waived reading of the bill, waived the hearing, and admitted to the allegations in the habitual offender bill of information.<sup>4</sup> The trial court adjudicated the defendant a second-felony habitual offender and imposed an enhanced sentence of ten years imprisonment at hard labor. The defendant now appeals, designating one assignment of error. We affirm the conviction, habitual offender adjudication, and sentence.

### **FACTS**

The following facts are based on testimony adduced at the hearing on the motion to suppress evidence. On May 8, 2013, Detective John Cole, with the Narcotics Division of the Slidell Police Department, was patrolling when he was contacted by a fellow officer who was following a silver Chevrolet Camaro that had just left a house in the Old Spanish Trail area in Slidell. The house had been under surveillance for drug activity and the officer following the Camaro had observed the defendant, the front passenger of the vehicle, make contact with

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<sup>1</sup> Throughout the record, the defendant is referred to as "Derek E." or "Derek K." or "Derek Kirk" Dupont; however, there is no apparent issue as to the defendant's correct name, Derek Kirk Dupont.

<sup>2</sup> See **State v. Crosby**, 338 So.2d 584 (La. 1976).

<sup>3</sup> See **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

<sup>4</sup> The defendant's predicate conviction was for distribution of an imitation or counterfeit controlled dangerous substance on October 22, 2007, a violation of La. R.S. 40:971.1.

someone from that house. When the driver of the Camaro failed to use her turn signals, the officer made a traffic stop. Detective Cole arrived at the scene shortly thereafter and approached the defendant. When he saw the defendant place his hand in his front pocket, Detective Cole ordered him out of the vehicle and performed a pat-down search for weapons. The detective felt what appeared to be plastic or cellophane-wrapped drugs in the same pocket where the defendant had his hand. Detective Cole removed the item, which was a plastic bag containing heroin. The defendant ran, but was subsequently apprehended.

### **ASSIGNMENT OF ERROR AND LAW**

In his sole assignment of error, the defendant argues the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends the officers did not have probable cause to believe the passengers inside the vehicle had any illegal drugs, firearms, or other evidence of criminal activity.

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. Wells, 2008-2262 (La. 7/6/10), 45 So.3d 577, 580-81. 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.

At the motion to suppress hearing, Detective Cole testified that he was being radioed information from a Detective Bush who was conducting surveillance of a house off of Almonaster Street, near Old Spanish Trail. There were ongoing complaints about drug trafficking from that house. Detective Bush informed Detective Cole that he observed a silver Camaro stop near the house. A woman exited the house and met with the front passenger, later identified as the defendant. Shortly thereafter, the Camaro left the residence. Detective Bush followed the vehicle. When the driver failed twice to use her turn signals, she was pulled over

for traffic violations. At that time, Detective Cole arrived on the scene. One of the other police officers on the scene made contact with the driver, and Detective Cole made contact with the defendant. When the detective approached the passenger side of the Camaro, he saw the defendant reaching into his right front pocket. Detective Cole ordered the defendant to exit the vehicle and he performed a **Terry**<sup>5</sup> pat-down search for weapons. The detective felt in the defendant's right front pocket an object consistent with narcotics, namely a small item in a cellophane or plastic bag with soft matter in it. Detective Cole removed the item, which was found to be heroin inside a plastic bag.

In denying the motion to suppress, the trial court stated:

All right. After having listened to the testimony of the Defendant and the Witness, relative to the Motion to Suppress the Evidence, [t]he Court listened to the testimony of Detective Cole and found that there was probable cause to make this stop, based upon his experience in the field of dealing with narcotics arrests and such and his observation of the Defendant in the vehicle. I think he was well within his rights to pat this Defendant down, for officer safety purposes. And he testified that he felt what would normally be like packaged drugs, asked the Defendant to remove them and he wouldn't remove them. He took it from his pocket and the Defendant fled, at that time.

So I don't find any merit in the Motion to Suppress the Evidence. And I will deny that Motion to Suppress the Evidence.

The defendant argues in brief that the State failed to show that probable cause and exigent circumstances justified a warrantless search and seizure. According to the defendant, not one officer noticed any criminal activity happening at the residence under surveillance; he (the defendant) had no contact with anyone going to or leaving from that particular residence; and while the officers may have had a hunch there was illegal activity, such information came from an anonymous source.

Based on the record before us, none of these assertions by the defendant appear accurate. Detective Bush did observe a suspected drug transaction when he

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<sup>5</sup> **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

saw the female from the house meet with the defendant at the passenger-side window. As such, the defendant clearly had contact with someone “going to or leaving from that particular residence.” Finally, the information did not come from an anonymous source, but directly from Detective Bush, who observed a possible drug transaction.

In any event, based on the foregoing, Detective Bush was well within his rights to follow the Camaro and needed no probable cause to do so. When Detective Bush observed the traffic violations, he then had probable cause to stop the vehicle. The decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. The standard is a purely objective one that does not take into account the subjective beliefs or expectations of the detaining officer. Although they may serve, and may often appear intended to serve, as the prelude to the investigation of much more serious offenses, even relatively minor traffic violations provide an objective basis for lawfully detaining the vehicle and its occupants. **State v. Waters**, 2000-0356 (La. 3/12/01), 780 So.2d 1053, 1056 (per curiam). See **Whren v. United States**, 517 U.S. 806, 817-19, 116 S.Ct. 1769, 1776-77, 135 L.Ed.2d 89 (1996).

An officer making a traffic stop may order the driver, as well as the passengers, out of a vehicle pending completion of the stop. **Maryland v. Wilson**, 519 U.S. 408, 414-415, 117 S.Ct. 882, 886, 137 L.Ed.2d 41 (1997); **State v. Benoit**, 2001-2712 (La. 5/14/02), 817 So.2d 11, 15. Thus, when he arrived at the scene, Detective Cole legally ordered the defendant out of the vehicle during the traffic stop. Thereafter, Detective Cole patted down the defendant for weapons. Under **Terry v. Ohio**, 392 U.S. 1, 30-31, 88 S.Ct. 1868, 1884-85, 20 L.Ed.2d 889 (1968), there is no probable cause requirement to search a person for weapons, and a search for weapons can be conducted prior to having probable cause to arrest. See **Terry**, 392 U.S. at 25, 88 S.Ct. at 1882. An officer may conduct a limited pat-

down frisk for weapons if he reasonably believes that he is in danger or that the suspect is armed. La. Code Crim. P. art. 215.1(B). Detective Cole made clear at the motion to suppress hearing that based on the possible drug transaction the defendant had just been engaged in and his observation of the defendant's hand in his pocket just prior to being removed from the vehicle, he felt the defendant could have been armed. As Detective Cole explained during his testimony, "for some reason, weapons go along with drugs." See State v. Small, 2000-0564 (La. 3/24/00), 762 So.2d 1071 (per curiam).

Upon the pat down, Detective Cole felt a distinct soft bulge in the defendant's pocket, which he recognized as being consistent with narcotics packaging. If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context. **Minnesota v. Dickerson**, 508 U.S. 366, 375-76, 113 S.Ct. 2130, 2137, 124 L.Ed.2d 334 (1993). "Immediately apparent" requires no more than "probable cause to associate the property with criminal activity." See Texas v. Brown, 460 U.S. 730, 741-42, 103 S.Ct. 1535, 1543, 75 L.Ed.2d 502 (1983) (quoting **Payton v. New York**, 445 U.S. 573, 587, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639 (1980)). Thus, Detective Cole, who had been in the narcotics division five-and-one-half years and had conducted hundreds of narcotics investigations, legally removed the heroin from the defendant's pocket.<sup>6</sup> See State v. Boudoin, 2010-2868 (La. 3/4/11), 56 So.3d 233, 235 (per curiam); **State v. Francois**, 2000-1039 (La. App. 4th Cir. 1/10/01), 778 So.2d 673, 678-79; **State v. Williams**, 98-

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<sup>6</sup> While the defendant makes no argument in his brief about the plain-feel exception to the warrant requirement or the actual removal of the drugs from his pocket, we address the issue for the sake of completeness.

3059 (La. App. 4th Cir. 3/3/99), 729 So.2d 142, 146-46; **State v. Hall**, 555 So.2d 495, 498-99 (La. App. 4th Cir. 1989), writ denied, 577 So.2d 44 (La. 1991).

### **CONCLUSION**

Accordingly, we find the trial court did not err or abuse its discretion in denying the motion to suppress. The defendant's assignment of error is without merit. Thus, we hereby affirm the defendant's conviction, habitual offender adjudication, and sentence.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**