NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 KA 0707

STATE OF LOUISIANA

VERSUS

JOHN CURTIS DAVIS

Judgment Rendered: DEC 21 2017

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On appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket Number 566140, Section B

Honorable August J. Hand, Judge Presiding

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BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

Pettigrew, J. Concurs.

GUIDRY, J.

The defendant, John Curtis Davis, was charged by bill of information with possession of methamphetamine, a violation of La. R.S. 40:967(C). He 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 thereafter withdrew his not guilty plea and pled guilty to the instant charge pursuant to Crosby, reserving the right to challenge the trial court's ruling on the motion to suppress. See State v. Crosby, 338 So. 2d 584 (La. 1976). The trial court deferred imposition of sentence and placed the defendant on three years supervised probation with conditions. See La. C. Cr. P. art. 893. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

The following facts were adduced at the motion to suppress hearing. On the evening of July 9, 2015, officers with the St. Tammany Parish Sheriff's Office were on patrol at the Value Travel Inn Hotel in Slidell. The hotel is in a high-crime area, known for drugs and prostitution. The defendant drove into the parking lot, alone, in a pickup truck. He backed in against the northern-most fence, which was away from the hotel's front office, and sat there for several minutes. Deputy Christopher Comeaux, who was on foot and conducting surveillance, observed these actions by the defendant. While the defendant remained in his truck, Deputy Comeaux noticed the defendant appeared to be focused on something in his lap. Deputy Comeaux radioed this information to Lieutenant Randy Loumiet, who was in the same area conducting surveillance. Lieutenant Loumiet, along with another officer, approached the defendant and asked him to exit the vehicle. Shortly thereafter, Deputy Comeaux, and a fourth officer, approached. As the defendant was getting out of his truck, Deputy Comeaux saw the defendant still fumbling with something on his lap; he also saw what appeared to be the defendant putting

something in his pocket. As the defendant was brought to the front of the truck, Deputy Comeaux shined his flashlight into the cab of the truck and saw a "meth pipe" on the front seat. He seized the pipe and relayed this information to Lieutenant Loumiet, who was patting down the defendant for weapons. Lieutenant Loumiet retrieved a pill bottle from the defendant's pants pocket and gave the bottle to Deputy Comeaux. Deputy Comeaux opened the bottle and found a small Ziploc bag inside. The bag contained what appeared to be crystal methamphetamine.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in denying the motion to suppress the evidence seized from the vehicle. Specifically, the defendant contends that the officers had no reasonable grounds for the initial investigatory stop; the search of the truck was illegal; and the seizure and search of the pill bottle was effected without probable cause and, therefore, illegal.

Trial courts are vested with great discretion when ruling on a motion to suppress. State v. Long, 03-2592, p. 5 (La. 9/9/04), 884 So. 2d 1176, 1179, cert. denied, 544 U.S. 977, 125 S. Ct. 1860, 161 L.Ed.2d 728 (2005). 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, p. 11 (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, p. 6 (La. 12/1/09), 25 So. 3d 746, 751.

The Fourth Amendment to the United States Constitution and article I, § 5, of the Louisiana Constitution protect people against unreasonable searches and seizures. Subject only to a few well-established exceptions, a search or seizure conducted without a warrant issued upon probable cause is constitutionally

prohibited. Once a defendant makes an initial showing that a warrantless search or seizure occurred, the burden of proof shifts to the State to affirmatively show it was justified under one of the narrow exceptions to the rule requiring a search warrant. La. C. Cr. P. art. 703(D); State v. Johnson, 98-0264, p. 3 (La. App. 1st Cir. 12/28/98), 728 So. 2d 885, 886. Evidence derived from an unreasonable search or seizure will be excluded from trial. State v. Benjamin, 97-3065, p. 3 (La. 12/1/98), 722 So. 2d 988, 989.

The defendant argues in brief that his initial stop was invalid. According to the defendant, because the officers approached him in his truck without reasonable grounds, the subsequent search of the vehicle was illegal. The defendant suggests that, because the officers had no idea what was in his lap, and there was "nothing sinister" in his sitting in a parked vehicle, the officers lacked the required reasonable suspicion to approach him in his truck and conduct an investigatory stop. The defendant also asserts that his "detention" after he exited his truck was an arrest without probable cause.

The defendant further asserts that there was no basis for Lieutenant Loumiet to pat him down. Lieutenant Loumiet, according to the defendant, was not justified in patting him down for weapons because the original stop was not justified. Furthermore, the defendant alleges, Deputy Comeaux conducted an illegal search when he opened the pill bottle, even though he knew the bottle was not a weapon.

The defendant also asserts that because he was illegally detained, the subsequent search of his truck was illegal. The defendant suggests that the meth pipe was not discovered in plain view because a flashlight was used to search for it, and the officer could not have perceived that the residue in the pipe was an illegal substance without performing a closer inspection. Finally, the defendant suggests the search was not proper under the automobile exception because Deputy

Comeaux had neither probable cause nor exigency to search the truck.

We address first the initial encounter with the defendant by law enforcement. In State v. Fisher, 97-1133, pp. 4-6 (La. 9/9/98), 720 So. 2d 1179, 1182-83, our supreme court recognized in United States v. Watson, 953 F.2d 895, 897 n.1 (5th Cir.), cert. denied, 504 U.S. 928, 112 S. Ct. 1989, 118 L.Ed.2d 586 (1992), a useful three-tiered analysis of interactions between citizens and the police. In the first tier, there is no seizure or Fourth Amendment concern during mere communication with police officers and citizens where there is no coercion or detention. The second tier consists of brief seizures of a person, under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), 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 activity. See 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). The third tier is custodial arrest where an officer needs probable cause to believe that the person has committed a crime. See State v. Hamilton, 09-2205, p. 4 (La. 5/11/10), 36 So. 3d 209, 212. Within the first tier, officers have the right to engage anyone in conversation, even without reasonable grounds to believe that they have committed a crime. Further, the police do not need probable cause to arrest or reasonable suspicion to detain an individual each time they approach a citizen. Hamilton, 09-2205 at p. 4, 36 So. 3d at 212. See State v. Dobard, 01-2629, p. 3 (La. 6/21/02), 824 So. 2d 1127, 1130.

In State v. Neyrey, 383 So. 2d 1222, 1224 (La. 1979), our supreme court stated:

> Policemen in the course of their duties initiate or respond to a wide variety of encounters, many of which are not related to the pursuit of criminals [, such as] providing first aid, mediating disputes or just talking to citizens. Policemen may defuse arguments. They may act as good Samaritans in checking to see if someone is in trouble, sick, too drunk to care for themselves and in need of assistance.

> Policemen could not perform such valuable non-prosecutorial services nor could they effectively pursue criminals if they did not initiate or respond to encounters with citizens. While unsolicited assistance, unasked for conversation, and unrequested advice are not always welcome, the Constitution provides no protection from these everyday annoyances whether the source of irritation is a policeman or a citizen. The citizen's remedy in either instance is the same, decline the assistance, refuse to converse, or walk away. [Footnote and citation omitted.]

The police were already present at the hotel prior to the defendant arriving and backing into a parking space. As Deputy Comeaux explained at the motion to suppress hearing, he was on foot patrol in a very high-crime area known for drugs and prostitution. That is, the police were on proactive patrol in an area well known for its crime and where Deputy Comeaux had made repeated apprehensions and arrests. See State v. Broadstreet, 14-953, pp. 3-6 (La. App. 5th Cir. 4/15/15), 170 So. 3d 306, 310-11. The foregoing facts notwithstanding, the police are wholly entitled to approach citizens and converse with them without any reasonable suspicion for doing so. See Fisher, 14-953 at p. 5, 720 So. 2d at 1183. The defendant asserts in brief that when he was approached in his truck by the police, he was seized for Fourth Amendment purposes because this constituted an investigatory stop. The State in its brief agrees with the defendant on this issue. According to the State, the defendant correctly asserts that "reasonable grounds" for the stop were required.

We do not agree with either the defendant or the State. When the defendant was approached in his truck by Lieutenant Loumiet, the officer did not need any reasonable suspicion (much less probable cause) to engage the defendant. Although reasonable suspicion is required for a police officer to stop an individual, it is not required every time an officer approaches a citizen in a public place. Police officers possess the same right as any citizen to approach an individual and ask a few questions. State v. Jackson, 00-3083, p. 3 (La. 3/15/02), 824 So. 2d 1124, 1126 (per curiam). See Florida v. Bostick, 501 U.S. 429, 434-35, 111 S. Ct.

2382, 2386, 115 L.Ed.2d 389 (1991). When Lieutenant Loumiet asked the defendant to get out of his truck, there was no coercion or detention. See Fisher, 97-1133 at p. 5, 720 So. 2d at 1183. The defendant asserts several times throughout his brief that up to four deputies ordered the defendant from his truck, or demanded that he exit his truck. These assertions are not supported by the record. The defendant was *asked* to get out of his truck by Lieutenant Loumiet, and the defendant agreed to get out. It was reiterated by Deputy Comeaux and Lieutenant Loumiet at four different points during the motion to suppress hearing that the defendant was approached and asked to get out of his truck. Further, when the defendant was asked to get out of his truck, no guns were drawn, and, according to Deputy Comeaux, the defendant had the option to stay in or to get out of his truck. See State v. Hill, 01-1372, pp. 9-11 (La. App. 5th Cir. 5/15/02), 821 So. 2d 79, 85-86 (finding that where defendant exited the vehicle by consent, and not by force or with a weapon drawn, there was no evidence that there was a "seizure" within the meaning of the Fourth Amendment or the Louisiana Constitution; and opining that asking defendant in a non-authoritative manner to voluntarily step out of a parked car and answer some questions does not rise to the level of an investigatory stop). See also State v. Morales, 12-454, pp. 6-9 (La. App. 5th Cir. 12/18/12), 125 So. 3d 1141, 1146-47. We find, therefore, that this initial encounter with the defendant by law enforcement amounted to no more than a first-tier interaction under Fisher between a citizen and the police and, as such, there was no seizure or Fourth Amendment concern at this point of the encounter.

According to Lieutenant Loumiet, after he told the defendant to move to the front of his truck, he patted down the defendant for weapons. When he felt the round bulge of the pill bottle in the defendant's pocket, Lieutenant Loumiet thought it could be a knife. According to the lieutenant, "They make knives today that are contained in a round type of container with an automatic blade."

Lieutenant Loumiet retrieved the object, observed that it was a pill bottle, then handed over the pill bottle to Deputy Comeaux. Deputy Comeaux then opened the pill bottle. The defendant argues in brief there was no basis for Lieutenant Loumiet to pat him down because the original stop was not justified. Furthermore, according to the defendant, Deputy Comeaux conducted an illegal search when he opened the pill bottle, knowing that it was not a weapon.

The defendant's assertions are groundless, regarding both the pat down and the opening of the pill bottle. Probable cause to arrest exists when the facts and circumstances within the officer's knowledge are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. Beck v. Ohio, 379 U.S. 89, 91, 85 S. Ct. 223, 225, 13 L.Ed.2d 142 (1964); State v. Wilson, 467 So. 2d 503, 515 (La.), cert. denied, 474 U.S. 911, 106 S. Ct. 281, 88 L.Ed.2d 246 (1985). The determination of probable cause, although requiring something more than bare suspicion, does not require evidence sufficient to support a conviction. Probable cause, as the very name implies, deals with probabilities. State v. Simms, 571 So. 2d 145, 148 (La. 1990). The determination of probable cause, unlike the determination of guilt at trial, does not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands, and credibility determinations are seldom crucial in deciding whether the available evidence supports a reasonable belief that the person to be arrested has committed a crime. Gerstein v. Pugh, 420 U.S. 103, 121, 95 S. Ct. 854, 866-67, 43 L.Ed.2d 54 (1975); State v. Rodrigue, 437 So. 2d 830, 834 (La. 1983). The determination of probable cause involves factual and practical considerations of everyday life on which average men, and particularly average police officers, can be expected to act. State v. Ogden, 391 So. 2d 434, 436-37 (La. 1980). See Simms, 571 So. 2d at 149.

As noted, the initial stop and subsequent detention of the defendant was

justified and proper. More importantly, Deputy Comeaux discovered the "meth pipe" in the truck while the defendant was being brought to the front of his truck. As the deputy explained at the motion to suppress hearing, as the defendant was getting out of his truck, Deputy Comeaux noticed the defendant continued to "fumble with something in his lap." Further, the defendant, while still preoccupied with his lap, was also, it appeared, placing something in his left pocket. When the defendant got out and walked to the front of his truck, the defendant left his door open. Deputy Comeaux shined his flashlight inside the cab of the truck and saw what appeared to be a "meth pipe" on the front seat. Deputy Comeaux noted that meth pipes were very common and explained in some detail the difference between a meth pipe and a "crack pipe." Deputy Comeaux also observed a white "residue throughout the pipe." Based on his training and experience, Deputy Comeaux suspected this residue to be methamphetamine. Deputy Comeaux indicated he had made well over one hundred arrests for possession of methamphetamine.

At the moment Deputy Comeaux found the meth pipe, he had probable cause to arrest the defendant (for possession of drugs, possession of drug paraphernalia, etc.). See La. C. Cr. P. art. 213. Any pat down of the defendant for weapons right after or simultaneous with the discovery of the meth pipe was, therefore, clearly not improper. When asked at the motion to suppress hearing if at the moment he saw suspected methamphetamine on the pipe in the truck, he was satisfied he was going to make an arrest, Deputy Comeaux responded, "Yes. He was going to be arrested for that." It is irrelevant that the actual custodial arrest of the defendant may have taken place after the methamphetamine was found on his person. The subjective intent of the officers does not determine the reasonableness of a warrantless search incidental to arrest, where the officer did not have an intent to arrest for the offense for which probable cause objectively existed. State v. Sherman, 05-0779, p. 15 (La. 4/4/06), 931 So. 2d 286, 296. As such, any drugs on

the defendant's person would have been seized pursuant to a valid search incident to arrest. See State v. Surtain, 09-1835, p. 8 (La. 3/16/10), 31 So. 3d 1037, 1043.

The defendant is also incorrect in his assertion that the meth pipe was not seized by Deputy Comeaux in plain view because he used a flashlight. Under the plain view doctrine, if police are lawfully in a position from which they view an object that has an incriminating nature that is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. Horton v. California, 496 U.S. 128, 136-37, 110 S. Ct. 2301, 2308, 110 L.Ed.2d 112 (1990). State v. Leger, 05-0011, p. 65 (La. 7/10/06), 936 So. 2d 108, 155, cert. denied, 549 U.S. 1221, 127 S. Ct. 1279, 167 L.Ed.2d 100 (2007). The incriminating nature of the meth pipe was immediately apparent to Deputy Comeaux without close inspection that there was contraband inside of the vehicle. The "plain view" exception to the warrant requirement applied, and the seizure of the meth pipe was permissible. See State v. Arnold, 11-0626, p. 1 (La. 4/27/11), 60 So. 3d 599, 600 (per curiam).

The use of a flashlight to illuminate the interior of a vehicle did not constitute a search of the vehicle. See State v. Lewis, 07-1183, pp. 5-13 (La. App. 3rd Cir. 4/2/08), 980 So. 2d 251, 256-60; State v. Dickens, 633 So. 2d 329, 332 (La. App. 1st Cir. 1993). It is beyond dispute that Deputy Comeaux's action in shining his flashlight to illuminate the interior of the vehicle trenched upon no right secured to the defendant by the Fourth Amendment to the United States Constitution. See Texas v. Brown, 460 U.S. 730, 739-40, 103 S. Ct. 1535, 1542, 75 L.Ed.2d 502 (1983); State v. Bracken, 506 So. 2d 807, 812 (La. App. 1st Cir. 1987). Thus, when he seized the meth pipe, Deputy Comeaux seized it, not because he had searched the vehicle and discovered it, but because it was in plain view immediately upon shining the flashlight inside the truck.

The defendant also suggests in brief that the meth pipe could not have been

seized under the automobile exception, which requires probable cause to believe the vehicle contains contraband before it can be searched. See Pennsylvania v. Labron, 518 U.S. 938, 940, 116 S. Ct. 2485, 2487, 135 L.Ed.2d 1031 (1996). The defendant avers the officers did not have probable cause to believe there was contraband in the truck based only on the vehicle being backed into a parking space and his sitting inside, "fumbling with an unknown object." The automobile exception has no applicability to this case. Deputy Comeaux did not need probable cause to search the truck. As discussed, he saw the meth pipe in plain view and seized it. Thus, there was no Fourth Amendment search of the truck, which required some exception to the warrant requirement.

Based on the foregoing, we find that the trial court did not err or abuse its discretion in denying the motion to suppress the evidence (or any inculpatory statement the defendant may have made).[1] Deputy Comeaux had not conducted any search of the vehicle when he observed the meth pipe in plain view and seized it. When he discovered the meth pipe in the truck, Deputy Comeaux clearly had probable cause to arrest the defendant. As such, the removal of the pill bottle from the defendant's pocket, and subsequent search of the bottle, was permissible as a search incident to a lawful arrest. See United States v. Robinson, 414 U.S. 218, 235, 94 S. Ct. 467, 477, 38 L.Ed.2d 427 (1973). It is of no moment that the search of the defendant's person preceded the actual arrest. Given the fact the lawful

[1] There was very little testimony adduced or argument made at the motion to suppress hearing regarding any inculpatory statements made by the defendant. Testimony was adduced that Deputy Comeaux believed the defendant admitted it was methamphetamine, and that he used it from time to time. It appeared that, for good measure, the trial court ruled the statement was also admissible after a detailed discussion of why the drugs were admissible. Thus, following the trial court's denial of the motion to suppress the drugs, the following exchange took place:

> Mr. Peters [prosecutor]: And Judge as to the, I don't even know if it was challenged for [sic] if this does go forward, a ruling as to the statement.
> The Court: Well, I mean it was a voluntary statement so I would conceive or agree that it be admissible.
> Mr. Peters: Thank you. Yes, sir, I just wanted to get a ruling on that.
> The Court: There's no argument about it, as to the voluntariness of the statement.
> Mr. Peters: Right.

custodial arrest alone is sufficient to find a warrantless search of the person reasonable, and that the search may precede the actual arrest, where probable cause to arrest exists, a search of the person does not violate the Fourth Amendment or La. Const. art. I, § 5, where the suspect is subject to the greater intrusion of arrest and search. Sherman, 05-0779 at p. 13, 931 So. 2d at 295. See Rawlings v. Kentucky, 448 U.S. 98, 111, 100 S. Ct. 2556, 2564, 65 L.Ed.2d 633 (1980).

Accordingly, the assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.