NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 0541

STATE OF LOUISIANA

VERSUS

JOHN DALE LEE

Judgment Rendered: NOV 06 2018

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 582297

HONORABLE AUGUST J. HAND, III, JUDGE

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BEFORE: McDONALD, CRAIN, and HOLDRIDGE, JJ.

Crain, J. concurs in part and dissents in part and assigns reasons
Holdridge J., concurs with brief reasons.

McDonald, J.

The defendant, John Dale Lee, was charged by bill of information with one count of operating a motor vehicle while intoxicated (fourth offense), a violation of Louisiana Revised Statutes 14:98 and 14:98.4 (count I), and one count of aggravated obstruction of a highway, a violation of La. R.S. 14:96 (count II). (R. 29-30).[1] At his arraignment, the defendant pled not guilty on both charges. (R. 1). He later moved to suppress evidence seized during an allegedly improper search, but the motion was denied. (R. 47, 125-28). Thereafter, the defendant withdrew his previously entered pleas of not guilty and entered a **Crosby**[2] guilty plea on both counts, specifically preserving his right to challenge the trial court's denial of his motion to suppress and its finding he was competent to stand trial. (R. 14-18, 128). After a **Boykin**[3] examination, the trial court accepted the defendant's guilty plea. (R. 154). On count I, the defendant was sentenced to serve a period of ten years at hard labor with eight years of the sentence suspended, and the remaining two years to be served without benefit of probation, parole, or suspension of sentence. Thereafter, the defendant would be placed on supervised probation, with special conditions, for five years. On count II, the defendant was sentenced to five years at hard labor, with the sentence suspended and the defendant placed on supervised probation, with special conditions, for five years. (R. 14-18, 156-57). For the following reasons, we affirm the defendant's convictions and sentences.

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[1] The defendant was also charged by a misdemeanor bill of information with one count of possession of an alcoholic beverage in a motor vehicle, a violation of La. R.S. 32:300, one count of operating a vehicle while under suspension, a violation of La. R.S. 14:98.8, and one count of refusing to submit to a chemical test, a violation of La. R.S. 14:98.7. (R. 32-33). Similar to his felony charges, the defendant withdrew his previously entered not guilty pleas, and entered a **Crosby** guilty plea on each count. (R. 2, 19-20). On all three counts combined, the defendant was sentenced to ninety days in the parish jail. (R. 19-20, 157).

[2] **State v. Crosby**, 338 So.2d 584 (La. 1976).

[3] **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

FACTS

The defendant pled guilty in this case, thus the facts were not fully developed. According to the affidavit of probable cause, on August 5, 2016, while traveling on Interstate 12, Louisiana State Police Trooper Jeremiah Bell observed a grey pickup truck ahead of him which, in an attempt to pass another vehicle hauling a boat and trailer, "[weaved] across the painted yellow center line several times." As Trooper Bell continued on the roadway, he observed the truck move to the right lane and pass the vehicle while reaching a speed of 94 miles-per-hour. The truck then moved back into the left lane and accelerated but, as it approached a tractor-trailer rig in the left lane and a car in the right, the truck "accelerated and began using the paved shoulder to pass at a high rate of speed." (R. 24-25, 126).

After stopping the truck and identifying the defendant as the driver, Trooper Bell ordered him out of the truck and detained him for reckless operation. Trooper Bell then learned the defendant's driver's license was suspended for several previous DWI offenses. The defendant was then arrested and placed in the rear transport compartment of Trooper Bell's unit. While inventorying the defendant's truck, Trooper Bell observed on the rear floorboard an open beer bottle, which was still cold to the touch, an empty bottle, and "[a] six pack . . . in the same spot with three of them missing." Trooper Bell then advised the defendant of his **Miranda**[4] rights and, while questioning him about the alcohol, Trooper Bell could smell the odor of alcohol on the defendant's breath. (R. 24).

After transporting the defendant to the regional State Police office, Trooper Bell conducted standard field sobriety tests on the defendant, observing several clues indicating impairment. However, the defendant refused to provide a breath

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

sample or otherwise submit to any chemical tests. The defendant was then transported to the St. Tammany Parish Jail for booking. (R. 24).

MOTION TO SUPPRESS[5]

In his first assignment of error, the defendant vaguely contends the trial court erred in denying his motion to suppress, generally arguing probable cause did not exist for Trooper Bell to search his vehicle. In the motion to suppress, he averred that "[n]one of the exceptions to a search warrant requirement are applicable; and, therefore, any search performed in this matter could only be lawfully conducted pursuant to a valid search warrant." (R. 47; Defense brief 8-9).

The authority and limits of the Fourth Amendment apply to investigative stops of vehicles. **United States v. Sharpe**, 470 U.S. 675, 682, 105 S.Ct. 1568, 1573, 84 L.Ed.2d 605 (1985). The stopping of a vehicle and the detention of its occupants is a seizure within the meaning of the Fourth Amendment. **U.S. v. Shabazz**, 993 F.2d 431, 434 (5th Cir. 1993). The standard for evaluating a challenge to a routine warrantless stop for violating traffic laws is the two-step formulation articulated in **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The court must determine "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." **Terry**, 392 U.S. at 20, 88 S.Ct. at 1879.

For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred or is about to occur, before stopping the vehicle. **State v. Hunt**, 2009-1589 (La. 12/1/09), 25 So.3d 746, 753. When determining whether an

[5] In defendant's appellate brief, defense counsel addresses this *pro forma* issue as it is "obliged to raise this argument on appeal so as to fulfill the terms of the plea agreement." (Defense brief 9).

investigatory stop was justified by reasonable suspicion, a reviewing court must consider the totality of the circumstances, giving deference to the inferences and deductions of a trained police officer. **State v. Huntley**, 97-0965 (La. 3/13/98), 708 So.2d 1048, 1049 (per curiam). The determination of reasonable suspicion for an investigatory stop, or probable cause to arrest, does not rest on the officer's subjective beliefs or attitudes, but turns on a completely objective evaluation of all the circumstances known to the officer at the time of the challenged action. **State v. Landry**, 98-0188 (La. 1/20/99), 729 So.2d 1019, 1020 (per curiam). When an officer observes what he objectively believes is a traffic offense, the decision to stop the vehicle is reasonable. See **Whren v. U.S.**, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996). Herein, Trooper Bell observed the defendant drive his truck in a reckless manner, "weave" across the painted center line, use the paved shoulder to pass other vehicles, and exceed the posted speed limit, all violations of La. R.S. 14:99(A), La. R.S. 32:79, La. R.S. 32:74(B), and La. R.S. 32:61(A). Thus, Trooper Bell's decision to conduct an investigatory stop of the defendant's truck was reasonable.

Pursuant to La. Code Crim. P. art. 215.1(D), during the detention of an alleged violator of any provision of the motor vehicle laws of this State, an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity. Article 215.1(D) does not preclude a police officer, who may lack reasonable suspicion of other criminal activity, from engaging a motorist in conversation while investigating a routine traffic violation. The officer may also compel or instruct the motorist to comply with the administrative or other legal requirements of Title 32 or Title 47 of the Louisiana Revised Statutes. Therefore, an officer is allowed

to conduct a routine driver's license and vehicle registration check and may engage in conversation with the driver and any passenger while doing so. **State v. Lopez**, 2000-0562 (La. 10/30/00), 772 So.2d 90, 92-93 (per curiam). Herein, upon learning that the defendant's driver's license was suspended, Trooper Bell reasonably concluded that the defendant had committed another offense, namely, operating a vehicle while under suspension pursuant to other DWI convictions. See La. R.S. 14:98.8.[6] As such, even without a warrant, Trooper Bell had probable cause to detain and arrest the defendant.[7]

Under the Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution, a search conducted without a warrant is per se unreasonable, subject only to a few specifically established and well-delineated exceptions. **State v. Griffin**, 2007-0974 (La. App. 1st Cir. 2/8/08), 984 So.2d 97, 109. Moreover, when challenged by a motion to suppress, the State bears the burden of proving the admissibility of evidence seized without a warrant. La. Code Crim. P. art. 703(D); **State v. Warren**, 2005-2248 (La. 2/22/07), 949 So.2d 1215, 1226. A trial court's ruling on a motion to suppress 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**, 2001-0908 (La. App. 1st Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 2002-2989 (La. 4/21/03), 841 So.2d 791. Consequently, 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.

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[6] La. R.S. 14:98.8(A) provides, in pertinent part, that "[i]t is unlawful to operate a motor vehicle on a public highway where the operator's driving privileges have been suspended under the authority of R.S. 32:414(A)(1), (B)(1) or (2), (D)(1)(a), or R.S. 32:667."

[7] La. Code Crim. P. art. 213(A)(1) provides "[a] peace officer may, without a warrant, arrest a person when any of the following occur . . . [t]he person to be arrested has committed an offense in his presence; and if the arrest is for a misdemeanor, it must be made immediately or on close pursuit."

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**, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751. Further, the entire record, not merely the evidence adduced at the motion to suppress, is reviewable by the appellate court in considering the correctness of a ruling on a pretrial motion to suppress. **State v. Francise**, 597 So.2d 28, 30 n.2 (La. App. 1st Cir.), writ denied, 604 So.2d 970 (La. 1992).

An exception to the warrant requirement exists when there is probable cause to search an automobile. The warrantless search of an automobile is not unreasonable if there is probable cause to justify the search, without proving additional exigency, when the automobile is readily mobile because there is an inherent risk of losing evidence. See **Maryland v. Dyson**, 527 U.S. 465, 466-67, 119 S.Ct. 2013, 2014, 144 L.Ed.2d 442 (1999) (per curiam). The determination of probable cause does not rest on the officer's subjective beliefs or attitudes, but turns on a completely objective evaluation of all the circumstances known to the officer at the time of the challenged action. **State v. Landry**, 98-0188 (La. 1/20/99), 729 So.2d 1019, 1020 (per curiam). In considering those circumstances, a reviewing court should give deference to the inference and deductions of a trained police officer "that might well elude an untrained person." **State v. Huntley**, 708 So.2d at 1049. If a vehicle is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits the police to search the vehicle without more. **Pennsylvania v. Labron**, 518 U.S. 938, 940, 116 S.Ct. 2485, 2487, 135 L.Ed.2d 1031 (1996) (per curiam); see also **State v. Harris**, 2011-0779 (La. App. 1st Cir. 11/9/11), 79 So.3d 1037, 1041.

In **Arizona v. Gant**, 556 U.S. 332, 350-51, 129 S.Ct. 1710, 1723, 173 L.Ed.2d 485 (2009), the three arrestees, all of whom had been handcuffed and

secured in separate patrol cars before the officers searched the defendant's vehicle, were outnumbered by five officers. Under those circumstances, the defendant clearly was not within reaching distance of his vehicle at the time of the search. Although the United States Supreme Court found that neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in that case, the Court specifically noted that circumstances unique to the vehicle context might justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. But in others, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein. **Id**. at 556 U.S. at 343-44, 129 S.Ct. at 1719.

Given the extremely reckless manner in which the defendant was operating his truck, the smell of alcohol on the defendant's breath, and the suspension of the defendant's license for previous DWI offenses, it is reasonable to conclude Trooper Bell had probable cause to believe the defendant was operating his truck while intoxicated. As such, Trooper Bell acted within the scope of the automobile exception when he searched the defendant's truck without a warrant. Accordingly, we conclude that **Gant** is factually distinguishable from this case. See **State v. Bell**, 2010-1954 (La. App. 1st Cir. 6/10/11), 2011 WL 3444226 at *7 (unpublished), writ denied, 2011-1504 (La. 2/3/12), 79 So.3d 1024; see also **Harris**, *supra*. Therefore, as Trooper Bell was justified in conducting an investigatory stop of the defendant's truck, had probable cause to arrest, had probable cause to believe the defendant was operating his truck while intoxicated,

and acted within the scope of the automobile exception, this assignment of error lacks merit.

COMPETENCY TO STAND TRIAL

In his second assignment of error, the defendant argues that because of a "traumatic brain injury," he "has no memory of the alleged criminal episode . . . [and] his amnesia renders him incapable of assisting his counsel[.]" (Defense brief 9). He further claims that he "remembers nothing of the circumstance of his arrest nor of the preceding six years. His loss of memory function was caused by a serious brain injury which has necessitated extensive, lengthy, and continuing medical treatment. His loss of memory, through no fault of his own, has rendered him completely incapable of assisting his counsel in the preparation and presentation of a defense." (Defense brief 12). Therefore, the defendant avers the trial court erred by finding him competent to proceed to trial. (Defense brief 12).

A criminal defendant has a constitutional right not to be tried while legally incompetent. The State must observe procedures adequate to protect a defendant's right not to be tried while incompetent, and its failure to do so deprives the defendant of his due process right to a fair trial. **State v. Campbell**, 2006-0286 (La. 5/21/08), 983 So.2d 810, 848, cert. denied, 555 U.S. 1040, 129 S.Ct. 607, 172 L.Ed.2d 471; **State v. Carmouche**, 2001-0405 (La. 5/14/02), 872 So.2d 1020, 1041. Pursuant to La. Code Crim. P. art. 641, mental incapacity to proceed exists when, as a result of a mental disease or defect, a defendant lacks the capacity to understand the proceedings against him or her or to assist in his defense. However, the fact that the defendant claims to be unable to remember the time period surrounding the alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges against him and can assist in his defense. La. Code. Crim. P. art. 645(A)(2). Louisiana law also imposes a legal

presumption that a defendant is sane and responsible for his actions. See La. R.S. 15:432. Accordingly, the defendant has the burden of proving by a preponderance of the evidence his incapacity to stand trial. **Carmouche**, 872 So.2d at 1041.

In evaluating the legal capacity of the criminally accused, the Louisiana Supreme Court has stated that the considerations in determining whether the defendant is fully aware of the nature of the proceedings include: whether he understands the nature of the charge and can appreciate its seriousness; whether he understands what defenses are available; whether he can distinguish a guilty plea from a not guilty plea and understand the consequences of each; whether he has an awareness of his legal rights; and whether he understands the range of possible verdicts and the consequences of conviction. **State v. Bennett**, 345 So.2d 1129, 1138 (La. 1977) (on rehearing). The Louisiana Supreme Court has stated that the facts to consider in determining the defendant's ability to assist in his defense include: whether he is able to recall and relate facts pertaining to his actions and whereabouts at certain times; whether he is able to assist counsel in locating and examining relevant witnesses; whether he is able to maintain a consistent defense; whether he is able to listen to the testimony of witnesses and inform his lawyer of any distortions or misstatements; whether he has the ability to make simple decisions in response to well-explained alternatives; whether, if necessary to defense strategy, he is capable of testifying in his own defense; and to what extent, if any, his mental condition is apt to deteriorate under the stress of trial. **Campbell**, 983 So.2d at 850.

While a thorough mental examination is necessary, the final determination of a defendant's competency to stand trial must rest in a judicial authority; it is a legal, rather than a medical, issue. The trial judge should not rely so heavily upon the medical testimony that he commits the ultimate decision of competency to the

physician. **State v. Harris**, 518 So.2d 590, 597 (La. App. 1st Cir. 1987), writ denied, 521 So.2d 1184 (La. 1988); see also La. Code Crim. P. art. 647. A reviewing court owes the trial court's determinations as to the defendant's competency great weight, and the trial court's ruling thereon will not be disturbed on appeal absent a clear abuse of discretion. **Carmouche**, 872 So.2d at 1041.

In **State v. Dixon**, 95-0269 (La. App. 4th Cir. 1/19/96), 668 So.2d 388, 394, writ denied, 96-0332 (La. 5/17/96), 673 So.2d 608, cert. denied, 519 U.S. 983, 117 S.Ct. 438, 136 L.Ed.2d 335 (1996), the court found that a defendant charged with attempted armed robbery, and unable to remember his actions at the time of the alleged offense due to amnesia caused by a gunshot wound, was competent to stand trial. The court noted that, although ample evidence indicated that the defendant would never be able to recall the events surrounding the incident, a continuance would not assist the defendant in preparing a defense, as his memory loss was permanent and did not stop his counsel from cross-examining the victim.

Herein, the trial court had the benefit of reviewing three separate examination reports of the defendant in determining his competency to stand trial. In an April 10, 2017 report, Dr. Rafael Salcedo noted the defendant had an unremarkable psychiatric history up until the time he was involved in a work-related accident on September 16, 2016, but since then, the defendant "maintains a six-year period of retrograde amnesia, i.e., he has little recollection for the last six years of the time span prior to the accident, and since the accident, has had difficulty being able to encode and retrieve new information as well." Dr. Salcedo further reported that the defendant gave "excellent responses to questions concerning the Bennett criteria for competency to proceed, at least insofar as being able to demonstrate that he understood the meaning of various pleas, the consequences of various legal outcomes, his legal rights, and related courtroom

dynamics. On the other hand, he claims to have no recollection for the timeframe involving the alleged offense, and therefore would appear to have difficulty being able to assist his attorney in preparing his defense." Dr. Salcedo concluded that the defendant did not show signs or symptoms of a major psychiatric disorder but, "[u]nfortunately, this individual's claims of not being able to recall the circumstances leading to his arrest in connection with the current charges is problematic from the standpoint of his ability to assist counsel. For this reason, my recommendation to the Court is that he be found incompetent to proceed to trial." Dr. Salcedo did qualify his report by stating the defendant's difficulties have the potential for being "adequately addressed if he is able to acquire and recall information presented to him regarding the circumstances leading to his arrest." (Report #1).

In a second report, dated May 17, 2017, Dr. Michelle Garriga likewise noted the defendant's work-related accident and that since then he has suffered from retrograde amnesia for the six years prior to the fall. Following her examination, Dr. Garriga opined that the defendant "had the capacity to understand the proceedings against him. He stated his charge and said that he could be sent to prison if convicted of this crime. He correctly explained the roles and responsibilities of the defense counsel, prosecutor, judge, jury, and witnesses. He understood his role during a trial. He correctly defined the terms 'guilty,' 'not guilty,' and 'not guilty by reason of insanity' and the consequences of each verdict. He was able to list his legal rights and discuss them appropriately. He understood available defenses." Further, while Dr. Garriga expressed concern about the defendant's ability to assist in his defense, she noted that he was able to make "reasonable decisions in response to well explained alternatives. He was presented with hypothetical plea bargain scenarios and made reasonable decisions when

questioned about the scenarios. He has the ability to testify relevantly and be crossed examined if necessary in his own defense." Dr. Garriga concluded that the defendant "can relate to his attorney with a reasonable degree of rational understanding but may have difficulty understanding the proceedings against him. He was unable to fully meet the Bennett [g]uidelines for competency to stand trial based upon his ability to recall the last six years." Yet, Dr. Garriga stated that "retrograde amnesia alone is insufficient to hinder an individual's ability to meet the Bennett [g]uidelines. The problem area [for the defendant] is whether he is able to incorporate new information." (Report #2).

The third report - a follow-up examination conducted by Dr. Salcedo on September 11, 2017 - reflected an improvement in the defendant's condition. Dr. Salcedo indicated the defendant was capable of forming new memories as he recalled and spoke of events occurring subsequent to his work injury. However, Dr. Salcedo reported the defendant "continues to maintain that he has absolutely no recollection for anything during the timeframe involving the alleged offense . . . ," yet was able to provide "excellent responses to questions concerning his understanding of the nature of the charges and the proceedings he faces." Dr. Salcedo concluded:

> [The defendant's] claims of amnesia for the timeframe involving the alleged offense, do present challenges in terms of defense counsel being able to enlist [the defendant's] assistance while preparing his defense, particularly with regard to items like being able to assist in the cross examination of hostile witnesses. On the other hand, claims of amnesia are not infrequent, and do not typically form a basis for a recommendation that [an] individual be found incompetent to proceed to trial on that basis alone. In particular, this is the case when the circumstances and facts surrounding the alleged offense can be obtained, by defense counsel, through other means (such as video recordings, officer camcorders, etc.).
>
> Given that [the defendant] fulfills all of the Bennett criteria for competency to proceed to trial other than for his claims of amnesia

> surrounding the alleged offense, and given the issue described above, it is my recommendation to the Court that he be found to be presently competent to proceed to trial.

(Report #3).

The defendant cites **State v. Swails**, 223 La. 751, 762-63, 66 So.2d 796, 799-800 (1953) for his contention that "amnesia may render a defendant incapable of assisting in his defense." (Defense brief 12). In **Swails**, the defendant claimed he recalled "practically nothing for a period extending for a year or more before the time of the commission of the alleged crime until after he had been committed to the hospital for about two months, and that all that he knows about any such crime is what his wife has told him and what he later read in the papers . . . ." The Louisiana Supreme Court stated, in dicta, that "in order to be able to assist . . . in his defense, he must have such possession and control of his mental powers, including the faculty of memory, as will enable him to testify and inform his counsel of material facts bearing upon the criminal acts charged against him[.]" **Id**. However, in **State v. Fugler**, 97-1936 (La. App. 1st Cir. 9/25/98), 721 So.2d 1, 16, this court expressly found this language to be dicta and declined to follow it. Moreover, this passage from **Swails** is precisely what the legislature abrogated when it passed La. Acts 1990, No. 436, § 1, adding Subsection (A)(2) to La. Code Crim. P. art. 645, which states, *supra*: "The fact that the defendant claims to be unable to remember the time period surrounding the alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges against him and can assist in his defense."

Under our jurisprudence, the trial court's determination of mental capacity to assist at trial is entitled to great weight, especially where the evaluation of credibility or the resolution of conflicting well-founded medical testimony is concerned. **State v. Brooks**, 541 So.2d 801, 807 (La. 1989). Here, the trial court

evaluated the evidence and determined the defendant was competent to proceed. As the defendant failed to meet the burden of establishing incompetency to stand trial, we find that the trial court did not abuse its discretion, and the trial court's ruling will not be disturbed. See **State v. Verrette**, 2010-0102 (La. App. 1st Cir. 6/11/10), 2010 WL 2342823, at *9 (unpublished). Therefore, this assignment of error lacks merit.

PATENT ERROR REVIEW

In conducting our review of the record as required by La. Code Crim. P. art. 920(2), we note the existence of a sentencing error. As noted, the penalty provision for driving while intoxicated fourth or subsequent offense, in pertinent part, includes a mandatory fine of five thousand dollars. See La. R.S. 14:98.4(A)(1). While part of the defendant's special condition of parole included a two thousand dollar fine, the trial court did not impose the five thousand dollar fine as part of his sentence. Under the general provisions of La. Code Crim. P. art. 882(A), an illegal sentence "may" be corrected at any time by an appellate court on review. Because the trial court's failure to impose the fine was not raised by the State in either the trial court or on appeal, and the defendant is not prejudiced by the trial court's failure to impose the mandatory fine, we decline to amend the sentence imposed by the trial court. See **State v. Price**, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277; **State v. Landrum**, 2017-0307 (La. App. 1st Cir. 2/16/18), 2018 WL 913161, at *10 (unpublished), writ denied, 2017-1783 (La. 5/25/18), 243 So.3d 566.

CONVICTIONS AND SENTENCES AFFIRMED.

STATE OF LOUISIANA

VERSUS

JOHN DALE LEE

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 KA 0541

HOLDRIDGE, J., CONCURS.

I respectfully concur. While it is questionable as to whether the motion to suppress should have been denied, the evidence and the facts that could have been admitted at trial were more than sufficient to justify a conviction for the charges to which the defendant pled guilty.