NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 2359

STATE OF LOUISIANA

VERSUS

RANDY R. RENAUDIN

Judgment Rendered: May 2, 2008

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On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 394,673, Division "B"

Honorable Elaine W. DiMiceli, Judge Presiding

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

The defendant, Randy R. Renaudin, was charged by bill of information with possession of a Schedule IV controlled dangerous substance, namely Alprazolam, a violation of LSA-R.S. 40:969(C). The defendant pled not guilty and filed a motion to suppress the evidence. Following a hearing, the motion was denied. The defendant then withdrew his former plea of not guilty and entered a **Crosby** plea of guilty as charged, reserving his right to appeal 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 pursuant to LSA-C.Cr.P. art. 893 and placed the defendant on probation for five years. The defendant was also ordered to enroll and successfully complete the 22nd JDC's Drug Court Program. The defendant now appeals, asserting in his sole assignment of error that the trial court erred in denying his motion to suppress the evidence. We affirm the conviction and deferred sentence.

FACTS

On February 22, 2005, Deputy Jeremy Church of the St. Tammany Parish Sheriff's Office was dispatched to the Highway 35 area north of Abita Springs in response to a citizen complaint about someone driving recklessly. Deputy Church pulled into the Fabriella's Deli parking lot, where the complainant and the defendant were parked in separate vehicles. The complainant informed Deputy Church that he was driving behind the defendant when he observed the defendant drive through several yards and a ditch, and nearly become involved in a head-on collision with oncoming traffic. The complainant further stated that he had followed the defendant into the deli parking lot and pointed out the defendant's vehicle to Deputy Church.

The defendant was sitting alone behind the wheel of an S-10 pickup truck. Deputy Church asked the defendant to exit the truck and the defendant complied. Deputy Church observed that the defendant's speech was slurred and his eyes were droopy and somewhat glazed over. Deputy Church did not, however, detect the odor of alcohol on the defendant's breath. While Deputy Church was speaking to the defendant, the defendant had his hands in his pockets. Deputy Church asked the defendant to keep his hands out of his pockets and the defendant removed his hands and turned toward the S-10. Deputy Church noticed that the defendant was trying to hide something in his right hand. The defendant put his forearms on the bed of the truck and dropped an orange object into the bed of the truck. When Deputy Church looked into the bed he saw an orange-brown, translucent pill bottle with a white cap. The label had been peeled off of the pill bottle, and there was no writing on it. Deputy Church retrieved the pill bottle. Although Deputy Church could not see through the pill bottle completely, he could tell that there were objects in it. He opened the pill bottle and found four Xanax pills. The defendant did not provide Deputy Church with either a prescription or a receipt for the drugs.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant avers that the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends that Deputy Church's retrieval and opening of the pill bottle constituted an illegal search and seizure in violation of the Fourth Amendment.[1]

[1] The defendant does not contest the legality of the investigatory stop. In fact, in his brief, the defendant concedes that the citizen complaint provided Deputy Church with reasonable grounds for an investigatory stop.

Trial courts are vested with great discretion when ruling on a motion to suppress. Consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion. **State v. Long**, 2003-2592, 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).

The trial court found that Deputy Church had probable cause to believe that the defendant's truck contained possible contraband; and, thus, under the automobile exception, Deputy Church had the right to search the pill bottle found in the truck.

If an officer has probable cause to believe that the automobile contains contraband, the officer may conduct a warrantless search of the vehicle, including containers in the vehicle which may hold contraband. **California v. Acevedo**, 500 U.S. 565, 111 S.Ct. 1982, 1989, 114 L.Ed.2d 619 (1991) (some citations omitted). Once police officers have probable cause to search a vehicle, they also have the right to search belongings or containers found in the vehicle, as those items may contain the contraband which the officer now has reason to believe is in the vehicle. **Maryland v. Dyson**, 527 U.S. 465, 467, 119 S.Ct. 2013, 144 L.Ed.2d 442 (1999) [per curiam] (some citations omitted).

Although a search and seizure conducted without a warrant issued on probable cause is *per se* unreasonable, it is well settled that the warrantless search and seizure can be justified by one of the narrowly drawn exceptions to the warrant requirement. **State v. Thompson**, 2002-0333, p. 6 (La. 4/9/03), 842 So.2d 330, 335. One of these is the "automobile" exception. **United States v. Ross**, 456 U.S. 798, 823-824, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982).

Two requirements must be satisfied before a warrantless seizure of evidence within a movable vehicle can be authorized: (1) there must be probable cause to believe that the vehicle contains contraband or evidence of a crime; and (2) there must be exigent circumstances requiring an immediate warrantless search. **Thompson**, 2002-0333 at p. 7, 842 So.2d at 336.

Probable cause means "a fair probability that contraband or evidence of a crime will be found." **Illinois v. Gates**, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). It must be judged by the probabilities and practical considerations of everyday life on which average people, and particularly average police officers, can be expected to act. **Thompson**, 2002-0333 at p. 8, 842 So.2d at 336.

In the instant matter, Deputy Church was informed that the defendant drove through several yards and through a ditch, and was nearly involved in a head-on collision with oncoming traffic. When Deputy Church approached the defendant, he noticed that the defendant's eyes were glazed over and droopy, and that his speech was slurred, but he did not detect any alcohol on the defendant's breath. Based on the defendant's appearance, Deputy Church felt that the defendant was in no condition to be driving. Further, while Deputy Church was speaking to the defendant, the defendant had his hands in his pockets. For safety concerns Deputy Church asked the defendant to remove his hands from his pockets. And as the defendant removed his hands, Deputy Church observed an object in the defendant's right hand which the defendant was attempting to hide. The defendant turned toward his vehicle and dropped the object, which was orange in color, into the open bed of the truck. When Deputy Church looked into the truck bed he saw an orange-colored prescription pill bottle which had been altered. Specifically, the label on the bottle had been peeled off, and the remaining

pieces of paper stuck to the bottle contained no writing. Regarding the significance of the removal of the label, Deputy Church testified as follows on direct examination at the motion to suppress hearing:

> Q. Had you experienced situations where somebody was in possession of a bottle with the label torn off?
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> A. Yes, sir, I have.
>
> Q. Those pill bottles that had a torn off label, based on your personal experience, are they more likely to contain something that is illegal or less likely to contain something that's illegal?
>
> A. Either way. Somebody could have a prescription for the medication. They usually have a newer prescription bottle full, but the majority of the time that I've encountered, there's usually something illegal that they were not supposed to possess.

Deputy Church retrieved the bottle and opened it. Inside the bottle were four Xanax pills, which Deputy Church recognized due to his experience as a law enforcement officer.

We find that when the defendant palmed and guilefully dropped an unlabeled pill bottle into his truck bed, Deputy Church's reasonable suspicions ripened into probable cause. See **Thompson**, 2002-0333 at p. 8, 842 So.2d at 336-37. See also **State v. Braud**, 357 So.2d 545, 546-47 (La. 1978). In quoting **Brown v. State**, 269 Ga. 830, 504 S.E.2d 443, 446 (1998), the supreme court in **Thompson**, 2002-0333 at p. 8, 842 So.2d at 336-37, noted:

> Observation of what reasonably appear to be furtive gestures is a factor which may properly be taken into account in determining whether probable cause exists.... Thus, if the police see a person in possession of a highly suspicious object or some object which is not identifiable but which because of other circumstances is reasonably suspected to be contraband, and then observe that person make an apparent attempt to conceal that object from police view, probable cause is then present.

While the furtive reaction alone was not sufficient to provide legal justification for the search, when the act is considered together with the other

facts known to Deputy Church, the deputy had a particularized basis for associating the pill bottle with contraband. The report of the defendant's erratic driving; the defendant's droopy, glazed eyes and slurred speech; and the veiled discarding of a pill bottle with a torn off label all contributed to the totality of the evidence supporting Deputy Church's probable cause. See **Thompson**, 2002-0333 at pp. 8-9, 842 So.2d at 336-37.

We also find that exigent circumstances were present because the defendant's vehicle was readily mobile.[2] See **Thompson**, 2002-0333 at pp. 9-10, 842 So.2d at 337-38. Accordingly, pursuant to the "automobile" exception, Deputy Church was allowed to search the pill bottle because he had probable cause to believe it contained contraband or evidence. See **Acevedo**, 500 U.S. at 580, 111 S.Ct. at 1991. We find no abuse of discretion by the trial court in denying the defendant's motion to suppress.

The assignment of error is without merit.

CONVICTION AND DEFERRED SENTENCE AFFIRMED.

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[2] The United States Supreme Court in **Dyson**, 527 U.S. at 466-67, 119 S.Ct. at 2014, held that under the "automobile" exception, there is no separate exigency requirement:

> The Fourth Amendment generally requires police to secure a warrant before conducting a search. **California v. Carney**, 471 U.S. 386, 390-91, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985). As we recognized nearly 75 years ago in **Carroll v. United States**, 267 U.S. 132, 153, 45 S.Ct. 280, 69 L.Ed. 543 (1925), there is an exception to this requirement for searches of vehicles. And under our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear in **United States v. Ross**, 456 U.S. 798, 809, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), when we said that in cases where there was probable cause to search a vehicle "a search is not unreasonable if based on facts that would justify the issuance of a warrant, *even though a warrant has not been actually obtained.*" (Emphasis added.) In a case with virtually identical facts to this one (even down to the bag of cocaine in the trunk of the car), **Pennsylvania v. Labron**, 518 U.S. 938, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996) (*per curiam*), we repeated that the automobile exception does not have a separate exigency requirement: "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment ... permits police to search the vehicle without more." **Id.**, at 940, 116 S.Ct. 2485.