NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0558

STATE OF LOUISIANA

VS.

TRENTON K. DUBOIS

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JUDGMENT RENDERED: SEPTEMBER 19, 2007

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ON APPEAL FROM THE
TWENTY-THIRD JUDICIAL DISTRICT COURT
DOCKET NUMBER 19495, DIVISION C
PARISH OF ASCENSION, STATE OF LOUISIANA

HONORABLE GUY HOLDRIDGE, JUDGE

****

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STATE OF LOUISIANA

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ATTORNEY FOR DEFENDANT/APPELLANT
TRENTON K. DUBOIS

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

McClendon, J. concurs

MCDONALD, J.

The defendant, Trenton K. Dubois, was charged by amended bill of information with seven counts of possession with intent to distribute schedule II controlled dangerous substances (counts I – VII), violations of La. R.S. 40:967(A)(1); one count of possession with intent to distribute a schedule III controlled dangerous substance (count VIII), a violation of La. R.S. 40:968(A)(1); and three counts of possession with intent to distribute schedule IV controlled dangerous substances (counts IX – XI), violations of La. R.S. 40:969(A)(1). He pleaded not guilty on all counts. He moved to suppress any and all evidence as the result of unconstitutional interrogation and search and seizure. Following a hearing, the motion was denied. Thereafter, he withdrew his former pleas and pleaded guilty reserving his right to seek review of the court's ruling on the motion to suppress. See **State v. Crosby**, 338 So.2d 584 (La. 1976). Pursuant to a plea bargain, he was sentenced, on each count, to six and one-half years at hard labor, with all sentences to run concurrently with each other. He now appeals, designating two assignments of error. We affirm the convictions and sentences on all counts.

ASSIGNMENTS OF ERROR

1. The police violated the Fourth Amendment and La. Const. art. I, § 5 when they entered the defendant's home and arrested him based upon probable cause they created and exigent circumstances they invented. The trial judge erred in denying the motion to suppress evidence based upon a warrant issued subsequent to the illegal intrusion, that lacked probable cause, that contained misrepresentations of fact, that was based in part upon information acquired as a result of the illegal intrusion, and that was presented in bad faith.

2. The trial judge erred in not suppressing the statements given by the defendant. The State failed to establish that the statements were knowing and voluntary and attenuated from the forced police entry into his home and his illegal arrest.

FACTS

On June 2, 2005, Casey Charles was involved in a car accident in the Lake Charles area. As a result of the accident, between 5,000 and 10,000 Valium pills were scattered on the road. Charles had been carrying approximately 12,000 Valium pills, as well as steroids and Clenbuterol, in a backpack. She indicated she was in the process of delivering the pills to the defendant when she had the car accident. She also indicated she had been delivering pills to the defendant "for a while." As a result of a narcotics investigation concerning the defendant seven or eight years earlier, the police were aware that Charles and the defendant had been involved in a relationship and had been involved in drug activity together.

Charles agreed to have an audio recording-transmitting device placed on her body and complete her delivery to the defendant. She went to the defendant's house, knocked on the door, and the defendant allowed her into the home. Listening to the conversation between Charles and the defendant, the police heard the defendant expressed apparent surprise to see Charles. Thereafter, he stated that he wanted to get out of the narcotics trade and became emotional because drugs had ruined his life and caused him to break-up with his present girlfriend. Both Charles and the defendant began crying and began comforting each other. The police became concerned that the defendant would discover the audio recording-transmitting device on Charles's body, and knocked on the door to the defendant's home, and entered. Once

inside, the police secured the defendant, Charles, and another man discovered in a bedroom.

Louisiana State Police Trooper Jeff Holley advised the defendant of his Miranda rights, and the defendant indicated that he understood those rights. Trooper Holley asked the defendant if he would consent to a search of the residence. The defendant gave a verbal consent, and the police asked him to sign a consent to search form. Trooper Holley felt that the defendant "looked a little tentative" and decided to obtain a search warrant.

After a search warrant was signed by a judge, Trooper Holley telephoned the police at the defendant's home and they searched the home. Over 400 Valium pills as well as Somas, steroids, and Clenbuterol were recovered from the home. Approximately 413 Valium pills, 286 units of Xanax, 63 units of Oxycontin, and $6,400 in cash were recovered from the defendant's bedroom closet. The defendant admitted that a Pontiac Sunfire at the residence was the car he "was driving." That vehicle contained 235 units of Meprobamate, 95 units of four milligram Dilaudid, 91 units of eight milligram Dilaudid, 25 units of codeine, 40 units of Ritalin, 71 units of Dextrostat, 9 units of morphine, 1200 units of Soma, 238 units of Straterra, 31 units of Provigil, and 7 vials of Serastem.

The defendant told Trooper Holley that the drugs recovered in the home and the car were his drugs, which he sold. He also indicated that the money recovered from his closet was money he had received from selling drugs. The defendant advised Trooper Holley that he had been receiving pills from Charles and that her boyfriend worked at a medical center. The defendant indicated he was addicted to Valium and Charles knew that if she started bringing him Valium, he would have to sell them because he would use some

of them. The defendant also admitted that he had been "doing that" for a while now and was really getting tired.

Within days following the execution of the search warrant, the defendant told Trooper Holley that Charles and her boyfriend had previously gone to his residence and stolen narcotics he intended to sell, as well as drug money. The defendant claimed he did not know Charles was coming to him on the day of the search and had not spoken to her since the narcotics and money were stolen.

MOTION TO SUPPRESS EVIDENCE

In assignment of error number 1, the defendant argues there was no probable cause to believe that the residence contained drugs other than those sent into the house with the police informant, and no exigent circumstances other than those created by the police themselves. Additionally, he argues the affidavit in support of the search warrant was insufficient to support issuance of the warrant because it contained misrepresentations and omissions, and because the only information that the officers possessed before their entry into the residence was the uncorroborated word of Charles, a first-time informant whom the trial judge recognized "made a deal" for leniency.[1]

Initially, we note the defendant failed to raise in the trial court that the affidavit in support of the search warrant was insufficient. An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the

[1] The defendant references the court's response to defense argument that because Charles went into the defendant's home "of her own right or free will," the police were under no obligation to protect her. The court responded, "No, I don't think [Charles] went in of her own free will. I'm sure she went in on a deal with the State Police to lessen the penalty that she was going to receive."

action which he desired the court to take, or of his objections to the action of the court, and the grounds therefor. La. Code Crim. P. art. 841. Accordingly, the defendant's challenge to the affidavit in support of the search warrant was not preserved for appeal.

It is a basic principle of the U.S. Fourth Amendment that searches and seizures inside a home without a warrant are presumptively unreasonable. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be erased without a warrant. **Payton v. New York**, 445 U.S. 573, 586-90, 100 S.Ct. 1371, 1380-82, 63 L.Ed.2d 639 (1980).

Probable cause to arrest exists when facts and circumstances within the arresting officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a man of average caution in the belief that the person to be arrested has committed or is committing an offense. Although mere suspicion cannot justify an arrest, the officer does not need sufficient proof to convict. **State v. Farber**, 446 So.2d 1376, 1379 (La. App. 1st Cir.), writ denied, 449 So.2d 1356 (La. 1984).

One of the most important elements in determining whether probable cause existed is satisfied when the police know a crime has actually been committed. When a crime has been committed and the police know it, they only have to determine whether there is reasonably trustworthy information to justify a man of ordinary caution in believing the person to be arrested has committed the crime. In many cases the police do not know that a crime has been committed. When the arrest or search is made when the police do not know that a crime has been committed, more and better evidence is needed to

prove that probable cause exists for the arrest than is the case when the police know a crime has been committed. **Farber**, 446 So.2d at 1379.

Probable cause alone does not justify the entry into an area otherwise protected by the Fourth Amendment of the United States Constitution and Louisiana Constitution, Article I, § 5. There is a justified intrusion of a protected area if there is probable cause to arrest and exigent circumstances. Exigent circumstances are exceptional circumstances which when coupled with probable cause justify an entry into a "protected" area that, without those exceptional circumstances, would be unlawful. Examples of such exigent circumstances include escape of the defendant, avoidance of a possible violent confrontation that could cause injury to the officers and the public, and the destruction of evidence. **Farber**, 446 So.2d at 1380.

In the instant case, the defense moved to suppress any and all evidence, whether oral inculpatory statements or physical evidence, obtained as the result of unconstitutional interrogation and search and seizure. At the hearing on the motion to suppress, the defense argued there was nothing to justify the entry into the defendant's home. The State responded that because Charles and the defendant had a history together, they may have been speaking in code. The State further argued there was a possibility that the drugs could have been flushed down the toilet.

In denying the motion to suppress, the trial court noted that the police entry into the home was justified because the informant seemed on the verge of being exposed and the police did not know what actions the defendant might have taken against her if he discovered the audio recording-transmitting device. There was no **Payton** violation in this case. At the time the police entered the defendant's residence, there was probable cause to arrest and an exigent circumstance. The police were aware of the commission of the

offense of possession with intent to distribute the drugs at the crash scene in the Lake Charles area. Charles, a principal to that offense, directly implicated the defendant in the offense. Charles told the police that she was on her way to deliver the drugs to the defendant. The police had independent knowledge that Charles and the defendant had previously been in a relationship and had previously been involved in drug activity together. Thereafter, she and the defendant came into close body contact that threatened to compromise her status as an informant if the defendant discovered the device. The police did not create the exigent circumstance in this case; to the contrary, they intended for Charles's status as an informant to remain hidden from the defendant.

This assignment of error is without merit.

MOTION TO SUPPRESS CONFESSION/INCULPATORY STATEMENTS

In his second assignment of error, the defendant argues that moments before being advised of his Miranda rights, he had been crying; Trooper Holley testified he obtained a search warrant because he did not think that the defendant's "state of mind would have been that good to give consent," and Trooper Holley agreed the defendant was not in his "right mind" to give consent. The defendant argues the State failed to show he recovered sufficiently from the intrusion and subsequent custody to be able to give a legally voluntary statement.

It is well settled that for a confession or inculpatory statement to be admissible into evidence, the State must affirmatively show that it was freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451. Additionally, the State must show that an accused who makes a statement or confession during custodial interrogation was first advised of his Miranda rights. **State v. Plain**, 99-1112, p. 5 (La. App. 1st Cir. 2/18/00), 752 So.2d 337, 342.

The admissibility of a confession is, in the first instance, a question for the trial court; its conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession are accorded great weight and will not be overturned unless they are not supported by the evidence. Whether or not a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. The trial court must consider the totality of the circumstances in deciding whether or not a confession is admissible. **Plain**, 99-1112 at p. 6, 752 So.2d at 342.

There was no abuse of discretion in the trial court's denial of the motion to suppress the confession/inculpatory statements. The fact that the defendant may have been upset about breaking up with his girlfriend or that Trooper Holley decided to obtain a search warrant rather than relying on consent from the defendant before searching the defendant's home does not mean that the defendant was incapable of giving a free and voluntary statement. Trooper Holley testified he read the defendant his Miranda rights, the defendant indicated he understood those rights, and the defendant thereafter made the challenged statements. The trial court found the testimony of Trooper Holley credible and there is no basis to overturn that determination.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES ON ALL COUNTS AFFIRMED.