NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 2105

STATE OF LOUISIANA

VERSUS

HUEY M. MOONEY, III

Judgment Rendered: MAY - 8 2009

* * * * * *

On Appeal from the Twenty-Second Judicial District Court
In and For the Parish of St. Tammany
State of Louisiana
Docket No. 417039

Honorable Peter J. Garcia, Judge Presiding

* * * * * *

Walter P. Reed
District Attorney
Covington, Louisiana

Kathryn W. Landry
Special Appeals Counsel
Baton Rouge, Louisiana

Counsel for Appellee
State of Louisiana

Jerry L. Fontenot
Covington, Louisiana

Counsel for Defendant/Appellant
Huey M. Mooney, III

* * * * * *

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

McCLENDON, J.

Defendant, Huey M. Mooney, III, was charged by bill of information with possession with intent to distribute cocaine (Count 1), a violation of LSA-R.S. 40:967A(1); possession with intent to distribute methadone (Count 2), a violation of LSA-R.S. 40:967A(1); possession with intent to distribute clonazepam (Count 3), a violation of LSA-R.S. 40:969A(1); possession of a firearm while in possession of cocaine (Count 4), a violation of LSA-R.S. 14:95E; and possession of a firearm by a convicted felon (Count 5), a violation of LSA-R.S. 14:95.1A. Defendant pled not guilty to all counts. Defendant filed a motion to suppress. Following a hearing on the matter, the motion to suppress was denied. Thereafter, defendant withdrew his prior pleas of not guilty and, at the **Boykin** hearing, entered **Crosby** pleas of guilty as charged to all counts, reserving his right to challenge the trial court's ruling on the motion to suppress. See **State v. Crosby**, 338 So.2d 584 (La. 1976).

For the possession with intent to distribute cocaine conviction (Count 1), defendant was sentenced to twenty-five years imprisonment at hard labor with the first two years of the sentence to be served without benefit of probation, parole, or suspension of sentence. The state filed a multiple offender bill of information. Defendant admitted to the allegations in the multiple bill, and he was adjudicated a second-felony habitual offender.[1] The trial court vacated the twenty-five year sentence previously imposed and resentenced defendant to twenty-five years imprisonment at hard labor with the first two years of the sentence to be served without benefit of probation, parole, or suspension of sentence. For the possession with intent to distribute methadone conviction (Count 2), defendant was sentenced to ten years imprisonment at hard labor with the first two years of the sentence to be served without benefit of probation, parole, or suspension of sentence. For the possession with intent to distribute clonazepam conviction (Count 3), defendant was sentenced to ten years imprisonment at hard labor. For the possession of a firearm while in possession of cocaine conviction (Count 4), defendant was sentenced to ten years

[1] The predicate was for an unrelated crime in Tennessee, namely, an aggravated assault causing serious bodily injury.

imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. On the possession of a firearm by a convicted felon conviction (Count 5), defendant was sentenced to ten years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. All sentences were ordered to run concurrently.

Defendant now appeals, designating two assignments of error regarding the trial court's ruling on his motion to suppress the evidence and statement. We affirm the convictions and the habitual offender adjudication. We affirm the possession with intent to distribute cocaine sentence (Count 1), the possession with intent to distribute clonazepam sentence (Count 3), the possession of a firearm while in possession of cocaine sentence (Count 4), and the possession of a firearm by a convicted felon sentence (Count 5). We amend the possession with intent to distribute methadone sentence (Count 2) to delete the provision without parole, affirm as amended, and remand with instructions.

FACTS

As there was no trial, the facts were established by the introduction of documentary evidence and testimony given at the motion to suppress hearing. On February 22, 2006, Detective Charles Landrum and other officers with the St. Tammany Parish Sheriff's Office received a call from dispatch about a "rolling disturbance." A male and female were having an argument in a white Cadillac Escalade travelling on La. Highway 1083.

At the intersection of La. Highway 40 and La. Highway 1083, Detective Landrum observed a woman standing in the middle of the road. The woman, identified as Samantha Brownlow, was covered in blood and her clothes were torn. She was hysterical and crying. Because of her hysteria, Detective Landrum found it difficult to get any information from her. Finally, he was able to ascertain that a male was hurt and bleeding by a driveway on La. Highway 40. Looking down the road, Detective Landrum saw a white Escalade pulling out of a driveway.

Detective Landrum notified the other officers, and the white Escalade was stopped in the driveway. The driveway and related house were owned by defendant.

Edwin Bedford, III, the occupant of the Escalade, had a severe laceration on his arm and was bleeding profusely. Detective Landrum was unable to obtain any information from Edwin. However, Detective Landrum observed a truck in the same driveway with the door open, the keys in the ignition, and a wallet laying in plain view. Detective Landrum also observed a trail of blood that led from the Escalade to the porch and front door of defendant's house.

Detective Landrum did not know if there was anyone inside the house who was injured or if there was a possible perpetrator inside. Detective Landrum stayed by the front of the house, while Corporal McCormick and Deputy Rowland went to the rear of the house. Corporal McCormick made entry through the back door, and he and Deputy Rowland began searching the house for victims or perpetrators. Corporal McCormick opened a closet door upstairs near defendant's bedroom and observed, illuminated by a black light, a triple beam scale, a straight-shooter narcotics smoking pipe containing suspected cocaine residue, used "char boy" smoking filters, and a Century safe.

Corporal McCormick did not seize the contraband. Instead, the officers withdrew from the house and obtained a search warrant. Upon execution of the search warrant, the police seized approximately nine grams of cocaine (three baggies of HCL), twelve Klonopin tablets, three Methadone wafers, a triple beam scale and three digital scales with cocaine residue, three drug ledgers, other drug paraphernalia, a loaded .38 pistol, a .357 pistol, a Mac 11 machine gun with an unregistered silencer, an SKS assault rifle, and six other rifles. Most of these items were found upstairs, in or near defendant's bedroom.

Defendant was subsequently arrested. He gave a written statement to the police, wherein he admitted to having some of the above-described drugs and weapons in his house. There was apparently no connection between defendant and Samantha Brownlow's hysterical condition or Edwin Bedford's injuries. While it appeared Samantha and Edwin lived near defendant, defendant testified that he did not know either one of them.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, defendant argues that the trial court erred in denying his motion to suppress the evidence. Specifically, defendant contends that the warrantless intrusion into his home, without probable cause or exigent circumstances, was a violation of the United States and Louisiana Constitutions.

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**, 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).

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

> All right. Regarding the seizure of the items within the house, I think the police officers acted reasonably in their initial entry into the residence based on the incident that was contended to be unrelated in that the trail of blood by uncontroverted testimony that led up to the front of the house. I think they would have been derelict in their duties not to go into the house to determine if anything was amiss in the house, and I don't think that a cursory examination of the first floor would have necessarily revealed anything and that it was necessary for them to go beyond that and into other areas of the house to determine whether or not the blood led to something else or some other incident occurred or some person was in the house that they needed to render assistance to.
>
> So I think they were reasonable in every aspect of their movement through the house and the fact that a warrant was subsequently obtained, and based upon sufficient probable cause, I think gives me reason to deny that portion of the Motion to Suppress.

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Similarly, the Louisiana Constitution provides that "[e]very person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy." LSA-Const. art. I, § 5. See **State v. Brisban**, 00-3437, pp. 4-5 (La. 2/26/02), 809 So.2d 923, 927. Except in certain narrowly defined classes of cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant. **State v. Ludwig**, 423 So.2d 1073, 1075 (La. 1982).

One carefully defined exception to the warrant requirement, recognized throughout the United States, is the so-called "emergency exception." See **Mincey v.**

Arizona, 437 U.S. 385, 392, 98 S.Ct. 2408, 2413, 57 L.Ed.2d 290 (1978). Under this exception, police officers may enter a dwelling without a warrant to render emergency assistance to a person they reasonably believe to be in distress and in need of such assistance. **Ludwig**, 423 So.2d at 1075. Further, under this exception, police officers are entitled to make a quick search of premises to determine the presence of a perpetrator who might still remain on the premises. See **Thompson v. Louisiana**, 469 U.S. 17, 21, 105 S.Ct. 409, 411, 83 L.Ed.2d 246 (1984) (per curiam); **Mincey**, 437 U.S. at 392, 98 S.Ct. at 2413; **Ludwig**, 423 So.2d at 1075-76. Also, the police may seize any evidence that is in plain view during the course of their legitimate emergency activities. See **Mincey**, 437 U.S. at 393, 98 S.Ct. at 2413. The burden of showing that the entry fell within the narrow confines of the emergency exception is on the state. **Ludwig**, 423 So.2d at 1076. See **State v. White**, 399 So.2d 172, 175-76 (La. 1981); **State v. Aspin**, 449 So.2d 49, 51(La.App. 1 Cir. 1984).

In the instant matter, Detective Landrum established at the motion to suppress hearing that, while responding to a rolling disturbance involving a man and a woman arguing in a white Escalade, he observed a woman standing in the middle of the road at the intersection of La. Highway 40 and La. Highway 1083. The woman, identified as Samantha Brownlow, was hysterical and crying. Her clothes were torn, and she was covered in blood. Samantha told Detective Landrum only that "he was bleeding" and "he was hurt," while pointing to a driveway on La. Highway 40. Looking in that direction, Detective Landrum saw a white Escalade pulling out of a driveway.

Other police officers were called, and the white Escalade was stopped. Edwin Bedford, III, who was in the Escalade, was severely injured and bleeding profusely. Detective Landrum was unable to obtain any information from Edwin. Edwin was airlifted by helicopter to the hospital.

Detective Landrum observed a truck in the same driveway with the door open, the keys in the ignition, and a wallet laying in plain view. According to Detective Landrum, it appeared "as if someone was in the [truck] or tried to get in the vehicle." Detective Landrum also observed a trail of blood that led from the Escalade to the porch and front door of defendant's house.

Detective Landrum did not know if there was anyone inside the house who was injured or if there was a possible perpetrator inside. When asked on direct examination what he then decided to do, Detective Landrum testified, "Well, myself and Corporal McCormick was [sic] not sure if there was someone in the house that had sustained any kind of injuries and we had no information from the two victims. We decided to try to make entry to make sure no one was in the house hurt, unconscious."

Several officers, including Corporal McCormick, entered the house and searched for any victims or perpetrators. When Corporal McCormick opened a closet door upstairs, he observed drug paraphernalia inside the closet. Corporal McCormick did not seize the contraband. Instead, the officers withdrew from the house and obtained a search warrant to seize what had already been found and to search for other contraband.

Detective Landrum testified on cross-examination that there was no evidence on the scene that any other party was involved besides Samantha and Edwin. He further testified that the officers searched the house, despite there being no response to the officers' identifying themselves before entering and despite not seeing blood in the house as they entered. According to Detective Landrum, the officers wanted to make sure the house was clear. On redirect examination, Detective Landrum was asked, "Was that a dangerous situation for the officers as well as anybody that might have been in that home?" He responded, "Yes."

We find that, under the specific circumstances herein, the officers were justified in their warrantless entry and search. Police officers had encountered an unknown, hysterical woman covered in blood, pointing to a driveway and indicating only that someone was hurt and bleeding. In that driveway, the officers found an unidentified man in the suspect white Escalade so badly injured that he had to be airlifted to the hospital. With no additional information, other than a blood trail leading from the Escalade to the front door of the house, and a truck in the driveway with an open door and keys in the ignition, the officers could have reasonably suspected foul play inside the house. Objectively viewed, the facts created the inference that an injured, bleeding individual or a perpetrator was present in defendant's house. The apparent need for

emergency action was reasonable, given the information available to the officers. Therefore, the search was valid as an emergency exception to the warrant requirement.

We also find that the drug paraphernalia discovered in the closet was in plain view. An exception to the search-warrant requirement also exists for items in plain view. Two conditions must be satisfied to trigger the applicability of the doctrine: (1) there must be a prior justification for an intrusion into the protected area; and (2) it must be immediately apparent without close inspection that the items are evidence or contraband. "Immediately apparent" requires no more than probable cause to associate the property with criminal activity. **State v. Young**, 06-0234, p. 6 (La.App. 1 Cir. 9/15/06), 943 So.2d 1118, 1122-23, writ denied, 06-2488 (La. 5/4/07), 956 So.2d 606. As established, Corporal McCormick had prior justification for his intrusion into defendant's home. Further, when he opened the closet door upstairs, it was immediately apparent that the drug paraphernalia he saw was associated with criminal activity.

Accordingly, the trial court did not abuse its discretion in denying the motion to suppress the evidence. This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In his second assignment of error, defendant argues the trial court erred in denying his motion to suppress his statement to the police. Specifically, defendant contends his statement was not intelligently and voluntarily given.

Before a confession can be introduced into evidence, it must be affirmatively shown that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. LSA-R.S. 15:451. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his **Miranda** rights.[2] Since the general admissibility of a confession is a question for the trial court, its conclusions on the credibility and weight of the testimony are accorded great weight and will not be overturned unless they are not supported by the evidence. See **State v. Patterson**, 572 So.2d 1144, 1150 (La.App. 1 Cir. 1990), writ denied, 577 So.2d 11 (La. 1991). The trial court must

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

consider the totality of the circumstances in determining whether or not a confession is admissible. **State v. Hernandez**, 432 So.2d 350, 352 (La.App. 1 Cir. 1983). The direct testimony of the interviewing police officer can be sufficient to prove a defendant's statement was freely and voluntarily given. See **State v. Sims**, 310 So.2d 587, 589-90 (La. 1975); **State v. Washington**, 540 So.2d 502, 507-08 (La.App. 1 Cir. 1989).

Sergeant Darren Blackman, with the St. Tammany Parish Sheriff's Office, testified at the motion to suppress hearing that, following the execution of the search warrant of defendant's house, defendant was arrested. Defendant was advised of his **Miranda** rights. Defendant signed both a statement of **Miranda** rights and a waiver of those rights. Sergeant Blackman also signed and dated the waiver of rights form. According to Sergeant Blackman, defendant indicated he understood his rights. Defendant did not appear to be intoxicated, drugged, or mentally ill. Sergeant Blackman stated defendant "did not appear to be under the influence of any type."

Defendant spoke with Sergeant Blackman about the circumstances which led up to the execution of the search warrant. Defendant subsequently provided a written statement, which is as follows:

> On Feb 22 when my house on hwy 40 25025 bush. I had in my safe 4 eight balls of cocaine and a loaded .357 which belong to CJ. Their wherh also guns in my attic that wherh found, that belong to CJ and TJ. In my closet were also a thriple beam that Brodrick had left at my house I also had some methadon and klopon in my posastion [sic throughout].

According to Sergeant Blackman, during the entire interview process, defendant never indicated that he wished to stop speaking or writing or to have an attorney present. Defendant's statements were voluntary, and he was neither threatened nor coerced. Also, no promises were made to defendant to induce his confession.

Defendant testified at the motion to suppress hearing. When asked on direct examination if any promises were made to him by the police to get him to confess, defendant responded in the affirmative. He stated he "thought they was [sic] going to work some kind of deal out with [him], but apparently [he] was mistaken." When asked if the police made a promise to go easy on him, defendant responded in the affirmative. He stated he "thought [he] was going to get some kind of deal if [he went]

ahead and signed some kind of confession." Following questioning by the state and defense counsel, the trial court asked defendant what he was promised to induce him to confess. Defendant stated, "A lighter sentence and some drug rehab."

In its reasons for denying the motion to suppress the statement, the trial court stated:

> Regarding the statement made by Mr. Mooney, his testimony was internally inconsistent. I believe that he testified he may have received something, he wasn't quite sure himself. And the police officers testified they absolutely did not offer him anything in return for his written confession.
>
> I think he may have in his mind felt that he was going to obtain some gain by doing that, but I don't know if the testimony supports a finding that anything was promised or that he was coerced in any way to make his statement[.]

We agree. The record establishes that defendant's statement was freely and voluntarily given. Further, the trial court's determination on credibility was supported by the record. Accordingly, the trial court did not abuse its discretion in denying defendant's motion to suppress his statement.

This assignment of error is without merit.

SENTENCING ERRORS

Inasmuch as an illegal sentence is an error discoverable by a mere inspection of the proceedings without inspection of the evidence, LSA-C.Cr.P. art. 920(2) authorizes consideration of such an error on appeal. For the possession with intent to distribute methadone conviction (Count 2), defendant was sentenced to ten years imprisonment at hard labor with the first two years of the sentence to be served without benefit of probation, parole, or suspension of sentence. The correct sentencing provision is the pre-amendment 2006 version of LSA-R.S. 40:967B(1),[3] which provides that defendant shall be sentenced to a term of imprisonment at hard labor for not less than two years nor more than thirty years. There is no parole restriction under this provision. Thus, the denial of parole eligibility on defendant's sentence was unlawful. We note that neither defendant nor the state has raised this issue on appeal. However, in

[3] The crimes were committed in February of 2006. Acts 2006, No. 68, § 2, which became effective on August 15, 2006, amended LSA-R.S. 40:967B, in part, by removing methadone from the applicability of paragraph B(1) and adding methadone to subparagraph B(4)(b). Therefore, this amendment is inapplicable to the instant matter.

accordance with LSA-C.Cr.P. art. 882A, we amend the sentence to delete the parole restriction. Resentencing is not required. This matter is remanded to the trial court with instructions to correct the minutes and commitment order, if necessary, to reflect this amendment to the sentence.

Whoever is found guilty of possession of a firearm by a convicted felon (Count 5) shall be fined not less than one thousand dollars nor more than five thousand dollars. See LSA-R.S. 14:95.1B. In sentencing defendant for this crime, the trial court failed to impose a fine. Therefore, defendant's sentence is illegally lenient. However, since the sentence is not inherently prejudicial to defendant, and neither the state nor defendant has raised this sentencing issue on appeal, we decline to correct this error. See **State v. Price**, 05-2514 (La.App. 1 Cir. 12/28/06), 952 So.2d 112 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So.2d 1277.

CONVICTIONS AND HABITUAL OFFENDER ADJUDICATION AFFIRMED. POSSESSION WITH INTENT TO DISTRIBUTE COCAINE SENTENCE (COUNT 1), POSSESSION WITH INTENT TO DISTRIBUTE CLONAZEPAM SENTENCE (COUNT 3), POSSESSION OF A FIREARM WHILE IN POSSESSION OF COCAINE SENTENCE (COUNT 4), AND POSSESSION OF A FIREARM BY A CONVICTED FELON SENTENCE (COUNT 5) AFFIRMED. POSSESSION WITH INTENT TO DISTRIBUTE METHADONE SENTENCE (COUNT 2) AMENDED AND AFFIRMED AS AMENDED. REMANDED TO CORRECT MINUTES AND COMMITMENT ORDER, IF NECESSARY.