

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 2001

STATE OF LOUISIANA

VERSUS

BOBBI J. FORBES

Judgment Rendered: June 7, 2013

**Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, State of Louisiana
Trial Court Number 520679**

Honorable Raymond S. Childress, Judge Presiding

**Walter P. Reed
Covington, LA**

**Counsel for Appellee,
State of Louisiana**

**Kathryn W. Landry
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**Frank Sloan
Mandeville, LA**

**Counsel for Defendant/Appellant,
Bobbi J. Forbes**

BEFORE: WHIPPLE, C.J., McCLENDON AND HIGGINBOTHAM, JJ.

W.P.R.
KWL
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WHIPPLE, C.J.,

The defendant, Bobbi J. Forbes, was charged by bill of information with possession of Alprazolam, a violation of LSA-R.S. 40:969(C) (Count 1); possession of Oxycodone, a violation of LSA-R.S. 40:967(C) (Count 2); possession of Morphine, a violation of LSA-R.S. 40:967(C) (Count 3); possession of Hydromorphone, a violation of LSA-R.S. 40:967(C) (Count 4); and possession of marijuana, a violation of LSA-R.S. 40:966(C) & (E).¹ The defendant pled not guilty to all counts. The defendant filed a motion to suppress evidence and, following a hearing on the matter, the motion was denied. Thereafter, the defendant withdrew her prior plea of not guilty and, at a Boykin hearing, entered a Crosby plea of guilty to the charges, reserving her right to challenge the trial court's rulings on the motion to suppress. See State v. Crosby, 338 So. 2d 584 (La. 1976). For each of the four counts, the defendant was sentenced to three years at hard labor, with each sentence to run concurrently. The sentences were suspended and the defendant was placed on probation for a period of five years, with probation being subject to special conditions. For the possession-of-marijuana conviction, the defendant was sentenced to six months in the parish jail. The six-month sentence was suspended and the defendant was placed on probation for a period of two years. This sentence was ordered to run concurrently with the other sentences. The defendant now appeals, designating one assignment of error.

We affirm the defendant's convictions and sentences.

FACTS

The facts were developed at the motion-to-suppress hearing. On the evening of April 10, 2012, police officers with the St. Tammany Parish Sheriff's Office were conducting a fake checkpoint on I-12 at La. Hwy. 434. Corporal Jeff Brady was informed by another officer that the driver of a red Toyota Camry had run a

¹The possession-of-marijuana charge, a misdemeanor, was billed under a different docket number than the first four counts.

stop sign at an off-ramp on La. Hwy. 434 before getting back onto I-12. Corporal Brady caught up to the Toyota and effected a traffic stop. Richard Hobbs was the driver and the defendant was the front-seat passenger. There was also a dog in the vehicle. As Corporal Brady was informing Hobbs of his violation, he observed marijuana gleanings on the defendant's clothing. Corporal Brady also saw a partially burned cigarette on the seat between the defendant's legs and detected the odor of marijuana in the vehicle. Corporal Brady had both occupants exit the vehicle. The defendant gave Corporal Brady the hand-rolled cigarette, which contained suspected marijuana.

Corporal Brady patted down Hobbs and found no weapons or contraband. He had the defendant empty her pockets, which contained no contraband. He did not pat down the defendant because she was a female. Corporal Brady prepared to search the vehicle, but before doing so, he asked the defendant to remove the dog. As the defendant leaned into the vehicle to retrieve the dog, Corporal Brady observed her make a furtive movement toward her waistband. Corporal Brady put the dog back in the vehicle, and brought the defendant to the rear of the vehicle and handcuffed her. A female officer was called to the scene to conduct a thorough search of the defendant's person. Corporal Brady had Hobbs remove the dog and then searched the vehicle. Corporal Brady searched the defendant's purse, which was in the vehicle. The purse contained a Tylenol bottle and two prescription bottles. One of the prescription bottles contained Flexeril, Morphine sulfate, Xanax, and Dilaudid. These drugs did not match either prescription on the bottles.

Shortly thereafter, a female officer, Detective Victoria Stelfox, with the St. Tammany Parish Sheriff's Office, arrived at the scene. Detective Stelfox spoke to the defendant. The defendant informed the detective that she had contraband on her person. The handcuffs were removed, and the defendant was allowed to

retrieve from her crotch area a dollar bill that contained about six Roxicodone² tablets. The defendant was placed under arrest and Mirandized.

ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant argues that the trial court erred in denying her motion to suppress the evidence. Specifically, the defendant contends the State failed to establish that she was advised of her Miranda rights before she admitted to having hidden contraband in her pants.

When a court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See State v. Green, 94-0887 (La. 5/22/95), 655 So. 2d 272, 281. However, a 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.

It is well settled that the ruling in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) protects an individual's Fifth Amendment privilege during incommunicado interrogation in a police-controlled atmosphere. In Miranda, 384 U.S. at 444, 86 S. Ct. at 1612, the Supreme Court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Thus, before a confession or inculpatory statement made during a custodial interrogation may be introduced into evidence, the State must prove beyond a reasonable doubt that the defendant was first advised of his Miranda rights, that he voluntarily and intelligently waived those rights, and that the statement was made freely and voluntarily and not under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. See LSA-Cr.P. art. 703(D); LSA-R.S. 15:451; Hunt, 25 So. 3d at 754. See State v.

²Roxicodone is the brand name for the generic name Oxycodone.

Patterson, 572 So. 2d 1144, 1150 (La. App. 1st Cir. 1990), writ denied, 577 So. 2d 11 (La. 1991). Thus, where the defendant alleges police misconduct in reference to the statement, the State must specifically rebut these allegations. State v. Montejo, 2006-1807 (La. 5/11/10), 40 So. 3d 952, 966, cert. denied, ___ U.S. ___, 131 S. Ct. 656, 178 L. Ed. 2d 513 (2010).

Resolution of the issues now raised by the defendant on appeal challenging the correctness of the trial court's ruling under Miranda would involve reviewing the surrounding circumstances when the evidence was obtained, including whether the defendant was in custody when questioned by Detective Stelfox and what Detective Stelfox told or asked the defendant before the defendant told the detective she had contraband on her person. These issues, however, were not addressed at the hearing because the defendant made no assertions about a violation of her Miranda rights in the written motion to suppress. Instead, the motion to suppress filed by the defendant stated, in pertinent part:

that the evidences [sic] obtained herein:

1. Were obtained without the defendant's consent
2. Were conducted without probable cause
3. Were discovered pursuant to an improper road block [sic].
4. And/or should not be admitted for any other reasons as provide[d] by applicable law.

As the transcript reflects, the questions asked by both defense counsel and the prosecutor at the hearing on the motion to suppress focused on whether there was probable cause to stop the vehicle and whether there was probable cause to search the defendant. Defense counsel made no argument after the last witness was called, but stated, "Defense submits, Your Honor." In denying the motion, the trial court focused on the issue of probable cause and made no mention of Miranda, as follows:

Based upon the testimony of the officers who were called here today, it would, certainly, appear to me that, upon the initial contact, there was a probable cause to stop them, based upon the testimony of

Detective Boynton, who said she observed the red Toyota Camry run the stop sign and identified it as one having a bike rack.

And then, the officer pulled that vehicle over-- Corporal Brady-- and based upon his observations, had [sic] certainly had reason to interact with the driver and the defendant.

He indicated that he had seen marijuana available and he did was appropriately [sic] supposed to do, as far as not having contact with this particular female suspect.

He had called for another officer to come.

* * * * *

Detective Stelfox testified she arrived and, after conversing with the defendant, the defendant produced some additional contraband.

It sounds, as though to me, that everything was appropriately handled and that the evidence was appropriately received.

Louisiana courts have long held a defendant may not raise new grounds for suppressing evidence on appeal that he did not raise at the trial court in a motion to suppress. Montejo, 40 So.3d at 967. The defendant must raise all grounds for suppression of the evidence that are knowable or available at that time. The defendant bears this burden in order to give the State adequate notice so that it may present evidence and address the issue at trial on the motion. Montejo, 40 So. 3d at 969. Because the defendant did not raise the grounds of improper and/or absent Miranda rights in her written motion to suppress or allege facts supporting those grounds, the State had no need to put on evidence of precisely what Detective Stelfox and the defendant talked about, or whether Detective Stelfox's questioning of the defendant constituted custodial interrogation.³ The State simply put on

³In the motion-to-suppress hearing, Corporal Brady testified regarding what he observed when Detective Stelfox searched the defendant, as follows:

She arrived on scene. I informed her exactly what happened and what I observed.

She pulled the defendant aside and asked her if there was anything illegal, any weapons on her person or anything like that that she'd, you know, would harm her during her search.

At that time, the defendant told Detective Stelfox that she did have some Roxicodone secreted beneath her waistband in her pants.

Regarding this same issue, Detective Stelfox testified as follows: "After talking to her, briefly, she had mentioned that she had his [sic] some contraband on her person."

Regarding whether Detective Stelfox's speaking to the defendant constituted custodial interrogation, Corporal Brady testified that the defendant was handcuffed for officer safety reasons and was arrested and Mirandized after the Roxicodone was found. However, on cross-examination, Detective Stelfox testified as follows:

evidence at the motion hearing as required by LSA-C.Cr.P. art. 703(D) and LSA-R.S. 15:451 to show that the stop was based on probable cause and that the evidence seized was admissible. See Montejo, 40 So. 3d at 969.

Pursuant to LSA-C.Cr.P. arts. 703(F) and 841, to allow an objection on new grounds to be presented for the first time on appeal deprives the trial court of the opportunity to consider the merits of the particular claim. See State v. Cressy, 440 So. 2d 141, 142–43 (La. 1983). Accordingly, we find the defendant's argument that she was not advised of her Miranda rights is not properly before us on appeal.

Moreover, we find that the drugs hidden on the defendant's person would still have been properly admitted at trial under the inevitable-discovery doctrine. The United States Supreme Court has held that unconstitutionally obtained evidence may be admitted at trial if it would inevitably have been seized by the police in a constitutional manner. Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509, 81 L. Ed. 2d 377 (1984). In the instant matter, prior to the defendant even revealing that she had Roxicodone hidden in her pants, Corporal Brady observed marijuana gleanings on her clothes and saw a suspected marijuana cigarette in her lap; he detected the odor of marijuana emanating from the vehicle; and he found Xanax, morphine, and Dilaudid in the defendant's purse. Based on these offenses observed by Corporal Brady, he had probable cause to arrest the defendant. See LSA-C.Cr.P. art. 213. Accordingly, the defendant would have been arrested whether or not the drugs hidden on her person had been discovered. A search incident to arrest, either on the scene or at the police station, would have revealed the hidden Roxicodone. See Chimel v. California, 395 U.S. 752, 762–63, 89 S. Ct. 2034, 2040, 23 L. Ed. 2d 685 (1969); State v. Surtain, 2009-1835 (La.

Q. Officer, when you arrived on the scene, was Ms. Forbes in cuffs?

A. Yes, sir.

Q. So she was, clearly, under arrest?

A. Yes, sir; I believe so.

3/16/10), 31 So.3d 1037, 1043. The Roxicodone, therefore, would have been admissible at trial.

The assignment of error lacks merit.

For the above reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.