

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 KA 0565

STATE OF LOUISIANA

VERSUS

STEVEN AUSTIN LADNER

Judgment rendered NOV 02 2018

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, State of Louisiana
Trial Court No. 586420
Honorable Peter J. Garcia, Judge

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STEVEN AUSTIN LADNER

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

PETTIGREW, J.

Defendant, Steven Ladner, was charged by bill of information with: count one - aggravated second degree battery; count two - possession of a schedule II controlled dangerous substance (amphetamines); and count three - possession of a schedule IV controlled dangerous substance (alprazolam), violations of La. R.S. 14:34.7, La. R.S. 40:967(C), and La. R.S. 40:969(C), respectively. He pled not guilty on all counts. Defendant filed a motion to quash counts two and three, alleging he was in possession of valid prescriptions for the medications at issue. After a contradictory hearing, the trial court granted the motion to quash. The State of Louisiana now appeals, challenging the trial court's decision in two related assignments of error. We reverse the granting of the motion to quash counts two and three. Defendant's motion to quash is hereby denied, and the matter is remanded for further proceedings.

FACTS¹

During the early morning hours of February 19, 2017, Slidell Police Department Officer J. Stokes was conducting a foot patrol in the Old Towne Slidell area. He was there due to a "heavy crowd" and "bar closing." While walking, Officer Stokes was alerted by the security staff of a bar that a patron had been struck in the head with a glass bottle by another patron. Shortly thereafter, the staff identified defendant as the perpetrator, and he was detained by officers. During a search incident to arrest, officers discovered amphetamine and alprazolam pills in defendant's front right pants pocket. Defendant told officers he took the medication for anxiety. In addition to being charged with aggravated second degree battery, defendant was charged with criminal possession of both controlled substances.

¹ Due to there being no testimony regarding the events at issue, the facts are taken from the probable cause affidavit included in the record. Relative to counts two and three, there appears to be no disagreement as to the evening's events or the propriety of the search incident to arrest, and, in any case, they are not dispositive to the resolution of the issues presented by the State herein.

ASSIGNMENT OF ERROR 1: HEARSAY

In its first assignment of error, the State contends the trial court erred in granting defendant's motion to quash where defendant presented only inadmissible hearsay evidence in support of his motion to quash. Specifically, the State alleges defendant presented unauthenticated hearsay consisting of purportedly valid prescriptions for the controlled substances found in his possession. Defendant claims the State did not make a proper hearsay objection, and thus waived any complaint of it on appeal.

At the initial hearing on defendant's motion to quash, held on September 28, 2017, defendant introduced into evidence one photocopy of three alprazolam prescriptions allegedly written over different dates, all issued by one doctor at an urgent care clinic in Slidell. The trial court continued the hearing on defendant's motion to quash to October 26, 2017, during which defendant introduced into evidence four exhibits. Three of the exhibits were photocopies of prescriptions written on different dates for, among other drugs, alprazolam. The remaining exhibit was a three-page progress note purported to have been written by a doctor at the same urgent care clinic. The State objected to the admission of the four exhibits as having been insufficiently authenticated by defendant before introduction. The State's response to defendant's motion to quash and the trial court's judgment on the motion to quash refer to a letter from "Dr. Christy Graves" in which defendant's possession of amphetamines allegedly is explained. However, there is no such letter admitted into evidence, notwithstanding the trial court's citation to one in support of its ruling quashing the two counts of possession.

When a trial court rules on a motion to quash, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion. See **State v. Odom**, 2002-2698 (La. App. 1 Cir. 6/27/03), 861 So.2d 187, 191, writ denied, 2003-2142 (La. 10/17/03), 855 So.2d 765. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Smith**, 99-0606, 99-2094, 99-2015, 99-2019 (La. 7/6/00), 766 So.2d 501, 504.

Louisiana Revised Statutes 40:991 provides:

A. An individual who claims possession of a valid prescription for any controlled dangerous substance as a defense to a violation of the provisions of the Uniform Controlled Dangerous Substances Law shall have the obligation to produce sufficient proof of a valid prescription to the appropriate prosecuting office. Production of the original prescription bottle with the defendant's name, the pharmacist's name, and prescription number shall be sufficient proof of a valid prescription as provided for in this Section.

.....

C. Any individual who claims the defense of a valid prescription for any controlled dangerous substance shall raise this defense before commencement of the trial through a motion to quash.

Similarly, La. Code Crim. P. arts. 532 and 535, providing for the general grounds and the timing of a motion to quash, respectively, were amended by 2009 La. Acts, No. 265, § 2 (effective August 15, 2009) to add:

The individual charged with a violation of the Uniform Controlled Dangerous Substances Law has a valid prescription for that substance.

See La. Code Crim. P. art. 532(10); La. Code Crim. P. art. 535(A)(7); **State v. Tran**, 2012-1219 (La. App. 4 Cir. 4/24/13), 115 So.3d 672, 674, writ denied, 2013-1202 (La. 11/22/13), 126 So.3d 478 ("Not only does the defendant bear the burden of proving possession of a valid prescription, but he must 'raise this defense before commencement of the trial through a motion to quash.'").

The State correctly notes that the rules of evidence apply in motions to quash where the evidence is dispositive of an issue of fact. See La. Code Evid. art. 1101(A)(1) ("[T]he provisions of this Code shall be applicable to the determination of questions of fact in all contradictory judicial proceedings and in proceedings to confirm a default judgment."); cf. **State v. Cline**, 99-1675 (La. App. 1 Cir. 5/11/00), 760 So.2d 632, 636, writ denied, 2000-2079 (La. 5/25/01), 792 So.2d 753 (hearsay evidence admissible at hearing on motion to quash based on lack of venue, where issue at hearing was not factual guilt or innocence, but whether there were sufficient allegations of crime that, if proven to be true at actual trial, would sustain conviction in parish and hearing did not involve questions of fact that were central to dismissal of case). However, on appeal great weight must be given to a ruling of a trial judge as to sufficiency of the foundation for the admission of a business record into evidence. **State v. Graves**, 259 La. 526,

531, 250 So.2d 727, 729 (1971), rev'd on other grounds, **State v. Monroe**, 345 So.2d 1185, 1190 (La. 1977).

In support of its argument on appeal, the State cites **State v. Rainey**, 2014-0523 (La. App. 4 Cir. 9/17/14), 150 So.3d 370, in which the fourth circuit held that evidence submitted during a motion to quash necessitated a factual determination be made requiring the application of the rules of evidence. The fourth circuit was presented with the same underlying facts as before us here, and found that a defendant's copy of a prescription and the pharmacy's computer printout were not sufficient proof of a valid prescription because the documents were not properly authenticated business records. **Id.** at 374; see also La. Code Evid. art. 803(6) (hearsay exception applies to records made of events by a person with knowledge, "if made and kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make and to keep the ... record, ... all as shown by the testimony of the custodian or other qualified witness"); **State v. Gordy**, 2007-1032 (La. App. 3 Cir. 3/12/08), 981 So.2d 45, 48 (business records exception to hearsay rule requires custodian or other qualified witness to testify regarding preparation that produced business record sought to be introduced). But see **State v. Williams**, 2012-0110 (La. App. 4 Cir. 10/10/12), 101 So.3d 533, 537, writ denied, 2012-2423 (La. 4/19/13), 111 So.3d 1029 (where State failed to object on hearsay grounds, trial court did not abuse its discretion in finding Walgreens documents with which the court was familiar established defendant had a valid prescription that warranted grant of defendant's motion to quash).

Here, on the subject of the prescriptions, the State, when asked if it had an objection, said, "Yes, Judge, we would note an objection given the fact that these are handwritten documents from the doctor and not properly authenticated." The court acknowledged lack of authentication was the basis of the State's objection. There is no other exception to the hearsay rule into which the purported alprazolam prescriptions would fall.

"Under compelling circumstances, a defendant's right to present a defense may require admission of statements which do not fall under any statutorily recognized

exception to the hearsay rule." **State v. Rubin**, 2015-1753 (La. 11/6/15), 183 So.3d 490, 491 (per curiam) (citing **State v. Gremillion**, 542 So.2d 1074, 1078 (La. 1989) ("While the statement does not fit into any of the recognized exceptions to the hearsay rule, it should have, nevertheless, been admitted into evidence due to its reliability and trustworthy nature.")). Here, defendant has not demonstrated how unclear photocopies of purported prescriptions warrant an exception to the hearsay rule due to any inherent reliability. See **Gremillion**, 542 So.2d at 1079 ("Such exceptions should be very rare and should be sparingly applied") (Lemmon, J. dissenting); **State v. Charles**, 2011-0628 (La. App. 3 Cir. 12/7/11) 2011 WL 6077830, *4 (unpublished) (in a case involving a motion to quash filed pursuant to La. R.S. 40:991, "[a]bsent a proper foundation for their admissibility, the proposed evidentiary items should have been rejected.").

Moreover, though it is oft cited by defendant in brief, there is no doctor's letter in evidence or in the record on appeal. Consequently, with the erroneously admitted evidence excluded, defendant provides nothing in support of his motion to quash. Without more, we reverse the trial court's ruling on the motion to quash and remand to the trial court for further proceedings. As a result, we pretermitt discussion of the State's second assignment of error.

TRIAL COURT'S RULING ON MOTION TO QUASH COUNTS TWO AND THREE REVERSED; DEFENDANT'S MOTION TO QUASH DENIED; REMANDED FOR FURTHER PROCEEDINGS.