

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2011-KA-0397**
VERSUS *
ALQUAN G. CRESPO * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 500-414, SECTION "A"
Honorable Laurie A. White, Judge

* * * * *

Judge Daniel L. Dysart

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(Court composed of Judge Charles R. Jones, Judge Roland L. Belsome, Judge Daniel L. Dysart)

Leon A. Cannizzaro, Jr.
District Attorney
Scott G. Vincent
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR STATE OF LOUISIANA

James Harper
ORLEANS PUBLIC DEFENDERS
2601 Tulane Avenue
Seventh Floor
New Orleans, LA 70119
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

OCTOBER 26, 2011

PROCEDURAL BACKGROUND

The State charged the defendant by bill of information on September 21, 2010 with violating La. R.S. 14:69.1, relative to illegal possession of a stolen firearm. The case was assigned a docket number of #500-414. On September 23, 2010, the defendant pled not guilty to the State's charge. The defendant filed a motion to quash on September 27, 2010, which was denied by the trial court.

On October 20, 2010, the defendant appeared for a hearing and elected to plead guilty to the State's charge pursuant to *State v. Crosby*, 338 So.2d 584 (La. 1976). The defendant waived sentencing delays, and the trial court sentenced the defendant to serve two years, suspended the sentence, and placed the defendant on two years of active probation. The defendant filed a notice of appeal on December 7, 2010.

The State also charged the defendant by bill of information on September 16, 2010 with violating La. R.S. 14:95 and La. R.S. 14:108, relative to carrying a concealed weapon and resisting an officer. The case was assigned docket number #500-310. On September 20, 2010, the defendant pled guilty to the State's charges. The defendant waived sentencing delays, and the trial court sentenced the

defendant to serve six months in the Orleans Parish Prison, with credit for time served and one year of intensive probation.

FACTUAL BACKGROUND

The police report contains the following summary which applies to the charges in both the present matter and docket #500-310:

On Wednesday, 9/8/10 at about 11:05 am, Sgt. Michael Stalbert and several other 7th District Officers, responded to a call of a residential burglary in progress; involving a gun, at 10151 Curran Blvd. Upon arrival, Sgt. Stalbert, was canvassing the area for a possible perpetrator of the incident. While en route to the scene, Sgt. Stalbert observed a black male, wearing a tan shirt with a white shirt underneath, approximately 5'11", thin build, late teens early twenties, and about 150 pounds at the intersection of Read Boulevard and Irby Street. This is on the corner of the location of the burglary in progress call. When Sgt. Stalbert approached to investigate, the subject immediately clutched and moved his crotch area several times at the sight of the uniformed officer. At this time, Sgt. Stalbert did not observe a firearm but did see a bulge in the area. Through his training and experience, Sgt. Stalbert believed that his actions were consistent with making safety adjustments along with carrying a concealed firearm. Sgt. Stalbert approached and grabbed the subject's shirt, raised it, and exposed a black semi-automatic handgun in the subject's waistband.

The subject fled on foot westbound on Irby Street towards Means Avenue. Detective Kesha Reed was on the scene with other responding officers and observed the subject as he fled towards the residence at 7803 Means Avenue. There was an immediate perimeter established at the beginning of the foot chase and the officers believed that the subject was still inside of said perimeter. The officers located, in the alley of an abandoned residence at 7807 Means Avenue, directly adjacent to 7803 Means Avenue, a black 9mm semi-automatic Taurus model PT 24/7 (serial number TZC94923) handgun. As the officers retraced the subjects possible escape route, Sgt. Stalbert located a discarded black extended capacity magazine containing live rounds. Located under the carport at 7803 Means was one live 9mm round.

Believing that the subject was still in the area, the perimeter was sustained. Eventually the officers located the subject, identified as Mr. Alquan Crespo, hiding under a carport located at 7940 Read Boulevard where he was arrested. It should be noted that Crespo does reside at the address where he was last observed running towards, 7803 Means Avenue. After an interview with his mother, Ms. Lisa

Crespo, it was learned that she does not permit Alquan Crespo to have a key to the residence which explained why he was unable to flee inside the location.

Crespo was advised of his Rights as Per Miranda and his charges. Once at the Seventh District sub-station, Crespo gave officers a written statement, which included him (Crespo) admitting to illegally possession a stolen handgun. After the completion of the necessary paperwork and interview, he was transported to central lock-up and booked accordingly.

It should be noted that the officers learned that the recovered firearm was stolen under NOPD Item Number F-22880-09.

Both the State and the defendant agree that the charges filed against the defendant in docket #500-314 and docket #500-310 arise out of the foregoing incident.

ERRORS PATENT

A review of the record reveals no errors patent.

DISCUSSION

The defendant argues, in his sole assignment of error, that the trial court erred when it refused to quash the State's bill of information on the grounds of double jeopardy.

Louisiana jurisprudence provides that an accused who commits separate and distinct offenses during the same criminal episode or transaction may be prosecuted and convicted for each offense without violating the prohibition against double jeopardy. *State v. Nichols*, 337 So.2d 1074 (La. 1976). Nevertheless, the Fifth Amendment to the United States Constitution provides that no person shall be "subject for the same offenses to be twice put into jeopardy of life or limb." The double jeopardy clause was made applicable to the states through the Fourteenth Amendment, and Article 1, § 15, of the Louisiana Constitution contains a similar guarantee. The guarantee against double jeopardy provides three central

constitutional protections: (1) protection against a second prosecution for the same offense after acquittal; (2) protection against a second prosecution for the same offense after conviction; and, (3) protection against multiple punishments for the same offense. *State v. Crandell*, 2005–1060, p.5 (La. 3/10/06), 924 So.2d 122, 129 (Johnson, J. dissenting).

The two tests used by Louisiana courts when examining double jeopardy violations are the “distinct fact” or the *Blockburger* test and the “same evidence test.” *State v. Steele*, 387 So.2d 1175 (La. 1980). The *Blockburger* test determines whether each crime requires proof of an additional fact which the other does not. *State v. Watson*, 97-353, p.4 (La. App. 4 Cir. 1/23/98), 706 So.2d 1044, 1046. Even if there is not a finding of double jeopardy under the *Blockburger* test, this Court must look to Louisiana's “same evidence” test to see if the state's greater protection is implicated. The Louisiana definition of double jeopardy test is contained in La. C. Cr. P. art. 596, which states:

Double jeopardy exists in a second trial only when the charge in that trial is:

(1) Identical with or a different grade of the same offense for which the defendant was in jeopardy in the first trial, whether or not a responsive verdict could have been rendered in the first trial as to the charge in the second trial; or

(2) Based on a part of a continuous offense for which offense the defendant was in jeopardy in the first trial.

The “same evidence” test is articulated as this query: “If all the evidence required to support a finding of guilt of one crime would also have supported conviction of the other, the two are the same offense under a plea of double jeopardy, and a defendant can be placed in jeopardy for only one. The test depends on the evidence necessary for conviction, not all the evidence introduced at trial.”

State v. Redfearn, 89-1091,p.19 (La. App. 2 Cir. 9/23/09), 22 So.3d 1078, 1090.

The “same evidence” test is broader in concept than *Blockburger*, the central idea being that one should not be punished (or put in jeopardy) twice for the same course of conduct. *Id.*

In the present case, the record indicates that defendant pled guilty to a charge of violating La. R.S. 14:95, relative to carrying a concealed weapon, in the context of case number 500-310. La. R.S. 14:95 provides in pertinent part:

A. Illegal carrying of weapons is:

(1) The intentional concealment of any firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, on one's person.

Thus, under La. R.S. 14:95, the State was required to prove that the defendant intentionally concealed a firearm, or other dangerous weapon, on his person. In the context of the present case the State charged the defendant with violating La. R.S. 14:69.1, concerning the illegal possession of a stolen firearm.

La. R.S. 14:69.1 provides in pertinent part:

Illegal possession of stolen firearms is the intentional possessing, procuring, receiving, or concealing of a firearm which has been the subject of any robbery or theft under circumstances which indicate that the offender knew or should have known that the firearm was the subject of a robbery or theft.

Based on this statutory provision, the State had to prove that the defendant intentionally possessed a firearm, that the firearm was the subject of robbery or theft, and that he knew or should have known the firearm was the subject of a robbery or theft. *State v. Johnson*, 2009-862 (La. App. 3 Cir. 2/3/10), 28 So.3d 1263.

In either case, a comparison of the charged offenses indicates that the elements of each are different. That is, each of the two charges calls upon the State

to prove additional facts not present in the other charge. The crime of illegally carrying a concealed weapon obligated the State to establish that the defendant illegally concealed a weapon on his person, whereas the offense in the present case called upon the State to prove that the firearm was stolen and that the defendant knew or should have known that it was stolen. The bill of information in the present matter did not subject the defendant to double jeopardy under the *Blockburger* test.

The charged offenses are also two separate offenses under the same evidence test because the evidence necessary to prove the offense of illegally carrying a concealed weapon would not have been sufficient to convict the defendant of illegal possession of a stolen firearm. Had this case gone to trial, the State would have been required to present the additional evidence that the firearm found on the defendant's person at the time of his arrest was the subject of robbery or theft, and that the defendant knew or should have known that the firearm was the subject of a robbery or theft. Accordingly, because each of the defendant's two cases involved separate offenses, the defendant was not subjected to double jeopardy when he pled guilty to the offense of illegal possession of a stolen firearm.

CONCLUSION

The trial court correctly denied the defendant's motion to quash. We therefore affirm the defendant's conviction and sentence for illegal possession of a stolen firearm.

AFFIRMED