NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 1387

STATE OF LOUISIANA

VERSUS

LIONEL ROYAL

Judgment Rendered: MAR 2 2 2013

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On Appeal from the Seventeenth Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
No. 487195

Honorable F. Hugh Larose, Judge Presiding

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

McCLENDON, J.

Defendant, Lionel Royal, was charged by bill of information #487195 with one count of possession with intent to distribute oxycodone (count I), and one count of possession with intent to distribute cocaine (count II), violations of LSA-R.S. 40:967. He initially entered a plea of not guilty and, alleging his statement to the police was not free and voluntary and the search of his home was not based on reasonable suspicion, he moved to suppress from use as evidence his inculpatory statement and the drugs seized from his home. Following a hearing, the motion to suppress was denied. Thereafter, the State nol-prossed "docket #487196"[1] and bill #487195, count I. Additionally, pursuant to a plea bargain for an agreed-upon sentence and the State's agreement not to pursue habitual offender proceedings against him, defendant pled guilty to bill #487195, count II, reserving his right to seek review of the court's rulings on the motion to suppress. See **State v. Crosby**, 338 So.2d 584 (La. 1976). In accordance with the plea agreement, on count II, he was sentenced to six years at hard labor, with the first two years of the sentence without benefit of parole, probation, or suspension of sentence. Defendant now appeals, arguing in his counseled brief that the trial court erred in denying the motion to suppress his statement. He also files a pro se brief, referencing the search of his person and his vehicle. For the following reasons, we affirm the conviction and sentence.

FACTS

Due to defendant's guilty plea to bill #487195, count II, there was no trial, and thus, no trial testimony concerning the facts of that offense. The State, however, set forth the following factual basis for defendant's guilty plea:

> [O]n or about June 29, 2010, within the Parish of Lafourche, that [defendant] was in possession of a controlled dangerous substance which is shown to be cocaine. [The State] would also prove that [defendant] had the intent to distribute that substance in violation of the Controlled Dangerous Substance Law.

[1] The record does not include information concerning the charges under this docket number.

The defense agreed that all necessary elements of the offense to which defendant had pled guilty were present.

MOTION TO SUPPRESS STATEMENT

In counseled assignment of error number 1, defendant argues his statement was the product of coercion, and thus, the trial court erred in denying the motion to suppress the statement.

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect persons against unreasonable searches and seizures. A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. LSA-C.Cr.P. art. 703A. The State shall have the burden of proving the admissibility of a purported confession or statement by a defendant or of any evidence seized without a warrant. LSA-C.Cr.P. art. 703D. 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. LSA-R.S. 15:451. Further, the State must show that an accused who makes a statement or confession during custodial interrogation was first advised of his **Miranda**[2] rights. **State v. Plain**, 99-1112 (La.App. 1 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**, 752 So.2d at 342.

If the defendant alleges police misconduct in eliciting a confession, it is incumbent upon the State to rebut these allegations specifically. However, a

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

confession is not rendered inadmissible by the fact law enforcement officers exhort or adjure a defendant to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or one which implies a promise of reward. **State v. Lee**, 577 So.2d 134, 143 (La.App. 1 Cir.), writ denied, 580 So.2d 667 (La. 1991).

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial 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, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751.

Prior to trial, defendant moved to suppress from use as evidence his inculpatory statement and the drugs seized from his home, arguing his statement to the police was not free and voluntary and that the search of his home was not based on reasonable suspicion. Following a hearing, the trial court denied the motion.

Louisiana Department of Corrections, Office of Probation and Parole, Officer Michael Collins testified at the hearing on the motion to suppress that he was involved in an investigation of defendant, a parolee, on June 29, 2010. Officer Collins indicated that defendant's supervisor, Officer Ron Tillery, had received information in an anonymous telephone call that defendant and another person were "dealing drugs" out of the residence, and that the drugs were "right next to the house." The anonymous caller stated he knew the people dealing drugs and had personally witnessed the drug dealing. Thereafter, Officer Collins and police officers[3] went to defendant's residence in Cut Off. Defendant was not home, but his mother, his girlfriend, Tamika Bourda, and her two children were present. Subsequently, Officer Tillery telephoned defendant and instructed him to return home.

[3] Officer Collins testified the police officers were present for "officer safety."

Following a search of the home, Oxycontin and crack cocaine were discovered hidden inside the door of the hot water heater. Thereafter, defendant was informed of his **Miranda** rights, waived those rights, and was questioned by Louisiana State Police Trooper Craig Rhodes in the garage. Officer Collins was also present during the questioning. According to Officer Collins, defendant did not indicate that he did not understand his rights. Officer Collins also indicated Trooper Rhodes did not threaten defendant or promise him anything in exchange for his statement.

Trooper Rhodes testified that defendant wanted the police to "promise him something." Defendant did not want to go to jail. Trooper Rhodes told defendant that if the information defendant provided was "fruitful," the district attorney's office would be notified of whatever cooperation defendant had provided. Trooper Rhodes specifically denied promising defendant that he would not go to jail or that he would be allowed to stay with his family. Trooper Rhodes also denied threatening or coercing defendant into giving a statement.

Defendant's statement was recorded. Trooper Rhodes told defendant, "I am not going to lie to you and tell you if you do A, B, & C, then you get out of jail free. ... It don't work that way. Any cop that tells you that is just down right lying to you. ... If you want to start telling to try to help yourself out, I'm all ears." Defendant asked, "What need[s] to be said in order for me to stay home with my family?" Trooper Rhodes replied, "You got to tell me the truth." Thereafter, defendant indicated the cocaine recovered at his home was the remainder of one ounce of cocaine he had purchased for $1,000 from a man in Thibodaux. Defendant also indicated he had purchased "pain pills" from "a little chick."

Bourda testified that the police took defendant to a shed at the home. She claimed Officer Collins told her to ask defendant where the drugs were located. She indicated that defendant denied any knowledge of any drugs. She stated after the drugs were discovered, the police told her that if no one confessed to owning the drugs that everyone would be arrested and the children would be given to child

protection services. Bourda stated she then talked to defendant again, and he denied knowledge of the drugs.

The State specifically rebutted defendant's claims of police misconduct in eliciting the statement. Trooper Rhodes told defendant to tell the truth and used no improper means to obtain his statement. We find no error or clear abuse of discretion in the trial court's denial of the motion to suppress defendant's statement.

This assignment of error is without merit.

PRO SE BRIEF

In his pro se brief, defendant sets forth that sheriff's deputies searched him when he arrived at the scene and found no illegal drugs in his pocket. Additionally, he states sheriff's deputies searched his vehicle without a warrant.

No substantial rights of the accused were affected by the search of defendant's person or vehicle because no drugs were located there. See LSA-C.Cr.P. art. 921. The motion to suppress challenged the voluntariness of defendant's statement and the legality of the search of his home. In his counseled brief, defendant presents argument concerning the voluntariness of his statement.[4] The pro se brief does not present any argument concerning the inculpatory statement or the drugs recovered from the area of the water heater. Assignments of error not briefed on appeal are considered abandoned. Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4.

For the foregoing reasons, defendant's conviction and sentence are hereby affirmed.

CONVICTION AND SENTENCE AFFIRMED.

[4] Defendant's counseled brief sets forth, "[t]he Court correctly ruled that the drugs found in the water closet were legally seized because [defendant] had agreed, as a condition of his release from prison, that his residence could be searched by probation and parole at any time while he was under their supervision."