

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 1064

STATE OF LOUISIANA

VERSUS

DANICA POUNDS

Judgment Rendered: MAR 09 2015

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On Appeal from the  
22nd Judicial District Court  
In and for the Parish of Washington  
State of Louisiana  
No. 13-CR8-120926

Honorable Scott Gardner, Judge Presiding

\* \* \* \* \*

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\* \* \* \* \*

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

**DRAKE, J.**

The defendant, Danica L. Pounds, was charged by amended bill of information with misrepresentation in order to obtain a controlled dangerous substance (counts 1-25), violations of Louisiana Revised Statutes section 40:971B(1)(b).<sup>1</sup> On all counts, she initially entered a plea of not guilty and filed a motion to suppress the evidence. Following the denial of her motion to suppress, the defendant withdrew her former plea of not guilty and entered pleas of guilty, reserving her right to appeal under *State v. Crosby*, 338 So.2d 584 (La. 1976). She was then sentenced to five years at hard labor on each count. The district court ordered counts 2-25 to run concurrently and count 1 to run consecutively with counts 2-25. The defendant's sentences were suspended, and she was placed on five years supervised probation. She was ordered to pay a \$2,000.00 fine and to participate in drug screens, a substance abuse program, and community service.

The defendant now appeals, arguing that the district court erred in denying her motion to suppress the evidence. For the following reasons, we reverse the district court's ruling denying the motion to suppress and remand for further proceedings allowing the defendant the opportunity to withdraw her guilty pleas.

**FACTS**

The facts of this case were not fully developed because the defendant entered a guilty plea. According to the bill of information, *Boykin*<sup>2</sup> colloquy, and the hearing on the motion to suppress, between January 3, 2012, and August 27, 2012, the defendant obtained possession of controlled dangerous substances from multiple doctors and pharmacies through misrepresentation.

The investigation began when a doctor with the LSU Health Sciences Center in Bogalusa filled out a suspicious activity report online through the Louisiana

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<sup>1</sup> The State entered a nolle prosequi to counts 26-41, also violations of Section 40:971B(1)(b), on the original bill of information.

<sup>2</sup> *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

State Police website referencing the defendant and her husband<sup>3</sup> and stating that the defendant received more than six thousand pills from January to October 2012. Based on the doctor's report, Louisiana State Police Trooper Steven Linn requested a prescription monitoring program report from the Louisiana Pharmacy Board pursuant to La. R.S. 40:1007 and obtained the defendant's prescription history. Working jointly with U.S. Department of Justice, Drug Enforcement Administration (DEA) Agent Chris Sperandeo and using the DEA's notice of inspection form,<sup>4</sup> Trooper Linn obtained the defendant's patient profile from each pharmacy where she filled prescriptions. The pharmacists at the various pharmacies consented and turned over copies of the defendant's prescriptions.

Next, Trooper Linn contacted the doctors who wrote the prescriptions to check for fraud and overlapping prescriptions. He had the doctors fill out a form stating that they would not have prescribed those medications to the defendant had they known she had been prescribed certain medications by other doctors. The forms obtained by Trooper Linn indicated that the defendant had been prescribed lortab, xanax, soma, ambien, adderall, and tussinex. Some of the listed items were controlled substances and some were not. Based on his discoveries after comparing all of the prescriptions, Trooper Linn obtained an arrest warrant for the defendant and her husband.

### **MOTION TO SUPPRESS**

In her sole assignment of error, the defendant contends that the district court erred in denying her motion to suppress the evidence. Specifically, she argues that

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<sup>3</sup> The defendant's husband, Michael Pounds, was charged by a separate bill of information and has filed a separate appeal. *See State v. Pounds*, 14-1063 (La. App. 1 Cir. \_\_\_), \_\_So.3d\_\_. In the court below, *State v. Michael Pounds* and the instant case were consolidated for motion purposes only. Michael Pounds entered a guilty plea to five counts of attempted possession of a controlled dangerous substance by fraud and six counts of misrepresentation to obtain a controlled dangerous substance.

<sup>4</sup> Trooper Linn testified that the form used was the DEA's "form 82," through which the owner or operator of controlled premises could consent to an administrative inspection. *See* 21 U.S.C. § 880.

because a search warrant was not obtained, her prescription records were obtained in violation of her right to privacy. After a hearing was held on the motion to suppress, the district court denied the motion, concluding that the investigation was conducted reasonably and with probable cause.

A district court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. *State v. Jones*, 01-0908 (La. App. 1 Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 02-2989 (La. 4/21/03), 841 So.2d 791. Likewise, when a district court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the district 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 district 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.

The Fourth Amendment, applicable to the states through the Fourteenth Amendment, provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....” U.S. Const. amend. IV; see *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961). Louisiana provides protection not only against unreasonable searches and seizures, but our Constitution explicitly protects against unreasonable invasions of privacy. Louisiana Constitution Article I, section 5 provides, in part, “[e]very person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.” Federal and state constitutional protections against unreasonable searches exist only when an individual has an actual expectation of privacy that society is prepared to recognize as reasonable. *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 516, 19 L.Ed.2d 576 (1967)

(Harlan, J. concurring); *State v. Ragsdale*, 381 So.2d 492, 497 (La. 1980). See *State v. Skinner*, 08-2522 (La. 5/5/09), 10 So.3d 1212, 1215-16.

The right to privacy in one's medical and prescription records is an expectation of privacy that society recognizes as reasonable. Absent the narrowly drawn exceptions permitting warrantless searches, a warrant is required to conduct an investigatory search of medical and/or prescription records. *Skinner*, 10 So.3d at 1218.<sup>5</sup> Trooper Linn testified at the motion to suppress hearing that he did not obtain a search warrant before conducting his search of the defendant's prescription records. Because the Fourth Amendment of the U.S. Constitution and Article I, section 5 of the Louisiana Constitution require a search warrant before a search of prescription and medical records for criminal investigative purposes is permitted, the defendant's records were illegally searched and seized. Therefore, the district court erred in denying the defendant's motion to suppress the evidence. The ruling of the trial court denying the defendant's motion to suppress evidence is hereby reversed and this case is remanded to the trial court for further proceedings allowing the defendant the opportunity to withdraw her guilty pleas.

**REVERSED AND REMANDED FOR FURTHER PROCEEDINGS  
ALLOWING THE DEFENDANT THE OPPORTUNITY TO WITHDRAW  
HER GUILTY PLEAS.**

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<sup>5</sup> The Court in *Skinner* also rejected the reasoning that no warrant was needed because the attempted subpoenas were directed at third party business entities that were not under investigation for a crime, noting, "the attempted subpoenas sought the prescription and the medical records of the defendant, who had a reasonable expectation of privacy in these records. Because we have determined the defendant had a right of privacy in these records, they can only be searched and seized pursuant to a warrant." See *Skinner*, 10 So.3d at 1218-19.