

STATE OF LOUISIANA

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NO. 2002-K-1156

VERSUS

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COURT OF APPEAL

THOMAS HATCHER

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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**SUPERVISORY WRIT DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 428-823, DIVISION "C"
HONORABLE SHARON K. HUNTER, JUDGE**

**CHARLES R. JONES
JUDGE**

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, and Judge Patricia Rivet Murray)

BYRNES, C.J., DISSENTS WITH REASONS

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WRIT GRANTED;

RELIEF DENIED

The State of Louisiana seeks our supervisory jurisdiction to review a ruling of the district court granting the Motion to Suppress Evidence and Statements filed by the defendant, Thomas Hatcher.

On March 18, 2002 Hatcher was charged with one count each of possession of at least 28 but less than 200 grams of cocaine, and possession with the intent to distribute heroin, charges to which he subsequently pled not guilty. On May 21, the district court heard and granted the defendant's motion to suppress the evidence and statements. The State now comes before this court seeking relief from this ruling and has supplemented its writ application with the May 21 transcript. Finding no error by the district court, we grant the Relator's writ application, but deny relief.

On February 20, 2002, N.O.P.D. Off. Meisch received a phone call from a reliable confidential informant stating that two black men wearing white T-shirts and black sweat pants were selling crack cocaine at the corner of Third and Clara Streets. The C.I. indicated that the men had the cocaine in a pill bottle. Off. Meisch set up a surveillance of that location and observed two black men, wearing clothing fitting the description given by

the C.I., standing at the corner. Off. Meisch testified that one of the men, later identified as the defendant Thomas Hatcher, took a pill bottle from his waistband and handed it to his companion. The companion opened the bottle and began to examine the objects inside the bottle. Off. Meisch testified that at that point, he called for back-up, and when the other officers entered the area, Hatcher grabbed the pill bottle from his companion and threw it behind him. Off. Meisch testified that the other officers detained Hatcher and his companion, and when he arrived on the scene, he retrieved the pill bottle. He opened the bottle and found it contained numerous rock-like substances wrapped in plastic which were later found to be crack cocaine, measuring approximately nineteen grams.

Off. Meisch testified that he then advised Hatcher and his companion of their rights, reading the rights from a card he kept with him while on patrol but which he did not have with him at the hearing. Off. Meisch testified that Hatcher then admitted he had another \$800 worth of crack cocaine in a black knit cap in his bedroom. Based upon this statement, the officers went to Hatcher's home on S. Robertson Street, where they knocked on the door. Off. Meisch testified that although no one answered the door, at that point Hatcher's mother walked up to them while they were standing outside the door and told them the residence belonged to her. Off. Meisch

testified that he told Hatcher's mother about Hatcher's arrest and his admission that he had drugs in the residence, and she consented to a search of Hatcher's room. Off. Meisch testified another officer produced a consent to search form and explained it to Hatcher's mother, who then signed the form. He testified that the officers entered the residence, went to the room she indicated was Hatcher's bedroom, and found the additional cocaine in a black knit cap in a drawer. Inside the cap the officers found an additional twenty-one grams of crack cocaine as well as several aluminum foil packets containing what the officers believed to be heroin. In addition, the officer found a \$100 bill inside the cap.

On cross-examination, Off. Meisch testified he set up the surveillance approximately fifteen minutes after receiving the tip, and he watched the men for a few minutes before Hatcher removed the pill bottle from his pocket. During that time, the officer saw no one approach the men. He testified that although the top to the pill bottle was still open when the companion was examining its contents, the cap was on the bottle by the time he seized it from the ground. He testified that Hatcher refused to consent to a search of his room, and he insisted he did not see Hatcher's younger brother until after he had spoken with Hatcher's mother. He admitted he did not specifically remember whether he advised Hatcher that he could stop the

questioning at any time, but he indicated that if that warning was on his Miranda card, he would have given it. He admitted he took Hatcher's keys from him, but he insisted he did not use the keys to enter the residence.

Off. Sandoz was one of the back-up officers who detained Hatcher and his companion. He testified that he and his partner were approximately twenty to thirty feet away from the men when Hatcher grabbed the bottle from his companion and threw it behind himself. He testified that he and his partner then exited their vehicle and detained the men until Off. Meisch arrived and retrieved the bottle, which was closed. He insisted the officers did not enter Hatcher's residence until after Off. Meisch had gotten permission from Hatcher's mother to do so. He also testified that the officers searched only Hatcher's bedroom. He testified that the officers entered the apartment through the front door which opened onto the building's courtyard.

Warren Branch testified that he was Hatcher's companion on the day of his arrest. He testified that he and Hatcher had just come from Hatcher's house and were going to Hatcher's grandmother's house. He testified that they did not stop at the corner of Clara and Third, but rather they were walking on Third when the officers stopped them. He insisted that he did not have anything in his hands at that time, and he did not see Hatcher throw

anything when the officers pulled up. He testified that he crossed the street and looked back to see the officers had detained Hatcher and placed him on the ground. The officers then crossed the street and placed him on the ground. He insisted the officers searched him, finding only a few dollars. He did not see the officers retrieve anything from Hatcher. He testified that the officers then began questioning them without first advising them of any rights, and he heard Hatcher tell the officers only that he would not consent to a search of his residence. He testified that the officers drove him to Hatcher's apartment. He further testified that Hatcher's younger brother had been at the apartment when he and Hatcher left the apartment approximately fifteen to twenty minutes earlier. He testified that no one could enter the apartment through the front, courtyard door, but rather someone from the inside had to open the door to allow entrance. He testified that he believed Hatcher's brother must have opened that door for the officers, but he admitted he remained in the police car while the officers searched the apartment.

Paula Williams testified that she is Hatcher's mother. She testified that the apartment has two doors, and the front one that opens onto the courtyard could not be opened from the outside because the lock was broken. She testified that she was at work nearby when she learned Hatcher

had been arrested. She testified that she got someone to take her to the scene of the arrest, but by the time she got there he was gone. She then went home, walked around to the back door, and noticed an officer walking down the stairwell near the door. She testified that the officer asked her if she lived in the apartment, and she admitted she did but told him that he could not enter without a search warrant. She testified that she walked to the front door and saw it was open, and then she realized Off. Meisch was already inside the apartment. She stated that she reiterated that the officers could not go inside the apartment without a warrant, but one of the officers told her that they would get a warrant and that it might take “some hours” to get it. She testified that she was still supposed to be at work, so she eventually signed the consent form, but she insisted the officers had already been inside the apartment before she signed the form. She testified that the officers then reentered the apartment and emerged with a plastic bag which they indicated they found inside. She admitted she did not know when the officers actually found the bag.

The district court refused to suppress the crack cocaine seized on the street, but did suppress the cocaine and heroin seized from the apartment, and Hatcher’s statement made at the scene of his arrest. The district court found that the State failed to demonstrate that the officers advised Hatcher of

all of his Miranda rights. Further, the district court found that the officers' testimony was contradictory and unbelievable, presumably as to the issues of the advisement of rights and the voluntariness of Hatcher's mother's consent to search the apartment.

In its writ application, the State addresses only the consent issue. However, if Hatcher's admission that he had more drugs in his bedroom is found to be involuntary, there would have been no reason for the officers to go to his apartment. Because it appears the district court's ruling is based upon both issues, both will be addressed herein.

With respect to the Miranda issue, Off. Meisch testified that he advised Hatcher of his rights by using a card he usually carried while on duty, but which he did not have with him at the time of the hearing. When pressed as to these warnings, he recalled that he advised Hatcher that he had the right to remain silent; that anything he said could be used against him in court; that he had the right to an attorney; and that if he could not afford an attorney one would be appointed to represent him. On cross-examination, he admitted he could not remember if he advised Hatcher that he could discontinue giving his statement at any time. During argument on the motion to suppress, defense counsel stated that his client was not adequately advised of his rights because Off. Meisch did not tell him he could stop the

questioning at any time, which argument the court apparently accepted.

In State v. Jones, 2002-1171, pp. 11-12 (La. App. 4 Cir. 6/26/02), ____ So. 2d ____, ____, 2002 WL 1424642, this Court set forth the standard for determining whether a statement was voluntarily made:

The State has the burden of proving the admissibility of a purported statement at a motion to suppress hearing. La. C.Cr.P. art. 703(D); *State v. Hohn*, 95-2612, p. 3 (La. App. 4 Cir. 1/19/96), 668 So.2d 454, 456. Before a statement or confession can be admitted into evidence, it must be shown that it was made freely and voluntarily and not under the influence of fear, duress, intimidation, menace, threats, inducements or promises. La. R.S. 15:451. *State v. Sepulvado*, 93-2692, p. 4 (La. 4/8/96), 672 So.2d 158, 163, *cert. denied sub nom. Sepulvado v. Louisiana*, 519 U.S. 1035, 117 S.Ct. 600, 136 L.Ed.2d 527; *State v. Hohn, supra*. "The testimony of police officers alone can be sufficient to prove the defendant's statements were freely and voluntarily given." *State v. Gibson*, 93-0305, p. 7 (La. App. 4 Cir. 10/13/94), 644 So.2d 1093, 1097. In determining the voluntariness of a statement, the trial court must review the totality of the circumstances. *State v. Sepulvado, supra*; *State v. Dunn*, 94-776, p. 15 (La. App. 5 Cir. 2/15/95), 651 So.2d 1378, 1387. A trial court's determination as to the admissibility of a statement is within the discretion of the trial court and its decision will not be disturbed unless unsupported by the evidence. *State v. Samuels*, 94-1408, p. 7 (La. App. 4 Cir. 6/7/95), 657 So.2d 562, 566.

Where, as here, a defendant gives a statement while in custody (the defendant had already been arrested at the time he admitted he had more

drugs in his apartment), the State must also show that the defendant was fully advised of his Miranda rights and that he understood and waived these rights. See State v. Vigne, 2001-2940 (La. 6/21/02), ___ So. 2d ___, 2002 WL 1354222. In Vigne, p. 6, ___ So. 2d ___, ___, the Court noted:

In Miranda, the United States Supreme Court recognized the coercive atmosphere created by police custody and established a procedural mechanism to safeguard the exercise of a defendant's Fifth Amendment rights. Before interrogating a suspect in custody, law enforcement officials must inform the suspect that he has the right to remain silent, that his statements may be used against him at trial, that he has a right to an attorney, and that if he cannot afford an attorney, one will be appointed for him.

Indeed, a reading of Miranda itself shows that the Court required the advisement of only the four rights listed above. The Court warned that after a defendant has been advised of these rights, a police officer must stop the interrogation at any time the defendant invokes his Miranda rights; however, the Court did not require that a defendant be told that such questioning will cease. Miranda v. Arizona, 384 U.S. 436, 468-474, 86 S.Ct. 1602, 1624-1628 (1966).

In Vigne, as here, the officer testified he read the defendant his rights from a card he carried. He did not have the card with him at the suppression hearing, and he could not remember any of the rights he read to the

defendant. The Court found that the State failed to prove that the defendant was adequately advised of his rights. The Court further found that the State failed to prove that the defendant understood and waived these rights in that the testimony was silent as to whether the officer ascertained that the defendant understood the rights read to him.

The Court based its ruling in part on Taque v. Louisiana, 444 U.S. 469, 100 S.Ct. 652 (1980), where the officer testified that not only could he not remember what rights were contained on the Miranda card he used to advise the defendant of his rights, he also could not remember if he had asked the defendant if he understood those rights or if he had tested the defendant's knowledge to see if he had understood these rights. The Louisiana Supreme Court upheld the admissibility of the resulting statement upon the facts that the officer testified he read the rights from a card and that there was no indication that the defendant did not understand and knowingly waive his rights. See State v. Taque, 372 So. 2d 555 (La. 1979). On review, the U.S. Supreme Court reversed, holding that the State must show that the defendant knowingly waived his rights, and that the fact that the defendant subsequently gave a statement did not conclusively prove the defendant understood and knowingly waived his rights.

Here, with respect to the reading of the Miranda rights, this case can

be distinguished from Vigne in that here, Off. Meisch recited the rights he remembered giving to Hatcher, which were the four rights enumerated in Miranda. It appears the district court found this advisement of rights was faulty because the officer did not also advise Hatcher that he could stop the questioning at any time. However, this advisement is not required by Miranda, and the statement should not have been suppressed on that basis. A greater problem arises, however, as to whether the State proved that Hatcher understood and knowingly waived his rights. Unlike in Taque, here there were no questions concerning this issue. In Vigne, the Court found that the absence of any evidence as to the voluntariness of the waiver rendered the statement inadmissible. In light of this holding, it appears the district court correctly suppressed Hatcher's admission that he had drugs in his bedroom, albeit for the wrong reason.

The search of Hatcher's house was a direct result of his admission that he had drugs there. Considering that the State failed to demonstrate that the statement was voluntarily given, the subsequent search of the home was tainted by this failure, and the district court properly suppressed the drugs found in the apartment.

Therefore, for the reasons above indicated, the Relator's writ application is granted, but the relief sought is hereby denied.

RELIEF DENIED

WRIT GRANTED;