

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2007-KA-0088**  
**VERSUS** \* **COURT OF APPEAL**  
**KELLY M. FALGHOU** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

\* \* \* \* \*

APPEAL FROM  
25TH JDC, PARISH OF PLAQUEMINES  
NO. 2006-2084, DIVISION "A"  
Honorable Anthony D. Ragusa, Judge

\* \* \* \* \*

**Judge David S. Gorbaty**

\* \* \* \* \*

(Court composed of Judge James F. McKay, III, Judge David S. Gorbaty,  
Judge Leon A. Cannizzaro, Jr.)

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**AFFIRMED**

Appellant Kelly M. Falghou appeals the denial of his motion to suppress evidence. For the following reasons, we affirm.

**STATEMENT OF CASE:**

On March 13, 2006, the State charged Kelly Falghou with one count of possession of ecstasy. At his arraignment on March 20 he pled not guilty. On June 7, the court heard Falghou's motion to suppress the evidence, which it denied on June 26. On October 11, Falghou withdrew his prior plea of not guilty and pled guilty as charged, reserving his right to appeal the court's decision on the motion to suppress the evidence as per *State v. Crosby*, 338 So.2d 584 (La. 1976). Falghou waived all delays, and the court sentenced him to six years at hard labor, suspended, and placed him on two years active probation and three years inactive probation, with various conditions. The court also imposed a \$1000 fine. The court granted Falghou's motion for appeal on October 16, 2006.

**FACTS:**

Early on the morning of February 26, 2006, Deputy Ryan Martinez was driving on Highway 23 in Belle Chasse. As he neared E. Third Street, he observed a vehicle coming down E. Third Street, approaching the intersection with Highway 23. He noticed that the vehicle did not stop before entering the highway. Dep. Martinez testified that there were railroad tracks crossing E. Third Street before it intersected with Highway 23, and he was fairly sure that the stop sign on E. Third Street was located between the tracks and the highway. Dep. Martinez testified that the vehicle stopped neither before the tracks nor before the highway. He followed the vehicle a short distance and then activated his lights. The vehicle immediately pulled over. He then ordered the driver to exit the vehicle and meet him behind the vehicle.

Dep. Martinez testified that Kelly Falghou, the only person in the vehicle, met him at the back of the vehicle. Dep. Martinez stated that he could smell the odor of burned marijuana emanating from Falghou. Dep. Martinez advised Falghou of the reason for the stop, advised him of his rights, and asked Falghou if he had any drugs on his person or in his vehicle. Falghou hesitated and then admitted he had marijuana in his vehicle. Falghou retrieved a bag of marijuana from the glove compartment. Dep. Martinez then arrested Falghou for possession of marijuana. He also

ultimately issued Falghou a citation for disregarding the stop sign. Dep. Martinez testified that Dep. Chris Johnson soon arrived on the scene and conducted an “inventory” search of Falghou’s vehicle incident to Falghou’s arrest. Pursuant to this search, Dep. Johnson found a single pill that he believed to be ecstasy. Dep. Martinez also conducted a search of Falghou and found in his pants pocket a package of rolling papers. He testified that Falghou’s vehicle was then towed to the police yard.

On cross-examination, Dep. Martinez insisted that Falghou did not stop at any time prior to entering Highway 23. He admitted that Falghou’s vehicle was far enough in front of his car that he was not forced to put on the brakes when Falghou pulled onto the highway. He also admitted that Falghou immediately pulled over when Dep. Martinez activated his lights, and he cooperated with the deputy. He stated that Falghou asked him if he had a choice whether to consent to a search of his vehicle, and Dep. Martinez told him that he did have a choice, but he did not remember if the two of them discussed the possibility of obtaining a canine unit. He testified that he did not know if Dep. Johnson found any loose marijuana in the vehicle when he searched it.

On redirect, Dep. Martinez testified that a DVD was made of Falghou’s booking, and it is unclear from the deputy’s testimony if Falghou

made any other statements at that time. Dep. Martinez stated that Falghou appeared to understand his rights and did not ask for an attorney. He insisted that no promises or threats were made to Falghou.

Dep. Chris Johnson testified that Dep. Martinez was placing Falghou under arrest when he arrived on the scene. He stated that he started conducting an “inventory” search of Falghou’s vehicle once Dep. Martinez handcuffed Falghou and started obtaining information from him. Dep. Johnson testified that he could smell an odor of burned marijuana emanating from inside the vehicle. He stated that he found lying on the driver’s side floorboard a purple pill that he recognized as ecstasy. He insisted that the pill was lying in plain view on the floorboard of the driver’s side, in front of the driver’s seat. He stated that he also found a few loose pieces of vegetable matter that he believed to be marijuana, but these pieces were too small to collect. He stated that Falghou became upset when he found the pill and insisted that the pill was not his. He testified that Falghou did not appear to be intoxicated or impaired, and no field sobriety test was conducted on him.

Kelly Falghou denied running the stop sign on E. Third at Highway 23. He testified that the stop sign was situated before the railroad tracks, and that there was no stop sign between the tracks and the highway. He insisted

nonetheless that he stopped both at the stop sign and again at Highway 23 on the other side of the tracks for safety. He denied seeing any car approaching on Highway 23 when he pulled onto it. On cross-examination, he testified that he was coming from a friend's trailer in the area when he was stopped by Dep. Martinez. He insisted that the stop occurred sometime around 12:30 a.m., and it was not until about 2:30 a.m. that they left the scene. He admitted having one prior conviction eighteen years earlier for burglary.

## **DISCUSSION:**

### **A. Errors Patent:**

A review of the record reveals there are no patent errors.

### **B. Assignment of Error:**

By his sole assignment of error, Falghou contends that the trial court erred by denying his motion to suppress the evidence. Specifically, he argues that the trial court erred by believing Dep. Martinez's testimony over his on the issue of whether he disregarded the stop sign.

Dep. Martinez testified that he initially stopped Falghou because Falghou disregarded the stop sign at E. Third Street and Highway 23. Having seen this traffic violation, the deputy had probable cause to stop Falghou to give him a citation. Falghou argues that the State failed to establish that this traffic offense occurred, however, because his testimony

on this point was more credible than that of Dep. Martinez, who was unable to recall some details about the stop until his memory was refreshed with his police report. However, this Court has repeatedly held that a factfinder's credibility decision should not be disturbed unless it is clearly contrary to the evidence. *State v. Huckabay*, 00-1082 (La.App. 4 Cir 2/6/02), 809 So.2d 1093; *State v. Harris*, 99-3147 (La.App. 4 Cir. 5/31/00), 765 So.2d 432. Although Dep. Martinez testified that he was fairly sure that the stop sign on E. Third Street was between the railroad tracks and the highway, rather than before the tracks, he also testified that he was able to observe Falghou's vehicle as it approached the highway, and he did not see the vehicle stop at either location before turning onto the highway. The trial court was faced with directly conflicting testimony on this point, and it was able to observe the witnesses' demeanor to assess their credibility, something this Court cannot do from a mere reading of the motion hearing transcript. There is nothing in the transcript to lead this Court to believe that the trial court's credibility finding was clearly contrary to the evidence. Thus, the trial court did not err by crediting the testimony of Dep. Martinez over that of Falghou.

Once Falghou exited his car, Dep. Martinez detected the odor of marijuana on Falghou's person. The deputy advised Falghou why he was being stopped, advised him of his rights, and then asked if he had any drugs

on his person or in his vehicle. Although defense counsel asked whether Falghou and Dep. Martinez discussed the possibility that a canine unit would be called, Dep. Martinez did not recall this conversation, and Falghou did not mention it in his testimony. In any event, Falghou hesitated and then admitted he had marijuana in his vehicle, and he retrieved it from his glove compartment and surrendered it to the deputy. Again, Falghou did not dispute the deputy's testimony on this point.

Although both deputies indicated that the pill of ecstasy was found incident to an "inventory search," the court found that this evidence was lawfully seized pursuant to the automobile exigent circumstances exception to the warrant requirement. It is doubtful that the State established the necessary elements to show the validity of an inventory search, which include searching the vehicle *after* it has been towed to another location because it cannot be left at the scene of the arrest. *See State v. Robinson*, 98-0005 (La.App. 4 Cir. 9/29/99), 743 So.2d 814; *State v. Short*, 588 So.2d 151 (La.App. 4 Cir. 1991). Instead, the evidence supported the trial court's finding that the evidence was lawfully seized pursuant to the automobile exception. In *State v. Anderson*, 06-1031, p. 5 (La.App. 4 Cir. 1/17/07), 949 So.2d 544, 547-48, this Court discussed this exception to the warrant requirement:

Although a warrant is generally required



prior to conducting a search, *California v. Carney*, 471 U.S. 386 (1985), the “automobile exception” to this requirement is well-established. *Carroll v. United States*, 267 U.S. 132 (1925). Pursuant to the “automobile exception”, there is no separate exigency requirement if there is probable cause to search a vehicle. *U.S. v. Ross*, 456 U.S. 798, 809 (1982); *see Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (“If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.”); *see also State v. Thompson*, 2002-0333 (La. 4/9/03), 842 So. 2d 330 (if a vehicle is readily mobile, there is no difference between seizing the car while obtaining a search warrant and immediately searching the vehicle without a warrant). Thus, if there is probable cause to search and the vehicle is readily mobile, even if stationary at the time the search proceeded, any evidence will be considered constitutionally seized. (citations omitted.)

*See also Maryland v. Dyson*, 527 U.S. 465, 119 S.Ct. 2013 (1999); *State v. Adams*, 04-2177 (La.App. 4 Cir. 6/29/05), 909 So.2d 5, *writ denied* 05-1999 (La. 2/17/06), 924 So.2d 1013.

Here, the deputies had probable cause to believe that Falghou’s vehicle contained contraband, given the fact that he had just given Dep. Martinez a bag of marijuana that he had in the glove compartment. The vehicle was obviously operable because Dep. Martinez had just stopped Falghou. Thus, the deputies could lawfully search the vehicle.

In addition, Dep. Johnson testified that he discovered the ecstasy pill

lying in plain view on the driver's side floorboard, just in front of the driver's seat. As such, Dep. Johnson was authorized to seize the pill pursuant to the plain view exception to the warrant requirement. *See State v. Brown*, 03-2155 (La.App. 4 Cir. 4/14/04), 895 So.2d 542; *State v. Jones*, 02-1171 (La.App. 4 Cir. 6/26/02), 822 So. 2d 205. Dep. Johnson had a prior justification for entering the vehicle, the probable cause to believe the vehicle contained more contraband, and while inside the vehicle he discovered the pill, which he recognized as contraband.

Given the circumstances of this case, the ecstasy pill was lawfully seized. In addition, there is no indication that the trial court's credibility finding was clearly contrary to the evidence presented at the suppression hearing. Thus, the trial court did not err by denying Falghou's motion to suppress the evidence. This claim has no merit.

Accordingly, Kelly M. Falghou's guilty plea and sentence are affirmed.

**AFFIRMED**