

STATE OF LOUISIANA * **NO. 2018-K-0233**
VERSUS * **COURT OF APPEAL**
MELVIN MIGUEL * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 538-436, SECTION "F"
Honorable Robin D. Pittman, Judge

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JUDGE SANDRA CABRINA JENKINS

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(Court composed of Chief Judge James F. McKay, III,
Judge Terri F. Love, Judge Sandra Cabrina Jenkins)
ON APPLICATION FOR REHEARING

Dylan Duffey
ORLEANS PUBLIC DEFENDERS
2601 Tulane Avenue, Seventh Floor
New Orleans, LA 70119

COUNSEL FOR DEFENDANT/RELATOR

Leon A. Cannizzaro, Jr., District Attorney
Scott G. Vincent, Assistant District Attorney
PARISH OF ORLEANS
619 South White Street
New Orleans, LA 70119

COUNSEL FOR STATE OF LOUISIANA/RESPONDENT

**REHEARING GRANTED; WRIT GRANTED;
REVERSED AND REMANDED; STAY LIFTED**

APRIL 26, 2018

Relator/defendant, Melvin Miguel, seeks review of the trial court's February 20, 2018 ruling denying his motion to suppress. On April 4, 2018, this Court denied defendant's writ application, noting that it did not comply with Rule 4-5, Uniform Rules—Courts of Appeal due to defendant's failure to submit the body camera footage introduced at the suppression hearing and complete transcripts of the motion hearing. Thereafter, defendant filed an application for rehearing and submitted the body camera footage and complete transcripts. For the reasons that follow, we grant the application for rehearing, and, upon review of the record, we grant defendant's writ application and reverse the trial court's ruling.

FACTS

At the motion to suppress hearing, Detective James Terrell testified that, on October 19, 2017, he conducted a traffic stop of a black 2008 Nissan Altima, being driven by defendant, after observing that the vehicle's windshield was cracked. Det. Terrell also observed that the license plate on the back of the vehicle was an unlawful temporary tag. After stopping the vehicle and making contact with

defendant, Det. Terrell learned that defendant was operating the vehicle without a valid driver's license. At that time, Det. Terrell asked defendant to exit the vehicle. While standing at the driver's side window, Det. Terrell conducted a visual inspection of the interior of the vehicle and observed an orange prescription pill bottle in the driver's side door panel. Det. Terrell asked defendant about the pill bottle and defendant denied ownership of it. Det. Terrell then retrieved the pill bottle from inside the vehicle, opened it, and observed five pills that he identified as Hydrocodone. Thereafter, defendant was arrested and charged with possession of Schedule II controlled dangerous substance.¹

During cross-examination, defense counsel introduced into evidence Det. Terrell's body camera video from the traffic stop of defendant. On cross-examination, Det. Terrell acknowledged that there was a label on the pill bottle, but he stated that "it didn't have a name." He also stated that he could not see the contents of the pill bottle when he first observed it; and he did not observe defendant handling the pill bottle. Following Det. Terrell's testimony, defense counsel argued that Det. Terrell did not have probable cause to search defendant's vehicle and that the plain view exception to the warrant requirement did not apply, because Det. Terrell could not immediately ascertain that the pill bottle contained contraband. At the conclusion of the hearing, the trial court took defendant's motion to suppress under advisement. On February 20, 2018, the trial court denied defendant's motion to suppress.

¹ Defendant was also issued citations for the cracked windshield, the unlawful temporary tag, and driving with a suspended driver's license.

DISCUSSION

Before addressing the merits of defendant's writ application, we address the procedural issue raised by this Court's granting of defendant's application for rehearing. Pursuant to Rule 2-18.7, Uniform Rules—Courts of Appeal, "[a]n application for rehearing will be considered in cases where the court has: (A) [g]ranted a writ application on the merits; (B) [d]ismissed an appeal; or (C) [r]uled on the merits of an appeal." The original writ application in this matter was denied by this Court on April 4, 2018. In denying the writ, this Court noted that defendant's writ application was incomplete, lacking a copy of the body camera footage and the complete transcripts from the suppression hearing and ruling. As indicated by the substance of the disposition, this Court did not consider defendant's writ application as originally submitted because the application before us was incomplete. Based on the foregoing, and in consideration that defendant has submitted the complete transcripts and the body camera footage, we find that the defendant's application for rehearing may be treated as a supplement to the previously filed writ application which this Court now addresses on the merits. *See* La. C.C. art. 2164 ("The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal.").

Defendant argues that the trial court erred in denying his motion to suppress, because the State failed to prove that the search of defendant's vehicle and the seizure of the pill bottle were justified under one of the narrow exceptions to the warrant requirement.

The trial court is vested with great discretion in ruling on a motion to suppress and, consequently, the trial court's ruling will not be disturbed absent an abuse of discretion. *State v. Norals*, 10-0293, p. 3 (La. App. 4 Cir. 7/30/10), 44 So.3d 907, 909. The trial court's findings of fact on a motion to suppress are reviewed under a clearly erroneous standard and the trial court's ultimate determination of Fourth Amendment reasonableness is reviewed *de novo*. *State v. Anderson*, 06-1031, p. 2 (La. App. 4 Cir. 1/17/07), 949 So.2d 544, 546. "Accordingly, 'on mixed questions of law and fact, the appellate court reviews the underlying facts on an abuse of discretion standard, but reviews conclusions to be drawn from those facts *de novo*.'" *Id.* (quoting *State v. Pham*, 01-2199, p. 3 (La. App. 4 Cir. 1/22/03), 839 So.2d 214, 218).

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution guarantee the right of the people to be free from unreasonable searches and seizures. "It is well settled that a search and seizure conducted without a warrant issued on probable cause is *per se* unreasonable unless the warrantless seizure and search can be justified by one of the narrowly drawn exceptions to the warrant requirement." *State v. Thompson*, 02-0333, p. 6 (La. 4/9/03), 842 So.2d 330, 335. Where evidence is seized without a warrant supported by probable cause to search, the burden is on the State to show that a search is justified by some exception to the warrant requirement.

In *State v. Smith*, 96-2161, p. 3 (La. App. 4 Cir. 6/3/98), 715 So.2d 547, 549, this Court explained the plain view exception to the warrant requirement as follows:

In order for an object to be lawfully seized pursuant to the “plain view” exception to the Fourth Amendment, “(1) there must be a prior justification for the intrusion into a protected area; (2) in the course of which the evidence is inadvertently discovered; and (3) where it is immediately apparent without close inspection that the items are evidence or contraband.”

This Court has further stated, “[t]he plain view exception does not require a police officer to actually know that the object in plain view is contraband, but rather only requires that the officer have probable cause to believe that the item in question is contraband.” *Norals*, 10-0293, p. 5, 44 So.3d at 910.

In this case, defendant argues that Det. Terrell’s search and seizure of the pill bottle does not fall within the plain view exception to the warrant requirement, because Det. Terrell did not have probable cause to believe it contained contraband. In support of his argument, defendant relies on the Louisiana Supreme Court’s decision in *State v. Meichel*, 290 So.2d 878 (La. 1974).

In *Meichel*, the State argued that the seizure of an unlabeled bottle of pills from defendant’s vehicle was justified under the plain view exception. In finding that the plain view exception did not apply, the Louisiana Supreme Court reasoned as follows:

It is well established that evidence in the open or plain view of a police officer who is legally on the premises from which he obtains the view is subject to seizure without a warrant. The word ‘evidence’ in the formulation above is critical. A policeman does not have the right to seize any object in his view in order to examine it and determine if it is or would be evidence in a criminal prosecution. An

object in open plain view may be seized only where it is readily apparent that the object is contraband or evidence.

In the instant case the testimony of the officer making the seizure is clearly to the effect that he did not know the nature of the pills until after he had picked up the bottle and examined it. He did not know at the time he saw the pills that there was a probability that they were contraband and probably evidence. This seizure does not fall within the plain view exception to the warrant requirement. As such the seizure violated defendant's constitutional rights and was illegal.

Meichel, 290 So.2d at 880. (citations omitted)

In this case, Det. Terrell testified that “[a]lmost immediately upon walking up to the vehicle,” he illuminated the inside of the vehicle with his flashlight and observed an orange prescription bottle in plain view in the door panel. When asked if he noticed anything about the pill bottle, Det. Terrell responded, “[e]ven before picking it up, I observed, the name was peeled off of it.” When defendant denied ownership of the pill bottle, Det. Terrell retrieved it, opened it, and looked inside to discover pills, which he identified as Hydrocodone by using the “pill identifier website.” Thus, based on his testimony, it was not immediately apparent to Det. Terrell that the prescription bottle contained contraband; only after opening the bottle, inspecting its contents, and consulting a pill identifier reference guide did Det. Terrell determine that the bottle contained a Schedule II controlled substance.

The trial court's ruling was based on its conclusion that the officer's actions fell within the plain view exception to the warrant requirement. However, Det. Terrell's testimony that he observed an orange prescription bottle without a legible name is not sufficient to constitute probable cause to search that container for contraband. Notably, Det. Terrell did not testify to any facts or circumstances that

he observed that provided probable cause for him to believe that there was evidence of contraband in the vehicle. In addition, from our review of Det. Terrell's body camera footage, we find the trial court abused its discretion in finding that Det. Terrell had probable cause for his seizure and search of the pill bottle.

Upon review of the record from the motion to suppress hearing, including Det. Terrell's testimony and body camera footage, we find that the seizure and search of the prescription pill bottle was not justified by the plain view exception to the warrant requirement. Further, based on our review of the evidence and testimony in light of relevant jurisprudence, we find that the search and seizure of the prescription pill bottle cannot be justified as a search incident to arrest or as inevitable discovery. Consequently, we grant defendant's writ, reverse the trial court's ruling, and grant defendant's motion to suppress.

CONCLUSION

For the reasons stated above, we grant the application for rehearing, grant defendant's writ application, and reverse the trial court's ruling on defendant's motion to suppress.

**REHEARING GRANTED; WRIT GRANTED;
REVERSED AND REMANDED; STAY LIFTED**