

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 KA 1933

STATE OF LOUISIANA

VERSUS

STANLEY POOLE

Judgment Rendered: March 26, 2010

On Appeal from the 32nd Judicial District Court
In and For the Parish of Terrebonne
Trial Court No. 477021

Honorable Randall L. Bethancourt, Judge Presiding

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.


JP
Jaw

HUGHES, J.

The defendant, Stanley Poole, was charged by bill of information with possession with intent to distribute cocaine, a violation of LSA-R.S. 40:967(A) (count 1), and possession of a firearm while in the possession of cocaine, a violation of LSA-R.S. 14:95(E).¹ The defendant pled not guilty to each count. The defendant filed a motion to suppress the evidence. Following a hearing on the matter, the motion to suppress was denied.

Following a jury trial, the defendant was found guilty as charged on both counts. The defendant filed a motion for new trial and a motion for a postverdict judgment of acquittal, which were both denied. Subsequently, the defendant filed a second motion for new trial on the grounds of newly discovered evidence. The trial court granted the motion for new trial.

The plaintiff was re-arraigned and pled not guilty to both counts. The defendant subsequently withdrew his not-guilty pleas and entered pleas of guilty under **Crosby**, reserving the right to appeal the trial court's ruling on the motion to suppress. See State v. Crosby, 338 So.2d 584 (La. 1976). On the possession with intent to distribute cocaine conviction (count 1), the defendant was sentenced to ten years at hard labor, with the first two years of the sentence to be served without the benefit of parole, probation, or suspension of sentence. On the possession of a firearm while in the possession of cocaine conviction (count 2), the defendant was sentenced to five years at hard labor without the benefit of parole, probation, or suspension of sentence. The sentences were ordered to run consecutively.

The defendant now appeals, designating one assignment of error.

¹ Originally, count two charged the defendant with possession of a firearm by a convicted felon. However, the State later amended that count to charge the defendant with possession of a firearm while in the possession of cocaine.

FACTS

At the hearing on the motion to suppress, Agent Steve Bergeron, with the Terrebonne Parish Sheriff's Office, testified that on June 10, 2006, he received a radio dispatch of a possible disturbance in progress in the Livas Lane area near Thibodaux. When Agent Bergeron arrived on the scene, he observed a person lying in the front yard of a residence, bleeding from the head. About ten feet from the residence, Agent Bergeron observed the defendant sitting in a pickup truck on the driver's side. The defendant motioned to Agent Bergeron, so Agent Bergeron walked toward the defendant. As the defendant exited his truck, Agent Bergeron saw an orange pill bottle with no label fall from the truck onto the ground. Agent Bergeron picked up the bottle and observed through the relatively clear plastic what appeared to be crack cocaine inside the bottle. He opened the bottle to confirm that it contained drugs. The defendant was arrested and handcuffed. Agent Bergeron then patted down the defendant and found a piece of crack cocaine in his pocket and an empty nylon holster for a firearm. Agent Bergeron searched the defendant's truck and found a loaded .38 revolver on the driver's-side seat. The defendant possessed a total of 5.45 grams of cocaine.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to suppress. Specifically, the defendant contends that the warrantless search of the pill bottle did not fall within the plain-view exception and was, therefore, unconstitutional. Thus, any evidence seized as a result of this illegal search should have been suppressed.

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. Subject only to a few well-established exceptions, a search or seizure conducted without a warrant issued upon probable cause is constitutionally prohibited. Once a defendant makes an initial showing that a warrantless search or seizure occurred, the burden of proof shifts to the State to affirmatively show that it was justified under one of the narrow exceptions to the rule requiring a search warrant. LSA-C.Cr.P. art. 703(D). A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the district court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Young**, 2006-0234, pp. 5-6 (La. App. 1st Cir. 9/15/06), 943 So.2d 1118, 1122, writ denied, 2006-2488 (La. 5/4/07), 956 So.2d 606.

One exception to the search warrant requirement is the plain-view exception. Two conditions must be satisfied to trigger the applicability of the doctrine: (1) there must be a prior justification for an intrusion into the protected area; and (2) it must be immediately apparent without close inspection that the items are evidence or contraband. "Immediately apparent" requires no more than probable cause to associate the property with criminal activity. **State v. Howard**, 2001-1487, p. 8 (La. App. 1st Cir. 3/28/02), 814 So.2d 47, 53, writs denied, 2002-1485 (La. 5/16/03), 843 So.2d 1120, 2006-2125 (La. 6/15/07), 958 So.2d 1180. See Horton v. California, 496 U.S. 128, 136-37, 110 S.Ct. 2301, 2307-08, 110 L.Ed.2d 112 (1990).

Having been dispatched by radio to a possible disturbance in progress, Agent Bergeron clearly had prior justification for intrusion into a protected area. At the motion to suppress hearing, Agent Bergeron testified that, as he

approached the defendant, the defendant began to exit his truck. During the defendant's exit, Agent Bergeron observed an orange pill bottle fall from the defendant's truck onto the ground. Agent Bergeron testified that he grabbed the pill bottle and "looked inside" finding suspected crack cocaine. It is not clear from this testimony whether Agent Bergeron meant he took the lid off the bottle or looked through the bottle without opening it. In any event, the following testimony clearly indicates that, immediately upon picking up the bottle, Agent Bergeron recognized the crack cocaine through the bottle:

Q. Could you tell from looking at the pill bottle - you had to open it up, or could you tell from looking at the outside?

A. It didn't have any labels, you can look from the outside in. It was a pretty clear bottle, you could look in, look through and could see the suspected crack cocaine.

Under these circumstances, we find that Agent Bergeron's seizure of the pill bottle was properly made pursuant to the plain-view exception because it was immediately apparent without close inspection that the pill bottle contained an illegal substance. See State v. Williams, 605 So.2d 716, 719-20 (La. App. 2d Cir. 1992). Accordingly, the trial court properly denied the motion to suppress. The assignment of error is without merit. We therefore affirm the convictions and sentences.

CONVICTIONS AND SENTENCES AFFIRMED.