

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0052

STATE OF LOUISIANA

VERSUS

ALICIA ANNE BAILEY

Judgment Rendered: June 10, 2011.

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On Appeal from the  
21st Judicial District Court,  
In and for the Parish of Livingston,  
State of Louisiana  
Trial Court No. 24601

The Honorable Zorraine M. Waguespack, Judge Presiding

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Amite, LA

Attorney for Defendant/Appellant,  
Alicia Anne Bailey

Scott Perrilloux,  
District Attorney  
and  
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Livingston, LA

Attorneys for the State of Louisiana

\* \* \* \* \*

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

**CARTER, C. J.**

The defendant, Alicia Anne Bailey, was charged by bill of information with first degree robbery, a violation of La. Rev. Stat. Ann. § 14:64.1. She initially entered a plea of not guilty. Upon the trial court's denial of the motion to suppress her statement and the evidence, the defendant withdrew her not guilty plea and entered a plea of guilty as charged. The defendant reserved her right to appeal the trial court's ruling on the motion to suppress her statement and the evidence pursuant to *State v. Crosby*, 338 So. 2d 584 (La. 1976). The trial court imposed a sentence of three years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, urging that the trial court erred in denying the motion to suppress. For the following reasons, we affirm the conviction and sentence.

**FACTS**

The facts of the instant offense were not fully developed as the defendant ultimately entered a guilty plea. The following statement of facts is based on the record, which includes the testimony presented at the motion to suppress hearing, police reports, and written statements.

On August 24, 2009, Detective Treuil of the Livingston Parish Sheriff's Office received a dispatch regarding a robbery in progress at Live Oak Pharmacy on Louisiana Highway 16 in Denham Springs. Detective Treuil was on Cane Market Road at the time of the dispatch and immediately headed toward the scene of the robbery. Moments later, a follow-up dispatch detailed that the suspects were two females, one of whom was armed with a gun and wearing dark clothing and a baseball cap. The two

females were traveling in a small white four-door vehicle northbound on Louisiana Highway 16 approaching Cane Market Road.

As he responded, Detective Treuil passed a white vehicle occupied by two females fitting the description provided by the dispatch. A second vehicle occupied by one female was travelling directly behind the suspected vehicle. Detective Treuil made a U-turn and began pursuing the suspected vehicle. Near the intersection of Cane Market Road and Clinton Allen Road, Detective Treuil stopped the second vehicle and the driver for assistance in locating the first vehicle. The driver led Detective Treuil back to the street where the first vehicle turned. Detective Treuil advised all other responding units of his location. Deputy Johnson arrived and alerted Detective Treuil that he had spotted the suspected vehicle parked behind a residence located approximately five miles from the pharmacy. Detective Treuil observed two female subjects running from the white vehicle. As Detective Treuil approached, the subjects complied with Deputy Johnson's commands to stop running.

While Detective Treuil was advising the subjects of their *Miranda* rights, one of them, later identified as the defendant, interrupted stating, "It's not a real gun." The defendant repeated the statement after Detective Treuil finished advising her of rights and the other female subject, later identified as Amanda Roussel, stated, "It's a B.B. gun, and it's still in the car." The officers then searched the defendant and Roussel and recovered two bottles of Oxycodone pills with Live Oak Pharmacy labels during the search of Roussel.<sup>1</sup> The police later obtained and executed a search warrant.

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<sup>1</sup> While Detective Treuil testified that one bottle of Oxycodone pills was recovered, the police narratives in the record indicate that Deputy Johnson actually recovered two bottles of Oxycodone from Roussel.

## ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant contends that the trial court erred in denying the motion to suppress her statement and the evidence.<sup>2</sup> The defendant contends that at the motion to suppress hearing, one of the arresting officers, Detective Treuil, gave testimony that contradicted several items contained in his written narratives of the events leading up to the defendant's arrest. Specifically, the defendant asserts that Detective Treuil's narratives, unlike his hearing testimony, did not reflect any facts or issues regarding a hot pursuit. The defendant notes that Detective Treuil consistently acknowledged that he stopped and questioned the driver of the second vehicle to determine the direction in which the suspects' vehicle proceeded, then waited for Deputy Johnson to arrive to assist. The defendant contends that the record and Detective Treuil's hearing testimony are inconsistent regarding the description of the suspects provided, particularly whether one of them had long hair. The defendant notes that a search warrant was not secured until after she was apprehended and searched on private property. The defendant concludes that she was arrested and searched without probable cause or a warrant and in the absence of a hot pursuit or exigent circumstances.

The Fourth Amendment to the United States Constitution and La. Const. Art. 1, § 5 protect individuals from unreasonable searches and seizures. If evidence was derived from an unreasonable search or seizure,

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<sup>2</sup> The defendant moved to suppress her statement to the police and evidence including "all objects or other property, or documents, books, confessions or writings presently in the possession of the state." To the extent she intended to do so, we note that the defendant lacked standing to challenge the statement made by Roussel. *See State v. Burdgett*, 434 So. 2d 1062, 1064 (La. 1983).

the proper remedy is exclusion of the evidence from trial. *State v. Benjamin*, 97-3065 (La. 12/1/98); 722 So. 2d 988, 989.

As a general rule, searches and seizures must be conducted pursuant to a validly executed search warrant or arrest warrant. Warrantless searches and seizures are considered to be *per se* unreasonable unless they can be justified by one of the Fourth Amendment's warrant exceptions. *State v. Warren*, 05-2248 (La. 2/22/07); 949 So. 2d 1215, 1226. A traditional exception to the warrant requirement is a search incident to a lawful arrest based upon probable cause. *United States v. Robinson*, 414 U.S. 218, 224 (1973).

The “probable cause” or “reasonable cause” needed to make a full custodial arrest requires more than the “reasonable suspicion” needed for a brief investigatory stop.<sup>3</sup> *State v. Caples*, 05-2517 (La. App. 1 Cir. 6/9/06); 938 So. 2d 147, 154, *writ denied*, 06-2466 (La. 4/27/07); 955 So. 2d 684. Probable cause exists when the facts and circumstances known to the arresting officer, and of which he has reasonable and trustworthy information, are sufficient to justify a man of ordinary caution in the belief that the accused has committed an offense. *State v. Parker*, 06-0053 (La. 6/16/06); 931 So. 2d 353, 355 (*per curiam*). Searches incident to arrest conducted immediately before formal arrest are valid if probable cause to arrest existed prior to the search. *State v. Surtain*, 09-1835 (La. 3/16/10); 31

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<sup>3</sup> Louisiana Code of Criminal Procedure Annotated article 213(3) uses the phrase “reasonable cause.” The “reasonable cause” standard of Article 213(3) is equivalent to “probable cause” under the general federal constitutional standard. To read Article 213 as allowing an arrest on less than probable cause would put the article afoul of the Fourth Amendment. *Caples*, 938 So. 2d at 154 n.3.

So. 3d 1037, 1046. During a search incident to arrest, a searching officer may seize weapons and evidence of crime. *Surtain*, 31 So. 3d at 1043.

In denying the motion to suppress in this case, the trial court found that exigent circumstances and probable cause existed to justify the officers' actions. The trial court concluded that the defendant and Roussel were in fact fleeing from the vehicle and that the police were in hot pursuit at the time of the stop. A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because of the court's 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. Correspondingly, when a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial 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 trial court's legal findings are subject to *de novo* review. *See State v. Hunt*, 09-1589 (La. 12/1/09); 25 So. 3d 746, 751. When reviewing a trial court's ruling on a motion to suppress, the entire record may be considered. *Green*, 655 So. 2d at 280.

Based on our review of the testimony and the narratives in the record, we disagree with the defendant's contention that Detective Treuil gave inconsistent accounts of the incident. The record consists of several written narratives, some more detailed than others, from police reports, witness statements, and probable cause affidavits. Detective Treuil was uncertain at the time of the hearing of the original description of one of the suspects' hair, and presumed that it was described as long. However, he specifically

recalled, consistent with written narratives and photographs in the record, that one of the perpetrators was wearing dark clothing and a baseball cap, and that the two females were travelling in a small, white four-door vehicle.

The written narratives and hearing testimony provide that Detective Treuil received the dispatched information regarding the robbery in progress and was advised to be on the lookout for the described vehicle and suspects. Detective Treuil and Deputy Johnson were in the area at the time of the dispatch. Detective Treuil spotted the vehicle and suspects matching the description and alerted Deputy Johnson. When the vehicle was located, the two suspects were running from the vehicle and stopped upon command. At this point the facts and circumstances known to the officers, based on reasonable and trustworthy information, were sufficient to justify the belief that the suspects committed the robbery. Thus, the officers were authorized to arrest the suspects and conduct a full search of the suspects' persons incident to an arrest for which probable cause existed. *State v. Kennedy*, 569 So. 2d 242, 245 (La. App. 1 Cir. 1990), *writ denied*, 575 So. 2d 387 (La. 1991).

We agree with the trial court's finding that probable cause justified the warrantless arrest and search in this case. Accordingly, the trial court did not err or abuse its discretion in denying the motion to suppress. Finding no merit to the defendant's sole assignment of error, the defendant's conviction and sentence are affirmed.

**CONVICTION AND SENTENCE AFFIRMED.**