NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1698

STATE OF LOUISIANA

VERSUS

DARRYL RUFFIN

On Appeal from the 16th Judicial District Court
Parish of St. Mary, Louisiana
Docket No. 2010-182134, Division "F"
Honorable Edward M. Leonard, Jr., Judge Presiding

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Darryl Ruffin

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

Judgment rendered May 3, 2012

PARRO, J.

Defendant, Darryl Ruffin, was charged by bill of information with one count of possession with intent to distribute a Schedule II controlled dangerous substance (cocaine), a violation of LSA-R.S. 40:967(A)(1) (Count 1); one count of possession with intent to distribute a Schedule I controlled dangerous substance (marijuana), a violation of LSA-R.S. 40:966(A)(1) (Count 2); and one count of failure to signal when turning, a violation of LSA-R.S. 32:104(B) (Count 3). Defendant initially entered a plea of not guilty and filed a motion to suppress evidence against him. Following presentation of evidence on defendant's motion to suppress, the trial court took the matter under advisement. Defendant later withdrew his not guilty plea and entered a no contest plea to Count 1 only, under **State v. Crosby**, 338 So.2d 584 (La. 1976), reserving his right to appeal "his motion to suppress hearing." The trial court subsequently sentenced defendant to a term of fifteen years of imprisonment at hard labor. Defendant now appeals, alleging one assignment of error. For the following reasons, we remand for further proceedings.

FACTS

On April 6, 2010, the trial court held a hearing on defendant's motion to suppress. The only testimony regarding defendant's offense comes from Agent Duval Arthur, III, of the St. Mary Parish Sheriff's Office, who was the state's witness at defendant's motion-to-suppress hearing.

Agent Arthur testified that on December 15, 2009, in Siracusaville, he conducted a traffic stop of a dark-colored Ford Taurus after he observed the vehicle execute a left turn without signaling. Agent Arthur stated that during the traffic stop, defendant consented to a search of the vehicle. During his subsequent search of the vehicle, Agent Arthur found several small black bags of marijuana. Agent Arthur also found a pack of Doral cigarettes, inside of which he discovered "a cellophane bag containing numerous rocks of crack cocaine, as well as a balled-up piece of paper that contained

two larger crack rocks, as well as another cellophane bag that contained powdered cocaine."

ASSIGNMENT OF ERROR

In defendant's sole assignment of error, he argues that the trial court failed to rule on his motion to suppress, thereby hindering his ability to obtain appellate review of his "motion to suppress hearing" under **Crosby**. Defendant asks that this matter be remanded for a new hearing on his motion to suppress.

In reviewing the record, we note that defendant's motion-to-suppress hearing was presided over by Judge Comeaux on April 6, 2010. The transcript of that hearing indicates that the only issue of concern to the trial court was whether defendant gave free and voluntary consent to search his vehicle. Judge Comeaux noted that he would take the matter under advisement, and he asked the state and defense to submit any cases relevant to the issue before April 16, 2010. Judge Comeaux did not ask for any written memoranda on the issue, and none were filed in the record. After a thorough review of the record, we have found no minute entry or other documentation to reflect that defendant's motion to suppress had been ruled upon by Judge Comeaux.

A minute entry from a pre-trial conference on January 24, 2011, indicates that Judge Leonard was the judge of record in this case on that date. However, the record does not reflect why defendant's case was transferred from Judge Comeaux to Judge Leonard. On April 21, 2011, Judge Leonard accepted defendant's no contest plea under **Crosby**, and defendant was sentenced to serve fifteen years of imprisonment at hard labor. At the time of defendant's plea, defense counsel clearly informed the trial court that defendant was reserving "his rights to appeal his motion to suppress hearing." Nothing in the record reflects that Judge Leonard ever ruled on defendant's motion to suppress.

On October 14, 2011, this court ordered the St. Mary Parish Clerk of Court (Clerk) to supplement the record in this case with a transcript of the hearing on defendant's motion to suppress and with a minute entry or order reflecting a denial of

the motion to suppress. In response, the Clerk's office provided this court with the requested transcript. However, the Clerk's office also sent to this court a letter that stated it could not find a minute entry or order to reflect that the motion to suppress was denied.

Thus, the record establishes that defendant pled no contest under **Crosby**, expressly reserving his right to appellate review of what he apparently believed to be a denial of his motion to suppress. However, there is no evidence in the record that a ruling on the motion to suppress was made by either district court judge who handled defendant's case. Appellate review is not possible in the absence of a trial court ruling on the motion to suppress. Therefore, defendant's case must be remanded for such a ruling. See **State v. Floyd**, 07-0216 (La. 10/5/07), 965 So.2d 865 (per curiam); **State v. Walton**, 06-2553 (La. 6/1/07), 957 So.2d 133-34 (per curiam); **State v. Guillory**, 06-2544 (La. 6/1/07), 957 So.2d 132-33 (per curiam).

In addition to requesting a remand for a ruling on his motion to suppress, defendant also requests a remand for an entirely new hearing on his motion to suppress. Based on the record before us, we do not agree that defendant is entitled to a new hearing.

Accordingly, on remand, the district court is instructed to render a ruling, within thirty days of the finality of this decision, on the merits of any issue raised by defendant's motion to suppress. If the court rules favorably to defendant on the motion, it shall provide him with the opportunity of withdrawing his plea and pleading anew. In the event of an adverse ruling on his motion, the trial court shall maintain the no contest plea and defendant may again appeal his conviction and sentence on the basis of his original **Crosby** reservation. See **Floyd**, 965 So.2d at 865; **Walton**, 957 So.2d at 134; **Guillory**, 957 So.2d at 133.

REMANDED FOR FURTHER PROCEEDINGS.