**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2011 KA 1981**

**STATE OF LOUISIANA**

**VERSUS**

**JILL S. HILSHER**

**Judgment Rendered: May 2, 2012**

**Appealed from the**
**Twenty-Second Judicial District Court**
**In and for the Parish of St. Tammany, State of Louisiana**
**Trial Court Number 505890**

**Honorable Allison H. Penzato, Judge Presiding**

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**Jill S. Hilsher**

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**BEFORE: WHIPPLE, KUHN AND GUIDRY, JJ.**

**WHIPPLE, J.**

The defendant, Jill S. Hilsher, was charged by bill of information with possession of buprenorphine, a Schedule III controlled dangerous substance, in violation of LSA-R.S. 40:968. She pled not guilty. She filed a motion to suppress the evidence. A hearing was held on the matter, and the motion was denied. Following a jury trial, the defendant was found guilty as charged. The State subsequently filed a multiple offender bill of information. The defendant was adjudicated a second-felony habitual offender and sentenced to five years imprisonment at hard labor without benefit of probation or suspension of sentence. The defendant now appeals, designating two assignments of error. We affirm the defendant's conviction, habitual offender adjudication, and sentence.

## FACTS

On the evening of March 25, 2011, the defendant was driving her boyfriend's GMC Sierra in the Target parking lot in Slidell. The defendant struck a parked vehicle. She got out of the Sierra, observed that the damage was minimal, and went inside Target. The owner of the vehicle that was struck called the police. Officer Bradford Hoopes, with the Slidell Police Department, arrived at the scene and arrested the defendant for hit and run.

Pursuant to her consent, Officer Hoopes searched the defendant's purse and found three pill bottles. Two of the bottles had an orange tint and the third was a small Tylenol bottle. The name on the label on one of the bottles was "Kenneth Hilton," the defendant's boyfriend. Officer Hoopes opened that bottle and found one-half of a pill of Suboxone (buprenorphine). Thus, the defendant was also arrested for possession of Suboxone. Officer Hoopes did not open the other two pill bottles.

The defendant was transported to the Slidell Jail. During processing, Officer Keith Geauthreaux opened the other two pill bottles that were in the defendant's

purse and found more Suboxone pills in them. The larger pill bottle, which had the defendant's name on the label (for a Soma prescription) had one and one-half pills of Suboxone; the Tylenol bottle contained about two and one-half pills of Suboxone.

Kenneth Hilton testified at trial that he takes prescription Suboxone. He stated that the Suboxone is in an eighty-count bottle and, as such, he carries a portion of the medication in a smaller Tylenol bottle. According to Hilton, the defendant dropped him off in his Sierra at work on the day of the hit and run. Hilton left his Suboxone in his Sierra. He explained that the Suboxone found in the Tylenol bottle was his, and that the defendant was going to bring him his medication at work after she went to Target. Hilton could not explain why the defendant had three different bottles, each with Suboxone in them.

The defendant did not testify at trial.

## ASSIGNMENT OF ERROR NO. 1

In her first assignment of error, the defendant argues the trial court erred in denying the motion to suppress. Specifically, the defendant contends that she should have been Mirandized a second time (after she got to the police station) because a separate, distinct investigation had begun there.[1]

Before a confession can be introduced into evidence, the State must affirmatively show that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. LSA-R.S. 15:451. The State must also establish that an accused who makes a confession

[1]In the counseled brief, the defendant notes that she gave a statement on the scene (at the parking lot) and a statement at the jail, and argues that there "are multiple problems with both" statements. Our discussion, however, addresses only the admission(s) the defendant made at the jail because the motion-to-suppress hearing was directed to what the defendant said at the jail.

during custodial interrogation was first advised of his Miranda rights. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Since the general admissibility of a confession is a question for the trial court, its conclusions on the credibility and weight of the testimony are accorded great weight and will not be overturned unless they are not supported by the evidence. State v. Patterson, 572 So. 2d 1144, 1150 (La. App. 1st Cir. 1990), writ denied, 577 So. 2d 11 (La. 1991). However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589 (La. 12/1/09), 25 So. 3d 746, 751.

The trial court must consider the totality of the circumstances in determining whether or not a confession is admissible. State v. Hernandez, 432 So. 2d 350, 352 (La. App. 1st Cir. 1983). Testimony of the interviewing police officer alone can be sufficient to prove a defendant's statements were freely and voluntarily given. State v. Mackens, 35,350 (La. App. 2d Cir. 12/28/01), 803 So. 2d 454, 463, writ denied, 2002-0413 (La. 1/24/03), 836 So. 2d 37.

In determining whether a ruling on a motion to suppress is correct, we are not limited to the evidence adduced at the hearing on that motion. We may consider all pertinent evidence offered at the trial. State v. Fleming, 457 So. 2d 1232, 1235 n.3 (La. App. 1st Cir.), writ denied, 462 So. 2d 191 (La. 1984). In denying the motion to suppress, the trial court found that at the scene of her arrest, the defendant was given her Miranda warnings and, at no time, did she invoke her right to remain silent or request an attorney. Officer Hoopes testified at trial and at the motion-to-suppress hearing that he Mirandized the defendant at the scene of the hit and run, but did not Mirandize the defendant again at the police station. In her brief, the defendant notes that she admitted to the police "making contact" with the other vehicle after being Mirandized at the scene of the hit and run. However, she was not Mirandized at the jail regarding her possession of Suboxone. The defendant suggests that a traffic incident and possession of drugs are separate

crimes with separate elements. Accordingly, she asserts that with "a new and separate investigation that was completely different and after obtaining new probable cause to detain, a new Miranda warning is necessary."

This argument is meritless. Aside from citing Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932), (a seminal double jeopardy decision), the defendant cites no authority for her position. In State v. Harvill, 403 So. 2d 706, 709 (La. 1981), the defendant did not dispute the fact that he was previously advised of his rights, but instead characterized the taped interview as a second distinct interrogation session which mandated an independent explanation of the Miranda warnings. The Supreme Court rejected the defendant's claim and found that absent some significant break in the interrogation process, such as a specific request for assistance of counsel, repetition of the Miranda warnings prior to the taping of defendant's statement is not required.

Moreover, there was no "separate investigation" as suggested by the defendant. There was one brief, ongoing investigation in the Target parking lot when Officer Hoopes discovered that the defendant had both hit another vehicle and was in possession of Suboxone. Officer Hoopes testified at trial that after he spoke to the victim, Ms. Paucier, an officer brought the defendant to Hoopes. The first thing Officer Hoopes did was advise the defendant of her Miranda rights. After he spoke with her for a bit, the defendant admitted to Officer Hoopes that she hit another vehicle, checked for damage, then went inside the store. Officer Hoopes placed the defendant under arrest for hit and run. Immediately thereafter, Officer Hoopes asked the defendant if she had any drugs or weapons. The defendant responded that she did not and that Officer Hoopes could search her purse. Officer Hoopes searched her purse and found the Suboxone. He then arrested the defendant also for possession of suspected Suboxone. Thus, the

defendant had already been arrested for possession of Suboxone before even being brought to the jail and making any subsequent statement about those drugs.[2]

Officer Hoopes went to the jail to speak to the defendant after being told by an officer that more Suboxone was found in the defendant's purse. Officer Hoopes did not Mirandize the defendant again, but asked her about the other Suboxone pills. The defendant admitted that the pills were hers, but responded that she did not know it was illegal to have the Suboxone in her possession. The defendant did not need to be Mirandized again at the jail because Officer Hoopes had Mirandized her only about thirty minutes before in the Target parking lot. As Officer Hoopes stated at the motion-to-suppress hearing, he was at the parking lot scene for about twenty minutes, and the time from when he left the parking lot until he arrived at the jail was fifteen minutes.

Except where the circumstances indicate coercion, there is no necessity to reiterate the Miranda warnings at each phase of an interrogation. State v. Kimble, 546 So. 2d 834, 840 (La. App. 1st Cir. 1989). A requirement that the Miranda warnings be repeated before each separate interrogation period would quickly degenerate into a formalistic ritual. State v. Harvill, 403 So. 2d at 709.

In Maguire v. United States, 396 F. 2d 327, 331 (9th Cir. 1968), cert. denied, 393 U.S. 1099, 89 S. Ct. 897, 21 L. Ed. 2d 792 (1969), the defendant was properly advised of his Miranda rights three days prior to his interrogation by another law enforcement officer. Despite a deficient recitation of Miranda rights prior to the latter interrogation, the court held that the proper recitation of Miranda rights three days earlier was sufficient to defeat the claim by the defendant that he had not been advised of his Miranda rights. See Kimble, 546 So. 2d at 841 (where, upon the

[2]We note as well that it appears from the record that the defendant was Mirandized again at the jail. Officer Steven Gilley, with the Slidell Police Department, who was also at the hit-and-run scene, transported the defendant to jail. Officer Gilley testified at trial that a trainee and reserve officer, Officer Carswell, was with him at Target and at the jail. According to Officer Gilley, Officer Carswell advised the defendant of her Miranda rights at jail and had her sign a Miranda rights form. (However, there is no waiver-of-rights form in evidence.)

defendant's admission that he received his Miranda rights on September 2, this court affirmed the defendant's conviction despite a technically deficient recitation of Miranda rights that preceded the defendant's confession two days later on September 4).

In this case, less than one hour had passed, from the time the defendant was given her Miranda rights at the scene and made an oral admission to possessing and taking Suboxone, to the time she again admitted at the jail to possessing Suboxone. We are convinced the defendant was well aware of her rights when she talked a second time with Officer Hoopes at the jail about the Suboxone she had in her purse. Accordingly, the trial court did not err or abuse its discretion in denying the motion to suppress the defendant's admission.

This assignment of error is without merit.

## ASSIGNMENT OF ERROR NO. 2

In her second assignment of error, the defendant argues the evidence was insufficient to support the conviction. Specifically, the defendant contends that her boyfriend had a valid prescription for Suboxone and that she was bringing the prescription medication to him.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). See LSA-C.Cr.P. art. 821(B); State v. Ordodi, 2006-0207 (La. 11/29/06), 946 So. 2d 654, 660; State v. Mussall, 523 So. 2d 1305, 1308-09 (La. 1988). The Jackson standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial,

for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See State v. Patorno, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So. 2d 141, 144.

Buprenorphine is a Schedule III controlled dangerous substance. LSA-R.S. 40:964, Schedule III(D)(2)(a). It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule III unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner. LSA-R.S. 40:968(C).

Louisiana Revised Statute 40:991 provides in pertinent part:

> A. An individual who claims possession of a valid prescription for any controlled dangerous substance as a defense to a violation of the provisions of the Uniform Controlled Dangerous Substances Law shall have the obligation to produce sufficient proof of a valid prescription to the appropriate prosecuting office. Production of the original prescription bottle with the defendant's name, the pharmacist's name, and prescription number shall be sufficient proof of a valid prescription as provided for in this Section.
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> * * * * *
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> C. Any individual who claims the defense of a valid prescription for any controlled dangerous substance shall raise this defense before commencement of the trial through a motion to quash.

Louisiana Revised Statute 40:990(A) provides:

> It shall not be necessary for the state to negate any exemption or exception set forth in this part in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this part, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

Thus, the defendant bears the burden of proving that she possessed otherwise illegal drugs pursuant to a valid prescription. State v. Ducre, 604 So. 2d 702, 708 (La. App. 1st Cir. 1992). The State is not required to prove the absence of a prescription. Instead, the defendant has the burden to rebut the State's charges by asserting an affirmative defense. See State v. Rodriguez, 554 So. 2d 269, 270 (La.

App. 3d Cir. 1989), <u>writ granted in part, denied in part on other grounds</u>, 558 So. 2d 595 (La. 1990) (the burden of showing the controlled dangerous substance was possessed pursuant to a valid prescription was on the defendant as an affirmative defense to the crime of possession).

The defendant contends that Hilton had the valid prescription for Suboxone, and that she was bringing the Suboxone to him. She argues that, as such, the State did not prove beyond a reasonable doubt that she possessed the Suboxone without a valid prescription.

Testimony and physical evidence introduced at the trial established that the defendant possessed three different pill bottles, all of which had Suboxone in them. The defendant offered no evidence to prove that she possessed otherwise illegal drugs pursuant to a valid prescription. When Officer Hoopes found the pill bottle with Hilton's name on it in the defendant's purse, the defendant, while stating that Hilton was her boyfriend, did not explain to the officer that she was carrying the Suboxone for Hilton, or that she was bringing Hilton his medication. Further, after more Suboxone was found in the defendant's purse at the jail, Officer Hoopes asked her why she had more Suboxone. The defendant's response was that she did not know it was illegal to have the Suboxone. Even had the defendant been in the process that night of bringing Hilton his Suboxone, such a scenario would not have explained why there were Suboxone pills in three different pill bottles. According to his own testimony, Hilton sometimes kept his Suboxone pills in a small Tylenol bottle. But his testimony showed only that his pills would have been in that one bottle, and he had no explanation for why they would have been in the other pill bottles the defendant was carrying in her purse. At trial, the following exchange occurred between Hilton and the prosecutor.

> Q. I'll try another one. Did you put your suboxone in this bottle?
> A. No.
> Q. Did you put your suboxone in this bottle?

A. No.
Q. Did you claim you put your suboxone in this bottle?
A. That's correct.
Q. Do you have any idea how it got in these two bottles?
A. I don't have any idea.
Q. Any idea how these bottles got in her purse?
A. She was going to probably return them to me.
Q. What?
A. She was probably going to return the one to me. Before the store closed.
Q. All three bottles?
A. No, just the one.

Thus, the evidence showed that the defendant possessed Suboxone for which she did not have a prescription and for which there was no plausible explanation to show how she legally possessed Suboxone pills in three different pill bottles. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. See State v. Moten, 510 So. 2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So. 2d 126 (La. 1987). The jury heard the testimony and viewed the other evidence presented to it at trial and found the defendant guilty. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. State v. Taylor, 97-2261 (La. App. 1st Cir. 9/25/98), 721 So. 2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See State v. Mitchell, 99-3342 (La. 10/17/00), 772 So. 2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact

does not render the evidence accepted by the trier of fact insufficient. State v. Quinn, 479 So. 2d 592, 596 (La. App. 1st Cir. 1985). In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. State v. Higgins, 2003-1980 (La. 4/1/05), 898 So. 2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S. Ct. 182, 163 L. Ed. 2d 187 (2005). The jury's verdict reflected the reasonable conclusion that the defendant possessed Suboxone without a valid prescription. In finding the defendant guilty, the jury clearly rejected the defense's theory of innocence. See Moten, 510 So. 2d at 61.

After a thorough review of the record, we find that the evidence supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence offered by the defense, that the defendant was guilty of possession of buprenorphine (Suboxone).

This assignment of error is without merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**