

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 1127

*JLW*  
*JP*  
*JME*

STATE OF LOUISIANA

VERSUS

REGGIE ALLEN ESTAY

Judgment Rendered: December 21, 2011

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Appealed from the  
Thirty-Second Judicial District Court  
In and for the Parish of Terrebonne, Louisiana  
Trial Court Number 572,832

Honorable Randall L. Bethancourt, Judge

\* \* \* \* \*

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Defendant – Appellant  
Reggie Allen Estay

\* \* \* \* \*

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Reggie Allen Estay, was charged by bill of information with one count of possession with intent to distribute Soma<sup>1</sup> (count I), a violation of La. R.S. 40:969; and one count of obtaining a controlled dangerous substance from a health care practitioner without disclosing an existing prescription for the controlled dangerous substance, (count II), a violation of La. R.S. 40:971(B)(1)(i). He pled not guilty on both counts and moved to quash the bill of information. Following a hearing, the motion to quash was denied. Thereafter, he pled guilty to counts I and II, reserving his right to seek review of the court's ruling on the motion to quash. See State v. Crosby, 338 So.2d 584 (La. 1976). On each count, he was sentenced to four years at hard labor, suspended, subject to serving two years at hard labor and three years of probation. The trial court ordered the sentences would run concurrently with each other. The defendant now appeals, challenging the ruling on the motion to quash. For the following reasons, we affirm the convictions and sentences.

#### VENUE

In assignment of error number one, the defendant contends the trial court erred in considering the location of the arrest as a basis for the jurisdiction of the Thirty-Second Judicial District Court over the case because location of arrest is not an element of the offense under La. R.S. 40:971(B)(1)(i). In assignment of error number two, the defendant contends the trial court erred in considering the location of the drugs at the FedEx office in Houma as a basis for the jurisdiction of the Thirty-Second Judicial District Court over the case because the defendant never took possession of the drugs. In assignment of error number three, the defendant contends the trial court erred in considering the defendant's legal prescription for

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<sup>1</sup> Soma is a brand name for carisoprodol. **Physicians' Desk Reference** 323 (2005). Carisoprodol is a controlled dangerous substance. La. R.S. 40:964, Sched. IV, (B)(52) (prior to amendment by 2010 La. Acts No. 810, §§ 1 & 2).

Soma, which was obtained in Terrebonne Parish, as a basis for the jurisdiction of the Thirty-Second Judicial District Court over the case because having a valid prescription is not an element of the offense under La. R.S. 40:971(B)(1)(i).

Louisiana Constitution article I, § 16 requires that every person charged with a crime has the right to an impartial trial “in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law.”

Louisiana Code of Criminal Procedure article 611(A) provides:

All trials shall take place in the parish where the offense has been committed, unless the venue is changed. If acts constituting an offense or if the elements of an offense occurred in more than one place, in or out of the parish or state, the offense is deemed to have been committed in any parish in this state in which any such act or element occurred.

The *locus delicti* of a crime must be determined from the nature of the crime alleged and the location of the act or acts constituting it. **State v. Hayes**, 2001-3193 (La. 1/28/03), 837 So.2d 1195, 1197 (per curiam).

Louisiana Revised Statutes 40:971, in pertinent part, provides:

B. (1) It shall be unlawful for any person knowingly or intentionally:

....

(i) To obtain or seek to obtain any controlled dangerous substance or a prescription for a controlled dangerous substance from a health care practitioner, while being supplied with any controlled dangerous substance or a prescription for any controlled dangerous substance by another health care practitioner, without disclosing the fact of the existing prescription to the practitioner from whom the subsequent prescription for a controlled dangerous substance is sought. . . . As used in this Section, the term “existing” shall mean the period of time within which the prescription was prescribed to be taken.

On a pretrial motion, the trial judge is not required to find that a crime charged was committed beyond a reasonable doubt, but only that venue is proper by a preponderance of the evidence. **State v. Dudley**, 2006-1087 (La. App. 1<sup>st</sup> Cir. 9/19/07), 984 So.2d 11, 25, writ not considered, 2008-1285 (La. 11/20/09), 25 So.3d 783.

When a trial court denies a motion to quash, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion. See State v. Odom, 2002-2698 (La. App. 1<sup>st</sup> Cir. 6/27/03), 861 So.2d 187, 191, writ denied, 2003-2142 (La. 10/17/03), 855 So.2d 765. However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Smith, 99-2094, 99-2015, 99-2019, 99-0606 (La. 7/6/00), 766 So.2d 501, 504.

The defendant filed a pretrial motion to quash, arguing the offenses alleged by the State occurred outside the Parish of Terrebonne, and thus, outside the jurisdiction of the trial court.

Louisiana State Police Trooper Craig Rhodes testified at the hearing on the motion to quash. On March 29, 2010, he investigated a report that the defendant was attempting to obtain a shipment of Soma pills at the FedEx facility on Louisiana Highway 311 in Terrebonne Parish. Trooper Rhodes arrived at the facility to find the defendant stumbling around the lobby and the package of Soma pills located on the counter. While an employee was attempting to locate other packages for the defendant, the defendant stumbled out of the facility and approached his vehicle. Trooper Rhodes followed the defendant outside, identified himself, and told the defendant about the investigation. Trooper Rhodes asked the defendant if he had anything illegal on his person, and the defendant retrieved a plastic prescription bottle from his pocket and attempted to throw it between the front seats of his car. The bottle had a prescription label with another person's name on it for the drug Ambien. It contained four Soma pills.

The package at the FedEx facility was addressed to the defendant and was from Dr. Moran in New York. The defendant consented to the package being opened, and one hundred and fifty-one Soma pills were contained therein. After

being advised of his **Miranda**<sup>2</sup> rights, the defendant indicated he was under the care of Dr. Christopher Cenac, a physician in Terrebonne Parish, and had an “ongoing prescription” for Soma from him. Trooper Rhodes asked the defendant if he had notified either Dr. Cenac or Dr. Moran that he was under the care of the other doctor and receiving prescriptions for the same controlled drug from both doctors. The defendant replied he had not informed either doctor. A subsequent search of the defendant’s home in Larose, in Lafourche Parish, revealed older packaging from the same originating address on the package of Soma pills.

The trial court denied the motion to quash, noting that “there was an attempt” at the FedEx facility in Terrebonne Parish. Based on the record, we find no error in the trial court’s ruling that venue was proper in Terrebonne Parish. The violation of La. R.S. 40:971(B)(1)(i) was deemed to have been committed in Terrebonne Parish because acts constituting the offense or elements of the offense occurred in that parish. The defendant sought to obtain the Soma pills, a controlled dangerous substance, in the package from Dr. Moran while being supplied with Soma pills by Dr. Cenac without disclosing the fact of Dr. Cenac’s prescription for Soma to Dr. Moran. Moreover, the force of the defendant’s criminal act would be felt in Terrebonne Parish where he wrongfully sought to obtain the Soma pills from Dr. Moran even though he was obtaining Soma pills from Dr. Cenac. See Hayes, 837 So.2d at 1199 (“the place where the effect of the criminal conduct occurs is an important consideration in determining whether the charged criminal acts have substantial contacts with the venue chosen for prosecution”); Dudley, 984 So.2d at 25-26 (“Additionally, because the criminal conduct at issue depleted the funds of DHH, the force or effect of the Medicaid fraud and money laundering was felt in East Baton Rouge Parish.”).

These assignments of error are without merit.

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<sup>2</sup> **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

## **CONCLUSION**

For the foregoing reasons, the defendant's convictions and sentences are affirmed.

**CONVICTIONS AND SENTENCES AFFIRMED.**