

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

NUMBER 2011 KA 0966

STATE OF LOUISIANA

VERSUS

RENEE H. CRAPPS

Judgment Rendered: December 21, 2011

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Appealed from the  
Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany, Louisiana  
Trial Court Number 478,931

Honorable Raymond S. Childress, Judge

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Walter P. Reed, District Attorney  
Nick F. Noriea, Jr., Asst. District Attorney  
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and  
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Attorneys for  
State – Appellant

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Covington, LA

Attorney for  
Defendant – Appellee  
Renee H. Crapps

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

JEW  
GAP  
PMC

WELCH, J.

The defendant, Renee H. Crapps, was charged by bill of information with possession of hydrocodone in combination with one or more active non-narcotic ingredients (a Schedule III controlled dangerous substance pursuant to La R.S. 40:964), a violation of La. R.S. 40:968(C). The defendant entered a plea of not guilty. The defendant later filed a motion to quash the bill of information, claiming that she has a valid prescription for the controlled dangerous substance forming the basis of the charge and further concluding that the bill of information fails to state a violation of law. After a hearing, the trial court granted the defendant's motion to quash the bill of information. The State now appeals, arguing that the trial court erred in granting the defendant's motion to quash the bill of information. For the following reasons, we affirm the ruling of the trial court.

#### **ASSIGNMENT OF ERROR**

In an original and reply brief, the State herein argues that the trial court erred and abused its discretion in granting the defendant's motion to quash the bill of information. The State notes that at the hearing on the motion to quash, the State introduced the defendant's pharmacy records and a scientific analysis report to show that the pills in the defendant's possession in this case did not match the defendant's prescription. The State further notes that the defendant then changed the basis of her motion and argued that she did not have the necessary criminal intent for possession. The State presumes that the defendant, without presenting any evidence of such, is contending that she had her husband's prescription and therefore lacked the requisite criminal intent. The State argues that criminal intent, a defense on the merits, is not a proper consideration on a motion to quash.

In response, the defendant contends that she had a valid prescription for the possession of hydrocodone and is not raising the lack of intent as a defense for the

offense. The defendant notes that the trial court found that she had a valid prescription and therefore granted the motion to quash. The defendant further notes that at the hearing, the State argued that the pill in question, a Watson 540, contained hydrocodone in combination with acetaminophen, the active ingredient in Tylenol. The defendant notes that acetaminophen is not a controlled dangerous substance and is legal to possess. The defendant concludes that the trial court's ruling should not be disturbed.

It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule III unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner. La. R.S. 40:968(C). Pursuant to La. C.Cr.P. arts. 532 and 535, as amended by 2009 La. Acts No. 265, § 2, if an individual charged with a violation of the Uniform Controlled Dangerous Substances Law has a valid prescription for that substance, he has grounds to file a motion to quash the related charge. Additionally, La. R.S. 40:991, which was added by 2009 La. Acts No. 265, § 1 and thus became effective August 15, 2009, provides:

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.

B. As used in this Section, "controlled dangerous substance" shall have the same meaning as provided in R.S. 40:961(7) and "prescription" shall have the same meaning as provided in R.S. 40:961(33).

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.

The defendant bears the burden of proving that he possessed otherwise illegal drugs pursuant to a valid prescription. See La. R.S. 40:990(A); **State v.**

**Lewis**, 427 So.2d 835, 839-40 (La. 1982) (on rehearing); **State v. Ducre**, 604 So.2d 702, 708-09 (La. App. 1<sup>st</sup> Cir. 1992). Louisiana Revised Statutes 40:961(33) provides the definition of a prescription as follows:

“Prescription” means a written request for a drug or therapeutic aid issued by a licensed physician, dentist, veterinarian, osteopath, or podiatrist for a legitimate medical purpose, for the purpose of correcting a physical, mental, or bodily ailment, and acting in good faith in the usual course of his professional practice.

When a trial court rules on 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, 99-0606 (La. 7/6/00), 766 So.2d 501, 504.

Herein at the hearing on the motion to quash, the State filed the St. Tammany Parish Sheriff’s Office Crime Laboratory Scientific Analysis Report into evidence to show that the defendant possessed a prescription vial containing ten oval-shaped, blue-colored tablets marked “WATSON 540” containing hydrocodone. Further, the State filed the applicable page from a “Drug Bible” (frequently used as a reference in narcotics cases) that shows “WATSON 540” contains ten milligrams of hydrocodone bitartrate and five hundred milligrams of acetaminophen. Also admitted into evidence was the defendant’s Northshore Discount Pharmacy record showing that she had prescriptions described as “HYDROCOD/APAP 10/650 TAB.” Finally, the State filed the defendant’s husband’s Abita Pharmacy records showing that he had prescriptions described as “HYDROCODONE/APAP 10/500 T.” On this basis the State argued that the pills that the defendant possessed were not the pills that were prescribed for her.

The defense attorney argued that the defendant lacked the *mens rea* to commit the instant offense because first, she has a prescription for hydrocodone,

albeit for pills that contain a different amount of acetaminophen than the one she possessed in this case; and second, her husband has a prescription for the pills that were in her possession. The defense attorney further noted that when the defendant left home, she did not know or did not remember that she had her husband's pills in her possession. The defense attorney concluded that both prescriptions negated the issue of criminal intent. The defense attorney further argued that the defendant's vehicle was an extension of her home, contending that she should not be criminalized for her husband's pills being in her vehicle just as it would be legal for the pills to be in their home. The trial court, agreeing with the defense, granted the motion to quash.

Louisiana Revised Statutes 40:968(C) exempts from criminal liability persons who possess a Schedule III drug pursuant to a valid prescription as provided in La. R.S. 40:978, which states in pertinent part (prior to its amendment by 2011 La. Acts No. 155):

B. Except when dispensed or administered directly by a practitioner or administered by a person authorized to administer by such practitioner, other than a pharmacist, to an *ultimate user*, no controlled dangerous substance included in Schedule III and IV which is a prescription drug as determined under the Louisiana Revised Statutes may be dispensed or administered without a written or oral prescription. Such prescription may not be filled or refilled more than six months after the date thereof or refilled more than five times after the date of the prescription, unless renewed by the practitioner. (Emphasis added.)

The definition of an ultimate user is contained in La. R.S. 40:961(40): “‘Ultimate user’ means a person who lawfully possesses a controlled dangerous substance for his own use *or for the use of a member of his household* or for administration to an animal owned by him or by a member of his household.” (Emphasis added.) In granting the motion to quash, the trial court determined that the defendant possessed the hydrocodone pursuant to a valid prescription. Pursuant to La. R.S. 40:991, the defendant properly raised the affirmative defense of a valid

prescription before commencement of the trial through a motion to quash. We find that it was reasonable for the trial court to conclude that the defendant was in lawful possession of the controlled dangerous substance at issue. Based on the foregoing, we find that the trial court did not err or abuse its discretion in granting the motion to quash the bill of information. The State's sole assignment of error is without merit.

### **CONCLUSION**

For the foregoing reasons, the trial court's ruling granting the defendant's motion to quash the bill of information is affirmed.

**AFFIRMED.**