NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 0381

STATE OF LOUISIANA

VERSUS

RHONDA L. GOODSON

Judgment Rendered: DEC 29 2011

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit number 446598

Honorable William J. Knight, Presiding

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

GUIDRY, J.

The defendant, Rhonda L. Goodson, was charged by bill of information with possession of cocaine, 400 grams or more, a violation of La. R.S. 40:967(F)(1)(c). She pled not guilty and, following a trial by jury, was found guilty as charged. The trial court sentenced the defendant to eighteen years at hard labor without the benefit of parole, probation, or suspension of sentence. The defendant was also ordered to pay a fine of two hundred fifty thousand dollars. The defendant now appeals, designating three assignments of error:

1. The defendant was denied due process when the state withheld evidence until the date of trial in violation of Kyles v. Whitley.

2. The defendant was denied due process under the Sixth Amendment of the United States Constitution when she was not allowed to confront her accuser.

3. The defendant was severely prejudiced when the court improperly admitted her arrest record.

Finding no merit in the assigned errors, we affirm the defendant's conviction and sentence.

FACTS

On March 12, 2008, at approximately 7:30 a.m., the defendant was traveling eastbound on Interstate 12 in St. Tammany Parish when she was stopped by Louisiana State Trooper Jason Lamarca. Lamarca stopped the defendant after observing her vehicle swerve off and back onto the interstate several times. The defendant advised Lamarca that she was traveling from Texas to Mississippi to spend "a couple of hours" at a casino in Mississippi. Lamarca observed that the defendant appeared nervous. Believing that the defendant's claim to be traveling for a long distance to gamble for a short period of time was suspicious, Lamarca questioned her further. Lamarca questioned the defendant regarding whether or not she had any previous arrests, and she responded that she did not. Lamarca later learned that the defendant had an arrest for illegal carrying of a weapon in the State

of Texas. Lamarca requested, and was granted, consent to search the defendant's vehicle.

Lamarca, with the assistance of Louisiana State Trooper Brad Tate, searched the defendant's vehicle. In the defendant's trunk, the troopers found a large bag that appeared to be a fifty-pound sack of dog food. However, when the bag was opened, 3 large bundles of suspected cocaine were found inside. The approximate weight was later determined to be 3.3 kilograms. The traffic stop and subsequent search were captured on video surveillance footage from the police vehicle. However, it was later determined that the audio component of the surveillance equipment was inoperative.

A subsequent search of the defendant's vehicle revealed several receipts for the purchase of dog food, a business card, and some other papers. While inside the interrogation room, the defendant picked up one of the papers or receipts and ingested it. It was never recovered.

ASSIGNMENTS OF ERROR ONE & TWO

In these assignments of error, the defendant argues she was denied due process when the state withheld evidence until the date of trial, in violation of Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). Specifically, the defendant argues that, despite several requests, the state failed to disclose personal work records regarding Louisiana State Trooper Brad Tate's termination until the date of the trial. The defendant claimed Trooper Tate's work records would include information indicating that he had been suspected of intentionally failing to employ the audio recorder in his vehicle during traffic stops. The defendant further asserts the state's late disclosure of Trooper Tate's work records made it extremely difficult for the defense to subpoena him to appear at the defendant's trial.

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed. 215 (1963). Favorable evidence includes both exculpatory evidence and evidence impeaching the testimony of a witness when the reliability or credibility of that witness may be determinative of the defendant's guilt or innocence, or when it may have a direct bearing on the sentencing determination of the jury. United States v. Bagley, 473 U.S. 667, 676 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985); Giglio v. United States, 405 U.S. 150, 153-54, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972). Regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Kyles, 514 U.S. at 433-34, 115 S.Ct. at 1565, (citing Bagley, 473 U.S. at 682, 105 S.Ct. at 3383). Bagley's touchstone of materiality is a "reasonable probability" of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial." Kyles, 514 U.S. at 434, 115 S.Ct. at 1566; Bagley, 473 U.S. at 678, 105 S.Ct. at 3381.

Herein, on May 14, 2009, the defendant filed a Request and Motion for Discovery, Disclosure, Inspection, Copying, and for a Bill of Particulars under

Kyles, Marshall,[1] Brady, Bagley, Giglio, and La. C. Cr. P. art. 716 *et seq.* Thereafter, on January 13, 2010, the defendant filed a Motion for Discovery specifically requesting access to the personnel file and/or termination records of Trooper Tate. Prior to trial, the court noted that it had become aware that the relevant personnel documentation had not been provided in response to a subpoena by the defense. The court further noted that the confusion on the production of the documentation likely resulted from confusion as to whether the Louisiana State Police Commission, which is the agency reviewing terminations, or the Louisiana State Police Office was in possession of the records. The court went on to note that it personally contacted the State Police and requested that the documents be provided to the court for an in camera inspection. The judge noted that in order to expedite the production of the documents, he personally drove to Baton Rouge State Police Troop A to pick up the information. Counsel for the defendant personally thanked the court for the extra effort in securing the documentation.

Upon review of the documents provided, the court determined that Brady material existed in Trooper Tate's file. The court provided the defense with copies of the relevant documentation. In response to a request by the defense, the court agreed to issue an instanter subpoena for Trooper Tate. On the second day of the trial, the court noted:

> The Court had the subpoena delivered to the sheriff's department last night, who in turn delivered it to Tangipahoa Parish, who in turn delivered it to St. Helena Parish who attempted service on former Trooper Tate at his 31141 Highway 16, Amite, Louisiana, address at around 2200 hours last night. No response to the subpoena. The Court understands that perhaps Mr. Tate is employed by St. John Parish Sheriff's Office. I do not know that for a fact. It took me five minutes and three phone calls. If you want to follow up, follow up. That's the best I can tell you.

Defense counsel responded, "Yes, sir."

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[1] State v. Marshall, 94-0461(La. 9/5/95), 660 So. 2d 819.

The record in this case reflects that, at the trial, the defendant did not object and/or move for a recess on the basis of a discovery violation or her inability to have Trooper Tate served with a subpoena. Because the defendant's claim that she was prejudiced by the state's late discovery and failure to subpoena Trooper Tate was not raised below, it will not be considered for the first time on appeal. See La. C. Cr. P. art. 841A. Moreover, even if we were to consider the defendant's claim, we would find it meritless. We note that Trooper Tate was not the trooper who actually stopped the defendant. It is also worth noting that the defendant provided written consent to search the vehicle. Thus, it is unlikely that the information regarding the circumstances surrounding Trooper Tate's termination would have likely produced a different outcome in this trial. The defendant failed to show any substantial prejudice such that she was deprived of any reasonable expectation of a fair trial.

These assignments of error are without merit.

ASSIGNMENT OF ERROR THREE

In her final assignment of error, the defendant contends the trial court erred in permitting the state to introduce at trial evidence of other crimes and/or bad acts. Specifically, the defendant contends the state should not have been allowed to introduce evidence regarding her prior arrest for illegal carrying of a weapon. The defendant asserts the evidence of this unrelated offense was not relevant and was used only to depict her as a person of poor character.

Prior to commencing the second day of the defendant's trial, the following relevant exchange took place:

[PROSECUTOR]:

> Your Honor, I do want to put something on the record, with permission, while we have time. The report that was generated by Trooper Lamarca indicates that he asked Ms. Goodson had she ever been arrested and she said no. This is in the report. Yesterday there was conversation about this and Mr. Alexander [defense counsel]

indicated – and I didn't know and I'm sure he didn't know, and I know he wasn't trying to mislead anybody and neither was I. We didn't have the report in front of us, we were just talking. I'm certainly not implying there was any attempt to mislead anybody. But I do want to say that the report does say that Deputy Lamarca asked Ms. Goodson if she had ever been arrested, and Ms. Goodson said no. Then the report further says, "I returned to my unit and checked Goodson through NCIC via Troop L. The check revealed that she had been arrested in Texas for carrying an illegal weapon. And this is part of what led him to seek the consent to search and also part of, based on his experience, to give him the authority, along with other things she said, to give him the authority, had she refused the consent to search to call in for a dog to sniff around the vehicle. At least that's what she's understanding. It goes toward the reasons he did what he did. I think it's not being introduced to show that she's a bad person or anything like that, it would be attempted to be introduced to show why the officer acted the way he did. I think that that's important for the jury to know that it was not only what she had said, but the fact that she had in fact told them something that wasn't true, that alerted him to do the following steps: (1) to ask for consent to search; and (2) if she refused, to go further. But I think it's part of the case. It's in the police report; it's not something new. And it's not being introduced. Clearly, had she not lied we wouldn't be able to introduce that, or misunderstood, whatever explanation for it may be, but I think it shows and is important for the State to introduce that to show why the officer did what he did.

[COUNSEL FOR DEFENDANT]:

Your Honor, if I could respond. Ms. Goodson consented immediately, both orally and in writing, to a search of her vehicle. The issue about whether or not she's been arrested is clearly inadmissible, even if Trooper Lamarca asked her about that. Under 609, Code of Evidence 609, it's inadmissible; it's not a conviction, it's an arrest. She gave immediate oral and written consent to search the vehicle. And the issue of whether she was arrested before doesn't come into play because she consented, again, both orally and verbally – orally and in writing to a search of the vehicle immediately.

Secondly, Your Honor, I think it would be very prejudicial for the jury to be aware of a prior arrest even if she testifies. If I don't bring anything up about her character, they cannot attack her character. And that's standard rule under the Code of Evidence. If she had not agreed to search the vehicle and he had used that prior arrest as a basis to search based on probable cause, despite her lack of consent, then I could see how it would be relevant. But she consented immediately, orally, and in writing, to a search of the vehicle. I don't think it's admissible.

THE COURT:

So your assertion to the Court is that the consent was given prior to the question being asked? I'm a real simple foundational-kind of guy. So that's the first foundational question.

[COUNSEL FOR DEFENDANT]:

No, sir, the consent was given after.

THE COURT:

Then it's relevant. Objection overruled. Court will allow, with proper predicate, the question to be asked. Without proper predicate, obviously not.

Louisiana Code of Evidence article 404 provides, in pertinent part:

(A) Evidence of a person's character or a trait of his character, such as a moral quality, is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except: (1) Evidence of a pertinent trait of his character, such as a moral quality, offered by an accused, or by the prosecution to rebut the character evidence; provided that such evidence shall be restricted to showing those moral qualities pertinent to the crime with which he is charged, and that character evidence cannot destroy conclusive evidence of guilt.

* * * * *

(B)(1) Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Louisiana Code of Evidence article 609.1 entitled "Attacking credibility by evidence of conviction of crime in criminal cases," provides in pertinent part:

A. ... In a criminal case, every witness by testifying subjects himself to examination relative to his criminal convictions, subject to limitations set forth below.

> B. ...Generally, only offenses for which the witness has been convicted are admissible upon the issue of his credibility, and no inquiry is permitted into matters for which there has only been an arrest, the issuance of an arrest warrant, an indictment, a prosecution, or an acquittal.

Initially, we note that, although the trial court previously ruled that the evidence regarding the defendant's denial of any prior arrests and the Trooper's confirmation that this statement was inaccurate would be admissible if the proper foundation was laid, the evidence was actually elicited by defense counsel during the defendant's own testimony.[2] This is the only instance of other crimes evidence the defendant takes issue with in her brief. Thus, as the state correctly asserts, any error in the trial court's pretrial ruling was waived when the defense elicited the evidence at issue.

Furthermore, it is well settled that the erroneous admission of other crimes evidence is a trial error subject to harmless-error analysis on appeal. State v. Johnson, 94-1379 (La. 11/27/95), 664 So.2d 94, 102. The test for determining whether an error is harmless is whether the verdict actually rendered in this case "was surely unattributable to the error." Sullivan v. Louisiana, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); Johnson, 664 So.2d at 100.

In the instant matter, we find the defendant could not have been prejudiced by any evidence regarding a prior arrest. The defendant consented to a search of the vehicle she was driving and was found transporting over three kilograms of cocaine. The evidence introduced by the state clearly established the defendant's guilt. As such, the guilty verdict rendered was surely unattributable to any reference to the defendant's prior Texas arrest for illegal possession of a firearm. See Sullivan, 508 U.S. at 279, 113 S.Ct. at 2081.

This assignment of error lacks merit.

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[2] In her brief, the defendant states "[t]he State was allowed to introduce testimony of Ms. Goodson's prior arrest for illegal carrying of a weapon." However, as noted above, while the trial court ruled this evidence admissible (upon proper foundation), the state did not introduce such evidence; the defendant did.

For the foregoing reasons, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.