

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 1987

STATE OF LOUISIANA

VERSUS

SAM COOPER

Judgment rendered May 6, 2011.



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Appealed from the
21st Judicial District Court
in and for the Parish of Tangipahoa, Louisiana
Trial Court No. 700934
Honorable Elizabeth P. Wolfe, Judge

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SAM COOPER

* * * * *

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

PETTIGREW, J.

The defendant, Sam Cooper, was charged by bill of information with three counts of possession of a firearm by a convicted felon (counts I, II, and III), violations of La. R.S. 14:95.1; one count of possession with intent to distribute MDMA (ecstasy) (count IV), a violation of La. R.S. 40:966(A)(1); one count of possession of cocaine (count V), a violation of La. R.S. 40:967(C); and one count of possession with intent to distribute marijuana (count VI), a violation of La. R.S. 40:966(A)(1). He initially pled not guilty and, alleging an unconstitutional search and seizure, moved to suppress from use as evidence all objects or confessions in the possession of the State. Thereafter, the State nolo-prossed counts II and III. Following the partial granting and partial denying of the motion to suppress, the defendant pled nolo contendere, in his best interests, to counts IV and V, reserving his right to seek review of the court's ruling on the motion to suppress.¹ See North Carolina v. Alford, 400 U.S. 25, 37, 91 S.Ct. 160, 167, 27 L.Ed.2d 162 (1970); State v. Crosby, 338 So.2d 584, 588 (La. 1976). On count IV, he was sentenced to five years at hard labor without the benefit of parole, probation, or suspension of sentence. On count V, he was sentenced to one year at hard labor, to run concurrently with the sentence imposed on count IV. He now appeals, contending the trial court erred in partially denying the motion to suppress. For the following reasons, we affirm the convictions and sentences on counts IV and V.

FACTS

On February 6, 2007, Louisiana Probation and Parole Officer John Magee, accompanied by Louisiana Probation and Parole Officers Kelly Spinks and Justin Crowe, investigated a complaint that parolee Marcus Williams was selling illegal narcotics from his residence. As a condition of his parole, Williams had agreed to allow probation and parole officers to check his residence to verify he was living there and did not have drugs or weapons. The officers went to what they believed was 51447 Gulotta Lane in

¹ The State dismissed counts I and VI due to the ruling on the motion to suppress.

Independence, Louisiana, the address Williams had listed as his residence. Officer Magee had never been to the property before. There was a wood-frame house at the front of the driveway, a mobile home in the center of the driveway, and another wood-frame home on the end of the driveway.

The officers first approached the mobile home because Williams had indicated he was living in a mobile home. At the scene, however, Williams advised the officers he was now living in "the house up front," so the officers went to that house. At the house on the front of the property, the defendant informed the officers that he lived there. The officers told the defendant they were there to perform a residence check on Williams because he was supposed to be living there. The defendant indicated he had guns in the house and led the officers into the house. Officer Magee watched the perimeter, while Officers Spinks and Crowe performed a residence check. Two women were in the house. They disputed Williams's claim that he slept in the living room, and indicated he had a bedroom in the house.

Thereafter, the defendant exited the rear of the residence with a "rather large" pill bottle in his hand, and he was "attempting to conceal it in his hand." Officer Magee shouted at the defendant to stop, and he dropped the pill bottle, but picked it up again. The bottle was orange with a white cap and, in the bottle, Officer Magee saw a white substance in a baggie, consistent with cocaine he had observed in connection with other cases, as well as different colored pills with different stamps on them. Officer Magee alerted his fellow officers to the suspected drugs. Officer Crowe performed a pat-down search of the defendant for officer safety, which resulted in the discovery of three bags of marijuana in the defendant's pockets. The defendant was not immediately advised of his **Miranda**² rights. Officer Magee told the defendant a narcotics dog would be arriving, and the defendant stated he "would have a little bit of marijuana in his house." Officer Magee asked the defendant what he meant by "a little bit," and he replied, "a good bit."

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

The defendant was advised of his **Miranda** rights after the narcotics dog arrived. The defendant stated he had marijuana in his nightstand and closet. Thereafter, a total of approximately five pounds of marijuana was recovered from those locations. Two handguns and two shotguns were also recovered from the defendant's bedroom. Additionally, a .38 caliber handgun was recovered from Williams's suspected bedroom.

According to the defendant's wife, Nancy Cooper, the address of the house on the front of the property was 51445, and the address of the house at the end of the driveway was 51447. Nancy Cooper claimed that on February 6, 2007, Williams was living at 51447 Gulotta Lane. Additionally, the State and the defense stipulated that if defendant's daughter, Brittany Duncan, were called to the stand, she would testify she was "there on that date" and Williams was not "living there."

MOTION TO SUPPRESS EVIDENCE

In his sole assignment of error, the defendant argues the trial court erred in relying on the plain-view doctrine in denying the motion to suppress evidence because the officer was not sure the object dropped was contraband and because the officer had no legal right to conduct a search of the defendant's residence.

An exception to the search-warrant requirement exists for items in plain view. Two conditions must be satisfied to trigger the applicability of the doctrine: (1) there must be a prior justification for an intrusion into the protected area; and (2) it must be immediately apparent without close inspection that the items are evidence or contraband. "Immediately apparent" requires no more than probable cause to associate the property with criminal activity. **State v. Howard**, 2001-1487, p. 8 (La. App. 1 Cir. 3/28/02), 814 So.2d 47, 53, writs denied, 2002-1485 (La. 5/16/03), 843 So.2d 1120 and 2006-2125 (La. 6/15/07), 958 So.2d 1180.

Prior to the **Crosby** guilty plea, the defense moved to suppress from use as evidence all objects or confessions in the possession of the State due to an unconstitutional search and seizure.

Following a hearing on the motion to suppress, the court granted the motion in regard to the firearms discovered in the defendant's closet, his statements concerning the

guns in his room, the marijuana in his room, and his statements concerning the marijuana in his room. However, in regard to the drugs found in the pill bottle dropped by the defendant and the three bags of marijuana found in his pockets, the court denied the motion to suppress. The court noted the officers had gone to the location to visit their parolee, Marcus Williams, and check his residence for drugs and weapons, but actually went to the defendant's residence. Thereafter, Agent Magee saw the defendant drop a clear pill bottle containing what he believed was cocaine powder and ecstasy pills. The court found that the pill bottle and the three bags of marijuana on the defendant's person were not constitutionally protected due to the plain-view doctrine and a pat-down search for officer safety.

The trial court did not abuse its discretion in denying the motion to suppress. The court correctly found the plain-view doctrine applied in this case. A parolee is released on the assumption that he will meet the conditions of his parole, one of which is to refrain from violating the law, and a parole officer is charged with the duty of enforcing the conditions of parole. See State v. Malone, 403 So.2d 1234, 1237 (La. 1981). Officer Magee and his fellow parole officers explained to the defendant why they were at his residence, i.e., to conduct a residence check of Williams, and rather than dispute that Williams lived there, the defendant allowed them into the residence. The officers reasonably relied on the assertions of Williams that he lived in the house on the front of the property, as well as the actions of the defendant in allowing them into that structure without disputing Williams's claim, to conclude they were performing a residence check of Williams's residence. Moreover, Officer Magee's observation of the defendant and his pill bottle of narcotics did not occur in the defendant's residence, but outside the residence. Officer Magee was justified in being outside the defendant's residence while his fellow officers conducted a residence check of Williams. Based on his experience, Officer Magee recognized the narcotics in the bottle as contraband.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES ON COUNTS IV AND V AFFIRMED.