

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2009 KA 1688**

**STATE OF LOUISIANA**

**VERSUS**

**WILFRED J. DEAS**

Judgment Rendered: June 11, 2010

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On Appeal from the 22nd Judicial District Court  
In and For the Parish of St. Tammany  
Trial Court No. 453906

Honorable Reginald T. Badeaux, III, Judge Presiding

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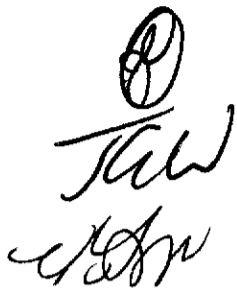
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**BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.**

Handwritten initials and signature in the left margin. The initials appear to be 'TRW' and 'WJ'.

## HUGHES, J.

The defendant, Wilfred J. Deas, was charged by bill of information with second-offense possession of marijuana, a violation of LSA-R.S. 40:966(C), (E). He pled not guilty. The defendant moved to suppress the evidence and to quash the bill of information, but the motions were denied. Thereafter, the defendant withdrew his former not guilty plea and pled guilty pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976), reserving his right to challenge the trial court's ruling on the motion to quash and motion to suppress. Following a **Boykin** examination,<sup>1</sup> the trial court accepted the defendant's guilty plea and sentenced him to imprisonment at hard labor for six months. The defendant now appeals, urging in a single assignment of error that the trial court erred in denying the motion to quash.<sup>2</sup> For the following reasons, we affirm the conviction and sentence.

### FACTS

Because the defendant pled guilty, the facts of the offense were not fully developed at a trial. The following facts were gleaned from the testimony adduced at the hearing on the motion to suppress.

On August 13, 2008, Detective John Cole, of the Slidell Police Department, Narcotics Division, was patrolling the area near West Hall Avenue and Carroll Road in Slidell, Louisiana, when a vehicle passed by playing loud music. The windows of the vehicle were down and the sound of the loud music caused vibrations. Detective Cole activated his emergency lights and effectuated a traffic stop of the vehicle for violation of a Slidell City noise ordinance. The defendant stopped in front of a nearby residence and exited the vehicle. Detective Cole smelled the odor of burned marijuana emitting from the defendant's person and from the vehicle. When

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<sup>1</sup> **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

<sup>2</sup> The defendant does not challenge the trial court's ruling on the motion to suppress the evidence.

Detective Cole asked the defendant to explain the source of the odor, the defendant admitted that he and a female friend had just smoked marijuana inside the vehicle. As he conversed with Detective Cole, the defendant repeatedly placed his hands in his pocket and attempted to avoid eye contact. A safety pat down was conducted and a small cellophane bag containing suspected marijuana was discovered in the defendant's pocket. The defendant was placed under arrest. Scientific testing confirmed that the substance seized from the defendant's pocket was marijuana.

### MOTION TO QUASH

In his sole assignment of error, the defendant argues the trial court erred in failing to grant the motion to quash because the State failed to prove that the prior guilty plea used to support the second-offense marijuana charge involved a knowing and intelligent waiver of rights. Specifically, the defendant notes that, at the hearing on the motion to quash, the State failed to produce a transcript of the proceedings of the predicate offense.<sup>3</sup> The defendant argues that the minute entry introduced by the State is insufficient to meet the State's burden of proof.

In order for a misdemeanor guilty plea to be used as a basis for actual imprisonment, enhancement of actual imprisonment, or conversion of a subsequent misdemeanor into a felony, the trial judge must inform the defendant that by pleading guilty he waives: (a) his privilege against compulsory self-incrimination, (b) his right to trial and jury trial where it is applicable, and (c) his right to confront his accuser. **State v. Longo**, 560 So.2d 530, 531-32 (La. App. 1 Cir. 1990). The trial judge must ascertain that the accused understands what the plea connotes and its consequences. **State v. Jones**, 404 So.2d 1192, 1196 (La. 1981) (per curiam).

If the defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty plea and that the defendant

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<sup>3</sup> The defendant notes that the State was unable to produce a transcript because those records were, apparently, destroyed in Hurricane Katrina.

was represented by counsel when it was taken. If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one which reflects a colloquy between the judge and the defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. If the State introduces anything less than a "perfect" transcript, for example, a guilty plea form, a minute entry, an "imperfect" transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three **Boykin** rights. **State v. Shelton**, 621 So.2d 769, 779-80 (La. 1993); **State v. Bickham**, 98-1839, p. 4 (La. App. 1 Cir. 6/25/99), 739 So.2d 887, 889-90. See also **State v. Carlos**, 98-1366, pp. 6-7 (La. 7/7/99), 738 So.2d 556, 559. The purpose of the rule of **Shelton** is to demarcate sharply the differences between direct review of a conviction resulting from a guilty plea, in which the appellate court may not presume a valid waiver of rights from a silent record, and a collateral attack on a final conviction used in a subsequent recidivist proceeding, as to which a presumption of regularity attaches to promote the interests of finality. See **State v. Deville**, 2004-1401, p. 4 (La. 7/2/04), 879 So.2d 689, 691 (per curiam).

At the hearing on the motion to quash, the State introduced certified copies of the City Court of Slidell disposition report and minute entry (docket number 1993KS04358) showing that the defendant pled guilty on March 30, 2000, to

possession of marijuana, at which time he was represented by counsel and advised of his constitutional rights. The trial court found that the documentation submitted by the State was sufficient to show that the defendant had made a knowing and intelligent waiver of his rights in connection with the March 30, 2000 guilty plea to possession of marijuana and, thus, that guilty plea could be used to enhance the punishment on the instant offense. Our review of the record reveals the trial court did not err in so ruling.

The State presented certified documentary evidence which shows that the defendant, while represented by counsel, and after being advised of his **Boykin** rights, pled guilty to possession of marijuana. With this documentation, the State met its initial burden under **Shelton**. It was then the defendant's burden to produce affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. The defendant offered no affirmative evidence to contradict the State's evidence. Accordingly, the State had no burden to prove the constitutionality of the predicate guilty plea by "perfect" transcript or otherwise.

Considering the foregoing, it is clear that the defendant's claim that the predicate guilty plea should have been quashed as defective lacks merit. This assignment of error is without merit.

**CONVICTION AND SENTENCE AFFIRMED.**