NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0452

STATE OF LOUISIANA

VERSUS

KELVIN M. DOSS

Judgment Rendered: September 10, 2010.

* * * * *

On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court Nos. 424255 and 425842

The Honorable August J. Hand, Judge Presiding

* * * * *

Frank Sloan
Mandeville, La.

Counsel for Defendant/Appellant,
Patrick D. Washington

Walter P. Reed
District Attorney
Covington, La.
Kathryn W. Landry
Baton Rouge, La.

Counsel for Appellee,
State of Louisiana

* * * * *

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

CARTER, C.J.

The defendant, Kelvin M. Doss, was charged by bill of information with possession of cocaine, a violation of La. R.S. 40:967.[1] The defendant initially entered a plea of not guilty. The trial court denied the defendant's motion to suppress the evidence and his confession. In an unpublished decision, this court denied the defendant's supervisory writ application seeking review of the trial court's ruling. **State v. Doss**, 2009-0047 (La. App. 1 Cir. 1/12/09) (unpublished). The defendant withdrew his plea and entered a plea of guilty pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976), reserving the right to appeal the denial of his motion to suppress.

The defendant was sentenced to five years imprisonment at hard labor. The sentence was suspended, and the defendant was placed on supervised probation for a period of five years with the following conditions: payment of a $500.00 fine, performance of 60 days of community service, submission to random drug screening, and completion of a court-approved drug or substance abuse program.

The defendant appeals, challenging the trial court's ruling on his motion to suppress the evidence and confession. For the following reasons, we affirm the conviction and sentence.

---

[1] The defendant originally was charged by bill of information 425255 with distribution of cocaine. The State amended the bill of information to charge him with possession of cocaine.

STATEMENT OF FACTS

In accordance with testimony presented at the motion to suppress hearing, on or about July 21, 2006, Detective Emile Lobrano, Sergeant Brad Rummel, Lieutenant Joe Perconi, and Detective Keith Dolin of the St. Tammany Parish Sheriff's office went to the defendant's residence as a part of the investigation of a quadruple homicide that occurred in the Slidell area. A search of the residence led to the recovery and seizure of cocaine. The defendant was arrested and ultimately pled guilty to possession of cocaine.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant challenges the trial court's ruling on his motion to suppress the evidence and confession. The police did not have a warrant. The defendant emphasizes that he was not advised of his **Miranda** rights until after his confession and the discovery of cocaine. The defendant contends that the arrival of four armed officers at his residence led him to believe that they were there to investigate suspected drug activity and that he was not free to leave. He argues that the presence of the officers in his living room was an intimidating show of force and that he was under arrest, without probable cause, prior to Detective Lobrano questioning him about narcotics. The defendant contends the subsequent search of the residence yielded "fruit of a poisonous tree" and should have been suppressed along with his statement.

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. A search conducted without a warrant is presumably unreasonable unless justified by one of the specifically established

exceptions. **Schneckloth v. Bustamonte**, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043, 36 L.Ed.2d 854 (1973); **State v. Farber**, 446 So.2d 1376, 1378 (La. App. 1st Cir.), writ denied, 449 So.2d 1356 (La. 1984). A valid consent search is a well-recognized exception to the warrant requirement, but the State has the burden of proving that the consent was valid in that it was freely and voluntarily given. **Bumper v. North Carolina**, 391 U.S. 543, 548, 88 S.Ct. 1788, 1792, 20 L.Ed.2d 797 (1968); **State v. Smith**, 433 So.2d 688, 693 (La. 1983). An oral consent to search is sufficient; a written consent is not required. **State v. Ossey**, 446 So.2d 280, 287 n.6 (La.), cert. denied, 469 U.S. 916, 105 S.Ct. 293, 83 L.Ed.2d 228 (1984); **State v. Parfait**, 96-1814 (La. App. 1 Cir. 5/9/97), 693 So.2d 1232, 1240, writ denied, 97-1347 (La. 10/31/97), 703 So.2d 20. Voluntariness is a question of fact to be determined by the trial judge under the facts and circumstances surrounding each case. **Ossey**, 446 So.2d at 287. When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed unless there is no evidence to support those findings. **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751. However, a trial court's legal findings are subject to a *de novo* standard of review. **Hunt**, 25 So.3d at 751.

Detective Lobrano was assigned to the narcotics division of the sheriff's office at the time of the offense but was assisting with the investigation of the homicides of two adults and two juveniles. Detective Lobrano specifically testified that his job was to obtain intelligence to provide leads for the main investigators to establish suspects or witnesses.

Based on the defendant's name being raised in reference to occurrences within the area, the officers were interested in speaking with him.

The officers arrived at the defendant's residence in the afternoon. Upon arrival, the officers exited their vehicle, approached the residence, and knocked on the door. Someone from inside yelled for them to come inside. The door to the residence was unlocked. One of the officers advised they were from the sheriff's office.

The defendant was observed on the sofa. Detective Lobrano asked the defendant if anyone else was present in the home, and the defendant stated no and told the officers to "take a look." Sergeant Rummel stayed with the defendant in the den area while Detective Lobrano walked through the kitchen into the back bedroom. Detective Lobrano observed a shotgun on the bed, but no one was in the back of the residence. Detective Lobrano noted the presence of three or four cellular telephones in the entertainment center. Based on his experience, he suspected that one telephone was for personal use while another, usually an inexpensive throw-away phone with a minimal number of calling minutes, was for conducting illegal drugs transactions.

Detective Lobrano also noted a plastic bag with the bottom torn out in the kitchen area. Due to his experience, Detective Lobrano was aware that plastic bags are often ripped and filled with marijuana, cocaine, crack, or heroin by illegal drug dealers. Detective Lobrano testified that the defendant was free to come and go as he pleased and that his movement was not restricted. Based on his observations, Detective Lobrano asked the defendant if he had any drugs in the residence. The defendant removed

himself from the sofa, pointed toward the sofa, and stated that "Dreds" set him up. The defendant further stated that "Dreds" had just dropped off some cocaine, and the defendant agreed to hide it for him under the sofa cushion.

The defendant granted the detective's verbal request for consent to search the residence. Detective Lobrano specifically testified that the defendant stated, "Fine, no problem" and gestured back to the sofa cushion regarding the request for consent to search. Detective Lobrano located a plastic baggy containing approximately seven grams of cocaine under the sofa cushion. The defendant was advised of his **Miranda** rights and placed under arrest. During cross-examination, Detective Lobrano confirmed that the defendant was previously suspected of drug activity in a July 1, 2006, investigation. During re-direct examination, Detective Lobrano stated that to the best of his knowledge he did not speak to or communicate with the defendant at any time regarding the previous investigation.

"Knock and talk" is a law enforcement tactic where police officers who possess information that they believe warrants further investigation, but that is insufficient to constitute probable cause for a search warrant, approach a person suspected of engaging in illegal activity at the person's residence, identify themselves as police officers, and request consent to search for the suspected illegality or illicit items. **State v. Warren**, 05-2248 (La. 2/22/07), 949 So.2d 1215, 1221. If successful, the tactic allows police officers lacking probable cause to gain access to a house and conduct a search. **Warren**, 949 So.2d at 1221. The "knock and talk" procedure does not, per se, violate the Fourth Amendment. **Warren**, 949 So.2d at 1222. The prevailing rule is that, absent a clear expression by the owner to the

contrary, police officers in the course of their official business are permitted to approach a person's dwelling and seek permission to question an occupant. **Warren**, 949 So.2d at 1222. Knocking on a door is a request for permission to speak to the occupant. **Warren**, 949 So.2d at 1222.

There is a clear distinction between the police detaining a suspect on the street as authorized by Article 215.1 of the Code of Criminal Procedure and the police knocking on a suspect's door. **State v. Sanders**, 374 So.2d 1186, 1188 (La. 1979). When stopped on the street, a suspect has no choice but to submit to the authority of the police. **Sanders**, 374 So.2d at 1188. However, when a door is opened in response to a knock, it is the consent of the occupant to confront the caller; there is no compulsion, force, or coercion involved. **Sanders**, 374 So.2d at 1188.

It is well settled that for a confession or inculpatory statement to be admissible into evidence, the State must affirmatively show that it was freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451. Additionally, the State must show that an accused who makes a statement or confession during custodial interrogation was first advised of his **Miranda** rights.[2] **Miranda v. Arizona**, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); **State v. Caples**, 05-2517 (La. App. 1 Cir. 6/9/06), 938 So.2d 147, 153, writ denied, 06-2466 (La. 4/27/07), 955 So.2d 684. The obligation

---

[2] In **Miranda**, the Supreme Court promulgated a set of safeguards to protect the therein delineated constitutional rights of persons subject to custodial police interrogation. The warnings must inform the person in custody that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. **Miranda**, 384 U.S. at 444, 86 S.Ct. at 1612.

to provide **Miranda** warnings attaches only when a person is questioned by law enforcement after he has been taken "into custody or otherwise deprived of his freedom of action in any significant way." **Miranda**, 384 U.S. at 444, 86 S.Ct. at 1612; **State v. Payne**, 01-3196 (La. 12/4/02), 833 So.2d 927, 934.

Custody is decided by two distinct inquiries: an objective assessment of the circumstances surrounding the interrogation to determine whether there is a formal arrest or restraint on freedom of the degree associated with formal arrest; and, second, an evaluation of how a reasonable person in the position of the interviewee would gauge the breadth of his freedom of action. See **Stansbury v. California**, 511 U.S. 318, 322-325, 114 S.Ct. 1526, 1528-1530, 128 L.Ed.2d 293 (1994) (*per curiam*). As such, **Miranda** warnings are not required when the law officer is making a general, on-the-scene investigation to determine whether there has been the commission of a crime and, if so, by whom. **State v. Davis**, 448 So.2d 645, 651 (La. 1984). A general and pre-custodial inquiry at the home of a defendant does not require **Miranda** warnings. **State v. Hodges**, 349 So.2d 250, 257 (La. 1977), cert. denied, 434 U.S. 1074, 98 S.Ct. 1262, 55 L.Ed.2d 779 (1978).

We conclude that the defendant's voluntary statements inside his home were part of a general inquiry and pre-custodial questioning, requiring no **Miranda** warnings. Because the defendant was not in custody, the officers were not obliged to provide **Miranda** warnings. The cocaine was recovered after the defendant allowed the police to enter the trailer and voluntarily consented to a search of the trailer. The defendant's freedom of movement was not infringed upon, and no search or seizure occurred except

on the basis of the defendant's voluntary actions and consent. Based on the foregoing reasons, we find that the trial court did not err or abuse its discretion in denying the motion to suppress the evidence and confession.

CONVICTION AND SENTENCE AFFIRMED.