09/24/2019 "See News Release 040 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

NO. 2019-KK-0634

STATE OF LOUISIANA

VERSUS

LORI ANNE ELLIS

ON SUPERVISORY WRIT TO THE 22ND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY

WEIMER, J., dissenting.

Respectfully, because the full record has not been considered, I find insufficient deference has been afforded to the district court's ruling in this fact-intensive case. In ruling the deputy had no reasonable suspicion of additional criminal activity, the majority appears to assume that throughout the deputy's encounter with the defendant driver, the defendant gave no indication of being impaired. The present record strongly suggests otherwise, which justifies closer scrutiny of at least two questions of law and fact: 1) whether the traffic stop lasted "for a period of time longer than reasonably necessary to complete the investigation" (La. C.Cr.P. art. 215.1(D)); and 2) whether the defendant surrendered crack cocaine to the deputy voluntarily or as a response to coercion.

The present record shows that, while driving along a state highway, a sheriff's deputy observed the defendant allegedly veer twice from the lane of travel. Once stopped, according to the deputy, in response to casual questions the defendant "was rather nervous, fidgeting about making furtive movements inside the vehicle, constantly looking around, making head movements." Both the defendant's appearance and her behavior, including "canvassing the interior of the vehicle with

her eyes in an apprehensive manner[]" led the deputy to believe the defendant might have "either a potential weapon or contraband" in the vehicle. Therefore, the deputy instructed the defendant to exit her vehicle. She complied with these instructions, but was hesitant and vague when responding to the deputy's questions about her driving. However, the defendant clearly consented when the deputy asked for written permission to search her vehicle. Before actually undertaking the search, the deputy requested a female deputy come to the scene to perform a pat-down of the defendant.

The vehicle search produced no weapons or contraband, but all of the police actions to this point–which the defendant does not challenge–no doubt took time. The present record indicates that the written permission form alone required obtaining and supplying the defendant's name, address, and a detailed vehicle description, in addition to describing the location of the vehicle and the time the search would be conducted. Moreover, after the search, the deputy still had to check the defendant's name for open arrest warrants, verify vehicle insurance and registration, and issue a traffic citation. With these tasks remaining,[1] the deputy informed the defendant that a female officer, as requested earlier, was en route to conduct a pat-down. In response, the defendant admitted to having "$20 worth of crack" in her bra and produced a clear cylinder container containing multiple white fragments of suspected crack cocaine from her clothing. The state characterizes her statement as unsolicited and spontaneous, which was not provided as a result of police interrogation or compelling influence and, thus, admissible without **Miranda** warnings.[2] The

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[1] The deputy explained that, because the defendant was ultimately arrested on a narcotics charge, a charge of improper lane usage was included in the deputy's booking for the defendant's arrest rather than as a traffic citation.

[2] See **Miranda v. Arizona**, 384 U.S. 436 (1966).

defendant herself voluntarily removed the drugs from her bra before the female deputy arrived.

It is axiomatic that efforts by police to obtain evidence of a crime, without a warrant, cannot be justified merely by the fruits of those efforts. See **State v. Sherman**, 05-0779, p. 8 (La. 4/4/06), 931 So.2d 286, 292. It is equally true, however, that the constitutionality of such efforts is gauged by examining the totality of circumstances. See **State v. Brady**, 585 So.2d 524, 526 (La. 1991). Both the federal and state constitutions prohibit police from making unreasonable property seizures. See U.S. Const. Amend. IV; La. Const. art. I, § 5. Suppression of evidence is intended to deter police from overreaching. See **State v. Varnado**, 95-3127, p. 3 (La. 5/31/96), 675 So.2d 268, 270.[3] From what is currently known about the progression of events on the highway, I am not presently prepared to find that the deputy acted unreasonably or overreached by informing the defendant that a female deputy was already en route to frisk her (rather than being frisked by either of the two male deputies on the scene).[4] Instead of summarily suppressing the defendant's inculpatory statement and the crack cocaine evidence that the defendant pulled from her bra and handed to the deputy, I would grant and docket this case for further study and a full opinion. Thus, I respectfully dissent.

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[3] Generally, "[t]he roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute 'custodial interrogation' for the purposes of the **Miranda** rule." **Berkemer v. McCarty**, 468 U.S. 420, 421 (1984). Under the doctrine recounted in **Berkemer**, police and courts "will continue occasionally to have difficulty deciding exactly when a suspect has been taken into custody." ***Id.*** 468 U.S. at 441.

[4] According to the deputy who initiated the traffic stop, pursuant to standard backup procedures, a second male deputy arrived shortly after the highway traffic stop began.