

SUPREME COURT OF LOUISIANA

No. 98-KK-0188

STATE OF LOUISIANA

v.

ARISTIDE LANDRY AND RAYMOND SCARDINO

LEMMON, J., Dissenting

The trial court made a factual finding that defendants had been arrested in their home without a warrant in violation of Payton v. New York, 445 U.S. 573 (1980), and suppressed videotaped statements, subsequently made by defendants at the police station, as the product of an illegal arrest. We granted certiorari to review that ruling because of a statement attached to the state's application in which defendant Scardino's brother appeared to provide a probable cause basis for the warrantless arrest.¹ We thus intended to review the trial court's suppression ruling in light of New York v. Harris, 495 U.S. 14 (1990), which held that the exclusionary rule does not bar the state's use of a statement made by the defendant outside of his home, even though the statement was taken after an arrest in the home in violation of Payton, when the police had probable cause to make the warrantless arrest of defendant in his home.

¹The statement by Benjamin Scardino was given twelve hours before defendants' arrest in their home. In the statement, Benjamin Scardino related information, confided to him by defendants, that they helped Ricky Alford tie the victim up and beat him; that Alford nearly decapitated the victim with a large knife and forcefully stabbed him; and that defendants and Alford wrapped the body in a sail from Alford's sailboat and transported the weighted body to a roadside canal, where it was dumped. The details given by Benjamin Scardino matched those in the autopsy report and in the police report of the recovery of the body.

After granting the state's application and reviewing the record, we determined that the state at the suppression hearing failed to introduce Benjamin Scardino's statement or other critical information bearing on probable cause to arrest defendants in their home. Without a showing of probable cause, the state could not have relied on the Harris holding as a basis for using defendants' statements made at the police station after the warrantless arrest in their home.² Thus the trial court's suppression ruling appears to be correct on the record evidence introduced at the suppression hearing. The critical issue, therefore, is whether we should remand the case for a reopened hearing on the motion to suppress and thereby provide the state with a second opportunity to introduce probable cause evidence that was available to and in the possession of the state at the time of the first hearing. I disagree with the majority's remanding the case under these circumstances.

This court has previously ordered reopened hearings on motions to suppress under limited circumstances. In State v. Jackson, 424 So. 2d 997 (La. 1983), the trial judge denied a motion to suppress both a purse seized during the defendant's arrest and statements made by the defendant after his arrest. During the hearing that led to this ruling, the judge sustained the state's objection to defense counsel's cross-examination of witnesses pertaining to probable cause for the defendant's arrest. At trial, the state introduced the confession and the purse, and the defendant was convicted.

On appeal, this court, after ruling that the trial judge erred in restricting defense counsel's cross-examination pertaining to probable cause to arrest, was unable in light of the trial error to determine whether the state carried its burden of establishing the admissibility of the confession. Rather than reversing the conviction, however, this

²The state did not urge Harris in the trial court (or in its application to this court) as a basis for denial of the motion to suppress. Indeed, the state at the hearing objected to defense counsel's attempt to question the detective about Benjamin Scardino's statement.

court remanded “the motion for a reopened hearing to admit the omitted or improperly excluded evidence.” Id. at 1000. This court noted that the error may be eliminated by a reopened hearing on the motion to suppress at which the trial court, after considering the excluded cross-examination, may determine that the motion to suppress still must be denied, and a new trial on the merits possibly may be avoided. Id. See also State v. Edwards, 375 So. 2d 1365 (La. 1979) (possibly avoiding new trial after conviction by remanding for a reopened suppression hearing when the trial court at first suppression hearing erroneously denied defendant’s motion to suppress by granting state’s objections when the defendant attempted to explore issue of lack of probable cause).

Unlike the Jackson and Edwards cases, the trial court in the present case granted the motion to suppress, and the state is the party complaining to this court of the trial court’s ruling. However, the state’s complaint (unlike defense counsel’s complaint in the Jackson and Edwards cases) is not that the trial court improperly excluded evidence offered by the complaining party or limited in any manner the complaining party’s examination or cross-examination of any witnesses.³ Nor does the state assert in this court that it has newly discovered evidence of probable cause that was not known or reasonably knowable at the time of the suppression hearing. In fact, the state, as noted earlier, had in its possession significant evidence of probable cause that it simply failed to offer in evidence.

I agree with the rationale of Jackson and Edwards cases, which was designed to avoid a new trial on the merits when a reopened suppression hearing might show that correction of a trial error in improperly admitting or excluding evidence at the original

³The state’s sole complaint was that the trial court erred in finding that defendants had been arrested rather than that they freely consented to go to the police station and give statements.

hearing would not change the original suppression ruling. That rationale, however, has no application in the present case. The decision unfavorable to the state at the motion to suppress did not result from erroneous evidentiary rulings by the trial court, but rather resulted from the state's unexplained failure to argue the New York v. Harris exception to the Payton violation and the state's further failure to introduce available evidence on probable cause which would support a New York v. Harris argument in this court. The state has further failed to advance any convincing argument that it should be given a second chance to remedy the prior failings. Under the circumstances, it is inappropriate for this court not only to supply a legal argument overlooked by the state, but also to provide the state a second opportunity to meet its burden of proof when the necessary evidence was in its possession at the time of the original hearing.⁴

⁴I concede that this court has previously granted this type of favorable treatment to the state. See State v. Scott, 355 So. 2d 231 (La. 1978) (possibly avoiding new trial after conviction by remanding for a reopened suppression hearing; prosecution at first suppression hearing failed to fully establish either probable cause or break in causal connection between arrest and confession); State v. Hills, 354 So. 2d 186 (La. 1977) (same; prosecution at first suppression hearing failed to rebut evidence of coerced confession); State v. Simmons, 328 So. 2d 149 (La. 1976) (same; holding that prosecution had burden at first suppression hearing of rebutting each of defendant's coercion claims).