STATE OF LOUISIANA	*	**NO. 2001-K-2079**
VERSUS	*	**COURT OF APPEAL**
DARRYL L'HERISSE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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ON SUPERVISORY WRIT DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 425-248, SECTION "D"
HONORABLE FRANK A. MARULLO, JUDGE

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JUDGE MICHAEL E. KIRBY

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(Court composed of Judge Steven R. Plotkin, Judge Patricia Rivet Murray, Judge Michael E. Kirby)

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STATEMENT OF THE CASE

On October 9, 2001 the State filed a bill of information charging the defendant Darryl L'Herisse with one count of distribution of marijuana and one count of possession of marijuana with the intent to distribute. A second person, David Simms, was charged only with one count of possession of marijuana with the intent to distribute. L'Herisse was arraigned and entered a not guilty plea on October 12, 2001; the court immediately set the matter for a combined motion hearing and trial on October 23, 2001. The defendant appeared as scheduled on the 23rd. The court heard testimony and argument, then found the defendant guilty of a responsive verdict of simple possession of marijuana as to the distribution charge and imposed a suspended sentence on the defendant. As to the count of possession with the intent to distribute, the court granted the motion to suppress evidence. The State objected and gave notice of intent to seek writs. The original return date of October 29, 2001 was later extended to November 5, 2001. This timely and complete application follows.

STATEMENT OF THE FACTS

On September 6, 2001 Detective Eugene Landry of the Seventh District, along with other members of the district narcotics unit, conducted a buy-bust operation in the 6000 block of Chef Menteur Highway, specifically in an apartment complex located at the corner of Chef and Downman. Detective Landry, who was equipped with a transmitting device and attired in plainclothes, entered the courtyard and asked an unknown black male where he "could get some smoke;" he was informed that he should go to Apartment 210 and ask for "Darryl." Detective Landry proceeded to Apartment 210 and knocked on the door. Another black male answered, and Detective Landry again asked where he could get smoke. The male asked who Landry wanted; Landry stated he wanted Darryl. At that point, the defendant came to the door. He first told Detective Landry not to come to the door in the future, but rather to wait until he came out because "there's people be tripping." The defendant then asked him what he needed, and Detective Landry stated he wanted a dime. The defendant reached into his pocket, pulled out several small plastic bags containing green vegetable matter, and handed two bags to Landry in exchange for currency (which had previously been photocopied). After concluding this transaction, Detective Landry left the second floor of the apartment while radioing the description and location of the defendant to the back-up team.

Detective Jake Schnapp was one of the three officers who did the takedown of the defendant after Detective Landry completed the buy. Detective Schnapp testified at the combined motion hearing and trial that, after receiving the clothing description of the seller and his location on the second floor balcony of 6002 Chef Menteur, the three officers walked up the stairs and saw the defendant standing in front of Apartment 211. The defendant saw the officers coming and began to move into Apartment 210. Because they believed the defendant was still in possession of contraband, and had just made a sale to Detective Landry, the officers pursued the defendant into Apartment 210. The defendant ran into the rear bedroom of the apartment; when the officers forcibly followed, they saw ten small bags of marijuana on the bed. Two people in addition to the defendant were in the bedroom. The defendant was searched after being formally arrested, but no additional contraband was found.

The court questioned Detective Schnapp regarding the exact sequence of events leading to the officers' entry into the apartment. The detective explained that the defendant had entered and closed the door to the apartment; Detective Dent kicked the door open so that the officers could enter. The officers were only seconds behind the defendant.

The trial court suppressed all evidence seized from the apartment on

the grounds that the officers failed to obtain a warrant.

DISCUSSION

The State is before this Court arguing that the officers were justified in making a warrantless entry into the apartment because they had exigent circumstances, specifically to prevent the defendant's escape under the concept of "hot pursuit" and to prevent the possible destruction of contraband. Furthermore, once lawfully inside, the officers could make a warrantless seizure of the marijuana on the bed because it was in plain view.

This Court recently exhaustively addressed the applicable legal precepts in State v. Finney, 00-2761 (La. App. 4 Cir. 9/5/01), ___ So. 2d ___, 2001WL1359771:

> In State v. Page, 95-2401, p. 10, (La. App. 4 Cir. 8/21/96), 680 So. 2d 700, 709, this Court discussed the warrantless entry into a protected area:
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> There is a justified intrusion of a protected area if there is probable cause to arrest and exigent circumstances. State v. Rudolph, 369 So. 2d 1320, 1326 (La. 1979), cert. denied., Rudolph v. Louisiana, 454 U.S. 1142, 102 S.Ct. 1001 (1982). Exigent circumstances are exceptional circumstances which, when coupled with probable cause, justify an entry into a "protected" area that, without those exceptional circumstances, would be unlawful. Examples of exigent circumstances have

been found to be escape of the defendant, avoidance of a possible violent confrontation that could cause injury to the officers and the public, and the destruction of evidence. State v. Hathaway, 411 So. 2d 1074, 1079 (La. 1982).

See also State v. Tate, 623 So. 2d 908 (La. App. 4 Cir. 1993). The determination of probable cause involves factual and practical considerations of everyday life on which average men, and particularly average police officers, can be expected to act. State v. Ogden and Geraghty, 391 So. 2d 434 (La. 1980).

In State v. Hathaway, 411 So. 2d 1074 (La.1982), officers received a tip that a known drug user would be delivering drugs to a residence in a certain block and that he would be armed. The officers set up a surveillance of the block and saw the user talking to another known drug user and to the defendant, who was unknown to the officers. The officers decided to detain the men, and when they announced their presence and told the men to "freeze," the other known drug user and the defendant ran inside one of the residences in the block. The officers chased them and entered the residence, where they found the defendant with a gun and the other man trying to flush a syringe. On review of the defendant's conviction, the Court found the tip, combined with the officers' observations and their knowledge of two of the men, gave them reasonable suspicion to stop the group. The flight of one of the known users gave them probable cause to believe he was involved in drug activity, and their belief he entered the house to dispose of evidence gave them exigent circumstances to follow and enter the house.

In State v. Byas, 94-1999 (La. App. 4 Cir. 12/15/94), 648 So. 2d 37, this Court combined the theories of exigent circumstances and hot pursuit.

> The officers received a tip from a reliable known informant that "Cory" was selling cocaine at a certain address. The confidential informant also stated that "Mary" lived at that address and aided Cory in the operation. The officers went to the residence and saw a man standing outside. The man saw the officers and fled. The next evening, the officers again approached the residence and saw the same man standing outside. Upon seeing the officers, the man fled toward the rear of the residence, and one officer saw him throw a bag, containing a large white object, over a fence into a vacant lot next to the residence. The man ran to the back of the residence, knocked, and was admitted by the defendant. When she saw the officers pursuing, the defendant slammed the door shut. The officers entered and seized the defendant and the man. The officers searched her and found in her pants pocket a matchbox containing three rocks of cocaine. Upholding the officers' entry into the house and the search of the defendant, this Court noted that the officers had probable cause to arrest the man based upon the tip from the informant, the man's flight, and his abandonment of the bag containing what appeared to be cocaine. The officers were justified in chasing the man into the residence in "hot pursuit". This Court further found that once the officers were inside the house, they were justified in arresting the defendant for her commission of acts which constituted resisting arrest and for her participation in the drug operation.

Finney, pp. 4-5, ___ So. 2d at ___.

In Finney, the officers, who knew the defendant from a prior narcotics arrest during which he had been observed selling narcotics repeatedly, saw the defendant being handed a white spherical object, approximately the size

of a tennis ball, which the officers believed to be cocaine. Finney attempted to conceal the object as soon as he saw the police car. This Court concluded that, in light of the officers' previous experience and knowledge of the defendant as a large-scale drug dealer, there was reasonable suspicion to stop him. When the defendant was ordered to stop, he fled into his house. That flight, coupled with the attempt to conceal the object and the officers' prior knowledge of the defendant, was sufficient to give the officers probable cause to believe the defendant was in possession of drugs.

Here, the defendant actually made a sale of marijuana to an undercover police officer, giving the officers probable cause to arrest him. Furthermore, the undercover officer had seen additional contraband in the defendant's possession, and this information had been relayed to the takedown team. Therefore, when the defendant entered his apartment after seeing the officers approaching, the officers were justified in pursuing the defendant to prevent the destruction of evidence as well as to apprehend him.

As the State argues, once the officers were lawfully inside the apartment, they could make a warrantless seizure of the marijuana which they saw on the bed in plain view. See State v. Smith, 96-2161 p. 3 (La. App. 4 Cir. 6/3/98), 715 So. 2d 547, 549, in which this Court discussed the

plain view exception:

> In order for an object to be lawfully seized pursuant to the "plain view" exception to the Fourth Amendment, "(1) there must be a prior justification for the intrusion into a protected area; (2) in the course of which the evidence is inadvertently discovered; and (3) where it is immediately apparent without close inspection that the items are evidence or contraband." State v. Hernandez, 410 So. 2d 1381, 1383 (La. 1982); State v. Tate, 623 So. 2d 908, 917 (La. App. 4 Cir.), writ denied 629 So. 2d 1126 and 1140 (La. 1993). In Tate, this court further noted: "In Horton v. California, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990), the Court held that evidence found in plain view need not have been found "inadvertently" in order to fall within this exception to the warrant requirement, although in most cases evidence seized pursuant to this exception will have been discovered inadvertently." Tate at 917.

See also State v. Nogess, 98-0670 (La. App. 4 Cir. 3/3/99), 729 So. 2d 132; State v. O'Shea, 97-0400 (La. App. 4 Cir. 5/21/97), 696 So. 2d 115.

CONCLUSION

For the above reasons we find that the trial court abused its discretion when it suppressed the evidence seized from the apartment. This writ is granted and the motion to suppress is reversed.

WRIT GRANTED; MOTION TO SUPPRESS IS REVERSED.