

**STATE OF LOUISIANA**

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**NO. 2001-K-2408**

**VERSUS**

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**COURT OF APPEAL**

**VINCENT LEWIS**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**APPLICATION FOR SUPERVISORY WRITS DIRECTED TO  
CRIMINAL DISTRICT COURT ORLEANS PARISH**

**NO. 418-552, SECTION "E"**

**Honorable Calvin Johnson, Judge**

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**PER CURIAM**

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(Court composed of Chief Judge William H. Byrnes III, Judge Joan Bernard  
Armstrong and Judge James F. McKay, III)

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COUNSEL FOR DEFENDANT

**WRIT GRANTED**  
**REVERSED AND**  
**REMANDED FOR**  
**FURTHER PROCEEDINGS.**

STATEMENT OF THE CASE

On December 12, 2000, the defendant, Vincent Lewis, was charged with one count of distribution of marijuana, a charge to which he subsequently pled not guilty. The court heard his motion to suppress the evidence on July 16 and October 5, 2001. The court took the matter under advisement, and on November 29 the court granted the motion. The State now comes before this court seeking relief from this ruling. Pursuant to this court's order, the State has supplemented its application with the transcripts of the July 16, 2001 hearing and the November 29 ruling. This court stayed all proceedings.

FACTS

The evidence suppressed in this case was seized from the defendant's residence pursuant to a search warrant. The affidavit for the warrant stated that on August 21, 2000, police officers received a complaint on the "Narcotics Hotline" that unidentified individuals were selling unknown narcotics from 3439 Bruxelles Street. The officers had received complaints

in the past about narcotics sales from that address, and on one occasion the complaint had specified that “Vincent” was involved in the sales.

At approximately 7:30 p.m. on August 31, the officers set up a surveillance of the address. Shortly thereafter, the officers observed an unknown man walk up to the residence and knock on the door. He was admitted to the residence, remained a short time, and then left. A few minutes later, another man walked up to the residence and knocked on the door. The man was admitted to the residence, remained a short time, and then left.

At approximately 8:00 p.m. the officers saw a man drive up in a truck and park in front of the residence. He walked to the door, knocked, and was admitted. He remained there approximately five minutes and then left the residence, getting into his truck and driving from the scene. Backup officers followed the truck until it had left the immediate area and then stopped the truck. As the officers approached the driver’s side of the truck, they detected a strong odor of marijuana coming from within the truck. After the officers ordered the driver out of the truck, they observed a small partially burned marijuana cigarette lying in the ashtray. They also found a small zip-lock bag of marijuana lying on the seat of the truck, hidden under a newspaper. The officers arrested the driver.

The officers then decided to apply for a warrant for the residence, and they returned to the residence to secure it while the warrant was being sought. The officers found a man on the front porch of the residence and noticed the front door was open. The officers knocked on the door and entered. Inside, they encountered the defendant Vincent Lewis in the living room, and they also saw a small amount of loose marijuana lying in plain view in a small tray on a coffee table. Other officers secured a shed in the back yard and found two cultivation boxes, one of which contained two large marijuana plants and loose marijuana, and items used in the indoor growing of marijuana. Based on these facts, the officers obtained a warrant to search the house.

At the July 16, 2001 hearing, one of the officers involved in the surveillance described the events leading up to the execution of the warrant. His testimony basically tracked the information given in the warrant affidavit. In addition, he testified that the defendant Vincent Lewis was the man who admitted the suspected buyers to the residence. He also testified that after the other officers stopped the truck driver and found him to be in possession of marijuana, they decided to secure the residence prior to seeking the warrant because the area where the truck was stopped was near the St. Bernard Project, next to which the residence was also located, and

they feared news of the stop would travel back to anyone in the residence. He testified that the officers did not search the residence after entering it to secure it. He stated that once it was established that only the defendant was inside the residence, one officer remained with the defendant inside while the others left. He stated that after they executed the warrant, they searched the residence and found three large zip-lock bags of marijuana in a dresser drawer, as well as five smaller bags of marijuana and various small bags, some of which were similar to the bag recovered from the driver and others which resembled shipping envelopes. In addition, the officers found a scale and a book detailing how to grow marijuana. From the shed, they recovered cultivation boxes, two large marijuana plants, several large lamps, a thermometer, and razor blades. They also recovered \$156 from the defendant's pants pocket, in the denominations of seven \$20 bills, one \$10 bill, and six \$1 bills.

At the October 5 hearing, one of the officers who stopped the truck testified. He stated that at approximately 8:10 p.m. he and his partner were given a description of the truck. They stopped it near the intersection of Gentilly Boulevard and St. Bernard Avenue. He testified that after stopping the truck they found inside some partially-burned marijuana cigarettes and a zip-lock bag of marijuana. He stated that the officers decided to secure the

residence after finding marijuana in the truck, and he went to the residence and participated in securing it. He stated they saw some marijuana lying in plain view in the living room. He detailed what the officers seized pursuant to the warrant, and he stated that some of the marijuana found in the residence was packaged in a bag identical to the one he seized from the truck.

On cross-examination, the officer stated that the driver of the truck did not tell them that he had gotten the marijuana from the defendant; he made no statements at his arrest. The officer testified that as he entered the residence, he saw the defendant sitting on a sofa in the same room where the marijuana was lying in plain view. He stated that although the officers secured the residence at approximately 8:15, they did not obtain the warrant until 10:35 that evening.

## DISCUSSION

The November 21 transcript indicates the trial court suppressed the evidence because it found there was not a sufficient link between the marijuana found in the truck and the defendant's residence. The court noted the tips the officers received were from unknown sources; the officers did not attempt to corroborate the tips by conducting a controlled buy; and the

truck's driver did not admit he obtained the marijuana from the defendant. The State argues the tip, combined with the surveillance and the discovery of marijuana in the truck of the last person who was seen entering and leaving the residence, gave the officers probable cause to believe there was contraband in the residence. In his response, the defendant contends there was no probable cause for the issuance of the warrant until the officers entered the residence and found the marijuana lying in plain view. Thus, he argues, that marijuana could not be considered in determining whether there was probable cause for the issuance of the warrant, and without this marijuana, there was no probable cause for the issuance of the warrant.

There is no doubt that the discovery of the marijuana in the residence supported the issuance of the warrant. The marijuana was discovered in plain view, and if the officers had the right to be where they could see it, it could be lawfully seized and could be included in the affidavit for the warrant. See 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. Thus, the real issue is whether the officers' warrantless entry into the residence was lawful.

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:

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. den., *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. Julian*, 2000-1238 (La. App. 4 Cir. 3/4/01), 785 So. 2d 872; *State v. Brown*, 99-0640 (La. App. 4 Cir. 5/26/99), 733 So. 2d 1282.

With respect to the exigent circumstances requirement, here the State argued the officers had exigent circumstances to enter the residence because the truck driver was stopped in the same general area as the residence, and the officers feared word of the arrest might get back to the residence and its occupant would destroy any remaining marijuana. The defendant argues that the only reason given at the hearing for entering the residence was one officer's testimony that they entered to stop the defendant from conducting any further sales. However, at the July 16 hearing, that same officer testified:

Due to the factors of the amount of traffic that we observed in a short span and our knowledge that word does travel fast in that area—it's right around the St. Bernard Housing Development. It's on the



outskirts. From past experience, they have a lot of lookouts.

In addition, at the October 5 hearing another officer testified that they decided to secure the residence “given the close proximity of the stop and to stop any additional illegal activity at the residence”. In State v. Killian, 95-826 (La. App. 3 Cir. 5/8/96), 677 So.2d 487, the court found the imminent sale of the remaining drugs gave the officers exigent circumstances to enter the house. Thus, it appears the State showed the existence of exigent circumstances to enter the residence.

However, it does not appear that the court suppressed the evidence because it found the officers lacked exigent circumstances to enter the residence. A reading of the court’s ruling shows the court suppressed the evidence because it found the tip, the officers’ surveillance, and the stop of the truck driver did not give the officers probable cause to believe the residence contained contraband.

In State v. Powell, 2001-0638 (La. App. 4 Cir. 12/12/01), 804 So. 2d 802, the officers received a tip from a reliable C.I. about drug sales from a certain location. The officers went to that location and saw what he believed were three drug transactions. This court found the officers had probable cause to believe the residence contained contraband. In State v. Julian, 2000-1238 (La. App. 4 Cir. 3/4/01), 785 So. 2d 872, this court found the

officers had probable cause to believe the residence that the officers entered without a warrant contained contraband. The officers had received complaints of narcotics activity at the residence, and during a surveillance they saw one of the defendants engage in an apparent drug transaction in front of the residence. Likewise, in State v. Pounds, 2000-2118 (La. App. 4 Cir. 5/30/01), 789 So. 2d 721, police officers were conducting a surveillance of a certain apartment complex when they saw the defendant walk out of an apartment and engage in an apparent drug transaction on the balcony outside the apartment. The officers approached the suspected buyer as he left, and he threw down a bag of marijuana. The officers then went to the apartment, which the defendant had reentered, and forced their way inside. Once inside, the officers saw marijuana lying in plain view. On review, this court found the officers had probable cause to believe the apartment contained drugs, even though the State did not present any evidence of why the officers were conducting the surveillance, because they discovered the suspected buyer in possession of the marijuana. This court also found there were exigent circumstances to enter the apartment because the officers stopped and arrested the buyer just outside the apartment.

In contrast, this court found no probable cause to believe there was contraband in a residence in State v. Blue, 97-2699 (La. App. 4 Cir. 1/7/98),

705 So. 2d 1242. The officers received a tip of drug sales at a certain address by a man wearing certain clothes. The officers went to the address and saw the defendant, whose clothes matched those given in the tip, walk out onto the porch. The defendant appeared startled and then walked back inside. The officers followed. This court found these facts did not give the officers probable cause to believe the residence contained contraband. This court discussed and distinguished other cases where this court found probable cause.

In the instant case, the facts that the officers knew at the time they entered the residence were the numerous anonymous tips about the sale of unknown narcotics from the residence, the entry and quick exit of three separate men within half an hour of the establishment of the surveillance, and the possession of a bag of marijuana and a partially-burned marijuana cigarette by the last person seen entering and leaving the residence. The State argues this knowledge made it more probable than not that there was contraband in the residence. We agree. We find that given the circumstances of this case, the officers had probable cause to believe the residence contained contraband before they entered and saw the marijuana lying in plain view.

For the foregoing reasons, we grant the writ, reverse the trial court's

ruling, and remand the case for further proceedings.

**WRIT GRANTED**  
**REVERSED AND**  
**REMANDED FOR**  
**FURTHER PROCEEDINGS.**