STATE OF LOUISIANA	*	**NO. 2000-KA-0014**
VERSUS	*	**COURT OF APPEAL**
HARRY HANDY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT, ORLEANS PARISH
NO. 403-683, SECTION "L"
HONORABLE TERRY ALARCON, JUDGE

* * * * * *

JOAN BERNARD ARMSTRONG

JUDGE

* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin and Judge Patricia Rivet Murray)

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AFFIRMED.

STATEMENT OF CASE

The defendant, Harry C. Handy and co-defendant, Keith Jenkins, were both charged by bill of information on December 17, 1998, with possession of cocaine, a violation of La. R.S. 40:967. The defendant pled not guilty at his arraignment on January 26, 1999. On March 18, 1999, the court found probable cause and denied the motion to suppress the evidence. The defendant's first trial ended in a hung jury on July 14, 1999. The State re-tried the defendant, and on September 20, 1999, a six-member jury found him guilty as charged. On September 29, 1999, the judge sentenced the defendant to serve five years in the custody of the Department of Correction, but suspended three years of the sentence, and placed him on three years active probation. On appeal, the defendant raises one assignment of error.

The record reflects that on December 13, 1998 at approximately 10:30 p.m., Officers Jamar Morris, Andre Benjamin and James Waiters of the Fifth District Task Force were on pro-active patrol in the area of North Galvez

and Flood Streets, a heavy drug dealing area. They were in a marked police unit and were looking for crimes in progress.

As the officers were proceeding on Flood Street, they saw a vehicle occupied by three males[2], two of whom were identified at trial as the defendant, the driver, and Keith Jenkins, run the stop sign at the intersection of Flood and Rocheblave Streets. Officer Morris activated the police vehicle's siren and lights, signaling the defendant to stop. Instead of stopping, the defendant "hit the gas" and turned onto Law Street, with the officers in pursuit. The defendant stopped about two blocks from where the officers initially signaled him to stop. The officers stopped behind the defendant's car, and Officer Morris approached the driver's side of the defendant's vehicle, while Officer Benjamin walked to the passenger side to cover Morris. As he approached the defendant's vehicle, Morris witnessed the defendant give Jenkins a plastic bag, which Jenkins placed in an open ashtray in the center console. Morris saw that the bag contained a white substance which he suspected was cocaine. The defendant and Jenkins were ordered out of the vehicle and secured by Officers Benjamin and Waiters. Thereafter, Officer Morris returned to the defendant's vehicle, and retrieved the contraband. The defendant and Jenkins were subsequently arrested.

The State and the defense stipulated, that if called to testify, an officer

from the crime laboratory would confirm that the substance retrieved was in fact cocaine.

The defense produced two witnesses at trial. Keith Jenkins testified that the cocaine found in the defendant's car belonged to him, and that unbeknownst to the defendant, he placed it under the back seat when the police began following them. He did not tell the police that the drugs belonged to him. The defendant denied running a stop sign, and trying to elude the officers. He also denied that Jenkins handed him anything. He added that the police approached his car with their guns drawn, and handcuffed him as he got out of the car. The police removed the back seat of his vehicle, and discovered the contraband. He denied that there were drugs in the car's console area.

A review of the record reflects that there are no errors patent.

In his sole assignment of error, the defendant argues that the trial court erred when it denied the motion to suppress because the officers lacked probable cause to arrest him. Therefore, the drugs were seized pursuant to an illegal search and should have been suppressed.

An individual cannot be stopped in his vehicle by a police officer, who does not have a warrant, unless the officer has reasonable suspicion that the individual is committing, has committed, or is about to commit a

criminal offense, including the violation of a traffic regulation. La.C.Cr.P. art. 215.1; State v. Mitchell, 97-2774, 98-1128, 98-1129 (La. App. 4 Cir. 2/3/99), 731 So.2d 319. See generally, Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Andrishok, 434 So.2d 389 (La.1983); State v. Smith, 94-1502 (La. App. 4 Cir. 1/19/95), 649 So.2d 1078.

Reasonable suspicion for an investigatory stop is something less than probable cause. It must be determined under the facts of each case whether the officer had sufficient articulable knowledge of particular facts and circumstances to justify an infringement upon an individual's right to be free from governmental interference. State v. Albert, 88-1251, 88-1252 (La. App. 4 Cir.11/16/89), 553 So.2d 967. The totality of the circumstances must be considered in determining whether reasonable suspicion exists. State v. Belton, 441 So.2d 1195 (La.1983), cert. den., Belton v. Louisiana, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984); State v. Anderson, 96-0810 (La. App. 4 Cir. 5/21/97), 696 So.2d 105. An investigative stop must be justified by some objective manifestation that the person stopped is or is about to be engaged in criminal activity, or else there must be reasonable grounds to believe that the person is wanted for past criminal conduct. State v. Moreno, 619 So.2d 62, 65 (La.1993). See also, State v. Eddie, 96-2787 (La. App. 4 Cir. 4/30/97), 694 So.2d 503.

Warrantless searches and seizures fail to meet constitutional requisites, unless they fall within one of the narrow exceptions to the warrant requirement. State v. Edwards, 97-1797, (La.7/2/99); 750 So.2d 893, cert. denied, Edwards v. Louisiana, --- U.S. ----, 120 S.Ct. 542, 145 L.Ed.2d 421 (1999). 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, 93-1281 (La. App. 4 Cir. 8/19/93), 623 So.2d 908, 917, writs denied, 629 So.2d 1126, 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. Harris, 97-1620 (La. App. 4 Cir. 8/27/97), 700 So.2d 222.

Officer Morris' testimony at the hearing on the motion to suppress and at the trial, established that he was patrolling an area known for

narcotics activity, when he witnessed the defendant run the stop sign. Morris activated his vehicle's flashing lights and siren, and chased the defendant's car for two blocks before the defendant pulled over. As Morris approached the driver's side of the defendant's vehicle, his suspicion was aroused when he saw the defendant make a "sneaky" hand to hand pass of a plastic bag to Jenkins. When questioned as to his vantage point to see the contraband, Morris responded:

> A. I was standing right next to their vehicle, right at the window.
>
> Q. Was the window up or down?
> A. It was down.
>
> Q. So you could see right through the car?
> A. Right.

Nevertheless, because he was not certain that the bag did not contain a weapon, he ordered the suspects out of the car. Once his partners secured the suspects, Morris returned to the defendant vehicle, and retrieved the contraband. As to the visibility of the contraband, Officer Morris stated:

> Q. Did you have to move anything out of the way?
> A. No, . . . It was right there at the front. It was right sitting in the ashtray.

In State v. Smith, 96-2161 (La. App. 4 Cir. 6/3/98), 715 So.2d 547 police officers followed a vehicle whose occupants they suspected had just

made a drug buy. As the suspects parked their vehicle in the parking lot of an abandoned building, the officers parked nearby, approached the suspects' car on foot, and saw the suspects "loading" crack pipes with apparent rocks of cocaine. The defendants were ordered out of the car and immediately placed under arrest. This court upheld the seizure under the "plain view" exception noting that the suspects were not "stopped" until after they were observed engaging in the commission of a crime, preparing to smoke crack cocaine. The officers had not intruded into a protected area at the time they observed the actions of the suspects.

In this case, the defendant and Jenkins were not stopped until the officers witnessed them run a stop sign. At trial the officer testified he could see what appeared to be crack cocaine inside the bag being passed. At no time did the officers intrude into a protected area; what they observed could have been observed by any member of the public. The evidence seized was in plain view.

The trial court correctly denied the motion to suppress the evidence. This assignment is without merit.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED.