

STATE OF LOUISIANA

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NO. 2000-KA-0415

VERSUS

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COURT OF APPEAL

**REGINALD JACKSON,
TAMAKIA MCCOY, AND
ROLESA CLAVERIE**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 407-102, SECTION "F"
Honorable Dennis J. Waldron, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,
and Judge Dennis R. Bagneris, Sr.)

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AND ROLESA CLAVERIE**

AFFIRMED

Reginald Jackson, Tamakia McCoy, and Rolesa Claverie each appeals their pleas of guilty under State v. Crosby, 338 So.2d 500 (La. 1976) to multiple drug charges. We affirm.

PROCEDURAL HISTORY

By bill of information, Reginald Jackson, Tamakia McCoy, and Rolesa Claverie were charged as follows: Count 1 charged all three with distribution of cocaine; Count 2 charged all three with possession of cocaine with intent to distribute; and Count 3 charged Jackson and Claverie with possession of cocaine. After the trial court denied their motion to suppress the evidence, they changed their pleas to guilty under State v. Crosby, 338 So. 2d 500 (La. 1976). Jackson entered a guilty plea to being a second offender and was sentenced as a second offender on Count 1 to fifteen years at hard labor without benefit of parole, probation, or suspension of sentence for the first five years of the sentence and without probation or suspension of sentence for the remaining ten years. On Count 2, Jackson was sentenced to

fifteen years at hard labor without benefit of parole, probation, or suspension of sentence for the first five years of the sentence; and, on Count 3, he was sentenced to two years at hard labor. All sentences are to run concurrently with each other. McCoy was sentenced on Counts 1 and 2 to seven and one-half years at hard labor without benefit of parole, probation, or suspension of sentence for the first five years. Both sentences are to run concurrently. Claverie was sentenced on Counts 1 and 2 to five years at hard labor without benefit of parole, probation, or suspension of sentence; and, she was sentenced to five years at hard labor on Count 3. All sentences are to run concurrently.

FACTS

Detective Patrick Joseph testified that on March 23, 1999, at approximately 9:00 p.m., he conducted a narcotics investigation in the 1300 block of St. Philip. Detective Joseph testified that he was undercover and on foot when he was approached by an unknown black male just before 1323 St. Philip. He said that this man stood just inside the ajar driver's side door of a gray Dodge Caravan which had its hood up, and that this man asked him if he was looking for something. He replied that he was and the man asked Detective Joseph what he needed, and Detective Joseph told the man that he wanted a "20." The man removed clear plastic from his mouth, unwrapped

the plastic, and gave Detective Joseph two pieces of an off-white substance that the detective believed to be cocaine. He then gave the man a pre-recorded twenty dollar bill from the First District Narcotics Unit. After the sale, Detective Joseph advised other officers of the sale; and, it was decided that Detective Joseph should return to the area to gather more intelligence on the man who sold him the cocaine.

Detective Joseph returned to the area shortly afterward, but he did not see the gray van or the man who had sold him the cocaine. He testified that as he continued through the 1300 block, he saw Reginald Jackson who asked him if he needed anything. Detective Joseph testified that he believed Jackson was soliciting a narcotics transaction, and he told Jackson that he needed a "20." The Detective watched Jackson go up a stairway and walk over to Apartment C where he saw Jackson engage in a conversation with an unknown subject. He also saw an exchange between them. Detective Joseph testified that Jackson came back down the stairs and gave him a piece of an off-white compressed substance he believed to be cocaine. He gave Jackson a pre-recorded twenty dollar bill in return and left the area.

Detective Joseph further testified that after notifying other officers of this second transaction, he was sent to the area for a third time with the intent that he purchase the same substance from the apartment where he saw

Jackson go. He went to 1323 St. Philip, Apartment C and knocked on the door which was answered by a woman later identified as Rolesa Claverie. He told her that he was looking for a little something, and she asked him what he needed. He told her, "A 20." Detective Joseph testified that she went back into the apartment, returned about fifteen seconds later, and gave him three clear plastic bags containing an off-white compressed substance believed to be cocaine. He then gave her a pre-recorded twenty dollar bill and checked the contraband. He testified that he next grabbed Ms. Claverie by the wrist and advised her that she was under arrest. After surrendering Ms. Claverie to another officer, Detective Joseph, Sergeant Mike Mornay, and Sergeant Mike Glasser secured the apartment. Detective Joseph testified that he saw a woman, later identified as Tamakia McCoy, on a bed in the rear bedroom. He further testified that when he entered the bedroom, he saw several pieces of an off-white compressed substance packaged in small baggies that were inside a torn paper bag. He placed Ms. McCoy under arrest, and he found several small children in a second bedroom in the apartment.

Detective Joseph further testified that he secured the apartment and left to obtain a search warrant while other officers stayed to maintain custody of the premises. He obtained the warrant at approximately 11:00

p.m. and returned to the apartment to conduct the search. He found sixty dollars in currency on the bed next to Ms. McCoy and several empty baggies in a dresser drawer in her bedroom. A search of Ms. Claverie's person turned up \$150 in currency. Detective Joseph also testified that forty-four bags of crack cocaine were found in plain view.

Asked whether he believed either Claverie or Jackson was going to destroy whatever contraband was present in the residence, Detective Joseph replied that based on his experience with a particular location when he tried to secure sellers and apartments inside the complex, people would look out of their windows and see police officers approaching. He noted that the apartment had two windows on the St. Philip Street side. He added that he felt it was necessary to devise a plan to slip in, secure the apartment, and then type up the search warrant before the contraband was either sold or destroyed. He admitted that neither Jackson nor Claverie had done or said anything to lead him to believe that they were going to destroy contraband. Detective Joseph also admitted that he did not see McCoy engage in any narcotics transactions and did not find any narcotics or marked money on her person. He further testified that two of the marked twenty dollar bills he used to buy the cocaine were found on the bed next to the torn brown paper bag that contained crack and that these items were next to McCoy. He also

testified that Jackson was arrested by support units just inside the hallway area as he (Detective Joseph) went up the stairs to the apartment.

Officer Adam Werner testified that he watched Jackson, McCoy, and Claverie after they were taken into custody and that he saw Claverie with a cigarette. He asked her what she had in her hand, and she told him that it was a cigarette laced with cocaine.

DISCUSSION

ERRORS PATENT

A review of the record shows no errors patent.

ASSIGNMENT OF ERROR NO. 1

In their first assignment of error, Jackson, McCoy, and Claverie complain that the trial court erred in denying their motion to suppress the evidence. They argue that there was no probable cause to enter the apartment without a search warrant and that exigent circumstances did not justify the warrantless entry. They further argue that any exigency was created by Detective Joseph when he pulled Ms. Claverie out of the apartment and that there was no basis to believe that evidence would be destroyed.

In State v. Johnson, 617 So. 2d 18, 20 (La. App. 4 Cir. 1993), this court discussed the applicability of the exigent circumstances exception:

Generally, searches may be conducted only

pursuant to a warrant which has been issued by a judge on the basis of probable cause. U.S. Constitution, Amendment 4; Louisiana Constitution Article 1 §5; C.Cr.P. Article 162; State v. Brady, 585 So. 2d 524 (La. 1991). A recognized exception to the warrant requirement for entry into a building is a quick search of the premises to determine the presence of persons in need, the presence of a perpetrator who might still remain on the premises, or to prevent the destruction of evidence. Thompson v. Louisiana, 469 U.S. 17, 105 S.Ct. 409 (1984); United States v. Rubin, 474 F.2d 262 (3rd Cir. 1974) cert. denied 414 U.S. 833, 94 S.Ct. 173, 38 L.Ed.2d 68 (1973); State v. Roebuck, 530 So. 2d 1242 (La. App. 4th Cir. 1988), writs denied, 531 So. 2d 764 (1988).

Probable cause alone does not justify the entry into an area otherwise protected by the Fourth Amendment of the United States Constitution and the Louisiana Constitution, Article 1 § 5. 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 (La. 1979). 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).

...In United States v. Rubin, 474 F.2d at 268-269, the court listed circumstances which might lead police officers to reasonably conclude that evidence would be destroyed or removed before they could secure a search warrant:

- 1) The degree of urgency involved and the amount of time necessary to obtain a warrant;
- 2) A reasonable belief that the contraband is about to be removed;
- 3) The possibility of danger to police officers guarding the site of the contraband while a search warrant is sought;
- 4) Information indicating the possessors of the contraband were aware that the police were on their trail; and
- 5) The ready destruction of the contraband and the knowledge and efforts to dispose of narcotics and escape are characteristic behavior of persons engaged in narcotics traffic.

In Johnson, the officers received information that drugs were being sold from a certain address. They established a surveillance and observed what appeared to be drug sales by the defendant in front of the address and then from a nearby car where the defendant's companion was stationed. The officers arrested the companion at the car and then secured the house while awaiting the issuance of a warrant for the house. On appeal of the defendant's conviction, this court found that the officers had probable cause to believe that the house contained drugs; and, the arrest of the defendant's companion, of which the defendant would be aware, allowed the officers to

enter the house to secure it.

In both United State v. Thompson, 700 F.2d 944 (5th Cir. 1983) and United States v. Scheffer, 463 F.2d 567 (5th Cir. 1972), cert. den. 409 U.S. 984, 93 S.Ct. 324 (1972), the Court found that the officers' entries into the houses were or might have been illegal because the officers set up the encounter which led the officers to make a warrantless entry. In Scheffer, the officers set up a controlled delivery of the drugs, and the Court found that there was no reason why the officers could not have gotten a warrant prior to the delivery. In Thompson, the police set up a controlled buy of drugs, and the defendant was arrested outside the house where the purchase was to be made when he recognized one of the undercover agents. The government argued that the officers entered the house because of their fear for the safety of the informant making the purchase, but the record did not establish this fear. The Court remanded the case to the trial court, however, for a determination if the officers feared that the evidence would be destroyed. The Court also noted that the officers' failure to get a warrant at the first opportunity to do so would not automatically render a warrantless exigent entry unlawful. In United States v. Webster, 750 F.2d 307 (5th Cir. 1984), cert. den. 471 U.S. 1106, 105 S.Ct. 2340 (1985), the Court upheld a warrantless entry into a hotel room even though the officers could possibly

have gotten a warrant at an earlier opportunity, where the delay in getting the warrant was only a few hours from the first opportunity and where the officers were involved in a continuation of the investigation when circumstances arose necessitating a warrantless entry.

In the present case, exigent circumstances justified Detective Joseph's entry in the apartment occupied by Claverie and McCoy. The exigency was not created by Detective Joseph when he lawfully arrested Claverie who had just sold him crack cocaine. He reasonably believed, because of previous events at that apartment complex, that evidence would be destroyed by other occupants of the apartment once he arrested Claverie and Jackson.

The cocaine found in the bedroom was discovered pursuant to the "plain view" exception to the warrant requirement. For evidence to be seized under this exception, "(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 apparently without close inspection that the items are evidence or contraband." State v. Hernandez, 410 So. 2d 1381, 1383 (La. 1982). See also State v. Taylor, 531 So. 2d 1137 (La. App. 4th Cir. 1988). In Horton v. California, 496 U.S. 128, 110 S.Ct. 2301 (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. Detective Joseph saw the crack cocaine on the bed in a torn paper bag. Therefore, he could lawfully seize it pursuant to the “plain view” exception. This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In their second assignment of error, Jackson and McCoy complain that the trial court erred in finding probable cause for their arrests. As to Jackson, he argues that there was no probable cause for his arrest for possession with intent to distribute the cocaine that was found in the apartment; and, as to McCoy, she argues that there was no probable cause for her arrest for distribution of cocaine or for possession of cocaine with the intent to distribute.

Probable cause to arrest exists when the facts and circumstances, either personally known to the arresting officer or of which he has reasonably trustworthy information, are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223 (1964); State v. Fisher, 97-1133 (La. 9/9/98), 720 So. 2d 1179; State v. Thomas, 349 So. 2d 270, 272 (La. 1977). The standard for assessing probable cause is an objective

standard that must withstand the “detached, neutral scrutiny of a judge.” State v. Flowers, 441 So. 2d 707, 712 (La. 1983). The determination of probable cause must take into account the “practical considerations of everyday life on which ... average police officers can be expected to act.” State v. Raheem, 464 So. 2d 293, 296 (La. 1985). The arresting officer does not need to be convinced beyond a reasonable doubt of the guilt of the arrested person; and, the determination of probable cause requires more than bare suspicion, but not evidence sufficient to support a conviction. Melder v. Sears, Roebuck and Co., 98-0939 (La. App. 4 Cir. 3/31/99), 731 So. 2d 991; State v. Johnson, 94-1170 (La. App. 4 Cir. 8/23/95), 660 So. 2d 942, writs denied 95-2331, 95-3044 (La. 2/2/96), 666 So. 2d 1092, 1105.

It appears that McCoy and Jackson are confusing probable cause for an arrest with sufficiency of the evidence for a conviction. Detective Joseph had probable cause to arrest McCoy for possession of cocaine with the intent to distribute because she was found sitting on a bed where forty-four bags of crack cocaine lay in plain view. The facts and circumstances within his knowledge justified him in believing that she constructively possessed that cocaine; and, because there was probable cause for that arrest, probable cause to arrest her on the distribution charge is immaterial. As to the arrest of Jackson for possession of cocaine with the intent to distribute, he was

already under arrest for distribution of cocaine. He was seen going to the apartment where the cocaine was found and engaging in a transaction with an occupant of that apartment. He then returned to Detective Joseph and gave him crack cocaine. Detective Joseph was justified in believing that Jackson had constructive possession of the forty-four bags of cocaine seized from the apartment; therefore, Detective Joseph had probable cause to arrest Jackson for possession with intent to distribute. It should be noted that the transcript of the hearing at which they entered their guilty pleas indicates that Jackson, McCoy and Claverie reserved their rights to appeal the pretrial rulings against them, specifically the denial of the motion to suppress the evidence. As set forth in the discussion of Assignment of Error No. 1, above, there was no error in the trial court's ruling on the motion to suppress the evidence; and, because that ruling was not in error, the issue of probable cause for the arrests of McCoy and Jackson is immaterial. By pleading guilty under Crosby, they waived their right to have the State prove the charges against them. This assignment of error is without merit.

DECREE

For the foregoing reasons, the convictions and sentences of Reginald Jackson, Tamakia McCoy and Rolesa Claverie are affirmed.

AFFIRMED