

**STATE OF LOUISIANA** \* **NO. 2000-KA-0965**  
**VERSUS** \* **COURT OF APPEAL**  
**JONNETTE E. MCCORMICK** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 407-423, SECTION "B"**  
**Honorable Patrick G. Quinlan, Judge**

\* \* \* \* \*  
**Charles R. Jones**  
**Judge**  
\* \* \* \* \*

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones,  
and Judge Terri F. Love)

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**AFFIRMED**

Jonnette E. McCormick appeals her plea of guilty, citing State v. Crosby, 338 So.2d 584 (La. 1976), for the crimes of distribution of cocaine and possession of cocaine. In her sole assignment of error on appeal, McCormick argues the district court erred in failing to grant her motion to suppress evidence. We affirm.

**FACTS**

At the motion to suppress hearing, New Orleans police officer Patrick Joseph testified that the police received, on April 9, 1999, a hotline tip that a black female living at 241 S. White Street was selling crack cocaine from her house. The informant physically described the woman and indicated that she was selling the cocaine from a side door of the house located on Palmyra Street. The informant also noted the woman sold drugs twenty-four hours a day and that she used runners to deliver some drugs.

Officer Joseph testified that after receiving the tip, he walked through that area in an undercover capacity. As he came to 241 S. White, he saw

McCormick standing outside the residence. She fit the description given in the tip, and she was playing catch with several children. Officer Joseph walked up to McCormick, exchanged greetings with her, and then asked her, "You doing something?" McCormick stepped away from the children and asked him who had sent him. Officer Joseph replied: "Black, from down the street." McCormick asked him what he needed, and he told her he needed a "twenty." McCormick turned, took a small film canister from her pocket, and opened it. Officer Joseph testified he looked into the canister and saw several small rocks inside. She took one out and handed it to him. In return, he handed her a \$20 bill, the serial number of which had been previously recorded. Officer Joseph pocketed the rock and left the area.

Officer Joseph further testified he met with Detective Lanez, and the two agreed to return to McCormick and arrest her. Approximately ten minutes after the sale, Officer Joseph walked back to the area, and McCormick was still standing outside the residence. He went to her, arrested her, placed her in handcuffs, and advised her of her rights. He searched her but did not find the film canister. The door to the house was open, and he testified he and McCormick had been standing right in front of the open door while engaging in the sale. He testified he believed the film canister had been placed inside the house, and he intended to get a warrant to

search the house. He testified he entered the house to secure the premises to discover if anyone was inside who could destroy any evidence prior to his being able to obtain a warrant. He testified that as he walked through the house he saw some crack cocaine lying in plain view on a bed, along with a large amount of money, one bill of which was later found to be the marked \$20 bill he had given her. He also saw another rock lying on the kitchen table. He testified that he told McCormick he was going to get a warrant, and at that point she consented to a search of the house. He testified he further searched and found two razor blades with a white residue, tweezers with residue, a digital scale, and paraphernalia.

Officer Joseph admitted he did not see McCormick go inside the house after the sale, but he did not remain on the scene after completing the sale. He testified that after he arrested McCormick, she urged him to lock her open door. Instead, he entered and saw the contraband lying in plain view.

The State introduced the crime lab report, which indicated the rocks seized from McCormick's house and the rock she sold to Officer Joseph tested positive for cocaine.

### **DISCUSSION**

A review of the record for errors patent reveals the trial court erred in

sentencing McCormick on both counts. She pled guilty to one count of distribution of cocaine and one count of possession with the intent to distribute cocaine. As per La. R.S. 40:967B(4)(b), the first five years of each count must be served without benefit of parole, probation, or suspension of sentence. Although the court did not suspend either sentence, neither did it impose the prohibition of parole for the first five years of each sentence. Thus, the sentences are illegally lenient. Nonetheless, this court will not correct an error patent favorable to the defense where, as here, the issue is not raised by the State. State v. Fraser, 484 So. 2d 122 (La. 1986).

There are no other errors patent.

By her sole assignment of error, McCormick contends the trial court erred by denying her motion to suppress the evidence. She does not argue that the one rock of cocaine she sold to Officer Joseph was illegally seized; indeed, as the object was sold to the undercover officer, she has no basis for such a claim. Instead, she argues the cocaine seized from her house did not fall within any exception to the warrant requirement.

In its ruling on the motion to suppress evidence, the district court first noted that the officer was justified in entering the house to see if there were any adults who could take charge of the children outside. However, it does not appear this circumstance would allow the officer to enter McCormick's

house, especially given the fact that it was unknown to the Officer whether the children with whom McCormick was playing catch were her children, as opposed to children who may have lived in the neighborhood. The officer could have just as easily asked her if the children were hers, and if so, if anyone could have taken charge of them. Indeed, the officer did not offer this as a justification for entering the house.

Instead, the officer testified he intended to get a warrant to search the house, and he entered the house to make sure there was no one in the house who could have destroyed any evidence while he was getting the warrant. This was the other basis mentioned by the trial court upon which the officer could enter the house. 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. Brown, 99-0640 (La. App. 4 Cir. 5/26/99), 733 So. 2d 1282; State v. Blue, 97-2699 (La. App. 4 Cir. 1/7/98), 705 So. 2d 1242; State v. Tate, 623 So. 2d 908 (La. App. 4 Cir. 1993).

McCormick does not appear to dispute that the officer had probable cause to believe the house contained contraband. The hotline tip indicated she was selling cocaine from her house, and the officer conducted an undercover purchase of cocaine from her as she was standing right outside the side door to the house. The door was open during the transaction. When McCormick opened the film canister from which she took the rock of cocaine she sold to the officer, the officer observed several other rocks inside the canister. When the officer arrested McCormick ten minutes later, she did not have the film canister in her pocket, and the door to the house was still open. The tip, combined with the sale, gave the officer probable cause to believe there was cocaine in the house.

However, McCormick argues that the second prong, that of exigent circumstances, is missing from this case. She contends there was no reason for the officer to believe anyone else was in the house who could have tampered with evidence or destroyed contraband. She points to the fact that no one else was involved in the sale to the undercover officer, and no other adult was in the area when the officer returned to arrest her. In response, the

State argues that the tip indicated McCormick also used runners in her drug sales, who could have been in the house during her arrest. The State also notes that McCormick nervously asked the officer to lock her door prior to taking her away. In her response, McCormick notes that any person who was arrested and who had left her door open would have reasonably asked the arresting officer to lock her door if no one else was around when the arrest occurred. In addition, she describes the function of "runners", which would have precluded her participation in the direct sale to the undercover officer if a runner had been present.

Given the fact that the tip mentioned other people involved in the drug operation originating out of the house, it does not appear that the trial court erred by finding the officer's entry was justified to keep any drugs from being destroyed by someone who might have been in the house. Thus, the State showed probable cause and exigent circumstances for the officer's entry into the house. Once inside, the officer saw cocaine and a large amount of money lying in plain view. The officer could have seized these items pursuant to the plain view exception to the warrant requirement. 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; State v. Irby, 93-2265 (La. App. 4 Cir. 1/13/94), 632 So. 2d 798. The rest of the items



seized from the house were seized after McCormick gave her consent to a search. She does not now argue this consent was lacking.

The trial court did not err by denying the motion to suppress the evidence seized from McCormick's house. Accordingly, the convictions and sentence of Jonnette E. McCormick are affirmed.

**AFFIRMED**