NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-0264**
VERSUS	*	**COURT OF APPEAL**
GREGORY W. GUIDRY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 421-849, SECTION "C"
Honorable Sharon K. Hunter, Judge
* * * * * *
Judge Patricia Rivet Murray
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, Judge Patricia Rivet Murray)

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AFFIRMED

STATEMENT OF THE CASE

Gregory W. Guidry was charged by bill of information with one count of possession of crack cocaine with intent to distribute and one count of distribution of crack cocaine. His motion to suppress evidence was denied, and he was found guilty of simple possession of cocaine following a bench trial. He subsequently was adjudged to be a fourth felony offender, and sentenced as a habitual offender to thirty years at hard labor. Mr. Guidry appeals his conviction arguing that the court erred when it refused to suppress evidence that he alleges was seized illegally.

STATEMENT OF FACT

At Mr. Guidry's trial, Detective Noel testified that on March 26, 2002, he and Detective Keating, along with Sergeant Imbraguglio, were on proactive patrol, passing slowly in front of 8726 Jeannette Street in the Pidgeontown area of New Orleans, notorious for narcotics sales. The officers were aware of previous complaints to the police department "hotline" regarding illegal narcotics activities at the residence, and as they

passed the house, they observed a person on the porch, later identified as Clardie Ellis, hand an unknown amount of currency to a person, later identified as Gregory Guidry, in the open doorway of the house, in exchange for a small object, which the officers could not identify.

The officers had an unobstructed view of the transaction from their vehicle, and based on their experience, observations, and the hotline complaints, the officers believed a hand-to-hand narcotics transaction was occurring. They, therefore, stopped, got out of their vehicle, and approached the porch. Upon seeing the officers, Mr. Ellis stepped off the porch and walked away while Mr. Guidry entered the residence. Detective Keating approached Mr. Ellis who then discarded a piece of crack cocaine, which the detective recovered. Detective Noel and Sergeant Imbraguglio followed Mr. Guidry into the residence, apprehended him in the second room, handcuffed him, and read him his *Miranda* rights. As they were leaving the residence, the officers noticed a plastic bag of possible crack cocaine and a plastic bag of possibly illegal pills in plain view on a dresser top. The officers seized the plastic bags of possible illegal narcotics from the residence, as well as the one piece of suspected crack cocaine from Mr. Ellis. Mr. Guidry was holding a ten-dollar bill in his hand when he was apprehended, and an additional $205.00 was found on him when he was searched incident to

arrest.

ERRORS PATENT

A review of the record reveals one possible error patent. On the day of sentencing, Guidry's attorney orally motioned for a new trial; the court denied the motion and immediately proceeded to sentencing. As previously stated by this Court, this was most likely harmless error:

> La.C.Cr.P. art. 873 requires a twenty-four hour delay between the denial of a motion for new trial and sentencing, unless the defendant waives such delay. This court has held that, where a defendant shows no prejudice and does not challenge his sentence on appeal, any error in failing to observe the twenty-four hour delay is considered harmless. *State v. Ward*, 94-0490, pp. 7-8 (La.App. 4 Cir. 2/29/96), 670 So.2d 562, 566, *writ denied*, 97-0642 (La.9/19/97), 701 So.2d 165; *State v. McKinney*, 93-1425, pp. 8-9 (La. App. 4 Cir. 5/17/94), 637 So.2d 1120, 1125, *writ denied*, 97-1339 (La.12/19/97), 706 So.2d 444. Defendant has failed to show any prejudice because his original sentence was vacated and set aside on April 4, 1996, when the defendant was adjudicated a habitual offender and sentenced under La. R.S. 15:529.1. Accordingly, defendant is not entitled to any relief as a result of this error. La.C.Cr.P. art. 921.

State v. Bentley 97-1552 (La. App. 4 Cir. 10/21/98), 728 So.2d 405, 407, 408. Mr. Guidry was sentenced immediately after the denial of his motion for new trial, but that sentence was then vacated and he was sentenced as a habitual offender. In addition, La.C.Cr.P. art. 852 requires a motion for new trial to be in writing. In the instant case, it appears that Mr. Guidry's motion

was made orally, and on that basis, it appears that the trial court did not err in failing to rule on the improperly filed motion before sentencing. *State v. Lewis*, 99-3150, p. 6 (La. App. 4 Cir. 2/22/01), 781 So.2d 650, 653. The trial court's error appears to be harmless, and Mr. Guidry is not entitled to any relief as a result of this error.

DISCUSSION

Mr. Guidry contends that the trial court erred in denying his motion to suppress evidence for lack of probable cause to arrest him or to enter his house. The appellate court reviews the trial court's findings of fact on a motion to suppress under a clearly erroneous standard and reviews the issue of reasonableness de novo. *State v. Hamilton*, 2000-1176, p. 5 (La.App. 4 Cir. 9/13/00), 770 So. 2d 413, 417. On mixed questions of law and fact, the appellate court reviews the underlying facts on an abuse of discretion standard and reviews any conclusions drawn from those facts de novo. *Hamilton*, 2000-1176, p. 5, 770 So. 2d at 417. Mr. Guidry requests review of the trial court's conclusion that the officers had probable cause to arrest him.

Warrantless searches and seizures are unreasonable per se unless justified by one of the specific exceptions to the warrant requirement. *State v. Henderson*, 2000-0511, p. 8 (La. App. 4 Cir. 12/16/00), 775 So. 2d 1138,

1142-1143, citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). When the constitutionality of a warrantless search or seizure is at issue on a motion to suppress, the state bears the burden of proving that the search or seizure was justified under one of the exceptions to the warrant requirement. La.C.Cr.P. art. 703(D). *State v. Hall*, 99-2887, pp. 3-5 (La. App. 4th Cir.10/4/00), 775 So.2d 52, 56-57. Whether evidence was seized in violation of the Fourth Amendment is a determination to be made by the trial judge, whose factual findings are entitled to great weight on appeal. *Id*.

At the hearing on the motion to suppress in the instant case, Detective Noel testified that he and the other two officers were on proactive patrol, passing Mr. Guidry's house on Jeannette Street based on previous tips received by the police department "hotline" of illegal narcotics sales from that residence, which is located in an area with a reputation for such sales. While observing the residence, the officers witnessed what appeared to be a drug exchange for cash; at that point, the officers had reasonable suspicion for an investigatory stop of Mr. Guidry and Mr. Ellis. The fact these men were on the porch of Mr. Guidry's residence did not prohibit the officers from approaching them. In *State v. Dixon*, 391 So.2d 836, 838 (La.1980), the Louisiana Supreme Court made clear that the police have "the same right

as other members of the public to approach the doorway [of a home] and see what was exposed by the owner to the view of the general populace." Mr. Guidry was in the open doorway of his residence, while Mr. Ellis was on the porch, leaving both men open to view by the public.

In addition, once Mr. Ellis dropped the rock of crack cocaine, the officers had probable cause to arrest him and Mr. Guidry for the suspected drug transaction. *State v. Deary*, 99-0627, p. 1-2 (La. 1/28/00), 753 So.2d 200, 201. When Mr. Guidry and Mr. Ellis fled, one into the residence, the other away from the residence, the officers pursued and lawfully entered the residence based on the exigent circumstance that evidence may be destroyed and based on their hot pursuit of Guidry. *Id.*

A protective sweep of the residence was properly conducted, as a security check of the surrounding area immediately after an arrest is a recognized exception to the search warrant requirement. *State v. Guiden*, 399 So.2d 194 (La.1981), *cert. denied*, 454 U.S. 1150, 102 S. Ct. 1017, 71 L.Ed.2d 305 (1982). In recognizing this exception, the Louisiana Supreme Court stated:

> The reasonableness of a security check is simple and straightforward. From the standpoint of the individual, the intrusion on his privacy is slight; the search is cursory in nature and is intended to uncover only "persons, not things." Once the security check has been completed and the premises secured, no further search be it extended or limited is permitted until a warrant is obtained. From the standpoint of the public,

> its interest in a security check is weighty. The delay attendant upon obtaining a warrant could enable accomplices lurking in another room to destroy evidence. More important, the safety of the arresting officer or members of the public may be jeopardized. Weighing the public interest against the modest intrusion on the privacy of the individual ... a security check conducted under the circumstances stated above satisfies the reasonableness requirement of the Fourth Amendment.

Guiden, 399 So.2d at 199, *quoting United States v. Agapito*, 620 F.2d 324, 336 (2d Cir.1980), *cert. denied*, 449 U.S. 834, 101 S. Ct. 107, 66 L.Ed.2d 40 (1980).

Once inside Mr. Guidry's residence, the officers discovered the bags of crack and pills, which were in plain view on the dresser. As discussed in *State v. Smith*, 96-2161 p. 3 (La. App. 4 Cir. 6/3/98), 715 So.2d 547, 549:

> 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.

This exception is applicable to the instant case where the police officers,

who entered the house in pursuit of Mr. Guidry under exigent circumstances, noticed what appeared to be illegal narcotics in plain view.

The officers began with a tip, developed a reasonable suspicion of criminal activity through their experience and observations, which then escalated into probable cause for arrest based on the actions of Mr. Ellis. The men attempted to depart the area, and the officers legally followed Mr. Guidry into the residence due to exigent circumstances. The illegal narcotics were recovered after Mr. Ellis dropped a rock of cocaine and after the arresting officer noticed additional obvious contraband in plain view.

CONCLUSION

The trial court did not err when it refused to suppress evidence that had been seized legally. Mr. Guidry's conviction and sentence are affirmed.

AFFIRMED