

STATE OF LOUISIANA * **NO. 2003-K-1585**
VERSUS * **COURT OF APPEAL**
TROY MCMAHON * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 439-062, SECTION "K"
Honorable Arthur Hunter, Judge

CHIEF JUDGE JOAN BERNARD ARMSTRONG

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Terri F. Love and Judge David S. Gorbaty)

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**WRIT GRANTED; RULING ON MOTION TO SUPPRESS
VACATED; MOTION TO SUPPRESS DENIED.**

STATEMENT OF THE CASE

On May 30, 2003 the State filed a bill of information charging the defendant with one count of possession of cocaine. The defendant was arraigned and entered a not guilty plea on June 4, 2003. On July 30, 2003, the defense filed pretrial motions. The hearing on motions was held on August 11, 2003; the court granted the motion to suppress evidence but denied the motion to suppress a statement. The court further found sufficient probable cause to bind the defendant over for trial. The State seeks our supervisory review of the suppression of the evidence. We grant the writ, and because we find the police officer had probable cause to search the vehicle for narcotics, we vacate the ruling of the trial court suppressing the evidence found incident to that search and deny defendant's motion to suppress.

STATEMENT OF THE FACTS

On May 13, 2003, New Orleans Police Department officers conducted a narcotics investigation at the Friendly Inn at 4861 Chef Highway because of citizen complaints and numerous prior narcotics arrests at that location. One of the officers, Detective Willoughby, was in a surveillance vehicle in the parking lot and observed a gray Suburban leaving the lot. The SUV

stopped when a man flagged it down, walked to the driver's side of the vehicle and handed currency to the driver, who then gave the man a small object. The man on foot immediately placed the object in his mouth.

Detective Willoughby recognized that this action was consistent with a crack cocaine purchaser concealing drugs. The pedestrian walked away, and the SUV continued out of the parking lot.

After having observed this apparent narcotics transaction, Detective Willoughby followed the SUV from the parking lot and observed that the targeted vehicle had a non-functional brake light. Based on this observation, as well as the apparent drug activity, Detective Willoughby asked that the takedown officers stop the SUV. Detective Jeff Sislo was able to locate the targeted vehicle as it was entering the interstate. He elected to wait until the SUV was off the interstate to make the stop, which occurred without incident after the vehicle left the I-10 at the Michoud exit.

Detective Sislo testified at the motion hearing that he obtained the driver's license information from the defendant, who was the driver of the vehicle. The NOPD computer information indicated that the defendant had two outstanding *capias* warrants for narcotics violations and a Municipal Court attachment. Det. Sislo arrested the defendant based on the warrants, handcuffed him, and placed him in the police car. He then conducted a

cursory search of the front driver's side of the vehicle. On the floor, he found a brownish-white piece of crushed matter in a small plastic bag; he immediately recognized the substance to be crack cocaine. In the ashtray he found thirty dollars in bills; wrapped inside were six more pieces of crack cocaine. The defendant was placed under arrest for the narcotics offense.

Detective Sislo further testified that there was a second occupant of the vehicle, a female passenger. After the defendant was arrested for the drugs and had been advised of his rights, he blurted out that the drugs belonged to him and that the girl had nothing to do with it.

During cross-examination, Detective Sislo explained that he was alone when he stopped the defendant. He initially asked both the defendant and the female passenger to exit the car. He ran the defendant's license, discovered the warrants, and then placed defendant, handcuffed, into the police car. The female had no outstanding warrant and was allowed to drive the defendant's vehicle away from the scene after the search was concluded. The detective testified that no contraband was found on the defendant's person. Det. Sislo saw the first piece of crack cocaine on the floor mat in the area where the driver's feet would be.

ANALYSIS

The State argues that the trial court erred when it suppressed the drugs found in the defendant's vehicle. The court heard argument during which defense counsel suggested that Detective Sislo had no authority to return to the vehicle and conduct a search after the defendant had been arrested and placed in the police car. The court agreed, noting that the officer did not state that he found the drugs in plain view, nor did he testify that the defendant made any movements indicating that he was attempting to hide contraband. The State argues here that the court erred in determining that Detective Sislo conducted a search and argues that the evidence was on the floorboard in "plain view".

At the hearing, defense counsel argued that Detective Sislo had referred to a search, and the police report that he identified also referred to a search incidental to an arrest. The Assistant District Attorney offered to recall the detective, but the court took the defense counsel's suggestion that the court reporter read back the detective's testimony. The court then specifically concluded that Detective Sislo did not testify that he observed contraband in plain view, but instead stated that he discovered the drugs on the floorboard as the result of a "cursory search." Because a review of the transcript confirms the trial court's conclusion that the detective testified that the drugs were located after a search, the State's argument lacks factual

support.

The State in its writ application does not specifically argue in the alternative that there were valid grounds to conduct an actual search of the vehicle, but the argument is implicit in the State's suggestion that there was probable cause to arrest the defendant for selling drugs based on the information regarding drug activity at the Friendly Inn and Detective Willoughby's observations.

In Maryland v. Dyson, 527 U.S. 465, 119 S.Ct. 2013 (1999), the Court held that there is no separate exigency requirement for a warrantless search of an automobile. It is sufficient merely that the State shows that there was probable cause to believe contraband was contained in the vehicle.

In State v. Bryant, 98-1115 (La. App. 4 Cir. 8/4/99), 744 So. 2d 108, the police received a tip from a confidential informant who described a man selling drugs from a dark green Oldsmobile Cutlass in the 1200 block of South Robinson. A surveillance was established, and the narcotics officer saw what he believed was a narcotics transaction by the defendant. The defendant was stopped, and the keys to the described vehicle were removed from his possession. The officer retrieved a bag containing crack cocaine from under the driver's seat of the Cutlass. In discussing whether the officer had probable cause to remove the keys from the defendant's possession and

search the vehicle, this Court stated:

Probable cause to arrest exists when the facts and circumstances known to the arresting officer and 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. State v. Wilson, 467 So. 2d 503 (La. 1985); cert. den. Wilson v. Louisiana 474 U.S. 911, 106 S.Ct. 281 (1985); State v. Blue 97-2699 (La. App. 4th Cir. 1/7/98), 705 So. 2d 1242 writ den. 98-0340 (La. 3/27/98), 716 So. 2d 887.

[Footnotes omitted.]

Bryant, pp. 5-6, 744 So. 2d at 111.

In State v. Julian & Whitley, 2000-1238 (La. App. 4 Cir. 3/14/01), 785 So. 2d 872, writ denied, 01-1247 (La. 3/22/02), 811 So.2d 920, this Court affirmed the denial of a motion to suppress evidence in circumstances similar to those found in Bryant. In Julian, complaints about drug activity at a certain residence were received on the ATF hotline; the callers also gave a description of the alleged seller. Members of the ATF and the New Orleans Police Department set up a surveillance at the address given, but were present for less than a minute when a person matching the description of the alleged seller walked out of the alleyway on the side of the residence. He met with a man who was holding currency. The alleged seller removed a plastic object from his pocket, opened it, removed something, and handed it to the apparent buyer. The seller received the currency in return. The buyer

walked off and was not able to be located later. However, the officers conducting the surveillance did follow the seller, who was later identified as William Whitley, down the alleyway to the backyard. He was detained and frisked. The officer conducting the frisk felt a plastic container in Whitley's pocket, removed and opened it, finding six pieces of crack cocaine.

Members of the back-up team who entered the backyard of the residence found additional cocaine on top of a washing machine. Four people were there and were arrested, including the defendant Julian who was observed throwing down marijuana and was found to be in possession of heroin. On appeal, the defendants argued that the search of Whitley exceeded the permissible scope of a frisk and that the officers exceeded their authority when they entered the backyard of the residence. This Court disagreed, noting that the observation of a narcotics transaction provided probable cause to arrest Whitley, and thus any search was valid as incidental to arrest. The Court further found that the observation of a narcotics transaction in front of the residence, coupled with the complaints of narcotics activity at the residence, gave the officers probable cause to believe that contraband was located in the backyard or down the alleyway from which Whitley had come just prior to the narcotics sale.

In the instant case, there was not a specific tip regarding the defendant

or his vehicle, a factor that distinguishes it from the cases discussed above. However, the police had received complaints about drug activity at the Friendly Inn; they also had made many arrests at that location. Detective Willoughby's surveillance confirmed that the defendant was involved in drug trafficking, specifically that the defendant exchanged a small object for currency. Moreover, the buyer concealed the object in a distinctive manner, consistent with purchasing crack cocaine, by placing the object in his mouth. Finally, when the defendant was stopped, a check of his name revealed that he was wanted for other narcotics violations. Therefore, there was probable cause to search the defendant's vehicle.

The defendant argues that the search was improper as incident to his arrest because he was handcuffed and in the police car when the search occurred. However, this overlooks the fact that the officer had independent probable cause to search the vehicle for drugs.

For the foregoing reasons, we grant supervisory review and vacate the trial court's ruling suppressing the evidence seized in the search of the defendant's vehicle.

**WRIT GRANTED; RULING ON MOTION TO SUPPRESS
VACATED; MOTION TO SUPPRESS DENIED.**