NOT DEISGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2004-K-0687**
VERSUS	*	**COURT OF APPEAL**
DARRELL DEGRUY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 437-832, SECTION "B"
Honorable Lynda Van Davis, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
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(Court composed of Chief Judge Joan Bernard Armstrong,
Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr.)

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WRIT APPLICATION GRANTED; JUDGMENT OF THE TRIAL

COURT REVERSED.

On April 8, 2003 the State filed a bill of information charging the defendant Darrell Degruy with one count of possession of cocaine with the intent to distribute. The defendant was arraigned and entered a not guilty plea on May 5, 2003. A motion to suppress evidence was filed on July 18, 2003; however, the hearing did not occur until March 19, 2004. At that time, the court granted the motion to suppress evidence. The State now seeks to have the matter reviewed under our supervisory jurisdiction.

FACTS

The only witness at the motion hearing was Officer Kori Keaton. He testified that on March 31, 2003 he was assigned to the Special Operations Division. On that date he received a tip from a confidential informant, who had provided information in the past which led to arrests and narcotics seizures, regarding drug sales in the 2600 block of Ursuline Street. The informant provided a description of the person selling drugs and also indicated that a white GMC truck was involved. Based on the tip, Officer Keaton set up a surveillance of the area in an unmarked police vehicle. He saw a black male, whom he identified as the defendant, sitting on the porch of 2640 Ursuline Street. The defendant matched the description given by the informant. Also, a white GMC vehicle was parked in front of the residence.

As Officer Keaton maintained his surveillance, he saw two people

make apparent drug buys from the defendant. The first person to approach the defendant was a female. She spoke with him briefly and then handed him an unknown amount of currency. The defendant put the money in his pocket, got up from the porch, and pointed a set of keys at the GMC truck, apparently deactivating an alarm on the truck. Officer Keaton could hear the sound of the alarm beeping and saw the lights blink. He observed the defendant enter the passenger side of the vehicle, reach down to the floorboard, retrieve an object, close the door, reactivate the alarm, and walk back to the female. She accepted the object from the defendant and went into the residence next door to 2640 Ursuline. A few minutes later, a male approached the defendant. Officer Keaton observed a similar sequence of events, involving the defendant accepting currency, turning off the car alarm, going into the vehicle to retrieve an object from the floorboard, and then giving an object to the unknown male. The apparent buyer then walked away from the area.

Based on his observations, his experience, and the tip from the informant, Officer Keaton believed he had witnessed two narcotics sales by the defendant. He then called his support unit, consisting of Sergeant Brian Lampart and Officer Nathan Gex, and requested a stop of the defendant whom he described to them. Those officers arrived at the scene, exited their

vehicle, and approached the defendant. The defendant immediately got up, went to the door of the residence, and began knocking on it, but did not receive a response. Sgt. Lampart and Officer Gex advised the defendant that he was under investigation for narcotics activity. Officer Keaton drove by the scene and confirmed to his take-down team that they had apprehended the person he had seen selling narcotics. He also gave them the information about the truck which the defendant had entered twice. Officer Nathan Gex walked over to the vehicle, looked through the window, and observed on the floorboard a clear plastic bag containing what appeared to be cocaine. Officer Gex retrieved the keys from the defendant, opened the vehicle, and removed the cocaine. The officers also seized the license plate from the truck because it was a personalized plate bearing the last name of the defendant, Degruy.

A search of the defendant's person resulted in the seizure of $105.00 in currency.

During cross-examination, Officer Keaton testified that the confidential informant had described the clothing of the subject as either a purple sweatshirt or sweat pants; the officer could not recall the exact description without reviewing the police report. He further testified that he conducted the surveillance from approximately one-half block away from

the defendant's location. He admitted that neither of the apparent buyers was stopped, nor was any attempt made to arrest the female who had entered the next-door house after buying drugs. Officer Keaton also admitted that no one ran the license plate of the white truck to determine to whom it was registered.

After Officer Keaton testified, the State introduced the crime lab report reflecting that two pieces of a white substance tested positive for cocaine.

DISCUSSION

The trial court granted the motion to suppress evidence solely because no search warrant was obtained by the police. The court noted first that the defendant was outside the vehicle when he was taken into custody. The defendant had the keys. Thus, the court reasoned, the police could have obtained a search warrant, which "would have been given on those set of facts, with two hand to hand transactions occurring." The court did not dispute that no violation of the defendant's privacy rights had occurred by Officer Gex looking through the truck window and observing cocaine; instead the court stated that "[t]he plain view doctrine doesn't get you into the car." Notably, the court believed that there was a sufficient basis to arrest the defendant, stating, "if Mr. Degruy were in the car when they went

to arrest him, that would have gotten them in the car without a search warrant. But with the car being locked, . . . [t]he Officer didn't have the right to go into that vehicle." The court then ruled that, because the only contraband seized was from the vehicle, there was no probable cause for the defendant's arrest.

We find that the trial court erred in its legal conclusion that the police could not enter the vehicle to seize the contraband which was in plain view. As was noted in State v. Heim, p. 6, 03-0957 (La. App. 4 Cir. 3/10/04), ____ So. 2d ____, 2004 WL 575024:

> It is well settled that a search conducted without a warrant issued upon probable cause is per se unreasonable under the Fourth Amendment, subject only to a few specifically and well delineated exceptions. State v. Spencer, 374 So.2d 1195 (La. 1979). The automobile exception was established due to the mobility of automobiles. Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). The exception was then extended to packages located within the vehicle. United States v. Ross, 456 U.S. 798, 102 S.Ct. 2175, 72 L.Ed.2d 72 (1970). To apply this exception the officers had to have probable cause to believe drugs were in the vehicle.

See also State v. Brown, 03-2155 (La. App. 4 Cir. 4/14/04), ____ So. 2d ___, in which this Court upheld the warrantless seizure of contraband under circumstances similar to those found in the instant case. The officers in Brown had received a citizen's tip about drug activity involving a man named "Sam" for whom the concerned citizen gave a physical description.

Surveillance was established, and the officer saw two suspected drug transactions involving the defendant, Samuel Brown, who matched the description given by the citizen. In each case, Brown retrieved something from a white Chevrolet. When the back-up officers arrived to stop him, Brown dropped a set of keys. One of the officers went over to the white Chevrolet, looked inside, and saw a clear plastic bag containing a white powder. He retrieved the keys which Brown had dropped, opened the car, and seized the bag of cocaine; a further search of the car resulted in the discovery of a firearm. In addition to finding that there was a reasonable basis to stop the defendant, this Court held that the cocaine was discovered in plain view and that under the automobile exception to the warrant requirement the officers could search the car without a warrant. Brown, p. 9, ____ So. 2d at ____.

In Brown, this Court cited to Maryland v. Dyson, 527 U.S. 465, 119 S.Ct. 2013 (1999), in which the United States Supreme Court reversed the granting of a motion to suppress evidence that had been seized without a warrant from the trunk of the defendant's automobile. The court, in a per curiam opinion, stated:

> The Fourth Amendment generally requires police to secure a warrant before conducting a search. California v. Carney, 471 U.S. 386, 390-391, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985). As we recognized nearly 75 years ago in Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925),

> there is an exception to this requirement for searches of automobiles. And under our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear in United States v. Ross, 456 U.S. 798, 809, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), when we said that in cases where there was probable cause to search a vehicle "a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained." (Emphasis added). In a case with virtually identical facts to this one (even down to the bag of cocaine in the trunk of the car), Pennsylvania v. Labron, 518 U.S. 938, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996) (per curiam), we repeated that the automobile exception does not have a separate exigency requirement: "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." Id., at 940, 116 S.Ct. 2485.

Id., 527 U.S. at 466-67, 119 S.Ct. at 2014.

Here, the trial court stated unequivocally that, if the officers had sought a search warrant for the vehicle, one would have been granted. Thus the trial court apparently had no doubt that there was probable cause to search the vehicle. Furthermore, the court acknowledged that Officer Gex observed the cocaine in plain view in the vehicle. The court's only basis for granting the motion to suppress was its erroneous belief that the police were required to obtain a search warrant before physically entering the vehicle to retrieve the contraband. However, the jurisprudence is to the contrary; because an automobile is readily mobile, there is no additional exigency requirement.

For these reasons, we grant the State's writ application and we reverse the judgment of the trial court, which granted defendant's motion to suppress evidence.

WRIT APPLICATION GRANTED: JUDGMENT OF THE TRIAL COURT REVERSED