

STATE OF LOUISIANA

NO. 19-K-599

VERSUS

FIFTH CIRCUIT

DEVIN LACROSSE

COURT OF APPEAL

STATE OF LOUISIANA

January 07, 2020

Susan Buchholz

First Deputy Clerk

IN RE STATE OF LOUISIANA

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE E. ADRIAN ADAMS, DIVISION "G", NUMBER 19-4240

Panel composed of Judges Marc E. Johnson,
Robert A. Chaisson, and John J. Molaison, Jr.

WRIT GRANTED

Relator, the State of Louisiana, seeks review of the November 20, 2019 ruling of the trial court that granted defendant Devin Lacrosse's motion to suppress evidence.

On July 22, 2019, the Jefferson Parish District Attorney filed a bill of information charging defendant with possession with intent to distribute marijuana in the amount of less than two and one half pounds, in violation of La. R.S. 40:966(A). Defendant thereafter filed a motion to suppress evidence on the basis that it was seized without a warrant and without reasonable suspicion or probable cause.

At the November 20, 2019 hearing on defendant's motion to suppress, Patrol Officer Brandon Machecha with the Gretna Police Department testified regarding the circumstances surrounding the stop of defendant and the subsequent search of his vehicle. According to Officer Machecha, at approximately 8:20 p.m. on June 6,

2019, he was on proactive patrol when he conducted a traffic stop of defendant's moving vehicle for illegal window tint, a traffic violation. Defendant pulled the vehicle into the driveway of 810 21st Street in Gretna, and as Officer Macheca exited his vehicle, defendant immediately exited his vehicle, shut the door, and took a few steps away from it. As defendant shut his door, Officer Macheca noted, "like a gust of wind from shutting the door, I detected the odor of marijuana coming from the vehicle." Officer Macheca explained that he has made arrests and conducted traffic stops involving marijuana, that he is familiar with the smell of marijuana, that there is a difference between the smell of fresh and burning marijuana, and that in this case, he smelled fresh marijuana.

Officer Macheca ordered defendant to the front of the officer's vehicle and advised him of his rights. Defendant waived his rights, and Officer Macheca questioned him about the smell, which defendant denied knowing anything about. Officer Macheca proceeded to conduct a search of the vehicle for marijuana or drug paraphernalia based on the marijuana odor he had detected. He relayed that he began the search at the front of the vehicle, then the cab, and as he moved toward the trunk, the odor grew stronger. Ultimately, Officer Macheca located a black backpack containing a large bag and several smaller bags of marijuana, two scales, "two other large bags," and a gun magazine. Officer Macheca subsequently arrested defendant.

After the conclusion of Officer Macheca's testimony, the defense argued that there were no exigent circumstances to justify the search as Officer Macheca did not indicate that he felt threatened by defendant, did not call for back-up, and did not believe there was a threat of defendant destroying contraband in the vehicle. He referenced Officer Macheca's testimony that he did not obtain consent to search the vehicle and argued that Officer Macheca could have applied for a search warrant or had a canine perform a sniff. The State responded that exigent

circumstances were not required under the circumstances of this case, and that probable cause for a search of the entire vehicle, including the trunk, existed at the moment Officer Macheuca smelled marijuana emanating from the vehicle.

After considering the evidence presented and the arguments of counsel, the trial court granted the motion to suppress evidence, stating: “The Court does not find that there were exigent circumstances that were presented during the hearing, and at that particular time of the date in question, to allow the officer to actually go into the trunk without getting a search warrant.”

The State now challenges this ruling, arguing that the trial court erred in finding that a lack of exigent circumstances rendered the search of defendant’s trunk illegal. It notes that the automobile exception does not have a separate exigency requirement and asserts that the officer had probable cause to search the vehicle once he smelled the marijuana. We agree with the State’s arguments.

In *State v. Brown*, 17-420 (La. App. 5 Cir. 2/21/18), 239 So.3d 455, 461-62, writ denied, 18-480 (La. 1/18/19), 262 So.3d 281, this Court summarized the law on warrantless searches of vehicles as follows:

In *Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S.Ct. 2485, 2487, 135 L.Ed.2d 1031 (1996) (*per curiam*), the United States Supreme Court held that if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits the police to search the vehicle. In *Maryland v. Dyson*, 527 U.S. 465, 466–67, 119 S.Ct. 2013, 2014, 144 L.Ed.2d 442 (1999) (*per curiam*), the Supreme Court explained that the “automobile” exception has no separate exigency requirement. This Court has also recognized that the “automobile” exception does not have an independent exigency requirement, and if probable cause exists for the search of the vehicle that is sufficient. The exigency is supplied by the inherent mobility of the vehicle and the citizen's lesser expectation of privacy. *State v. Mitchell*, 10-334 (La. App. 5 Cir. 10/26/10), 52 So.3d 155, 160 (citing *Joseph*, 850 So.2d at 1054).

In addition, the Louisiana Supreme Court has recognized that there is no constitutional distinction between seizing and holding a car before presenting the probable cause issue to a magistrate and immediately searching the vehicle without a warrant. *Mitchell, supra*; *Joseph, supra*. Given probable cause to search, either course is

reasonable under the Fourth Amendment and the Louisiana Constitution. State v. Tatum, 466 So.2d 29, 31 (La. 1985)

Probable cause means “a fair probability that contraband ... will be found.” Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983); Mitchell, supra. Whether probable cause exists must be judged by the probabilities and practical considerations of everyday life on which average people, and particularly average police officers, can be expected to act. State v. Jones, 09-688 (La. App. 5 Cir. 2/9/10), 33 So.3d 306, 317.

Additionally, courts, including this Court, have consistently held that the odor of marijuana provided the officers with sufficient probable cause to conduct warrantless searches of vehicles. State v. Turner, 12-855 (La. App. 5 Cir. 5/16/13), 118 So.3d 1186, 1193; State v. Allen, 10-1016 (La. 5/7/10), 55 So.3d 756 (*per curiam*); Mitchell, supra.

The scope of the warrantless search of an automobile is not defined by the nature of the container in which the contraband is secreted, but rather, is defined by the object of the search and the place in which there is probable cause to believe it may be found. Tatum, 466 So.2d at 31(citing U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982)). Once probable cause for the search of a vehicle exists, a police officer has the authority to search those places in the vehicle in which there is probable cause to believe the object searched for may be found. California v. Acevedo, 500 U.S. 565, 570, 111 S.Ct. 1982, 1986, 114 L.Ed.2d 619 (1991) (holding that the police do not need a warrant to search a closed container found within a lawfully stopped vehicle when the officers have probable cause for the search); State v. Holmes, 08-719 (La. App. 5 Cir. 3/10/09), 10 So.3d 274, 281, *writ denied*, 09-0816 (La. 1/8/10), 24 So.3d 857.

[footnote omitted]

After reviewing the State’s writ application, including the transcript from the suppression hearing, and the applicable jurisprudence, we find that the trial court erred in granting defendant’s motion to suppress evidence.

The evidence at the suppression hearing reflected that Officer Macheca conducted a valid traffic stop of defendant’s vehicle after observing that the vehicle had illegally dark window tint. After coming to a stop in a driveway, defendant immediately exited his vehicle and closed the door, at which point Officer Macheca detected the odor of marijuana. This smell of fresh marijuana provided the officer with sufficient probable cause to conduct a warrantless search

of the vehicle. As Officer Macheca conducted the lawful search, the smell of the marijuana grew stronger as he neared the trunk. Given the ready mobility of the vehicle and defendant's reduced expectation of privacy, the officer was thereafter authorized to search the entire vehicle for marijuana, including the trunk and the backpack located inside the trunk. *See State v. Brown, supra.*

In light of the foregoing, we find that the trial court erred in finding that a lack of exigent circumstances rendered the search of defendant's trunk illegal and in thereafter granting defendant's motion to suppress evidence. Accordingly, this writ application is granted, the judgment of the trial court is vacated, and the matter is remanded for further proceedings.

Gretna, Louisiana, this 7th day of January, 2020.

RAC
MEJ
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT
MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **01/07/2020** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

19-K-599

E-NOTIFIED

Thomas J. Butler (Relator)

John T. Fuller (Respondent)
Darren A. Allemand (Relator)

MAILED

Honorable Paul D. Connick, Jr. (Relator)
District Attorney
Twenty-Fourth Judicial District
200 Derbigny Street
Gretna, LA 70053