STATE OF LOUISIANA

VERSUS

BRUISA T. PIERCE

NO. 25-K-109

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

June 02, 2025

Linda Tran
First Deputy Clerk

IN RE BRUISA T. PIERCE

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE ELLEN SHIRER KOVACH, DIVISION "K", NUMBER 24-1859

Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and Scott U. Schlegel

WRIT DENIED

Defendant, Bruisa T. Pierce, seeks review of the 24th Judicial District Court's January 31, 2025 ruling denying his Motion to Suppress Evidence. Defendant was charged with possession of a firearm, while in possession of a Controlled Dangerous Substance in violation of La. R.S. 14:95(E), in April 2024. Defense counsel filed "Omnibus Motions and Order for Pre-Trial Motions" that included a general motion to suppress the evidence. On January 31, 2025, the district court denied Defendant's motion to suppress evidence and ruled that the State had established probable cause after a hearing on the motion and a preliminary examination were held. For the following reasons, Defendant's writ is denied.

Gretna Police Officer Lisdy Sarmiento testified at the hearing that she responded to a call at the Westbank Athletic Center on April 1, 2024 regarding a suspicious male who had left a bag on the front counter after requesting a

membership application. According to the search warrant introduced at the motion to suppress hearing, Defendant never finished that application. Instead, he was seen walking around the facility parking lot acting suspiciously and looking inside the patron's cars. He did not attempt to enter any of the cars. Officer Sarmiento was informed that Defendant had made patrons "a little nervous because he was walking around the vehicles." She confirmed that she did not receive any information that Defendant was threatening anyone, brandishing weapons, or selling drugs. According to the search warrant though, defendant was seen smoking something and appeared to be under the influence with slurred speech.

As a result of this suspicious behavior, an off-duty officer inside the gym decided to palpate the bag defendant left on the counter. He immediately felt what appeared to be a firearm, so he opened the bag, saw the firearm, and summoned Gretna police officers. During her testimony, Officer Sarmiento stated that she only knew the off-duty officer by name and that he was not a Gretna police officer.

Officer Sarmiento further testified that when she initially arrived, Defendant was walking past her as she was entering the gym. The responding officers then placed Defendant in handcuffs, advised him of his rights and secured him in the back of the police unit. They also located the bag, which had been left behind on the counter and performed a search of it.

During the search, Officer Sarmiento found a handgun, a pack of pills and a gym membership application with Defendant's name on it inside of Defendant's cross-body bag. She testified that Defendant refused to speak to the officers. She obtained a search warrant for Defendant's DNA to determine whether his DNA was on the firearm.

At the conclusion of the motion to suppress hearing, the State argued that once Defendant left the confines of the building, he had abandoned the bag. Once abandoned, the bag could be searched by the police without first obtaining a

warrant. The State averred that the firearm and drugs inside of the bag provided the officers with probable cause to arrest Defendant, and none of the evidence should be suppressed.

Defense counsel countered that when the off-duty officer searched Defendant's bag, Defendant was still on the premises, he was right outside the door in the parking lot, and had done nothing to communicate an intent to abandon the bag. Counsel further argued that there were no exceptions in this instance that presented any exception that would allow a warrantless search of the bag (such as hot pursuit, a life threatening situation, plain view, or destruction of evidence). There was no evidence that Defendant threatened anyone, or an altercation had taken place. Also, Defendant, once handcuffed and in the back of a police car, posed no threat to anyone. Counsel urged that there was no reason for law enforcement to perform a search regarding Defendant, let alone perform a warrantless search of his bag.

The trial court ruled that the State established probable cause and denied the motion to suppress evidence. Defendant argues that 1) there was no evidence to establish that he posed a threat or danger prior to the "illegal touch" of his bag; 2) because there was no abandonment, concealment, flight, or exigency, law enforcement had no right to seize his gym bag and conduct a search; 3) he had a reasonable expectation of privacy of the bag, he gave no one permission to search or touch it, and his placement of the bag on the counter indicated an intent to maintain ownership; 4) there was no probable cause to handcuff and detain him; and 5) because there was no probable cause to detain him, law enforcement could not violate the expectation of privacy he had for his gym bag and there was no valid basis for the State warrant to obtain his DNA.

On the showing made, we deny Defendant's writ.

According to Officer Sarmiento's testimony and application for search warrant, an off-duty police officer inside of the gym was notified of Defendant's suspicious behavior and told that he had left his bag on the counter when he left. As a result, the off-duty officer patted down the bag for public safety purposes and discovered the firearm and a blister pack of Tapentadol pills inside. He then immediately zipped the bag back up and called the Gretna Police department and did not engage with or attempt to detain Defendant. Defendant argues that these actions were illegal.

"As has been recognized since *Burdeau v. McDowell*, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048 (1921), the Fourth Amendment of the United States Constitution gives protection only against unlawful governmental action. . . . However, [. . .] a Louisiana deputy sheriff never truly goes off duty. He remains at all times a member of the law enforcement agency, charged with greater knowledge and responsibility in criminal affairs." *State v. Wilkerson*, 367 So.2d 319, 321 (La. 1979). *Cf. State v. Schwartz*, 354 So.2d 1332, 1334, n.2 (La. 1978). "A law enforcement officer, who is off-duty, is still considered a government agent for purposes of authority to conduct searches and seizures." Gail Dalton Schlosser, La. Prac. Crim. Trial Prac. § 4:2 Searches by private citizens (4th ed. 2024), *citing Wilkerson, supra*. *Cf. State v. Lavergne*, 991 So. 2d 86 (La. App. 1 Cir. 5/2/2008), *writ denied*, 1 So.3d 494 (La. 2/20/09) (finding volunteer firefighter who initiated stop of suspected driver under the influence acted as a private citizen).

Considering the foregoing, we find that the off-duty officer acted at the government's behest, motivated by a concern for public safety. *See State v. Scott*, 42,997 (La. App. 2 Cir. 2/13/08), 975 So.2d 782, 785 (citing *U.S. v. Ginglen*, 467 F.3d 1071 (7th Cir. 2006)); *State v. Lavergne*, *supra.* Because the search was performed at the government's behest, Defendant's Fourth Amendment rights were implicated. However, we also find Defendant had no reasonable expectation of

privacy once he left the bag unattended on the gym counter, and especially after the subsequent discovery of the firearm and pills. Defendant was not a regular patron of the gym, he had been observed smoking and pacing outside the gym before entering, and he appeared to be under the influence of an illicit substance. If property is abandoned prior to any unlawful intrusion into a citizen's right to be free from governmental interference, then the property may be lawfully seized because the individual has no reasonable expectation of privacy in it. *State v. Parks*, 07-655 (La. App. 5 Cir. 1/22/08), 977 So.2d 1015, 1022, *writ denied*, 08-495 (La. 12/19/08), 996 So.2d 1126. Here, Defendant relinquished his reasonable expectation of privacy such that the subsequent search and seizure was valid. *See State v. Stephens*, 40,343 (La. App. 2 Cir. 12/14/05), 917 So.2d 667, 672-73, *writ denied*, 06-441 (La. 9/22/06), 937 So.2d 376 (citing *United States v. Hoey*, 983 F.2d 890 (8th Cir. 1993)).[1]

In *State v. Lewis*, 11-889 (La. App. 4 Cir. 2/1/12), 85 So.3d 150, 156, police encountered defendant and a companion sitting on the steps of an abandoned home. The police observed that the pair appeared to be nervous, and exited their vehicle and asked the men to approach. The defendant left a black object on the steps before approaching the police. The fourth circuit found that the defendant had no reasonable expectation of privacy in the black object (which turned out to be a magnetic key box – used in the illegal drug trade to transport and conceal drugs) by the time the officer searched its contents. *Id.* at 157. The appellate court observed that because the abandonment occurred before an actual stop or an imminent actual stop, as in the instant case, it was unnecessary to consider the legality of the governmental intrusion. *Id.* at 156.

[1] *See United States v. Austin*, 66 F.3d 1115, 1118-19 (10th Cir. 1995), *cert. denied*, 516 U.S. 1084, 116 S.Ct. 799, 133 L.Ed.2d 747 (1996) ("The test for abandonment is whether an individual has retained any reasonable expectation of privacy in the object. An expectation of privacy is a question of intent which may be inferred from words, acts, and other objective facts…But defendant must show more than his subjective intent. His expectation of privacy must be one that society would recognize ... as *objectively* reasonable for the search to have violated the Fourth Amendment." (citations omitted) (emphasis in original)).

In *State v. Gentry*, 450 So. 2d 773, 777 (La. App. 5th Cir. 1984), *affirmed and remanded*, 462 So.2d 624, 628 (La. 1985), Defendant attempted to mail a package to France. During transport of the package, an employee of the courier noticed a "suspicious lump" inside the package which should have only contained documents. Upon further inspection per the courier's protocol, the employee and the manager discovered a plastic audio cassette holder that contained a white, powdery substance, later revealed by Kenner Police Department testing to be cocaine. This Court found that the search by the courier's employees, as opposed to government actors, as we have found here, was not subject to the limitations of the Fourth Amendment. But, similarly, once the (private) search had revealed the contraband, "the defendant's expectation of privacy surrounding his package [was] greatly diminished, if not completely compromised". *Id.* The Louisiana Supreme Court agreed on this point. *Gentry*, 462 So.2d at 629. Further, both this Court and the Louisiana Supreme Court observed that the subsequent search by the Kenner Police "did not violate any legitimate expectation of privacy that would trigger a violation of the Fourth Amendment". *Id.*

Considering the foregoing, we find Gretna Police officers' search of Defendant's bag and execution of the DNA search warrant did not violate the Fourth Amendment. Further, considering the totality of the circumstances, we find that the district court had a substantial basis to find that probable cause existed for the issuance of the search warrant for Defendant's DNA. *See State v. Shumaker*, 41,547 (La. App. 2 Cir. 12/13/06), 945 So.2d 277, 285, *writ denied*, 07-144 (La. 9/28/07), 964 So.2d 351.

Accordingly, the writ is denied.

Gretna, Louisiana, this 2nd day of June, 2025.

MEJ
SUS

STATE OF LOUISIANA	NO. 25-K-109
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WINDHORST, J., CONCURS WITH REASONS

I hesitantly agree with the majority disposition of this writ application, but I write to state why I find this to be a borderline case.

La. C.Cr.P. art. 703 D places the burden on the State to show that evidence obtained without a warrant was not obtained unconstitutionally. The warrant application and the warrant itself covers only obtaining a DNA sample from the accused, not the evidence which was seized from the bag, *i.e.*, the gun and pills. Therefore, the State's burden is to show that the evidence seized by a warrantless search either fell within a recognized exception to the general requirement of a warrant, or that no warrant was required in the first place. The State's contention is the latter.

The State's sole argument at the hearing was that the bag which was searched, and from which evidence was obtained, had been abandoned by defendant. The State did not contend that there was probable cause and that an exception to the general requirement of a search warrant existed. The defense countered with a rational argument that the bag had not been abandoned, and that therefore the State must, but had failed to demonstrate an exception to the need for a warrant.

Whether inculpatory evidence has been abandoned to a degree which makes a warrant or a recognized exception unnecessary is a question of fact. The trial court, however, did not make any finding of fact as to whether the evidence was actually abandoned, or address the abandonment issue at all. The trial court's sole stated reason for denying the motion to suppress was finding that probable cause existed.

Probable cause is always needed for seizures with or without a warrant, but a warrantless seizure additionally requires the existence of a recognized exception to the general necessity of a warrant. Here, the unidentified off-duty police officer, from another police department, who looked into the bag and found the gun and drugs, was not present to testify, and there was scant testimony even in the hearsay to establish probable cause and justify the search which later resulted in the responding officers' subsequent seizure. But even assuming that the unknown officer had probable cause, I do not find that there was a recognized exception to the general necessity for a warrant, which is why the State alleges and relies upon abandonment.

Evidence supporting the allegation of abandonment of the evidence is equally scant and uncertain. Further, the majority's partial reliance on the defendant having no expectation of privacy depends squarely on whether he abandoned his bag of evidence, or left it temporarily intending to return when the coast was clear, or when he finished perusing parked cars.

Because I conclude that the trial court's finding of probable cause alone is insufficient to justify a warrantless search, and because the trial court made no finding of fact that defendant abandoned the evidence, I find that the evidence at the hearing and the denial of the motion are disconnected.

I nevertheless agree with denial of this writ due in part to the broad discretion afforded the trial judge on such motions. Further, it is well-settled in Louisiana jurisprudence that in determining whether the trial court's ruling on a motion to suppress is correct, an appellate court is not limited to the evidence presented at the motion to suppress hearing, but also may consider all pertinent evidence presented at trial. State v. Adams, 22-271 (La. App. 5 Cir. 5/10/23), 364 So.3d 1272; appeal after new sentencing hearing, 398 So.3d 143, 23-508 (La. App. 5 Cir. 8/14/24).

Likewise, I believe that although La. C.Cr.P. art. 703 F[2] prohibits re-argument of the motion to suppress during trial, the trial judge may nevertheless reassess her suppression ruling if evidence developed during the normal course of the trial establishes unconstitutionality of the evidence seized from defendant's bag.

SJW

[2] La. C.Cr.P. art. 703 F**:** "A ruling prior to trial on the merits, upon a motion to suppress, is binding at the trial. Failure to file a motion to suppress evidence in accordance with this Article prevents the defendant from objecting to its admissibility at the trial on the merits on a ground assertable by a motion to suppress."

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

(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 **06/02/2025** 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

CURTIS B. PURSELL
CLERK OF COURT

25-K-109

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Ellen Shirer Kovach (DISTRICT JUDGE)
Michael F. Somoza (Relator)
Thomas J. Butler (Respondent)
Mark D. Plaisance (Relator)

MAILED

Remy V. Starns (Relator)
Attorney at Law
301 Main Street
Suite 700
Baton Rouge, LA 70825

Marcus J. Plaisance (Relator)
Attorney at Law
Post Office Box 1123
Prairieville, LA 70769

R. Erich Cathey (Respondent)
Assistant District Attorney
Twenty-Fourth Judicial District
200 Derbigny Street
Gretna, LA 70053