NOT DESIGNATED FOR PUBLICATION

COURT OF APPEAL

STATE OF LOUISIANA

FIRST CIRCUIT

2008 KA 1200

STATE OF LOUISIANA

VERSUS

JAMMIE M. WILLIAMS

Judgment rendered: DEC 2 3 2008

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On Appeal from the 21st Judicial District Court
Parish of Tangipahoa, State of Louisiana
Docket Number: 110425; Division G
The Honorable Ernest G. Drake, Jr., Judge Presiding

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District Attorney

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State of Louisiana

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Counsel for Appellant
Jammie Williams

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

DOWNING, J.

The defendant, Jammie M. Williams, was charged by bill of information with armed robbery, a violation of La. R.S. 14:64 He pled not guilty. He filed a motion to suppress evidence and, following a hearing on the matter, the motion was denied. Following a jury trial, the defendant was found guilty as charged. He was sentenced to thirty-five years at hard labor, without benefit of parole, probation, or suspension of sentence. The defendant now appeals, asserting in his sole assignment of error, that the trial court erred in denying his motion to suppress evidence. We affirm the conviction and sentence.

FACTS

On May 3, 2004, between 11:00 a.m. and noon, an unidentified man with a shirt covering his face walked into Family Check Advance in Hammond and robbed at gunpoint, the manager, Diane Prine, and Louise Fricano, an employee. The man took a little over $3,000.00 in cash and a roll of dimes. Diane Prine testified she placed the money in a yellow Dollar General bag, and drove away in a white Chevrolet Lumina. Diane followed him out of the store and wrote down the license plate number of the vehicle. An eyewitness also saw the suspect leave the store and drive away in the Lumina.

Diane gave a description of the suspect, the vehicle, and the license plate number to the Hammond police. The police ran the license plate number in the state computer and determined that the owner of the Lumina was Darletta Sims. Darletta's boyfriend at that time was the defendant. Darletta testified at trial that the defendant used her vehicle on the day of the armed robbery. The defendant was the only other person with access to her car. The Hammond police put out a BOLO (be on the lookout) based on the information they had and contacted the Amite City Police Department to be on the lookout for the Lumina. Captain Mike Foster, with the Amite City Police Department, received information from the

Hammond Police Department regarding the suspect's description, a description of the vehicle, and the license plate number. Officer Clint Baham, with the Amite City Police Department, spotted the Lumina at the Three Stooges convenience store in Amite on U.S. Highway 51 South. The defendant exited the vehicle, entered the store, and then returned to the vehicle. The defendant drove off and when he turned onto West Factory Street, Captain Foster and Officer Baham executed a felony-traffic stop. The defendant fit the physical description given by the eyewitnesses. The defendant was arrested and placed in the back of a police unit.

Captain Foster testified at trial that he conducted an "inventory search" of the Lumina. Amite City police officers found the stolen bag of money from Family Check Advance under the hood in the space behind the left headlight. The roll of dimes from Family Check Advance was found in the trunk.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends that the warrantless search of the vehicle could not be justified under the inventory search exception to the warrant requirement.

Trial courts are vested with great discretion when ruling on a motion to suppress. Consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion.[1] **State v. Long**, 03-2592, p. 5 (La. 9/9/04), 884 So.2d 1176, 1179, cert. denied, 544 U.S. 977, 125 S.Ct. 1860, 161 L.Ed.2d 728 (2005).

The United States and Louisiana Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; La. Const. art. I, § 5. A search

[1] In determining whether the ruling on defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n. 2 (La. 1979).

conducted without a warrant is per se unreasonable, subject only to a few specifically established and well-delineated exceptions. Both the United States Supreme Court and the Louisiana Supreme Court have recognized a true inventory search to be an exception to the warrant requirement. **State v. Griffin**, 07-0974, pp. 12-13 (La. App. 1 Cir. 2/8/08), 984 So.2d 97, 109.

The justification for an inventory search is ostensibly to protect the occupant against loss of his property or to protect the law enforcement agency against the occupant's claim for failure to guard against such a loss. A valid inventory search is conducted not on probable cause to secure evidence, but merely to inventory the vehicle's contents in order to safeguard them, as an incident to the vehicle's necessarily being taken into lawful police custody. **Griffin**, 07-0974 at p. 13, 984 So.2d at 109.

Because the inventory search is a narrow exception to the requirement of a warrant and the requirement of probable cause, it must be strictly limited to these practical purposes for which it is justified. An inventory search may not be used as a subterfuge for rummaging through the arrestee's vehicle without a warrant for the primary purpose of seizing evidence. To fall within the inventory exception, however, the State must prove that the impoundment of the defendant's vehicle was necessary, and that the inventory of the vehicle's contents was necessary, and reasonable in its scope. Inventory searches at the place of arrest, rather than at the place of impoundment, are suspect and have frequently been found to be a subterfuge for a search for evidence. Factors that are significant in determining whether a so-called "inventory search" was a subterfuge for a warrantless search without probable cause are:

> (1) the vehicle could not have remained safely at or near the place it was stopped; (2) the search was not conducted in the field; (3) the tow truck was called before the search commenced; (4) formal impoundment procedures were followed; (5) the vehicle operator was asked if he consented to a search, if the car contained valuables, or if

> he would consent to the agency's failure to afford him the protection of an inventory search; (6) arrangements were made for someone designated by the operator to take possession or protective custody of the vehicle for him.

Griffin, 07-0974 at pp. 13-14, 984 So.2d at 109.

In the instant matter, there is nothing in the record to indicate the vehicle could not have remained safely at or near the place it was stopped. Further, it is also not clear from the record if, or to what extent, formal impoundment procedures were followed.[2]

Additionally, despite Captain Foster's testimony regarding Amite inventory-search procedures, the officers' actions in checking underneath the hood went beyond the scope of an inventory search. The area under the hood in the space behind the headlight is an unlikely place for an owner to keep anything of value. See **State v. Jewell**, 338 So.2d 633, 638-40 (La. 1976). Captain Foster testified at the motion to suppress hearing that they did not search, but "did an inventory of the vehicle." At trial, Captain Foster testified that the type of search of the vehicle was an "inventory search." Under the totality of the circumstances, however, we find that the nominal "inventory search" actually constituted a search for evidence. Accordingly, the warrantless search could not be justified as a valid inventory search.

Nonetheless, while the search of the vehicle cannot be construed as a valid inventory search, we find that the warrantless search was reasonable under the automobile exception to the warrant requirement. It is irrelevant that the search was characterized by the officers as an inventory search. In evaluating alleged violations of the Fourth Amendment, the United States Supreme Court has

[2] Captain Foster testified at trial that an inventory search in Amite includes searching under the hood. Detective Ordeneaux testified at trial that he believed the Amite police were doing an inventory search because one of the officers was filling out, what Detective Ordeneaux recognized from working as a patrolman, to be a storage inventory form. No storage inventory form, or any other similar documentation, was submitted into evidence. Nothing in the record indicates the defendant was asked if he consented to a search of the vehicle. The defendant testified at the motion to suppress hearing that he was handcuffed and placed in the back of a unit. When the defendant asked what was happening, an Amite officer told him that he did not know, and that they had officers coming from Hammond. The record also indicates that, while the police knew that Darletta Sims was the owner of the vehicle, no efforts were made to contact her about taking possession of her vehicle.

undertaken an objective assessment of an officer's action in light of the facts and circumstances then known to him. "[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." **State v. St. Martin**, 93-1863, p. 7 (La. App. 1 Cir. 10/7/94), 644 So.2d 773, 776. See also **State v. Canezaro**, 07-668, pp. 5-6 (La. 6/1/07), 957 So.2d 136, 140 (per curiam) (where the La. Supreme Court stated, "We are not constrained by the deputy's characterization of the search as one pursuant to inventory nor is our analysis of the facts circumscribed by that characterization.")

Under the automobile exception, two requirements must be satisfied before a warrantless seizure of evidence within a movable vehicle can be authorized under this exception: (1) there must be probable cause to believe the vehicle contains contraband or evidence of a crime; and (2) there must be exigent circumstances requiring an immediate warrantless search. **State v. Thompson**, 02-0333, p. 7 (La. 4/9/03), 842 So.2d 330, 336. Probable cause means "a fair probability that contraband or evidence of a crime will be found." **Illinois v. Gates**, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). It 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. **Thompson**, 02-0333 at p. 8, 842 So.2d at 336.

In the instant matter, based on eyewitness testimony of the armed robbery perpetrated by the defendant, Detective Ordeneaux obtained a description of the defendant, including his physical appearance and his clothes, and a description of the vehicle the defendant was driving, including the vehicle's license plate number. He put out a BOLO of this information. In addition, Captain Foster received a call from Kenny Corken, Assistant Chief from the Hammond City Police Department,

informing him they had just had an armed robbery about thirty or forty minutes ago. Assistant Chief Corken informed Captain Foster that the suspect was possibly headed to the Amite area, and provided him with the license plate number, and a description of the defendant and the vehicle he was driving. Assistant Chief Corken also told Captain Foster that, according to the witnesses, the suspect had bloodshot eyes. A short while later, the suspect vehicle, identified by its description and license plate number, was spotted by Officer Clint Baham in Amite near U.S. Highway 51 South. About twenty to twenty-five minutes after receiving the call from Assistant Chief Corken, Captain Foster and Officer Baham effected a felony-traffic stop. The defendant was alone. According to Captain Foster, the defendant fit the description he was given, including his bloodshot eyes. The defendant was arrested, **Mirandized**, and placed in the back of a police unit. Captain Foster and other Amite officers then searched the vehicle.

We find that under these circumstances, where the defendant was spotted by the police about an hour after robbing Family Check Advance, driving a vehicle as described by eyewitnesses, Captain Foster clearly had probable cause to believe the vehicle contained evidence of the armed robbery, namely the money and gun. Further, there was no legal impediment to the Amite City police officers searching in the trunk and under the hood of the vehicle. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. **U.S. v. Ross**, 456 U.S. 798, 825, 102 S.Ct. 2157, 2173, 72 L.Ed.2d 572 (1982). See also **California v. Acevedo**, 500 U.S. 565, 579-80, 111 S.Ct. 1982, 1991, 114 L.Ed.2d 619 (1991). We find further that exigent circumstances were also present because the vehicle was readily mobile.[3] See **Thompson**, 02-0333 at pp. 9-10, 842 So.2d

[3] The United States Supreme Court in **Maryland v. Dyson**, 527 U.S. 465, 466-67, 119 S.Ct. 2013, 2014, 144 L.Ed.2d 442 (1999) (per curiam) held that under the "automobile" exception, there is no separate exigency requirement:

at 337-38. Accordingly, the warrantless search of the vehicle was lawful under the automobile exception. See **St. Martin**, 93-1863 at pp. 7-8, 644 So.2d at 776. We find no abuse of discretion by the trial court in denying the defendant's motion to suppress the evidence.

The assignment of error is without merit.

ARTICLE 930.8 NOTICE

The defendant notes the trial court failed to advise him of the two-year prescriptive period for filing for post-conviction relief under La. Code Crim. P. art. 930.8.

As the issue of filing for post-conviction relief has been raised herein, it is apparent that the defendant has notice of the limitation period and/or has an attorney who is in the position to provide him with such notice. Although we have done so in the past, we decline to remand for the trial court to provide such notice. Instead, out of abundance of caution, and in the interest of judicial economy, we note that La. Code Crim. P. art. 930.8(A) generally provides that no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. Code Crim. P. arts. 914 or 922. See **State v. Godbolt**, 06-0609, pp. 7-8 (La. App. 1 Cir. 11/3/06), 950 So.2d 727, 732.

The Fourth Amendment generally requires police to secure a warrant before conducting a search. **California v. Carney**, 471 U.S. 386, 390-91, 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, 153, 45 S.Ct. 280, 69 L.Ed. 543 (1925), there is an exception to this requirement for searches of vehicles. And under our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear in [**Ross**, 456 U.S. at 809, 102 S.Ct. at 2164-65], 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.* [sic]" (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.

DECREE

For the foregoing reasons, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED