NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0404

STATE OF LOUISIANA

VERSUS

CARLUS ANDRE WRIGHT

Judgment Rendered: September 14, 2007.

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On Appeal from the
19th Judicial District Court,
in and for the Parish of East Baton Rouge
State of Louisiana
District Court No. 06-06-0365

The Honorable Richard Anderson, Judge Presiding

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BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

CARTER, C.J.

The defendant, Carlus Andre Wright, was charged by bill of information with possession of a firearm by a convicted felon, a violation of LSA-R.S. 14:95.1. After entering a plea of not guilty, the defendant filed a motion to suppress any evidence obtained pursuant to the search incident to his arrest. Following a hearing, the motion to suppress was denied.

The defendant withdrew his former plea of not guilty and entered a **Crosby** plea of guilty as charged, reserving his right to appeal the trial court's denial of his motion to suppress. See **State v. Crosby**, 338 So.2d 584 (La. 1976). The defendant was sentenced to ten years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court also ordered the defendant to pay a $1,000.00 fine.

The defendant now appeals, asserting in his sole assignment of error that the trial court erred in denying his motion to suppress the evidence. We affirm the conviction and sentence.

FACTS[1]

On April 18, 2006, Baton Rouge City Police Officers Jeffrey Anders and his partner were dispatched to 2275 Rhodes Drive in response to a complaint by a neighbor, Ms. Matthews, that two men were in the front yard fighting over a gun. When the officers arrived, Ms. Matthews informed them that one suspect had left in a vehicle, and the other suspect, the

[1] The facts of this case were developed at the preliminary examination, wherein Officer Jeffrey Anders testified. At the hearing on the motion to suppress, the parties stipulated that the preliminary examination transcript be made a part of the record on the motion to suppress. In determining whether the ruling on the 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).

defendant, was sitting in a vehicle in the front yard. Ms. Matthews told the officers that the defendant was wearing a green shirt and that he was the one with the gun.

When the officers approached the vehicle, they saw the defendant sitting in the front seat digging under the seat. The defendant, wearing a green shirt, exited the vehicle as the officers arrived and stood by the driver's-side door. The defendant was advised of his **Miranda** rights and patted down. During the pat down, the defendant advised the officers that he had a baggie of marijuana in his back pocket. The marijuana was removed, and the defendant was handcuffed and arrested for possession of marijuana. While the defendant was standing in between the open driver's-side door and the vehicle, the officers searched the vehicle and found the gun on the front driver's-side floorboard.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant avers that the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends that the search incident to his arrest was illegal because he was handcuffed and there was no possibility that he could have reached inside the vehicle to retrieve the gun from the floorboard.

The rule that a search conducted without a warrant issued upon probable cause is per se unreasonable is subject to only a few specifically established exceptions. One of those exceptions is the search incident to a lawful arrest. The search incident to arrest is limited to the area within the arrestee's immediate control. Courts have held it is permissible to search the interior of an automobile after arresting its occupants when the occupants

remain in proximity to the vehicle. **State v. Drott**, 412 So.2d 984, 986 (La. 1982); see also **New York v. Belton**, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981); **Chimel v. California**, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

In **Thornton v. United States**, 541 U.S. 615, 617-618, 124 S.Ct. 2127, 2129, 158 L.Ed.2d 905 (2004), the defendant, who was already outside of his vehicle when confronted by a police officer, agreed to a pat down. Upon feeling a bulge in the defendant's left front pocket, the defendant admitted to having illegal narcotics on him and pulled out of his pocket two individual bags containing marijuana and crack cocaine. The officer handcuffed the defendant, informed him that he was under arrest, and placed him in the back seat of the patrol car. The officer then searched the defendant's vehicle and found a handgun under the driver's seat. The Supreme Court noted, "In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle." **Thornton**, 541 U.S. at 621, 124 S.Ct. at 2131. In finding the search incident to arrest to be valid, the Supreme Court stated, "So long as an arrestee is the sort of 'recent occupant' of a vehicle such as petitioner was here, officers may search that vehicle incident to the arrest." **Thornton**, 541 U.S. at 623-624, 124 S.Ct. at 2132.

In **State v. Warren**, 05-2248 (La. 2/22/07), 949 So.2d 1215, the defendant was arrested in a motel room. The defendant was handcuffed and seated in a chair by the doorway. A large black duffel bag was on one of the beds. Officers opened the bag and found marijuana inside. **Warren**, 949

So.2d at 1220. Although the defendant's hands were cuffed behind his back and he was seated at the doorway some six feet away from the duffel bag, the Louisiana Supreme Court found that the search of the duffel bag was incidental to a lawful arrest of the defendant. **Warren**, 949 So.2d at 1230.

In the instant matter, an eyewitness informed Officer Anders that the defendant was struggling in the yard with another person over a gun. After Officer Anders approached the defendant in the vehicle, he arrested and handcuffed the defendant. Officer Anders found drugs on the defendant's person, but no gun. As Officer Anders searched the vehicle for the gun, the defendant, although handcuffed, was standing in between the open driver's-side door and the vehicle. As such, the defendant was still within proximity to pose a threat to Officer Anders because he could have reached into the vehicle to grab the gun.[2]

Although whether the gun was "readily accessible" to the defendant is a factor in our analysis, it is not dispositive of the issue before this court. "The need for a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment, justifies the sort of generalization which **Belton** enunciated." **Thornton**, 541 U.S. at 622-623, 124 S.Ct. at 2132. Under the recent Louisiana Supreme Court decision in **Warren** and the United States Supreme Court decision in **Thornton**, the

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[2] See **United States v. Helmstetter**, 56 F.3d 21, 23 (5th Cir. 1995), where the defendant was arrested, handcuffed, and placed in a chair in the living room of his apartment. Underneath the defendant's chair, a police officer observed a gun and seized it. Rejecting the defendant's argument that he could not have readily reached the gun, the court, relying in part on **Chimel**, found that the limited restraint placed on the defendant "impeded but did not prevent him from reaching the readily accessible weapon."

recovery of the gun was pursuant to a search incidental to a lawful arrest. Accordingly, the trial court did not err in denying the motion to suppress.

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.