NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 1205

STATE OF LOUISIANA

VERSUS

CHARLES L. HOLCOMBE, JR.

Judgment Rendered: December 23, 2008.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 415423

The Honorable William J. Knight, Judge Presiding

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

CARTER, C.J.

The defendant, Charles L. Holcombe, Jr., was charged by bill of information with possession of cocaine, a violation of La. R.S. 40:967C (count 1), and possession of hydromorphone, a violation of La. R.S. 40:967C (count 2). The defendant pled not guilty. A hearing was held on a motion to suppress evidence. The trial court denied the motion. Following a jury trial, the defendant was found guilty as charged on both counts. For each count, he was sentenced to five years imprisonment at hard labor, with the sentences to run concurrently. 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 convictions and sentences.

FACTS

On June 22, 2006, Officer James Bullock with the St. Tammany Parish Sheriff's Office received a BOLO (be on the lookout) for a gray Volvo, which was possibly occupied by suspects in an armed robbery. Officer Bullock spotted the Volvo on Million Dollar Road heading toward Covington. He observed the Volvo had a broken turn signal. With the assistance of back-up, Officer Bullock conducted a felony-traffic stop. Rhonda Achee was the driver, and the defendant was the passenger. When Officer Bullock approached, the defendant stepped out of the vehicle. Officer Bullock observed in the interior of the vehicle several syringes and a Diet Coke can presumably fashioned for smoking drugs. Achee and the defendant were placed under arrest.

Deputy Robert Edwards with the St. Tammany Parish Sheriff's Office walked his narcotics-detection dog around the vehicle. The dog alerted on both the passenger side and the driver side areas. Deputy Edwards searched under the seats and found a pill bottle containing cocaine and a cigarette pack containing hydromorphone.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends that Officer Bullock did not have probable cause to arrest him.

Trial courts are vested with great discretion when ruling on a motion to suppress.[1] Consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion. **State v. Long**, 2003-2592, 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 fourth amendment to the federal constitution and Article I, § 5 of the Louisiana constitution protect people against unreasonable searches and seizures. **State v. Belton**, 441 So.2d 1195, 1198 (La. 1983), cert. denied, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984). "Arrest is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him." La. Code Crim. P. art. 201; see **State v. Billiot**, 370 So.2d

[1] In determining whether the ruling on the defendant's motions 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).

539, 543 (La.), cert. denied, 444 U.S. 935, 100 S.Ct. 284, 62 L.Ed.2d 194 (1979).

It is clear from the record in the instant matter that the defendant was arrested prior to the Volvo being searched.[2] Officer Bullock testified at the motion to suppress hearing that the defendant, upon being removed from the vehicle, was handcuffed and placed in the back of a police unit. According to Officer Bullock, after he observed the drug paraphernalia inside the vehicle, the defendant was placed under arrest and advised of his **Miranda** rights. A search incident to an unlawful arrest is unconstitutional. See **State v. Rack**, 585 So.2d 1215, 1221 (La. App. 1st Cir. 1991). The issue before us, therefore, is whether Officer Bullock had probable cause to arrest the defendant.

While our constitution prohibits the unreasonable seizure of persons except upon a warrant issued on probable cause, a peace officer may arrest a person without a warrant when the "peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer." La. Code Crim. P. art. 213(3).[3] See **Billiot**, 370 So.2d at 543. Thus, a warrantless arrest, no less than an arrest pursuant to a validly issued warrant, must be based on probable cause. **State v. Thomas**, 349 So.2d 270, 272 (La. 1977) (per curiam). Probable cause exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a man of average caution in the belief that the person to be arrested

[2] The defendant does not contest the validity of the stop.

[3] Reasonable cause under La. Code Crim. P. art. 213 is in accord with the concept of probable cause. **State v. Weinberg**, 364 So.2d 964, 969 (La. 1978).

has committed or is committing an offense. **State v. Leatherwood**, 411 So.2d 29, 32 (La. 1982). Although mere suspicion cannot justify an arrest, the officer does not need proof sufficient to convict. **State v. Thomas**, 589 So.2d 555, 562 (La. App. 1st Cir. 1991). Probable cause must be judged by the probabilities and practical considerations of everyday life on which average men, and particularly average police officers, can be expected to act. **State v. Hubbard**, 506 So.2d 839, 842 (La. App. 1st Cir. 1987).

According to his testimony at the motion to suppress hearing, at the beginning of his shift at 6:00 p.m., Officer Bullock received a BOLO that a gray Volvo might be occupied by two suspects involved in an armed robbery. Officer Bullock also testified at trial that the Volvo he spotted was occupied by a white male and a white female, which was consistent with the information he had been given.[4] Prior to conducting a stop, Officer Bullock also observed the Volvo had a damaged, inoperable turn signal. He further observed the Volvo turn without signaling. When Officer Bullock conducted the felony traffic stop and asked Achee to step out of the vehicle, she complied. However, the defendant did not exit the vehicle upon the officers' request. Only when the officers approached did the defendant reluctantly exit the vehicle. As the defendant stepped out of the vehicle, Officer Bullock could see the interior compartment of the vehicle. He observed a bent Diet Coke can with tiny holes in it on the floorboard.

[4] Officer Bullock was not allowed to develop the specifics of the information he had received from the BOLO because of a ruling on a motion in limine just prior to Officer Bullock taking the stand to testify. The defendant's motion in limine sought to preclude other crimes evidence from being introduced at trial. The trial court informed Officer Bullock that he could state he received a BOLO for the occupants of a Volvo in connection with another investigation. However, Officer Bullock was not allowed to mention that the investigation was for an armed robbery. Accordingly, the full knowledge Officer Bullock may have possessed regarding all of the information from the BOLO is not discernible from the record.

According to Officer Bullock, cans configured in this fashion are used to smoke crack cocaine. Officer Bullock also observed several uncovered syringes scattered on the floorboard and elsewhere in the vehicle.

The quantum of information which constitutes probable cause must be measured by the facts of the particular case. A court, in determining probable cause, takes into account the total atmosphere of the case. **State v. DiBartolo**, 276 So.2d 291, 293 (La. 1973). Given that Officer Bullock had information that the occupants of the vehicle might be involved in an armed robbery, that he observed two traffic violations, and that he observed drug paraphernalia, including syringes, on the floorboard of the vehicle, Officer Bullock was justified in the belief that the defendant had committed at least one offense. We find, thus, that under these facts and circumstances, Officer Bullock had probable cause to arrest the defendant.

While the defendant addresses on appeal only the issue of whether there was probable cause to arrest, we note the search of the vehicle was a valid search incident to arrest. See **Thornton v. U.S.**, 541 U.S. 615, 124 S.Ct. 2127, 158 L.Ed.2d 905 (2004). Moreover, the officers procured a separate source of probable cause to search the vehicle. Officer Bullock immediately recognized drug paraphernalia inside the vehicle when the defendant exited the vehicle. Under the plain view doctrine, if police are lawfully in a position from which they view an object that has an incriminating nature that is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. **Horton v. California**, 496 U.S. 128, 136-137, 110 S.Ct. 2301, 2307-2308, 110 L.Ed.2d 112 (1990). Based on Officer Bullock's observations, Deputy

Edwards used his drug-detection K-9 unit to sniff around the vehicle, which did not constitute a search. See **State v. Kalie**, 96-2650, p. 4 (La. 9/19/97), 699 So.2d 879, 881 (per curiam). The dog alerted on both the driver side and the passenger side of the vehicle, giving the officers probable cause to search the vehicle. Exigent circumstances arising from the stop of the vehicle on the open road excused the warrant requirement. See **State v. Gant**, 93-2895, p. 2 (La. 5/20/94), 637 So.2d 396, 397 (per curiam).

Even assuming, *arguendo*, that probable cause to arrest had not been established, the drugs seized would still have been properly admitted at trial under the inevitable discovery doctrine. The United States Supreme Court has held that unconstitutionally obtained evidence may be admitted at trial if it would inevitably have been seized by the police in a constitutional manner. **Nix v. Williams**, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). In the instant matter, once the officers discovered the Volvo was involved in an armed robbery, they had the right to impound it and inventory or search its contents. See **State v. Stewart**, 387 So.2d 1103 (La. 1980); **State v. Smith**, 283 So.2d 470 (La. 1973). The Volvo was, in fact, impounded and brought to the crime lab for processing. Since the drugs would have been discovered inevitably during a search or inventory search, they were properly admitted into evidence by the trial court. See **State v. Harris**, 510 So.2d 439, 445 (La. App. 1st Cir.), writ denied, 516 So.2d 129 (La. 1987).

We find no abuse of discretion in the trial court's denial of the motion to suppress. The assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.