NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 2400

STATE OF LOUISIANA

VERSUS

PAUL A. JAMES, JR.

DATE OF JUDGMENT: June 6, 2008

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 405403-1 "J"), PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE WILLIAM J. KNIGHT, JUDGE

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Paul A. James, Jr.

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BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: CONVICTION, HABITUAL-OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Paul A. James, Jr., was charged by a bill of information with possession of a schedule II controlled dangerous substance (cocaine), a violation of La. R.S. 40:967C. Defendant entered a plea of not guilty. After a trial by jury, defendant was found guilty as charged and was sentenced to five years imprisonment at hard labor. The State filed a habitual-offender bill of information. Although defendant originally denied the allegations in the habitual-offender bill of information, he subsequently withdrew his former denial and, after being advised of his rights, stipulated to his habitual-offender status (second offender under La. R.S. 15:529.1A(1)(a)). The trial court vacated the original sentence and imposed six years imprisonment at hard labor. Defendant appeals, urging as error the trial court's decisions to proceed with the trial when he was absent from the courtroom and to deny his motions to suppress evidence and for a mistrial. We affirm the conviction, habitual-offender adjudication, and sentence.

FACTS

On or about November 15, 2005, during the early morning hours, several officers of the St. Tammany Parish Sherriff's Office arrived at a trailer home located at 21339 Progress Street in Covington, Louisiana. The officers were seeking to execute an arrest warrant for Sarah Latiolais and had received information that she was residing at that address. Latiolais had previously misrepresented her identity during the issuance of citations for various traffic violations. Deputy Alex Dantagnan, Sergeant Allen Williams, and Deputy Ben Godwin approached the front of the residence, while Corporal Danny LeBlanc positioned himself near the rear of the residence. After Deputy Godwin knocked

on the door and announced their identification as members of the sheriff's office, the officers heard movement inside of the trailer. Latiolais was present in open view when defendant opened the door. The officers entered the trailer and proceeded with the arrest.

As Corporal LeBlanc restrained Latiolais, he observed what appeared to be a pipe used to smoke crack cocaine on a countertop that divided the kitchen and living room area of the small trailer. Corporal LeBlanc notified the other officers of his observation and seized the item. Deputy Dantagnan and Sergeant Williams observed the defendant as he began to fidget and look around the trailer while he avoided eye contact with the officers and placed his hands in his pockets. The officers instructed him to remove his hands from his pockets. Defendant complied but within seconds placed his hands in his pockets again. Deputy Dantagnan developed safety concerns and decided to conduct a pat-down search of the defendant. During the pat-down search, Deputy Dantagnan felt a cylindrical object that defendant simultaneously identified as a "crack pipe." Deputy Dantagnan seized the object.

Immediately subsequent to the seizure of the crack pipe from defendant's person, Deputy Dantagnan informed the defendant of his ***Miranda***[1] rights, placed him in handcuffs, and conducted a search incident to the arrest wherein a small amount of a green, leafy substance suspected to be marijuana was recovered from his right, front pocket. Deputy Dantagnan asked defendant for consent to search the trailer and defendant agreed. Deputy Dantagnan noted that the cushion on a nearby chair was elevated. Sergeant Williams lifted the cushion and retrieved a

[1] ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

green handbag that contained a large amount of suspected marijuana and a film canister. The film canister contained suspected crack cocaine. A small clear plastic bag of suspected crack cocaine was recovered from underneath a mattress in the bedroom area of the trailer.

ASSIGNMENT OF ERROR NUMBER ONE

Defendant contends that the trial court violated his constitutional rights in proceeding to trial while he was absent from the courtroom.

Generally, a defendant charged with a felony has a right to be present and must be present at every important stage of the trial. In accordance with La. C.Cr.P. art. 831A(3)-(6), a defendant charged with a felony shall be present at the calling, examination, challenging, impaneling, and swearing of the jury; at all times during the trial when the trial court is determining and ruling on the admissibility of evidence; in jury trials, at all proceedings when the jury is present; in bench trials, at all times when evidence is being adduced; and at the rendition of the verdict or judgment. But the provisions of La. C.Cr.P. art. 831 are not absolute. As provided in La. C.Cr.P. art. 832A(1), a defendant who is initially present for the commencement of trial shall not prevent the further progress of the trial and shall be considered to have waived his right to be present if his counsel is present or if the right to counsel has been waived, and he voluntarily absents himself after the trial has commenced. A jury trial commences when the first prospective juror is called for examination. La. C.Cr.P. art. 761. If a defendant voluntarily absents himself but his attorney is present, the attorney's presence is sufficient to satisfy the due-process requirements of La. C.Cr.P. arts. 831 and 832. See ***State v. Bolton***, 408 So.2d 250, 257-58 (La. 1981); ***State v. Landrum***, 35,053,

p. 5 (La. App. 2d Cir. 9/26/01), 796 So.2d 94, 98, ***writ denied***, 2003-0493 (La. 2/20/04), 866 So.2d 823.

The record shows that defendant was present on December 4, 2006, when the jury trial commenced with the examination of the prospective jurors. He remained present during the jury selection. The trial court recessed the trial to the next day, December 5, 2006, but defendant did not return. The trial court noted that defendant was informed of his obligation to return, and the defense attorney was given an opportunity to contact defendant. The trial court recessed until 10:00 a.m. to allow additional time to contact the defendant and procure his presence. Since defendant did not appear, the trial court found that he had voluntarily absented himself after the trial commenced and noted its intention to proceed without him. The defense attorney objected. The trial court noted the objection, and proceeded with the hearing on the motion to suppress. After the conclusion of the hearing, the trial court informed the jury of defendant's absence, reiterated the State's burden of proof, and proceeded to trial, concluding it in defendant's absence. After the redirect examination of the State's final witness, the defense attorney noted for the record that defendant called his office that morning and informed the defense attorney's secretary that he was sick. The State rested and the defense subsequently rested without presenting evidence. At the conclusion of the trial, defendant was found guilty as charged. Defendant was present in court for subsequent proceedings.

The record established that defendant was initially present for the commencement of the trial but did not return. Nothing in the record suggests the trial court had reason to believe that defendant's absence was involuntary as there

was no evidence or argument to that effect. Thus, we find no error in the trial court's decision to proceed. Just prior to the conclusion of the trial, the defense attorney advised the trial court of a reason for defendant's absence but never moved for a mistrial or argued that defendant's absence was involuntary. Accordingly, the trial court did not err in finding that the defendant, by voluntarily absenting himself, waived his constitutional right to be present during the trial. Furthermore, we note the defendant's attorney was present in the courtroom throughout the trial. The defendant's constitutional rights were not violated as his counsel's presence satisfies the due-process requirements. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER TWO

Defendant challenges the trial court's ruling on his motion to suppress evidence, maintaining that he did not consent to the search of his trailer home.

The Fourth Amendment to the United States Constitution and article I, section 5 of the Louisiana Constitution provides protection against unreasonable searches and seizures. A search conducted without a warrant is presumably unreasonable unless justified by one of the specifically established exceptions. ***Schneckloth v. Bustamonte***, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043, 36 L.Ed.2d 854 (1973); ***Coolidge v. New Hampshire***, 403 U.S. 443, 454-55, 91 S.Ct. 2022, 2032, 29 L.Ed.2d 564 (1971); ***State v. Farber***, 446 So.2d 1376, 1378 (La. App. 1st Cir.), ***writ denied***, 449 So.2d 1356 (La. 1984). A valid consent search is a well-recognized exception to the warrant requirement, but the State has the burden of proving that the consent was valid in that it was freely and voluntarily given. ***Bumper v. North Carolina***, 391 U.S. 543, 548, 88 S.Ct. 1788, 1792, 20 L.Ed.2d

797 (1968); ***State v. Smith***, 433 So.2d 688, 693 (La. 1983). Consent is valid when it is freely and voluntarily given by a person who possesses common authority or other sufficient relationship to the premises or effects sought to be inspected. ***United States v. Matlock***, 415 U.S. 164, 171, 94 S.Ct. 988, 993, 39 L.Ed.2d 242 (1974); ***State v. Bodley***, 394 So.2d 584, 588 (La. 1981). An oral consent to search is sufficient; a written consent is not required. ***State v. Ossey***, 446 So.2d 280, 287 n.6 (La.), ***cert. denied***, 469 U.S. 916, 105 S.Ct. 293, 83 L.Ed.2d 228 (1984); ***State v. Parfait***, 96-1814, p. 13 (La. App. 1st Cir. 5/9/97), 693 So.2d 1232, 1240, ***writ denied***, 97-1347 (La. 10/31/97), 703 So.2d 20. Voluntariness is a question of fact to be determined by the trial court under the facts and circumstances of each case. See ***Parfait***, 96-1814 at p. 13, 693 So.2d at 1240.

The trial court's factual findings during a hearing to suppress evidence are entitled to great weight and should not be disturbed unless they are clearly erroneous. ***State v. Casey***, 99-0023, p. 6 (La. 1/26/00), 775 So.2d 1022, 1029, ***cert. denied***, 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000); ***State v. Brumfield***, 2005-2500, p. 5 (La. App. 1st Cir. 9/20/06), 944 So.2d 588, 593, ***writ denied***, 2007-0213 (La. 9/28/07), 964 So.2d 353. When reviewing a trial court's ruling on a motion to suppress, the entire record may be considered. ***State v. Martin***, 595 So.2d 592, 596 (La. 1992).

Insofar as the initial entry into defendant's residence, we note that in ***Steagald v. U.S.***, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981), the United States Supreme Court held that law enforcement officers must obtain a search warrant, in addition to an arrest warrant, when searching for the subject of the arrest warrant in the home of a third party, absent the presence of exigent

circumstances or consent. 451 U.S. at 216, 101 S.Ct. at 1650. In this case, the subject of the arrest warrant was Latiolais, who was in the officers' plain view when defendant opened the door to his residence. The officers had to enter the residence to arrest Latiolais. See ***State v. Young***, 2006-0234, p. 7 (La. App. 1st Cir. 9/15/06), 943 So.2d 1118, 1123, ***writ denied***, 2006-2488 (La. 5/4/07), 956 So.2d 606.

The absence of a search warrant before executing the arrest warrant on Latiolais is immaterial because Deputy Dantagnan testified at the motion to suppress hearing that he received information that Latiolais lived at defendant's residence. Similarly, Corporal LeBlanc testified during the trial that Latiolais's mother informed him that Latiolais was living at and frequently present at defendant's residence. An arrest warrant, founded on probable cause, gives law enforcement officers "the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." ***Payton v. New York***, 445 U.S. 573, 603, 100 S.Ct. 1371, 1388, 63 L.Ed.2d 639 (1980); ***State v. Barrett***, 408 So.2d 903, 904-05 (La. 1981).

Additionally, warrantless entry into a person's home, though *per se* unreasonable, may be justified where sufficient exigent circumstances exist. Examples of exigent circumstances have been found to include: escape of the defendant, avoidance of a possible violent confrontation that could cause injury to the officers and the public, and the destruction of evidence. ***Farber***, 446 So.2d at 1379-80. Because Latiolais had previously misrepresented her identity to the police and the officers heard commotion in the trailer after their presence was

announced, the record supports a finding that exigent circumstances existed so as to justify the warrantless entry into defendant's residence.

Turning now to the issue of whether defendant consented to the search of his residence, we note that in ***State v. Shy***, 373 So.2d 145, 148 (La. 1979), the Louisiana Supreme Court held that the State satisfied its burden of proving a defendant gave valid consent to the police to search his luggage with the uncontroverted testimony of a police officer, who was the State's sole witness at the suppression hearing. See also ***State v. Cambre***, 2004-1317, pp. 13-15 (La. App. 5th Cir. 4/26/05), 902 So.2d 473, 482-83, ***writ denied***, 2005-1325 (La. 1/9/06), 918 So.2d 1039 (holding that the trial court's reliance on the uncontroverted testimony of law enforcement officer to find that parents freely and voluntarily consented to the search of their home, including the room that their son occupied was sufficient to sustain State's burden of proof).

In this case, Deputy Dantagnan was the sole witness at the motion to suppress hearing. He also testified at the trial. Deputy Dantagnan specifically stated that defendant "consented with no problem." He responded negatively when asked whether the defendant was forced, threatened, or coerced in any way to give his consent. Thus, Deputy Dantagnan's testimony clearly establishes that defendant consented to the search of the residence prior to the search and seizure of the drugs from furniture in the trailer. Although defendant suggests that Sergeant Williams did not hear defendant give his consent to the search and that the law enforcement officer was not advised of any consent as he recovered evidence, Sergeant Williams was neither asked whether he had heard the defendant consent to the search nor did he specifically state that he did not hear

defendant consent to the search. We find no error in the trial court's reliance on the uncontroverted testimony of Deputy Dantagnan to find that defendant freely and voluntarily consented to the search of his residence. Thus, the trial court did not abuse its discretion in denying the motion to suppress evidence.

ASSIGNMENT OF ERROR NUMBER THREE

Defendant contends that the trial court erred in denying his motion for mistrial based on the admission of other crimes evidence under the *res gestae* doctrine. Defendant suggests that the State presented other crimes evidence when it referenced the presence of marijuana during *voir dire*, its opening statement, and the redirect examination of Deputy Dantagnan.

Generally, courts may not admit evidence of other crimes to show a defendant is a man of bad character who has acted in conformity with his bad character. But under La. C.E. art. 404B(1), evidence of other crimes, wrongs or acts may be introduced when it relates to conduct, formerly referred to as *res gestae*, that "constitutes an integral part of the act or transaction that is the subject of the present proceeding." *Res gestae* events constituting other crimes are deemed admissible because they are so nearly connected to the charged offense that the State could not accurately present its case without reference to them. A close proximity in time and location is required between the charged offense and the other crimes evidence to insure that the purpose served by admission of other crimes evidence is not to depict the defendant as a bad man, but rather to complete the story of the crime on trial by proving its immediate context of happenings near in time and place. ***State v. Colomb***, 98-2813, p. 3 (La. 10/1/99), 747 So.2d 1074, 1076 (per curiam).

The *res gestae* doctrine in Louisiana is broad and includes not only spontaneous utterances and declarations made before or after the commission of the crime, but also testimony of witnesses and police officers pertaining to what they heard or observed before, during, or after the commission of the crime, if a continuous chain of events is evident under the circumstances. ***State v. Kimble***, 407 So.2d 693, 698 (La. 1981). Integral act (*res gestae*) evidence in Louisiana also incorporates a rule of narrative completeness without which the State's case would lose its narrative momentum and cohesiveness. See ***Colomb***, 98-2813 at p. 4, 747 So.2d at 1076. The Louisiana Supreme Court has held that evidence of multiple crimes committed in a single course of conduct is admissible as *res gestae* at the trial of the accused for the commission of one or more, but not all, of the crimes committed in his course of conduct. ***State v. Washington***, 407 So.2d 1138, 1145 (La. 1981); accord ***State v. Meads***, 98-1388, p. 7 (La. App. 1st Cir. 4/1/99), 734 So.2d 792, 797, ***writ denied***, 99-1328 (La. 10/15/99), 748 So.2d 465.

Deputy Dantagnan recovered a small amount of marijuana from defendant's pocket during the search incident to the arrest, just prior to the consent to search the residence and the recovery of the crack cocaine. After defendant consented to the search, according to the testimony of Sergeant Williams and Deputy Dantagnan, some of the evidence forming the basis for the instant offense, possession of crack cocaine, was recovered from a film canister that was located in a green handbag that also contained marijuana. Thus, the possession of the marijuana constitutes an integral part of the cocaine offense. See La. C.E. art. 404B(1). We further note that the trial court admonished the jury to disregard

evidence regarding unrelated drugs. Accordingly, this assignment of error is without merit.

DECREE

For these reasons, the conviction, habitual-offender adjudication and sentence of defendant, Paul A. James, Jr., are affirmed.

CONVICTION, HABITUAL-OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.