

STATE OF LOUISIANA

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NO. 2000-KA-1048

VERSUS

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COURT OF APPEAL

JESSIE J. TRICE

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-204, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

JAMES F. MC KAY, III
JUDGE

(Court composed of Judge Miriam G. Waltzer, Judge James F. McKay, III,
Judge Michael E. Kirby)

HON. HARRY F. CONNICK
DISTRICT ATTORNEY OF ORLEANS PARISH
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New Orleans, Louisiana
Attorneys for Plaintiff/Appellee

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LOUISIANA APPELLATE PROJECT
New Orleans, Louisiana
Attorney for Defendant/Appellant

AFFIRMED

STATEMENT OF CASE

Jessie J. Trice was charged by bill of information on December 7, 1999 with possession of cocaine, a violation of La. R.S. 40:967. He was arraigned and pled not guilty on December 10, 1999. On December 16, 1999, a six-member jury found him guilty of attempted possession of cocaine. The court sentenced him on February 16, 2000, to thirty months at hard labor without benefit of parole, probation or suspension of sentence. That same day the State filed a multiple bill, to which the defendant pled guilty. The court then adjudicated him a third felony offender, vacated his sentence, and sentenced him pursuant to La. R.S. 15:529.1 to thirty months at hard labor with credit for time served.

STATEMENT OF FACT

On November 6, 1999, at about 8:20 p.m. Officer Ken Bowen was alone on routine patrol in the Carrollton area. When he turned off Carrollton Avenue onto Sycamore Street, he observed the defendant riding a bicycle headed in the same direction as the officer was driving. The defendant was wearing a backpack, and weaving from side to side on the street, looking into the driver's side windows of parked cars. The officer found the

defendant's behavior suspicious and thought he might be engaging in car burglaries, so he decided to stop the defendant and conduct a field interview. Officer Bowen instructed the defendant to get off his bike, and place his hands on the police car. At that point for his safety, the officer patted down the defendant's outer clothing for weapons. Officer Bowen detected a knife in the defendant's front pants pocket. As he put his hand into the defendant's pocket to retrieve the knife, Officer Bowen removed a putty knife and a crack pipe containing a white residue. The officer arrested the defendant for possession of cocaine and possession of drug paraphernalia.

Corey Hall, an expert in the identification and analysis of controlled dangerous substances, stated that testing confirmed that the pipe contained cocaine residue.

ERRORS PATENT

A review for errors patent on the face of the record reveals none.

ASSIGNMENTS OF ERROR NUMBERS 1 AND 2

In two assignments of error the defendant argues that Officer Bowen's opinion testimony that the defendant may have been engaged in car burglaries and the introduction of the putty knife should have been excluded as evidence of other crimes or bad acts with which he had not been charged. The defendant contends the court erroneously characterized his objection to

the evidence as one of suppression rather than La. C. E. art.404 (B).

Prior to trial, defense counsel unsuccessfully moved the court to exclude the opinion testimony and the putty knife as irrelevant:

I'm going to move that we exclude from testimony any testimony about the opinion of the police officer about what he thought the defendant might be doing in this case, believed he may be attempted to commit an auto burglary because he was riding down the street looking into vehicles on both sides of the street. This is not evidentiary value in terms of proving whether or not he knew he had cocaine in a crack pipe. We've not contesting that he had a crack pipe, we didn't file a motion to suppress, and that might be appropriate in a motion to suppress. I think that's even – the testimony is even borderline, but even so, I'm sure the Court would have found it sufficient. In any event, they stop him they frisk him. When they frisk him they find the object in his pants pocket. Well, they find a putty knife and then they frisk him again and then they find the crack pipe. I don't think any of that's relevant under 404 of the evidence code into proving his knowledge of what he was possessing.

After defense counsel urged his motion, the dialogue between the court, the State and defense counsel continued:

THE STATE:

Judge, I think that you need to provide for the jury a rational basis for why an officer would have stopped the defendant. In this case, established the probable cause and part of the res gestae of the overall stop, and so I think the officer has a right to testify as to whether or not he thought the defendant may be committing an auto burglary and that's why he stopped him. Furthermore, the evidence of the putty knife is further evidence and res gestae –

DEFENSE COUNSEL:

I'm not worried about the putty knife. My problem is the jury is not gonna decide a motion to suppress. They're not asked to decide a

motion to suppress. They're not asked to decide a motion to suppress. Now, if we want to, if the D.A. wants to do that, put the jury back upstairs and we'll do the motion to suppress now, if you want to do that.

THE COURT:

I'll deny the request . . .

La. C.E. art. 404(B)(1) provides in part:

Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, . . . **when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.** (emphasis supplied)

Generally, evidence of other crimes is inadmissible at trial because of the likelihood that the trier of fact will convict the defendant of the immediate charge based on his/her prior criminal acts. The emphasized portion of the provision above is the codification of the principle of "res gestae." Discussing the "res gestae" principal in State v. Colomb, 98-2813 (La.10/1/99), 747 So.2d 1074, the Supreme Court noted:

This Court has long approved of the introduction of other crimes evidence, both under the provisions of former R.S. 15:448 relating to res gestae evidence and as a matter of integral act evidence under La.C.E. art. 404(B), "when it is related and intertwined with the charged offense to such an extent that the state could not have accurately presented its case without reference to it." State v. Brewington, 601 So.2d 656, 657 (La.1992). This doctrine encompasses "not only spontaneous utterances and declarations made before and after 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 the

continuous chain of events is evident under the circumstances." State v. Molinario, 383 So.2d 345, 350 (La.1980). We have required a close connexity between the charged and uncharged conduct 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. Haarala, 398 So.2d 1093, 1098 (La.1981) (emphasis added); see also 1 McCormick on Evidence, § 190, p. 799 (4th ed., John William Strong, ed., 1992) (other crimes evidence may be admissible "[t]o complete the story of the crime on trial by placing it in the context of nearby and nearly contemporaneous happenings.") (footnote omitted). The res gestae or integral act doctrine thus "reflects the fact that making a case with testimony and tangible things not only satisfies the formal definition of an offense, but tells a colorful story with descriptive richness." Old Chief v. United States, 519 U.S. 172, 186, 117 S.Ct. 644, 653, 136 L.Ed.2d 574 (1997). The test of integral act evidence is therefore not simply whether the state might somehow structure its case to avoid any mention of the uncharged act or conduct but whether doing so would deprive its case of narrative momentum and cohesiveness, "with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict." Id.

In this case, the evidence was not offered to prove the defendant was of bad character, but rather to show how the sequence of events unfolded. The officer's testimony was admissible pursuant to the res gestae doctrine because it explained the basis for the stop. The presence of the putty knife led to the contemporaneous discovery of the crack pipe, and was an integral part of the act or transaction for which the defendant was being tried. The State could not have accurately or completely presented its case against the defendant without showing the basis for the stop and circumstances under

which the crack pipe was discovered.

Even if the officer's testimony and the putty knife were erroneously admitted into evidence, it is highly unlikely that the jury found the defendant guilty of the lesser included offense of attempted possession of cocaine on the basis of that evidence.

CONCLUSION

Accordingly, the defendant's conviction and sentence is affirmed.

AFFIRMED