NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-1891**
VERSUS	*	**COURT OF APPEAL**
RENE L. TAYLOR	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 413-295, SECTION "F"
HONORABLE DENNIS J. WALDRON, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Max N. Tobias, Jr. and Judge David S. Gorbaty)

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AFFIRMED

The defendant, Rene L. Taylor ("Taylor"), was charged with first degree robbery, a violation of La. R.S. 14:64.1. After the trial court denied his motions to suppress a statement and evidence, the defendant pleaded guilty as charged pursuant to *State v. Crosby*, 338 So. 2d 584 (La. 1976), reserving his right to appeal the trial court's denial of his motion to suppress the evidence. The trial court sentenced Taylor to serve fifteen years at hard labor without benefit of probation, parole, or suspension of sentence to run concurrently with any other sentence. Taylor now appeals.

Michael Pisciotta testified that at approximately 7:15 a.m. on 18 January 2000, a man, later identified as Taylor, approached him. Mr. Pisciotta had noticed the man standing on the sidewalk. Mr. Pisciotta stated that he was opening a gate to an alley to gain access to a rear apartment at 2321-23 Chartres Street when the man put something in his back and said, "Give me your money." Mr. Pisciotta testified that he did not see a weapon. He further testified that he dropped his money to the ground and covered it

with his foot. The perpetrator asked for the money again, and Mr. Pisciotta responded that he did not have any. The perpetrator then took the keys to Mr. Pisciotta's car. The perpetrator also told Mr. Pisciotta to given him his rings. Mr. Pisciotta testified that he dropped his wedding ring to the ground, but gave the perpetrator his diamond ring. Five to ten seconds later, when Mr. Pisciotta realized that the perpetrator was no longer behind him, he ran to the driveway and saw the man driving away in his 1997 Cadillac. Mr. Pisciotta immediately telephoned the police and, within ten minutes of the robbery, two police officers on bicycles arrived.

Mr. Pisciotta testified that he gave the two officers a description of the perpetrator as well as a description of the stolen automobile. He described the perpetrator as a brown-skinned, medium built male with a clean shaven head, and well-dressed in either khaki pants or blue jeans. About twenty minutes later, the police informed Mr. Pisciotta that his vehicle had been located and two suspects were in custody. Mr. Pisciotta was taken to where the suspects were being held, and he immediately identified Taylor as the perpetrator. Another man was there at the time, but the other man was not involved in the robbery. About an hour and a half later, the police called Mr. Pisciotta telling him that they had found his car keys, but not the diamond ring.

Officer Douglas Butler testified that he and his partner responded to the robbery call. After obtaining descriptions of the perpetrator and stolen vehicle, they relocated to St. Ferdinand and Marais Streets where they found Mr. Pisciotta's vehicle parked on St. Ferdinand Street. Officer Butler testified that he had relocated to that area because he had seen Taylor there earlier in the day and he had conducted several field interviews with him during the past weeks. The officers observed an Oldsmobile being driven by Gregory Keelen go to the corner about a half a block away; Taylor was a passenger in the vehicle. The officers stopped the vehicle, detained Taylor, advised him of his rights, and told him that he was under investigation for the robbery. At that time, another unit arrived with Mr. Pisciotta who positively identified Taylor as the perpetrator. Officer Butler re-advised Taylor of his rights and had him transported to the district station.

On cross-examination, Officer Butler acknowledged that he decided to look for Taylor in the area of St. Ferdinand and Marais Streets because it was a known drug area and the victim's description of the perpetrator matched that of a man whom he had seen earlier and knew lived in the area. Officer Butler stated that the victim described the suspect as bald headed, medium brown complexion, medium build, and a little shorter than Officer Butler. Officer Butler also stated that the victim did not give a clothing

description.

The crime lab tested the stolen vehicle for fingerprints. Four prints were lifted; three were not suitable for comparison; one was compared to Taylor's fingerprints and was found not to be his.

Officer Angela Davis conducted the follow-up investigation. After she informed Taylor of his rights, he indicated that he wanted to make a statement. According to Officer Davis, Taylor stated that he had approached the victim and implied that he had a weapon. He demanded money from the victim, and the victim informed him that he did not have any money. Then he demanded the rings and car keys. The victim turned over his rings and car keys. Taylor took the property and fled the scene. Officer Davis took Taylor'statement at approximately 9:30 a.m. on 18 January 2000.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR

By his sole assignment of error, Taylor claims that the trial court erred in denying his motion to suppress the evidence. He argues that the officers lacked reasonable suspicion to make an investigatory stop.

Warrantless searches and seizures fail to meet constitutional requisites unless they fall within one of the narrow exceptions to the warrant

requirement. *State v. Edwards*, 97-1797 (La. 7/2/99), 750 So. 2d 893, *cert. denied, Edwards v. Louisiana*, 528 U.S. 1026, 120 S.Ct. 542, 145 L.Ed.2d 421 (1999). On trial of a motion to suppress, the State has the burden of proving the admissibility of all evidence seized without a warrant. La. C.Cr.P. art. 703(D); *State v. Jones*, 97-2217 (La. App. 4 Cir. 2/24/99), 731 So.2d 389, 395, *writ denied*, 99-1702 (La. 11/5/99), 751 So. 2d 234. A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court has the opportunity to observe the witnesses and weigh the credibility of their testimony. *State v. Mims*, 98-2572 (La. App. 4 Cir. 9/22/99), 752 So. 2d 192.

La. C.Cr.P. art. 215(A) provides that:

> A law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and may demand of him his name, address, and an explanation of his actions.

The dispositive issue then, is whether police had reasonable suspicion to justify an investigatory stop of Taylor. "Reasonable suspicion" to stop is something less than the probable cause required for an arrest, and the reviewing court must look to the facts and circumstances of each case to determine whether the detaining officer had sufficient facts within his knowledge to justify an infringement of the suspect's rights. *State v. Littles*, 98-2517 (La. App. 4 Cir. 9/15/99), 742 So. 2d 735; *State v. Clay*, 97-2858

(La. App. 4 Cir. 3/17/99), 731 So. 2d 414, *writ denied*, 99-0969 (La. 9/17/99), 747 So. 2d 1096. Evidence derived from an unreasonable stop, i.e., seizure, will be excluded from trial. *State v. Benjamin*, 97-3065 (La.12/1/98), 722 So.2d 988. In assessing the reasonableness of an investigatory stop, a court must balance the need for the stop against the invasion of privacy that it entails. See *State v. Harris*, 99-1434 (La. App. 4 Cir. 9/8/99), 744 So. 2d 160. The totality of the circumstances must be considered in determining whether reasonable suspicion exists. *State v. Oliver*, 99-1585 (La. App. 4 Cir. 9/22/99), 752 So. 2d 911. The detaining officers must have knowledge of specific, articulable facts, which, if taken together with rational inferences from those facts, reasonably warrant the stop. *State v. Dennis*, 98-1016 (La. App. 4 Cir. 9/22/99), 753 So. 2d 296. In reviewing the totality of the circumstances, the officer's past experience, training and common sense may be considered in determining if his inferences from the facts at hand were reasonable. *State v. Cook*, 99-0091 (La. App. 4 Cir. 5/5/99), 733 So. 2d 1227. Deference should be given to the experience of the officers who were present at the time of the incident. *State v. Ratliff*, 98-0094 (La. App. 4 Cir. 5/19/99), 737 So. 2d 252, *writ denied*, 99-1523 (La. 10/29/99), 748 So. 2d 1160.

In *State v. Dank*, 99-0390 (La. App. 4 Cir. 5/24/00), 764 So. 2d 148,

eight to nine FBI agents and other federal law enforcement authorities had just exited an apartment belonging to the sister-in-law of a federal fugitive wanted for attempted murder. The fugitive was a male of Vietnamese descent. The agents observed a vehicle occupied by four Asian males drive into the parking lot in front of the apartment building they had just left. Two individuals exited the vehicle and walked toward that same building, while the driver parked. Agent Arruda said that as the car parked, she walked toward it "to see who was in the car." Agent Arruda, it can be assumed, had a photograph of the fugitive, as Special Agents Nguyen and Dillon testified they did, and thus, could have made a visual identification. "A person's liberty and privacy are not violated simply because a police officer attempts to talk with him as long as that individual is free to disregard the questioning and walk away." *State v. Burns*, 95-1500 (La. App. 4 Cir. 6/5/96), 675 So. 2d 1233, citing *U.S. v. Mendanhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). Thus, this Court found that Agent Arruda's initial approach toward the defendant and the driver of the vehicle was lawful. She did not need reasonable suspicion to approach and talk to them, or to more closely visually scrutinize them. Agent Arruda said she drew her weapon and ordered the defendant to stop, after seeing the driver run away, and seeing the defendant turn and begin to flee. At no point in her testimony did

Agent Arruda ever say that she was prompted to draw her weapon because the defendant looked like the fugitive, other than the fact that he was a male of Vietnamese descent. However, at trial Agent Linda Dillon, of Korean descent, testified that the defendant looked like the fugitive or at least like the photograph of the fugitive the agents had. Agent Nguyen said he knew the fugitive very well. He said that after looking at the defendant, he knew the defendant was not the fugitive. The import of his testimony indicates that Agent Nguyen meant that he could see the defendant was not the fugitive after viewing him close-up. The Louisiana Supreme Court stated in *State v. Kalie*, 96-2650 (La. 9/19/97), 699 So.2d 879, "the 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 so long as the circumstances, viewed objectively, justify that action," citing *Whren v. U.S.*, 517 U.S. 806, 116 S.Ct. 1769, 1774, 135 L.Ed.2d 89 (1996), quoting *Scott v. U.S.*, 436 U.S. 128, 138, 98 S.Ct. 1717, 1723-1724, 56 L.Ed.2d 168 (1978). Thus, even though Agent Arruda did not testify that the defendant looked like the fugitive, the evidence indicates that, objectively, the defendant did resemble the fugitive.

In the instant case, Officer Butler testified that he stopped Taylor because he had seen him earlier in a known drug area and Taylor matched

the description of the perpetrator given by the victim. Thus, the officers' initial approach was lawful.

Officer Butler further testified that Mr. Keelen gave his consent to search the vehicle. A search conducted pursuant to consent is a recognized exception to the warrant requirement. *Edwards*, *supra*. The burden is on the State to prove that such consent to search was given freely and voluntarily. *State v. Nogess*, 98-0670 (La. App. 4 Cir. 3/3/99), 729 So. 2d 132. The defense presented no evidence to contradict Officer Butler's testimony that Mr. Keelen freely consented to a search of the Oldsmobile.

The trial court did not abuse its discretion in denying the motion to suppress.

Accordingly, Taylor's guilty plea and sentence are affirmed.

AFFIRMED