

STATE OF LOUISIANA

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NO. 2001-K-1791

VERSUS

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COURT OF APPEAL

JAMES P. BLAKE

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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ON SUPERVISORY WRIT DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 421-486, 421-469, SECTION "E"
HONORABLE CALVIN JOHNSON, JUDGE

CHARLES R. JONES
JUDGE

(Court composed of Judge Charles R. Jones, Judge James F. McKay, III,
and Judge David S. Gorbaty)

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WRIT GRANTED;
RELIEF DENIED

The State of Louisiana seeks our supervisory jurisdiction to review the order of the district granting the Motion to Suppress evidence filed by James Blake. For the reasons, which follow, we grant the State's writ application, but deny relief.

Jessica Hagerty and James Blake were separately charged with one count of possession of cocaine. In another case, Blake was charged with first offense possession of marijuana. Both filed motions to suppress evidence; however, Hagerty did not appear for the hearing on the motion. The district court heard testimony and took the matter under advisement, and then granted the motion to suppress evidence as to Blake. This timely writ application follows.

The first witness at the June 29th hearing was Detective Paul Noel. He testified that on April 19, 2001 he received information from a reliable confidential informant (C.I.) that "the twins" (a reference to Jeremiah and Jeremy Williams) were selling narcotics in the area of Edinburgh and Pine Streets. The detective set up a surveillance of the block, and at approximately 4:30 p.m., he observed a Metaire minivan cab stop on the

corner of Pine and Edinburgh. A white female, later identified as Ms. Hagerty, exited and was met by Jeremiah Williams. The cab pulled away a short distance, approximately two house lengths, and parked. Ms. Hagerty gave Jeremiah several paper bills. Jeremiah then met with Jeremy Williams. Jeremy walked across the street and retrieved a potato chip bag and removed five small white objects from the bag. Jeremy gave the objects to Jeremiah, who immediately returned to Ms. Hagerty and handed them to her. Ms. Hagerty returned to the cab and drove off. Because Detective Noel believed that he had witnessed a narcotics transaction, he contacted the support unit and instructed that the cab be stopped. Detective Noel did not participate in the stop of either defendant.

On cross-examination by counsel for Blake, Detective Noel acknowledged that the driver of the Metaire cab was not arrested but that all the other occupants, Hagerty, Blake and a woman named Kelly Roach were arrested. Detective Noel admitted that he was not aware of any of the occupants of the cab, except for Ms. Hagerty, until the investigation was complete.

The second witness at the motion hearing was Detective Michael Dalferes who testified that he acted as the takedown officer during the investigation on April 19, 2001. He made the stop of the Metairie cab upon

the instruction of Detective Noel. The takedown officers pulled the van over and had everybody to exit the vehicle. Detective Dalferes approached Ms. Hagerty first and told her to open her mouth; he did this because of the common practice of narcotics buyers to conceal the crack in their mouths. When Ms. Hagerty complied, the detective could see little pieces of a white substance. Upon orders of the detective, she spit the objects onto the ground; they were five pieces of cocaine. She was arrested immediately. Also, the officers arrested Blake and Roach. In a search incidental to arrest, Blake was found to be in possession of a glass pipe and a metal pipe. The cabdriver was interviewed and released.

Detective Dalferes was unable to recall where the various passengers in the van were seated. He did not observe Blake attempt to hide anything or make any suspicious movements. No evidence was found on the third occupant, Kelly Roach.

Following the testimony of Detective Dalferes, counsel for Blake argued that there was insufficient evidence to support a frisk or an arrest of his client, although there may have been ample grounds for a stop and arrest of Ms. Hagerty. Counsel noted that Blake was not observed engaging in any criminal activity, and he did not flee or act furtively when the van was stopped. The prosecutor responded that the quantity of cocaine, five rocks,

demonstrated that all of the passengers were involved in the possession of the drugs. We disagree.

The State has not provided the transcript of the district court's ruling, and therefore the exact basis for the district court's ruling is not known. However, based on the argument made by the parties, and the State's argument in its writ application, the sole issue presented herein is whether there was probable cause to arrest Blake so that the search incidental thereto was valid.

Probable cause to arrest exists when the facts and circumstances known to the officer are sufficient to justify a man of ordinary caution to believe the person to be arrested has committed a crime. State v. Matthews, 94-2112, p. 5 (La. App. 4 Cir. 4/26/95), 654 So. 2d 868, 871 (Judge Murray). Because the arrest and seizure of the evidence was without a warrant, the State bears the burden of proof. La. C.Cr.P. art. 703.

This Court has held that there is reasonable suspicion to stop and frisk a person who is in the company of another during a drug transaction. State v. Green, 586 So. 2d 639 (La. App. 4 Cir. 1991), in which police officers on patrol in a marked vehicle received a call of a drug deal. The officers parked their vehicle out of sight and walked to the location so that they would not be seen. When they the officers within approximately twelve feet, they

observed the defendant standing with a man named Jones. Jones was approached by another person, and a drug transaction occurred. The defendant did not participate in the transaction. Nevertheless, the officers approached all of the men and placed them against a car in order to do a frisk for weapons. The drug buyer had a rock of cocaine concealed in his hand. The defendant, while his hands were on the car, opened his right hand and dropped a rock-like substance. Green, the defendant, was then placed under arrest. The trial court suppressed the evidence. This Court reversed, stating:

Because the defendant was with Williams and Jones during the drug purchase in a high drug trafficking area, the officers were justified under these circumstances to conduct a pat-down search of the three men under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). See State v. Landry, 393 So. 2d 713 (La. 1981). Therefore, the seizure of the cocaine which the defendant abandoned because of that justified pat-down search was legal.

State v. Green, 586 So. 2d at 640. See also State v. Eddie, 96-2787 (La. App. 4 Cir. 4/30/97), 694 So.2d 503 (investigatory stop lawful where defendant was one of three individuals present when a drug transaction occurred, and he fled when the police appeared at the scene of the transaction); and State v. Robinson 00-1050 (La. App. 4 Cir. 4/11/01), 784 So.2d 781 (defendant in car with a person in possession of drugs could be frisked for weapons).

However, this Court found that the police did not have probable cause to arrest the driver of a vehicle solely because a person involved in a drug transaction entered the vehicle immediately after concluding a drug sale to an undercover officer. State v. Broussard, 99-2848 (La. App. 4 Cir. 10/4/00), 769 So.2d 1257. The court noted that, “although it is somewhat arguable that the appellant's proximity to the undercover drug sale might have given the officers reasonable suspicion to stop the appellant, these circumstances did not constitute probable cause to believe the appellant was involved in Allen's and Hills' drug operation in any way.” Id. p. 9, 769 So. 2d 1261.

As argued by defense counsel in this case, Blake was not simply frisked. Instead, he was arrested and searched. The State has not cited a single case in support of its contention that probable cause existed to believe that Blake was committing a crime at the time of his arrest. The State instead avers that “[t]he closeness between the defendant and the co-defendant are sufficient to establish probable cause for the defendant’s arrest.” The State makes the factual allegation that Blake “was seated next to” Hagerty once she re-entered the van. However, there was no testimony from Detective Dalferes to indicate that Blake was seated next to Hagerty; he stated he could not recall where Blake was seated. As to Hagerty, the

detective, when pressed, stated he believed she was seated “in the back” because the officers had to open the sliding side door to get her out. Detective Dalferes specifically denied that Blake acted in a suspicious fashion, instead agreeing that Blake “simply sat there like a bump on a log”.

Moreover, during the transaction between Hagerty and the twins, the Metairie cab had moved away from the immediate scene. Detective Noel’s testimony that he could not observe the cab during the transaction leads to a possible inference that the occupants of the cab could not see the transaction either, and thus had no obvious knowledge of it. Furthermore, Ms. Hagerty had concealed the drugs in her mouth, not in the cab where her co-occupants may have seen it prior to the stop.

The only fact, which remotely supports a finding of probable cause, is the quantity of drugs found in Hagerty’s possession. Detective Dalferes testified that it was his belief that five pieces of cocaine indicated that all three passengers intended to smoke it. However, the detective was not qualified as an expert as to typical amounts used. Moreover, his testimony was strictly of a conclusory nature, e.g., that Blake “was knowledgeable as to what was going on, and he was involved, it was determined”, without any testimony as to the factual basis for this determination of Blake’s involvement. There was no testimony regarding statements made by any of

the three passengers, and the substance of the interview with the cabdriver was never given. Had the cabdriver told the officers that Blake had directed him to the location of the drug transaction, or told him to pull away after dropping off Hagerty, such evidence would have made probable cause to arrest much more obvious. That evidence is lacking herein.

A trial court's ruling on a motion to suppress evidence should not be disturbed unless it was an abuse of discretion. State v. Scull, 93-2360 (La. App. 4 Cir. 6/30/94), 639 So.2d 1239. Considering that the State bore the burden of proof that the warrantless search was legal, and considering that Blake was actually arrested and searched, not merely subjected to a frisk following an investigatory stop, the district court did not abuse its much discretion in granting the motion to suppress. The State's writ application is granted, but relief is denied.

WRIT GRANTED;
RELIEF DENIED