

STATE OF LOUISIANA

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NO. 2001-KA-0084

VERSUS

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COURT OF APPEAL

HARDY WHITE

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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. 415-480, SECTION "J"
Honorable Leon Cannizzaro, Judge

Charles R. Jones
Judge

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones,
and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

Hardy White appeals his conviction and sentence for attempted possession of cocaine. In his lone assignment of error, he argues the district court erred in denying his Motion to Suppress Evidence. We affirm.

PROCEDURAL HISTORY

By bill of information, White was charged with possession of cocaine. The preliminary hearing and the hearing on the Motion to Suppress the Evidence was combined. The district court found probable cause and denied White's Motion to Suppress Evidence. A six-member jury found White guilty of attempted possession of cocaine and he was sentenced to serve thirty months at hard labor, the balance of which was suspended. White was placed on five years of active probation with special conditions. This appeal follows.

FACTS

At approximately 2:00 a.m. on June 2, 2000, Officers Chad Perez and Nathan Gex testified, they were sitting at a red light on the corner of South Carrollton Avenue and Palmetto Street when they observed a Nissan pick-up

truck going down the wrong side of the street. They stopped the vehicle and arrested the driver of the truck once they discovered that his driver's license was expired. White was a passenger, and between his legs he had an open beer bottle, which was nearly full.

White was asked to exit the vehicle, and the officers began asking him questions. Both officers were of the opinion that White was under the influence of drugs, and they described him as disoriented or being in a "zombie" state. Though White did not have a strong odor of alcohol about him, his eyes were bloodshot. When asked his name, White had to sit down and think because he could not remember; nor did he have any identification on him. However, the officers eventually learned that he was from Baton Rouge, Louisiana and obtained his date of birth. White was then arrested for having an open container in the vehicle. During the search incident to his arrest, the officers recovered a crack pipe containing white residue. Testing on the residue proved that it was cocaine.

ERRORS PATENT

No errors patent were found.

DISCUSSION

On appeal, White argues that the district court erred by denying his Motion to Suppress the Evidence. Specifically, he argues that the officers

were not justified in arresting him simply because he had an open container of alcohol in the vehicle.

Probable cause to arrest exists when the facts and circumstances, either personally known to the arresting officer or of which he has reasonable and trustworthy information, are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. State v. Thomas, 349 So.2d 270, 272 (La. 1977). The standard for assessing probable cause is an objective standard that must withstand the "detached, neutral scrutiny of a judge." State v. Flowers, 441 So.2d 707, 712 (La. 1983), reversed on other grounds, 779 F.2d 1115 (5 Cir. 1986). The determination of probable cause must take into account the "practical considerations of everyday life on which ... average police officers can be expected to act." State v. Raheem, 464 So.2d 293, 296 (La. 1985).

Section 54-407 of the New Orleans Municipal Code provides in pertinent part that "no operator of, or passenger in or on a motor vehicle shall possess, when such vehicle is upon a street or highway, any alcoholic beverage in an open container. Anyone who violates this ordinance is subject to a fine of not more than \$200." Though a violation of this ordinance may not in and of itself establish probable cause to arrest, White was clearly incapacitated by either alcohol and/or drugs.

Section 54-405 of the New Orleans Municipal Code provides that "it is unlawful for any person to appear in a public place manifestly under the influence of alcohol, narcotics or other drugs, not therapeutically administered, to the degree that he may endanger himself or other persons or property."

In State v. Smiley, 99-0065 (La. App. 4 Cir. 3/3/99), 729 So. 2d 743, this Court held that the police lacked probable cause to arrest the defendant for intoxication. Even though he staggered upon exiting a bar, nothing in the officer's testimony indicated that his actions at the time would endanger the public. An officer testified that he arrested the defendant to keep him from entering his truck and driving while intoxicated. However, the officer was unaware whether the defendant planned to leave soon or whether he would be driving his truck. Therefore, two companions, who could possibly drive, accompanied the defendant.

In the instant case, unlike Smiley, White's companion had just been arrested. Obviously, he was not in a condition to operate the vehicle, nor did he possess a driver's license. It was 2:00 a.m. and White was not a local resident. White had difficulty remembering his name let alone a residential address. Under the circumstances, White may have endangered himself and others if left on his own. Therefore, the officers had probable cause to arrest

him for intoxication. The crack pipe found during the search incident to his arrest was properly admitted into evidence. This assignment of error is without merit.

DECREE

For the reasons herein indicated, Hardy White's conviction and sentence are affirmed.

AFFIRMED