

STATE OF LOUISIANA

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NO. 2001-KA-1064

VERSUS

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COURT OF APPEAL

ALICE M. FOSTER

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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. 416-297, SECTION "B"
Honorable Patrick G. Quinlan, Judge

Judge Steven R. Plotkin

(Court composed of Judge Steven R. Plotkin, Judge Patricia Rivet Murray,
Judge Michael E. Kirby)

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AFFIRMED

The issue in this appeal is whether the trial court erred in denying the defendant's motion to suppress the evidence.

PROCEDURAL HISTORY

Defendant, Alice M. Foster, was charged by bill of information with possession of crack cocaine. She pled not guilty at arraignment and filed motions for preliminary hearing and to suppress the evidence. After a hearing the trial court found probable cause and denied the motion to suppress evidence. On October 12, 2000, defendant appeared for trial and withdrew her plea of not guilty and entered a guilty plea under *State v. Crosby*, 338 So.2d 584 (La. 1976), reserving her right to appeal the trial court's ruling on the motion to suppress evidence. On the same date the state filed a multiple bill alleging the defendant to be second felony offender, to which defendant pled guilty. After defendant waived all legal delays, the trial court sentenced her to five years with credit for time served.

STATEMENT OF FACTS

On August 10, 2000, New Orleans Police Detective David Waite was

conducting surveillance at the corner of Clio and Robertson because there had been numerous complaints from residents of the Melpomene Housing Project regarding drug sales occurring at that corner. At about 12:30 p.m. Waite observed Foster ride a bicycle up to a subject standing on the corner. After a short conversation, defendant handed the subject what appeared to be U.S. currency. The subject then spit an object into his hand from his mouth and handed it to Foster. Waite observed defendant look at the object and then place it in her right pocket.

Detective Waite testified that frequently when people are selling drugs they will hold them in their mouth. Waite further stated that he believed he had witnessed a drug transaction based on the fact that the defendant had given the subject money, and that the subject gave her an object from his mouth.

Detective Waite advised Detective Raymond Veit of what he had seen. Detective Veit stopped the defendant at the corner of Clara and Clio. Detective Veit conducted a pat down during which he felt an outline of a small hard object inside Foster's right front pants pocket. Based on his past experience and the observations of Waite, Detective Veit believed the object to be cocaine. The object recovered from Foster's right pocket was a piece of crack cocaine.

ERRORS PATENT

A review of the record shows no errors patent.

ASSIGNMENT OF ERROR

Foster contends the trial court erred in denying the motion to suppress the evidence. Defendant argues that because the police did not have probable cause to arrest her the search cannot be justified through a search incident to arrest, or alternatively, that the search exceeded the scope allowed under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968), and the plain feel doctrine.

In *State v. Simms*, 571 So.2d 145, 148 (La.1990) the Supreme Court defined probable cause as follows:

“Probable cause to arrest exists when the facts and circumstances within the officer's knowledge are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); *State v. Wilson*, 467 So.2d 503 (La.1985).”

In *State v. Julian*, 00-1239, (La. App. 4 Cir. 3/14/01) 785 So.2d 872, an ATF agent had received specific complaints of narcotics activity on the ATF “guns hotline” at a specific residence. During the course of surveillance, the agent observed the defendant exit the residence in question and engage a man standing outside who was holding U.S. currency in his

hand. The agent saw the defendant take an object out of a film canister and give it to the man. The unidentified man then gave the defendant U.S. currency. The defendant was then arrested and in a search incident to arrest six rocks of cocaine were recovered.

If a police officer stops a person whom he reasonably suspects is committing, has committed, or is about to commit a crime, the officer may demand of the person his or her name, address, and an explanation of his or her actions. La.C.Cr.P. art. 215.1 (A). If the officer reasonably suspects that he or she is in danger, the officer may frisk the outer clothing of such person for a dangerous weapon. La.C.Cr.P. art. 215.1(B). “If in the course of a frisk pursuant to La.C.Cr.P. art. 215.1(B) an officer feels an object whose contour or mass makes its identity as contraband immediately apparent, the officer may seize it under the “plain feel” exception to the warrant requirement.” *State v. Julian*, pp. 5-6 785 So.2d at 876, citing *Minnesota v. Dickerson*, 508 U.S. 366, 377, 113 S.Ct. 2130, 2137, 124 L.Ed.2d 334, (1993); *State v. Anderson*, 96-0810 (La.App. 4 Cir. 5/21/97), 696 So.2d 105; *State v. Williams*, 98-3059, pp. 6-7 (La.App. 4 Cir. 3/3/99), 729 So.2d 142, 145-146.

In *Julian* this Court determined that the officers had probable cause to arrest the defendant based on the officer’s observation of a narcotics

transaction and the complaints that had been received about the residence. In the instant case, the officer had received specific complaints from residents of the area that narcotics were being sold openly at the corner in question. The officer observed the defendant approach a subject standing on the corner and after a short conversation exchange U.S. currency for an object, which the subject spit from his mouth. As in *State v. Julian*, the police in the instant case not only had reasonable suspicion to stop Foster, but Detective Waite's observation of a narcotics transaction also provided probable cause to arrest Foster. The seizure of the cocaine was therefore valid as a search incident to arrest. See *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969); *State v. Tomasetti*, 381 So.2d 420 (La.1980).

CONCLUSION

For the foregoing reasons, we find that the trial court did not err in admitting the evidence. The drugs were obtained during a search incident to a lawful arrest.

Therefore, the defendant's conviction and sentence are affirmed.

AFFIRMED