STATE OF LOUISIANA	*	**NO. 2001-K-1689**
VERSUS	*	**COURT OF APPEAL**
FLOYD TAYLOR	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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ON SUPERVISORY WRIT DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 422-886, DIVISION "F"
HONORABLE DENNIS J. WALDRON, JUDGE

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CHARLES R. JONES
JUDGE

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(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

On July 9, 2001, Floyd Taylor was charged with one count of simple possession of crack cocaine, a charge to which he subsequently pled not guilty. The district court heard and granted his Motion to Suppress the Evidence. The State now comes before this Court seeking relief from this ruling.

FACTS

On April 10, 2001 at approximately 11:00 p.m., officers from the U.S. Marshall's Fugitive Apprehension Task Force and from the St. Bernard Sheriff's Office, as well as other federal probation officers, converged on the 2500 block of Congress Street to apprehend a federal fugitive pursuant to an arrest warrant. The officers had received a tip that the fugitive could be found at a house in that block. As they entered the intersection of Congress and Law Streets, they saw a man who "resembled" the fugitive, standing across the street from the address where they believed the fugitive could be found. That man was later identified as Floyd Taylor, who was not the fugitive the officers wanted. The officers identified themselves, approached Taylor, and ordered him to come to them. Taylor fled, and the officers

pursued and tackled him after a brief chase. One officer testified that he saw currency in Taylor's hand during the chase. When captured, Taylor was lying on the ground on his stomach then the officers turned him over on his back, and observed a clear plastic bag in his hand. The officers opened Taylor's hand and found the bag contained multiple pieces of a white rock-like substance, which was later found to be cocaine. The officers placed Taylor on his feet, handcuffed him, and arrested him. At that time, they asked him his name and learned that he was not the fugitive that they were seeking.

At the suppression hearing, Officer Patrick Green, a Louisiana State Probation and Parole Officer assigned to the U. S. Marshal's Fugitive Apprehension Task Force, testified that the area where Taylor's arrest occurred is considered a high drug distribution area. On cross-examination, Officer Green testified that the wanted subject was 5'11", weighed 170 pounds, and was twenty-six years old. He admitted that Taylor was twenty-three years old, approximately the same weight, but only 5'6" tall. Officer Green testified that Taylor appeared to be taller when he first observed him because Taylor was standing on the sidewalk, while the officer was standing in the street. Officer Green produced the photograph that he and his fellow officers used on the night of the arrest. After observing the photograph, the

district court indicated that the photograph was of such poor quality that it appeared to be only a silhouette of a man, and that it would only eliminate a woman as the wanted subject. Officer Green testified that there were seven officers in all involved in the operation, and that they arrived in four unmarked vehicles. All of the officers, however, were wearing clothing identifying them as officers. Officer Green testified that no officer had drawn his gun at the time Taylor fled. He stated that after the officers captured Taylor and rolled him over on his back, the officers could tell that he was not the man that they were seeking.

The evidence the district court suppressed was seized from Taylor as a result of the investigatory stop. Although it is not completely clear from the transcript the basis for the district court's ruling suppressing the evidence, it appears that the district court found that the officers did not have reasonable suspicion to chase and detain Taylor.

In State v. Dank, 99-0390 pp. 4-5 (La. App. 4 Cir. 5/24/00), 764 So.2d 148, 154-155, this Court addressed the issue of reasonable suspicion to support an investigatory stop of a suspect:

> 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.

"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, p. 3 (La. App. 4 Cir. 9/15/99), 742 So.2d 735, 737; *State v. Clay*, 97-2858, p. 4 (La. App. 4 Cir. 3/17/99), 731 So.2d 414, 416, *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, p. 3 (La.12/1/98), 722 So.2d 988, 989; *State v. Tyler*, 98-1667. p. 4 (La. App. 4 Cir. 11/24/99), 749 So.2d 767, 770. In assessing the reasonableness of an investigatory stop, the court must balance the need for the stop against the invasion of privacy that it entails. See *State v. Harris*, 99-1434, pp. 2-3 (La. App. 4 Cir. 9/8/99), 744 So.2d 160, 162. The totality of the circumstances must be considered in determining whether reasonable suspicion exists. *State v. Oliver*, 99-1585, p. 4 (La. App. 4 Cir. 9/22/99), 752 So.2d 911, 914; *State v. Mitchell*, 98-1129, p. 9 (La. App. 4 Cir. 2/3/99), 731 So.2d 319, 326. 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, p. 5 (La. App. 4 Cir. 9/22/99), 753 So.2d 296, 299; *State v. Keller*, 98-0502, p. 2 (La. App. 4 Cir. 3/10/99), 732 So.2d 77, 78. 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, p. 6 (La. App. 4 Cir. 5/5/99), 733 So.2d 1227, 1231; *State v. Williams*, 98-3059, p. 3 (La. App. 4 Cir. 3/3/99), 729 So.2d 142, 144. Deference should be given to the experience of the officers who were present at the time of the incident. *State v. Ratliff*, 98-0094, p. 3 (La. App. 4 Cir. 5/19/99), 737 So.2d 252, 254, *writ denied*, 99-1523 (La.10/29/99), 748 So.2d 1160.

In Dank, federal officers were looking for a Vietnamese fugitive at a relative's apartment. As the officers watched the apartment, a car drove up containing four Vietnamese men. Two passengers exited the car and walked toward the apartment, while the other two occupants parked and remained in the car. An officer approached the car, and the driver got out and fled. The defendant, a passenger, also attempted to flee, but the officers detained him. The defendant gave vague answers concerning his identity, his purpose for being at the scene, and the car's ownership. After viewing the defendant's driver's license, the officers determined that he was the owner of the car. It was also established that he was not the fugitive the officers sought. There was some uncertainty as to whether the defendant resembled the fugitive, but at least one officer knew the fugitive and knew (apparently after the stop) that the defendant was not the wanted man. The defendant consented to a search of the car, which revealed cocaine. On review of the defendant's conviction for attempted possession with the intent to distribute the drugs

found in his car, the defendant argued, among other things, that the officers did not have reasonable suspicion to stop him. This Court disagreed, finding that the officer's initial approach was not a stop. This Court cited State v. Benjamin, 97-3065 (La. 12/1/98), 722 So.2d 988, where the Louisiana Supreme Court found reasonable suspicion when officers saw the defendant clutch his waistband and run upon seeing the officers drive up next to him. See also Illinois v. Wardlaw, 528 U.S. 119, 120 S.Ct. 673 (2000), where the United States Supreme Court found flight in a high-crime area could trigger reasonable suspicion to stop a suspect. This Court in Dank found that the totality of the circumstances, including the defendant being in a car, which dropped off two Vietnamese men at the apartment where the fugitive was believed to have been, the flight of his companion, and his attempted flight at the officer's initial approach, gave the officers reasonable suspicion to stop the defendant.

The situation here is somewhat similar to that of Dank, but there were additional facts present in Dank that are not present here. In Dank there was a possible connection between the car in which the defendant was riding and the apartment where the fugitive was believed to have been, that being the other two passengers of the car walking toward the apartment. In addition, there was the flight of the driver at the officer's approach and the attempted

flight of the defendant. Here, by contrast, the State showed no connection between the suspected hiding place of the fugitive and Taylor. Taylor was merely standing on the sidewalk at the corner of the block, which contained the residence where the officers believed the fugitive was hiding.

There was also no indication that Taylor really resembled the fugitive. The district court viewed the photograph that the officers used and concluded that the picture was of such poor quality that it would not disqualify any black man from being the suspect. Taylor was much shorter than the fugitive, but the officer explained that Taylor looked taller because Taylor was standing on the sidewalk and the officers were in the street when he approached him. For the proposition that a suspect matching a description allows an officer to stop the suspect, the State cites State v. Williams, 96-1276 (La. App. 4 Cir. 4/9/97), 693 So.2d 204. However, the officers in Williams actually had a clothing description, given shortly before they saw the defendant, which matched the clothing worn by the defendant. In addition, the suspect had been seen burglarizing a car, and the defendant was carrying two plastic bags when he was apprehended. By contrast, here there was no clothing description, and the parts of the description Taylor matched would also have matched thousands of other black men.

Another distinguishing factor could be the number of officers

approaching Taylor. Although in Dank several officers were present near the apartment (they had just come from the apartment when the defendant and his companions drove up), only one officer approached the car prior to the driver's flight and Taylor's attempted flight. Here, by contrast, it appears not only that the testifying officer but any number of the seven officers simultaneously approached the defendant prior to his flight.

Had the State been able to show some sort of reasonable belief by the officers that there was some connection between Taylor and the targeted residence, then under Dank the officers would have had reasonable suspicion to stop Taylor. As it is, the *only* suspicious circumstances present in this case were the facts that Taylor was standing in a high-crime area in the same block as a residence where the officers suspected a fugitive could be found, and that he fled when approached by a number of officers. To uphold this stop, we must find that the defendant's presence and his flight were sufficient to give the officers reasonable suspicion to stop him.

In State v. Scull, 93-2360, p. 10 (La. App. 4 Cir. 6/30/94), 639 So.2d 1239, 1245, this Court stated: "The trial court is vested with great discretion when ruling on motion [sic] to suppress." See also State v. Briley, 2001-0143 (La. App. 4 Cir. 10/3/01), ___ So.2d ___, 2001 WL 1329557. Here, given that the State established no connection to the targeted residence and

that Taylor did not really resemble the fugitive, we find that the district court did not abuse its great discretion by finding that Taylor's flight in a high-crime area alone did not give the officers reasonable suspicion stop him. Thus, the granting of the Motion to Suppress was without error.

WRIT GRANTED;
RELIEF DENIED