STATE OF LOUISIANA	*	**NO. 2001-K-1845**
VERSUS	*	**COURT OF APPEAL**
ISTAWA ANGEVINE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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ON SUPERVISORY WRIT DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 423-370, SECTION "D"
HONORABLE FRANK A. MARULLO, JUDGE

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CHARLES R. JONES
JUDGE

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(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray and Judge Terri F. Love)

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WRIT GRANTED;
RELIEF DENIED

The Relator, the State of Louisiana seeks our supervisory jurisdiction to review the ruling of the district court granting the Motion to Supress Evidence filed by the Respondant, Istawa Angevine.

Angevine was charged with one count of simple possession of marijuana first offense. The district court held the trial/suppression hearing, at the conclusion of which the court suppressed the evidence but held open the trial. The State now comes before this Court seeking relief from this ruling. Thus, we grant the State's writ application, but deny relief.

New Orleans Police Officers were on routine patrol in the Iberville Housing Project when in the 400 block of Marais Street they spied Angevine walking in the middle of the street toward their car. The officers drove up to him, stopped their car, and conversed with him from within their vehicle. They asked him his name and where he lived. At this point, Angevine became nervous and placed his hand in his pocket. He continued conversing with the officers through the car window. Fearing for their safety, the officers asked Angevine to take his hand out of his pocket. At first he failed to do so, and one officer started to open the vehicle door. Angevine then

took his hand out of his pocket, bringing along three plastic baggies which he put into his mouth, and began walking away from the officers. Both officers exited their vehicle, and one detained Angevine, ordering him to spit out the baggies. Angevine complied, and the officers discovered the baggies contained what appeared to be marijuana. The officers then arrested Angevine.

Both officers admitted on cross-examination that Angevine admitted prior to their exiting their vehicle that Angevine lived across the river, and upon learning of this fact they planned at least to issue a citation to him for trespassing in the project. Both officers admitted that the police report stated that they had both exited their vehicle and ordered Angevine to place his hands on the police car before Angevine removed the baggies from his pocket and placed them in his mouth. Both officers maintained, however, that the report was incorrect and that Angevine placed the baggies in his mouth as the first officer opened the car door after Angevine refused to take his hand out of his pocket. Both officers testified Angevine was free to leave when they stopped their vehicle next to him and began talking to him. One officer admitted that at some point after he exited the vehicle with the intention of at least issuing a summons to Angevine for trespassing, he told Angevine to step over to the vehicle. He insisted that Angevine was not

placed under arrest prior to his putting the baggies in his mouth.

The district court suppressed the evidence because it found that the officers had no reason to detain Angevine. Further, the court questioned whether a person could be arrested for "trespassing" in a public housing project, which is built with and run with public funds.

The State argues that the initial contact between the officers and Angevine was not a "stop" nor a "detention" which required reasonable suspicion to believe Angevine was engaged in criminal activity. In State v. Fisher, 97-1133 (La. 9/9/98), 720 So.2d 1179, the Supreme Court described the three "tiers" of interaction between the police and citizens:

> In *United States v. Watson*, 953 F.2d 895, 897 n. 1 (5th Cir.1992), *cert. denied*, 504 U.S. 928, 112 S.Ct. 1989, 118 L.Ed.2d 586 (1992), the court articulated a useful three-tiered analysis of interactions between citizens and police under the Fourth Amendment. At the first tier, mere communications between officers and citizens implicate no Fourth Amendment concerns where there is no coercion or detention. *Id*.; *State v. Britton*, 93-1990 (La.1/27/97); 633 So.2d 1208, 1209 (noting that police have the same right as any citizen to approach an individual in public and to engage him in conversation under circumstances that do not signal official detention).
>
> At the second tier, the investigatory stop recognized by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or is about to

> be, engaged in criminal conduct or is wanted for past criminal acts. *Watson*, 953 F.2d at 897 n. 1; *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989)(citing *Terry*, 392 U.S. at 27, 88 S.Ct. 1868); *State v. Moreno*, 619 So.2d 62, 65 (La.1993). See also La. Code Crim. Proc. art. 215.1(A), which provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. However, reasonable suspicion is "insufficient to justify custodial interrogation even though the interrogation is investigative." *Florida v. Royer*, 460 U.S. 491, 499, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).
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> At the third tier, a custodial "arrest," the officer must have "probable cause" to believe that the person has committed a crime. *Watson*, 953 F.2d at 897 n. 1; *Moreno*, 619 So.2d at 65. See also La.Code Crim. Proc. art. 213, which uses the phrase "reasonable cause." [footnote omitted] The "probable cause" or "reasonable cause" needed to make a full custodial arrest requires more than the "reasonable suspicion" needed for a brief investigatory stop. See *Terry*, 392 U.S. at 22, 88 S.Ct. 1868; State v. Flowers, 441 So.2d 707, 712 (La.1983)(noting that a less intrusive stop does not require the same "probable cause" needed for an arrest).

State v. Fisher, 97-1133 at pp. 4-6, 720 So.2d at 1182-1183. See also State v. Bentley, 97-1552 (La. App. 4 Cir. 10/21/98), 728 So.2d 405.

Thus, the determining factor here is whether Angevine was being detained at the time he withdrew his hands from his pocket and placed the baggies of marijuana in his mouth. If the officers' actions at that time were considered to be a "detention", the officers needed reasonable suspicion of

criminal activity to do so. 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.

Here, the officers both testified that they stopped their car next to Angevine as he was walking down the street, and he leaned down and started talking to them while they remained in their vehicle. Both officers testified Angevine placed his hand in his pocket while they were still inside their vehicle. They asked him his name and his address, and he replied by identifying himself and telling them that he lived on a street which they knew was located across the river from the subject project. Up to that point, the officers did not need reasonable suspicion to stop next to Angevine and ask him questions.

Both officers further testified Angevine ignored their orders to take

his hand out of his pocket. Angevine did not take his hand out of his pocket and put the baggies of marijuana in his mouth until after the officer next to him attempted to open his vehicle door. The issue then becomes whether the officers' subsequent actions of ordering Angevine to remove his hand from his pocket, coupled with the officers' exiting their vehicle, amounted to an investigatory stop for which the officers needed reasonable suspicion of criminal activity. Our review of the record indicates that the officers' orders to Angevine to take his hand out of his pocket exceeded a mere conversation with him and required him to submit to their authority. The officers' further actions of opening their vehicle doors demonstrated their intention to enforce their order that Angevine take his hand out of his pocket. Therefore, we find that the officers had exceeded the first "tier" mentioned in Fisher, and their actions at that point may be viewed as an investigatory stop.

The officers testified that when Angevine admitted he did not live in the project, they considered him to be in violation of some unspecified trespass ordinance. The State did not identify this ordinance at the suppression hearing, nor does the State now cite this ordinance in its application. At best the state is arguing a passing reference to "violating a municipal ordinance against trespassing". Indeed, the State made a similar argument, which was rejected by this Court in State v. Parker, 97-1994 (La.

App. 4 Cir. 12/9/98), 723 So.2d 1066. In that case, as here, the defendant and his companions were in a housing project when they were approached by officers who asked them to identify themselves. The officers learned that the defendant did not live in the project, and when they saw a plastic baggie in his mouth, they ordered him to take it out of his mouth. He surrendered the bag, which contained drugs. On appeal, the defendant argued that the officers did not have reasonable suspicion to stop him. The State argued that the officers were justified in stopping the defendant to determine if he was trespassing in the project, citing some unspecified rule pertinent to housing developments. This Court rejected this argument, stating:

> The officers testified that the stop was made pursuant to a "rule" prohibiting persons from being in the Lafitte Housing Development without permission of a resident. Officer Jackson stated at the motion to suppress hearing that he and Officer Jacques had recently arrested the defendant and knew that he was not a resident of that project. However, the testimony of the officers does not indicate that they had reason to believe that the defendant did not have the permission of a resident to be in the project.
>
> Because the exact provisions of the Lafitte Housing Development trespassing rule were never established in the record by way of testimony or otherwise, we cannot determine whether or not this rule was violated, or even that there is such a rule. We have been unable to find any trespassing statute or ordinance that applies exclusively to the public housing developments of the City of New

> Orleans **and** is more restrictive than the general trespassing laws. Thus, we hold that the mere fact that the defendant was in a housing development did not give the officers reasonable suspicion that he was committing, had committed or was about to commit a crime when the stop was initiated. [emphasis supplied]

State v. Parker, 97-1994 pp. 6-7, 723 So. 2d at 1068-1069. The State fails to offer an ordinance of the City Code which specifically pertains to trespassing in a housing project.

In the matter sub judice, as in Parker, the officers believed that they had probable cause to arrest or at least issue a summons to Angevine because he was "trespassing" in the project. However, there is no such ordinance, and as in Parker, the State has not shown any factors which bring Angevine's actions, of merely being in the project, within the purview of the general trespass article. Thus, the officers did not have reasonable suspicion to stop Angevine prior to his taking the baggies out of his pocket and putting them in his mouth, thus his actions in doing so are as a result of an improper investigatory stop.

In State v. Scull, 93-2360, p. 9 (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. Given

the officers' actions which exceeded the scope of a mere conversation with Angevine and their lack of reasonable suspicion to believe he was involved in criminal activity, we do not find that the district court abused its much discretion by suppressing the evidence in this case. Accordingly, the writ application of the State of Louisiana is granted, but the relief requested therein is hereby denied.

WRIT GRANTED;
RELIEF DENIED