NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-0973**
VERSUS	*	**COURT OF APPEAL**
RONALD L. PITTS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 414-713, SECTION "B"
Honorable Patrick G. Quinlan, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., and Judge Max N. Tobias, Jr.)

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REVERSED

STATEMENT OF THE CASE

On May 31, 2000, the defendant, Ronald L. Pitts, was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967. The defendant pled not guilty at his arraignment on June 28, 2000. A preliminary and suppression hearing was held on August 11, 2000. The trial court found probable cause and denied defendant's motion to suppress evidence. On August 22, 2000, the defendant withdrew his not guilty plea and pled guilty as charged, preserving his right to appeal the suppression ruling pursuant to State v. Crosby, 338 So.2d 584 (La.1976). On the same date, the defendant pled guilty to the multiple bill of information. The trial court adjudicated defendant to be a second felony offender and sentenced him to serve thirty months at hard labor. The defendant's motion for appeal was granted and a return date of November 29, 2000 was set.

FACTS

On May 18, 2000, New Orleans Police Officers Bryant Lewis and

Melvin Williams were on routine patrol in the twenty four hundred block of Erato Street. The officers were patrolling the area due to complaints received regarding the frequency of trespassers who were involved in narcotics transactions and violence in the area. Officer Lewis testified that there were a few hallways (i.e., breezeways) in the twenty four hundred block of Erato Street that were known as areas where trespassers congregated to sell and use drugs. The trespassers would leave syringes on the ground, and children would pick them up and take them to their parents. On the day in question, Officers Lewis and Williams observed the defendant exiting one of the hallways. The officers decided to conduct an investigatory stop. When the defendant noticed the officers, he immediately turned around as if he was trying to avoid the officers. The officers asked the defendant to step towards the police vehicle. The defendant complied, and the officers conducted a safety pat down. The officers asked the defendant if he was visiting someone in the development, and the defendant failed to provide the name of anyone he was visiting in the development. The defendant's identification indicated that he did not reside in the Melpomene Housing Development. The officers ran the defendant's name and determined he did not have any outstanding warrants. However, the officers learned that the defendant had *previously* been arrested for failure to

appear in municipal court. The officers then arrested the defendant for trespassing. The defendant was advised of his rights. A crack pipe was found in the defendant's front pants pocket during a search incident to the defendant's arrest for trespassing. The defendant was re-advised of his rights and arrested for possession of drug paraphernalia.

ERRORS PATENT

A review of the record for errors patent reveals none.

LAW AND DISCUSSION

ASSIGNMENT OF ERROR NUMBER ONE

In his only assignment of error, the defendant argues that the trial court erred when it denied his motion to suppress evidence. The defendant contends that the police did not have reasonable cause to conduct an investigatory stop.

Warrantless searches and seizures fail to meet constitutional requisites unless they fall within one of the narrow exceptions to the warrant requirement. State v. Edwards, 97-1797, p. 5 (La. 7/2/99), 750 So. 2d 893, 901, cert. denied, Edwards v. Louisiana, 528 U.S. 893, 120 S.Ct. 542, 145 L.Ed.2d 421 (1999). On trial of a motion to suppress, the State has the

burden of proving the admissibility of all evidence seized without a warrant. La. C.Cr.P. art. 703(D); State v. Jones, 97-2217, p. 10 (La. App. 4 Cir. 2/24/99), 731 So.2d 389, 395. A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court has the opportunity to observe the witnesses and weigh the credibility of their testimony. State v. Mims, 98-2572, p.3 (La. App. 4 Cir. 9/22/99), 752 So.2d 192, 193-194.

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. 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, 97-2774, 98-1128,98-1129, 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.

In State v. Walker, 32,342 (La.App. 2 Cir. 9/24/99), 747 So.2d 133, the Court of Appeal for the Second Circuit considered whether a trespass gave rise to reasonable suspicion for an investigatory stop which led to the

defendants' arrest for possession of drugs. The court ultimately found that the officers' reasonable suspicion did not rise to the level of probable cause to arrest the defendants because there was no evidence of trespass. In that case, the defendants gave unclear answers to the officers' questions. The court noted that the parking area was neither fenced nor posted with any sign prohibiting parking after business hours or trespassing. The defendants were in a car with Mississippi license plates, and the driver had a California driver's license.

In State v. Parker, 97-1994 (La.App. 4 Cir. 12/9/98), 723 So.2d 1066, this Court found that the defendant's detention was illegal and the seized evidence should have been suppressed. The officers testified that the stop was made pursuant to a "rule" prohibiting a person from being in the Lafitte Housing Development without the permission of a resident. The officers testified that they knew from a previous arrest that the defendant did not reside in the project. However, they did not testify to a reasonable belief that the defendant did not have permission of a resident to be in the project. In addition, this Court found that the exact provisions of the Lafitte Housing Development trespassing rule were never established in the record by way of testimony or otherwise. This Court was unable to determine whether or not such a rule existed or if the defendant violated it. Thus, this Court held 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 officers initiated the stop.

In State v. Coleman, 2001-0112 (La.App. 4 Cir. 7/11/01), 791 So.2d 780, writ denied, 2001-2257 (La. 10/12/01), ___ So.2d ___, this Court concluded that the police officers did not have reasonable cause to believe that the defendant was committing the crime of criminal trespass. The Court determined that the case was similar to State v. Walker and reversed the defendant's conviction. In Coleman, the police officers were conducting an investigation when the defendant approached the officers and began questioning them about their investigation. The defendant made the initial contact. In response to her questions, one of the officers asked the defendant to identify herself and to provide her address. Defendant gave the name "Kim Carter" and told the officer that she was not a resident of the housing complex. The defendant also stated that her reason for being in the complex was to visit a friend. The defendant had no identification on her person, and she could not identify the person she had visited or their address in the housing complex. When the officer was unable to obtain any computer information for a "Kim Carter," he arrested the defendant for trespassing. In a search incident to the arrest, the officer found a crack pipe on the

defendant.

The facts of the case at bar are very similar to the factual situations presented in Walker, Parker, and Coleman. Officers Lewis and Williams testified that they decided to stop the defendant when they saw him walking out of one the hallways in the Melpomene Housing Development. The officers stated that they were patrolling the area due to resident complaints of trespassers and narcotic violations. The officers admitted that they did not see the defendant commit any suspicious acts prior to stopping the defendant. Officer Lewis stated that they decided to stop the defendant *even before* the defendant turned and walked in the opposite direction. While the defendant did turn in the opposite direction when he saw the police approach, the defendant did not attempt to run when the officers asked him to walk to the police vehicle. The officers had no reasonable basis to suspect the defendant of committing a crime when they made the decision in their minds to make an "investigatory stop." Subsequent physical movements by the defendant did not rise to a level to justify in hindsight the decision to make any stop. As the officers did not have reasonable cause to conduct an investigatory stop, the trial court erred in denying the defendant's motion to suppress evidence. The evidence obtained from an illegal stop cannot be admitted at trial. State v. Benjamin,

supra.

This assignment has merit.

CONCLUSION

Accordingly, for the foregoing reasons, the defendant's conviction and sentence are hereby reversed.

REVERSED