

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2001-KA-1285**
VERSUS * **COURT OF APPEAL**
ISABELLE R. RUSSO * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
*
*
*
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-645, SECTION "F"
HONORABLE DENNIS J. WALDRON, JUDGE

* * * * *

Chief Judge William H. Byrnes, III

* * * * *

(Court composed of Chief Judge William H. Byrnes, III, Judge Dennis R. Bagneris, Sr., and Judge Terri F. Love)

HARRY F. CONNICK
DISTRICT ATTORNEY
DONNA R. MUSSELMAN
ASSISTANT DISTRICT ATTORNEY
619 South White Street
New Orleans, LA 70119
Counsel for Plaintiff/Appellee

WILLIAM R. CAMPBELL, JR.
LOUISIANA APPELLATE PROJECT

700 Camp Street
New Orleans, LA 70130
Counsel for Defendant/Appellant

AFFIRMED

Defendant Isabelle A. Russo appeals her convictions and sentence for possession of cocaine as a second offender. We affirm.

The trial court found probable cause for a violation of La. R.S. 40:967, and denied Russo's motion to suppress the evidence on July 25, 2000. After a trial on August 8, 2000, a six-member jury found Russo guilty as charged of possession of cocaine. The trial court found that Russo was a second-felony habitual offender on September 1, 2000. On November 22, 2000, the trial court sentenced Russo to four years at hard labor without benefit of probation or suspension of sentence, denied Russo's oral motion to reconsider sentence, and granted her motion for appeal.

Facts

New Orleans Police Officer Michael Montalbano, assigned to the Sixth District Narcotics Unit, testified that on June 30, 2000, he and his partner, Officer Raymond Veit, were conducting a surveillance of the intersection of Josephine and Laurel Streets. He was approximately two hundred and fifty feet away, maybe more, but was using binoculars. Officer Montalbano observed Russo walk down Josephine Street to the intersection,

where she met an unknown male. Russo reached into her right rear pocket, took out paper currency, and handed it to the male. The male took the money, reached into his right front pocket, and pulled out a clear plastic bag of what Officer Montalbano said was a type commonly used to package and hold narcotics. The male reached into the plastic bag, took out a smaller plastic object, and placed it into Russo's hand. Russo placed the object into the right front coin pocket of her pants. Officer Montalbano stated that, based on his experience, he believed that Russo had purchased narcotics from the male on the corner. After observing the transaction, the officers proceeded down Laurel Street to Josephine Street, eventually stopping Russo at Laurel and St. Mary Streets. After stopping Russo, Officer Veit retrieved a tied-off piece of plastic from her person, which contained a hard rocklike substance.

Officer Raymond Veit's testimony essentially tracked that of Officer Montalbano. He estimated that the officers were approximately one long block away from the intersection of Josephine and Laurel Streets. Only Officer Montalbano had binoculars, and the officers decided to stop Russo based on Officer Montalbano's observations. The officers stopped Russo, and Officer Veit said he asked her to place her hands on the police car so he could do a weapons pat down for his safety and the safety of Officer

Montalbano. He felt an object in the watch pocket area of her right front jeans pocket, and looked down to see a piece of plastic protruding from the watch pocket. Officer Veit stated that, based on the observations of his partner, he removed the plastic bag and found that it contained a white rocklike object he immediately recognized as crack cocaine. He testified at the motion to suppress hearing that he believed he recognized the object as crack cocaine by its outline.

It was stipulated that Officer Harry O’Neal tested the white substance introduced into evidence by the State, and that it was positive for cocaine.

Errors Patent

A review of the record reveals no errors patent.

Assignment of Error

Russo claims that: “[t]he trial court erred in denying defendant’s motion to suppress the evidence, because the officer had no particularized suspicion that the defendant was dangerous or was concealing any weapons on his person in order to justify frisking her.”

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. 11 (La. 7/2/99), 750 So.2d 893, 901, *certiorari denied sub nom. Edwards v. Louisiana*, 528 U.S. 1026, 120

S.Ct. 542, 145 L.Ed.2d 421. 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. Kirk*, 2000-0190, p. 3 (La. App. 4 Cir. 11/15/00), 773 So.2d 259, 262, *writ denied*, 2000-3395 (La. 11/9/01), 801 So.2d 1063; *State v. Jones*, 97-2217, p. 10 (La. App. 4 Cir. 2/24/99), 731 So.2d 389, 395; *writ denied*, 99-1702 (La. 11/5/99), 751 So.2d 234. 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. Devore*, 2000-0201, p. 6 (La. App. 4 Cir. 12/13/00), 776 So.2d 597, 600-601; *State v. Mims*, 98-2572, p. 3 (La. App. 4 Cir. 9/22/99), 752 So.2d 192, 193-194. In reviewing a trial court's ruling on a motion to suppress, an appellate court is not limited to evidence adduced at the hearing on the motion to suppress; it may also consider any pertinent evidence given at trial of the case. *State v. Nogess*, 98-0670, p. 11 (La. App. 4 Cir. 3/3/99), 729 So.2d 132, 137.

If a police officer stops a person pursuant to La. C.Cr.P. art. 215.1(A), whom he reasonably suspects is committing, has committed, or is about to commit a crime, and reasonably suspects that he is in danger, the officer may frisk the outer clothing of such person for a dangerous weapon; if the officer reasonably suspects that the person possesses a dangerous weapon, he may

search the person. La. C.Cr.P. art. 215.1(B); *State v. Jones*, 99-0861, p. 12 (La. App. 4 Cir. 6/21/00), 769 So.2d 28, 38, *writ denied*, 2000-2138 (La. 9/28/01), 797 So. 2d 685. The officer need not be absolutely certain that the person is armed, but the facts must justify a belief that the officer's safety or that of others is in danger. *State v. Williams*, 98-3059, p. 4 (La. App. 4 Cir. 3/3/99), 729 So.2d 142, 144. The question is not whether the police officer subjectively believes he is in danger, or whether he articulates that subjective belief in his testimony, but whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger—an objective test. *State v. Dumas*, 2000-0862, pp. 2-3 (La. 5/4/01), 786 So.2d 80, 81-82. In *Jones*, *supra*, this court recognized a drug trade-weapons connection, stating:

. . . [I]n many instances, suspicion of drug dealing itself is an articulable fact that may support a frisk pursuant to La. C.Cr.P. art. 215(B). *State v. Fortier*, 99-0244 (La. App. 4 Cir. 1/26/00), 756 So.2d 455 ("We can take notice that drug traffickers and users have a violent lifestyle, which is exhibited by the criminal element who are generally armed due to the nature of their illicit business. Therefore, a police officer should be permitted to frisk a suspect following an investigatory stop [based on reasonable suspicion] relating to drug activities."), 99-0244 at p. 7, 756 So.2d at 460, quoting *State v. Curtis*, 96-1408, pp. 9-10 (La. App. 4 Cir. 10/2/96), 681 So.2d 1287, 1292. See also *State v. Williams*, 98-3059 (La. App. 4 Cir. 3/3/99), 729 So.2d 142 (officer's testimony that he frisked a defendant suspected of drug activity to look for weapons for his own safety was sufficient to validate a frisk pursuant to La. C.Cr.P. art. 215(B)). (footnote omitted).

Id., 99-0861 at p. 14, 769 So. 2d at 38-39.

In the present case, the evidence established that based on Officer Montalbano's observations and experience, the officers witnessed Russo purchase drugs from a street corner dealer. Officer Veit testified that after Russo was stopped, he performed a weapons frisk for the safety of himself and his partner. The officers had a reasonable suspicion that Russo had just engaged in a drug transaction. Therefore, based on the recognized drug trade-weapons connection, Officer Veit was justified in frisking defendant for weapons. The trial court correctly denied the motion to suppress the evidence.

Russo makes no argument concerning the seizure of the cocaine; her argument is limited to the justification for the frisk. In any case, Officer Veit testified at the motion to suppress hearing that when he frisked Russo, he felt the outline of an object and saw a piece of plastic sticking out of the right front coin pocket of her jeans. He indicated that he recognized the object to be crack cocaine, factoring in his knowledge that Officer Montalbano had seen Russo place the plastic-wrapped object she apparently purchased from the street corner drug dealer into her right front coin pocket. At this point, based on the totality of the circumstances, Officer Veit had sufficient facts within his knowledge to constitute probable cause to believe that Russo

possessed cocaine in her right front coin pocket, and he properly seized it and arrested her.

The defendant did not contest her second offender status.

Accordingly, the defendant's convictions and sentence are affirmed.

AFFIRMED