

STATE OF LOUISIANA

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NO. 2001-KA-1291

VERSUS

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COURT OF APPEAL

ROBERT A. FONTAINE

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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. 419-760, SECTION "C"
HONORABLE SHARON K. HUNTER, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby,
Judge David S. Gorbaty)

ON APPLICATION FOR REHEARING

GORBATY, J. - DISSENTS

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Defendant moved for rehearing claiming that we erred in concluding that State v. Finne, 92-2555 (La. App. 4 Cir. 2/11/94), 632 So.2d 819 applied to the facts of this case. Defendant contends that Finne is applicable only to residences and here the alleged transaction occurred at an apartment complex. We grant rehearing to address this issue only.

We believe defendant reads Finne too narrowly. The deciding factor is not the type of structure involved. Rather it is the totality of the circumstances of the entire situation that controls the determination as to whether the officer had probable cause to arrest a suspect or reasonable grounds to believe he had committed, was committing or was about to commit an offense.

Detective Gagnon testified at the Motion to Suppress hearing that on the date in question he was participating in the surveillance of a known drug-trafficking operation at the apartment complex. There had been several

citizen complaints to the hotline complaining of “prolific” drug trafficking in and out of the complex. In the preceding two months “we’ve pulled numerous people out of there and/or served warrants and stopped people coming in and out of that place consistently, day-in and day-out with crack cocaine and drug paraphernalia.” On the date in question surveilling officers observed defendant enter the premises without knocking, which was the similar modus operandi of “all the other cases we have [from this complex].” He stayed only a short time and left. The amount of time he stayed was inconsistent with visiting someone or even walking to the back of the apartments. The surveilling officers then radioed the suspect’s description to Detective Gagnon and his partner who stopped him for investigation. The officers had the defendant put his hands on their vehicle “due to the close connection between drugs and guns and weapons and contraband” and they patted him down. During the pat down they discovered several hard rock like substances wrapped in foil in his front right shirt pocket.

The defendant cites State v. Sneed, 95-2326 (La. App. 4 Cir. 9/11/96), 680 So.2d 1237, in which this court found that the officers in that case did not have reasonable suspicion to stop the defendant simply because he was

seen briefly visiting a residence under surveillance for drug activity.

However, in the instant case, unlike Sneed, the officers testified that there had been several citizen complaints of drug activity in the complex the defendant visited. More importantly, as of the time of defendant's arrest, numerous others had been arrested for narcotics offenses after briefly visiting the same complex.

In the instant case, the defendant was seen entering an apartment complex that had been under surveillance for drug activity for weeks. The defendant's actions, of briefly entering and exiting the complex, fit the pattern of others who had been found to have drugs or drug paraphernalia on them when stopped during the surveillance period. Defendant in the instant case, like the defendant in Finne, Id, was seen coming and going from a location the police knew to be a place of drug activity. Additionally, the defendant fit the description of the person leaving the known drug area.

We find the totality of the circumstances gave the officers in this case reasonable suspicion to stop the defendant. The illegal drugs were found pursuant to a valid pat-down for weapons as allowed by C.Cr.P. art. 215.1. Therefore, we adhere to our opinion on original hearing.

AFFIRMED