

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2001-KA-1304**  
**VERSUS** \* **COURT OF APPEAL**  
**DON L. SCOTT** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 418-265, SECTION "F"**  
**Honorable Dennis J. Waldron, Judge**  
\* \* \* \* \*  
**Judge Patricia Rivet Murray**  
\* \* \* \* \*

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge Dennis R. Bagneris, Sr.)

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### **AFFIRMED**

On November 22, 2000, Don L. Scott, the defendant, was charged by bill of information with possession of cocaine, a violation of La. R.S. 40:967 (C). On November 28, 2000, defendant was arraigned and pleaded not guilty. On February 16, 2001, the trial court denied defendant's motion to suppress the evidence and found probable cause. On March 1, 2001, defendant entered a plea of guilty as charged pursuant to *State v. Crosby*, 338 So. 2d 584 (La. 1976), reserving the right to appeal the denial of his motion to suppress. The State agreed not to charge defendant as a multiple offender. The trial court sentenced defendant to two years, and granted defendant's motion for appeal.

### **FACTS**

New Orleans Police Department Officer Patrick Evans testified that he arrested the defendant on October 24, 2000. He and his partner, Sergeant Michael Glasser, were acting as backup for an undercover surveillance being conducted by Detective Chad Gagnon and his partner, Detective Nicholas Fiscante. The latter detectives were stationed at the 1300 block of Columbus Street, a high crime area. The detectives were wearing plain clothes and

sitting in an unmarked car. Officer Evans testified that he and his partner were stationed nearby “in case anything turned in from the surveillance.”

At 1:55 a.m., Detectives Gagnon and Fiscante radioed and informed Officer Evans and his deputy that they needed assistance; particularly, Officer Evans testified that:

“As [Detectives Gagnon and Fiscante] were conducting the surveillance, Mr. – they observed Mr. Scott coming down the street, looked like he was peering into car windows, walking, looking over into cars. As he walked up onto the unmarked police vehicle, he placed his hands onto the window, looked inside the car at the two officers. As he noticed the officers inside the car, he immediately, Mr. Scott did, placed his hand in his pocket, backed away quickly, and walked up the street.

Detectives Gagnon and Fiscante believed that he may be armed, radioed us, advised us what just took place, and we conducted a stop of Mr. Scott.”

Describing the manner in which they conducted that stop and the reason they arrested defendant, Officer Evans testified:

“After we stopped Mr. Scott, we had him place his hands on the hood of the police vehicle for our safety and his, as well, believing that he may possibly be armed. As he was putting his hands onto the hood of the police vehicle on the passenger side – I was on the driver’s side – I observed a white rock-like substance wrapped in plastic in Mr. Scott’s hand as he was placing onto the hood of the car.”

Officer Evans further testified that he “immediately recognized to be crack cocaine, placed him under arrest, retrieved the piece out of his hand.”

In denying defendant's motion to suppress, the trial court reasoned that based on the totality of the circumstances--including the officers' personal concerns, prior experiences, and particularized observations articulated at the hearing--the officers had a reasonable suspicion justifying their stopping and frisking defendant. As to the reasonable grounds for the protective frisk, the trial court further stated that "there was reasonable fear that he might be armed with a weapon, based on the officer's testimony that he immediately went with his hand into a pocket as he backed away from one of the vehicles that the officers say he was peering into." The court thus found the officer reasonably believed that defendant "may very well have had a weapon in his pocket".

## **DISCUSSION**

A review of the record reveals no errors patent.

Defendant's sole assignment of error is that the trial court erred in denying his motion to suppress the evidence. His argument is two-pronged: (1) Officer Evans lacked reasonable suspicion to stop him, and (2) even assuming that stop was justified, the frisk was not justified. We address each of these prongs separately.

### **(i) Reasonable suspicion for stop**

La. C.Cr. P. art. 215.1(A) authorizes a law enforcement officer to

“stop a person in a public place whom he *reasonably suspects* is committing, has committed, or is about to commit an offense.” La. C.Cr. P. art. 215.1(A) (emphasis supplied). The reasonable suspicion required to justify an investigatory stop is less than the probable cause required to justify an arrest. Nonetheless, reasonable suspicion has been construed as requiring that the law enforcement officer “have knowledge of specific, articulable facts, which, if taken together with rational inferences from those facts, reasonably warrant the stop.” *State v. Howard*, 2000-2405, p. 4 (La. App. 4 Cir. 4/11/01), 787 So. 2d 404, 408 (collecting cases).

At trial on a defendant’s motion to suppress, the state bears the burden of proving the admissibility of any evidence seized without a warrant. *Howard*, 2000-2405 at p. 3, 787 So. 2d at 407. On appeal, a trial court’s ruling on a motion to suppress is entitled to great weight “because the court has the opportunity to observe the witnesses and weigh the credibility of their testimony.” *Id.*

A reviewing court must consider the facts and circumstances of each case in determining whether the law enforcement officer possessed sufficient specific, articulable facts to justify an infringement on the suspect’s rights. *State v. Matthews*, 94-2112, p. 3 (La. App. 4 Cir. 4/26/95), 654 So. 2d 868, 870. As the Louisiana Supreme Court recently stated, a reviewing court, in

assessing whether the law enforcement officer had reasonable suspicion to make an investigatory stop, is required to consider “the ‘totality of the circumstances—the whole picture’ giving deference to the inferences and deductions of a trained police officer ‘that might well elude an untrained person.’” *State v. Wilson*, 2000-0178, p. 2 (La. 12/8/00), 775 So. 2d 1051, 1053 (quoting *State v. Huntley*, 97-0965 (La. 3/13/98), 708 So. 2d 1048, 1049)).

Likewise, we recently noted that “[i]n reviewing the totality of 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. Vingle*, 2001-0840, p. 5 (La. App. 4 Cir. 11/21/01), 802 So. 2d 887, 890. Two factors we recognized that may support a determination that the officer had a reasonable suspicion are the reputation of the area and the suspect’s flight or his nervous or startled look upon spotting a police officer. *Id.*

Both factors noted in *Vingle* were present in the instant case. The stop took place in a high crime area, and the officers testified that upon spotting the undercover detectives defendant was startled. In this regard, we quote the following testimony of Detective Gagnon:

“The subject, after he peered into our vehicle, which kind of alarmed my partner and I, unknowing what – what intentions this subject had. He immediately placed his hand in his pocket,

and he backed away from the vehicle. When I say backed, I mean he was walking almost backwards. Then he turned in the same direction in which he came, and began walking back away from us.”

As to what lead them to believe defendant was committing or about to commit an offense, Detective Gagnon testified, based on his experience, that “there was a high number of auto burglaries and/or thefts in that area, my partner and I thought that he might possibly be looking to break in the vehicle and/or steal the vehicles that he was looking into.”

We thus conclude that the trial court did not err in finding the officers had reasonable suspicion to stop defendant. Given the lateness of the hour (1:55 a.m.), the location of the stop (a high crime area), defendant’s actions of peering into the windows of parked cars, and defendant's startled response upon sight of the undercover officers, the officers had “an articulable and minimal objective basis” justifying the stop. *Wilson*, 2000-0178 at p. 3, 775 So. 2d at 1053. Contrary to defendant’s contentions, this is not the case of a suspect being stopped merely because he was walking down the street. See *State v. Ganier*, 591 So. 2d 1328, 1330 (La. App. 4<sup>th</sup> Cir. 1991)(noting “[t]his is not the case of a man merely standing on a street corner who is detained by the police simply because he is there.”)

**(ii) Reasonable grounds for protective frisk**

As noted, defendant next argues that even if the officers had reasonable suspicion to make the stop, the subsequent frisk and resulting seizure of the cocaine was unlawful. When a suspect is validly stopped pursuant to La. C.C.P. art. 215.1(A)(as we conclude that defendant was), a law enforcement officer who reasonably believes that he is in danger or that the suspect is armed is authorized to conduct a limited pat-down frisk for weapons. La. C. Cr. P. art. 215.1(B). This standard is different from the reasonable suspicion standard required to stop a suspect under La. C. Cr. P. art. 215.1(A). *State v. Denis*, 96-0956, p. 7 (La. App. 4 Cir. 3/19/97), 691 So. 2d 1295, 1298 (noting “Article 215.1 consists of two different standards, separately stated in subsections A and B.”)

In finding the officers possessed the reasonable belief required for a protective frisk, the trial court apparently credited the testimony of Detective Gagnon at the hearing that:

**“Prosecutor:** Okay. And where was his hands?

**Detective Gagnon:** In his pocket.

**Prosecutor:** Okay. And at that point what did you do?



**Detective Gagnon:** My partner and I, to avoid blowing our cover, radioed for a take-down unit, which happened to be Detective Evans and Sergeant Michael Glasser at the time.

**Prosecutor:** Okay. And why did you radio for a take-down unit?

**Detective Gagnon:** My partner and I were concerned. We didn't know if the subject had a—had a gun; for our safety and for the—the civilians' safety, if he was in fact in possession of a handgun. We wanted to conduct an investigation to find out.”

The above testimony provides sufficient basis to support the trial court's finding that the frisk was justified by the officers' objective belief that defendant was armed. Detective Gagnon's testimony that both he and his partner believed defendant might have a gun based on their observation of defendant immediately placing his hand in his pocket upon spotting them provided an objective basis for the frisk. Although we acknowledge the correctness of defendant's argument that a person placing his hands in his pockets is insufficient alone to provide reasonable grounds to either stop or frisk that person, that action in combination with other factors may lead to a reasonable suspicion that the person is armed. *State v. Dumas*, 2000-0862, p. 4 (La. 5/4/01), 786 So. 2d 80, 82.

Here, as in *Dumas*, the totality of the circumstances, which include the defendant's presence in a high crime area, the late hour, his suspicious

actions in peering into the windows of parked cars, and his startled response upon spotting the undercover officers of backing away and immediately placing his hand into his pocket support the trial court's finding that "the officers had not only reasonable suspicion for an investigatory stop but also reasonable grounds to conduct a limited *Terry* search for weapons." *Dumas*, 2000-0862 at p. 5, 786 So. 2d at 83.

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

**AFFIRMED**

