NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-1471**
VERSUS	*	**COURT OF APPEAL**
CARL D. HALL	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 400-281, SECTION "G"
HONORABLE JULIAN A. PARKER, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * * *

(COURT COMPOSED OF JUDGE JOAN BERNARD ARMSTRONG, JUDGE TERRI F. LOVE, AND JUDGE MAX N. TOBIAS, JR.)

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CONVICTION AFFIRMED.

On 30 July 1998, defendant, Carl D. Hall ("Hall"), was charged by bill of information with one count of possession of cocaine, a violation of La. R.S. 40:967. He entered a plea of not guilty at his 8 August 1998 arraignment. On 4 June 1999, the trial court heard arguments on Hall's motion to suppress the evidence; the motion was denied. On 9 December 1999, a six-person jury found Hall guilty as charged. On 24 April 2000, a hearing was held on the multiple bill of information, which alleged Hall to be a third felony offender. The court subsequently found Hall to be a third offender. On 17 August 2000, Hall was sentenced to life imprisonment without benefit of probation, parole, or suspension of sentence. Hall orally moved for reconsideration of his sentence and for an appeal. No ruling on the motion for reconsideration appears in the record, but the trial court granted Hall's oral motion for appeal.

STATEMENT OF FACT

Sargeant Michael Sposito of the New Orleans Police Department's Special Operations Division, Warrant Squad, testified that on 14 July 1998,

he received information concerning the defendant being sought by the Gretna Police Department on two outstanding warrants. Based on the information, Sergeant Sposito dispatched officers from the warrant squad to Hall's home in the 1400 block of Foy Street. Sergeant Sposito, Detectives Kevin Guillot and Robert Norton, and Sergeant Michael Mulla responded.

According to Sergeant Sposito, Hall left his home, entered a dark blue, four-door Mercury automobile, and drove away. The officers on the scene stopped Hall's vehicle. Once out of the vehicle, Hall was informed that he was under arrest, and Detective Guillot briefly frisked Hall's outer extremities. Hall was then transported to the warrant squad office, before being taken to central lock up, so that the warrants from the Gretna police could be verified.

Detectives Norton and Sergeant Mulla transported Hall from the warrant squad office to central lock up to be properly booked. Once at central lock up, Sergeant Mulla escorted Hall inside and turned him over to the deputy criminal sheriff on duty at the desk.

Deputy Criminal Sheriff Michael Kendall testified that he conducted a thorough search of Hall and found pieces of rock-like substances that appeared to be crack cocaine, and a green and brown vegetable substance that appeared to be marijuana.

Sergeant Mulla testified that Deputy Kendall made him aware of what he found, and he turned the drugs over to Detective Norton, who was the lead detective on the case.

Detective Guillot testified, corroborating the testimony of the other officers.

Lashunda Brown, a defense witness, testified that she witnessed the stop and arrest of Hall. She testified that she saw the officers remove Hall from his vehicle, and force him to spread his hands on the hood of the car. Ms. Brown testified that she saw Hall turn his pants pockets inside out and gesture to indicate that they were empty.

ERRORS PATENT

A review of the record revealed no errors patent.

ASSIGNMENT OF ERROR NUMBER 1

Hall contends that the State improperly used its peremptory challenges of jurors to exclude African-Americans from the jury in violation of *Batson v. Kentucky*, 476 So.2d 79, 106 S.Ct. 1712 (1986). He complains the trial court incorrectly ruled upon his *Batson* challenge, which he made after the State used its peremptory challenges to exclude African-Americans from the jury panel. The trial court found Hall had not made a prima facie case of discriminatory intent on the part of the State.

Equal protection prohibits a peremptory challenge of a prospective juror based on race. *Batson, supra.* The equal protection rights of both the prospective juror and the defendant are protected by *Batson* and its progeny. *Powers v. Ohio*, 499 U. S. 400, 111 S.Ct. 1364 (1991).

Batson adopts a three-part analysis to determine whether a prosecutor has exercised peremptory challenges in a discriminatory fashion. The defendant must first demonstrate a prima facie case of purposeful discrimination. *Batson,* 476 U.S. at 96-97, 106 S.Ct. at 1722. Once the defendant establishes a prima facie case of discrimination, the burden shifts to the prosecution to give race-neutral reasons for the peremptory challenges. *Id.*, 476 U.S. at 97-97, 106 S.Ct. at 1723. Finally, after the prosecutor has stated his or her reasons for the challenge, the issue of fact is joined. The trial court then assesses the weight and credibility of the explanation in order to determine whether purposeful discrimination is present in the use of the challenge. *Id.* For a *Batson* challenge to succeed, it is not enough that a racially discriminatory result be evidenced; rather, the result must be traced to a racially discriminatory purpose. *State v. Green*, 94-0887 (La. 5/22/95), 655 So.2d 272. The sole focus of the *Batson* inquiry is the intent of the prosecutor at the time of the exercise of the peremptory challenge. *Id.*

If the defendant fails to make out a prima facie case of racial discrimination, the *Batson* challenge fails. To prove his case, the defendant may offer any relevant facts, such as the pattern of strikes by the prosecutor against members of a suspect class, statements, or actions of the prosecutor, that support an inference that the exercise of the strikes was motivated by impermissible considerations, including the composition of the venire and of the jury finally impaneled, and any other disparate impact upon the suspect class. *Green, supra.*

In the case at bar, Hall asserts he met his burden of proof of a racially discriminatory purpose by showing the State used four of its peremptory challenges to dismiss African-Americans from the jury. However, Hall has not produced any other evidence to support an allegation of a racially discriminatory purpose. Hall has not given, and the record does not disclose, any information concerning the racial composition of the jury venire or of the jurors empanelled in this case. Hall points to the fact that the trial judge considered the State's peremptory strikes to be arbitrary. Even assuming that the State's strikes were arbitrary, that fact alone does not automatically prove a racially biased motivation. Nothing in the record supports Hall's argument. The trial court did not err when it denied Hall's *Batson* challenge. This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 2

Hall complains that the state violated his right to a fair trial by eliciting testimony regarding the "violent offender warrant squad" despite the trial court's admonition not to do so. Several of the police witnesses were members of the "violent offender warrant squad."

La. C.Cr.P. art. 841 provides in part:

> An irregularity of error cannot be availed of after verdict unless it was objected to at the time of occurrence.

The phrase, "violent offender warrant squad," was used in three instances after the trial court cautioned the attorneys about eliciting testimony about violent offenders. In two of the instances, police officers used the phrase to identify the unit of the police department to which they were assigned at the time of their testimony; in the third instance, the officer referred to the location of the warrant squad office at 1700 Moss Street. Defense counsel was present when the trial judge warned about being careful using the word "violent" and he was also present when the phrase was used. Defense counsel failed to object to its use or to the nature of the testimony at the time it was given. Therefore, Hall has failed to preserve this error for appellate review. La. C.Cr.P. art. 841. This assignment of error is

without merit.

ASSIGNMENT OF ERROR NUMBER 3

In his third assignment of error, Hall complains that the trial court erred in failing to grant his motion for mistrial when the State's elicited testimony commenting on Hall's failure to make a post-arrest statement.

Hall alleges that the State elicited the testimony when questioning Deputy Michael Kendall, who searched Hall at central lock up and discovered crack cocaine and marijuana in Hall's pockets. However, at the time the testimony was given, defense counsel failed to object; instead, counsel chose to wait until the end of the State's case to orally move for a mistrial based upon the testimony of Deputy Kendall. As noted above, La. C.Cr.P. art. 841 states in pertinent part that an irregularity or error cannot be availed of after the verdict unless it was objected to at the time of occurrence. The objection was not timely and, therefore, Hall failed to preserve this error for appellate review. This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 4

Hall complains that the trial court erred in failing to grant his motion to suppress the evidence. Specifically, Hall argues that the testimony of

Sergeant Sposito implied the information received by the warrant squad came from an anonymous confidential informant. Based upon the tip, the warrant squad stopped, detained, and arrested Hall. Hall also avers that the information provided by the informant did not give the police probable cause to arrest him.

The trial court is vested with great discretion when ruling on a motion to suppress. *State v. Oliver*, 99-1585, p. 4 (La. App. 4 Cir. 9/22/99), 752 So.2d 911, 914.

La. C.Cr.P. art. 215.1A provides:

> 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 demand of him his name, address, and an explanation of his actions.

In *State v. Anderson*, 96-0810, p.2 (La. App. 4 Cir. 5/21/97), 696 So.2d 105,106, we noted:

> Reasonable suspicion for an investigatory stop is something less than probable cause; and, it must be determined under the facts of each case whether the officer had sufficient articulable knowledge of particular facts and circumstances to justify an infringement upon an individual's right to be free from governmental interference. The totality of the circumstances must be considered in determining whether reasonable suspicion exists….An investigative stop must be justified by some objective manifestation that the person stopped is or is about to be engaged in criminal

> activity or else there must be reasonable grounds to believe that the person is wanted for past criminal conduct. [Citations omitted.]

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. Short*, 96-1069, p.4 (La. App. 4 Cir. 5/7/97), 694 So.2d 549, 552.

When a law enforcement officer has probable cause to believe that a person has committed a crime, he may place that person under arrest. Incident to such lawful arrest, the officer may lawfully conduct a full search of the arrestee and the area within his immediate control for weapons and for evidence of a crime. *State v. Morgan*, 445 So.2d 50, 51 (La. App. 4 Cir. 1984).

In *State v. Morales*, 583 So.2d 129 (La. App. 4 Cir. 1991), this court found that a tip from an anonymous informant was sufficient to create a reasonable suspicion to stop the defendant when the information from the tip was corroborated by independent police work.

In the case at bar, Sergeant Sposito corroborated the information received when he observed Hall exit the address given and enter a vehicle that fit the description of the vehicle given in the tip. Based on his independent observations, he had reasonable suspicion to believe Hall was

an individual wanted for crimes that had already been committed. La. C.Cr.P. art. 215.1 gives police officers the authority to detain an individual suspected of having committed a crime. Once the outstanding warrants for Hall from Gretna police had been verified, the officers had probable cause to arrest Hall.

Hall argues that his four-hour detention by the warrant squad before his arrest went beyond the "temporary" detention envisioned in La. C.Cr.P. art. 215.1. However, Hall admits that every case turns on its own facts. Under the circumstances, the time frame necessary to verify the Gretna police warrants was beyond the warrant's squad control. Therefore, the detention of Hall was reasonable. Additionally, once the existence of the warrants was verified, the officers had probable cause to arrest Hall, and the drugs were seized pursuant to a lawful search incident to that arrest. The trial court did not err in denying Hall's motion to suppress. This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 5

Hall complains that the trial court erred in adjudging him a third felony offender. Specifically, Hall alleges that the State failed to show that he knowingly and intelligently pled guilty in the predicate offenses by not attaching transcripts or minute entries to show the waivers were done

voluntarily.

In *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969), the United States Supreme Court emphasized three federal constitutional rights that are waived by a guilty plea: the privilege against self-incrimination; the right to trial by jury; and the right to confront one's accusers. The purpose of the *Boykin* is to insure that the defendant has adequate information in order to plead guilty intelligently and voluntarily.

In *State v. Alexander*, 98-1377, pp.5-6 (La. App. 4 Cir. 2/16/00), 753 So.2d 933, 937, this court set forth the standard of proof in multiple bill hearings: La. R.S. 15:529.1 D (1)(b) states that the district attorney has the burden of proving beyond a reasonable doubt any issue of fact and that the presumption of regularity of judgment shall be sufficient to meet the original burden of proof. In *State v. Shelton*, 621 So.2d 769, 779-80 (La. 1993), the Supreme Court stated:

> If the defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty pleas and that defendant was represented by counsel when they were taken. If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one

> which reflects a colloquy between judge and defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. If the State introduces anything less than the "perfect" transcript, for example, a guilty plea form, a minute entry, and "imperfect" transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three Boykin rights. [Footnotes omitted.]

In *Shelton, supra,* the Louisiana Supreme Court stated that the State has to first prove the existence of the prior guilty pleas and that the defendant was represented by counsel at the time. If the State meets its burden, the burden then shifts to the defendant to show an infringement of his rights or a procedural irregularity in the taking of the pleas.

The State in the instant case met its burden by providing two plea forms that not only spelled out Hall's *Boykin* rights and that he understood the rights he was giving up, but also contained language that said the trial judge had a colloquy with Hall, that Hall understood the nature of the crimes to which he pled guilty, that the defendant admitted he did in fact commit the crimes, and that Hall's pleas were given voluntarily. Additionally, each plea form contained language by the defendant's attorney that said he was

present during the recitation of the colloquy between Hall and the trial judge, that he informed Hall of his rights, that the defendant was informed of the maximum sentence the court could impose, that he explained to Hall the rights being waived, and that Hall made the plea knowingly, willingly, and voluntarily. Hall, his attorney, and the trial judge signed the plea forms.

Once the State submitted the guilty plea forms, the burden shifted to the defendant to show his rights were violated when the pleas were taken or a procedural error existed. Hall has failed to do either. Thus the burden of proof did not shift back to the State to prove the constitutionality of the pleas. *Shelton* holds that only if the burden shifts back to the State does it become necessary for the State to provide a minute entry or transcript of the plea colloquy. The trial court did not err finding Hall a third felony offender. This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 6

Hall complains that the trial court erred when it held it had no choice but to impose a life sentence. At the time of the offense in this case, La. R.S. 15:529.1, the Habitual Offender Law, provided in pertinent part:

> (b)(ii) If the third felony or either of the two prior felonies is a felony defined as a crime of violence under R.S. 14:2(13) or as a violation of the Uniform Controlled Dangerous Substances Law

> punishable by imprisonment for more than five years, or any other crime punishable by imprisonment for more than twelve years the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

The transcript of the sentencing hearing reflects that Hall orally moved for a reconsideration of his sentence. The record fails to reflect that the trial court has ruled upon the motion. In the absence of a ruling, we are precluded from considering this assignment of error. La. C.Cr.P. art. 881.1.

ASSIGNMENT OF ERROR NUMBER 7

In his final assignment of error, Hall complains that his trial counsel rendered ineffective assistance by failing to conduct a hearing at sentencing to sway the court to make a downward departure from the statutory minimum of a life sentence. Again, since Hall's counsel moved for a reconsideration of the sentence and the trial court has yet to rule upon it, we are precluded from considering this issue. La. C.Cr.P. art. 881.1.

CONCLUSION

For the foregoing reasons, we affirm Hall's conviction; however, we are presently precluded from reviewing his sentence.

CONVICTION AFFIRMED.