STATE OF LOUISIANA	*	**NO. 2001-KA-1515**
VERSUS	*	**COURT OF APPEAL**
DAREN WILLIAMS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 413-482, SECTION "F"
Honorable Dennis J. Waldron, Judge
* * * * * *
Charles R. Jones
Judge
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, and Judge James F. McKay, III)

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AFFIRMED

Daren Williams appeals his plea of guilty and sentence under State vs. Crosby, 338 So.2d 584 (La. 1976) for Possession of Cocaine with the Intent to Distribute, and his plea of guilty and sentence under the same terms for being a convicted felon in possession of a firearm. We affirm.

Williams was charged by Bill of Information with Possession of a Firearm by a Convicted Felon, La. R.S. 14:95, and Possession with Intent to Distribute Cocaine, La. R.S. 40:967. He filed a Motion to Suppress Evidence and a Motion to Suppress Statement, which were denied. He withdrew his former plea of not guilty and pled guilty as charged under State v. Crosby. Williams waived delays and was sentenced to twenty years without benefit of parole, probation, or suspension of sentence, and fined $1000 for the firearm conviction; and he was sentenced to ten years at hard labor, the first five of which to be served without benefit of parole, probation, or suspension of sentence for the drug conviction. The sentences were ordered to be served concurrently. This timely appeal follows.

A review of the record for errors patent indicates that there are none.

The Motion to Suppress hearing transcript indicates that Detective

Lawrence Jones testified that he received information from a confidential informant who had proved reliable in the past that a man referred to as "Red", who drove a red Monte Carlo, was selling crack from his residence at 1412 Louisa Street, Apartment A. Detective Jones went to the address and saw the car. The license plate was registered to Williams, who used the nickname "Redman." Detective Jones sent the confidential informant on a controlled buy at the residence, and the confidential informant returned with crack cocaine. A search warrant was issued for the residence and on execution of the warrant, Williams, a woman, and another man were present at the residence. Williams then told the officers that he had crack cocaine in a shirt pocket in the closet, that he had a gun underneath his bed, and that he was a convicted felon.

In his lone assignment of error, Williams argues that the district court erred in denying his motions to suppress because the warrant was not based on probable cause. He argues that the district court erred in denying his Motion to Suppress Statement allegedly made by him at the time of his arrest and his Motion to Suppress Evidence allegedly found in his residence. He argues that he was not prosecuted for the drugs sold in the transaction with the confidential informant, thus there was insufficient evidence to issue the search warrant, which resulted in the drugs and weapon being seized

from his home, and his alleged inculpatory statement.

This Court set out the applicable law pertaining to the issuance of search warrants in State v. Martin, 97-2904 (La. App. 4 Cir. 2/24/99), 730 So.2d 1029, as follows:

> La.C.Cr.P. article 162 provides that a search warrant may be issued "only upon probable cause established to the satisfaction of the judge, by the affidavit of a credible person, reciting facts establishing the cause for the issuance of the warrant." The Louisiana Supreme Court has held that probable cause exists when the facts and circumstances within the affiant's knowledge, and those of which he has reasonably trustworthy information, are sufficient to support a reasonable belief that evidence or contraband may be found at the place to be searched. State v. Duncan, 420 So.2d 1105 (La. 1982). The facts which form the basis for probable cause to issue a search warrant must be contained "within the four corners" of the affidavit. Id. A magistrate must be given enough information to make an independent judgment that probable cause exists for the issuance of the warrant. State v. Manso, 449 So.2d 480 (La. 1984), cert. denied Manso v. Louisiana, 469 U.S. 835, 105 S.Ct. 129, 83 L.Ed.2d 70 (1984). The determination of probable cause involves probabilities of human behavior as understood by persons trained in law enforcement. State v. Hernandez, 513 So.2d 312 (La. App. 4 Cir. 1987), writ denied, 516 So.2d 130 (La.1987).
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> In its review of a magistrate's finding of probable cause, the reviewing court must determine whether the "totality of circumstances" set forth in the affidavit is sufficient to allow the magistrate to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the

> "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a reasonable probability that contraband ... will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclu [ding] that probable cause existed." Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2232, 76 L.Ed.2d 527 (1983).

97-2904 at pp. 4-5, 730 So.2d at 1031-1032.

In State v. Fisher, 97-1133, p. 8 (La. 9/9/98), 720 So.2d 1179, 1184, the Supreme Court discussed the factors to evaluate when the police rely on a tip from a confidential informant:

> While probable cause must be determined on the totality of the circumstances, an informant's reliability, veracity and basis of knowledge are "all highly relevant." Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); State v. Ruffin, 448 So.2d 1274, 1278 (La. 1984). A confidential informant may provide adequate information to establish probable cause for a warrantless arrest, so long as the basis for the informant's knowledge and the informant's reliability, when examined under the totality of the circumstances, are established.

Using the standard cited in Fisher, in State v. Smith, 99-2129 (La. App. 4 Cir. 4/26/00), 761 So.2d 642, this Court found that the police lacked probable cause to effect an arrest. In Smith, the officers received a tip from an untested informant that the defendant, who lived at a certain address, would deliver drugs from that address to a certain location every night

between 11:45 p.m. and midnight, using a certain truck. The officers were already familiar with the defendant due to other tips, and the delivery address was well-known for drug activity. The officers set up a surveillance of the given address and saw the described truck sitting outside the residence. At approximately 11:40 p.m., they saw the defendant walk out of the residence, walk to the truck, put an unknown object in his mouth, enter the truck, and drive from the residence. The officers followed the defendant for six blocks and then stopped him, using a "boxed-in" maneuver wherein he could not move his truck. As the defendant exited his truck, the officers saw him put another unknown object in his mouth and chew vigorously. The defendant refused to open his mouth at the officers' order, and he denied living at the residence he had just left, indicating his girlfriend lived at that address. The officers searched him and his truck but found no contraband. The officers took him back to the residence, and using keys they obtained from his pocket, opened the door to the residence. Inside the residence, they found drugs. On appeal, this Court reversed the defendant's conviction, finding the officers' actions at the stop constituted an arrest, and there was no probable cause for the arrest. This Court noted the tip was from an untested informant, and the officers' observations did not corroborate the untested informant's tip that the defendant was delivering

drugs. This Court also noted that the fact that the defendant placed unknown objects in his mouth was not in itself a particularly suspicious action, which would lead them to believe he was engaged in criminal activity.

In State v. Sanchez, 617 So. 2d 948 (La. App. 4 Cir. 1993), this Court reversed a district court judgment granting the defendants' Motion to Suppress Evidence seized after an investigatory stop based primarily on a tip from an untested informant. New Orleans police were given information that two black Cuban males, one light–complected, the other dark-complected, would be leaving a residence in the 4600 block of S. Robertson Street in a particular tan Ford Bronco and traveling to the St. Thomas Housing Project to deliver a large amount of cocaine. Police staked out the 4600 block of S. Robertson Street and observed two black males and a female enter a tan Ford Bronco, which had a license plate matching the number given by the informant. Police followed the Bronco as it traveled in a direction that could have eventually led to the St. Thomas Housing Project. However, the occupants apparently observed the police tailing them and suddenly made a left turn and sped off in a direction toward the project. Police then made a stop of the Bronco. As the officers approached the vehicle, they saw the defendant, who was driving, reach under the driver's seat. Fearing that the defendant might have a gun, the officers ordered all of

the occupants out of the vehicle. One of the officers looked inside the vehicle through the open driver's-side door and saw the grip or handle of a gun sticking out from under the front seat. When he retrieved the gun, a bag of cocaine fell out into plain view. In finding that police had reasonable suspicion to make the initial stop of the vehicle, this Court stressed that police had corroborated information given them by the confidential informant, including information regarding the defendants' future behavior. Also, the defendants fled upon seeing that the police was following them.

Williams seeks to distinguish his case from State v. Lincoln, 34,770 (La. App. 2 Cir. 6/22/01), 794 So.2d 56, citing State v. Gant, 93-2895 (La. 5/20/94), 637 so.2d 396, rehearing denied, 93-2895 (La. 7/01/94) 639 So.2d 1183. He notes that while the appellate court said in Lincoln, supra, that as a general rule, "[a] controlled buy of a small amount of cocaine from a defendant by a reliable confidential informant gives the police probable cause to secure a warrant for that address." He further argues that a finding of probable cause is not automatic in every case where a controlled purchase has occurred. For example, in State v. Fleniken, 451 So.2d 1342 (La. App. 1 Cir. 1984), the First Circuit upheld an order of suppression based in part on the conclusion that, despite the fact that a controlled buy had been executed, there was no probable cause to believe that marijuana would be found within

the defendant's residence on that particular day. The court held that the affidavit in support of the warrant fell short because the controlled buy resulted in the purchase of only a small amount of marijuana within the previous 48 hours, and there was no indication that there would be any other marijuana in the residence at the time the warrant was to be issued. The case at bar is similar in that there was no information supplied by the confidential informant alleging any amount of cocaine seen or known to be present within the residence. Accordingly, the First Circuit found that there was no probable cause to believe that there would be cocaine in the residence when the warrant was issued. We disagree.

In the instant case, an officer received information from a confidential informant that Williams was selling drugs from his residence. The officer went to the address and corroborated that a red Monte Carlo, registered to Williams, whose nickname is "Redman", was present. A controlled buy from Williams at the residence produced crack cocaine. At that point, there was probable cause to believe that the residence contained contraband, and the warrant was properly issued. The district court did not err in denying the Motion to Suppress Evidence or the Motion to Suppress Statement.

This assignment of error is without merit.

DECREE

For the foregoing reasons, the convictions and sentences of Daren Williams are hereby affirmed.

AFFIRMED