

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2002-KA-0481**  
**VERSUS** \* **COURT OF APPEAL**  
**WILLIAMS COOPER** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 419-759, SECTION "K"  
Honorable Arthur Hunter, Judge  
\* \* \* \* \*  
**Judge Steven R. Plotkin**  
\* \* \* \* \*

(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer,  
Judge Patricia Rivet Murray)

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**AFFIRMED.**

The issue in this appeal is whether the trial court erred in denying the defendant's motion to suppress the evidence. For the reasons below, we affirm the decision of the trial court.

### **PROCEDURAL HISTORY**

The defendant, Williams Cooper, was charged with possession of cocaine. He pled not guilty at arraignment. A hearing was conducted on defendant's motion to suppress the evidence. The trial court denied the motion and found probable cause. The defendant withdrew his former not guilty plea and entered a plea of guilty as charged under *State v. Crosby*, 338 So.2d 584 (La. 1976). The court sentenced defendant to forty months at hard labor in the custody of the Department of Corrections. The State filed a multiple bill alleging the defendant to be a third felony offender. Defendant pled guilty to the bill, and the court vacated the previous sentence and sentenced defendant to forty months at hard labor in the Department of Corrections. The sentence was ordered to be served concurrently with the sentence in case number 419-776.

## **STATEMENT OF FACTS**

Detective Demond Lockhart, who was assigned to the second district narcotics unit at the time of defendant's arrest, testified at the motion to suppress hearing. He testified that he met with a confidential informant who informed him that a black male known as "Icee" was utilizing 2809 Sixth Street Apartment "E" as a retail outlet for the distribution of cocaine. The informant related that he had purchased retail quantities of cocaine from the location within the past twenty-four hours.

As Detective Lockhart had no previous experience with the informant, he contacted several officers in other districts who had worked with the informant and learned that the informant had provided reliable information in the past that had led to arrests and prosecutions. Detective Lockhart also discovered that this person was a documented informant with the New Orleans Police Department. To further assess the credibility of the informant, Detective Lockhart affected a controlled buy from the location, which was successful. Within hours of the controlled purchase of cocaine, the detective obtained a search warrant for the apartment. Detective Lockhart, along with several other officers, subsequently returned to the apartment to execute the warrant.

When the officers approached, the defendant was observed peering through a window and appeared startled at the sight of the approaching officers. The defendant went into apartment E and slammed the door behind him. Fearing that the defendant might destroy evidence, the officers forced entry into the apartment. Two officers, who had been dispatched to the rear of the building, apprehended defendant as he was exiting the back door of the apartment. In his hands, the officers recovered an amber pill bottle containing fifty-six clear plastic bags of cocaine and a brown paper bag containing marijuana. The officers placed the defendant under arrest and mirandized him. Detective Lockhart conducted a search incident to arrest. In defendant's pocket the police recovered a cigarette pack containing approximately nine grams of cocaine.

### **ERRORS PATENT**

A review of the record for errors patent reveals none.

### **ASSIGNMENT OF ERROR NUMBER 1**

Through appellate counsel and pro se, defendant contends that the trial court erred in denying the motion to suppress the evidence. Defendant contends the warrant was founded on less than probable cause in that there was insufficient information presented in the affidavit to indicate that drugs would be present in the defendant's apartment.

The legal standard for reviewing determinations made by a trial court on motions to suppress evidence seized pursuant to a warrant was outlined in *State v. Alvarez*, pp. 8-11, 00-0819 (La. App. 4 Cir. 7/13/01), 792 So. 2d 875, 881:

The defendant bears the burden of proving that the evidence seized with a warrant should be suppressed. La.C.Cr.P. art. 703(D). 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. Mims*, 98-2572, p. 3 (La. App. 4 Cir. 9/22/99), 752 So.2d 192, 193-194. This court set out the 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, writ denied, 99-0874 (La. 10/1/99), 747 So. 2d 1136, 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).

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 ... concluding] 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.

Defendant cites the decision of *State v. Fleniken*, 451 So.2d 1342 (La. App. 1 Cir. 1984) in support of the assertion that the affidavit failed to establish probable cause to believe that contraband would be found in the apartment. In *Fleniken*, the First Circuit upheld the trial court's granting of a motion to suppress, despite the fact that a controlled buy had been effected, finding the affidavit was insufficient in three respects: 1) the affidavit failed to establish probable cause to believe that other marijuana would be located at the apartment at the time the warrant was to be issued; 2) the affidavit did

not establish the reliability of the informant beyond his involvement in the controlled purchase; 3) the affidavit did not provide any factual basis for crediting the information that Fleniken was a dealer in cocaine and marijuana.

With respect to the court's determination that the warrant in *Fleniken* failed to establish a sufficient likelihood that contraband would be located in the apartment, the court stated,

An affidavit which recites credible facts showing merely that a small amount of marijuana was taken from a particular place within the previous forty-eight hours does not, without more, establish probable cause to believe that other marijuana was located there at the time the warrant was to be issued. *See State v. Cann*, 392 So.2d 381 (La.1981) (Dennis, J., concurring); *State v. Lewis*, 385 So.2d 226 (La.1980); *State v. Boneventure*, 374 So.2d 1238 (La.1979); cf. *State v. Howard*, 448 So.2d 713 (La. App. 1st Cir.1984) (direct undercover police observation of additional marijuana within eight hours of the warrant's execution sufficient to establish probable cause).

With respect to the present case, *Fleniken* can be distinguished because the likelihood that drugs would be located at the location was only one of three factors the court found lacking. Furthermore, where two days passed between the controlled purchase and the warrant being executed in *Fleniken*, here the warrant was executed within a matter of hours of the controlled buy.

In both *Lewis* and *Bonaventure*, cited in *Fleniken*, the informant was

offered either a small or an unidentified quantity of contraband, in both cases marijuana, for consumption as opposed to sale as is the case here.

Furthermore, unlike *Fleniken*, the affidavit in question here established the reliability of the informant "beyond his involvement in the controlled purchase," and it provided a factual basis derived from first hand knowledge



that Cooper was a dealer.

Defendant, pro se, further contends that probable cause was lacking because Officer Lockhart was unable to observe the defendant after he entered the apartment building and therefore could not verify whether the cocaine was actually obtained from the apartment in question or some other apartment in the building. Officer Lockhart testified that the building contained six apartments. Despite the fact that the officer was physically precluded from verifying that the cocaine was actually retrieved from the apartment in question, given all the circumstances set forth in the affidavit it is apparent that the magistrate judge had a substantial basis for concluding that there was probable cause to believe that cocaine would be found in the apartment. Thus, there is no merit in this assignment of error.

## **CONCLUSION**

For the foregoing reasons, we find that the trial court did not err in admitting the evidence. There was sufficient information in the affidavit to indicate that drugs would be present in the defendant's apartment.

Therefore, defendant's conviction and sentence are affirmed.

**AFFIRMED.**