NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-0482**
VERSUS	*	**COURT OF APPEAL**
ELIJAH J. ANDERSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 422-421, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * * *
Judge David S. Gorbaty
* * * * * *

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

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AFFIRMED

On June 22, 2001, defendant was charged by bill of information with possession of cocaine. Defendant filed a motion to suppress the evidence, which was denied. On July 26, 2001, the defendant withdrew his former plea of not guilty and entered a plea of guilty under *State v. Crosby*, 338 So.2d 584 (La.1976). He was sentenced to thirty months at hard labor. The state filed a multiple offender bill of information. The defendant admitted the allegations of the bill. The trial court vacated the previous sentence and again sentenced the defendant to serve thirty months at hard labor. Defendant subsequently filed this appeal.

FACTS

Officer Marcel Foxworth testified that at 9:40 p.m., on May 19, 2001, he and his partner were on routine patrol in the 1900 block of Orleans Avenue. They observed the defendant sitting on a milk crate between a nightclub and a convenience store. Officer Foxworth testified that they decided to determine why the defendant was out there. Foxworth related

that there are signs posted in the area against loitering. He stated that there had been problems with narcotics being sold in front of the businesses and related that the store owner had previously advised him that he would prefer if people not to stand in front of his store. Foxworth noted that this location is across from the Lafitte Housing, which he stated was a high crime area. Officer Foxworth further stated that he and his partner had effected numerous arrests in the area for narcotics violations.

The two officers exited the patrol car and approached the defendant. While questioning the defendant, Officer Roach detected a strong odor of alcohol about him, and observed that the defendant's speech was slurred. Officer Roach then asked the defendant for identification. Officer Roach ran the name and learned that there was an outstanding traffic attachment for the defendant. Officer Roach advised the defendant that he was placing him under arrest. The defendant pushed the officer's hands away and began to flee on foot. With Officer Foxworth's assistance, Officer Roach was able to detain the defendant after a brief struggle. In a search incident to arrest, Officer Foxworth located three pieces of crack cocaine in individual bags and a bag of marijuana.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR NUMBER 1

Defendant contends that the trial court erred in denying the motion to suppress the evidence. He argues that the officers lacked reasonable suspicion to justify an investigatory stop pursuant to C.Cr.P. art 215.1. The State contends that the evidence was properly admitted under the "attenuation doctrine," an exception to the exclusionary rule. *See State v. Hill*, 97-2551 (La.11/6/98), 725 So.2d 1282. Although no written judgment was issued, a review of the transcript from the hearing reflects that the trial court made the same determination.

The question of whether the doctrine of attenuation is applicable in this case aside, neither party addresses as an initial inquiry whether in approaching the defendant and requesting his identification, the officers' conduct rose to the level of stop for purposes of the Fourth Amendment. Recently, the Louisiana Supreme Court reiterated that "'law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen....' *Florida v. Royer*, 460 U.S. 491, 498, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983)(White, J.)," and that "[a]n officer's request for identification does not turn the encounter into a forcible detention unless the

request is accompanied by an unmistakable show of official authority indicating to the person that he or she is not free to leave. *Royer*, 460 U.S. at 501, 103 S.Ct. at 1326; *see also I.N.S. v. Delgado*, 466 U.S. 210, 216, 104 S.Ct. 1758, 1762, 80 L.Ed.2d 247 (1984)('[I]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure.')…." *State v. Lewis*, 2000-3136, pp. 3-4 (La. 4/26/02), 815 So.2d 818 at 820.

In *Lewis*, the officers were patrolling the Iberville Housing Development in response to complaints of residents that trespassers were selling drugs within the development. Believing that the defendant and his companion were not residents of the development, the officers stepped in front of the two men as they approached from the opposite direction and made some basic requests for information such as their reason for being in the area and for identification when the defendant ran from the officers. The officers pursued the defendant who discarded a plastic bag containing cocaine. The court concluded that "with or without reasonable suspicion, Officers Pratt and White had the right to approach respondent and his companion and to ask them a few questions. Officer White's request for identification without any greater show of authority did not transform the encounter into a forcible detention and did not 'provoke' respondent to

flight." *Lewis* at p. 5, 815 So.2d at 821.

There is nothing from the testimony to indicate that in the present circumstance the officers effected an "unmistakable show of official authority indicating to the [the defendant] that he … was not free to leave." *Royer, supra*. Although the defendant had "'the right to ignore the police and go about his business'" *Lewis* at p. 4, 815 So.2d at 821, *citing Illinois v. Wardlow*, 528 U.S. 119, 124-25, 120 S.Ct. 673, 676, 145 L.Ed.2d 570 (2000), under these circumstances it does not appear that the officer's request for identification amounted to a detention or a seizure for purposes of the Fourth Amendment. Accordingly, the motion to suppress the evidence could have been denied on that basis.

Furthermore, assuming for the purpose of argument, that the officers' request for identification amounted to a stop, the evidence could properly be admitted under the "attenuation doctrine," because the evidence was seized after the defendant was arrested pursuant to an outstanding arrest warrant. *See State v. Hill, supra; State v. Marin*, 2001-0787 (La. App. 4 Cir. 1/09/02) 806 So.2d 894; *State v. Perez*, 99-2063 (La.App. 4 Cir. 9/15/99), 744 So.2d 173. In *Hill*, even though the officers may have conducted an impermissible *Terry* stop, no evidence was recovered during the search. The court ruled that once the officers discovered there were outstanding warrants issued for

the defendant's arrest, the officers could arrest him and lawfully seize any evidence found in a search incident to arrest. The Court noted that although there may have been a "temporal proximity" between the initial stop and the subsequent search, the discovery of the outstanding warrants was an intervening circumstance which dissipated the "taint of an initial impermissible encounter." *Hill* at p. 5, 725 So.2d at 1285.

In the present circumstance, assuming that that the officers' request for identification amounted to a stop, the evidence was not seized until after the officers learned of the outstanding warrant. The evidence was therefore admissible.

CONCLUSION

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

AFFIRMED