

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2002-KA-0569**  
**VERSUS** \* **COURT OF APPEAL**  
**ALVIN HANDY** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 415-537, SECTION "K"**  
**HONORABLE ARTHUR HUNTER, JUDGE**

\* \* \* \* \*

**JUDGE MAX N. TOBIAS, JR.**

\* \* \* \* \*

(COURT COMPOSED OF JUDGE CHARLES R. JONES, JUDGE  
MICHAEL E. KIRBY, AND JUDGE MAX N. TOBIAS, JR.)

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**CONVICTION AND SENTENCE AFFIRMED.**

The defendant, Alvin Handy, was charged by bill of information on 11 July 2000 with one count of unauthorized entry of a business, a violation of La. R. S. 14:62.4. Mr. Handy pleaded not guilty at his 14 July 2000 arraignment. On 7 September 2000, he changed his not guilty plea and pled guilty as charged under *State v. Crosby*, 338 So.2d 584 (La. 1976) and *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970). The trial court imposed a sentence of three years in the Department of Corrections. The State filed a multiple bill of information alleging Mr. Handy to be a second felony offender, to which he also pled guilty. The trial court vacated its initial three-year sentence and re-sentenced the defendant to three years in the Department of Corrections with credit for time served. On 29 January 2002, the trial court granted a motion for an out of time appeal.

**STATEMENT OF FACTS**

At a 25 August 2000 probable cause hearing, New Orleans Police Officer John Simone testified that on 2 June 2000, at approximately 2:30 a.m., he was patrolling the 3000 block of Earhart Boulevard in New Orleans

when he observed the defendant closing the side door of a business. Officer Simone further testified that based on the late hour, his knowledge of other previous business burglaries in the area, and that most businesses in the area were closed at that hour, he conducted an investigatory stop. When Officer Simone questioned the defendant, he told the officer he was an employee of the business. During the questioning, the officer noticed that the door the defendant had exited looked as if it had been pried open.

Officer Simone detained the defendant and called for back-up. When the other officers arrived, Officer Simone entered the business premises to look around. He testified that the premises did not seem disturbed, but he noticed that a four-pane window on the premises was broken. Officer Simone phoned the owner of the business, who informed him that the defendant was not his employee. The business owner also told the officer that the broken window and pry marks on the exterior door were from a previous burglary, but that an interior door had been locked.

### **ERRORS PATENT**

A review of the record reveals no errors patent.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, Mr. Handy complains the trial court

erred in upholding the police officer's investigatory stop. Therefore, he reasons that the trial court's finding of probable cause to arrest him was error.

La. C. Cr. P. art. 215.1 gives a police officer the right to make an investigatory stop when the officer has reasonable cause to suspect that a crime has been committed and the individual stopped may be the offender. In the case at bar, the officer was familiar with the neighborhood, was aware of previous business burglaries in the neighborhood, and observed the defendant exit from a door of a business at 2:30 a.m. No reasonable person could conclude that the officer did not have reasonable cause to make an investigatory stop. That investigatory stop lead to the officer observing pry marks on the door from which the defendant exited. It was therefore reasonable for the officer to investigate further by calling the business owner to inquire further of the circumstances and to whether the defendant was properly on the premises. The call lead to further information that an interior door of the premises that should have been locked was not and was apparently forced open. The trial court did not err in finding probable cause. However, even assuming that the officer had no probable cause, such would not prohibit the State from trying Mr. Handy for the crime of unauthorized entry of a business.

The defendant cites *State v. Daniels*, 93-1769 (La. App. 4 Cir. 1/27/94), 631 So.2d 1281, for the proposition that insufficient facts do not create a reasonable suspicion to warrant an investigatory stop. *Daniels*, however, is a suppression of evidence case; in the case at bar, no evidence was seized from the defendant. *Daniels* is therefore inapplicable.

The assignment of error is without merit.

## **CONCLUSION**

The defendant's conviction and sentence are affirmed.

**CONVICTION AND SENTENCE**  
**AFFIRMED.**