

**STATE OF LOUISIANA**

\*

**NO. 2003-KA-0431**

**VERSUS**

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**COURT OF APPEAL**

**BRANDON D. BATES**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 429-949, SECTION "I"  
HONORABLE RAYMOND C. BIGELOW, JUDGE

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**JUDGE MICHAEL E. KIRBY**

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(Court composed of Judge Michael E. Kirby, Judge Max N. Tobias Jr.,  
Judge Leon A. Cannizzaro Jr.)

EDDIE J. JORDAN, JR., DISTRICT ATTORNEY  
ZATA W. ARD, ASSISTANT DISTRICT ATTORNEY  
619 SOUTH WHITE STREET  
NEW ORLEANS, LA 70119  
COUNSEL FOR PLAINTIFF/APPELLEE

LAURA PAVY  
LOUISIANA APPELLATE PROJECT  
P.O. BOX 750602  
NEW ORLEANS, LA 701750602  
COUNSEL FOR DEFENDANT/APPELLANT

## **STATEMENT OF CASE**

On April 30, 2002, Brandon Bates was charged by bill of information with being a felon in possession of a firearm. Bates pled not guilty at arraignment on May 23, 2002. A motion hearing was conducted on June 14, 2002, after which the trial court denied the motion to suppress the evidence and found probable cause. On September 3, 2002, a jury convicted the defendant of attempted possession of a firearm by a convicted felon. On October 11, 2002, the trial court sentenced the defendant to four years at hard labor without benefits. The defendant's motion for appeal was granted.

## **STATEMENT OF FACT**

The trial testimony reflects that on April 6, 2002, at approximately 4:00 a.m. members of the New Orleans Police Department were on patrol in the Hollygrove area when they observed a subject exit a white Honda Accord and begin to act suspiciously. The officers stopped the subject and recovered a handgun from his waistband. Additionally, the officers stopped the Honda as it was being driven off by blocking its path with the police vehicle. Brandon Bates was driving the vehicle. The officers approached the

vehicle and fearful that the defendant might also be armed they requested that he raise his hands. With the use of a flashlight the officers observed a handgun in between the defendant's legs. The gun was retrieved and found to be a fully loaded nine millimeter semi-automatic pistol. The defendant was asked to step out of the vehicle. In doing so, a black bandana fell from his leg. A search of the vehicle revealed a high capacity magazine located on the driver's floorboard containing twenty-nine nine millimeter rounds. Two additional rounds were recovered on the passenger's seat.

### **ERRORS PATENT**

A review of the record for errors patent reveals none.

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

The defendant contends the trial court erred in denying the motion to suppress the evidence. Defendant contends that the actions of the alighted passenger did not give the police sufficient legal cause to interfere with the defendant's right to be left alone.

Police officers may stop a person whom they "reasonably believe is committing, has committed, or is about to commit an offense." La. C.Cr.P. art. 215.1; *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). In making a

brief investigatory stop on less than probable cause to arrest, the police  
"must have a particularized and objective basis for suspecting the particular  
person stopped of criminal activity." *State v. Kalie*, 96-2650, p. 3  
(La.9/19/97), 699 So.2d 879, 881 (*quoting United States v. Cortez*, 449 U.S.  
411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981)).

In determining whether the police possessed the requisite " 'minimal level of objective justification' " for an investigatory stop based on reasonable suspicion of criminal activity, *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989) (*quoting INS v. Delgado*, 466 U.S. 210, 217, 104 S.Ct. 1758, 1763, 80 L.Ed.2d 247 (1984)), reviewing courts "must look at the 'totality of the circumstances' of each case," a process which "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, ----, 122 S.Ct. 744, 750- 51, 151 L.Ed.2d 740 (2002)(*quoting United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981)). The assessment by a reviewing court of the cumulative information known to the officers avoids a "divide-and-conquer analysis" by which the whole becomes less than the sum of its parts because each circumstance examined individually may appear "readily susceptible to an innocent explanation." *Arvizu*, 534 U.S. at ----, 122 S.Ct. at 751.

*State v. Johnson*, 2001-2081, pp. 2-3 (La. 4/26/02), 815 So.2d 809,  
811.

Testifying at the hearing on defendant's motion to suppress the evidence, Officer Scott Rodrigue stated that he and three officers from the Second District were working overtime and patrolling the area to prevent auto burglaries and auto thefts. Officer Rodrigue and Sergeant Scanlon were in an unmarked vehicle. They were followed by Officer Barbe and Officer Laroche in a marked unit with its headlights off. As Rodrigue and Scanlon traveled down Eagle Street they observed a light blue four door vehicle on the side of the street with the interior light of the vehicle on. As they drew near they observed a female in what appeared to be a nurse's outfit looking for something in her purse.

As they passed the light blue vehicle, they observed a white Honda pull to the right side of the road and observed the passenger exit and begin walking back in their direction and towards the light blue four door vehicle. As they approached the subject he was observed to remove a white handkerchief from his left pocket and place it over his face. The subject was then observed reaching for the right side of his waistband. The officers decided to investigate.

Officer Rodrigue testified that as they approached the subject he observed them as well as the marked unit following behind. The subject spun around and began running or walking quickly back to the car which

was waiting with its brake lights on.

Sgt. Scanlan, who was driving, pulled the car over and Officer Rodrigue exited the vehicle and detained the subject. He recovered a blue steel revolver from the subject's waistband. Officer Scanlan radioed to the marked unit that they had detained a subject with a gun, that there was a white Honda in front of them that was possibly involved, and that they were possibly armed robbery suspects.

Officer Nicole Barbe pulled the marked vehicle in front of the Honda. Officer Jody LaRoche ordered the defendant to raise his hands into view. Initially the defendant failed to comply, but he soon raised his hands. Officer LaRoche and Sgt. Scanlan approached the driver's side and observed the handle of a semi-automatic handgun between the driver's legs. Sgt. Scanlan opened the door, and Officer LaRoche retrieved the weapon.

The sight of a subject dawning a handkerchief to cover his face has been a well known harbinger of criminal activity since the days of the old west. Furthermore, the late hour, the subject's action of reaching for his waistband, and the close proximity of a potential victim, all gave the officers an overwhelming basis to suspect, if not believe, that criminal activity was afoot. Their stop of the subject was therefore reasonable.

As for the defendant himself, the masked subject was seen exiting the

Honda only moments before donning the handkerchief. Rather than depart, the Honda remained on the scene with the engine running and the brake engaged. Furthermore, the officers did not attempt to stop the vehicle until after they had learned that the second subject was in fact armed with a handgun. It was reasonable to suspect that the driver of the Honda was possibly acting together with the armed subject as a principal and a potential getaway driver.

For the above and foregoing reasons we affirm the defendant's conviction and sentence.

**AFFIRMED.**