NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0517

STATE OF LOUISIANA

VERSUS

JEFFERY BLANTON

Judgment Rendered: September 10, 2010

Appealed from the
Seventeenth Judicial District Court
in and for the Parish of Lafourche, State of Louisiana
Trial Court Number 446701

Honorable Ashly Bruce Simpson, Judge Presiding

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Camille A. Morvant, II **Steven M. Miller** **Thibodaux, LA**	**Counsel for Appellee,** **State of Louisiana**
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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

WHIPPLE, J.

The defendant, Jeffery Blanton, was charged by bill of information with possession of cocaine, a violation of LSA-R.S. 40:967(C). He pled not guilty and proceeded to trial before a jury. The jury determined that the defendant was guilty, and the trial court sentenced him to a term of four years at hard labor. The defendant appeals, asserting four issues for review. Finding no error, we affirm the defendant's conviction and sentence.

FACTS

On July 10, 2007, Sergeant John Champagne with the Lafourche Parish Sheriff's Office served an arrest warrant on Victoria Cheramie at her home. Cheramie asked to speak with Champagne privately and told him that she was expecting a "black guy by the name of Jeffery," who was bringing a large amount of crack cocaine to her home. Cheramie said that Jeffery would be driving a white Yukon. Approximately fifteen minutes later, a white Yukon arrived with two passengers. One person stayed in the Yukon while the other came to Cheramie's door. Agent Robert Mason approached the defendant, who was the person who stayed in the Yukon, and asked him to step out of the car. As the defendant was getting out of the car, Mason saw the defendant's arm move in a way that suggested he was dropping something. Officers discovered a Money Gram and approximately 6.3 grams of crack cocaine underneath the car.

MOTION TO SUPPRESS

In his first assignment of error, the defendant contends that the court erred in denying his motion to suppress. He argues that the "tip" from Cheramie was unreliable, as she denied having told Champagne anything and there were no corroborating witnesses to support Champagne's claims. The defendant acknowledges that it was within the court's discretion to believe Champagne's testimony and to find Cheramie lacking in credibility, but argues that the court

erred in its application of the law to the facts. Specifically, the defendant argues that the court erroneously determined that the officers had sufficient reasonable suspicion to believe a crime was being committed as to justify their approach of the Yukon and interaction with the defendant.

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. See State v. Green, 94-0887, p. 11 (La. 5/22/95), 655 So. 2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589, p. 6 (La. 12/1/09), 25 So. 3d 746, 751. In determining whether the ruling on a motion to suppress was correct, the court is not limited to the evidence adduced at the hearing on the motion, but may consider all pertinent evidence given at the trial of the case. State v. Chopin, 372 So. 2d 1222, 1223 n.2 (La. 1979).

The Fourth Amendment to the United States Constitution and La. Const. Art. 1, § 5 protect individuals from unreasonable searches and seizures. State v. Belton, 441 So. 2d 1195, 1198 (La. 1983), cert. denied, 466 U.S. 953, 104 S. Ct. 2158, 80 L. Ed. 2d 543 (1984). If evidence was derived from an unreasonable search or seizure, the proper remedy is exclusion of the evidence from trial. State v. Benjamin, 97-3065, p. 3 (La. 12/1/98), 722 So. 2d 988, 989.

As a general rule, searches and seizures must be conducted pursuant to a validly executed search warrant or arrest warrant. Warrantless searches and seizures are considered to be *per se* unreasonable unless they can be justified by one of the Fourth Amendment's warrant exceptions. State v. Warren, 05-2248 (La. 2/22/07), 949 So. 2d 1215, 1226. The State has the burden of showing that one of the exceptions applies. LSA-C.Cr.P. art. 703D.

However, the right of law enforcement officers to stop and question a person

where there is reasonable suspicion to believe that the person is committing, has committed, or is about to commit a crime was established in Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) and codified by LSA-C.Cr.P. art. 215.1. Article 215.1A provides that a law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and may demand of him his name, address, and an explanation of his actions.

Terry stops require reasonable suspicion of criminal activity. The test for "reasonable suspicion" is whether the police officer had sufficient knowledge of the facts and circumstances to justify an infringement upon the individual's right to be free from governmental interference. State v. Robertson, 97-2960, pp. 2-3 (La. 10/20/98), 721 So. 2d 1268, 1269.

The facts upon which an officer bases an investigatory stop should be evaluated in light of the circumstances surrounding the incident. A reviewing court must take into consideration the totality of the circumstances and give deference to the inferences and deductions of a trained police officer that might elude an untrained person. State v. Huntley, 97-0965, p. 3 (La. 3/13/98), 708 So. 2d 1048, 1049 (per curiam).

An informant's tip can provide a police officer with reasonable cause to support a Terry stop. Adams v. Williams, 407 U.S. 143, 146-47, 92 S. Ct. 1921, 1923-24, 32 L. Ed. 2d 612 (1972); State v. Thomas, 583 So. 2d 895, 898 (La. App. 1st Cir. 1991). In Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), a case which dealt with an anonymous tip in the probable cause context, the United States Supreme Court outlined the "totality of the circumstances" analysis for determining whether or not an informant's tip establishes probable cause. In Alabama v. White, 496 U.S. 325, 330-31, 110 S. Ct. 2412, 2416, 110 L. Ed. 2d 301 (1990), the Court discussed review of the totality of the circumstances

when reasonable suspicion rather than probable cause justified the encounter with a suspect:

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. **Adams v. Williams** demonstrates as much. We there assumed that the unverified tip from the known informant might not have been reliable enough to establish probable cause, but nevertheless found it sufficiently reliable to justify a **Terry** stop. Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors-quantity and quality-are considered in the "totality of the circumstances-the whole picture," that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable. The **Gates** Court applied its totality-of-the-circumstances approach in this manner, taking into account the facts known to the officers from personal observation, and giving the anonymous tip the weight it deserved in light of its indicia of reliability as established through independent police work. The same approach applies in the reasonable-suspicion context, the only difference being the level of suspicion that must be established. [Internal citations omitted].

In the instant matter, the information was provided to officers who had previously worked in the area and knew the area to be a "haven for drugs." The officers were also familiar with Cheramie (the informant) and her prior drug history. The tip was specific, timely, and accurate in predicting that a white Yukon would arrive. Once it did, officers observed the defendant get out of the car, open the trunk, close it, begin to walk across the street, stop, look around furtively, turn around, walk back to the car and sit in the driver's seat.

After watching the defendant appear to retrieve something from his trunk to bring to the residence and to then change his mind while en route to the house and return to the Yukon, coupled with the tip from Cheramie, the officers had a reasonable suspicion to detain the defendant, who was seen dropping something onto the ground while getting out of the car at Mason's request. Upon observing this behavior, officers had a reasonable suspicion for further detention of the

defendant and were justified in seizing the drugs from the ground. Thus, the trial court properly denied the motion to suppress.

This assignment of error lacks merit.

THE SENTENCE

In three assignments of error, the defendant contends that the court erred in imposing an excessive sentence and in denying his motion to reconsider sentence. He suggests that the amount of cocaine in his possession was small and that when imposing sentence, the court improperly focused on his prior felony conviction for distribution of controlled dangerous substances while ignoring other details of his background, including his employment, education, and family history.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. State v. Hurst, 99-2868, pp. 10-11 (La. App. 1st Cir. 10/3/00), 797 So. 2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So. 2d 962.

Louisiana Code of Criminal Procedure article 894.1 sets forth items that must be considered by the trial court before imposing sentence. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. State v. Leblanc, 2004-1032, p. 10 (La. App.

1st Cir. 12/17/04), 897 So. 2d 736, 743, writ denied, 2005-0150 (La. 4/29/05), 901 So. 2d 1063, cert. denied, 546 U.S. 905, 126 S. Ct. 254, 163 L. Ed. 2d 231 (2005); State v. Faul, 2003-1423, p. 4 (La. App. 1st Cir. 2/23/04), 873 So. 2d 690, 692. Failure to comply with Article 894.1 does not necessitate the invalidation of a sentence or warrant a remand for resentencing if the record clearly illumines and supports the sentencing choice. State v. Smith, 430 So.2d 31, 46 (La. 1983). Maximum sentences may be imposed only for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. State v. Miller, 96-2040, p. 4 (La. App. 1st Cir. 11/7/97), 703 So. 2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So. 2d 459. A trial court is entitled to consider the defendant's entire criminal history in determining the appropriate sentence to be imposed. State v. Ballett, 98-2568, p. 25 (La. App. 4th Cir. 3/15/00), 756 So. 2d 587, 602, writ denied, 2000-1490 (La. 2/9/01), 785 So. 2d 31.

The defendant was convicted of possession of cocaine, which is punishable by imprisonment, with or without hard labor, for not more than five years, or a fine of not more than $5,000.00, or both. LSA-R.S. 40:967C(2). The defendant's four-year sentence, with no fine imposed, was not the maximum possible sentence. In imposing sentence, the court stated:

> The Court is required to state on the record its reasons for sentencing. The defendant has a prior felony conviction in the State of Mississippi, involving the distribution of a controlled dangerous substance. Therefore, this conviction . . . is the defendant's second felony conviction involving a controlled dangerous substance. For these reasons, there is an undue risk that during the period of probation, the defendant will commit another crime and there is evidence that he is in need of correctional treatment.

Although the court did not articulate its consideration of the defendant's work and family history, it is apparent from the record that the court was aware of the defendant's history, carefully considered the sentence it was imposing, and complied with Article 894.1 in imposing its sentence, which was not excessive

under the facts and circumstances herein.

According, these assignments of error also lack merit.

CONCLUSION

Having found no merit in the defendant's assignments of error, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.