NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-0197**
VERSUS	*	**COURT OF APPEAL**
ANDREW BROWN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 407-029, SECTION "A"
Honorable Charles L. Elloie, Judge
* * * * * *
Chief Judge Robert J. Klees
* * * * * *

(Court composed of Chief Judge Robert J. Klees, Judge Joan Bernard Armstrong, Judge Charles R. Jones)

ARMSTRONG, J., - DISSENTS

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REVERSED AND REMANDED

By bill of information dated May 21, 1999, defendant was charged with possession of cocaine with the intent to distribute; and, he pleaded not guilty. On October 13, 1999, defendant changed his plea to guilty as charged pursuant to State v. Crosby, 338 So. 2d 584 (La. 1976), following the trial court's denial of his motion to suppress his statement. The trial court sentenced defendant, who waived all delays, to five years at hard labor without benefit of parole, probation, or suspension of sentence.

STATEMENT OF THE FACTS

Detective Henry Laurent testified that on April 22, 1999, he received information from a confidential informant that a person named "Tank" was selling crack cocaine from Apartment 249 at the Curran Place Apartments. Laurent further testified that he supplied the informant with NOPD money that he photocopied and that Detective Nicole Gooch drove the informant to the apartment building. He stated that Officer Joseph Williams set up surveillance of the apartment and that Williams saw the informant approach

defendant outside the apartment. Williams also saw the informant hand paper currency to defendant who then entered the apartment and then came out two minutes later at which point he handed an object to the informant. The informant met with Gooch and told her that he had purchased crack cocaine for forty dollars.

Laurent testified that he used this information to obtain a search warrant for the apartment and that Williams continued his surveillance of the apartment. Williams saw a person on a bicycle come to the apartment, knock on the door, and meet with defendant. He also saw a female come to the apartment where Raymonda Brown answered the door, took currency from the unidentified female, and went back into the apartment. Defendant then opened the door and handed an object to the female.

Laurent testified that when he and other officers entered the apartment with the search warrant, they saw Ms. Brown in the front room with her children and found defendant in the rear bedroom. After securing defendant and his sister, the officers found a clear plastic bag containing 26.3 grams of crack cocaine in a shoe box. The officers also found in defendant's right rear pocket the money that had been photocopied and given to the informant. Laurent stated that baggies and a plastic tube containing residue were found in Ms. Brown's bedroom.

Laurent testified that he could not recall if anyone made any statements; but, he was shown his police report which noted that Ms. Brown stated that "Tank" was the one dealing drugs and that "Tank" stated he would take the charge if the police would release his sister. On cross-examination, Laurent stated that he did not recall if he was present when the statements were made and was not present when defendant was placed under arrest. He stated that Officers Phillips and Jackson were the ones who were in the bedroom.

DISUCUSSION

ERRORS PATENT

A review of the record shows no errors patent.

ASSIGNMENT OF ERROR NO. 1

In his sole assignment of error, defendant complains that the trial court erred in denying his motion to suppress the statement. He argues that there was no evidence that his statement was freely and voluntarily made or that he had been advised of his constitutional rights when he made the statement.

In State v. Labostrie, 96-2003, pp. 4-5 (La. App. 4 Cir. 11/19/97), 702 So. 2d 1194, 1197, this court stated:

> The State has the burden to prove, beyond a reasonable doubt, that a statement made by a defendant was freely and voluntarily given and

> was not the product of threats, fear, intimidation, coercion, or physical abuse. State v. Seward, 509 So. 2d 413 (La. 1987); State v. Bourque, 622 So. 2d 198 (La. 1993). Thus, the State must prove that the accused was advised of his/her Miranda rights and voluntarily waived these rights in order to establish the admissibility of statement made during custodial interrogation. State v. Brooks, 505 So. 2d 714 (La. 1987), cert. denied Brooks v. Louisiana, 484 U.S. 947, 108 S.Ct. 337, 98 L.Ed.2d 363 (1987); State v. Daliet, 557 So. 2d 283 (La. App. 4th Cir. 1990). A waiver of Miranda rights need not be explicit but may be inferred from the actions and words of the accused; however, an express written or oral waiver of rights is strong proof of the validity of the waiver. North Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979); State v. Harvill, 403 So. 2d 706 (La. 1981). Whether a statement was voluntary is a question of fact; thus, the trial judge's ruling, based on conclusions of credibility and the weight of the testimony, is entitled to great deference and will not be disturbed on appeal unless there is no evidence to support the ruling. State v. Parker, 96-1852, pp. 112-13 (La. App. 4th Cir. 6/18/97), 696 So. 2d 599, 606.

In State v. Nguyen, 97-0020, p. 3 (La. App. 4 Cir. 1/14/98), 707 So. 2d 66, 67, this court stated:

> Miranda warnings are required to be given whenever a citizen is deprived of his liberty in a significant way or was [sic] not free to go as he pleases. State v. Thompson, 399 So. 2d 1161, 1165 (La. 1981). In that case the Louisiana Supreme Court found that an objective test to determine whether there was a significant detention included the following factors:
>
> (1) whether the police officer had

> reasonable cause under C.Cr.P. art. 213(3) to arrest the interogee without a warrant; (2) the focus of the investigation on the interogee; (3) the intent of the police officer, determined subjectively; (4) the belief of the interogee that he was being detained, determined objectively.
> Id. at 1165.

However, a voluntary, spontaneous statement is admissible without Miranda warnings even if the defendant is in custody when the statement is made. State v. Atkins, 97-1278 (La. App. 4 Cir. 5/27/98), 713 So. 2d 1168; State v. Lee, 95-1398 (La. App. 4 Cir. 8/23/95), 660 So. 2d 911.

The trial judge characterized the statement made by Ms. Brown as an excited utterance when he denied the motion to suppress her statement, but he did not specifically state why he was denying the motion to suppress the statement made by defendant. The only witness who testified at the hearing was Detective Laurent who could not independently recall the statements made by defendant and his sister and who admitted not being present when defendant made his inculpatory statement. None of the officers who actually detained defendant or were present when he made the statement testified at the hearing; thus, the record is devoid of any testimony showing the circumstances under which the statement was made. In other words, there is no way of determining from the present record whether defendant's

statement was spontaneous and voluntary or whether he had been advised of his Miranda rights when he made the statement. The State did not meet its burden of proof of showing that the statement was admissible, and the trial court erred in denying the motion to suppress the statement.

Accordingly, the trial court's denial of the motion to suppress the statement is reversed and the defendant's guilty plea and sentence are vacated, with the case remanded to the trial court for further proceedings.

REVERSED AND REMANDED