

STATE OF LOUISIANA

\*

NO. 2000-KA-0124

VERSUS

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COURT OF APPEAL

SAMUEL T. HILLS

\*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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**BYRNES, C. J., DISSENTS WITH REASONS:**

I respectfully dissent based on my conclusion that the trial court did not err in denying the defendant, Samuel T. Hills' motion to suppress.

Considering the totality of circumstances, I find that there were sufficient circumstances to find probable cause for an arrest of Hills before he gave the officers his statement directing them to the cocaine under the cushion on the table under the outside stairway. Hills' statement was properly admitted, and the cocaine and currency found in the apartment were also lawfully seized pursuant to a search warrant based on probable cause.

Arrest

In reviewing a denial of a motion to suppress, an appellate court is not limited to the evidence adduced at a suppression hearing, but the appellate court may consider all pertinent evidence adduced at trial. *State v. Martin*,

97-2904 (La. App. 4 Cir. 2/24/99), 730 So.2d 1029, *writ denied* 99-0874 (La. 10/1/99), 747 So.2d 1136. An arrest occurs when the circumstances indicate an intent to effectuate an extended restraint on the liberty of an accused, rather than at the precise moment that the officer tells an accused that he is under arrest. *State v. Jones*, 31-613 (La. App. 2 Cir. 4/1/99), 733 So.2d 127, *writ denied*, 99-1185 (La. 10/1/99) 748 So.2d 434.

It is not a prerequisite for the existence of probable cause to make an arrest that the police officers know at the time of the arrest that the particular crime has definitely been committed; it is sufficient that it is reasonably probable that the crime has been committed under the totality of the known circumstances. *State v. Gates*, 24,995 (La. App. 2 Cir. 1/19/94), 630 So.2d 1345, *writ denied sub nom. Gates v. Jones*, 94-0640 (La. 6/17/94), 638 So.2d 1091. An arresting officer need only have a reasonable basis for believing that his information and conclusions are correct. *Rodriguez v. Deen*, 33,308 (La. App. 2 Cir. 5/10/00), 759 So.2d 1032, *writ denied*, 2000-1414 (La. 6/23/00), 765 So.2d 1049. For an arrest, the law does not require that "reasonable cause to believe" be established by evidence sufficient to convict; the arresting officer need not be convinced beyond a reasonable doubt of the arrested person's guilt. La. C.Cr.P. art. 213; *State v. Weinberg*, 364 So.2d 964 (La. 1978). The standard of reasonable cause to believe is a

lesser degree of proof than beyond a reasonable doubt, determined by the setting in which the arrest took place, together with the facts and circumstances known to the arresting officer from which he might draw conclusions warranted by his training and experience. *Id.* Probable cause for an arrest must be judged by the probabilities and practical considerations of everyday life in which average people, and particularly average police officers, can be expected to act. *State v. Franklin*, 598 So.2d 1147 (La. App. 1 Cir. 1992), *writ denied*, 604 So.2d 1317 (La. 1992). The reputation of the area is an articulable fact upon which a police officer may legitimately rely. *Id.* The determination of probable cause, unlike the determination of guilt at trial, does not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands. *State v. Green*, 98-1021 (La. App. 4 Cir. 12/22/99), 750 So.2d 343, *writ denied*, 96-2610 (La. 6/20/97), 695 So.2d 1348. In reviewing the totality of circumstances, the officer's past experience, training and common sense may be considered in determining if his inferences from the facts at hand were reasonable. *State v. Short*, 96-1069 (La. App. 4 Cir. 5/7/97), 694 So.2d 549. Deference should be given to the experience of the police who were present at the time of the incident. *State v. Short, supra.*

In the present case, the officers, familiar with the methods used to

conduct drug transactions, observed what the officers believed were two drug transactions taking place. They arrested the seller, James Scott, and Howard Bryant, the buyer in one transaction.

The officers not only had information from James Scott, the untested informant, who implicated Hill, but the officers also initially had a tip from a reliable confidential informant who reported that a subject named “James” currently was dealing narcotics in the 2100 block of LaSalle Street. When the police went there, their observations supported the initial reliable confidential informant’s tip that drug dealings were taking place.

In *State v. Cook*, 99-0091 (La. App. 4 Cir. 5/5/99), 733 So.2d 1227, reasonable suspicion for an investigatory stop ripened to probable cause to arrest the defendant where the defendant, whom the officer had reasonable suspicion to warrant an investigative stop for drugs, ran back into the apartment upon seeing the officers, the apartment was under surveillance based on an anonymous tip of narcotics activity at an address, and the officers had observed suspicious hand-to-hand drug transactions in front of the apartment.

The fundamental philosophy behind the probable cause requirement of the Fourth Amendment is that common rumor or report is not an adequate basis for the arrest of a person. *State v. Fisher*, 97-1133 (La. 9/9/98), 720

So.2d 1179.

In *State v. Coldman*, 99-2216 (La. App. 4 Cir. 8/30/00), 769 So.2d 131, this court found that probable cause existed for the issuance of an arrest warrant where the affidavit for the warrant stated that a known witness, who knew both the victim and defendant, heard shots, and identified the defendant as standing over the victim's body, and striking the victim with a gun.

In *State v. Davis*, 92-1623 (La. 5/23/94), 637 So.2d 1012, *cert. denied sub nom. Louisiana v. Davis*, 513 U.S. 975, 115 S.Ct. 450, 130 L.Ed.2d 359 (1994), exigent circumstances and probable cause existed for a legal arrest without a warrant where an apparent accomplice came to the police, telling them who the defendant was. A videotape had been broadcast, the defendant was mobile in his vehicle, and the stateline was within 60 miles.

In *State v. Tasby*, 26,103 (La. app. 2 Cir. 6/24/94), 639 So.2d 469, *writ denied* 94-2256 (La. 1/13/95), 648 So.2d 1336, the appellate court held that probable cause to arrest the defendant without a warrant, based on statements by three witnesses that the defendant was the shooter, was not diminished by the fact that the witnesses were also implicated in the crime, where the statements were consistent and supported by the surrounding circumstances.

In the present case, James Scott, who implicated Hills, was known. He was named as “James” who was selling drugs by the reliable confidential informant, and James Scott admitted his identity. Ms. Bean testified that she knew James Scott as “Dinky” from the neighborhood.

When James Scott was arrested, he gave police information that he had obtained the contraband he was selling from Hills, and Scott motioned upstairs to Hills’ apartment where there were more drugs. Although James Scott was an untested source, his presence and participation in two drug transactions on the street verified the information given by the reliable confidential informant. The officers testified that Hills peered out of the back door of his apartment several times. Although Hills did not run out of the apartment as the defendant did in *State v. Cook, supra*, the officers testified that Hills and the other subjects acted suspiciously and attempted to leave so that exigent circumstances occurred.

Considering that the first reliable informant’s tip was supported by police surveillance; that the individual, “James”(Scott), was selling drugs in the vicinity of Hills’ apartment; that Scott, an apparent accomplice, implicated Hills as the source of the contraband; and that Hills acted suspiciously by peering out of his apartment on several occasions and then began to leave, the police had reason to believe that Hills was part of the

illegal drug trafficking taking place under the totality of circumstances, and they had probable cause to detain and arrest Hills.

Ms. Valisha Bean, who lived with Hills, testified that when she and Hills came out of the apartment, the police stopped them, and had them return to the residence. She did not contest that the individuals sat down and the police waited for the search warrant that was obtained before the officers searched the residence.

Ms. Bean and Hills testified at the motion to suppress hearing that Hills did not give a statement telling the police where to find the contraband located below the stairwell. At trial Ms. Bean again testified that she did not hear Hills tell the police where the contraband was located beneath the stairwell; however, she stated that the police took Hills outside and then returned to wait for the search warrant. The fact that Ms. Bean saw the police take Hills outside, shows support for the police officers' testimony that Hills described and then showed them where the contraband was hidden beneath the stairwell. The officers testified that Hills' statement was made after he was given his *Miranda* rights. Whether or not Hills gave the statement is a credibility determination to be made by the trier of fact; however Hills' statement was admissible. Because the officers had reasonable cause to believe that Hills had participated in a crime, the

contraband underneath the stairway was validly seized after Hills was detained. Probable cause existed for Hills' arrest although the police had not formally announced that Hills was under arrest.

In *State v. James*, 99-1406 (La. App. 4 Cir. 7/19/00), \_\_\_ So.2d \_\_\_, 2000 WL 1460626, this court held that the officer who arrested the defendant outside of the defendant's residence could, without the consent of the defendant, conduct a limited protective sweep of the defendant's residence to be certain that there was no one lurking in the residence who could destroy evidence or pose danger to the officers.

In the present case, with the existence of exigent circumstances, the police were justified in conducting a limited protective sweep of the apartment. Ms. Bean's testimony supported the officers' testimony that the individuals sat and the police waited for a search warrant before they searched the residence and found the currency and drugs. There was sufficient probable cause for the search warrant and the currency and drugs were validly seized.

Accordingly, I would affirm the trial court's ruling that denied the defendant's motion to suppress the evidence and statement.