

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-1038**
VERSUS * **COURT OF APPEAL**
GARY KINARD * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
*
*
*
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 401-436, SECTION "I"
Honorable Raymond C. Bigelow, Judge
* * * * *
Judge David S. Gorbaty
* * * * *

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

Harry F. Connick
District Attorney
Charles E. F. Heuer
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Yvonne Chalker

LOUISIANA APPELLATE PROJECT
P.O. Box 791665
New Orleans, LA 70196-1665
COUNSEL FOR DEFENDANT

AFFIRMED

On September 14, 1998, the defendant, Gary Kinard, was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967. The defendant pled not guilty at his arraignment on September 17, 1998. After a suppression and preliminary hearing on October 7, 1998, the trial court found probable cause and denied defendant's motion to suppress evidence. On November 16, 1998, the defendant withdrew his not guilty plea and pled guilty as charged pursuant to State v. Crosby, 338 So.2d 584 (La. 1976). The State then filed a multiple bill of information alleging

defendant was a second felony offender. The defendant admitted to the multiple bill allegations. The trial court adjudicated the defendant a second felony offender and sentenced defendant to five years at hard labor. Defendant subsequently filed this appeal.

FACTS

Officer David Waite testified at the suppression hearing that at approximately 9:23 a.m. on July 9, 1998, he and his partner responded to a call from a McDonald's restaurant located on St. Claude Avenue concerning an intoxicated person who was harassing customers. When the officer arrived on the scene, he spoke with the restaurant manager. She indicated that she did not want the defendant to go to jail but wanted him removed from the premises. The officers placed the defendant in the back of the police vehicle and attempted to drive the defendant home. However, the defendant could not remember where he lived. The defendant gave the officers an address on Kentucky Street. When they arrived at the residence, the defendant realized that it was not his house. The defendant stated that he would show the officers where he lived. At that point, the defendant attempted to locate his identification but he could not find any form of identification. Officer Waite's partner then decided to give the defendant a

field sobriety test. The defendant failed the test. He stumbled and fell. In addition, the defendant was mumbling and slurring his words. The defendant was then placed under arrest for public intoxication. In a search incident to the arrest, the officers found five rocks of crack cocaine on the defendant.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR NUMBER ONE

In his sole assignment of error, the defendant complains that the trial court erred when it denied his motion to suppress evidence. He contends that he was taken into custody without probable cause to arrest.

Probable cause to arrest exists when the facts and circumstances, either personally known to the arresting officer or of which he has reasonable and trustworthy information, are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. State v. Thomas, 349 So.2d 270, 272 (La. 1977). The standard for assessing probable cause is an objective standard that must withstand the "detached, neutral scrutiny of a judge." State v. Flowers, 441 So.2d 707,

712 (La.1983), reversed on other grounds, 779 F.2d 1115 (5 Cir. 1986). The determination of probable cause must take into account the "practical considerations of everyday life on which ... average police officers can be expected to act." State v. Raheem, 464 So.2d 293, 296 (La. 1985).

Defendant's argument is clearly without merit. The defendant was intoxicated when the police officers arrived at McDonald's and decided to take the defendant home. The officers smelled alcohol on the defendant, who was stumbling and slurring his words. The officers had probable cause at that time to arrest the defendant for public intoxication. However, the officers chose to attempt to take the defendant home. When it appeared that the defendant was so intoxicated that he could not remember the location of his house, the officers had no choice but to arrest the defendant and take him to Central Lockup. The five rocks of crack cocaine were found on the defendant's person after a valid search incident to the defendant's arrest for public intoxication. The trial court correctly denied defendant's motion to suppress evidence.

CONCLUSION

Accordingly, for the reasons stated herein, the defendant's conviction and sentence are affirmed.

AFFIRMED