NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-1054**
VERSUS	*	**COURT OF APPEAL**
MILTON J. HORTON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 399-580, SECTION "A"
HONORABLE CHARLES L. ELLOIE, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * * *

(COURT COMPOSED OF JUDGE STEVEN R. PLOTKIN, JUDGE MICHAEL E. KIRBY, AND JUDGE MAX N. TOBIAS, JR.)

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AFFIRMED

By bill of information dated 6 July 1998, Milton J. Horton ("Horton") was charged with possession of more than twenty-eight grams, but less than two hundred grams, of cocaine, a violation of La. R.S. 40:967. He pled not guilty. On 8 December 1999, he was tried by a twelve-member jury, and found guilty as charged. On 14 December 1999, the trial court sentenced Horton to 10 years at hard labor without benefit of parole, probation, or suspension of sentence. The State filed a multiple bill, and, on 7 January 2000, Horton admitted to being a second offender. The court withheld imposition of sentence, although the multiple bill hearing transcript states that sentencing was set for 14 February 2000. The minute entry for 14 February 2000 states that a sentencing hearing was reset for 15 March 2000. There are no minute entries for that date in the record. The record on appeal fails to reflect that the defendant has been sentenced on the multiple bill.

STATEMENT OF THE FACTS

Officer Louis Martinez testified that on 20 June 1998 he investigated complaints concerning illegal drug activity in an abandoned building in the 3100 block of Caladium Lane, pursuant to complaints received on the New

Orleans Police Department Narcotics Hotline. He further stated that as he turned onto Caladium Lane from Murl Street, he saw Horton, who was alone, walking from a vehicle to the sidewalk of a building that was not abandoned. Officer Martinez testified that Horton took an object from under his shirt, dropped it to the ground when he saw the police car, and began to walk away. He further testified that he and his partner exited their vehicle and retrieved the object, which he said contained a large quantity of what he believed to be cocaine. Horton was then placed under arrest.

Officer Keith Ellis testified that he was on patrol with Officer Martinez on 20 June 1998 at 2:00 p.m. in the 3100 block of Caladium Lane where there had been numerous complaints of illegal drug activity. He stated that he saw Horton standing in a driveway and that Horton dropped an object to the ground as the officers drove into the driveway. Officer Ellis stated that he retrieved the object, a bag, which contained a white powdery substance he believed to be cocaine.

Officer Glenn Guilliot testified that he weighed and tested the white, powdery substance. He found that it was positive for cocaine and that it weighed sixty-three grams.

Trachelle Cross testified that Horton was her boyfriend and that they had stopped to visit her cousin. She stated that Horton pulled into the

driveway when he saw a female friend, Debbie Ware, and that she remained in the car as he spoke to her. She further stated that she then saw the police car drive up and that Horton walked over to the police car. Ms. Cross testified that the police officers got out of their car and handcuffed Horton. She further testified that the officers told her that Horton was under arrest for trespassing. She denied seeing Horton drop anything to the ground.

Troy Brooks testified that he and his cousin, Ms. Ware, were walking to Ms. Ware's house when Horton pulled into the driveway. He stated that as Horton spoke with Ms. Ware, a police car came into the driveway; the officers asked Horton to come over to the car. He further stated that Horton went over to the police car and the officers then placed Horton on the car and searched him. He denied seeing Horton drop anything to the ground. Mr. Brooks stated that the officers told him and his cousin to continue walking.

ERRORS PATENT

A review of the record reveals no errors patent.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, Horton complains that the trial court erred in denying his motion to suppress the evidence. He argues that the anonymous tip received by the police did not provide a lawful basis for the

search and seizure because the tip did not give any description of the accused.

A police officer has the right to briefly detain and interrogate a person when the officer has a reasonable articulable suspicion that the person is, has been, or is about to be engaged in criminal conduct. La. C.Cr.P. art. 215.1; Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968); State v. Tucker, 626 So. 2d 707 (La. 1993). "Reasonable suspicion" is something less than probable cause, and a reviewing court must look to the facts and circumstances of each case to determine whether the detaining officer had sufficient facts within his knowledge to justify an infringement of an individual's right to be free from governmental interference. State v. Robertson, 97-2960 (La. 10/20/98), 721 So. 2d 1268. Mere suspicious activity is not a sufficient basis for police interference with an individual's freedom. State v. Williams, 421 So. 2d 874 (La. 1982). However, the level of suspicion need not rise to the probable cause needed for a lawful arrest. State v. Huntley, 97-0965 (La. 3/13/98), 708 So. 2d 1048. The totality of the circumstances must be considered in determining whether reasonable suspicion exists. State v. Belton, 441 So. 2d 1195 (La. 1983), cert. denied Belton v. Louisiana, 466 U.S. 953, 104 S.Ct. 2158 (1984). An investigative stop must be justified by some objective manifestation that the person to be stopped is or is about to

be engaged in criminal activity, or else there must be reasonable grounds to believe that the person is wanted for past criminal conduct. State v. Moreno, 619 So. 2d 62 (La. 1993). Property that is abandoned without any prior unlawful intrusion into a citizen's right to be free from governmental interference may be lawfully seized. Belton, 441 So. 2d at 1199. An arrest occurs when there is an actual restraint of the person, and the circumstances indicate an intent to effect an extended restraint on the liberty of the accused. La. C.Cr.P. art. 201; State v. Simms, 571 So. 2d 145 (La. 1990).

Horton cites Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375 (2000), in support of his argument that the evidence should have been suppressed. In that case, the police had received an anonymous tip that a young black male, wearing a plaid shirt, was at a particular bus stop and had a gun in his possession. The police arrived at the bus stop six minutes after receiving the tip, and they saw three young men at the bus stop. One of the young men, J.L., wore a plaid shirt. The officers, who frisked all three young men, found a gun in J.L.'s pocket. The United States Supreme Court held that the anonymous tip did not give the officers reasonable suspicion for an investigative stop because the tip did not show that the tipster had knowledge of concealed criminal activity. The Court further stated that the tip had to be reliable in its assertion of illegality and not just in its tendency

to identify a determinate person.

In the present case, unlike Florida v. J.L., the basis for the stop of Horton was not the tips called into the police. The basis for the stop was the fact that the officers saw Horton drop an object to the ground as they approached in their police car. The tips to the hotline were why the officers were on patrol in the area, and it was because they were on patrol that they saw Horton's suspicious action of dropping the object to the ground upon the officers' approach. In Florida v. J.L., no evidence was present that the defendant had done anything suspicious when the officers went to the bus stop to check out the tip; therefore, the officers in that case had no reason to stop and frisk the defendant. Here, Horton abandoned the contraband before any intrusion into his right to be free from governmental interference. See State v. Belton, supra. Accordingly, the trial court did not err in denying the motion to suppress the evidence.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, Horton complains that the trial court erred in allowing inadmissible hearsay into evidence. He argues that the officers' testimony regarding the anonymous tips about illegal drug activity should not have been admitted into evidence. A review of the record

shows that Horton did not assert a hearsay objection to the testimony of either officer who referred to the anonymous tips received on the narcotics hotline or to complaints made by community leaders. The failure to object precludes appellate review. La. C.Cr.P. art. 841; La. C.E. art. 103.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 3

In his third assignment of error, Horton complains that he was prejudiced when a police officer testified that he had previously arrested Horton. He argues that this was inadmissible evidence and allowed the jury to convict him for being a bad person, and not for the charged crime. A review of the record shows that Horton did not contemporaneously object, request an admonishment, or move for a mistrial when Officer Martinez stated that he knew Horton because he had previously arrested him. Horton did not move for a mistrial until after the State rested its case. Because Horton failed to make a contemporaneous objection, request for admonishment, or motion for mistrial, appellate review is precluded. La. C.Cr.P. art. 841.

This assignment of error is without merit.

RECOMMENDATION

For the foregoing reasons, the conviction and sentence are affirmed.

AFFIRMED