NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-2355**
VERSUS	*	**COURT OF APPEAL**
KEFFER MOORE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 399-358, SECTION "A"
Honorable Charles L. Elloie, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones, and Judge Dennis R. Bagneris, Sr.)

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AMENDED AND AFFIRMED AS AMENDED

STATEMENT OF THE CASE

On June 26, 1998, the defendant, Keffer Moore, was charged with one count each of the possession with the intent to distribute cocaine and of being a convicted felon in possession of a firearm. At his arraignment on July 13, 1998, he pled not guilty to both counts. His motion to suppress the evidence was heard and denied on October 28, 1998. Although he noted his intent to take writs from this ruling, he did not do so. The matter was reset several times, and, on May 4, 2000, the defendant withdrew his prior pleas of not guilty and pled guilty as charged in each count, reserving his right to appeal the ruling on the motion to suppress the evidence under State v. Crosby, 338 So. 2d 584 (La. 1976). He was sentenced on each count to serve ten years at hard labor without benefit of parole, probation, or suspension of sentence, with the sentences to run concurrently. The trial court subsequently granted the motion for appeal. The record was lodged in this court on October 25, 1998.

FACTS

On the evening of January 19, 1998, police officers received a tip that the defendant was involved in drug activity at the corner of Fourth and Dryades Streets. The informant was described as a concerned citizen. The officers had previously heard that the defendant was a mid-level drug dealer who frequented that corner, using juveniles in his crack cocaine sales. They also knew he had a prior felony drug conviction. The officers drove to that location, proceeding down Dryades against traffic. As they neared the corner of Dryades and Fourth, they saw the defendant standing on the corner. When the defendant saw the officers approaching, he turned and walked up on the porch of 2704 Dryades. The officers saw the defendant open a screen door at that address, take a large silver object out of his waistband, and put the object inside the residence. Believing the object they saw the defendant put inside the house was a gun, the officers came up on the porch, handcuffed him, and advised him of his rights. The officers looked inside the residence and saw a gun lying on a stool just inside the door. The officers placed the defendant under arrest.

One of the officers opened the screen door to retrieve the gun. He then saw a small digital scale sitting on a coffee table a few feet from the stool upon which the gun sat. A razor blade was sitting on the scale, and both the scale and the razor were covered with a white powdery residue,

which the officer believed was cocaine. The officers secured the residence in preparation for obtaining a search warrant. At that point, Ms. Inisha London came out of a bedroom in the residence, and the officers detained her and advised her of her rights. The officers obtained a search warrant and executed the warrant a short time later. Pursuant to the warrant, the officers seized from a bedroom a bag containing a large rock of crack cocaine weighing between twenty and twenty-five grams. They also found seven pieces of crack cocaine hidden in a sock. They seized various documents in Ms. London's name, the defendant's name, and the defendant's mother's name with the address 2704 Dryades on them. The officers seized the scale, the razor blade, the gun, two magazines for the gun, and currency, both from the bedroom and from the defendant's person. The officers then placed both Ms. London and the defendant under arrest for cocaine charges.

LAW AND DISCUSSION

ERRORS PATENT

A review of the record reveals patent errors with respect to both of the defendant's sentences. The minute entry of May 4, 2000 indicates the trial court sentenced him on both counts to ten years at hard labor without benefit of parole, probation, or suspension of sentence. Both sentences are illegal,

but for different reasons.

With respect to the cocaine conviction, La. R.S. 40:967 provides that for a conviction for the possession with the intent to distribute cocaine, the offender must be sentenced to not less than five nor more than thirty years at hard labor, *the first five years of which must be without benefit of parole, probation, or suspension of sentence.* Here, the minute entry indicates the court imposed the entire cocaine sentence to be served without these benefits. Thus, the sentence is illegally excessive; therefore, this Court hereby amends the sentence to prohibit parole eligibility for only the first five years.

There is also an error with respect to the firearm conviction. The sentence to be imposed for a violation of La. R.S. 14:95.1 is not less than five nor more than fifteen years without benefits, and the statute requires that a fine of not less than $1,000 but not more than $5,000 be imposed. There is no indication that the court imposed a fine in this case; therefore, the sentence is illegally lenient. However, as this error is favorable to the defendant, this Court must ignore it. See State v. Fraser, 484 So.2d 122 (La. 1986).

There are no other errors patent.

ASSIGNMENT OF ERROR

By his sole assignment of error, the defendant contends the trial court erred by denying his motion to suppress the evidence. Specifically, he argues the information known by the officers and their observations did not give them reasonable suspicion to stop him. He further argues the officers had no probable cause to enter the house, seize the gun, and discover the cocaine residue on the scale and razor blade lying on a table near the gun.

The defendant first argues there was no reasonable suspicion to stop him. He contends the officers were intending to stop him prior to his placing the gun inside the residence, and he argues the officers' knowledge at that time was insufficient to support a finding of reasonable suspicion on their part that he was engaged in criminal activity.

In State v. Dank, 99-0390 pp. 4-5 (La. App. 4 Cir. 5/24/00), 764 So. 2d 148, 154-155, this Court addressed the issue of reasonable suspicion to support an investigatory stop of a suspect:

> La. C.Cr.P. art. 215(A) 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.
>
> "Reasonable suspicion" to stop is something less than the probable cause required for an arrest, and

the 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 the suspect's rights. *State v. Littles*, 98-2517, p. 3 (La.App. 4 Cir. 9/15/99), 742 So.2d 735, 737; *State v. Clay*, 97-2858, p. 4 (La.App. 4 Cir. 3/17/99), 731 So.2d 414, 416, *writ denied*, 99-0969 (La.9/17/99), 747 So.2d 1096. Evidence derived from an unreasonable stop, i.e., seizure, will be excluded from trial. *State v. Benjamin*, 97-3065, p. 3 (La.12/1/98), 722 So.2d 988, 989; *State v. Tyler*, 98-1667. P. 4 (La.App. 4 Cir. 11/24/99), 749 So.2d 767, 770. In assessing the reasonableness of an investigatory stop, the court must balance the need for the stop against the invasion of privacy that it entails. See *State v. Harris*, 99-1434, pp. 2-3 (La.App. 4 Cir. 9/8/99), 744 So.2d 160, 162. The totality of the circumstances must be considered in determining whether reasonable suspicion exists. *State v. Oliver*, 99-1585, p. 4 (La.App. 4 Cir. 9/22/99), 752 So.2d 911, 914; *State v. Mitchell*, 98-1129, p. 9 (La.App. 4 Cir. 2/3/99), 731 So.2d 319, 326. The detaining officers must have knowledge of specific, articulable facts, which, if taken together with rational inferences from those facts, reasonably warrant the stop. *State v. Dennis*, 98-1016, p. 5 (La.App. 4 Cir. 9/22/99), 753 So.2d 296, 299; *State v. Keller*, 98-0502, p. 2 (La.App. 4 Cir. 3/10/99), 732 So.2d 77, 78. In reviewing the totality of the 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. Cook*, 99-0091, p. 6 (La.App. 4 Cir. 5/5/99), 733 So.2d 1227, 1231; *State v. Williams*, 98-3059, p. 3 (La.App. 4 Cir. 3/3/99), 729 So.2d 142, 144. Deference should be given to the experience of the officers who were present at the time of the incident. *State v. Ratliff*, 98-0094, p. 3 (La.App. 4

Cir. 5/19/99), 737 So.2d 252, 254, *writ denied*, 99-1523 (La.10/29/99), 748 So.2d 1160.

Here, the defendant argues that the tip from the concerned citizen, even added to the officers' knowledge of the defendant's past, did not give the officers reasonable suspicion to stop him because they did not observe him involved in any criminal activity. He points out that the informant was unknown to the officers. He further points to the fact that the officers did not specify how they knew of his (the defendant's) prior criminal history or of his present reputation for dealing drugs at that location. If the officers had actually stopped him before he hid what they believed was a gun, his argument would have had some validity. However, by the time the officers detained and handcuffed him, he had already placed what they believed was a gun inside the residence. Given the tip, their knowledge of his prior convictions, and his apparent abandonment of a gun, the officers had not only reasonable suspicion of criminal activity to detain him, but they also had probable cause to arrest him for being a convicted felon in possession of a firearm. See State v. Wilson, 467 So.2d 503, 515 (La. 1985); State v. Blue, 97-2699 (La. App. 4 Cir. 1/7/98), 705 So.2d 1242.

The defendant argues that the officers did not know the object he placed inside the residence was a gun until they opened the door and seized it. The defendant mischaracterizes the officers' testimony. Officer McCabe

testified they saw the appellant remove “a large silver object from his waistband”. He further testified that he and his partner “immediately realized that the large silver object was obviously a handgun.” Officer Gaudet testified that they “thought it might be a weapon . . . we had a hunch that it might have been a weapon.” Given this testimony, even though Officer Gaudet testified that he did not positively know the object was a gun, it was more probable than not that the object the officers saw the appellant put inside the house was a gun. Added to their knowledge that the appellant was a convicted felon, they had probable cause to arrest him for being a convicted felon in possession of a firearm.

Officer McCabe testified that after he and Officer Gaudet detained and handcuffed the appellant, he looked through the screen door and saw the gun lying in plain view on top of a stool sitting next to the door. When the officer opened the door to retrieve the gun, he saw the scale and razor blade with residue sitting on top of the coffee table near the stool. In State v. Smith, 96-2161 p. 3 (La. App. 4 Cir. 6/3/98), 715 So.2d 547, 549, this Court discussed the plain view exception:

> In order for an object to be lawfully seized pursuant to the "plain view" exception to the Fourth Amendment, "(1) there must be a prior justification for the intrusion into a protected area; (2) in the course of which the evidence is inadvertently discovered; and (3) where it is immediately apparent without close inspection that

> the items are evidence or contraband." State v. Hernandez, 410 So.2d 1381, 1383 (La. 1982); State v. Tate, 623 So.2d 908, 917 (La. App. 4 Cir.), writ denied 629 So.2d 1126 and 1140 (La. 1993). In Tate, this court further noted: "In Horton v. California, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990), the Court held that evidence found in plain view need not have been found "inadvertently" in order to fall within this exception to the warrant requirement, although in most cases evidence seized pursuant to this exception will have been discovered inadvertently." Tate at 917.

See also State v. Nogess, 98-0670 (La. App. 4 Cir. 3/3/99), 729 So.2d 132; State v. O'Shea, , 97-0400 (La. App. 4 Cir. 5/21/97), 696 So.2d 115.

Here, Officer McCabe testified he saw the defendant put what appeared to him to be a gun inside the door. He then looked inside the door and saw the gun lying on a stool next to the door. Thus, he discovered the gun in plain view. He could enter the residence to seize the gun pursuant to the exigent circumstances exception to the warrant requirement. In State v. Page, 95-2401, p. 10 (La. App. 4 Cir. 8/21/96), 680 So.2d 700, 709, this Court discussed the warrantless entry into a protected area:

> There is a justified intrusion of a protected area if there is probable cause to arrest and exigent circumstances. *State v. Rudolph*, 369 So.2d 1320, 1326 (La. 1979), cert. den., *Rudolph v. Louisiana*, 454 U.S. 1142, 102 S.Ct. 1001 (1982). Exigent circumstances are exceptional circumstances which, when coupled with probable cause, justify an entry into a "protected" area that, without those exceptional circumstances, would be unlawful.

> Examples of exigent circumstances have been found to be escape of the defendant, avoidance of a possible violent confrontation that could cause injury to the officers and the public, and the destruction of evidence. *State v. Hathaway*, 411 So.2d 1074, 1079 (La. 1982).

See also State v. Brown, 99-0640 (La. App. 4 Cir. 5/26/99), 733 So.2d 1282.

In this case, Officer McCabe had probable cause to believe the residence contained evidence of a crime, i.e. the gun, which he saw when he looked inside the screen door. The officers saw the appellant take the gun from his waistband and place it inside the residence. Because he had a prior conviction, the gun was evidence of the defendant's possession of a firearm as a convicted felon. As for the exigent circumstances, the gun was lying right inside the door of the residence, behind an unlocked screen door. Although the officers were not aware that anyone else was inside the residence, it was very possible that someone could reach inside the door from the outside if the officers left the area to get a search warrant. Thus, they were justified in entering the residence to secure the gun.

Once inside the residence, Officer McCabe saw the scale and the razor blade covered in a white residue lying in plain view on the coffee table near the stool. The officers could seize these items pursuant to the plain view exception to the warrant requirement.

The rest of the evidence was seized pursuant to the search warrant or

incident to the defendant's arrest. The defendant does not contend that there was no probable cause for the issuance of the warrant. Indeed, given the tip, the officers' knowledge about the defendant's prior drug conviction, and the discovery of the scale and razor blade with residue, there was probable cause to believe the residence contained cocaine. Thus, the warrant was properly issued. See La. C.Cr.P. art. 162; State v. Duncan, 420 So.2d 1105 (La. 1982); State v. Hoffpauir, 99-0128 (La. App. 4 Cir. 4/7/99), 731 So.2d 1026; State v. Bradford, 98-1428 (La. App. 4 Cir. 12/9/98), 729 So.2d 1049.

Given the above, we find that all of the evidence was lawfully seized. The trial court did not err by denying the motion to suppress the evidence. This assignment of error has no merit.

CONCLUSION

Considering the foregoing, the defendant's conviction and his sentence on the firearm conviction is hereby affirmed. The defendant's sentence on the cocaine conviction is amended to prohibit parole eligibility for only the first five years.

AMENDED AND AFFIRMED AS AMENDED