NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-2607**
VERSUS	*	**COURT OF APPEAL**
ALLISON E. HALL	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 413-546, SECTION "H"
Honorable Camille Buras, Judge
* * * * * *
Judge Patricia Rivet Murray
* * * * * *

(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, Judge Patricia Rivet Murray)

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AFFIRMED

Defendant, Allison E. Hall, appeals her conviction of possession of cocaine on the sole basis that the trial court erred in denying her motion to suppress the evidence. For the reasons that follow, we affirm.

STATEMENT OF THE CASE

On March 24, 2000, Allison E. Hall was charged with possession of cocaine, a violation of La. R.S. 40:967. At her arraignment, she pled not guilty. The court denied Ms. Hall's motion to suppress, at which point the defendant withdrew her former plea and entered a plea of guilty as charged under the provisions of State v. Crosby, 338 So. 2d 584 (La. 1976). The State then filed a multiple bill of information. On June 23, 2000, defendant pled guilty to the multiple bill and waived any sentencing delays. The court sentenced her pursuant to La. R.S. 15:529.1 to serve thirty months at hard labor to run concurrently with any other sentence. This appeal followed.

FACTS

At approximately 9:45 p.m. on February 24, 2000, Officers Chad Perez and Richie LeBlanc were patrolling in a fully marked police unit near the intersection of General Ogden and Edinburgh Streets. The officers observed a woman, subsequently identified as the defendant, standing alone on the corner in front of a store that had closed earlier in the afternoon. Due to the reputation of the corner for narcotics activity, the time, and the fact that the business was closed, the officers decided to initiate a pedestrian check to find out why the woman was standing on the corner. The woman had her back to the officers as they approached. When they got about fifteen feet from her, she turned around and noticed the police unit. She appeared startled and discarded a white object, which the officers believed to be contraband. After seeing her throw down the object, the officers pulled up next to her, stopped their vehicle, and got out. Officer LeBlanc detained Ms. Hall, and Officer Perez retrieved the discarded white paper towel. Inside the towel was a metal pipe containing a white residue which, based on their past experience, the officers believed to be crack cocaine. Ms. Hall appeared to be jittery and spoke in short phrases, which the officers recognized as signs of being under the influence of crack. Once the pipe was discovered, the officers advised Ms. Hall of her rights and placed her under arrest for possession of crack cocaine and possession of drug paraphernalia. At that

time, she gave them the name Peggy Martin, which they later discovered was not her real name. Consequently, she was also charged with misrepresenting her name.

Ms. Hall testified that she was walking down the street when "some guys" ran past her. A police car then circled the block. When the same police car came back the second time, the officers pulled their vehicle right in front of her and blocked her. The officers told her to get up against the car, frisked her, and went into her pocket, finding the crack pipe.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR

In her sole assignment of error, Ms. Hall argues that the trial court erred in denying her motion to suppress the evidence.

A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court has the opportunity to observe the witnesses and weigh the credibility of their testimony. State v. Mims, 98-2572, (La.App. 4 Cir. 9/22/99), 752 So.2d 192.

Ms Hall contends that the trial court should have granted her motion

to suppress because the police officers lacked reasonable suspicion to stop her. This argument is inapposite. Whether the police had reasonable suspicion to stop the defendant is irrelevant because she discarded the contraband before they actually stopped her. Therefore, the relevant question is whether or not there was an imminent stop of defendant, which prompted her to discard the item.

In California v. Hodari D., 499 U.S. 621, 111 S.Ct. 1547, 113 L. Ed. 2d 690 (1991), the Court held an individual is not "seized within the meaning of the Fourth Amendment until that individual either submits to the police show of authority or is physically contacted by the police."

In State v. Belton, 441 So. 2d 1195 (La. 1983), the Louisiana Supreme Court found an individual was "seized" when he is either "actually stopped" or when an "actual stop" of the individual is "imminent."

An "actual stop" occurs when an individual submits to a police show of authority or is physically contacted by the police. An "imminent actual stop" occurs when the police come upon an individual with such force that, regardless of the individual's attempts to flee or elude the encounter, an actual stop of the individual is virtually certain. State v. Tucker, 626 So. 2d 707, 712 (La. 1993), opinion reaffirmed and reinstated on rehearing, 626 So.2d 720 (La.1993). In Tucker, the Louisiana Supreme Court stated:

Although non-exhaustive, the following factors may be useful

> in assessing the extent of police force employed and determining whether that force was virtually certain to result in an actual stop of an individual: (1) the proximity of the police in relation to the defendant at the outset of the encounter; (2) whether the individual has been surrounded by the police; (3) whether the police approached the individual with their weapons drawn; (4) whether the police and/or the individual are on foot or in motorized vehicles during the encounter; (5) the location and characteristics of the area where the encounter takes place; and (6) the number of police officers involved in the encounter. Id. at 712-713.

In Tucker, acting on repeated complaints of drug-related activity, the police conducted a drug sweep in certain high-crime areas. The sweep began when approximately ten to twelve marked police vehicles carrying twenty to thirty officers converged. When two men noticed the approaching police cars, they quickly broke apart and began to leave. One officer stopped his car and began to get out while simultaneously ordering the two men to "halt" and "prone out." One man lay down immediately. The other, Tucker, moved several steps and tossed away a plastic bag. He then lay down. The Louisiana Supreme Court stated that it "could not conclude an actual stop of Tucker was 'virtually certain' to occur at the time he abandoned the evidence. Thus, at the time Tucker abandoned the marijuana he had not been unconstitutionally seized." Id., 626 So. 2d at 713.

In State v. Poche, 99-0039 (La. App. 4 Cir. 5/5/99), 733 So. 2d 730, a patrol car approached Poche with its bar lights flashing. Poche reached into

his back pocket, turned around, and saw the deputies' car had pulled up to him. The deputy stated that he was about five feet from Poche when the deputy got out of the passenger side of the patrol car. Poche reached for his back pocket. At that point the deputies yelled at him, and one deputy was over the hood of the car with his weapon drawn. Poche dropped an object which contained a small bag of marijuana and valium from his pocket on to the ground. This court determined that under the circumstances where the police flashed their lights and pulled up without telling Poche anything, an actual stop was not virtually certain to occur. The deputies' actions did not constitute an actual or an imminent actual stop when the contraband was abandoned.

In State v. Wilson, 95-0619 (La. App. 4 Cir. 6/7/95), 657 So. 2d 549, three uniformed police officers were patrolling in a marked police unit when they saw a group of men in a courtyard in the Desire Housing Project. They drove the car about two car lengths up onto the grass toward the men. They did not have their lights or siren turned on. Wilson left the group and began walking away. When the car stopped about five feet away, Wilson dropped a pill bottle and ran away. The officers were not out of the car and had not approached with weapons drawn at the time that Wilson dropped the bottle. Two officers chased Wilson and one retrieved the pill bottle that contained

crack cocaine. This court considered the Tucker factors, found that there had been no imminent stop, and concluded that the pill bottle was lawfully seized.

In the present case, the officers were in the police unit when Ms. Hall threw down the pipe. The officers did not stop and exit the vehicle until after the pipe had been discarded. It is clear that the defendant had not been actually stopped at the time she discarded the evidence. Thus, this court must look to the factors set forth in Tucker to determine if there was an "imminent actual stop" at the time she abandoned the property.

Officer Perez testified that as the marked police unit was approaching, when it was about fifteen feet away from Ms. Hall, she turned around, saw the police, looked startled, and threw down the crack pipe; after she did so, the police stopped their vehicle and got out. The police unit did not have its top lights or siren on. The officers did not approach Ms. Hall with their weapons drawn, and they did not try to apprehend the defendant until after she dropped the pipe. Under the totality of circumstances, we find that at the time Ms. Hall abandoned the contraband, the police had used no force that was virtually certain to result in an imminent actual stop of the defendant. Thus, the officers were justified in retrieving the pipe. The trial court did not err in denying the motion to suppress this evidence.

CONCLUSION

Accordingly, for the reasons stated, we affirm the defendant's conviction and sentence.

AFFIRMED