NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-0176**
VERSUS	*	**COURT OF APPEAL**
JOSEPH RICHARDSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-974, SECTION "E"
Honorable Calvin Johnson, 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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CONVICTION AND SENTENCE AFFIRMED

STATEMENT OF CASE

On January 13, 2000, Joseph Richardson was charged by bill of information with possession of cocaine, a violation of La. R.S. 40:967(C)(2). At arraignment on January 19, 2000, he entered a plea of not guilty. The court found probable cause on April 14, 2000 and denied the motion to suppress the evidence. On June 9, 2000, defendant entered a guilty plea under the provisions of State v. Crosby, 338 So. 2d 584 (La. 1976). He waived delays and was sentenced to serve forty months at hard labor. The State filed a multiple bill of information, and defendant admitted to the multiple bill. The court set aside the previous sentence and resentenced the defendant under the provisions of La. R.S. 15:529.1 to serve forty months at hard labor. The court recommended the Blue Waters and/or intensive incarceration program.

In writs 2000-K-1381 and 2000-K-1798, this court ordered the district court to grant defendant an out-of-time appeal, if the court found that he had not waived his right to an appeal. On September 22, 2000, the district court granted the appeal.

STATEMENT OF FACT

At the motion to suppress evidence and preliminary hearing, Officer Chad Perez testified that on January 5, 2000 at approximately 1:15 a.m. he and his partner were on proactive patrol driving a fully-marked unit in an uptown direction on Annunciation Street when they observed a black male walking in the street towards them in a downtown direction, next to vehicles, carrying some kind of bag. As he walked past a vehicle, he would stop and look inside the vehicle. According to Officer Perez, car burglaries were a big problem in that area. The defendant's actions raised the officers' suspicions that he may be attempting to break into a car or had just finished breaking into a car. They decided to initiate a pedestrian stop. When they came in contact with him, they immediately noticed that he seemed dazed with a glazed look over his eyes. As they spoke to him, they noticed that his speech was slurred, and he seemed very incoherent, all signs of being under the influence of narcotics.

The officers then placed him under arrest under an affidavit for drug incapacitation. He was not issued a summons because he had no form of identification on him. He also appeared to be in a delirious state, and he could have been a hazard to himself or others. The defendant provided the officers with his name. They ran it through the computer and learned that he was wanted for theft. He was then placed under arrest for the warrant.

Officer Perez conducted a search incident to arrest and located a homemade foil pipe with a piece of rock-like substance partially burned on the end of it in the subject's jacket pocket. Based on his past experience, Officer Perez believed it to be a homemade crack pipe and the white substance to be crack cocaine. He then advised the subject of his rights and placed him under arrest for possession of crack cocaine and possession of drug paraphernalia.

ERRORS PATENT

A review of the record for errors patent reveals none.

COUNSEL'S ASSIGNMENT OF ERROR

Appellate counsel argues that the trial court erred in denying the motion to suppress the evidence. Specifically, he contends that the officers lacked reasonable suspicion to make an investigatory stop.

Warrantless searches and seizures fail to meet constitutional requisites unless they fall within one of the narrow exceptions to the warrant requirement. State v. Edwards, 97-1797, (La. 7/2/99), 750 So. 2d 893, cert. denied, Edwards v. Louisiana, 528 U.S. 1026, 120 S.Ct. 542, 145 L.Ed.2d 421 (1999). On trial of a motion to suppress, the State has the burden of proving the admissibility of all evidence seized without a warrant. La. C.Cr.P. art. 703(D); State v. Jones, 97-2217, (La. App. 4 Cir. 2/24/99), 731

So.2d 389, 395, writ denied, 99-1702 (La. 11/5/99), 751 So. 2d 234. 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.

A temporary stop by a police officer of a person in a public place is authorized by La. C.Cr.P. art. 215(A) that provides in part:

> 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.

The dispositive issue then, is whether police had reasonable suspicion to justify an investigatory stop of the defendant. "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, (La. App. 4 Cir. 9/15/99), 742 So. 2d 735; State v. Clay, 97-2858, (La. App. 4 Cir. 3/17/99), 731 So. 2d 414, 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, (La.12/1/98), 722 So.2d 988; State v. Tyler, 98-1667, (La. App. 4 Cir.

11/24/99), 749 So. 2d 767. 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, (La. App. 4 Cir. 9/8/99), 744 So. 2d 160. The totality of the circumstances must be considered in determining whether reasonable suspicion exists. State v. Oliver, 99-1585, (La. App. 4 Cir. 9/22/99), 752 So. 2d 911; State v. Mitchell, 97-2774, (La. App. 4 Cir. 2/3/99), 731 So. 2d 319. 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, (La. App. 4 Cir. 9/22/99), 753 So. 2d 296; State v. Keller, 98-0502, (La. App. 4 Cir. 3/10/99), 732 So. 2d 77. 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, (La. App. 4 Cir. 5/5/99), 733 So. 2d 1227; State v. Williams, 98-3059, (La. App. 4 Cir. 3/3/99), 729 So. 2d 142. Deference should be given to the experience of the officers who were present at the time of the incident. State v. Ratliff, 98-0094, (La. App. 4 Cir. 5/19/99), 737 So. 2d 252, writ denied, 99-1523 (La. 10/29/99), 748 So. 2d 1160.

In the instant case, Officers Perez and his partner observed the

defendant walking in the street, stopping, and looking inside parked vehicles. The officer testified that they were on proactive patrol in an area with a high incidence of auto thefts and burglaries. They could have reasonably suspected that the defendant was about to break in to the parked car. After the defendant was stopped, the officers observed that he exhibited signs of being under the influence of narcotics. The defendant was placed under arrest for drug incapacitation. The officers ran a name inquiry revealing that the defendant was wanted for theft. He was then placed under arrest on the theft warrant, and a search incident to the arrest was conducted during which the foil pipe with a piece of crack on the end was found. There is no merit to this claim.

PRO SE ASSIGNMENT OF ERROR

The defendant argues pro se that the full search following his arrest was illegal because the arrest was for a misdemeanor offense.

A search is per se unreasonable when it is conducted without a warrant issued upon probable cause, subject to a few exceptions. State v. Raheem, 464 So.2d 293, 295 (La. 1985). A search made incident to a lawful arrest is one such exception. Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). State v. Wilson, 467 So.2d 503, 517

(La.1985), cert. denied, Wilson v. Louisiana, 474 U.S. 911, 106 S.Ct. 281, 88 L.Ed.2d 246. As this court noted in State v. Parker, 622 So.2d 791 (La. App. 4 Cir. 1993), writ denied, 627 So.2d 660 (La. 1993), the search of the defendant is legal if there is probable cause for his arrest. Id. at 793 (citing Chimel, supra, and Wilson, supra).

In the case at bar, the defendant had been arrested on a theft warrant and a drug intoxication charge when the police officers searched him and found the crack pipe. As the pipe was found in a search incident to a lawful arrest, the trial court correctly denied the motion to suppress evidence. This claim has no merit.

CONCLUSION

Accordingly, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED