STATE OF LOUISIANA	*	**NO. 2001-KA-0286**
VERSUS	*	**COURT OF APPEAL**
LAURENCE WATKINS, A/K/A LAWRENCE WATKINS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 410-340, SECTION "B"
Honorable Patrick G. Quinlan, Judge
* * * * * *

JOAN BERNARD ARMSTRONG

JUDGE

* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge David S. Gorbaty)

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AFFIRMED

STATEMENT OF CASE

On October 22, 1999, the defendant, Laurence Watkins, a/k/a Lawrence Watkins, was charged with one count each of being a convicted felon in possession of a firearm and possession of cocaine. At his arraignment on December 2 he pled not guilty to each count. The trial court heard and denied his motion to suppress the evidence on April 14, 2000. This court denied writs, noting the defendant would have an adequate remedy on appeal if convicted. State v. Watkins, 2000-1265 (La. App. 4 Cir. 6/19/00), unpub. On August 18, after the defendant waived his right to a jury, the court conducted a bench trial, at the conclusion of which it found him guilty of attempted possession of a firearm by a felon and guilty as charged of possession of cocaine. On August 31, the court sentenced the defendant on the firearm count to serve three years at hard labor without benefit of parole, probation, or suspension of sentence, and it imposed but suspended a $1000 fine. On the cocaine count the court sentenced the defendant to serve three years at hard labor, the sentences to be served

concurrently. The defendant orally moved for a new trial, upon which the court did not rule at that time. The court granted the defendant's motion for appeal.

FACTS

The record reflects that early in the evening of September 28, 1999, police officers received a call from an anonymous concerned citizen stating that a man was at the corner of Freret Street and Martin Luther King Boulevard with a gun, possibly intending to rob a store at that corner. The citizen described the suspect as a light-skinned black male wearing a white undershirt and black sweatpants. The officers went to that location and observed the defendant, who matched the description given in the tip, exiting a store. The officer who testified at trial stated he could see a bulge in the right front pocket of the defendant's pants. The officers called to the defendant, who grabbed the pocket and quickly walked to a nearby car and entered it. The car drove off, and the officers followed, activating their lights and sirens. The officer testified the car made a right turn and then an immediate left, where it was stopped by traffic. The officer stated that the defendant jumped out of the passenger seat and fled on foot. The officer exited his car and chased the defendant, and during the chase he saw the defendant reach into his right front pants pocket and pull out a gun. The

defendant threw the gun over a fence and continued running. The officer was able to apprehend the defendant when the defendant stumbled and fell. The officer's partner then arrived and held the defendant, while the officer returned to the area where he had seen the defendant throw the gun. He looked through the chain-link fence and saw a .38 caliber gun lying on the ground. The officer seized the gun and returned to the defendant. The officers arrested the defendant and advised him of his rights. Pursuant to this arrest, the officers searched the defendant and retrieved $86 and a medicine bottle containing five rocks of what was later found to be cocaine.

On cross-examination, the officer admitted that he did not see the defendant committing any crime when he walked out of the store. He testified that the only suspicious activity he saw the defendant engage in was grabbing his pocket when he noticed the officers. He also admitted that the store had not been robbed.

The parties stipulated that the five rocks found inside the medicine bottle tested positive for cocaine. They also stipulated that fingerprints on the bill of information from a prior felony conviction from Jefferson Parish matched those taken from the defendant.

ANALYSIS

A. Errors Patent

A review of the record reveals there is no indication the trial court ever ruled on the defendant's motion for new trial. However, the motion was not properly filed in that it was filed after sentencing, in contravention of La. C.Cr.P. art. 853 which provides that motions for new trial must be filed and disposed of prior to sentencing, and it was not in writing as mandated by La. C.Cr.P. art. 852. Because the motion was not properly filed, there was no error in the trial court's failure to rule on the motion, if indeed it did not do so.

There are no other errors patent.

B. Assignment of Error

By his sole assignment of error, the defendant contends that the trial court erred by denying his motion to suppress the evidence. Specifically, he argues: the officers did not have reasonable suspicion to stop him; the stop was an arrest, not an investigatory stop, for which there was no probable cause; the stop was based upon a traffic stop which was merely a pretext; the abandonment of the gun was caused by the illegal stop; and the subsequent arrest for the gun possession and the seizure of the cocaine incident to that arrest was tainted by the original stop/arrest.

The same officer who testified at trial also testified at the suppression hearing. At the hearing, he additionally stated that the tip indicated the

suspect was loitering in front of the store at the indicated corner. He did not mention the defendant grabbing at his pocket, and he stated that the defendant ignored their calls and walked to the other car. He testified that when the car fled, the driver ran a stop sign, a fact not mentioned at the bench trial. He also testified at the hearing that the car was slightly speeding. He described the actual stop of the suspects' car as being blocked by backup officers, not merely by being stopped in traffic as reported at trial. He stated that when the car stopped, the defendant immediately opened the door and fled. The officer's description of the chase was basically the same, noting that during the chase the defendant "was still clutching the right front pocket with his right hand."

On cross-examination, the officer admitted that the defendant was carrying a drink in his hand as he exited the store, and he did not know what constituted the bulge in the defendant's pocket. The officer testified that he decided to stop the defendant because the defendant matched the description given in the tip and he twice ignored the officers' calls to him. He testified that the driver of the car, Darryl Brown, was issued two citations, one for failure to yield and one for disregarding a stop sign. He admitted that once he and his partner had arrested and searched the defendant, they returned to the car from which the defendant fled and discovered that other officers had

searched Brown and the car, finding more contraband on the car's floorboard (the defendant was not charged with possessing this contraband). He also admitted that his partner had searched the defendant while he walked back to retrieve the gun he had seen the defendant throw over the fence during the chase.

Darryl Brown also testified at the suppression hearing. He stated that he and the defendant drove up to the store, went inside, and purchased non-alcoholic drinks. He testified that he did not see the defendant with a gun. He estimated they were inside the store between two and four minutes, and as they left the store, he saw a police car passing. He testified that he did not see any other officers at that time, nor did he hear anyone calling to the defendant. He testified that they entered his car and drove from the store, and a few blocks later a police car swerved in front of him, causing him to stop. He stated that one police car was stopped in front of him and at least one was stopped behind him. He denied seeing any police car with activated lights or hearing a siren. He testified that the officers ordered him out of the car and onto his knees. He testified that some officers searched his car during the stop. He stated that although he was also arrested on that date, no charges were filed against him except for the issuance of traffic citations, which he paid. He also testified that he was currently imprisoned due to a

drug conviction in Jefferson Parish.

The defendant first argues that the initial stop was illegal in that the officers had neither reasonable suspicion for an investigatory stop nor probable cause for an arrest at the time they stopped the car in which the defendant was riding. 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.

The defendant argues that the tip did not give the officers reasonable suspicion to stop him, citing Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375 (2000), where the U.S. Supreme Court held that the officers did not have reasonable suspicion to conduct an investigatory stop. The police received an anonymous tip that a man at a certain location, dressed in a certain way, was carrying a gun. The officer went to that location and saw the defendant,

who matched the description. Even though the officers did not see the defendant engage in any suspicious activity, they stopped and detained him based on the tip. The U.S. Supreme Court found that the anonymous tip, which merely described the defendant and noted his location, did not give the officers reasonable suspicion to stop him. The Court noted that anonymous tips such as the one in that case, which gave no predictive information, gave the officers no means to test the informant's knowledge or credibility. The Court stated:

> An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

Id. at 272, 102 S.Ct. at 1379.

The defendant also cites State v. Robertson, 97-2960 (La. 10/20/98), 721 So.2d 1268. In Robertson the anonymous tip noted that the defendant was selling drugs, described the vehicle the defendant drove, and noted where his vehicle would be parked when he was not using it to sell drugs. The officers went to that location and saw the vehicle just being driven away. The officers followed, and when the defendant stopped the vehicle,

the officers detained him and called for a canine unit. Contraband was subsequently discovered. Upon review of the trial court's denial of the motion to suppress the evidence and this Court's denial of writs from that refusal, the Court reversed, finding the corroboration of the "tip" did not give the officers reasonable suspicion to stop the defendant. The Court noted that the tip, being anonymous, lacked an indicia of reliability or basis of knowledge, and the officers' failure to corroborate any claim of criminal activity gave them an insufficient basis for a finding of reasonable suspicion to support the stop. The Court noted:

> We note that the police were not powerless to act on the non-predictive, anonymous tip they received. The officers could have set up more extensive surveillance of defendant until they observed suspicious or unusual behavior. Furthermore, if, after corroborating the readily observable facts, the officers had noticed unusual or suspicious conduct on defendant's part, they would have had reasonable suspicion to detain him. These circumstances, however, were not present here. In the absence of any suspicious conduct or corroboration of information from which police could conclude that the anonymous informant's allegation of criminal activity was reliable, we must conclude that there was no reasonable suspicion to detain defendant. The trial judge erred in holding otherwise.

Robertson, 98-2960 pp. 5-6, 721 So.2d at 1270-1271.

Here, if the officers had stopped the defendant based only upon the

facts that he was in the area indicated by the tip and that he matched the description given in the tip, they would not have had reasonable suspicion to stop him. However, the officers also observed the bulge in this pants, and although they did not know exactly what it contained, they could reasonably infer the bulge may have been a gun, given the tip that the person matching the description had a gun. In addition, the officers saw the defendant pat the bulge upon seeing the officers. In addition, he also ignored their request twice to talk to them and quickly got into the car. The car then left the scene, traveling at a speed slightly above the speed limit. These factors, when added to the tip, could have given the officers reasonable suspicion to stop the defendant.

The defendant argues that there was no real corroboration of the tip because there were "inconsistencies" between the tip and the actual scene as the officers observed it. The defendant points out that when the officers arrived, they did not see him "loitering" as noted in the tip, but rather he had just exited the store. In addition, he was in Darryl Brown's company, while the tip did not mention a companion. Also, he was seen getting into a car, while the tip indicated he was standing outside the store. These are not really inconsistencies. He may very well have been standing outside the store before the officers arrived. The fact that the informant said he was

standing outside the store did not mean that he did not arrive in a car or that he could not leave in a car. In addition, the fact that the informant did not mention a companion does not mean the suspect did not have one. These omissions are not of such a nature as to defeat a finding of reasonable suspicion.

The defendant further correctly argues that the actual stop, performed with a "boxed-in" procedure where one car cut the suspect's car off in front and others pulled in behind, was an arrest rather than an investigatory stop. He contends that because the officers did not have probable cause to stop and arrest him at that point, his abandonment of the gun was a result of the illegal arrest, and the gun should have been suppressed. This court extensively discussed this issue in State v. Broussard, 99-2848, pp. 5-8 (La. App. 4 Cir. 10/4/00), 769 So.2d 1257, 1259-61:

> The initial inquiry, however, is whether the officers detained or arrested the appellant when they stopped him. If the officers' actions were a mere detention, they would have only needed reasonable suspicion of criminal activity to stop him. *State v. Allen*, 95-1754 (La.9/5/96); 682 So.2d 713; State *v. Smiley*, 99-0065 (La. App. 4 Cir. 3/3/99); 729 So.2d 743, *writ den*. 99-0914 (La.5/14/99); 743 So.2d 651; State *v. Sneed*, 95-2326 (La. App. 4 Cir. 9/11/96); 680 So.2d 1237, *writ den*. 96-2450 (La.3/7/97); 689 So.2d 1371. However, if the officers' actions constituted an arrest, the officers had to have probable cause to believe the appellant himself was engaged in, or was about to become engaged in, criminal activity.

State v. Wilson, 467 So.2d 503, 515 (La.1985), *cert. den. Wilson v. Louisiana*, 474 U.S. 911, 106 S.Ct. 281, 88 L.Ed.2d 246 (1985); State *v. Blue*, 97-2699 (La. App. 4 Cir. 1/7/98); 705 So.2d 1242, *writ den*. 98-0340 (La.3/27/98); 716 So.2d 887; State *v. Johnson*, 94-1170 (La. App. 4 Cir. 8/23/95); 660 So.2d 942, *writ den.* 95-2331 (La.2/2/96); 666 So.2d 1092, and *State v. Dibartolo*, 95-3044 (La.2/2/96); 666 So.2d 1105.

In *State v. Smith*, 99-2129 (La. App. 4 Cir. 4/26/00); 761 So.2d 642, officers followed the defendant for six blocks and then stopped him, using a "box-in maneuver", wherein one officer pulled his vehicle in front of the defendant's truck while another officer blocked the back of the defendant's truck. On review, this court found that this type of detention was an arrest. This court stated:

> LSA-C.Cr.P. art. 201 provides that an arrest is the taking of one person into custody by another by actual restraint of the person. In determining whether a person has been seized under the Fourth Amendment, the court must determine whether or not a reasonable person would have believed he was free to leave. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). In *State v. Allen*, 95-1754, p. 6 (La.9/5/96); 682 So.2d 713, 719, the Supreme Court stated:
>
> > This court has considered this issue and determined that "it is the circumstances indicating the intent to effect an extended restraint on the

> liberty of the accused, rather than the precise timing of an officer's statements: 'You are under arrest,' that are determinative of when an arrest is actually made." *State v. Giovanni*, 375 So.2d 1360, 1363 (La.1979) (quoting *State v. Sherer*, 354 So.2d 1038, 1042 (La.1978)); see *also State v. Davis*, 558 So.2d 1379, 1382 (La.App.1990)[sic]; State *v. Simms*, 571 So.2d 145, 148 (La.1990). In both Giovanni and *Simms*, this court found an arrest based on the fact that the defendant was not free to leave.

Smith, supra at 645. This court found that the position of the officers' vehicles was such that the defendant was not free to leave, and thus the detention was an arrest. In addition, one of the officers admitted the defendant was under arrest when the officers stopped him.

In *State v. Bruser*, 95-0907 (La. App. 4 Cir. 9/15/95); 661 So.2d 152, the officers activated their lights in order to stop the defendant. After he exited his car, the officers advised him he was under investigation for narcotics violations and advised him of his Miranda rights. This court found there was no arrest because the officers did not order him from his car or physically restrain him.

In *State v. Wade*, 390 So.2d 1309 (La.1980),

cert. den. Wade v. Louisiana, 451 U.S. 989, 101 S.Ct. 2326, 68 L.Ed.2d 848 (1981), police officers "raced their vehicle until they pulled along side" the fleeing suspect, then stopped their vehicle and jumped out, blocking the suspect's path. The Louisiana Supreme Court concluded that this was an investigatory stop, even though some degree of force was used to accomplish this stop.

In *State v. Solomon*, 93-1199 (La. App. 3 Cir. 3/2/94); 634 So.2d 1330, the suspect fled as the police officers approached on foot. The officers gave chase, caught him, and informed him that "they merely wanted to speak with him." When the defendant began struggling, the deputies handcuffed him. The Louisiana Third Circuit, citing recent cases focusing on the intent of the officers to determine whether a stop is actually an arrest, held that the officers' intent was to question the defendant, not to formally arrest him. The court found that the defendant was handcuffed only because of his violent struggle with the deputies, and that the stop was brief and reasonable to investigate possible criminal activity.

In *State v. Francise*, 597 So.2d 28 (La. App. 1 Cir.1992), *writ den.* 604 So.2d 970 (La.1992), police officers activated the lights and siren on the police vehicle, while immediately behind the suspect's vehicle. The suspect defied the officers' act by accelerating rather than stopping. The officers successfully stopped the defendant's vehicle, drew their weapons, ordered the defendant and another passenger from the vehicle, and had them place their hands on the vehicle. The Louisiana First Circuit held that the officers' actions constituted an arrest. Likewise in *State v. Raheem*, 464 So.2d 293 (La.1985), the Supreme Court found that "when the officers stopped the Cadillac, drew their weapons, ordered the defendants out of the car, and had them place their

> hands on the vehicle, an arrest occurred." In *State v. Kinnemann*, 337 So.2d 441 (La.1976), the Court found that defendants were arrested where police officers stopped their vehicle using blue lights and a siren, removed the defendant from the vehicle, and physically restrained the defendants before contraband was found in the vehicle.

In Broussard, officers turned into the path of the car in which the defendant was riding, cutting off the car, while other officers pulled behind the suspects' car, effectively blocking the car. This court found that this maneuver was an arrest, and because the officers did not have probable cause to arrest the defendant at that point, this court reversed the defendant's conviction.

Here, as in Broussard and in State v. Smith, 99-2129 (La. App. 4 Cir. 4/26/00), 761 So.2d 642, cited by the defendant and quoted above in Broussard, the officers stopped the car in which the defendant was riding by pulling one vehicle across the front of the car and pulling in behind the car with another police vehicle. Thus, this action was an arrest, and the officers needed probable cause to stop the car. Contrary to the defendant's argument, however, the officers had probable cause to stop the *driver* of the car for his failure to stop at a stop sign. Although the driver testified at the suppression hearing that he did not run a stop sign, the officer testified he ran the stop sign. In addition, the driver admitted he received a citation for

running the stop sign and that he subsequently paid the ticket. The trial court apparently chose to believe the testimony of the officer on this point, rather than that of the driver. As noted in State v. Perez, 99-2063 (La. App. 4 Cir. 9/15/99), 744 So.2d 173, credibility decisions are best left to the trier of fact, here the trial court, and such considerations are to be upheld in the absence of manifest error. Given the circumstances cited above, it does not appear the trial court erred by believing the officer's testimony. Thus, at the time the officers stopped the car in which the defendant was riding, they had probable cause to stop the car because they saw the driver run the stop sign.

The defendant contends that the State failed to show that this traffic stop was not merely a pretext to stop the defendant based upon the tip. However, as noted by the Louisiana Supreme Court in State v. Kalie, 96-2650, pp. 1-2 (La. 9/19/97), 699 So.2d 879, 880: "[T]he determination of reasonable grounds for an investigatory stop, or probable cause for an arrest, does not rest on the officer's subjective beliefs or attitudes but turns on a completely objective evaluation of all of circumstances known to the officer at the time of his challenged action. Whren v. U.S., 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); State v. Wilkens, 364 So.2d 934, 937 (La. 1978)." Thus, even if the officers had other intentions when stopping the car in which the defendant was riding, the stop was valid because the officers

had probable cause to stop it due to the traffic violation.

When the officers stopped the car, the defendant immediately jumped out of the car and fled. This flight, added to the other circumstances cited above, gave the officers reasonable suspicion to chase him. See State v. Benjamin, 97-3065 (La. 12/1/98), 722 So.2d 988, where the Court found reasonable suspicion when the officers saw the defendant clutch his waistband and run upon seeing the officers drive up next to him. See also Illinois v. Wardlow, 528 U.S. 119, 120 S.Ct. 673 (2000). Because the officers had reasonable suspicion, they could lawfully seize the gun the defendant abandoned as he ran from the officers. See State v. Britton, 93-1990 (La. 1/27/94), 633 So.2d 1208; State v. Tucker, 626 So.2d 707 (La. 1993), opinion reaffirmed and reinstated on rehearing by 626 So.2d 720 (La. 1993); State v. Dennis, 98-1016 (La. App. 4 Cir. 9/22/99), 753 So.2d 296.

The officer testified that he knew the object the defendant threw was a gun. At that point, the officer had probable cause to arrest the defendant for carrying a concealed weapon. While that officer retrieved the gun, his partner searched the defendant incident to the arrest for the gun and found the medicine bottle containing the cocaine. Thus, the cocaine was lawfully seized incident to the arrest for the gun charge. See State v. Wilson, 467 So.2d 503, 515 (La. 1985); State v. Johnson, 94-1170 (La. App. 4 Cir.

8/23/95), 660 So.2d 942.

Lastly, the defendant argues the officers did not have probable cause to search Darryl Brown or Brown's car. However, the gun and the cocaine which the defendant was charged with possessing were not seized from either Brown or his car. Thus, any search of Brown or his car is immaterial to a motion to suppress the gun and the cocaine seized from the defendant after he fled the car.

In State v. Scull, 93-2360, p. 9 (La. App. 4 Cir. 6/30/94), 639 So.2d 1239, 1245, this Court stated: "The trial court is vested with great discretion when ruling on motion to suppress." See also State v. Smiley, 99-0065 (La. App. 4 Cir. 3/3/99), 729 So.2d 743. Given the circumstances of this case, we find that the trial court correctly denied the motion to suppress the evidence in this case. This assignment has no merit.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED