

STATE OF LOUISIANA

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NO. 2001-KA-1291

VERSUS

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COURT OF APPEAL

ROBERT A. FONTAINE

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 419-760, SECTION "C"
HONORABLE SHARON K. HUNTER, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby,
Judge David S. Gorbaty)

GORBATY, J. – DISSENTS WITH REASONS

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Defendant Robert Fontaine was charged with possession of cocaine in violation of La. R.S. 40:967 (C). Defendant pleaded not guilty at his February 16, 2001 arraignment. After a hearing on March 8, 2001, the trial court denied defendant's motion to suppress the evidence.

On March 22, 2001, the defendant withdrew his former plea of not guilty and entered a plea of guilty under State v. Crosby, 338 So.2d 584 (La. 1976). The defendant was sentenced to thirty months with credit for time served. The State subsequently filed a multiple bill of information alleging the defendant to be a second felony offender, but later withdrew the bill. The trial court granted the defendant's motion for appeal.

Officer Chad Gagnon, of the New Orleans Police Department, testified at the hearing on the defendant's motion to suppress that the apartment complex the defendant was seen briefly entering and exiting at about 1:45 a.m. on January 19, 2001, had been under surveillance for several weeks for drug activity. Officer Gagnon further testified that after the defendant was seen leaving the apartment complex, the officers conducting the surveillance radioed Officer Gagnon and his partner with a description of the defendant.

As the defendant approached the officers, who were standing next to their police vehicle, they identified themselves as police officers, and informed the defendant he was under investigation. Officer Gagnon conducted a pat down of the defendant, and felt hard rock like substances in the defendant's right shirt pocket. The officer informed defendant that he was being arrested for possession of crack cocaine, and then read defendant his Miranda rights. Officer Gagnon retrieved the crack cocaine from the defendant's shirt pocket.

A review of the record revealed no errors patent.

The defendant complains the trial court erred in denying his motion to suppress. Specifically, he argues that the police officers did not have reasonable suspicion to stop him. Therefore, he contends the drugs were seized from him in violation of his rights, and should have been suppressed.

The trial court is vested with great discretion when ruling on a motion to suppress. State v. Oliver, 99-1585 p. 4 (La. App. 4 Cir. 9/22/99), 752 So.2d 911, 914.

La. C.Cr.P. art. 215.1 provides in part:

A. 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 demand of him his name, address, and an explanation of his actions.

This court in State v. Anderson, 96-0810, p. 2 (La. App. 4 Cir. 5/21/97), 696 So.2d 105, 106, noted:

A police officer has the right to stop a person and investigate conduct when he has a reasonable suspicion that the person is, has been, or is about to be engaged in criminal conduct. Reasonable suspicion for an investigatory stop is something less than probable cause; and, it must be determined under the facts of each case whether the officer had sufficient articulable knowledge of particular facts and circumstances to justify an infringement upon an individual's right to be free from governmental interference.

The totality of the circumstances must be considered in determining whether reasonable suspicion exists. An investigative stop must be justified by some objective manifestation that the person 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. (Citations omitted)

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. Short, 96-1069 p. 4 (La. App. 4 Cir. 5/7/97), 694 So.2d 549, 552.

When a law enforcement officer has probable cause to believe that a person has committed a crime, he may place that person under arrest. Incident to such lawful arrest, the officer may lawfully conduct a full search of the arrestee and the area within his immediate control for weapons and for

evidence of a crime. State v. Morgan, 445 So.2d 50, 51 (La. App. 4th Cir. 1984).

In State v. Finne, 92-2555 p. 3 (La. App. 4 Cir. 2/11/94), 632 So. 2d 819, 821, this Court stated: “Based on the totality of circumstances, we find that the officers were justified in stopping defendant as they may reasonably have suspected that defendant had engaged in drug trafficking. Defendant was seen entering and leaving a residence which had been reported to police as a drug outlet, and police officers had independently observed several individuals coming and going from the residence, including a known narcotics trafficker. We find that under these circumstances the officers had reasonable suspicion of criminal activity to justify the investigatory stop.”

The defendant cites State v. Sneed, 95-2326 (La. App. 4 Cir. 9/11/96), 680 So.2d 1237, and argues that, like the officers in Sneed, the officers in the instant case stopped him simply because he briefly visited a residence that was under surveillance for drug activity, which did not rise to the level of reasonable suspicion. However, in the instant case, unlike Sneed, Officer Gagnon testified that there had been several citizen complaints of drug activity in the complex the defendant visited. More importantly, others had been arrested for possession of drugs after briefly visiting the same complex.

In the instant case, the defendant was seen entering an apartment

complex at 1:45 a.m. that had been under surveillance for drug activity for weeks. The defendant's actions, of briefly entering and exiting the complex, fit the actions of others who had been found to have drugs or drug paraphernalia on them when stopped during the same surveillance period. Defendant in the instant case, like the defendant in Finne, was seen coming and going from a location the police knew to be a place of drug activity. Additionally, the defendant fit the description of the individual seen entering and exiting the drug establishment. Therefore, we find that the totality of the circumstances gave the officers in this case reasonable suspicion to stop the defendant. This assignment of error is without merit.

Because we find no error in the trial court's denial of the motion to suppress, the defendant's conviction and sentence are affirmed.

AFFIRMED