

**STATE OF LOUISIANA**

\*

**NO. 2001-KA-2138**

**VERSUS**

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**COURT OF APPEAL**

**WENDELL E. MCNABB**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
PLAQUEMINES 25TH JUDICIAL DISTRICT COURT  
NO. 00-4719, DIVISION "A"  
Honorable Anthony D. Ragusa, Judge

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**Charles R. Jones**  
**Judge**

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(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, and  
Judge Max N. Tobias, Jr.)

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**AFFIRMED**

The Defendant, Wendell E. McNabb, appeals his conviction and sentence for possession of marijuana, a violation of La. R.S. 40:966(E)(2).

Following a review of the record, we affirm.

On the evening of December 3, 2000, Plaquemines Parish Sheriff's Officer Robert La Greco was working on a security detail along the levee of the Mississippi River in a desolate area near Bootheville, when he saw a car approach and stop at a stop sign for approximately one to two minutes. The officer turned his headlights off and observed the approaching car from behind a large dump truck. The Officer noticed the car turn left and stop by the side of the road for approximately another minute. The car then backed up and headed for Highway 23, a major four-lane thoroughfare. The Officer was concerned that they were either lost or up to something because other individuals had been attempting to light fires in a nearby oil spill on the river and there was a lot of oil company equipment on the river that needed protecting. Accordingly, Officer La Greco elected to pursue the car and caught up with the vehicle as it was entering the highway. The officer activated his lights and pulled the car over on the shoulder of Highway 23,

though, according to the officer, the car did not pull over immediately. He “believed that possibly” an object resembling a lit cigarette was thrown from the vehicle prior to the stop.

Once the car was stopped, Officer La Greco instructed the driver, Ms. Wendy Rourks, to exit the vehicle. He asked her to explain what she was doing in the area. She told him that she was looking for the mother of the two small children, who were also in the car. Ms. Rourks explained that the mother had dropped the children off several days earlier, and that they were searching for her. Officer La Greco proceeded to treat the situation as a child neglect case. Upon finding out from Ms. Rourks that the father of the children, McNabb, was also present in the vehicle, the officer went to the passenger side of the car to question McNabb. Once on the passenger side of the vehicle, he smelled burnt marijuana, which prompted Officer La Greco to arrest McNabb. Officer Yasha Miller was called as back up for Officer La Greco and upon arrival searched the vehicle. As testified to by Officer La Greco, Officer Miller discovered “four partial and rolled cigarettes containing a vegetable matter” in a red and white box on the passenger seat. Officer La Greco performed a pat down search on McNabb and discovered a bag of marijuana and some rolling papers in his pants. Although he searched the side of the road for a burning discarded marijuana

cigarette, he did not find one.

On December 18, 2000, the State charged McNabb with a second offense of marijuana possession. Following a hearing, the district court denied his Motion to Suppress Evidence. McNabb thereafter pleaded guilty to all charges, while reserving his right under State v. Crosby, 338 So.2d 584 (La. 1976), to appeal the district court's ruling denying his Motion to Suppress Evidence. The district court sentenced McNabb to an eighteen month suspended sentence and one year of active probation. This appeal follows.

Our review indicates that there are no errors patent.

In his sole assignment of error, McNabb argues that Officer La Greco did not have reasonable suspicion to stop him. McNabb argues that Officer La Greco would have been acting well within the confines of the State and Federal constitutions had he approached the vehicle while it was stopped at the stop sign or at the side of the road. The officer mentioned that the car may have been lost, and had a genuine concern about theft and arson in the area. However, McNabb avers that those concerns and suspicions dissipated when the car headed out of the area and prepared to get onto a major highway, and the officer ceased to have a reasonable basis for conducting the stop. McNabb argues that the officer's curiosity as to what the

occupants had been doing was irrelevant as it was objectively clear that no crime had been committed or was about to be committed. Further McNabb argues that the officer's "belie[f] that possibly" a lit cigarette-like object had been thrown from the vehicle while he was in the process of stopping the vehicle is not a sufficient basis for pursuing the stop in this case.

The State argues that according to the standard established in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), the evidence is sufficient for a rational trier of fact in a light most favorable to the prosecution, to find the essential elements of the crime charged beyond a reasonable doubt. Thus, the conviction must stand, because it is not the function of an appellate court to assess credibility or reweigh evidence. The State further argues that the facts indicate that Officer La Greco had reason to approach the vehicle, and once there, the officer smelled marijuana, which was a sufficient basis to stop, search, and arrest McNabb.

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. Devore, 2000-0201, p. 6 (La. App. 4 Cir. 12/13/00), 776 So.2d 597, 600-601; State v. Mims, 98-2572, p. 3 (La. App. 4 Cir. 9/22/99), 752 So.2d 192, 193-194.

Additionally, La. C.Cr.P. art. 215.1(A) codifies the U.S. Supreme

Court's authorization of police stops based on reasonable suspicion found in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and 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 a detaining officer had sufficient facts within his knowledge to justify an infringement of the suspect's rights. State v. Jones, 99-0861, p. 10 (La. App. 4 Cir. 6/21/00), 769 So.2d 28, 36-37, writ denied, 2000-2183 (La. 9/28/01), 797 So.2d 685; State v. Littles, 98-2517, p. 3 (La. App. 4 Cir. 9/15/99), 742 So.2d 735, 737. The totality of the circumstances must be considered in determining whether reasonable suspicion exists. State v. Lipscomb, 99-2094, p. 11 (La. App. 4 Cir. 9/13/00), 770 So.2d 29, 36, reversed in part on other grounds, 2000-2836 (La. 1/25/02), 807 So.2d 218; State v. Oliver, 99-1585, p. 4 (La. App. 4 Cir. 9/22/99), 752 So.2d 911, 914. 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.

Jackson, 99-2993, p. 3 (La. App. 4 Cir. 10/18/00), 772 So.2d 808, 810, reversed on other grounds, 2000-3083 (La. 3/15/02), \_\_\_ So.2d \_\_\_, 2002 WL 398710; State v. Dennis, 98-1016, p. 5 (La. App. 4 Cir. 9/22/99), 753 So.2d 296, 299. 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. Hall, 99-2887, p. 4 (La. App. 4 Cir. 10/4/00), 775 So.2d 52, 57; State v. Cook, 99-0091, p. 6 (La. App. 4 Cir. 5/5/99), 733 So.2d 1227, 1231.

In the instant case, given the circumstances—the oil spill, the fires set the previous night, the cleanup equipment spread around, the dead end road, darkness, and the actions of the driver of the vehicle—Officer La Greco was justifiably “suspicious.” Particularly, the objective facts in the instant case establish that a person or persons had set several fires in the area on the previous night, necessitating a response by firefighters to extinguish the blazes. The officer was patrolling the levee to, among other things, prevent persons from starting more fires. Officer La Greco testified that it was dark when he observed a suspicious vehicle pull up to a stop sign and stop for two minutes, turn onto a dead end lane and stop for another minute and a half, then back up and swiftly depart upon spotting him. Although the officer did not observe any activity suggestive of any one particular crime, in

his experience the vehicle was suspicious for being in an abandoned area suggesting either criminal activity was occurring or about to occur, or the driver might simply have been lost. In either event, Officer La Greco was justified in stopping the vehicle if merely to assist the occupants. The officer was initially attempting to assist Ms. Rourks and McNabb locate the mother of the children in the vehicle. Under these circumstances, Officer La Greco had a reasonable basis to stop the vehicle, and further investigate the matter.

This assignment of error is without merit.

### **DECREE**

For the reasons stated herein, the conviction and sentence of Wendell E. McNabb are hereby affirmed.

**AFFIRMED**