STATE OF LOUISIANA IN THE INTEREST OF J.M.	*	**NO. 2002-CA-0593**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

* * * * * * *

CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
STATE OF LOUISIANA IN THE INTEREST OF J.M.	**NO. 2002-C-0591**

APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 01-330-09-QF, SECTION "F"
Honorable Mark Doherty, Judge
* * * * *

PER CURIAM

* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Miriam G. Waltzer and Judge Michael E. Kirby)

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VACATED AND REMANDED.

On November 26, 2001, the State filed a petition averring that J.M. was a delinquent child in that he had violated La. R.S. 14:95.8, relative to being a juvenile in possession of a handgun, and La. R.S. 40:966, relative to possession of marijuana with the intent to distribute. Both offenses occurred on November 19, 2001, on which date J.M. had been arrested and for which offenses he remained in custody. Although scheduled to conduct a continued detention hearing on November 26th, the court did not do so because J.M. was not brought to court; the court reset the hearing for November 27, 2001. The record does not indicate that the hearing was ever held. On December 4, 2001 the parties were present for pretrial. The court noted for the record that the thirty-day period for motions would expire during a time when the court would be closed, and therefore there was good cause to set the matter for trial beyond the thirty-day period, specifically for January 16, 2002. Counsel for J.M. filed discovery motions on December 7, 2001; the State filed responses on January 15, 2002. The court on joint motion continued the January 16th trial to January 22, 2002 because

additional motions needed to be filed.

On January 22, 2002, the court heard testimony relative to the motion to suppress evidence and statements in a combined motion hearing and trial. The court granted the motion as to count two and denied it as to count one. The court then found the juvenile guilty of the first count, La. R.S. 14:95.8. The court committed J.M. to the custody of the Department of Corrections for a period not to exceed ninety days with credit for the sixty-four days he had already served in detention.

FACTS

The State gave notice of its intent to seek writs on the granting of the motion to suppress as to count two, the drugs. That writ, 2002-C-0591, was subsequently ordered consolidated with the instant appeal filed by J.M. In this appeal, J.M assigns five errors as to his adjudication and sentence on count one.

At the combined motion hearing and trial, Sergeant Danny Scanlan, commander of the Second District Task Force testified that he received information from his captain that a fifteen-year old named J. lived at 2426 Rex Place and owned a burgundy Oldsmobile; the information included the license plate number of the vehicle. The specific tip regarding the juvenile's criminal conduct was that he was in possession of five handguns. Sgt.

Scanlan stated that the person providing the information was not an informant, but rather was merely someone cooperating and that, as far as the sergeant knew, was unidentified. Based on this anonymous tip, Sgt. Scanlan assembled a group of four police officers and relocated to the juvenile's address. Upon the officers' arrival, they saw the juvenile J.M. standing looking in the trunk of a burgundy Oldsmobile which bore a license plate with the same number as that provided by the tipster. The four officers approached J.M. and questioned him regarding his name. When they confirmed that his first name was the same as the one given in the tip, and because J.M. appeared extremely nervous, he was frisked by Officer Steudlein. Officer Steudlein testified that he felt the distinct outline of a firearm in J.M.'s pocket and seized it. J.M. was then handcuffed and arrested.

Immediately following J.M.'s arrest, the officers approached the front porch of the residence to advise J.M's mother, M.M., of her son's arrest. Officer Steudlein informed M.M. that the officers intended to obtain a search warrant for the residence to search for additional weapons. M.M. purportedly agreed to a search and executed a consent form. During the search, M.M. told her son to tell the officers where the guns were located. J.M. then directed the officers to a cabinet inside of which they discovered

another weapon, several bags of marijuana, and twelve bullets.

M.M. testified that the officers did not say anything to her when they came into the house and did not ask her permission to search. She stated that she was asleep in bed when they first entered her home. She contended that the officers gave her a paper to sign, stating that it was a search warrant, and that if she did not sign it they would go get the dogs to come smell and see if anything was in there. M.M. admitted that during the search she told her son to inform the police where the guns were. M.M. further testified that she was on three types of nerve pills and sleeping pills, specifically Cyproheptadine, Trazonone, and Zoloft, and that she had been receiving treatment at the Central City Mental Health clinic for approximately five years. Additionally, M.M. stated that she had been in special education in school, as was J.M., that she had completed only the tenth grade, and that she could not read well. M.M. admitted that she recognized her signature on the consent to search form. She denied that anyone explained the form to her.

The State called Officer Steudlein in rebuttal. He testified that he read and explained the consent to search form to M.M. Furthermore, after J.M. had been transported to the Juvenile Bureau and been joined by his mother, Officer Steudlein read the rights of arrestee form to both.

DISCUSSION

In his first assignment of error, J.M. contends that the trial court erred in denying the motion to suppress the gun seized from his person. He argues that the anonymous tip received by the police in this case, although sufficient to enable them to confirm the identity of the target of the tip, was insufficient to establish any reasonable suspicion that he was engaging in any criminal activity.

In State v. Robertson, 97-2960 (La. 10/20/98), 721 So.2d 1268, the police received an anonymous telephone call from a concerned citizen that a person, known as Will who drove a dark green Pontiac, was involved in the sale of drugs in the Magnolia Housing Project. The caller gave a description of Will and stated that his car would be parked in the 2800 block of Magnolia when he was not dropping off narcotics. After the police went to the 2800 block of Magnolia and saw the car, they set up surveillance and saw the car drive away. They followed the car until it parked in the 2500 block of Sixth Street, and they saw that the driver matched the description given by the caller. The officers approached the driver, who was the defendant, and asked him his name. After the defendant gave them his name, William Robertson, the officers informed him that he was under

investigation for narcotics. A canine detection unit was called and arrived some ten to fifteen minutes later. The dog indicated that there were narcotics inside the car, and one of the officers retrieved a bag filled with crack cocaine. The trial court denied the defendant's motion to suppress the evidence, but the Supreme Court reversed. The court found that the officers did not have reasonable suspicion to conduct an investigatory stop of the defendant based upon the anonymous tip and the subsequent corroboration by the officers. The court noted that Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412 (1990), stressed corroboration and predictiveness in assessing reasonable suspicion for a stop pursuant to an anonymous tip and that the officers who had stopped the defendant corroborated certain aspects of the tip. The court further found that the tip had no predictive information from which the officers could reasonably determine that the informant had inside information or a special familiarity with the defendant's affairs. The court further stated that the police were not powerless to act upon the non-predictive, anonymous tip and that they could have set up more extensive surveillance of the defendant until they observed suspicious or unusual behavior. If after corroborating the readily observable facts, the officers noticed unusual or suspicious conduct by the defendant, they would have had reasonable suspicion to

detain him.

The United States Supreme Court subsequently addressed the issue of an anonymous tip in a factual scenario similar to the instant case in Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375 (2000). In J.L., an anonymous caller reported that a young black male wearing a plaid shirt was standing at a particular bus stop carrying a gun. Officers arrived and saw three black males at the bus stop. The defendant was wearing a plaid shirt. The officers did not see a firearm, and the defendant made no threatening or unusual movements. One officer approached the defendant, told him to put his hands on top of the bus stop, frisked him, and seized a gun. The Court specifically held that when an anonymous caller provides no predictive information and therefore leaves the police with no means to test the informant's knowledge or credibility, reasonable suspicion is not established.

Shortly thereafter, this Court reviewed the pertinent law, including J.L., in State v. Young, 99-2120 (La. App. 4 Cir. 9/6/00), 770 So.2d 7, writ denied, (2000-2798 (La. 9/21/01), 797 So.2d 63. There a police officer received a phone call from an informant. That officer asked two other officers to assist him in investigating the tip provided by his informant: drugs were being sold in a housing project courtyard in the 3700 block of Thalia Street by a black male who was wearing baggy jeans with a

camouflage bandana hanging out of his pants and riding a bicycle. Upon arrival at the designated location, the assisting officer used the headlights of the unmarked police car to shine into the courtyard which was also illuminated by outdoor lights on the buildings. The officers saw the defendant, who was dressed as described by the informant, straddling a bicycle as he talked to two other men. A woman was about thirty feet away, walking towards the defendant and his companions, but no one else was in the courtyard. The woman backed away when she recognized the approaching police officers; however neither the defendant nor his companions moved or tried to flee as the three policemen approached; instead the defendant told them something like, "The guys you're looking for went that way." The officers ignored this and instead immediately patted all three down "for officer safety." The officer who frisked the defendant felt an object which in his experience was consistent with the packaging of narcotics. The officer seized the object which was a large plastic bag containing eighty individually wrapped packages of cocaine. At the subsequent hearing on the motion to suppress the evidence, the officer testified that he had never used the informant who had provided the tip in the case, and thus could not answer questions about prior reliability or whether the informant was compensated, although as commanding officer, be

understood that another officer (who did not testify) had previously obtained useful information. The State subsequently argued on appeal that Robertson was distinguishable because the tip pertained to activity occurring at that time and was highly detailed in its description of the suspect; additionally the State argued that the informant was known to the police officer who had not testified at the hearing. This Court rejected the State's second argument, noting that there was no evidence to establish the reliability of the informant or information, and thus he was essentially anonymous. As to the State's first argument, the Court noted:

> The Supreme Court rejected this argument, however, explaining that such corroboration did not establish the necessary reliability:
>
> > 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.**
>
> *Florida v. J.L.*, __ U.S. at __, 120 S.Ct. at 1379 (emphasis added). The Court further explained that despite the "extraordinary dangers" presented when the tip includes an allegation of an illegal firearm, there could be no lesser standard of "pre-search reliability testing" in such cases. *Id*.
>
> Although the State emphasizes that the informant in the instant case provided the police with greater detail than was

available to the officers in *J.L.*, these details provided no additional support to a determination that the allegation of drug dealing was reliable. Instead, the easily observable information regarding Mr. Young's clothing and his bicycle merely allowed the police to quickly pinpoint which individual was the target of the accusation. Similarly, while the State asserts that the caller's allegation of current, ongoing drug activity in this case constituted an additional predictive element of the tip and necessitated urgent action, this "time factor" is indistinguishable from the tipster's report in *J.L.* that the defendant would be found to have a handgun in his possession. Therefore, despite the officers' visual corroboration of the informant's tip in the instant case, that information alone, as in *J.L.*, was insufficient to support an investigatory stop.

Nor do we agree with the State's contention that as in *State v. Huntley*, the detention and search of the three men was warranted under Article 215.1 because Mr. Young told the approaching police that they should look elsewhere for their suspects. Unlike the men approached in *Huntley*, Mr. Young and his friends made no attempt to flee when they saw the police pull up, nor did they make threatening or suspicious gestures. Although Mr. Young was in a housing project courtyard, there was no testimony in this case, as there was in *Huntley*, that the location was a high-crime area or otherwise known for drug activities. Furthermore, the testifying officers expressly denied any prior encounters with Mr. Young, and there was no indication that any of the three men were known to have a violent or criminal background until after they were searched and arrested. Absent evidence of further articulable, objective knowledge by the police, the circumstances presented here are insufficient to meet the constitutional standard for an investigatory stop set forth in *Florida v. J.L.*. Therefore, the trial court's finding that the search and seizure was justified by reasonable suspicion was in error, and Mr. Young's motion to suppress the evidence should have been granted.

Young, pp. 6-8, 770 So.2d at 10-11.

This Court reached an identical result in State v. Boson, 99-1984 (La.

App. 4 Cir. 1/17/01) 778 So.2d 687, writ denied, 2001-0430 (La. 9/13/02), 824 So.2d 1192. In Boson, two police officers were instructed by a sergeant to conduct a narcotics investigation at the Friendly Inn on Chef Menteur Highway. The officers were told that there had been complaints of drug trafficking in the area, which was well-known for prostitution and drugs. The officers were told to specifically look for two black males and a white Ford LTD. The officers entered the parking lot of the motel and saw a late model white Ford LTD. Two black males were inside. The officers approached, directed the men to exit, and patted them down for weapons. No weapons were found, but one of the officers felt a bulge and saw some money in Boson's pocket. Based on his experience connecting currency with drugs, the officer ordered Boson to empty his pockets. After he had placed the currency on the police car, Boson attempted to discard a plastic bag containing cocaine. His arrest followed. The trial court denied the motion to suppress evidence, and this Court reversed citing J.L., Robertson, and Young, finding that the tip failed to provide sufficiently particularized information to indicate that the defendant and his companion were engaged in criminal activity. Furthermore, the officers saw no suspicious activity at the time they stopped the suspects.

Relying on Boson, this Court found that the anonymous tip was

insufficiently corroborated even though the police officers were able to confirm that the defendant had been the subject of a prior, albeit ultimately uncorroborated tip a year earlier and the defendant had a prior criminal record; furthermore the deputies testified that they followed the defendant's vehicle to three different locations and that the defendant's general pattern of movement was consistent with drug trafficking. State v. Derouen, 00-1065 (La. App. 4 Cir. 5/23/01), 790 So.2d 88.

In still another case, State v. Wilson, 99-2334 (La. App. 4 Cir. 3/15/00), 758 So.2d 356, this Court found that an anonymous tip was insufficiently corroborated to support a stop. In Wilson two officers on routine patrol received a call from dispatch that an anonymous caller reported a "suspicious" person at the corner of Bienville and Gayoso Streets. The dispatcher described the suspect as a black male wearing a plaid shirt and white shorts, and "possibly" selling drugs. When the officers arrived at the intersection, a third officer met them. The officers observed the defendant, fitting the description broadcast by the dispatcher, leave the corner and enter Adams grocery store. One of the officers, Officer Colmenero, entered the store and asked the defendant to step outside. Once outside, the defendant became nervous and began to look as though he was going to run. However, the other two officers blocked his path. The officers

ordered the defendant to put his hands on the patrol car so they could conduct a pat down for weapons. Officer Colmenero acknowledged that from his experience drugs and weapons are usually found together. The defendant, however, refused to extend his arms. The defendant was frisked, and a medicine bottle containing rock cocaine was discovered tucked into the defendant's left armpit. The Court found that the circumstances did not justify the frisk of the defendant because, aside from a description of the clothing worn by the defendant, the only evidence of suspicious activity was the anonymous tip that the suspect was possibly selling drugs on the corner of Bienville and Gayoso Streets; notably the officers did not testify that the area was a high crime area nor a location noted for drug trafficking. Also, the officers did not observe any suspicious behavior on the part of the defendant that would appear to be drug related.

In Young and Boson, this Court distinguished State v. Huntley, 97-0965 (La. 3/13/98), 708 So.2d 1048. In Huntley, an unidentified woman approached two police officers on routine patrol in the St. Bernard Housing Project. She stated that a black male by the name of "Ronnie" was selling crack cocaine on that day in the project and that he normally wore a black New Orleans Saints starter jacket. The officers continued their routine patrol. As they entered a driveway known to them for its high incidence of

drug trafficking, they saw three men standing together. One of them, the defendant, was wearing a black Saints starter jacket. When the men noticed the officers marked police unit, they appeared startled and attempted to disperse. The officers stopped and frisked the men; no weapons were found. While the officers were running a computer check for warrants, another person walked by and yelled, “What’s up, Ronnie?” The defendant acknowledged the greeting. When no outstanding warrants were indicated, the officers informed the men they were free to leave. One of the officers noticed that the defendant’s pants were unbuttoned and his zipper open and called this situation to the defendant’s attention. As the defendant fumbled with his clothing, a bag of cocaine fell to the ground. In reviewing this Court’s unpublished decision holding that there was an insufficient basis to conduct an investigatory stop, the Supreme Court stated:

> The question here is not whether the anonymous tip to officers Williams and Demma alone had sufficient detail and predictive quality to provide probable cause for an arrest, *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), or reasonable suspicion for an investigatory stop, *Alabama v. White,* 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), or whether the startled looks of the three men and their attempt to evade the police presence in a high crime area alone gave rise to reasonable suspicion. Whether the police had a "minimal level of objective justification" to detain the defendant turns on the totality of all of the circumstances known to the officers: the informant's tip, which highlighted the black Saints starter jacket worn by the suspected narcotics trafficker; the defendant's presence in an area known to the officers for its narcotics activity and his appearance in a black

> Saints starter jacket; the startled looks by all three men when they spotted the police; and their attempt to leave the scene as the officers approached. **This Court has previously accorded significant weight to evasive conduct in response to police presence in high crime areas**, *see e.g. State v. Belton*, 441 So.2d 1195, 1199 (La.1983), *cert. denied*, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984); *State v. Wade*, 390 So.2d 1309, 1311 (La.1980); *State v. Cook*, 332 So.2d 760, 763 (La.1976), and we believe that the coalescence of circumstances in this case gave the officers a particularized and objective basis for seizing the three men "to maintain the status quo momentarily while obtaining more information." *State v. Fauria*, 393 So.2d 688, 690 (La.1981); *see also California v. Hodari D.*, 499 U.S. 621, 623, n. 1, 111 S.Ct. 1547, 1549, n. 1, 113 L.Ed.2d 690 (1991) ("That it would be unreasonable to stop, for brief inquiry, young men who scatter in panic upon the mere sighting of the police is not self-evident and arguably contradicts proverbial commonsense.").

State v. Huntley, pp. 3-4, 708 So.2d at 1050 (emphasis added). In contrast to Huntley, neither of the defendants in Young and Boson made any attempts to evade the officers or reacted in a startled fashion upon first seeing them.

In another case strikingly similar to the instant case, State v. Campbell, 99-0892 (La. App. 4 Cir. 1/3/01), 778 So.2d 636, revs'd in part on other grounds, 2001-0329 (La. 11/2/01), 799 So.2d 1136, this Court again found that the evidence was illegally seized following a stop based on an anonymous tip. In Campbell, Detective Russell Nelson received a telephone call from a concerned citizen reporting possible drug dealings in the 1000 block of North Robertson. The concerned citizen, who lived in the

area, stated that an African-American male, wearing a black cap, black sweatshirt and black pants, and standing next to a black four-door Buick, with license plate #CDH-637, was dealing narcotics from the trunk of the vehicle. Detective Nelson, along with his partner, traveled to the 1000 block of North Robertson Street. Immediately upon turning the corner, they observed the defendant closing the trunk of the vehicle. The defendant was wearing clothes that fit the description given over the hotline by the concerned citizen. The two detectives pulled up, identified themselves as police detectives, and informed the defendant that he was under investigation for selling narcotics. Detective Nelson then conducted a safety pat-down search and noticed a bulge in the defendant's right front pants pocket. Detective Nelson recovered ninety-three dollars in currency from the defendant. He also felt a bulge in the defendant's right rear pocket and removed a folding pocket knife with a three and a half-inch blade. The defendant was arrested for carrying a concealed weapon. The defendant's car was subsequently searched, purportedly after the defendant consented, resulting in the seizure of drugs. During the trial, Detective Nelson admitted that he had no prior dealings with the concerned citizen who called that morning, and he had no opportunity to verify any previous information given to his office for accuracy. The caller did not give an exact address

where the person selling drugs would be found; he merely described the clothing worn by the person selling narcotics in the 1000 block of North Robertson and the vehicle out of which the narcotics were being sold. In reversing the trial court's denial of the motion to suppress evidence, this Court noted that the officers admitted that they did not see the defendant engage in any type of behavior consistent with drug activity. Rather, they merely observed him closing the trunk of his car as they turned the corner. The defendant did not flee when they approached him, nor did he exhibit any type of behavior to indicate he had a weapon. Because the defendant's alleged consent to a search of his vehicle was tainted by the illegal stop and frisk, the seizure of the drugs was required.

The Second Circuit, following Florida v. J.L., held in State v. Boyle, 34,686 (La. App. 2 Cir. 9/17/01), 793 So.2d 1281, that a complaint of a vehicle being operated by a person under the influence of alcohol did not justify the investigating officer approaching the defendant in his driveway which time he smelled the odor of alcohol. The complaint in Boyle was described as an anonymous tip that a white pick-up truck with green stickers was traveling west on East McKinley Street and that the driver of the vehicle was intoxicated. The information was forwarded to the Haughton Police Department in Haughton, Louisiana. A Haughton police officer was in the

vicinity of the intersection where the vehicle was reported to be when he received the report regarding the anonymous tip. The officer responded to the call and reported that a vehicle and driver fitting the description given had passed through the intersection just prior to the broadcast. The officer pursued the defendant's vehicle and observed the defendant parking his vehicle in the driveway at his residence. In determining that any stop was unlawful, and thus the defendant's inculpatory statement was inadmissible, the court noted that the officer's report, which was admitted in lieu of live testimony, did not indicate that the officer saw the defendant actually driving erratically. The court further noted that the contact between the officer and the defendant occurred on private property.

In the instant case, the State in its brief does not dispute that the information given to the officers in this case was apparently anonymous and that four officers exited the vehicle(s) and approached J.M. on foot. The State suggests instead that the frisk of J.M. was justified because, after the officers had questioned J.M. about his identity, he appeared extremely nervous; the trial court relied upon this fact to uphold the frisk of J.M. However, any nervousness was exhibited only after the four officers, who were attired in their Task Force uniforms which included badges, weapons, and radios, had already begun to question the juvenile. Notably, there was

no testimony that J.M. attempted to evade the officers prior to the officers questioning him, nor that he appeared startled when the officers first approached him. He did not run or discard any contraband. Furthermore, there was no testimony that the area was known for drugs or weapons, that the officers had any prior knowledge of J.M. or his residence, or that they could see any weapons prior to the frisk. The lack of these additional indicia of possible criminal activity distinguishes this case from Huntley where the defendant and his companions were in a known high-crime area, appeared startled upon the mere sight of the police, and attempted to evade contact with the police. The facts of this case are similarly distinguishable from those in State v. Lewis, 2002-3136 (La. 4/26/02), 815 So.2d 818, cert. denied, Lewis v. Louisiana, ___U.S.___, 123 S.Ct. 312 (2002), in which two officers were patrolling a housing project in response to residents' complaints of trespassers selling drugs when the officers observed the defendant and a companion, neither of whom the officers recognized as residents; the defendant became very nervous as soon as he saw the officers, and he and the companion split up. Each officer approached one of the two men and inquired as to why they were in the area. The defendant ran, discarding cocaine. The Supreme Court reversed this Court's granting of the motion to suppress evidence, which was based on the lack of reasonable

suspicion for a stop, by finding that the defendant had not yet been subjected to a Terry stop at the time he ran from the police. The court noted the fact that the officers had merely walked up to the defendant in a public place and attempted to engage him in conversation. More notably in Lewis, the court did not find that the defendant's nervousness and initial evasiveness, coupled with the citizen's complaints, were sufficient to justify an investigatory stop.

In the instant case J.M. never attempted to evade the police. He did not discard or abandon any contraband or weapons. Furthermore, the officers did not simply encounter him in a public place. Instead, four police officers went to the fifteen-year old's residence and frisked him when they found him outside.

The trial court erred in denying the motion to suppress the weapon seized from J.M.'s person. Therefore, the adjudication and sentence on count one are hereby vacated and remanded.

We turn now to the issue posed by the State in its writ application.

The State argues that the trial court erred when it determined that the consent to search the residence given by M.M. was not valid because of her confused condition, caused by medication, mental illness, and lack of

intellectual capacity. J.M. argues in his response to the writ application that the trial court correctly determined that M.M. lacked the capacity to freely and voluntarily consent to a search of her home. J.M. further argues that any consent was tainted by the illegal seizure of the firearm and arrest of J.M. outside the residence.

In State v. Raheem, 464 So.2d 293 (La. 1985), the Louisiana Supreme Court found that the defendant's consent to search was not sufficiently attenuated from an illegal arrest to be considered voluntarily given. In Raheem, the defendant was illegally arrested and consented to a search approximately forty minutes following her arrest. There were no intervening circumstances between her arrest and consent, and she was continually in the presence of police officers and the confines of a police station before she consented.

As this Court noted in State v. Campbell, 99-0892 (La. App. 4 Cir. 1/3/01), 778 So.2d 636, revs'd in part on other grounds, 2001-0329 (La. 11/2/01), 799 So.2d 1136, a defendant's consent after he had been arrested in violation of his constitutional rights vitiates that consent unless it is sufficiently attenuated from the unlawful conduct to be a product of free will, considering the temporal proximity of the illegality and the consent, the lack of intervening circumstances, and the purpose and flagrancy of the

misconduct, citing Raheem, 464 So.2d at 297; State v. Bennett, 383 So.2d 1236 (La. 1979) (on rehearing); Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 (1979); and Wong Sun v. U.S., 371 U.S. 471, 83 S.Ct. 407 (1963).

Here there was no temporal break between the illegal arrest of J.M., the police entry into his residence with him in handcuffs, and his mother's signing of the consent to search form. Furthermore, Officer Steudlein candidly testified that he obtained M.M.'s consent only after informing her that the officers intended to obtain a search warrant; however, there was no legal basis to obtain such a warrant because the only evidence, the firearm, had been illegally seized and the anonymous tip was not sufficient for reasonable suspicion for a stop. Therefore, the result reached by the trial court was correct. Accordingly, as to writ application 2002-C-0591, the ruling of the trial court is affirmed.

For the foregoing reasons, it is therefore ordered that the adjudication and sentence on count one be vacated and the matter remanded.

VACATED AND REMANDED.