

**STATE OF LOUISIANA**

\*

**NO. 2002-KA-0378**

**VERSUS**

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**COURT OF APPEAL**

**MICHAEL FAIRLEY**

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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. 421-858, SECTION "F"  
Honorable Dennis J. Waldron, 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.)

**TOBIAS, J., CONCURS**

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## **AFFIRMED**

The Defendant/Appellant, Michael Fairly, appeals his conviction for possession of cocaine and his sentence to forty months imprisonment without benefits as a third felony offender. We affirm.

Fairly was charged by bill of information with one count of possession of cocaine and pled not guilty. On June 5, 2001, the district court heard and denied his motion to suppress the evidence. Later, Fairly pled guilty as charged under State v. Crosby, 338 So.2d 584 (La. 1976), and also pled guilty to the multiple bill as a third time felony offender. Fairly was sentenced to forty months at hard labor without benefit of probation or suspension of sentence. This timely appeal follows.

Detective Paul Noel, of the New Orleans Police Department, testified at the hearing on Fairly's Motion to Suppress that on March 23, 2001, he and his partner, Detective Andrew Rocoforte, were on proactive patrol in the 8800 block of Willow Street in New Orleans. The detective further testified that as he and his partner drove down Willow Street they observed Fairly sitting on the steps of 8830 Willow. Upon seeing the officers Fairly stood up

and put both hands in the air causing an object to fly out of his hands and land in the street. The officers then stopped and exited their vehicle.

Detective Rocoforte retrieved the object from the street, which turned out to be a glass tube with residue that appeared to be crack cocaine. Detective Noel placed Fairly under arrest and read him his rights.

A review of the record reveals no errors patent.

In his sole assignment of error, Fairly argues that the district court erred in denying his Motion to Suppress the Evidence. Specifically, he argues that his motion should have been granted because the evidence was seized pursuant to an infringement of his rights.

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 that:

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.

Though law enforcement officers are given the discretion to stop a person and investigate suspicious activity, it is juxtaposed against an individual's rights under the Fourth Amendment of the United States Constitution and the Louisiana Constitution Art.I, Section 5, which provides in part:

Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or

invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose for the search.

In State v. Tucker, 626 So.2d 707,710 (La. 1993), the Louisiana Supreme Court noted in an effort to discourage police misconduct in violation of these standards, evidence recovered as a result of an unconstitutional search or seizure is inadmissible. Thus, evidence abandoned by a citizen and recovered by the police as a direct result of an unconstitutional seizure may not be used in a resulting prosecution against the citizen. If, however, a citizen abandons or otherwise disposes of property prior to any unlawful intrusion into the citizen's right to be free from governmental interferences, then such property may be lawfully seized and used against the citizen in a resulting prosecution. In this latter case, there is no expectation of privacy and thus no violation of a person's custodial rights.

“It is only when the citizen is actually stopped without reasonable cause or when a stop without reasonable cause is imminent that the right to be left alone is violated, thereby rendering unlawful any resultant seizure of abandoned property.” Tucker, *id.* citing State v. Belton, 441 So.2d 1195,

1199 (La. 1983). In Tucker the Court gave factors to determine whether an actual stop of an individual is imminent: (1) the proximity of the police in relation to the defendant at the outset of the encounter; (2) whether the individual has been surrounded by the police; (3) whether the police approached the individual with their weapons drawn; (4) whether the police and/or the individual are on foot or in motorized vehicles during the encounter; (5) the location and characteristics of the area where the encounter takes place; and (6) the number of police officers involved in the encounter.

In the instant case testimony at the motion hearing revealed that the officers approached Fairly after they observed him put his hands in the air and toss an object into the street. The abandonment of the object gave the officers reasonable suspicion and sufficient articulable knowledge of particular facts and circumstances to justify detaining Fairly or to infringe upon his right to be free from governmental interference. State v. Anderson, supra at p.2, 696 So.2d at 106. Once the object was retrieved, and it appeared to be a crackpipe with cocaine residue, the officers then had probable cause to arrest or facts and circumstances within their knowledge based on reasonable and trustworthy information to justify a belief that Fairly had committed a crime. Gibson v. State, 99-1730, p.7 (La. 4/11/00),

758 So.2d 782, 788.

We find that this assignment of error lacks merit.

**DECREE**

For the reasons stated herein we hereby affirm the conviction and Sentence of Michael Fairly.

**AFFIRMED**