

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2002-KA-0177**  
**VERSUS** \* **COURT OF APPEAL**  
**WALTER MCDANIEL** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 423-399, SECTION "F"**  
**Honorable Dennis J. Waldron, Judge**  
\* \* \* \* \*  
**Chief Judge William H. Byrnes III**  
\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, Judge Patricia Rivet Murray)

Harry F. Connick  
District Attorney  
Anne M. Dickerson  
Assistant District Attorney  
619 South White Street  
New Orleans, LA 70119  
COUNSEL FOR PLAINTIFF/APPELLEE

Mary Constance Hanes  
LOUISIANA APPELLATE PROJECT  
P. O. Box 4015

New Orleans, LA 701784015  
COUNSEL FOR DEFENDANT/APPELLANT

**CONVICTION AND SENTENCE AFFIRMED**

Defendant was charged by a bill of information with distribution of cocaine on July 24, 2001. The bill charged a co-defendant, Kevin Daughtery, with simple possession of cocaine. Defendant pled not guilty at arraignment, and defense motions were heard on August 13, 2001, and September 5, 2001. The trial court denied the motion to suppress and found probable cause.

On September 24, 2001, defendant plead guilty to the amended charge of simple possession of cocaine, reserving his right to appeal under *State v. Crosby*, 338 So.2d 584 (La. 1972). The state filed a multiple bill of information alleging defendant to be a third felony offender. Defendant pled guilty to the bill. The trial court sentenced defendant to forty months at hard labor in the custody of the Department of Corrections and granted defendant's motion for appeal.

**STATEMENT OF FACT**

Detective Michael Roussel testified that on June 4, 2001, he and his partner were traveling in a marked police vehicle in the 1000 block of Bienville Street. He observed the two defendants cross over from the

Iberville Housing project. Roussel testified that:

Q. Officer, where did this arrest occur?

A. In the 1,000 block of Bienville right off of Rampart, off the corner of Rampart.

Q. And why were you at that location?

A. We were proceeding in a westbound direction on Rampart. We observed the two defendants cross from the direction of the Iberville Housing Development. It's common knowledge within that area that a lot of tourists enter that, those developments in search of narcotics. As they crossed over, they stopped maybe 20 feet off the corner in the 1,000 block. The defendant produced an object from his pocket, showed it for examination to the co-defendant, which aroused my suspicions. We proceeded as they – and then the – excuse me. And then the other defendant – I clearly saw a twenty-dollar, twenty-dollar – money, currency in his hand, which led me to believe a narcotics transaction was taking. [sic]

Q. Which defendant produced the object?

A. The defendant before the Bar.

Q. And which defendant produced the currency?

A. the white gentleman, Mr. Daugherty.

Q. Could you tell us what you saw after that?

A. They – there was a brief conversation, a few seconds, at which time, as we approached, they looked over their shoulder. They saw the police car. We were in uniform in a marked unit. They tried to separate. The white gentleman walked on a diagonal towards Rampart across the parking lot, and he was immediately detained. This subject [the defendant, McDaniel] was detained, at which time he discarded a small Cellophane wrapper, which I knew from my experience contained a piece of crack cocaine.

On cross-examination Roussel testified that the transaction had not been completed: “As we pulled up, they separated when they saw us.”

Detective Michael McCleery, Detective Roussel’s partner in the car, testified that he observed the defendant remove something from his right front pant's pocket, cup it in his hand, and show it to Daugherty, who then removed what McCleery believed to be paper currency from his right front pants pocket. McCleery observed the defendant hand the object to Daugherty. McCleery believed that a narcotics transaction had just taken place and testified that they stopped the defendant. Meanwhile, Daugherty walked off “briskly” approximately five feet and dropped a cellophane bag, which Officer McCleery recovered. The officers also recovered a folded up twenty dollar bill from Daugherty's right hand.

McCleery testified that the area was a high drug-traffic area and that he had made numerous narcotics arrests in that area. These events occurred at approximately 10:00 p.m.

### **ERRORS PATENT**

A review of the record for errors patent reveals none.

### **ASSIGNMENT OF ERROR NUMBER 1**

In his sole assignment of error, defendant contends that the trial court erred in denying his motion to suppress the evidence. The Louisiana Code

of Criminal Procedure article 215.1 (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.

While "reasonable suspicion" is something less than the probable cause needed for an arrest, it must be based upon particular articulable facts and circumstances known to the officer at the time the individual is approached. *State v. Smith*, 94-1502, p. 4 (La. App. 4 Cir. 1/19/95), 649 So.2d 1078, 1082. 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. 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, 1232. The court must also weigh the circumstances known to the police not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. *State v. Huntley*, 97-0965, p. 3 (La.3/13/98), 708 So.2d 1048, 1049.

Flight from police officers alone will not provide justification for a stop. *State v. Benjamin*, 97-3065, p. 3 (La.12/1/98), 722 So.2d 988, 989.

However, flight from police officers is highly suspicious and, therefore, may be one of the factors leading to a finding of reasonable suspicion to stop.

*State v. Fortier*, 99-0244, p. 7, (La. App. 4 Cir. 1/26/00), 756 So.2d 455, 459, citing *Benjamin*.

Defendant contends the facts were insufficient to establish a reasonable belief that defendant was committing a crime. Specifically, defendant contends that the fact that Daugherty walked away from the police officers is not enough to provide justification for the stop.

In *State v. Williams*, 98-3059 (La. App. 4 Cir. 3/3/99), 729 So. 2d 142, while patrolling in an area known for drug trafficking, the officers observed the defendant and another man standing together. The defendant was reaching his hand toward the other man's open palm when the two noticed the officers, and the other man ran and ultimately escaped. The defendant looked around as if he was going to run but did not. The officers detained and frisked him finding drugs. On review, this court upheld the stop.

In *State v. Hall*, 99-2887 (La. App. 4 Cir. 10/4/00), 775 So.2d 52, officers investigating a citizens complaint of drug activity at a particular location arrived at the scene to observe the defendant standing on a porch with his hand outstretched toward a female. The female had currency in her hand extended towards the defendant. At the sight of the officers, the two

individuals retracted their respective hands, and the female turned and walked away. The defendant walked quickly into a hallway. On these facts, this court found that the officers had reasonable suspicion to believe that the defendant had been committing a crime.

In *State v. [Manuel] Williams*, 2000-2116 (La.App. 4 Cir. 2/28/01), 782 So.2d 145, the officers were on routine patrol when they observed a pickup truck with three occupants stopped in front of a grocery store. Another male was standing outside the vehicle conversing with a passenger, who then gave the pedestrian some currency in exchange for an unknown object. As the marked police car approached, the pedestrian fled around the corner and the truck drove away. This court found that these actions were sufficient to give the officers reasonable suspicion to stop the defendant.

This court also upheld the constitutionality of stops with similar facts in *State v. Fortier*, 99-0244 (La. App. 4 Cir. 1/26/00), 756 So.2d 455 and *State v. Washington*, 99-1111 (La. App. 4 Cir. 3/21/01), 788 So.2d 477.

*State v. Chark*, 96-1667 (La. App. 3 Cir. 4/30/97), 693 So.2d 316, is inapposite. In *Chark* the defendant was alone. The defendant merely walked from a tree to a bicycle when he saw the police car. The defendant was not even described as having walked briskly. No other activity was observed on the part of the defendant when he was stopped. The officers did

not see the defendant holding or carrying anything. Nothing was observed in *Chark* that would justify a stop as distinguished from the instant case where the observed activity was consistent with a suspected drug transaction in an area known for the frequency of such transactions, coupled with the flight of Daugherty, albeit at a brisk walk, constituted reasonable suspicion to believe that the defendant was committing a crime. Flight by one's companion at the sight of police can be a factor in determining reasonable suspicion. *Washington, supra*, p. 8, 788 So.2d at 487. In other words, the police officers in the instant case were relying on the totality of the circumstances in making the stop, not the sole fact that Daugherty walked away briskly. Unlike *Chark*, the instant case is not the stereotypical "case of a man merely standing on a street corner who is detained by the police simply because he is there." *State v. Ganier*, 591 So.2d 1328, 1330 (La.App. 4 Cir.1991)

In *State v. Johnson*, 2001-0640 (La. 4/26/02), 2001 WL 737128, the officers were on routine patrol of an area "known to them as a hot spot of narcotics and activity by trespassers coming into the housing development" when they observed the defendant and a companion walking through one of the courtyards. *Id.*, 2001-0640 at p 1, --- So.2d ---. As the officers approached the two men quickened their pace to a near run and repeatedly

looked over their shoulders. In one officer's opinion the men were attempting to cross over into another courtyard where the patrol unit could not follow. The court concluded "that in the context of the other circumstances known to the officer, including the lateness of the hour, the high crime character of the area, and the nervous demeanor of the two men reflected in their repeated glances over their shoulders, respondent's evasive conduct provided the minimal objective justification for an investigatory stop." *Id.* at p. 3. In so ruling the court noted that "[t]he assessment by a reviewing court of the cumulative information known to the officers avoids a 'divide-and-conquer analysis' by which the whole becomes less than the sum of its parts because each circumstance examined individually may appear 'readily susceptible to an innocent explanation.' *Arvizu*, 534 U.S. at ----, 122 S.Ct. at 751." *Id.* at 2.

Defendant's assertion that "the action of merely showing an unknown object in the hand to another person is not sufficient to provide police officers with reasonable suspicion in the absence of evidence of flight (actual running) or other factors...." is just the kind of "divide and conquer" argument given short shrift in *Johnson*. The defendant's understated description of events conveniently omits any mention of the fact that Detective McCleery described the walk as "brisk," that it was an area known

for a lot of drug activity, that it was after 10:00 p.m. at night, and that the officers observed the defendant remove something from his right front pants pocket in response to which Daugherty produced currency from his pants pocket. See *Fortier, supra*, p. 7-8, 756 So.2d at 460. Contrary to the defendant's selective characterization of the facts and, as already noted above, this is not the stereotypical "case of a man merely standing on a street corner who is detained by the police simply because he is there." *Ganier, supra*. Considering the totality of circumstances, trial court properly denied the motion to suppress the evidence.

### **DECREE**

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

**CONVICTION AND SENTENCE AFFIRMED**