STATE OF LOUISIANA	*	**NO. 2003-K-1114**
VERSUS	*	**COURT OF APPEAL**
KURTIS ROBINSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 438-086, SECTION "J"
Honorable Darryl A. Derbigny, Judge
* * * * * *

Charles R. Jones
Judge
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Terri F. Love, and Moon Landrieu, Judge Pro Tempore)

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COUNSEL FOR RELATOR

WRIT GRANTED; RELIEF DENIED

The State of Louisiana seeks to invoke our supervisory jurisdiction to reverse the judgment of the district court granting the motion to suppress evidence. We grant the State's writ application, but deny relief.

On April 21, 2003, Kurtis Robinson was charged with one count of possession of a firearm while in possession of a narcotic drug. On May 22, 2003, the court heard and granted his motion to suppress the evidence. This timely writ application follows.

FACTS

The evidence presented at hearing indicates that on March 14, 2003, police officers received a tip that a suspect in a homicide could possibly be found in the 3300 block of N. Roman Street. The officers drove to that block, and as they approached a residence at 3317 N. Roman Street they observed four men seated on a porch. As the officers approached, one man ran from the porch towards the back of the residence, two men remained seated, and the fourth man, the defendant, Kurtis Robinson, got up from his seat and walked hurriedly into the residence. Before leaving his seat, Robinson placed an object under the seat. One officer opened the door to the residence and watched as Robinson hurried down a hallway, passing another man who was walking toward the front of the house, having just come from the kitchen area. The officer testified at trial that he ordered

Robinson to come back outside, but Robinson disappeared into a room, where he remained for a few seconds. Robinson then walked back out of the room into the hallway, and the officer met him in the hallway and escorted him back outside onto the porch.

When Robinson and the officer came out onto the porch, another officer told the officer who followed Robinson into the residence, that the object Robinson placed under his chair was a gun. The officer then walked back into the house and into the room where he saw Robinson disappear, which he later discovered was a bathroom. The officer testified that he noticed the water was still swirling in the toilet, and he saw a small clear plastic package floating at the water line. The package contained other clear plastic packages containing white, rock-like substances. He retrieved the package and recovered what he believed was crack cocaine.

On cross-examination, the officer admitted that they went to the "target location" to investigate "whoever was in front of that target location." He testified that he had never seen any of the four men who were on the porch before. He admitted that they had no arrest warrant, nor did they have a search warrant for the residence. He further testified that he opened the door to the residence and ordered Robinson to come back outside because he suspected that under the circumstances, Robinson was trying to

conceal “something considered to be contraband or worse;” although he admitted he saw no contraband nor any evidence of any crime at the time Robinson got up and hurried into the residence.

The district court granted the Motion to Suppress, both the gun seized from the porch and the cocaine seized from inside the residence. The State argues in its writ application that the district court erred by so ruling because the officers had reasonable suspicion to believe Robinson was engaged in some sort of criminal behavior, and his flight into the house allowed them to follow him inside. The State further argues that the officers were justified in seizing the gun and the cocaine because Robinson abandoned those items.

The transcript from the hearing indicates that the officers first approached Robinson’s residence based upon a tip about a person connected to a murder. Contrary to the State’s writ application, there is no indication in the transcript that this tip came from a credible person nor that the neighborhood was a high crime area. The sole officer who testified at the suppression hearing, who was not the officer who received the tip, merely testified that the tip came from a “cooperating individual” In addition, the district court noted at the suppression hearing that the officer did not characterize the neighborhood as a high crime area. Furthermore, there is no indication in the transcript that the officers knew what the suspect looked

like; defense counsel indicated at the hearing that the police report he had received did not contain a description of the person that the police were seeking, and the officer who testified indicated that they approached the residence to interview the men standing on the porch "to see if, in fact, one of those would have been the person we were looking for." Thus, the only factors the State produced at the hearing was that the officers had gone to the 3300 block of N. Roman Street, seeking an unspecified person "who was possibly wanted in connection with a murder."

When the officers reached the block, they saw four men on the porch of 3317 N. Roman Street. Upon seeing the officers approach, one man left the porch and ran down the side of the house, two men remained where they were, and Robinson placed an object under his seat and hurriedly entered the house. The State argues that the officers were justified in going onto the porch because the actions of the men gave the officers reasonable suspicion of criminal activity which allowed them to detain the men. In State v. Dank, 99-0390 pp. 4-5 (La. App. 4 Cir. 5/24/00), 764 So.2d 148, 154-155, this court addressed the issue of reasonable suspicion to support an investigatory stop of a suspect:

> La. C.Cr.P. art. 215(A) provides that:
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> > 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 the detaining officer had sufficient facts within his knowledge to justify an infringement of the suspect's rights. *State v. Littles*, 98-2517, p. 3 (La.App. 4 Cir. 9/15/99), 742 So.2d 735, 737; *State v. Clay*, 97-2858, p. 4 (La.App. 4 Cir. 3/17/99), 731 So.2d 414, 416, *writ denied*, 99-0969 (La.9/17/99), 747 So.2d 1096. Evidence derived from an unreasonable stop, i.e., seizure, will be excluded from trial. *State v. Benjamin*, 97-3065, p. 3 (La.12/1/98), 722 So.2d 988, 989; *State v. Tyler*, 98-1667. P. 4 (La.App. 4 Cir. 11/24/99), 749 So.2d 767, 770. In assessing the reasonableness of an investigatory stop, the court must balance the need for the stop against the invasion of privacy that it entails. See *State v. Harris*, 99-1434, pp. 2-3 (La.App. 4 Cir. 9/8/99), 744 So.2d 160, 162. 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; *State v. Mitchell*, 98-1129, p. 9 (La.App. 4 Cir. 2/3/99), 731 So.2d 319, 326. 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. Dennis*, 98-1016, p. 5 (La.App. 4 Cir. 9/22/99), 753 So.2d 296, 299; *State v. Keller*, 98-0502, p. 2 (La.App. 4 Cir. 3/10/99), 732 So.2d 77, 78. 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, 1231; *State v. Williams*, 98-3059, p. 3 (La.App. 4 Cir. 3/3/99), 729 So.2d 142, 144. Deference should be given to the experience of the officers who were present at the time of the incident. *State v. Ratliff*, 98-0094, p. 3 (La.App. 4 Cir. 5/19/99), 737 So.2d 252, 254, *writ denied*, 99-1523 (La.10/29/99), 748 So.2d 1160.

Here, arguably the officers had reasonable suspicion to detain the men on the porch once one of the men fled from the porch and ran down the side of the house, while Robinson hurriedly went inside the house. This court and others have recognized that flight is a circumstance that may be taken into account when determining whether officers have reasonable suspicion to stop a defendant. See Illinois v. Wardlaw, 528 U.S. 119, 120 S.Ct. 673 (2000); State v. Johnson, 2001-2081 (La. 4/26/02), 815 So.2d 809; see also State v. Williams, 98-3059 (La. App. 4 Cir. 3/3/99), 729 So.2d 142, where this court found flight by a companion could be imputed to the remaining suspect in determining whether the officers had reasonable suspicion to stop the suspect who did not run.

The State further argues that this reasonable suspicion allowed the officer to open the door and enter the house because the officer was in "hot pursuit" of Robinson who had hurriedly entered the house upon seeing the officers approach. In State v. Page, 95-2401, p. 10, (La. App. 4 Cir.

8/21/96), 680 So.2d 700, 709 this court discussed the warrantless entry into a protected area:

> There is a justified intrusion of a protected area if there is probable cause to arrest and exigent circumstances. *State v. Rudolph*, 369 So.2d 1320, 1326 (La. 1979), cert. den., *Rudolph v. Louisiana*, 454 U.S. 1142, 102 S.Ct. 1001 (1982). Exigent circumstances are exceptional circumstances which, when coupled with probable cause, justify an entry into a "protected" area that, without those exceptional circumstances, would be unlawful. Examples of exigent circumstances have been found to be escape of the defendant, avoidance of a possible violent confrontation that could cause injury to the officers and the public, and the destruction of evidence. *State v. Hathaway*, 411 So.2d 1074, 1079 (La. 1982).

See also State v. Brown, 99-0640 (La. App. 4 Cir. 5/26/99), 733 So.2d 1282; State v. Blue, 97-2699 (La. App. 4 Cir. 1/7/98), 705 So.2d 1242; State v. Tate, 623 So.2d 908 (La. App. 4 Cir. 1993).

"Probable cause to arrest exists when the facts and circumstances known to the officer and of which he has reasonably trustworthy information are sufficient to justify a man of ordinary caution in believing the person to be arrested has committed a crime." State v. Wilson, 467 So.2d 503, 515 (La. 1985). See also Blue; State v. Johnson, 94-1170 (La. App. 4 Cir. 8/23/95), 660 So.2d 942.

In Brown, officers had stopped the defendant for a traffic infraction

the day before his arrest, and at that time he did not have his license with him. He told the officers he had left his license at his nearby home. The officers had him complete a field interview card, gave him a warning, and released him. They learned later that day that the defendant's license had been suspended. The next day, they saw the defendant driving in the same area, and when the defendant saw the officers he quickly pulled to the side of the road, jumped out of the car, left the car door open, and ran into the front yard of a nearby residence, clutching something in his hand. The officers exited their car and asked the defendant to step toward them. Instead, Brown turned and fled inside the residence. The officers followed him inside and saw him throw three packets out a window. The officers retrieved the packets and found they contained marijuana. The trial court suppressed the evidence, and this court reversed, finding the officers were justified in entering the residence. This court found the officers had probable cause to arrest the defendant for driving without a license (they had learned the day before that his license had been suspended). This court further found that their entry into the house was justified under the "hot pursuit" exception to the warrant requirement. This court noted:

> In *State v. Byas*, 94-1999 (La.App. 4 Cir. 12/15/94), 648 So.2d 37, this court also combined the theories of exigent circumstances and hot pursuit. The officers received a tip from a reliable known informant that "Cory" was selling cocaine

> at a certain address. The C.I. also stated that "Mary" lived at that address and aided Cory in the operation. The officers went to the residence and saw a man standing outside. The man saw the officers and fled. The next evening, the officers again approached the residence and saw the same man standing outside. Upon seeing the officers, the man fled toward the rear of the residence, and one officer saw him throw a bag, containing a large white object, over a fence into a vacant lot next to the residence. The man ran to the back of the residence, knocked, and was admitted by the defendant. When she saw the officers pursuing, the defendant slammed the door shut. The officers entered and seized the defendant and the man. The officers searched her and found in her pant pocket a matchbox containing three rocks of cocaine. Upholding the officers' entry into the house and the search of the defendant, this court noted that the officers had probable cause to arrest the man based upon the tip from the C.I., the man's flight, and his abandonment of the bag containing what appeared to be cocaine. The officers were justified in chasing the man into the residence in "hot pursuit". This court further found that once the officers were inside the house, they were justified in arresting the defendant for her commission of acts which constituted resisting arrest and for her participation in the drug operation.

State v. Brown, 99-0640 pp. 9-10, 733 So.2d at 1287-1288. This court found that because there was probable cause to arrest the defendant and exigent circumstances to chase him into the house, the officers could seized the packets of cocaine he threw out the window.

By contrast, in State v. Blue, 97-2699 (La. App. 4 Cir. 1/7/98), 705

So.2d 1242, the officers received a tip that a man wearing certain clothing was selling drugs from a certain address. Once at that address, the officers saw the defendant, who was wearing clothing, which matched the description given in the tip, walk out on the porch of the indicated residence. The officers had had no prior dealings with the defendant. When the defendant walked back inside the apartment, the officers followed him inside and discovered contraband. On review, this court upheld the trial court's suppression of this evidence. This court found the officers did not have probable cause to enter the house because although the defendant's clothing matched the description given in the tip, the officers did not observe him engage in any criminal activity. The extent of his actions were to look startled and walk back inside the apartment when he observed the officers. This court distinguished other cases cited by the State wherein officers' entries were upheld, finding that in those cases there were additional factors which supplied the probable cause to arrest the defendant:

> In *State v. Hathaway*, 411 So.2d 1074 (La.1982), officers received a tip that a known drug user would be delivering drugs to a residence in a certain block and that he would be armed. The officers set up a surveillance of the block and saw the user talking to another known drug user and to the defendant, who was unknown to the officers. The officers decided to detain the men, and when they announced their presence and told the men to "freeze", the other known drug user and the defendant ran inside one of the residences in the

block. The officers chased them and entered the residence, where they found the defendant with a gun and the other man trying to flush a syringe. On review of the defendant's conviction, the Court found the tip, combined with the officers' observations and their knowledge of two of the men, gave them reasonable suspicion to stop the group. The flight of one of the known users gave them probable cause to believe he was involved in drug activity, and their belief he entered the house to dispose of evidence gave them exigent circumstances to follow and enter the house.

Likewise, in *State v. Killian*, 95-826 (La. App. 3rd Cir. 5/8/96), 677 So.2d 487 [writ den. 96-1461 (La. 11/8/96), 683 So.2d 266], the officers received a tip that marijuana was being sold from a certain residence. The C.I. then conducted a controlled purchase from the residence and informed the officers that although the seller still had a quantity of marijuana in the residence, he was planning to sell it soon. The officers entered the house to secure it while they obtained a warrant. After being advised of his rights, the defendant consented to a search of the house. On review, the court found the officers had probable cause to believe the residence contained drugs, and the imminent sale of the remaining drugs allowed the officers to enter and secure the residence while the warrant was sought. In addition, the court found that because the entry was valid, the consent to search was also valid.

In *State v. Morace*, 446 So.2d 1274 (La. App. 2nd Cir.1984) [writ den. 448 So.2d 689 (1984)], officers received a tip that the defendant, who was under investigation by them at the time, was riding around a certain area in a certain car with a box containing marijuana. The officers immediately went to that area and saw the defendant drive up in the described car and pull

into the driveway of a known drug dealer. The officers stopped the defendant when he left the driveway. The officers ordered the defendant and his companion out of the car, and inside the car the officers could see a gun and a bag containing marijuana lying in plain view. The officers then searched the car and found more drugs. Pursuant to a search incident to arrest, the officers seized a vial of cocaine from the defendant. The officers then had the car towed, and pursuant to a warrant to search the car they found more guns. On review, the court found that the detailed tip, combined with the officers' knowledge of the defendant and the other dealer and their observations, gave the officers probable cause to arrest the defendant when they stopped him.

The remaining cases cited by the State are even less similar to the case here. In *State v. Robertson*, 557 So.2d 315 (La.App. 4th Cir.1990), the officers had detained a man walking out of an abandoned building about which they had received complaints of trespassing. As one of the officers investigated the building, he looked through an open door and saw the defendant and others standing around a table upon which sat cocaine. This Court found the officer was justified in entering the building to investigate the complaint. In *State v. Lyons*, 514 So.2d 558 (La. App. 4th Cir.1987) [writ den. *State ex rel. Lyons v. State*, 581 So.2d 680 (1991)], the officers were investigating a call of a shot fired through the floor of an apartment in a four-plex. The defendant lived in the apartment below, and the officers arrested him at his door. Fearing for their safety, the officers then entered the apartment to make sure no one else was in the apartment. Once inside, they saw a gun lying on a bed in a room directly below the hole created by the gunshot. This Court found the officers' fears for their continued safety gave them exigent circumstances

> to enter the apartment from which the shot had originated. In *State v. Henderson*, 571 So.2d 770 (La.App. 2nd Cir.1990), the defendant was seen near the area where a convenience store customer had been beaten and robbed. The defendant was wearing a distinctive shirt which matched the description of the shirt worn by the perpetrator and also worn by a man seen leaving the convenience store. Police officers followed the defendant to his trailer, surrounded it, and then saw the shirt lying inside a detached outbuilding. Although the court spoke of "exigent circumstances", it found the officers could lawfully seize the shirt found in plain view in the outbuilding.

State v. Blue, 97-2699, pp. 4-6, 705 So.2d at 1245-1246.

Likewise, in State v. Ferrand, 95-1346 (La. 12/8/95), 664 So.2d 396, officers were investigating a tip of drug sales in a certain alley, but they had no tip concerning the defendant or his apartment located on the alley. They went to the alley and observed the defendant walk out of his apartment with a gun in his hand. The defendant then turned and walked back inside his apartment, still holding the gun. The officers followed him inside and detained him and others inside. The defendant signed a consent form, and the officers searched the apartment, seizing the gun and some cocaine. The defendant was charged with possession of both items, and the trial court suppressed the evidence. This court reversed, State v. Ferrand, unpub. 95-0059 (La. App. 4 Cir. 4/26/95). On writs, the Supreme Court reinstated the trial court's ruling, finding that the officers did not have probable cause to

believe the defendant was engaged in criminal activity, given that there was nothing to link the information about drug sales to the defendant. The Court noted:

> The report of drug dealing in the alley way did not identify Ferrand by name or appearance; the alley way was deserted when the officers arrived before Ferrand walked out of his apartment and stood on the porch with the handgun approximately two feet away from his front door; and the officers were not aware at the time of Ferrand's convicted felon status. As the officer acknowledged, the public possession of an openly displayed handgun is not a crime in Louisiana and does not alone provide probable cause for an arrest. *State v. Snoddy*, 389 So.2d 377 (La.1980); *State v. Bowen*, 376 So.2d 147 (La.1979).

Ferrand, 95-1346 at pp. 2-3, 664 So.2d at 397. In addition, the Court pointed out the defendant did not flee after making eye contact with the officers, but merely walked back inside his apartment. The Court further stated:

> Ferrand's conduct from the time the officer first spotted him until the time of his arrest was non-assaultive and entirely consistent with innocent pursuits. There was nothing to suggest that Ferrand had been or was engaged in the commission of any crime. *State v. Moreno*, 619 So.2d 62 (La.1993); *State v. Belton*, 441 So.2d 1195 (La.1983). Moreover, when they rushed across the threshold, the officers had no reason to suspect that anyone inside the apartment, including Ferrand, needed help, that any suspect was about to flee, or that any other course of action would create a grave risk of endangering their own lives.

> See *Warden v. Hayden*, 387 U.S. 294, 298-300, 87 S.Ct. 1642, 1646, 18 L.Ed.2d 782 (1967). Finally, the primary illegality of the entry tainted Ferrand's subsequent consent to the search of his apartment moments later and required suppression of all of the evidence found in the home. *State v. Raheem*, 464 So.2d 293 (La.1985).

Ferrand, 95-1346 at p. 3, 664 So.2d at 397-398.

In the matter *sub judice*, the officer testified that he opened the door and watched Robinson walk back into the residence and into a room which was later found to be a bathroom. The officer further admitted he entered the residence and escorted Robinson back outside. The State argues that the officer was justified in entering the residence because the officer had reasonable suspicion, due to Robinson's flight and the tip, that Robinson was engaged in criminal activity. However, as per the cases cited above, even if Robinson's actions were sufficient to give the officer reasonable suspicion of criminal activity, these actions did not provide the much greater *probable cause* needed to make a warrantless entry of the house. The officer admitted that he did not see Robinson engage in any criminal activity prior to Robinson's entrance to the residence. Even the fact that Robinson placed a gun under his seat before leaving the porch did not justify the officer's entry into the residence. As noted in Ferrand, *supra* the public display of a weapon by itself is not a crime, and there was no testimony that Robinson

had concealed the gun prior to his placing it under the chair. In any event, the officer admitted he did not know that Robinson had placed a gun under the chair until he had entered the house and escorted the defendant back outside. Thus, the officer's entry into the house was illegal.

The officer seized the cocaine from the bathroom of the residence. He suspected that Robinson had abandoned something in the room because he had seen Robinson go quickly into the room and then exit. However, the officer only knew of these actions because he had opened the door and entered the residence, and because he was without authority to do so, he could not reenter the residence to search that room unless he had a separate basis for the entry. In accordance with Ferrand, the fact that the officers found a gun under the chair that Robinson had vacated, does not give the officers probable cause to believe there was contraband or evidence of a crime inside the residence, see Ferrand, and even if it had, this fact alone does not give the officers exigent circumstances to enter the residence. See State v. Kirk, 2000-0190 (La. App. 4 Cir. 11/13/02), 833 So.2d 418. The officer here did not testify that he believed anyone else was in the residence at the time he re-entered to search the room in which he had seen Robinson briefly enter. Thus, there was no basis for the entry into the residence which would have allowed the officer to discover and seized the cocaine.

The State argues the cocaine (and the gun) were properly seized because Robinson abandoned them. See State v. Britton, 93-1990 (La. 1/27/94), 633 So.2d 1208; State v. Allen, 2001-0939 (La. App. 4 Cir. 7/18/01), 792 So.2d 93. However, as for the cocaine, it was "abandoned" inside the residence, where the officer had no authority to be. Thus, even if Robinson's actions could be said to have been an "abandonment", the officer still had no authority to enter the residence to seize it.

With respect to the gun, as the officer testified, Robinson placed it under his chair when he noticed the officers approaching. The mere approach of the officers would not constitute an "imminent actual stop" which would impinge upon Robinson's liberty rights, and as such the officers were justified in seizing the gun. It is true the officers seized the gun from the porch, but the gun was apparently lying in plain view from the porch. In State v. Brisban, 2000-3437 (La. 2/26/02), 809 So.2d 923, the Court recognized that an officer could seize contraband he saw through an open door way from his vantage point on a defendant's porch, if the officer was on the defendant's porch for a legitimate purpose. See also State v. Deary, 99-0627 (La. 1/28/00), 753 So.2d 200. The officers here were on the porch for a legitimate reason: to follow up on the tip, however vague it may have been. As such, they were in a position to see the gun.

However, the case at hand falls outside of the plain view exception in that it was not clear that the gun in question was contraband nor evidence of a crime. See State v. Jones, 2002-1171 (La. App. 4 Cir. 6/26/02), 822 So.2d 205; State v. Nogess, 98-0670 (La. App. 4 Cir. 3/3/99), 729 So.2d 132.

Finally, in State v. Scull, 93-2360, p. 9 (La. App. 4 Cir. 6/30/94), 639 So.2d 1239, 1245, this court stated: "The trial court is vested with great discretion when ruling on motion to suppress." See also State v. Jones, 2002-1931 (La. App. 4 Cir. 11/6/02), 832 So.2d 382; State v. Briley, 2001-0143 (La. App. 4 Cir. 10/3/01), 798 So.2d 1191 . Therefore, this Court finds no error in the district court granting the motions to suppress the cocaine seized from inside the residence and the gun found on the porch.

WRIT GRANTED; RELIEF DENIED.