NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2004-KA-0539**
VERSUS	*	**COURT OF APPEAL**
MARK A. JONES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-413, SECTION "F"
HONORABLE DENNIS J. WALDRON, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * * *

(COURT COMPOSED OF CHIEF JUDGE JOAN BERNARD ARMSTRONG, JUDGE MICHAEL E. KIRBY, AND JUDGE MAX N. TOBIAS, JR.)

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AFFIRMED.

Defendant, Mark A. Jones ("Jones"), and his co-defendant, Zelphia Lewis ("Lewis"), were charged by bill of information on 29 November 2001, with one count each of possession with the intent to distribute cocaine in violation of La. R.S. 40:967(B)(1). The defendants pleaded not guilty at their 7 December 2001, and 14 December 2001, arraignments. After hearings on 19 December 2001, 11 January 2002, and 17 January 2002, the trial court denied the defendants' motion to suppress the evidence on 1 March 2002.

On 22 April 2002, defendant Lewis pled guilty as charged. On 4 June 2002, Jones pled guilty as charged. On 12 July 2002, Jones was sentenced to ten years without the benefit of parole, probation, or suspension of sentence for the first two years. The trial court subsequently granted Jones' motion for appeal. Lewis is not a party to this appeal.

Detective Merlin Bush, of the New Orleans Police Department's Third District Narcotics Unit, testified at the 19 December 2002 motion

hearing that on 25 October 2001, he, Detective Jamar Little, and Sergeant Charles Little, also of the Third District Narcotics Unit, conducted an investigation of the defendants based on information given to the unit by a confidential informant. Detective Bush further testified that the informant described a black male and female engaging in narcotics trafficking from room 366 of the Knights Inn Motel located at 4180 Old Gentilly Road in New Orleans. The informant also told the unit that the female used a silver Towncar to deliver the narcotics when necessary.

Detectives Bush and Little positioned themselves in a location to observe room 366, while Sergeant Little acted as the take down officer. During the observation, the detectives saw a black female, later identified as Lewis, exit room 366 and enter the silver Towncar. The detectives and the sergeant followed the female to the Friendly Inn located on Chef Menteur Highway. Lewis parked the vehicle in an empty lot, exited the driver's seat, opened the rear driver's side passenger door, and retrieved something from a blue canvas bag. As Lewis parked the vehicle, the officers observed a white male exiting the Friendly Inn counting currency taken from his pants pocket. The white male returned the money to his pocket and approached Lewis. Lewis and the white male had a brief conversation, and the two engaged in what appeared to be a hand-to-hand drug transaction. The detectives

informed Sergeant Little of the exchange, and the sergeant approached the pair identifying himself as a police officer.

Detective Bush testified that as Sergeant Little approached he observed Lewis discard something into the rear of the vehicle. Lewis and the white male were detained as the vehicle was searched. The officers found a small clear plastic bag that contained a substance that appeared to be crack cocaine. Lewis was placed under arrest, and the white male was allowed to leave because no drugs were found in his possession. All of the officers returned to the Knights Inn Motel and knocked on the door of room 366. Jones opened the door and when he discovered it was the police knocking he attempted to slam the door. The officers entered the room for fear that Jones would destroy evidence or arm himself. The officers observed in plain view on the bed a clear plastic bag containing a white powder substance and a large white rock substance on the air conditioner vent. Jones was arrested and the room secured until a search warrant could be obtained.

Once the warrant was obtained, the officers searched the room and recovered two butane burners, a Louisiana driver's license belonging to Jones, a hotel receipt with the names of both defendants on it, a Taurus .38 special handgun, five boxes of sandwich bags, a box of baking soda, a

digital scale, a Sprint cellular phone, a plate containing a white powder residue, a plastic bag containing a powder residue, a razor blade, and a spoon.

Sergeant Little and Detective Little each gave corroborating testimony at the 11 January 2002, motion hearing.

A review of the record revealed that the copy of the bill of information contained in the record does not bear the district attorney's signature. La. C.Cr.P. art. 487 provides an indictment that charges an offense in accordance with the provisions of this title shall not be invalid or insufficient because of any defect or imperfection in, or omission of, any matter of form only. The omission of the signature by the district attorney is a formal defect. The technical sufficiency of an indictment may not be raised after conviction where the accused has been fairly informed of the charge against him and has not been prejudiced by surprise or lack of notice and will not be subject to any jeopardy of further prosecution. *State v. Guffey*, 94-797 (La. App. 3 Cir. 2/1/95), 649 So.2d 1169. Jones did not object to the defect prior to pleading guilty; the defect was therefore waived.

In his sole assignment of error, Jones complains that the trial court erred in denying the motion to suppress because there was no probable cause to arrest him and thus the warrant was obtained illegally.

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:

> 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. [Citations omitted]

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. Short*, 96-1069, p.4 (La. App. 4 Cir. 5/7/97), 694 So.2d 549, 552.

When a law enforcement officer has probable cause to believe that a person has committed a crime, he may place that person under arrest. Incident to such lawful arrest, the officer may lawfully conduct a full search of the arrestee and the area within his or her immediate control for weapons and for evidence of a crime. *State v. Morgan*, 445 So.2d 50, 51 (La. App. 4 Cir. 1984).

In *State v. Morales*, 583 So.2d 129 (La. App. 4 Cir. 1991), this court found that a tip from an anonymous informant was sufficient to create reasonable suspicion to stop the defendant and the officers had probable cause to arrest him when the information from the tip was corroborated by independent police work.

> Probable cause to arrest exists when the facts and circumstances known to the arresting officer and of which he has reasonably trustworthy information are sufficient to justify a man of ordinary caution in believing that the person to be arrested has committed a crime. *State v. Wilson*, 467 So. 2d 503 (La. 1985); *cert. den. Wilson v. Louisiana* 474 U.S. 911, 106 S.Ct. 281 (1985); *State v. Blue* 97-2699 (La. App. 4th Cir. 1/7/98), 705 So. 2d 1242 *writ den*. 98-0340 (La. 3/27/98), 716 So. 2d 887.

Whether an informant's tip establishes

> probable cause to arrest or reasonable suspicion to stop must be considered under the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983). Corroboration of details of an informant's tip by an independent police investigation is valuable when applying the totality of the circumstances analysis. *State v. Raheem*, 464 So. 2d 293 (La. 1985).

In the instant case, the corroboration of the informant's information by independent police surveillance gave the officers probable cause to arrest Jones. By the time the officers knocked on the door of room 366, all of the information given had been corroborated by independent investigation. Lewis exited the room identified by the informant, entered the silver Towncar, and attempted to deliver drugs to a potential customer, all as the informant had described. In addition, the officers found drugs in Lewis' car after observing her engage in a suspected drug transaction. The informant had also stated that room 366 was the central location of the drug operation, and that a black male was also involved. When Jones, a black male fitting the description given by the informant, opened the motel room door the informant's information was again corroborated. The officers entered the room only after Jones attempted to slam it shut upon seeing them at the door. Once the officers entered the room, the presence of the white powder substance in the clear plastic bag on the bed and the large rock like substance on the air conditioner vent gave the officers probable cause to arrest Jones

and obtain the search warrant to locate any other drugs hidden in the room. The Fourth Amendment does not prohibit warrantless seizure of evidence of a crime in plain view, even if the discovery of the evidence was not inadvertent. *Horton v. California*, 496 U.S. 128, 110 S.Ct. 2301. In *State v. Jones*, 02-1931, p. 5 (La. App. 4 Cir. 11/6/02), 832 So.2d 382, 386, this court found:

> 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. Julian*, 2000-1238 (La.App. 4 Cir. 3/4/01), 785 So.2d 872; writ den. 2001-1247 (La.3/22/02), 811 So.2d 920; *State v. Brown*, 99-0640 (La.App. 4 Cir. 5/26/99), 733 So.2d 1282.

In the instant case, all the evidence recovered from Jones' motel room was seized after the issuance of, and pursuant to the execution of, the search warrant. Probable cause for the issuance of the search warrant was established prior to the officers' entry into the motel room. There was nothing to suggest that the officers entered Jones' motel room for any purpose other than to insure that no one inside would dispose of evidence before the officers could obtain a search warrant. A preponderance of the

evidence shows that the items seized from Jones' motel room ultimately or inevitably would have been discovered pursuant to the execution of the search warrant. Accordingly, the evidence was admissible, and the trial court properly denied the motion to suppress it. This assignment is without merit.

Accordingly, Jones' conviction and sentence are affirmed.

AFFIRMED.