NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2007-KA-0699**
VERSUS	*	**COURT OF APPEAL**
SPENCER HINDSMAN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 464-603, SECTION "I"
Honorable Raymond C. Bigelow, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias, Jr., and Judge Leon A. Cannizzaro, Jr.)

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AFFIRMED

Spencer Hindsman appeals his conviction and sentence arguing that the district court erred in denying his motion to suppress. Hindsman also seeks review of errors patent by this Court. For the reasons set forth below, we affirm.

Hindsman was charged on March 23, 2006 with one count of possession of cocaine. He entered a not guilty plea on April 26, 2006. Then on May 11, 2006, he entered a guilty plea as charged; this plea was withdrawn on June 28, 2006. On July 20, 2006, the district court found probable cause and denied the motions to suppress the evidence and statement. Following a jury trial on September 6, 2006, Hindsman was found guilty as charged. He was sentenced on March 9, 2007 to serve four years at hard labor. The state filed a multiple bill of information to which Hindsman entered a not guilty plea. No hearing has been held on the multiple bill. Hindsman's motion for appeal was granted on March 15, 2007.

Facts

On February 15, 2006, Officers Nixon and Strunk were on proactive duty in the Fourth District patrolling in a marked police vehicle without roof lights. It was after 9:00 p.m. when they observed two individuals talking in the 1500 block of

Newton Street. The area was well lit and was known to have nuisance criminal activity.

One of the individuals was Hindsman, and he was sitting on a bicycle. The other individual, Mr. Smith, was standing. After observing a hand-to-hand exchange of unknown objects between the two individuals, the officers decided to investigate, thinking that a drug transaction had occurred. The officers exited the vehicle. Hindsman appeared to alert Mr. Smith of the police presence, and Mr. Smith immediately turned and walked into the street. Officer Nixon observed Hindsman bring his right hand to his mouth. Hindsman then rode off in the opposite direction on his bicycle.

Officer Strunk focused on Mr. Smith, who he ordered to stop and approach the police vehicle. Officer Nixon verbally ordered Hindsman to stop, but he proceeded down the street further with Officer Nixon following. Eventually Hindsman stopped, and he was ordered by the officer to show his hands. Hindsman's speech was garbled, and he began to choke. He then spat next to the bicycle that he had dismounted. Officer Nixon ordered Hindsman to approach the police vehicle. Officer Strunk was at the police vehicle with Mr. Smith. Officer Nixon used his flashlight to observe the spittle. In the spittle, he saw a baggie containing a white substance. Hindsman was then handcuffed by Officer Strunk. When Officer Nixon returned to the vehicle, appellant was placed under arrest for possession of cocaine. Officer Strunk testified that the baggie that was shown to him containing the cocaine was wet.

Officer Nixon first spoke with Mr. Smith, who informed the officer that Hindsman was looking for change to buy a "single". A "single" is an individual cigarette. Officer Nixon then spoke to Hindsman, who also stated that he was

asking for change to buy a "single." Later in the conversation, he admitted that he wanted a cigarette to smoke crack cocaine. Mr. Smith was not detained based upon the story told by the men. Though both officers admitted that no drug transaction had occurred, both testified that based on their experience, they reasonably believed that a crime had occurred. Both officers testified that they have participated in hundreds of drug arrests.

The defense entered into a stipulation that the white substance found inside the baggie tested positive for cocaine.

Errors Patent/Assignment of Error #2

There are no errors patent in this appeal.

Assignment of Error #1

Hindsman alleges that the district court erred by denying the motion to suppress the evidence because the officers lacked reasonable suspicion to stop appellant.

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.

The facts and circumstances leading to Officer Nixon's pursuit of Hindsman and ultimate recovery of the crack cocaine are similar to other cases wherein this court found that reasonable suspicion was present to effectuate a stop.

In State v. Schaffer, 99-0766 (La. App. 4 Cir. 4/12/00), 767 So. 2d 49, officers on patrol saw the defendant and another man engaging in a hand-to-hand exchange of unknown objects. Upon seeing the officers, the suspects suddenly closed their hands and stood up. As the officers approached, the defendant fled. This court found that these circumstances, the suspected drug transaction and the flight, combined to give the officers reasonable suspicion to stop the defendant.

In State v. Fortier, 99-0244 (La. App. 4 Cir. 1/26/00), 756 So. 2d 455, officers on patrol saw the defendant straddling a bicycle, showing something in his hand to another man. When the officers approached, the other man quickly walked away, while the defendant reached down to his sock and then began to ride away. The officers stopped the defendant, frisked him, and found marijuana in his sock.

On review, two members of the panel found reasonable suspicion to support the stop, even though there was no testimony the area was known for drug activity, and the officers did not see what was in the defendant's hand. The majority of the panel found the defendant's actions, which it found to be consistent with drug activity, coupled with the defendant's movement toward his sock and his flight, gave the officers reasonable suspicion to stop the defendant.

In State v. Briley, 2001-0143 (La. App. 4 Cir. 10/3/01), 798 So. 2d 1191, officers were on proactive patrol in an area known for narcotics activity when they observed the defendant and another man. The defendant had an object in his hand; the other person was looking at it. When the two men noticed the police car, they abruptly turned in different directions and walked away. The second subject was not stopped, although an effort was made to find him. As the officers approached the defendant, who still had the unknown object in his hand, he put his hand to his mouth. Because the officers believed that the defendant was attempting to dispose of contraband, they physically detained him. The officer could see remnants of crack cocaine on the defendant’s face. The officers formally arrested him; the defendant spit out his false teeth upon which the officers could see a white residue. On appeal, this Court concluded that the officers had reasonable suspicion for the initial detention of the defendant. Once they observed the crack cocaine remnants, they had probable cause for an arrest, a fact which was not disputed by the defendant.

Here, the officers witnessed a hand-to-hand transaction of some unknown objects. Based on their extensive experience, the officers reasonably believed that they had witnessed a drug transaction in an area known for nuisance criminal activity. Upon seeing the officers, Hindsman appeared to alert the other man, who

immediately walked away. Hindsman immediately turned his bicycle and fled a short distance after placing his hand to his mouth. As Officer Nixon approached, Hindsman spat. Found in the spittle was a baggie containing cocaine. If property is abandoned without any prior unlawful intrusion into a citizen's right to be free from government interference, then such property may be lawfully seized. In such cases, there is no expectation of privacy and thus no violation of a person's custodial rights. State v. Belton, 441 So. 2d 1195, 1199 (La. 1983). In sum, appellant abandoned the cocaine before the officers stopped him, the officers had reasonable suspicion to stop him, and the cocaine was lawfully seized.

Decree

For the reasons stated above we affirm Spencer Hindsman’s conviction and sentence.

AFFIRMED