STATE OF LOUISIANA	*	**NO. 2018-K-0375**
VERSUS	*	
		COURT OF APPEAL
TARIK MCMASTERS	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

*** * * * * * ***

APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 534-549, SECTION "L"
Honorable Franz Zibilich, Judge
* * * * * *

Judge Paula A. Brown
* * * * * *

(Court composed of Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins, Judge Paula A. Brown)

LEDET, J., DISSENTS AND ASSIGNS REASONS

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WRIT DENIED; STAY DENIED;
JUNE 4, 2018

The State seeks review of the district court's granting of Defendant's Motion to Suppress.

In *State v. McMasters*, 18-0027, p. 6 (La. App. 4 Cir. 3/15/18), (unpub.), we remanded the matter "for further consideration in light of [*State v.*] *Greenberry* [14-1126 (La. 4/10/15), 164 So.3d 824], [*State v.*] *Fearheiley* [08-0307, p. 1 (La. 4/18/08), 979 So.2d 487, 488)], [*State v.*] *Cure* [11-2238 (La. 7/2/12), 93 So.3d 1268 [*State v.*] *Bush*, [12-0720 (La. 6/1/12), 90 So.3d 395)], *et al"* to determine "whether, under a totality of the circumstances, the police possessed the requisite level of suspicion to effectuate the brief detention, which blossomed into probable cause to arrest once defendant fled from the scene and ignored the officer's command to stop."

The district court concluded, following remand, that "as a matter of fact and law the officers involved lack[ed] the requisite probable cause and reasonable suspicion to stop and search the defendant under the totality of the circumstances. We find the district court did not abuse its discretion in granting the Defendant's motion.

The district court properly considered the totality of the circumstances. Based upon the testimony elicited at the hearing on the motion to suppress, the district court made several specific factual findings:

> This Court reiterates the following: Number one, the Record does not indicate how long before the instant surveillance the alleged phone calls were made concerning the address/area in question.
>
> The testimony adduced at the motion hearing was that numerous phone calls had been made to either the police or the HANO police relative to a certain address. We don't know when those phone calls were made in relationship to the activity on the date in question.
>
> Number two, there is certainly no evidence or suggestion that the defendant was one of the suspects engaged in transactions. That was likewise brought out on cross-examination where the officer admitted that he had no evidence that this particular defendant was one of the four to five suspects engaged in transactions.
>
> Number three, there is no description of the defendant either by name or physical trait given by the alleged caller.
>
> Number four, prior to the defendant running [,] there was no evidence the defendant was committing a crime. All we have here that is suspicious is that the defendant ran. That simply is not enough to establish reasonable suspicion or probable cause because if it were every single time somebody ran when the police arrived at the scene, they would be subjecting themselves to searches pursuant to the Fourth Amendment.

"When a district court makes findings of fact based on the weight of the testimony and the credibility of the witnesses, a reviewing court owes those findings great deference, and may not overturn those findings unless there is no evidence to support those findings." *State v. Wells*, 08-2262, p. 4 (La. 7/6/10), 45 So.3d 577, 580 (citations omitted); *See State v. Morgan*, 09-2352, p. 5 (La. 3/5/11), 59 So.3d 403, 406 ("Furthermore, a reviewing court must give due weight to factual inferences drawn by resident judges.").

Additionally, the district court provided a discussion of the four cases referenced by this Court's prior writ decision and distinguished the present case in light of those cases:

> So here is the new Ruling relative to the Fourth Circuit Court of Appeal[']s mandate. This Court has re-examined the law pursuant to the Fourth Circuit Court of Appeal[']s] remand. The Court has reviewed and studied the four cases cited by the Court of Appeal and reconsidered this factual backdrop under "a totality of circumstances." This Court is still convinced if not more so that the stop hearing [sic] was not supported by Probable Cause or reasonable suspicion. Unlike **Fear**[**heighley**] there is nothing in the instant record to suggest that the defendant was involved in hand-to-hand transactions were [sic] observed in the instant case.
>
> The ***Bush*** facts likewise differ as well as the totality of circumstances gave rise to a reasonable belief that a hand-to-hand transaction occurred even though one was not seen.
>
> Again, in the case at bar the Record is devoid of any evidence that the defendant was one of the four to five individuals suspected of alleged transactions.
>
> In **Cure**, the experience[d] officer observed behavior consistent with drug transaction and use.
>
> Finally, in **Greenbe**[**rry**] the defendant brought attention to himself by continuously circling the block in a high crime, violent neighborhood.

A district court's ruling is generally entitled to review under a deferential standard with regard to factual and other trial determinations, and legal findings are subject to a *de novo* standard of review. *State v. Julien*, 17-0557, p. 24 (La. 10/18/17), 234 So. 3d 21, 24, citing *State v. Hunt*, 09-1589 (La. 12/1/09), 25 So.3d 746, 751. "[A] reviewing court must look at the totality of the circumstances to determine if an officer has reasonable suspicion to stop a suspect." *State v. Lewis*, 15-0773, p. 14 (La. App. 4 Cir. 2/3/16), 187 So.3d 24, 32, (citing, *State v. Temple*, 02-1895, p. 5 (La.9/9/03), 854 So.2d 856, 860). A trial court's ruling on a motion to suppress

will not be set aside unless there is an abuse of discretion. *State v. Thompson*, 11-0915, p. 13 (La. 5/8/12), 93 So.3d 553, 563.

Accordingly, we find no abuse of discretion in the district court's granting of Defendant's motion to suppress evidence. Additionally, the State's request for a stay is denied.

WRIT DENIED; STAY DENIED.