NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 2007

STATE OF LOUISIANA

VERSUS

COREY ANTHONY DAVIS

Judgment Rendered: March 26, 2008

Appealed from the
Thirty-Second Judicial District Court
in and for the Parish of Terrebonne, State of Louisiana
Trial Court Number 464,642

Honorable David Arceneaux, Judge Presiding

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Jason Lyons **Juan Pickett** **Houma, LA**	**Attorneys for Appellee,** **State of Louisiana**
Bertha Hillman **Thibodaux, LA**	**Attorney for Defendant/Appellant,** **Corey Anthony Davis**
Corey Anthony Davis **Grayson, LA**	**Pro Se**

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BEFORE: WHIPPLE, GUIDRY AND HUGHES, JJ.

WHIPPLE, J.

The defendant, Corey Anthony Davis, was charged by bill of information with possession with the intent to distribute a Schedule II controlled dangerous substance (cocaine) (count one), a violation of LSA-R.S. 40:967(A), and possession with the intent to distribute a Schedule I controlled dangerous substance (marijuana) (count two), a violation of LSA-R.S. 40:966(A). The defendant pled not guilty. The defendant filed a motion to suppress the evidence. Following a hearing on the matter, the motion was denied. Thereafter, the defendant withdrew his prior pleas of not guilty and, at a Boykin hearing, entered pleas of guilty pursuant to State v. Crosby, 338 So. 2d 584 (La. 1976), reserving his right to challenge the ruling on the motion to suppress evidence on appeal. On the conviction of possession with the intent to distribute cocaine (count one), the defendant was sentenced to fifteen years at hard labor, with the first two years of the sentence to be served without benefit of probation, parole, or suspension of sentence. On the conviction of possession with the intent to distribute marijuana (count two), the defendant was sentenced to fifteen years at hard labor. The sentences were ordered to run concurrently. The defendant now appeals, designating one counseled assignment of error and one pro se assignment of error. We affirm the convictions and sentences.

FACTS

On January 31, 2006, Kyle Bergeron, a Narcotics Division agent with the Terrebonne Parish Sheriff's Office, received an anonymous tip that a black male named Corey Davis at 131-A Samuel Street was in possession of a large amount of crack cocaine and marijuana. According to the tip, the drugs were kept in the defendant's residence and vehicle. Agent Bergeron, along with Agents Alvin Tillman and Russell Madere, went to the residence on Samuel Street to conduct a

"knock and talk." They knocked on the door and Latasha Hansey[1] answered. They asked Hansey if the defendant was there, and she responded in the negative. They asked if she lived there, and she responded in the affirmative. According to Agent Bergeron, who testified at the motion to suppress hearing, they asked if they could come inside to speak to her about an incident, and she invited them in. Hansey testified at the motion to suppress hearing that she did not give the agents permission to enter the residence.

According to Agent Bergeron, the agents smelled marijuana upon entering the residence. They saw the defendant walk into the living room and asked him his name. After the defendant confirmed his identity, the defendant and Hansey were advised of their rights and were told why the agents were there. The agents asked the defendant if there was any marijuana in the residence. The defendant said there was and removed a baggie of marijuana from a shoebox and handed it to the agents. The agents asked the defendant if there were any more drugs in the residence. The defendant said there was, but he was not signing anything and was not going to let them search.

Agents Bergeron and Tillman left and returned a short while later with a search warrant. The agents searched the residence and two vehicles parked in the defendant's driveway. They found approximately 45 grams of crack and powder cocaine, 378 grams of marijuana, and $4,000.00 in cash. They also found $960.00 in cash on the defendant.

COUNSELED ASSIGNMENT OF ERROR

In his counseled assignment of error, the defendant argues that the trial court erred in denying his motion to suppress. Specifically, the defendant contends that

[1]Hansey was involved in a romantic relationship with the defendant, but did not live with him at his residence on Samuel Street. At the time of this incident, Hansey was pregnant with their daughter.

Hansey did not give the agents permission to enter the residence, nor did she have the authority to give them permission to enter.

Louisiana jurisprudence allows the "knock and talk" approach of police. Knocking on a door is an age-old request for permission to speak to the occupant. When a door is opened in response to a knock, it is a consent of the occupant to confront the caller, and there is no compulsion, force, or coercion involved. State v. Warren, 2005-2248, pp. 6-7 (La. 2/22/07), 949 So. 2d 1215, 1222.

At the motion to suppress hearing, Agent Bergeron testified that when he and Agents Tillman and Madere went to the residence on Samuel Street and knocked on the door, a black female, later identified as Hansey, answered the door. The agents asked Hansey if she lived there and she said that she did. When the agents asked if they could come in to speak to her about an incident, Hansey stepped back and said, "Sure, come on in."

Hansey, on the other hand, testified on direct examination at the motion to suppress hearing that when she answered the door, the agents asked if the defendant was there, and she told the officers that he was not. The agents asked two or three times if they could come in and Hansey told them "no." Defense counsel asked, "Did you or Corey ever give them permission to enter into the house?" Hansey responded, "No." On cross-examination, Hansey testified that she lied to the agents about the defendant not being at the residence:

> Q. And you testified earlier, and I just want to make sure that I'm correct, that the police knocked on the door and they initially asked you if Corey Davis was there; is that right?
> A. Yes.
> Q. And you told them no?
> A. Yes.
> Q. Despite the fact that he was still there?
> A. Yes.
> Q. And you knew he was there, right?
> A. Yes.
> Q. So you're admitting under oath today that you lied to the police; is that right?
> A. Yes.

In denying the motion to suppress, the trial court stated in pertinent part:

> Now, I have the testimony of Ms. Hansey who says that she did not allow them to go in or give them permission to go in. . . . Deputy Bergeron's testimony was to the contrary.
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> * * *
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> Now, we really get down to one point and that is whether or not the police had the right to be on the premises, in the house, in the first place. And the only way they had a right to be there was if Ms. Hansey let them in.
>
> * * *
>
> I have the testimony of the deputy whose testimony, frankly, has been fairly consistent, and he says he specifically recalls that Ms. Hansey welcomed, I think that was the word he used, welcomed them into the home. Ms. Hansey says that she certainly did not. But I have Ms. Hansey also telling me here under oath today that she lied to the police when she [sic] arrived and said that Mr. Davis was not home when she knew he was.
>
> I have to weigh in this case the testimony of Ms. Hansey, who tells me she lied, against that of Deputy Bergeron, who tells me that they were welcomed into the home and his testimony appears to be consistent with everything else that he testified about in this case. Some of it [was] even confirmed by Ms. Hansey.
>
> All things considered, I think that the evidence is to the effect that Deputy Bergeron was being truthful when he said that he was permitted to enter the residence with the permission of Ms. Hansey, who by all appearances had the authority to do that. After all, she answered the door and told them that Mr. Davis wasn't home. By her own admission she said that. So she certainly had the authority, it appeared at least, for the police to enter the home.

When reviewing a trial court's ruling on a motion to suppress based on findings of fact, great weight is placed on the trial court's determination because the court had the opportunity to observe the witnesses and weigh the relative credibility of their testimony. Appellate courts will not set a credibility determination aside unless it is clearly contrary to the record evidence. State v. Peterson, 2003-1806, p. 9 (La. App. 1st Cir. 12/31/03), 868 So. 2d 786, 792, writ denied, 2004-0317 (La. 9/3/04), 882 So. 2d 606.

The trial court in the instant matter weighed the testimony of Agent Bergeron against the testimony of Hansey, who admitted on the stand to lying to

the agents, and found the testimony of Agent Bergeron to be more credible. This credibility determination is not clearly contrary to the evidence and, accordingly, the trial court's factual finding that Hansey gave the agents permission to enter the residence will not be disturbed.

The defendant asserts that even if this court finds that permission to enter was given, the evidence should still be suppressed because Hansey, a visitor at the residence, had no authority to give the agents permission to enter.[2] Agent Bergeron testified that Hansey told the agents she lived at the residence and she gave them permission to enter. Hansey testified that she told the agents the defendant was not at the residence. The facts presented at the motion to suppress hearing support the agents' reasonable belief that Hansey had actual authority to allow them entry into the residence. The trial court could have reasonably concluded that the agents were allowed into the residence by an occupant with apparent authority to consent. See State v. Nicholas, 2006-903, p. 9 (La. App. 5th Cir. 4/24/07), 958 So. 2d 682, 688.

Based on the foregoing, we find that the trial court did not err in denying the motion to suppress. Accordingly, the counseled assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR

In his pro se assignment of error, the defendant argues that the trial court erred in denying his motion to suppress the evidence. Specifically, the defendant contends that the information from the anonymous tip failed to establish probable cause for the agents to believe there was contraband at the residence. The

[2]In support of this assertion, the defendant argues in his brief about the validity of a third-party's consent to a warrantless search, and cites two cases in support of his argument. This argument, with its supporting jurisprudence, is misplaced. The issue before us is whether the evidence supports the finding that she consented to the officers entering the residence, not whether she consented to a search of the residence. See Nicholas, 2006-903 at p. 9 n.20, 958 So. 2d at 688 n.20.

defendant further contends that there was no evidence that he was domiciled at the residence searched or that he had dominion or control of any of the drugs seized.

The defendant's contention regarding probable cause is baseless. A police officer does not need probable cause that a person has committed an offense in order to act on an anonymous tip. In fact, when the agents in the instant matter received the anonymous call that the defendant was in possession of a large amount of drugs, they were duty bound to investigate the complaint. See State v. Johnson, 98-0264, p. 4 (La. App. 1st Cir. 12/28/98), 728 So. 2d 885, 886-87.

Further, no probable cause was required for the agents to knock on the defendant's door. Knock and talk investigation, which involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal complaint, and requesting permission to search the house, may, if successful, allow police officers who lack probable cause to gain access to a house and conduct a search without per se violating federal and state constitutional prohibitions against unreasonable searches and seizures. See Warren, 2005-2248 at p. 6, 949 So. 2d at 1221-1223. Also, knocking on a door does not constitute an investigatory stop and does not require reasonable suspicion. State v. Haywood, 2000-1584, pp. 5-6 (La. App. 5th Cir. 3/28/01), 783 So. 2d 568, 574. When the agents asked the defendant if there was any marijuana in the residence, the defendant said there was and handed them a baggie of marijuana. When asked if there were any more drugs in the residence, the defendant said there was, but he was not signing anything and was not going to let them search. Accordingly, when the agents subsequently obtained a search warrant, they clearly had probable cause that a crime had been committed and that there were more drugs in the residence. See LSA-C.Cr.P. art. 162.

The defendant's contentions that there was no evidence that he was domiciled at the residence searched and no evidence that he had dominion or

control of the drugs seized are baseless, as well. Hansey testified on cross-examination at the motion to suppress hearing that the residence searched on Samuel Street was the defendant's residence. The defendant did not testify at the motion to suppress hearing. Defense counsel called Jerome Boykin, Sr., to the stand to testify that he owned the property on Samuel Street. Boykin's testimony established merely that he owned the property, not that he lived there. Moreover, Hansey established through her testimony that the defendant lived at the residence on Samuel Street, and nothing in the record suggests otherwise.

We also find the record established the defendant possessed the drugs that were seized. To be guilty of the crime of possession of a controlled dangerous substance, one need not physically possess the substance; constructive possession is sufficient. In order to establish constructive possession of the substance, the State must prove that the defendant had dominion and control over the contraband. A variety of factors are considered in determining whether or not a defendant exercised "dominion and control" over a drug, including: the defendant's knowledge that illegal drugs are in the area; the defendant's relationship with any person found to be in actual possession of the substance; the defendant's access to the area where the drugs were found; evidence of recent drug use by the defendant; the defendant's physical proximity to the drugs; and any evidence that the particular area was frequented by drug users. State v. Harris, 94-0696, pp. 3-4 (La. App. 1st Cir. 6/23/95), 657 So. 2d 1072, 1075, writ denied, 95-2046 (La. 11/13/95), 662 So. 2d 477.

When the defendant produced a baggie of marijuana from a shoebox and informed the agents that there were more drugs in his residence, his actions clearly demonstrated that he had knowledge of the drugs, he had access to the area where the drugs were found, and he was in very close physical proximity to the drugs.

Accordingly, the defendant constructively possessed the drugs that were seized at his residence.

The defendant also argues that Hansey did not have the authority to give the agents permission to enter the residence and search the premises. These issues were addressed in the counseled assignment of error above and were found to be meritless.

The pro se assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.