

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 1027

STATE OF LOUISIANA

VERSUS

JEFFERY DANIEL MOORE

DATE OF JUDGMENT: November 2, 2007

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 409898 "B"), PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE ELAINE W. DIMICELI, JUDGE

Walter P. Reed, District Attorney
Covington, Louisiana

Counsel for Appellee
State of Louisiana

Kathryn W. Landry
Baton Rouge, Louisiana

Prentice L. White
Louisiana Appellate Project
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Jeffery Daniel Moore

BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

KUHN, J.

The defendant, Jeffery Daniel Moore, was charged by bill of information with possession of a Schedule II controlled dangerous substance (cocaine), a violation of La. R.S. 40:967(C). The defendant pled not guilty. A motion to suppress hearing was held wherein the defendant challenged the admissibility of the drugs seized. The motion to suppress was denied. Following a jury trial, the defendant was found guilty as charged. The defendant was sentenced to five years at hard labor. The State subsequently filed a “multiple offender” bill of information. Following a hearing, the defendant was adjudicated a fourth felony habitual offender. The defendant’s prior five-year sentence was vacated, and he was resentenced to twenty (20) years at hard labor without benefit of probation or suspension of sentence. The defendant now appeals, designating one assignment of error. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On February 12, 2006, Officer Jason Bettis with the Slidell Police Department was on routine patrol in his unit on Cawthorn Drive when he observed the defendant pass him in a vehicle with an expired 2004 inspection sticker. Officer Bettis made a U-turn, got behind the defendant, and engaged his blue lights to effect a traffic stop. When the defendant failed to pull over, Officer Bettis “popped” his siren a couple of times. Since the defendant did not immediately pull over, Officer Bettis called another unit for backup. The defendant continued driving for more than a block until he reached his residence, at which time he pulled over. Officer Bettis called in the license plate to dispatch

and discovered that the plate did not match the description of the defendant's vehicle.

The defendant immediately exited his vehicle. Officer Bettis directed the defendant to the back of his vehicle. As he walked to the back toward Officer Bettis, the defendant turned slightly away from Officer Bettis and placed his hands in his pockets. Officer Bettis ordered the defendant to remove his hands from his pockets. Officer Bettis observed that the defendant was visibly shaking and extremely nervous. Officer Bettis patted down the defendant for weapons, but found none. Officer Bettis also determined that the defendant did not have proof of insurance. Shortly following the pat-down, Officer Bettis's backup, Officer Corey Pertuit, arrived.

While Officer Pertuit stood by the defendant, Officer Bettis walked to the defendant's vehicle and saw on the back passenger floorboard an opened beer bottle "that looked as if it had been spilled." Officer Bettis also saw a package of rolling paper. Based on violations that, according to Officer Bettis, required impoundment, Officer Bettis effected an inventory search of the vehicle. Officer Bettis found a pack of cigarettes on the front passenger seat. Inside the pack of cigarettes, Officer Bettis found a mesh screen and a "push rod" with residue on them suspected to be crack cocaine.¹ Based on his discovery of suspected drugs and drug paraphernalia, Officer Bettis arrested the defendant. Officer Pertuit

¹ The screen, or wire mesh, was likely a piece of Brillo pad, and the "push rod" was an opened paper clip. According to Officer Bettis, these items are commonly used with crack pipes. The screen is placed into the crack pipe, and the crack cocaine is placed on the screen. The paper clip is used to push the crack down into the crack pipe in order to light it and smoke it.

patted down the defendant pursuant to a search incident to arrest and found a rock of crack cocaine in the defendant's rear pants pocket.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in denying his motion to suppress evidence. Specifically, the defendant contends that Officer Bettis did not have probable cause to detain him during the investigatory stop. The defendant further contends that Officer Bettis's failure to find the crack cocaine on his person during the pat-down for weapons "makes the entire investigatory stop suspect at best."

Trial courts are vested with great discretion when ruling on a motion to suppress. Consequently, the ruling of a trial court on a motion to suppress will not be disturbed absent an abuse of that discretion. *State v. Long*, 2003-2592, p. 5 (La. 9/9/04), 884 So.2d 1176, 1179, *cert. denied*, 544 U.S. 977, 125 S.Ct. 1860, 161 L.Ed.2d 728 (2005).

The fourth amendment to the federal constitution and Article I, § 5 of the Louisiana constitution protect people against unreasonable searches and seizures. However, the right of law enforcement officers to stop and interrogate one reasonably suspected of criminal conduct is recognized by La. Code Crim. P. art. 215.1, as well as by both state and federal jurisprudence. Reasonable cause for an investigatory detention is something less than probable cause and must be determined under the facts of each case by whether the officer had sufficient knowledge of facts and circumstances to justify an infringement on the individual's right to be free from governmental interference. The right to make an investigatory stop and question the particular individual detained must be based on

reasonable cause to believe that he has been, is, or is about to be engaged in criminal conduct. See *State v Belton*, 441 So.2d 1195, 1198 (La. 1983), *cert. denied*, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984).

Officer Bettis testified at both the trial and motion to suppress hearing² that, under the law, the switched license plate violation and the insurance violation resulted in mandatory impoundment of the vehicle. Given that the defendant's vehicle was to be towed and impounded, Officer Bettis conducted an inventory search of the vehicle. Officer Bettis explained that the inventory search was to protect the occupant against loss of property or damage to the vehicle. During the inventory search, Officer Bettis found a pack of cigarettes, which contained suspected drug paraphernalia, namely a crack pipe screen and a push rod with suspected cocaine residue on them.³ Based on his discovery of suspected drug paraphernalia and suspected crack cocaine, Officer Bettis arrested the defendant.

² In determining whether the ruling on the defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. *State v. Chopin*, 372 So.2d 1222, 1223 n. 2 (La. 1979).

³ The defendant does not challenge the lawfulness of either the inventory search or the search of the cigarette pack. The testimony adduced at trial does not indicate if the defendant's vehicle was actually towed, or even if any preparations were effected to have the vehicle towed, so whether or not a true inventory search was conducted is not clear. See *State v. Brumfield*, 560 So.2d 534, 536-37 (La. App. 1st Cir.), *writ denied*, 565 So.2d 942 (La. 1990), which discusses the factors considered to determine a true inventory search, such as the search was not conducted in the field and the tow truck was called before the search commenced. Based on the suspected drugs and drug paraphernalia found in his vehicle, the defendant was arrested, and, upon a valid search incident to arrest of the defendant's person, the rock of crack cocaine was found. See *Chimel v. California*, 395 U.S. 752, 762-63, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). We note that the defendant's numerous traffic offenses provided Officer Bettis with probable cause to arrest the defendant. Thus, even if it were determined that it was not a lawful inventory search, the subsequent search of the defendant's person and seizure of the cocaine from his pocket would still be lawful. Where an officer has probable cause to effect a lawful custodial arrest, and searches the person incident to arrest, fruits of the search may not be suppressed merely because the officer did not intend to arrest the suspect for the offense for which probable cause existed. See *State v. Sherman*, 2005-0779, pp. 17-18 (La. 4/4/06), 931 So.2d 286, 297.

Officer Pertuit searched the defendant's pockets pursuant to a search incident to arrest and found a rock of crack cocaine.

In his brief, the defendant simply states that the officers did not have sufficient probable cause to detain him during the investigatory stop. Whether or not the defendant is suggesting that his detention was somehow converted into a *de facto* arrest during the investigation is unclear. Regardless, we find that, prior to the discovery of the suspected cocaine and drug paraphernalia found in the defendant's vehicle, Officer Bettis had reasonable suspicion to detain the defendant during the investigatory stop, as well as probable cause to arrest him.

Based on the defendant's expired inspection sticker, Officer Bettis had probable cause to believe a traffic violation had occurred. Accordingly, Officer Bettis had an objectively reasonable basis for stopping the defendant's vehicle. La. Code Crim. P. art. 215.1; La. R.S. 32:53(D); see *State v. Waters*, 2000-0356, p. 4 (La. 3/12/01), 780 So.2d 1053, 1056 (*per curiam*). Before the defendant stopped his vehicle, Officer Bettis confirmed through dispatch that the defendant's vehicle had a switched license plate. Thus, prior to the defendant even being stopped, Officer Bettis had already determined that the defendant was driving a vehicle with an expired inspection sticker and a switched license plate. When Officer Bettis got behind the defendant and initially tried to pull him over, the defendant did not stop, despite Officer Bettis's use of his lights and siren. At this point, Officer Bettis called for backup. When the defendant finally pulled over in front of his house, he was visibly nervous, and his hands were shaking. Officer Bettis then discovered the defendant did not have proof of insurance.

Given the lawfulness of the initial stop, the reasonableness of the escalating encounter between the defendant and Officer Bettis hinged on whether the actions undertaken by Officer Bettis following the stop were reasonably responsive to the circumstances justifying the stop in the first place, as augmented by information gleaned by Officer Bettis during the stop. The defendant's extremely nervous demeanor, coupled with several traffic violations, including one suggestive of a stolen vehicle (switched license plate), led to a shift in Officer Bettis's focus that was neither unusual nor impermissible. See *State v. Miller*, 2000-1657, pp. 3-4 (La. 10/26/01), 798 So.2d 947, 949-50 (*per curiam*).

Officer Bettis patted down the defendant for weapons, but found none. When backup arrived shortly thereafter, Officer Bettis walked to the defendant's vehicle and saw an opened bottle of beer on the floorboard and a package of Joker rolling paper. The defendant was neither placed under arrest nor handcuffed when Officer Bettis discovered the beer and rolling paper in the defendant's vehicle. Thus, at this point of the investigation, even before Officer Bettis entered the defendant's vehicle and discovered the suspected drugs and drug paraphernalia which led to the defendant's arrest, the defendant was suspected of committing four offenses: driving with an expired inspection sticker, no insurance, a switched license plate, and an opened alcoholic beverage container. Based on this multitude of traffic offenses, Officer Bettis had probable cause not only to detain but also to arrest the defendant.⁴ See La. R.S. 32:57 & 32:391; see also *Brumfield*, 560 So.2d 534, 536-37 (La. App. 1st Cir.), *writ denied*, 565 So.2d 942

⁴ According to Officer Bettis's testimony at the motion to suppress hearing, the switched license plate violation, alone, subjected the defendant to arrest.

(La. 1990); *State v. Dillon*, 98-0861, p. 8 (La. App. 4th Cir. 6/24/98), 719 So.2d 1064, 1068; *State v. Daniels*, 614 So.2d 97, 101-06 (La. App. 2d Cir.), *writ denied*, 619 So.2d 573 (La. 1993). Accordingly, the defendant's assertion that the officers lacked probable cause to detain him during the investigatory stop is baseless.⁵

The defendant further asserts that the entire investigatory stop is suspect because Officer Bettis failed to find the crack cocaine on his person during the pat-down for weapons.⁶ In his brief, the defendant states that Officer Bettis, a well-respected officer who teaches new recruits how to conduct investigatory stops and pat-down searches, either completely missed the crack cocaine or confused the defendant's arrest with that of another motorist. Again, the specifics of the defendant's argument are unclear. Regardless, whether the defendant is suggesting police incompetence or misconduct, the assertion is baseless.

When Officer Bettis patted down the defendant, he was searching for weapons, not contraband. Officer Bettis did not search inside of the defendant's pockets, and the size of the rock of crack cocaine in the defendant's rear pants pocket was only .35 grams. When the defendant was placed under arrest, Officer Pertuit conducted a search incident to arrest of the defendant and found the cocaine. Unlike the thorough and intrusive search conducted incident to an actual

⁵ Officer Bettis's discovery of the suspected drugs and drug paraphernalia in the defendant's vehicle provided an additional source of probable cause to arrest the defendant.

⁶ This argument, in fact, ostensibly comprises the entirety of the defendant's sole assignment of error, which states: "The district court committed manifest error by denying Moore's Motion to Suppress because the record reflects that the alleged drugs found in Moore's pocket was [sic] not discovered by the more seasoned officer, but a rookie officer during a routine search." We addressed earlier in this opinion the issue of probable cause during the investigatory stop because, despite the verbiage of the assignment of error, the defendant raises the issue in his brief.

arrest, the *Terry* frisk is limited to a more specific pat-down of a suspect's outer clothing for the purpose of detecting weapons only. *State v. Sims*, 2002-2208, p. 11 (La. 6/27/03), 851 So.2d 1039, 1046. As explained by Officer Bettis at trial, this type of search incident to arrest is more significant than a pat-down search for weapons. When a defendant is searched following arrest, an officer specifically reaches into the pockets to potentially locate any contraband. Accordingly, there is nothing unusual or suspect about Officer Bettis's not having discovered a small rock of crack cocaine in the defendant's rear pants pocket during a brief, generalized pat-down search for weapons. See, e.g., *State v. Hill*, 97-2551, pp. 1-4 (La. 11/6/98), 725 So.2d 1282, 1283-84; *State v. Clesi*, 2006-1250, p. 3 (La. App. 1st Cir. 2/14/07), 959 So.2d 957, 960; *State v. Hughes*, 2002-11, p. 3 (La. App. 5th Cir. 5/29/02), 821 So.2d 491, 493, *writ denied*, 2002-1782 (La. 12/19/02), 833 So.2d 330; and *State v. Willis*, 31,561, p. 7 (La. App. 2d Cir. 1/20/99), 728 So.2d 493, 498 (where the drugs or drug paraphernalia were not found during the *Terry* frisk for weapons, but were subsequently found during the search incident to arrest).

We find no abuse of discretion in the trial court's denial of the defendant's motion to suppress. The assignment of error is without merit.

DECREE

For these reasons, we affirm the defendant's conviction, the habitual offender adjudication, and the sentence imposed.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.