

SUPREME COURT OF LOUISIANA

No. 01-KK-2436

STATE OF LOUISIANA

v.

LYLE J. JOHNSON

On Writ of Certiorari to the  
Fourth Circuit Court of Appeal

PER CURIAM:

In this prosecution for possession of heroin in violation of La.R.S. 40:966, the trial court granted respondent's motion to suppress the evidence, not on the basis of its own perception of the merits, which it thought were clearly against respondent, but on the basis of its impression that jurisprudentially, "it is a stop when the officers, like in this case, pull up four feet from the defendant who is just standing there, jump out of the car with the intention of grabbing this guy and putting him on the car." The court of appeal denied the state application for review finding no error "based upon [the court's] assessment of the credibility of witnesses." State v. Johnson, 01-1338 (La. App. 4<sup>th</sup> Cir. 8/3/01), \_\_\_\_ So. 2d \_\_\_\_ (Tobias, J., dissenting). We granted the state's application to reverse the rulings below because the uncontested testimony presented at the motion to suppress reveals that the trial court's first instincts were correct and that no actual or "imminent" stop occurred before respondent threw down his heroin packet at the mere sight of the police.

Acting on a tip from an anonymous informant that a light-skinned African-American male wearing a blue bandana, bluejeans and a black jacket was selling heroin in the 700 block of North Johnson street in New Orleans, Detective Jackson and his partner drove to that location in an unmarked car. When the officers arrived they noticed respondent, who matched the informant's description, standing by himself in a courtyard of the Lafitte Housing Project holding a paper bag in his hand. The officers pulled into a driveway and parked their vehicle no more than four or five feet from respondent. "As we exited the vehicle and he observed that we were the police," Officer Jackson testified, "he threw down the object." Jackson retrieved the bag, which contained heroin, while his partner stopped respondent. Jackson freely conceded that he did not observe respondent engage in any conduct more suspicious than pacing back and forth in the court yard before the officers parked in close proximity to him and that he considered his unknown informant reliable only to the extent that he provided an accurate clothing description of respondent. Still, the officer also testified that when he and his partner arrived at the location, they did not turn on their siren or blue light and did not otherwise identify themselves over their vehicle's P.A. system. Nor did they say anything to respondent as they began exiting their car. In fact, Jackson testified, he never had the chance to investigate the anonymous tip because as soon as the officers pulled up, respondent "threw the package down to the ground."

The tip provided by the anonymous informant may have provided accurate information with regard to respondent's clothing and physical location but it did not, without additional corroborating circumstances, provide reasonable suspicion or probable cause that respondent was engaged in criminal activity. Florida v. J.L., 529 U.S. 266, 271, 120 S.Ct. 1375, 1379, 146 L.Ed.2d 254 (2000)("The reasonable

suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person."). Nevertheless, "the police . . . have the right to engage anyone in conversation, even without reasonable grounds to believe that they have committed a crime." State v. Duplessis, 391 So.2d 1116, 1117 (La. 1980)(citations omitted). The officers therefore had the right to approach respondent in the project court yard and to engage him in conversation. Officer Jackson's uncontested testimony indicates that they had not yet physically restrained respondent when he panicked and discarded his paper bag; nor had they attempted to assert any official authority over him by ordering or signaling him to stop. Cf. State v. Chopin, 372 So.2d 1222, 1224-25 (La. 1979)(police "seized" the defendant by turning their patrol car to block his path and activating their red and blue lights). In addition, while Louisiana protects its citizens from "imminent actual stops" not based on reasonable suspicion or probable cause, State v. Tucker, 626 So.2d 707, 712 (La. 1993), Officer Jackson and his partner had not yet indicated by word or action that an actual stop, i.e., a forcible detention, or seizure of the person, was about to take place to effectuate Jackson's un-communicated intent to investigate the tip from his anonymous informant. Tucker, 626 So.2d at 712 ("It is only when the police come upon an individual with such force that, regardless of the individual's attempts to flee or elude the encounter, an actual stop of the individual is virtually certain, that an 'actual stop' of the individual is 'imminent.'")(footnote omitted). Under these circumstances, Officer Jackson lawfully seized and searched the bag discarded by respondent before any unlawful intrusion on respondent's right to privacy occurred. Tucker, 626 So.2d at 710 ("If . . . a citizen abandons or otherwise dispose of property prior to any unlawful intrusion into the citizen's right to be free from governmental interference, then such

property may be lawfully seized and used against the citizen in a resulting prosecution.").

The ruling of the trial court granting respondent's motion to suppress is therefore reversed, and this case is remanded to the district court for further proceedings consistent with the views expressed herein.

**JUDGMENT REVERSED; CASE REMANDED.**