

**SUPREME COURT OF LOUISIANA**

**No. 97-KK-2960**

**STATE OF LOUISIANA**

**V.**

**WILLIAM ROBERTSON**

**Knoll, Justice, concurring**

In suppressing the evidence, the majority's rationale confuses the initial investigatory stop with the *further* detainment of a defendant for further investigation. In my view, the initial stop was permissible;<sup>1</sup> however, with the quality of information provided by the anonymous tip and the lack of corroboration by the police officers that any illegal activity was taking place, defendant's *further* detention was tantamount to an illegal arrest. Accordingly, I agree that the evidence should have been suppressed.

Whether a person has been arrested is determined by the totality of the circumstances. *State v. Allen*, 95-1754 (La. 9/5/96), 682 So.2d 713. An arrest is not defined by the timing of the officer's statement that the defendant is under arrest, and no particular language need be used. *State v. Hargrave*, 411 So.2d 1058 (La.1982). An arrest takes place when a reasonable person would feel that he was not free to leave. *United States v. Mendenhall*, 446 U.S. 544 (1980).

Defendant's passenger testified that he was aware that police officers had been following them since they left Magnolia Street. When the defendant parked, the police pulled up behind him in the driveway. Once defendant was out of the car and asked to identify himself by name, he was read his rights and was told that he was under

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<sup>1</sup> In his closing argument at the July 8, 1997 hearing, the defense attorney conceded that "we agree that they may have had reasonable suspicion."

investigation for narcotics. There is no evidence that the defendant consented to detention thereafter, or that he might have felt free to go. Officer Veit testified that the defendant was not free to leave,<sup>2</sup> although he did not believe that he handcuffed the defendant immediately.<sup>3</sup> In my view, this initial stop was supported by sufficient reliability and predictability to give the officers reasonable suspicion to make an investigatory *stop*, but not to *further* detain defendant for further investigation. The level of suspicion necessary to make a stop is “considerably less than proof of wrongdoing by a preponderance of the evidence.” *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989). There must be some particularized and objective basis for the officer’s suspicion. *U.S. v. Cortez*, 449 U.S. 415 (1981). However, the level of objective justification need be only “minimal.” *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989).

In the case sub judice, the officers began to set up their surveillance on the same day they received a call on the AFT Gun Hotline made by a resident of the Magnolia Housing Development. The caller identified the defendant by first name and as one who sold drugs in the Development. Additionally, the caller described the defendant’s physical characteristics, the vehicle, where it was parked, and what activity was to occur when the defendant left with the identified vehicle. I see no significant difference

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<sup>2</sup> The following exchanges took place between the defense attorney and Officer Veit at the March 10, 1997 hearing.

Q: Was [the defendant] free to leave at that point?

A: No, not at that point.

R. at 71. Officer Veit had just approached defendant, advised him that he was under investigation for narcotics, read the defendant his Miranda rights, and was waiting for the dog to arrive.

Q: So based on the call you were going to stop him and hold him until the dogs got out there?

A: Correct.

R. at 73.

<sup>3</sup> As point of interest, the attorney for the State, in his closing argument at the July 8, 1997 hearing, stated: “The police officer pull[ed] him out of the car, and handcuff[ed] him.” R. at 106.

between that information and that in *State v. Jernigan*, 377 So.2d 1222 (La.1979), *cert. denied*, 446 U.S. 958 (1980), or *Alabama v. White*, 496 U.S. 325 (1990) where, in each case, an anonymous tip was found to have the indicia of reliability to justify an investigatory stop. In *Jernigan*, an unidentified caller told the police that a black male wearing a yellow shirt and blue pants was armed and would be sitting at Sander's Bar. In that case, the police officer was justified in conducting a public safety frisk based on the immediate danger presented by the crime allegedly being committed. In *White*, the anonymous caller described the vehicle, apartment, time of departure, destination, and defendant. Although there may have been greater detail regarding the predictability of the defendant's future actions in *White*, there was sufficient predictability in the case sub judice insofar as the defendant was known to be selling drugs in the area of his own neighborhood. In *White*, by contrast to this case, the further detention resulting in search of the vehicle was based on that defendant's consent to the search.

The exception to probable cause that permits an investigatory stop is narrowly drawn to represent the balance between the intrusion on the defendant's Fourth Amendment rights and governmental interests in disrupting the flow of drugs. *U.S. v. Place*, 462 U.S. 696 (1983). Nevertheless, the rule must not be so rigid that it fails to permit authorities to "graduate their responses to the demand of any particular situation." *U.S. v. Sharpe*, 470 U.S. 675, 686 (1985). Duration of a stop may be a factor. *Id.* Moreover,

[T]he scope of the detention must be carefully tailored to its underlying justification.

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The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.

*Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325 (1983). For that reason,

facts related to duration of detention yield varying results. A 90-minute detention was unreasonable where airport officers knew the suspect's time of arrival and therefore should have had a canine narcotic sniff team assembled and waiting. *U.S. v. Place*, 462 U.S. 696 (1983). In *U.S. v. Sharpe*, 470 U.S. 675 (1985), a 20-minute detention to await a DEA agent was reasonable where the roads were rural and the police officers themselves had witnessed suspicious activity in a known drug-trafficking area.

Once an investigatory stop is made, officers may gain additional information that may justify further detention. For example, officers stopped defendant for exceeding the speed limit. When the officer noted the extreme nervousness of the driver, he asked further questions regarding his activities. Based on the conflicting stories of the driver and passenger coupled with their extreme nervousness, the officer asked, and was refused, consent to search the vehicle. While defendants were told they were free to go, the vehicle was detained for fifteen minutes awaiting a canine unit. *State v. Burton*, 293-828 (La.App. 3 Cir. 2/23/94), 640 So.2d 342, writ denied, 94-0617 (La. 4/7/94), 638 So.2d 1091. In *Burton*, further detention was justifiable based on increased information learned *after* the initial stop. Other cases may ripen into probable cause based on, for example, a plain view exception (*E.g. State v. Dixon*, 337 So.2d 1165 (La.1976)), firearm safety (*E.g., Adams v. Williams*, 407 U.S. 143 (1972)), or officer's detection of marijuana odor (*Sharpe, supra*).

The majority opinion tends to confuse this important distinction between the information needed to make an initial stop with the quality of information necessary to further detain. Only minimal information is needed for an initial stop. *Sokolow, supra*. The rationale of the majority opinion pertains to the greater detail and predictability requisite for *further* detention rather than for the initial investigation.

For these reasons, I respectfully concur.

Once stops are made based on reasonable suspicion, a suspect may not be held unless the information justifies the further detention. (cite cases). Justification for a further

detention turns on the facts of each case, and must be based, as is reasonable suspicion and probable cause, on the “totality of the circumstances.”

In , a ninety-minute detention of luggage was deemed too long b/c. In another instance, a longer time may be reasonable based on

The suspicion of the officers was too weak to allow for further detention. Officers had no independent observation of any suspicious activity or behavior. They had no information regarding past criminal record.

When detention has been permitted,, based on a mere anonymous tip absent any observable suspicion

Once there is reasonable suspicion for an investigatory stop,

In *Place*, a 90 minute detention of luggage at the airport to await a canine narcotic sniff was found excessive. As police knew the time of arrival of the suspect, they could have had dogs waiting.

Once an investigatory stop is made, officers may gain additional information that may lead to a probable cause to search (drug odors) plain view seizure (Hensley) or may be coupled with reasons for further detention (heavy laden truck that initially would not pull over on rural, “drug traffic” road at officer’s command. A twenty-minute wait for a DEA officer was reasonable under the circumstances. Thereafter, the odor alerted the officer to the presence of marijuana. The original suspicion had ripened to probable cause to search the truck.

The right to temporarily detain a suspect to verify information from a suspect is justifiable. *White v. Morris*, 345 So.2d 461 (La.1977). While the length of an

investigatory stop is an important factor in determining reasonableness of a stop (Sharpe) (suspect held no longer than necessary to verify that the check had been forged, even though the detentio was 45 minutes. ) *State v. Borning*, 477 So.2d 134 (La.App. 1 Cir.), *writ denied*, 481 So.2d 1330, *cert. denied*, 479 U.S. 988 (1985).

For those reasons, I respectfully concur in the results.

Not whether investigatory stop was lawful, but whether investigatory detention was lawful under the circumstances. Scope of the detention must be tailored to the circumstances. (Fla. ) Circumstances indicated that investigatory stop was based on vey little info - enough to make the stop, but not enough to justify the detention awaiting canine nacartocis detection . In cases where detention was permissible, the detention was based on more than an anonymous tip. Where detention was found lawful, it was based on some independant observation by the officer of suspicious activity or behavior justifying the detention for further investigation.