

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1456

STATE OF LOUISIANA

VERSUS

TRAVIS EDWARD DAVIS

**On Appeal from the 22nd Judicial District Court
Parish of Washington, Louisiana
Docket No. 03-CR1-89436, Division "E"
Honorable William J. Burris, Judge Presiding**

**Walter P. Reed
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and

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**Attorney for
Defendant-Appellant
Travis Edward Davis**

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered February 14, 2007

Handwritten initials and signatures in the left margin, including what appears to be 'RHP', 'S', and 'M'.

PARRO, J.

Defendant, Travis Edward Davis, was charged by bill of information with one count of possession with intent to distribute cocaine (Count 1), a violation of LSA-R.S. 40:967(A)(1), and one count of possession with intent to distribute marijuana (Count 2), a violation of LSA-R.S. 40:966(A)(1).¹ Defendant pled not guilty and was tried before a jury. The jury determined defendant was guilty as charged. The trial court sentenced defendant to twenty-five years of imprisonment at hard labor, with the first two years to be served without benefit of probation, parole, or suspension of sentence for his conviction on Count 1, and further sentenced defendant to twenty-five years of imprisonment at hard labor for his conviction on Count 2, with the sentences to run concurrent to each other.

Defendant appeals. After reviewing the record and defendant's assignment of error, we affirm his convictions and sentences.

FACTS

On November 8, 2003, shortly after midnight, Officer David Miller, of the Bogalusa Police Department, was traveling southbound on Columbia Street when he noticed a vehicle in the oncoming lane of travel operating without its headlights. Officer Miller flashed his own headlights and overhead lights in an effort to alert the driver that his headlights were not on while the vehicle was moving, but there was no response from the driver. Officer Miller then initiated a traffic stop. Due to the darkness, Officer Miller used his public address system to request the driver to step out of his vehicle.

According to Officer Miller, once the driver exited the vehicle, he immediately appeared nervous and agitated. Officer Miller stepped forward and spoke with defendant, then asked defendant for his name, which defendant did not provide. Officer Miller then asked for defendant's driver's license. Defendant fumbled around, walked back to his vehicle, fumbled around the inside of the vehicle, went to the trunk,

¹ Defendant was also originally charged with one count of possession of cocaine in the same bill of information, but this charge was nol-prossed by the state prior to trial.

opened it, and appeared to be fumbling around next to a duffle bag in the trunk. At no point did defendant ever provide the police with his name.

Officer Troy Tervalon, also with the Bogalusa Police Department, arrived on the scene shortly after Officer Miller called in the traffic stop. Officer Tervalon observed Officer Miller's continued requests for defendant's name and driver's license and defendant's suspicious behavior of placing his hands in his pockets, acting nervous, and looking in all directions.

Defendant's refusal to provide his name and driver's license, and his suspicious behavior caused the police officers to become concerned that defendant might have a weapon. For their safety, they conducted a pat-down of defendant's outer clothing.

During the pat-down, Officer Tervalon felt a pill bottle in defendant's left front pocket. From his experience, Officer Tervalon knew that pill bottles were commonly used to hide narcotics or drugs. Officer Tervalon removed the pill bottle and noted that it contained what appeared to be crack cocaine. Defendant was immediately placed under arrest, advised of his rights, and transported to the police station.

Following defendant's arrest, the police also discovered \$347 in his right rear pocket. Once inside the police unit, defendant became verbally abusive toward the police officers.

A wrecker service was called to pick up defendant's vehicle. Prior to turning defendant's vehicle over to the wrecker service, Officer Tervalon inventoried the contents of the vehicle. During this inventory, Officer Tervalon discovered cocaine and three bags of marijuana in the center console, along with defendant's identification. The total amount of cocaine discovered on defendant and in his vehicle was 4.02 grams, and the total amount of marijuana discovered was 3.44 grams.

Against the advice of counsel, defendant testified on his own behalf at trial. Defendant admitted that he had the drugs and was selling drugs to "get a boost start to get up on my feet," but defendant seemed to allege entrapment and testified that he had been wired without his consent. When pressed for an explanation for this,

defendant stated, "The system's got new technology. They can put a bug in your throat and hear you through the Internet. I am not all the way up on it, but I am quite sure everybody know (sic) what I am talking about. Just no wire. I am not the only one. I am not up on it. Everybody else is up on it and it went over my head."

Defendant was convicted of both counts.

MOTION TO SUPPRESS EVIDENCE

In his sole assignment of error, defendant argues that the trial court erred in denying his motion to suppress the evidence because the evidence was the result of an unauthorized **Terry** frisk, or even if authorized, the scope was exceeded.

Defendant concedes in his brief that the initial traffic stop was justified. Defendant maintains that the subsequent search of his person was not justified because he was merely trying to locate his driver's license and proof of insurance and was not exhibiting any suspicious behavior.

An officer's right to conduct a protective frisk is codified in LSA-Cr.P. art. 215.1(B), which provides that when a law enforcement officer has stopped a person for questioning pursuant to this Article and reasonably suspects that he is in danger, he may frisk the outer clothing of such person for a dangerous weapon. While it is true that an officer is never justified in conducting a pat-down for weapons unless the original investigatory stop itself was justified, a lawful detention for questioning does not automatically give the officer authority to conduct a pat-down for weapons. Even after a lawful investigatory stop, a police officer may frisk the suspect only where a reasonably prudent person would be warranted in the belief that his safety or that of others is in danger. Therefore, the reasonableness of a frisk is governed by an objective standard. **State v. Sims**, 02-2208 (La. 6/27/03), 851 So.2d 1039, 1043.

In **State v. Sherman**, 05-0779 (La. 4/4/06), 931 So.2d 286, the Louisiana Supreme Court addressed the issue of the reasonableness of a warrantless search where probable cause to arrest existed, but the officers had no intent to arrest for the offense for which probable cause existed. In **Sherman**, police officers observed the

defendant standing in a roadway adjacent to his motorcycle, which was parked partially on the shoulder of a highway. Defendant was speaking on a cell phone. The officers approached defendant and asked what he was doing. Defendant explained that he had run out of gas. One of the officers asked defendant if he had a driver's license and defendant replied that he did not. The officer then searched defendant and reached inside his pocket and removed a ten-dollar bill and a bag containing several rocks of crack cocaine. The officers immediately arrested defendant for possession of a schedule II controlled dangerous substance with intent to distribute. **State v. Sherman**, 931 So.2d at 288.

At trial, defendant moved to suppress the evidence, arguing that the search exceeded an authorized search for weapons. The supreme court held that the search of the defendant fell within the well-established exception for a search incidental to an arrest even though defendant was not arrested for the offense for which probable cause existed. The supreme court pointed out that Louisiana law declares it unlawful for any person to drive a motor vehicle on any public street unless he has a driver's license. LSA-R.S. 32:402(B). Accordingly, defendant's admission that he had no driver's license gave the police probable cause to arrest him under that statute. **State v. Sherman**, 931 So.2d at 291.

The supreme court found that where the police have probable cause to effect a lawful custodial arrest, and conduct a search of that person incidental to the arrest, the fruits of that search may not be suppressed merely because the police did not intend to arrest the suspect for the offense for which probable cause existed. **State v. Sherman**, 931 So.2d at 297.

With the holding of **State v. Sherman** in mind, we turn our attention to the instant case. The facts presented by the state reveal that from the outset of his interaction with the police, defendant appeared extremely agitated and nervous. Despite being asked for his name and identification, defendant never verbally provided his name. Moreover, defendant spent several minutes going back and forth between

his trunk and the front door, and ignored questions by the police officers regarding where he usually kept his driver's license and registration. Despite being asked several times over the course of a few minutes about his identity or location of his driver's license, defendant never answered any question by the police officers.

Louisiana Revised Statute 32:402 provides, in pertinent part:

B. (1)(a) It shall be unlawful for any person to drive a motor vehicle on any public street, road, or highway of this state unless he has been issued a license by the department, or by a public license tag agent, authorized to issue drivers' licenses as provided in this Subsection, or a license issued by another state or foreign government and recognized by the department, in accordance with the provisions of this Chapter[.]

* * *

E. No person who holds a valid state driver's license shall be deemed to be in violation of this Section because such license is not in his immediate physical possession.

Louisiana Code of Criminal Procedure article 211.4 provides, in pertinent part:

A. When a peace officer has reasonable grounds to believe a person has committed an offense of driving without a valid driver's license in his possession, **the police officer shall make every practical attempt based on identifying information provided by the person to confirm that the person has been issued a valid driver's license.** If the police officer determines that the person has been issued a valid driver's license which is neither under revocation, suspension, or cancellation, but that the license is not in his possession, the peace officer shall issue a written summons to the offender in accordance with law, commanding him to appear and answer the charge. (Emphasis ours).

In the present case, defendant gave the police officers absolutely no information about himself or whether he was ever issued a valid driver's license. Moreover, defendant's nervous behavior of not looking at the officers, ignoring their questions, and frequent placement of his hands into his pockets were an indicator that he was not going to cooperate with the police in any manner.

Considering the foregoing fact of defendant's blatant refusal to cooperate with the police, we find that the police had probable cause to arrest defendant for the offense of driving without a license. Following **State v. Sherman**, it is irrelevant that this was not the offense for which defendant was arrested. Accordingly, the search of

defendant was incidental to his lawful arrest and the evidence on his person was properly seized.

Finally, we find the state proved why an inventory search of defendant's vehicle was necessary. Defendant was the only person in his vehicle. There was no other person who could have taken the vehicle from the scene following his arrest. In denying the motion to suppress, the trial court commented that the area in which defendant was arrested was not an area where a vehicle should be left and that had the police not impounded defendant's vehicle, it would have exposed them to liability given the likelihood something would have happened to it.

Accordingly, defendant's assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.