

SUPREME COURT OF LOUISIANA

No. 00-K-1580

STATE OF LOUISIANA

Versus

MARVA L. WATSON A/K/A LAWRENCE LACKINGS

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS

JOHNSON, J., dissenting

Under the principles set forth in *California v. Hodari D.*, 499 U.S. 621, 626, 111 S.Ct. 1547, 1551, 113 L.Ed.2d 690 (1991) and *State v. Tucker*, 626 So.2d 707 (La. 1993), in my mind, it is clear that the officers did not possess the requisite reasonable suspicion to make an investigatory stop. The sole basis articulated for the stop was that defendant was observed to have his right fist clenched in a hallway where, according to Officer Sinegar's testimony, it was common for people to "do drugs." There was no testimony that the officers had knowledge that defendant had participated, or was about to participate, in any criminal activity. Merely observing an individual in a public housing development with a clenched fist falls far short of establishing reasonable suspicion.

It is well settled that property abandoned pursuant to an illegal stop cannot be seized by police officers. *State v. Belton*, 441 So.2d 1195, 1199 (La. 1983), *cert. denied*, *Belton v. Louisiana*, 466 U.S. 953, 104 S.Ct. 2158 (1984). In my mind, the court of appeal's reliance on *State v. Ratliff*, 98-0094 (La. App. 4th Cir. 5/19/99), 737 So.2d 252, *writ denied*, 99-1523 (La. 10/29/99), 748 So.2d 1160, was not misplaced.

In that case, the defendant and others were observed by law enforcement in a “high crime area.” Ratliff had his arms crossed and his fist clenched. The officers ordered the men to approach and put their hands on the police car. As the defendant did so, he dropped an object from his clenched fist. The officers retrieved the object which was determined to be crack cocaine. At trial, the officer admitted that Mr. Ratliff was not free to walk away at the time the evidence was discarded. *Ratliff*, 737 So.2d at 254.

In the instant case, soon after defendant was arrested, Officer Michael Sinegar, completed an arrest report, documenting the following:

Officer Sinegar observed arrested subject right hand was closed fist. Officer Sinegar attempted to open the arrested subject hand and the arrested subject discarded from his right hand a foil package onto the ground. Officer [Wellington] Beaulieu retrieved the package and it contained a white powder substance. The arrested subject was advised of his rights and was transported to CLU.

Conversely, Officer Sinegar testified at the trial as follows:

A. He had his right fist. He had his right hand with his right fist in a balled up manner. As I asked Mr. Lackings to open up his right hand, he dropped--he dropped his right arm to the ground and opened his right hand, and he dropped a small piece of aluminum foil.

I believe that the police report, completed fifteen minutes after the arrest, is more reliable than the officer's testimony twenty-one days later. According to the officer's own report, defendant did not voluntarily open his hand and drop the foil package. Rather, the officer admittedly “attempted to open [defendant's] hand . . .” Thus, I can only conclude that the officer approached defendant and grabbed his hand, and it is highly improbable that defendant was free to walk away at that point. Consequently, it is clear that defendant was “seized,” for purposes of the Fourth Amendment, at the point when the officer approached him and attempted to open his

hand, and defendant did not voluntarily abandon the evidence.