

SUPREME COURT OF LOUISIANA

01-KK-2940

STATE OF LOUISIANA

versus

BYRON VIGNE

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

TRAYLOR, J., dissenting

Under the inevitable discovery doctrine, the evidence of narcotics in this case should not be suppressed. The prosecution has, by a preponderance of the evidence, proved that “the information ultimately or inevitably would have been discovered by lawful means.” *Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 2509 (1984).

The evidence in this case was clearly contrary to the finding set out by the trial court. *State v. Vessel*, 450 So.2d 938, 943 (La. 1984). Det. Jones testified that he intended to search the ceiling panels in the residence *before* the defendant’s statement. Indeed, it was Det. Jones statement which caused the defendant to become “very nervous”, start “shaking his feet and moving his legs”, and start “looking up and down.” It was only after Det. Jones declared his intent to search the ceiling panels that the defendant revealed the exact location of the narcotics. In addition, this intention was apparently reflected in the police report. Further, while the majority points out that Det. Jones only searched one bedroom, no reason existed to search the entire home once the defendant indicated the location of the narcotics. This fact, therefore, did not rebut Det. Jones’ testimony that he intended to search the ceilings before the defendant confessed to the

contraband. In light of Det. Jones' statement, the defendant's physical reaction to Det. Jones' statement, and the ease of searching this particular ceiling, the officers would have inevitably checked the ceiling tiles regardless of the defendant's help.

The majority relies heavily on the trial court's reasoning as an indication of Det. Jones' lack of credibility. The reasoning of the trial court does not state that the court believed Det. Jones lacked credibility. Rather, the trial court contended that the search warrant did not specifically state the ceilings were to be searched and further contended that the broad categories of "curtilage" and "premises" did not prove that Det. Jones intended to search the ceiling panels. The trial court simply inserted its definition of "premises", implying that it could not include ceiling panels. However, a search warrant encompassing such broad categories should not be conclusive proof regarding intent to search a specific area. Under the trial court's reasoning, the search warrant would also have to name closets, drawers, and any other area not immediately visible to the eye to prove the officer's intent to search.

Contrary to the trial court's finding, the evidence introduced at the hearing indicated the officers intended to search the ceiling panels even before the defendant showed them where the cocaine was hidden. Because the cocaine would have inevitably been discovered during execution of the search warrant, I respectfully dissent.