

**SUPREME COURT OF LOUISIANA**

**No. 2018-KK-1135**

**STATE OF LOUISIANA**

**versus**

**JERMAINE JACKSON**

**ON SUPERVISORY WRITS TO THE CRIMINAL  
DISTRICT COURT, PARISH OF ORLEANS**

**PER CURIAM:**

Writ granted. Two officers approached defendant, who stood on the sidewalk among a group of seven persons at night in a high crime area, because the group strongly smelled of burning marijuana, which gave the officers reasonable suspicion to conduct a brief investigatory stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Under the totality of the circumstances presented here, the officers also had a reasonable, objective and particularized basis for conducting a pat-down frisk of defendant. *See State v. Sellers*, 34,968 (La. App. 2 Cir. 9/26/01), 796 So.2d 158 (finding a frisk for weapons justified for officer safety in high crime area at night when officers were outnumbered following stop based on reasonable suspicion of criminal activity), *writ denied*, 01-2931 (La. 10/14/02), 827 So.2d 412. Before the pat-down was completed, defendant stated that he had a bag of marijuana and produced it for the officers. Defendant was then arrested, and a search incident to arrest revealed individually packaged heroin and a digital scale.

The district court granted defendant’s motion to suppress the evidence because, inter alia, the possession of marijuana, while criminal, may result in the issuance of a summons rather than an arrest. The district court erred. An officer

may arrest a person who commits a misdemeanor in the officer's presence. *See* La.C.Cr.P. art. 213; *see also Atwater v. City of Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 1557, 149 L.Ed.2d 549 (2001) (“If an officer has probable cause to believe an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”). Defendant here, during a *Terry* stop based on reasonable suspicion, was found to be in possession of marijuana. Therefore, he was subject to arrest. Accordingly, we grant the state's application to reverse the district court's ruling that granted defendant's motion to suppress, and remand for further proceedings. In addition, the district court is directed to reconsider its ruling with regard to probable cause in light of the views expressed here.

**REVERSED AND REMANDED**