

SUPREME COURT OF LOUISIANA

No. 97-KK-2551

STATE OF LOUISIANA

Versus

TIMMIE HILL

LEMMON, J., Concurring

When the Brown factors are applied to the attenuation analysis, the illegal detention initiated by the unlawful stop continued up until the moment of the arrest. Therefore, there was no time lapse at all between the illegal detention and the arrest.

Nevertheless, I conclude that the arrest was sufficiently attenuated because the intervening event -- the discovery of the information that led to defendant's arrest, namely, his identification and the ensuing check for outstanding warrants -- resulted from routine police procedures that were unrelated to any flagrancy in the initial police misconduct.

In the unlawful initial stop, the police were apparently overzealous in attempting to find drugs or weapons by stopping any innocently-behaving person in the area and feeling for drugs or weapons during a purported Terry frisk. When the frisk yielded nothing, the police routinely asked for the defendant's name, which was an innocuous tactic that led to the discovery of the outstanding arrest warrant. The fact that the original unlawful conduct (the stop and detention), although a "but for" cause of the discovery, apparently was not motivated by the likelihood of arresting defendant on an outstanding warrant strongly suggests that the conduct of the police was not particularly flagrant or offensive with respect to obtaining knowledge of the warrant, and that absence of flagrant misconduct further attenuates the original stop from the warrant-

based arrest. See 5 Wayne R. LaFave, Search and Seizure 321 (1996), which cites State v. McInnis, 494 P. 2d 690 (Cal. 1972) (regarding unlawfully obtained photographs later used to identify defendant as the perpetrator of another crime). Moreover, the need for the exclusionary rule is less when police misconduct is less egregious.¹ See 5 LaFave at 236.

In sum, the unlawful stop and detention did not taint the subsequent arrest, and the crack pipe was discovered pursuant to a search incident to a lawful arrest.

¹Decisions in immigration cases have held that the identity of an accused is not suppressible as the fruit of an unlawful detention. See, e.g., INS v. Lopez-Mendoza, 468 U.S. 1031, 1039-40 (1984). Because special rules regarding searches and seizures are applied in immigration cases, I hesitate to base the suppression decision in this case on the legality or illegality of the seizure of defendant's name after the unlawful initial stop.