

## *WARRANTLESS SEARCH OF HOUSE PENDING SEARCH WARRANT*

In *State v. Jones*, 832 So.2d 382, 2002-1931 (La.App. 4 Cir. 11/6/02), the Fourth Circuit examined whether an arrest near a residence qualified as exigent circumstances requisite for an nonconsensual, warrantless search. Police officers had conducted a search of a residence absent a warrant, consent or exigent circumstances. The State argued that exigent circumstances were present, based on the proximity of arrest of co-defendant. The Court affirmed defendant's motion to suppress evidence obtained in an illegal warrantless search of the defendant's residence.

In *Jones*, an undercover officer had been introduced to co-defendant Raiford, who solicited and later transacted sales of cocaine to the officer. On May 18, 2001, the officer had obtained an arrest warrant for Raiford and then contacted Raiford for another purchase of cocaine. Raiford, under police surveillance, entered a residence on Frenchmen Street, which he had been known to frequent prior to his transactions. Raiford then met the undercover officer and exchanged the cocaine for marked bills. After the transaction, Raiford was arrested.

The officer then went to obtain a search warrant for the Frenchmen Street residence while other officers entered the residence, purportedly to "secure" it prior to the issuance of the warrant. Jones, an occupant of the residence, was arrested in connection with the contraband seized in the residence, including one and one-half ounces of cocaine, a small amount of marijuana, a firearm, and approximately \$1600.

Police documentation showed that the seizure of evidence occurred prior to the authorization of the search warrant. Moreover, the police report indicated that no consent was obtained to search the Frenchmen residence.

The Fourth Circuit reversed the trial court's suppression of evidence seized, finding, in part, that there was probable cause for the issuance of the search warrant and that the evidence would inevitably be discovered. Defendants moved to reopen suppression hearing based on the U.S. Supreme Court's ruling in *Kirk v. Louisiana*, —U.S.—, 122 S.Ct. 2458, 153 L.Ed.2d 599 (2002). In *Kirk*, officers, acting on a tip regarding drug sales, stopped a drug purchaser just outside defendant's residence. Because of the close proximity to the residence, officers entered the house and "secured" the area while waiting for a search warrant. Contraband was discovered in plain view. Defendant sought to have evidence suppressed, based on a lack of exigent circumstances justifying a warrantless, nonconsensual search of the residence. The Supreme Court found, as in *Payton v. New York*, officers "need either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home."

The Fourth Circuit found *Kirk* to be controlling. The State argued that officers had probable cause to search the Frenchmen Street residence based on prior transactions with Raiford and could have obtained search warrant, but decided to wait until Raiford was arrested. They further claimed that exigent circumstances were present in that Raiford's arrest occurred "near" the residence. However, upon examination the Fourth Circuit noted that Raiford's arrest occurred approximately five blocks from the Frenchmen Street residence, and found no exigent circumstances to support the entry.

The Court further noted that “(u)nder *Kirk*, if there were no exigent circumstances to support the entry, the subsequent issuance of the search warrant would not cure the taint of illegal entry.”

#### TERRY STOPS AND THE RIGHT TO BE LEFT ALONE

In *State v. Lange*, 832 So.2d 397, 2002-0477 (La.App. 4 Cir. 11/6/02), the Fourth Circuit reaffirmed an individual’s right to walk away from police officers, as such action does not rise to the level of reasonable suspicion.

In *Lange*, police officers observed the defendant standing on a street corner showing another person something in his hand. As officers approached, defendant slipped the object into his pocket and walked away from the officers.

Officers effected a stop and proceeded to pat down the defendant, purportedly for weapons. The officer felt a large object, which officer suspected was cocaine, based on his experience and the feel of the object. This search yielded 34 cocaine rocks wrapped in cellophane.

The Fourth Circuit found that the officers did not have reasonable suspicion to warrant the investigatory stop. The court reasoned that an officer may stop an individual whom he reasonably believes to be committing, has committed, or is about to commit an offense. Further, an officer, in detaining an individual, must have knowledge of specific, articulable facts, which combined with rational inferences reasonably warrant the stop. A mere hunch or suspicion of illegal activity is insufficient to establish reasonable grounds to stop a person. Because the State failed to present any information supporting a reasonable suspicion, the investigatory stop was unlawful.

Moreover, the Court found insufficient grounds to frisk defendant. An officer is justified in executing a *Terry* search only where the initial was lawful *and* the officer has a reasonable belief that his safety or the safety of others is in danger. The Court found no evidence indicating that the officers believed that the defendant was armed.

By Michael S. Walsh and Amy McInnis, 2<sup>nd</sup> Year Law student at LSU Law, Law Clerk at Lee & Walsh