

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0056

STATE OF LOUISIANA

VERSUS

GRAYLIN W. SAMS

Judgment Rendered: June 8, 2007.

* * * * *

On Appeal from the
Twenty-Second Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 409177

The Honorable Raymond S. Childress, Judge Presiding

* * * * *

Walter P. Reed
District Attorney
Covington, La.

Kathryn W. Landry
Baton Rouge, La.

Counsel for Appellee,
State of Louisiana

Frank Sloan
Mandeville, La.

Counsel for Defendant/Appellant,
Graylin W. Sams

* * * * *

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

CARTER, C.J.

The defendant, Graylin W. Sams, was charged by bill of information with possession of a Schedule II controlled dangerous substance (cocaine), a violation of LSA-R.S. 40:967C. The defendant pled not guilty. The defendant filed a motion to suppress the evidence seized, which was denied. A jury found the defendant guilty as charged. The defendant filed motions for postverdict judgment of acquittal and for a new trial, which were denied. The defendant was sentenced to five years imprisonment at hard labor. The sentence was suspended, and the defendant was placed on supervised probation for five years with special conditions.

The defendant appeals, designating as his sole assignment of error that the trial court erred in denying his motion to suppress. We affirm the conviction and sentence.

FACTS

On February 21, 2006, at about 6:17 a.m., Deputy Jason Boyet with the St. Tammany Parish Sheriff's Office was patrolling the area east of Hillcrest Drive in St. Tammany Parish when he observed a vehicle, with no rear license plate, parked in the right lane of travel. When Deputy Boyet pulled up behind the vehicle, the defendant exited from the driver's side. When Deputy Boyet approached the defendant, the defendant told him he did not live in the area, his car had overheated, and a wrecker from Eddie's Wrecker Service was on its way. When Deputy Boyet told the defendant that he was going to contact his dispatch to find out when the wrecker might arrive, the defendant informed Deputy Boyet that he, in fact, had not called for a wrecker. At this point, the defendant attempted to reach into his

vehicle. Because Deputy Boyet was in a high crime area and was concerned with the possibility the defendant might pull out a weapon, Deputy Boyet told the defendant not to reach into his vehicle.

While Deputy Boyet spoke with the defendant, the defendant repeatedly reached into his pockets. For safety concerns, Deputy Boyet told the defendant to quit reaching into his pockets, but the defendant continued to do so. Deputy Boyet asked the defendant if he had any weapons on his person. The defendant responded that he had a pocketknife in his left front pocket. Deputy Boyet patted down the defendant and felt the knife in his pocket. He reached into the defendant's pocket, and as he retrieved the knife, he felt what he suspected to be a crack pipe. Deputy Boyet pulled out the knife. He then reached back into the defendant's pocket, and when he pulled out the crack pipe, a white rock-like substance fell into his hand from the end of the crack pipe. Crime lab analysis revealed that the crack pipe tested positive for cocaine residue, and the .1 gram rock that fell from the crack pipe tested positive for cocaine.

MOTION TO SUPPRESS

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to suppress. Specifically, the defendant contends that the cocaine was discovered during a pat-down search that "went well beyond a check for a weapon and became a check for cocaine."

The defendant does not contest the legality of the pat-down search or the removal of the knife. The only argument raised in brief by the defendant is that Deputy Boyet exceeded the permissible bounds of a **Terry** search

when he reached back into the defendant's pocket to remove the crack pipe after having seized the knife.

At the motion to suppress hearing and at the trial,¹ Deputy Boyet testified that he had been in law enforcement for approximately nine years. Deputy Boyet testified that when he reached into the defendant's pocket, he felt a cylindrical tube with jagged edges. Through training and his experience of running across these objects "hundreds of times," Deputy Boyet immediately recognized, upon feel, that the object in the defendant's pocket was a crack pipe.

In **Minnesota v. Dickerson**, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993), the United States Supreme Court established the "plain feel" doctrine, which applies to situations where an officer discovers contraband through the sense of touch during an otherwise lawful **Terry** search. See State v. Sam, 05-88 (La. App. 5 Cir. 5/31/05), 905 So.2d 379, 385, writ denied, 05-2100 (La. 3/10/06), 925 So.2d 510. Because of its singular association with narcotics consumption, a crack pipe constitutes a single-use instrumentality that does not support any reasonable expectation of privacy. An experienced police officer may therefore determine, simply by the contour and feel of a crack pipe through a pants pocket, that the object is narcotics paraphernalia subject to seizure under a "plain feel" rationale because its "contour or mass makes its identity immediately apparent." **State v. Lipscomb**, 00-2836 (La. 1/25/02), 807 So.2d 218, 220-21 (per curiam) (quoting **Dickerson**, 508 U.S. at 375, 113 S.Ct. at 2137).

¹ In determining whether the ruling on defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n. 2 (La. 1979).

Dickerson refers to a pat down of the “outer clothing”² and **Lipscomb** refers to a pat down “through a pants pocket.” Clearly, the “plain feel” rationale is equally applicable to contraband felt inside of a pocket during the simultaneous removal of a weapon. To find otherwise would require an officer to ignore objects of illegality discovered by touch alone during the process of removing a weapon from the person of a suspect. In the instant matter, there was no “continued exploration” by Deputy Boyet of the defendant’s pocket after he removed the knife. See Sam, 905 So.2d at 385-86; contra Dickerson, 508 U.S. at 378, 113 S.Ct. at 2138-39. Instead, his uncontroverted testimony established that, while removing the knife, Deputy Boyet felt what he immediately recognized to be a crack pipe. Deputy Boyet reached back into the defendant’s pocket simply to remove what he already knew to be a crack pipe based on his initial lawful entry into the pocket.

We find that the crack pipe was lawfully seized pursuant to probable cause that Deputy Boyet acquired through the “plain feel” exception. Accordingly, the trial court did not err in denying the defendant’s motion to suppress.

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.

² See also LSA-C.Cr.P. art. 215.1B, which states in pertinent part, “When a law enforcement officer has stopped a person for questioning pursuant to this Article and reasonably suspects that he is in danger, he may frisk the outer clothing of such person for a dangerous weapon.”