

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00925 COA

CURTIS JAMES NABORS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. BARRY FORD

COURT FROM WHICH APPEALED: LEE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

MICHAEL G. THORNE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: W. GLENN WATTS  
DISTRICT ATTORNEY: ROWLAND GEDDIE

NATURE OF THE CASE: CRIMINAL: POSSESSION OF CONTROLLED SUBSTANCE AS  
HABITUAL OFFENDER

TRIAL COURT DISPOSITION: CONVICTED OF POSSESSION OF COCAINE, SENTENCED  
AS HABITUAL OFFENDER

MANDATE ISSUED: 6/10/97

BEFORE McMILLIN, P.J., DIAZ, AND SOUTHWICK, JJ.

DIAZ, J., FOR THE COURT:

Curtis James Nabors (Nabors), the Appellant, was convicted in the Lee County Circuit Court for possession of cocaine and sentenced to serve three years in the Mississippi Department of Corrections as an habitual offender without the benefit of parole. Aggrieved from this judgment, Nabors appeals to this Court asserting the following issues: (1) whether the trial court erred in admitting the seized evidence; (2) whether the trial court erred in finding probable cause to search Nabors and (3) whether the initial stop was unjustified and beyond the scope of the *Terry* doctrine. Finding no reversible error in the proceedings below, we affirm.

## FACTS

On March 31, 1994, Officer Nicola Wright of the Tupelo Police Department responded to a 911 disturbance call from the Traveler's Motel in Tupelo, Mississippi. The manager of the motel had called complaining of excessive noise coming from rooms 40 and 41 in the back of the motel, an area previously associated with drug use. When Officer Wright arrived at the back of the motel with her blue lights and siren on, she saw a car pulling away from rooms 40 and 41. She testified that the car was going the wrong way out of the motel at an excessive rate of speed. When she called for backup, Officer Joseph Weeks arrived at the scene coming from a different direction and blocked the path of the vehicle. When the vehicle was stopped by Officer Weeks' patrol car, the doors flew open, indicating to the officers that the occupants were prepared to flee. The officers told the four males inside to come out of the car slowly. They were told to sit on the ground where they were patted down for weapons.

Officer Weeks testified that he saw a cigarette wrapper lying under the spot where Nabors' hand had been resting on the ground. The wrapper contained what appeared to be crack cocaine. Captain Ledbetter, also of the Tupelo Police Department, arrived on the scene as the men were told to sit on the ground. The officers on the scene showed Captain Ledbetter the cocaine they found in the wrapper on the ground. Captain Ledbetter then peered into the car and saw what appeared to be a crack pipe on the back floorboard of the car. After the officers saw the wrapper on the ground, as well as the pipe in the car, they searched Nabors. A cigarette pack with crack cocaine inside was found in Nabors' shirt pocket.

## DISCUSSION

### I. SUPPRESSION HEARING

Nabors argues that the cocaine found on him was the fruit of an illegal search, and therefore, should have been suppressed. The lower court conducted a suppression hearing and determined that sufficient probable cause existed for the officers to stop the fleeing vehicle, and to search the Appellant. Our duty as a reviewing court is simply to ensure that a substantial basis for concluding that probable cause existed was evidenced. *McNeal v. State*, 617 So. 2d 999, 1006 (Miss. 1993) (citations omitted). In other words, this Court is restricted to a review of the trial judge's findings using the applicable "substantial evidence"/ "clearly erroneous" standard. *Id.*

Substantial evidence existed in the present case upon which a judge could find probable cause to search the defendant. In this case, police officers were responding to a disturbance call from the motel where there had been previous drug problems. Upon arriving at the back of the motel where the disturbance was complained of, Officer Wright noticed an automobile pull out of the area at an excessive rate of speed. Officer Wright radioed for assistance, and Officer Weeks responded to the call. Officer Weeks blocked the exit of the vehicle. Upon stopping the vehicle, the doors flew open as if the occupants were ready to flee. The officers immediately ordered the occupants out of the car slowly as a protective measure, and ordered them to sit on the ground as they were patted down for weapons. Once Nabors was allowed to stand, the officers noticed what appeared to be crack cocaine in a wrapper directly under where Nabors' hand rested on the ground. Upon seeing this, the officers searched Nabors and found crack cocaine in a cigarette packet. The judge found that the officers acted on sufficient probable cause in the initial stop of the vehicle because they were responding to a disturbance call. Furthermore, both patrol cars had their blue lights and sirens on, yet the vehicle did not stop until its path was blocked.

We find that the judge's finding of probable cause to search Nabors is supported by substantial evidence. Therefore, there is no merit to this issue.

## II. ILLEGAL ARREST

Nabors argues that his arrest was illegal because he was arrested without probable cause. According to Nabors, the arrest began when the vehicle he was in was stopped, which was before any cocaine had been found. Several cases have held that an arrest begins when the pursuit for the purpose of making an arrest begins. *See Harper v. State*, 635 So. 2d 864, 866 (Miss. 1994) (citing *Singletary v. State*, 318 So. 2d 873, 876 (Miss. 1975)). The present case, however, is distinguishable in that it does not involve a chase for the purpose of making an arrest. In the present case, we must determine if the officers had sufficient reasonable suspicion to justify a brief investigatory stop, not probable cause to justify an arrest.

When Officer Weeks blocked the exit of the vehicle that Nabors was in, it was merely an investigatory stop to assess the situation in the back of the motel. Merely stopping the vehicle at that point did not constitute an arrest. "To stop and temporarily detain is not an arrest, and the cases hold that given reasonable circumstances an officer may stop and detain a person to resolve an ambiguous situation without having sufficient knowledge to justify an arrest." *Singletary v. State*, 318 So. 2d 873, 876 (Miss. 1975). After the exit was blocked off, the doors of the vehicle "flew open". In response to that, Officer Weeks ordered the four men to get out of the car slowly and sit on the ground. Nabors was not arrested until cocaine was found in his pockets. There is no merit to this issue.

## III. TERRY STOP

Nabors finally contends that because the officers lacked sufficient probable cause to search him, they violated the *Terry* doctrine which allows officers to "pat down" individuals in order to check for weapons. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). The present case is distinguishable from *Terry*

because the officers did not search Nabors until they had probable cause.

Officer Weeks testified that the occupants of the car were ordered out of the car, and were initially patted down for weapons. It was only after Nabors stood up, did officers notice the wrapper which contained what officers suspected to be crack cocaine. Furthermore, the officers saw a "crack pipe" in plain view on the back floor board of the car. At that point, Officer Weeks read everyone their *Miranda* rights, and searched the group. Only then did the officers find cocaine in a cigarette wrapper in Nabors' shirt pocket. It was the crack pipe and the wrapper on the ground that prompted the police to search Nabors. This was proper procedure; we find no *Terry* violation.

Finding no merit to the issues raised in this appeal, we affirm the judgment of the lower court.

**THE JUDGMENT OF CONVICTION IN THE LEE COUNTY CIRCUIT COURT OF POSSESSION OF A CONTROLLED SUBSTANCE AND SENTENCE TO SERVE THREE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WHERE SUCH SENTENCE SHALL NOT BE REDUCED, SUSPENDED, NOR SHALL APPELLANT BE ELIGIBLE FOR PAROLE OR PROBATION AND PAYMENT OF \$1000 FINE IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO LEE COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**