

FILED JUL 30 2002

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**VERSUS**

**LIONEL GRAY**

**COURT OF APPEAL**

**FIFTH CIRCUIT**

**STATE OF LOUISIANA**

**02-KA-344**

APPEAL FROM  
THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,  
PARISH OF JEFFERSON, STATE OF LOUISIANA,  
NUMBER 00-4520, DIVISION "O,"  
HONORABLE ROSS P. LADART, PRESIDING.

**JULY 30, 2002**

**WALTER J. ROTHSCHILD  
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr.  
Sol Gothard and Walter J. Rothschild.

**PAUL D. CONNICK, JR.**

District Attorney  
24<sup>th</sup> Judicial District  
Parish of Jefferson  
State of Louisiana

**TERRY M. BOUDREAUX**

Assistant District Attorneys  
Courthouse Annex  
Gretna, Louisiana 70053  
Counsel for State of Louisiana, Plaintiff-Appellee.

**JANE L. BEEBE**

Louisiana Appellate Project  
P.O. Box 1193  
Gretna, Louisiana 70054  
Counsel for Lionel Gray, Defendant-Appellant.

**AFFIRMED.**

WDR  
EAD  
Lg

On August 1, 2000, the defendant, Lionel Gray, was charged by bill of information with two counts of distribution of cocaine, in violation of LSA-R.S. 40:967(A). Count one alleged that the defendant knowingly and intentionally distributed cocaine on April 18, 2000, and count two alleged that the defendant knowingly and intentionally distributed cocaine on May 8, 2000. The defendant was arraigned on August 3, 2000, and he entered a plea of not guilty. On September 14, 2000, the defendant filed a motion to appoint a sanity commission to determine his competency to stand trial. The trial court declared the defendant competent to stand trial after a hearing on December 7, 2000.

The jury was selected on September 20, 2001, and the trial began on September 21, 2001. At the conclusion of the trial, the jury found the defendant guilty as charged as to both counts of distribution of cocaine. On September 25, 2001, the defendant filed a motion for new trial and a motion for post verdict judgment of acquittal, which were both denied by the trial court on October 4, 2001. On that same date, the trial court sentenced the defendant to 15 years of imprisonment at hard labor on each count and ordered that the sentences run concurrently with each other. The trial court further ordered that the

first five years of the sentence be served without benefit of probation, parole, or suspension of sentence.

On October 4, 2001, the State filed a multiple offender bill of information alleging that the defendant was a third-time felony offender, which the defendant contested. At the multiple offender hearing on February 14, 2002, pursuant to a plea agreement, the defendant pled guilty as a second felony offender. The trial court vacated the sentence of 15 years of imprisonment for count one and sentenced the defendant as a second felony offender to 15 years of imprisonment at hard labor to run concurrently with the original sentence for count two. The sentence was to be served without benefit of parole, probation or suspension of sentence for the first five years. The defendant filed a motion for appeal which was granted by the trial court on February 21, 2002.

### **FACTS**

Agent Megan Carter<sup>1</sup> testified at trial that she is an undercover narcotics agent for the Jefferson Parish Sheriff's Office ("JPSO"). Carter testified that, on April 18, 2000 around 2:30 p.m., she was in the area of 8905 Milan Street looking to purchase narcotics. She initiated a conversation with a black male who was later identified as the defendant, Lionel Gray. According to Carter, she asked the defendant where she could get "two twenties." She explained at trial that "two twenties" means two rocks of crack cocaine. The defendant replied that he only had one, and Carter gave him \$20 for one rock of cocaine.

Carter stated that the vehicle she was driving was equipped with a video and audio recording device. After the purchase, she met with Agent Billy Matranga. Carter testified that she turned over the rock of cocaine and the video tape of the transaction to Matranga. Carter identified in court the video tape, the rock of cocaine, and three photographs of the defendant taken during the transaction. Carter also identified the

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<sup>1</sup>Agent Carter indicated that her true name was not "Megan Carter." She stated that she was hired under this fictitious name for her safety.

defendant in court as the person who sold her the cocaine that day. The video tape of the transaction was played for the jury.

Carter further testified at trial about a second drug transaction with the defendant. According to Carter, on May 8, 2000 around 1:44 p.m., she was again in the Milan Street area looking to purchase narcotics. She observed the defendant and asked him for two twenties. The defendant replied that he would have to go and get them. Carter stated that the defendant walked down the street and returned with one \$40 slab of crack cocaine. She explained that a \$40 slab of cocaine was the equivalent of two twenties worth of cocaine. Carter testified that she gave the defendant \$40 in exchange for the cocaine. She then met with Agent Matranga and turned over to him the cocaine and the video tape of the transaction. At trial, Carter identified the slab of cocaine that she purchased that day. She also identified the video tape, which was played for the jury, and three still photos of the defendant committing the transaction. She further identified the defendant in court as the person who sold her cocaine on May 8, 2000.

Carter stated that, after the second transaction, the defendant had not been identified by name. She testified that when she observed the defendant in the area a third time, she notified agents who approached him and completed a field identification card.

Agent Billy Matranga, a narcotics agent for the JPSO, testified that he was the case agent in this investigation. He stated that he had received numerous complaints of drug activity in the Milan Street area. Pursuant to the complaints, he initiated a plan to buy narcotics with undercover agent Megan Carter. Matranga stated that he was in the general area when both transactions occurred between Carter and the defendant. He testified that, after each transaction, he met with Carter to obtain the cocaine and video tapes. He also testified that he field-tested the drugs, which tested positive for cocaine.

Matranga further testified that, on June 29, 2000, he was contacted by Carter. According to Matranga, Carter informed him that she had just observed an individual

standing on Milan Street and that this individual was the person who sold her cocaine on April 18, 2000 and on May 8, 2000. Matranga stated that he proceeded to Milan Street and field-interviewed the defendant for identification. Matranga testified that he filled out a field interview card and that the person identified himself as Samuel Smith. He then took a photograph of the individual, and he identified the photograph in court. He also identified the defendant in court as the person that he photographed and field interviewed on June 29, 2000.

Thomas Angelica, Jr., a forensic scientist for the JPSO, was accepted as an expert in the field of testing cocaine. He testified that the two substances obtained in this case both contained cocaine.

#### **LAW AND DISCUSSION**

On appeal, the defendant asserts one assignment of error. He contends that the evidence as to the seller's identity was insufficient to support the jury's verdict. The defendant argues that the State failed to prove beyond a reasonable doubt that he was the person who sold cocaine to Agent Carter. He claims that the man depicted in the video and in the photographs does not look like him. The State contends that there was sufficient evidence presented at trial to prove the identity of the defendant as the individual who sold the cocaine. The State further argues that Agent Carter positively identified the defendant as the seller of the illegal narcotics.

The standard for appellate review of the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979); State v. Rosiere, 488 So. 2d 965 (La. 1986); and State v. Lassere, 95-1009 (La. App. 5 Cir. 10/1/96), 683 So. 2d 812, 816, writ denied, 96-2655 (La. 4/18/97), 692 So. 2d 445. A reviewing court is required to consider the whole record and determine whether a

rational trier of fact would have found guilt beyond a reasonable doubt. State v. Lapell, 00-1056 (La. App. 5 Cir. 12/13/00), 777 So. 2d 541, 545, writs denied, 00-3546 (La. 9/14/01), 796 So. 2d 675, and 01-0439 (La. 1/4/02), 805 So. 2d 1192. It is not the function of this Court to assess credibility or to re-weigh evidence. State v. Hopson, 98-943 (La. App. 5 Cir. 3/30/99), 735 So. 2d 81, 85, writ denied, 99-1315 (La. 11/12/99), 749 So. 2d 650. A determination of the weight of evidence is a question of fact, resting solely with the trier of fact who may accept or reject, in whole or in part, the testimony of any witnesses. State v. Silman, 95-0154 (La.11/27/95), 663 So.2d 27, 35.

To convict a defendant of distribution of cocaine, the State must prove beyond a reasonable doubt that the defendant knowingly and intentionally distributed cocaine. LSA-R.S. 40:967(A); State v. Graham, 35,184 (La. App. 2 Cir. 10/31/01), 799 So. 2d 645, 649. In order to prove the elements of an offense, the State must prove the identity of the perpetrator. State v. Meyers, 95-750 (La. App. 5 Cir. 11/26/96), 683 So. 2d 1378, 1384; State v. Bovie, 95-474 (La. App. 5 Cir. 11/28/95), 665 So. 2d 558, 560. When the key issue in the case is identification, the State is required to negate any reasonable probability of misidentification in order to carry its burden of proof. State v. Raines, 00-1941 (La. App. 5 Cir. 5/30/01), 788 So. 2d 635, 641; State v. Zeno, 99-69 (La. App. 5 Cir.8/31/99), 742 So.2d 699, 706, writ denied, 00-0105 (La. 6/30/00), 765 So. 2d 1065. The testimony of one undercover officer who made the drug purchase is sufficient to convict a defendant charged with distribution of cocaine. State v. Graham, *supra* at 649.

At trial, Agent Carter testified that she got a “good look” at the perpetrator during the drug transactions, and she positively identified the defendant in court as the person who sold her cocaine on April 18, 2000 and May 8, 2000. These transactions were videotaped and played for the jury during the trial. Carter identified the defendant as the person depicted in the taped transactions. Agent Matranga testified that Carter identified the defendant as the seller on June 29, 2001 on the same street where the transactions

took place. Matranga proceeded to Milan Street, field interviewed the defendant, and also took his picture. Matranga positively identified the defendant in court as the person that he interviewed on June 29, 2001.

After viewing the video tapes and considering the evidence and testimony in this case, the jury determined that the defendant was the person who committed the crime of distribution of cocaine. Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence to establish that the defendant knowingly and intentionally distributed cocaine on April 18, 2000, and on May 8, 2000. Accordingly, this assignment of error is without merit.

The record was reviewed for errors patent, according to LSA-C.Cr.P. art. 920; State v. Oliveaux, 312 So. 2d 337 (La. 1975); State v. Weiland, 556 So. 2d 175 (La. App. 5 Cir. 1990). The review reveals no errors patent in this case.

For the reasons set forth above, we affirm the defendant's conviction and sentence.

**AFFIRMED.**



EDWARD A. DUFRESNE, JR.  
CHIEF JUDGE

SOL GOTHARD  
JAMES L. CANNELLA  
THOMAS F. DALEY  
MARION F. EDWARDS  
SUSAN M. CHEHARDY  
CLARENCE E. MCMANUS  
WALTER J. ROTHSCHILD

JUDGES

# Court of Appeal

FIFTH CIRCUIT  
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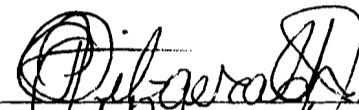
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## CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY JULY 30, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

  
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