

STATE OF LOUISIANA

*

NO. 2000-KA-2338

VERSUS

*

COURT OF APPEAL

RICHARD BROWN, III

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 407-740, SECTION "I"
Honorable Raymond C. Bigelow, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Terri F. Love, and
Judge Max N. Tobias, Jr.)

Harry F. Connick
District Attorney
Leslie Parker Tullier
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Sherry Watters
LOUISIANA APPELLATE PROJECT
P. O. BOX 58769
New Orleans, LA 70158-8769
COUNSEL FOR DEFENDANT/APPELLANT

CONVICTIONS AFFIRMED;
SENTENCES AMENDED AND
AFFIRMED AS AMENDED

Richard Brown, III appeals his two convictions and sentences for distribution of cocaine and possession with the intent to possess cocaine, respectively; after review of the record, we affirm his convictions, but vacate his sentences and remand for resentencing.

Brown was charged with one count of distribution of cocaine and one count of possession with intent to distribute cocaine. A jury found him guilty as charged on both counts. After the verdict had been rendered, the court ordered Brown's fingerprints be affixed to the bill of information in accordance with La. C.Cr.P. art. 871(B)(1)(a). Brown refused, and the court found Brown in contempt of court and sentenced him to six months consecutive to any sentence he received in the case.

The state filed a multiple offender bill of information alleging that Brown, having been convicted of distribution of cocaine in the present case (count 1), and having previously been convicted of simple burglary, was a second felony offender. The court found Brown to be a second felony offender. The transcript of the hearing and sentencing reflects that on count

one, pursuant to La. R.S. 15:529.1, the court sentenced Brown as a second felony offender to twenty years at hard labor in the custody of the Department of Corrections. On count two, the court sentenced Brown to twenty years imprisonment concurrent with the sentence imposed in count one. Brown entered an oral notice of intent to appeal. The minute entry from the sentencing hearing incorrectly states that the court sentenced Brown as a multiple offender on count two as well. In the minutes, both sentences were designated as without benefit of probation, parole, or suspension of sentence. This timely appeal follows.

Officer Steven Imbraguglio, assigned to the Second District Narcotics Unit, testified at trial that on February 18, 1999, he was involved in what he described as a buy-walk operation in which an undercover officer would proceed into areas of the Second District that are known to be frequented by street level narcotics dealers. The undercover officer is attired in plain clothes and operates an unmarked vehicle equipped with audio and video capability. After the officer is successful in making a purchase from one of the street dealers, he or she relates a description of the subject to the supporting unit. Officer Imbraguglio explained that his job is to locate the subject in the area and obtain pertinent biographical information, such as an address and date of birth. When the operation is concluded, an arrest

warrant will be obtained for the offender. Officer Imbraguglio explained that the offenders are not immediately arrested, as doing so would jeopardize the undercover operation.

Officer Catherine Beckett testified at trial that she was working in an undercover capacity in an attempt to purchase narcotics. She was driving a vehicle equipped with audio and video recording equipment. At 2:30 p.m., on the pertinent date, Officer Beckett was driving riverbound on Leonidas Street, and when approaching the intersection of Hickory Street, observed Brown on the corner straddling a bicycle. Brown motioned for her to pull the vehicle over. Officer Beckett turned the corner, and Brown approached the vehicle and asked what she was looking for. She stated a dime, which she explained to the jury is a street term for a ten-dollar piece of crack cocaine. Officer Beckett explained that she then exchanged money for a piece of crack cocaine with Brown, who then returned to the corner. After leaving the area, Officer Beckett relayed a description of Brown over the audio monitoring equipment to her backup officers, as wearing a white hooded "FILA" sweatshirt, green jeans, brown boots and some kind of black cotton garment hanging out of the back of his pants. Officer Beckett then met with the two backup officers who secured the cocaine she had purchased and removed the videotape from the vehicle. The state introduced the piece

of cocaine purchased from Brown, and the videotape of the narcotics sale was played for the jury. The state also introduced still photographs from the videotape.

Officer Imbraguglio testified at trial that on the day in question, after receiving a description of the suspect, he proceeded to the corner of Leonidas and Hickory Streets where he observed a subject who matched the description. Officer Imbraguglio was in an unmarked car and was dressed in plain clothes. As the officer approached, Brown looked in his direction and then discarded a small white object to the ground. Officer Imbraguglio and his partner, Officer Roccaforte, exited the vehicle and approached Brown. They identified themselves as police officers and patted Brown down to make sure he did not have a weapon. Officer Roccaforte engaged Brown in a conversation while Officer Imbraguglio retrieved the piece of crack cocaine that had been discarded. Officer Imbraguglio identified the piece of cocaine that was recovered that day, and it was introduced as evidence. He also identified a field interview card, which was prepared by Officer Roccaforte after speaking with Brown. Information on the card included Brown's name, his date of birth, a physical description, his address and a description of the clothing he wore that day. Officer Imbraguglio also testified that Brown was arrested at his home pursuant to an arrest warrant.

It was stipulated at trial that if Officer Corey Hall were called to testify he would be qualified as an expert in the analysis and identification of controlled substances, and that he would have testified that the two pieces of cocaine introduced as evidence tested positive for cocaine.

Brown contends the district court erred in imposing both sentences without benefit of parole. The assignment of error has merit. La. R.S. 40:967(B)(4)(b) provides that only the first five years of the sentence be served without benefit of parole, probation or suspension of sentence. The statute does not provide that the entire sentence be served without parole eligibility. State v. Kirk, 2000-0190 (La. App. 4 Cir. 11/17/00), 773 So.2d 259. Accordingly, Brown's sentences are amended to provide that he serve twenty years imprisonment at hard labor without benefit of parole eligibility for the first five years. The district court is directed to make an entry in the minutes reflecting this change and to issue a new commitment order to the Department of Corrections. Proof of compliance shall also be directed to this court.

The district court is also be directed to amend the minutes to reflect that Brown was sentenced pursuant to La. R.S. 15:529.1 on count one and not count two as currently designated.

ASSIGNMENT OF ERROR NUMBER 1

Brown contends the evidence was insufficient to support the conviction on count two for possession with intent to distribute cocaine. Specifically, he contends that the state failed to prove beyond a reasonable doubt that he possessed the cocaine with the intent to distribute, or that the state failed to rebut the possibility that he possessed the cocaine for his personal consumption.

We have often stated the standard of review for the sufficiency of the evidence in cases involving possession with the intent to distribute cocaine. See Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979); State v. Jacobs, 504 So.2d 817 (La. 1987).

In the instant matter, Officer Beckett testified that as she approached the intersection of Leonidas and Hickory, Brown motioned for her to pull over. He inquired what she was looking for and then sold her a piece of crack cocaine. Shortly thereafter, Officer Imbraguglio testified that he observed Brown on the same corner, and as Officer Imbraguglio approached, Brown discarded a piece of crack cocaine to the ground. Viewing the evidence in a light most favorable to the state, a reasonable trier of fact could have concluded beyond a reasonable doubt that Brown possessed the cocaine with the intent to distribute it. This assignment of error is without merit.

For the reasons herein stated we affirm the convictions of Richard Brown, III, and we amend his sentences to provide that he serve twenty years imprisonment at hard labor without benefit of parole eligibility for the first five years. The district court is also directed to make an entry in the minutes reflecting this change and to issue a new commitment order to the Department of Corrections; proof of compliance shall also be directed to this Court.

It is further ordered that the district court amend the minutes to reflect that Brown was sentenced pursuant to La. R.S. 15:529.1, on count one only, and not count two as currently indicated in the minutes.

**CONVICTIONS AFFIRMED;
SENTENCES AMENDED AND
AFFIRMED AS AMENDED**

