

**STATE OF LOUISIANA**

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**NO. 2000-KA-2406**

**VERSUS**

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**COURT OF APPEAL**

**BLAINE WILLIAMS**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 400-973, SECTION "K"  
Honorable Arthur Hunter, Judge

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**Judge Patricia Rivet Murray**

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(Court composed of Judge Miriam G. Waltzer, Judge Patricia Rivet Murray,  
Judge Max N. Tobias, Jr.)

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**CONVICTIONS AFFIRMED; SENTENCING VACATED;  
REMANDED FOR RESENTENCING**

Blaine A. Williams appeals his convictions for one count of distribution of cocaine and one count of possession of cocaine with intent to distribute, violations of La. R.S. 40:967 A(1), as well as the sentences imposed as a result of his adjudication as a second felony offender under La. R.S. 15:529.1. For the reasons that follow, we affirm the convictions but vacate the sentence imposed under the habitual offender statute. The case is remanded for resentencing in accordance with this opinion.

**FACTS AND PROCEEDINGS BELOW**

On August 21, 1998, the New Orleans Police Department Narcotics Section conducted a "buy/bust" operation in the Third District, which encompasses the 4400 block of Allen Street. Detective Adam Henry, dressed in plainclothes and carrying currency that had been previously photocopied, cruised the area in an unmarked police car equipped with audio-video recording and transmitting equipment. Sergeant Patrick Brown and Detective Paul Toyne monitored Det. Henry's audio transmissions from a nearby police vehicle, remaining out of sight until notified a transaction had been completed. The audio transmissions were also heard by several other

officers, including Detective Roger Smith, who were hidden in the neighborhood where they could observe Det. Henry's actions.

At the intersection of Allen and Sumpter Streets, Det. Henry encountered an individual, later determined to be Blaine Williams, who agreed to sell him a twenty-dollar rock of crack cocaine from a "stash" around the corner. Mr. Williams rode on the back of Det. Henry's car to a location near 4410 Allen St., then walked towards that residence. As Mr. Williams approached the front door, another man emerged, and both men then went into the house. When the two re-emerged, Mr. Williams walked back to Det. Henry's vehicle and gave him one piece of crack cocaine in exchange for two ten-dollar bills. As Det. Henry drove away, he radioed that a purchase had occurred and described Mr. Williams for the "take-down" officers.

Det. Smith remained hidden and continued watching Mr. Williams, who walked back towards the residence on Allen Street, handed something to the other man, then turned to walk away. As Sgt. Brown and Det. Toye pulled up to the house in their police car, they saw Mr. Williams throw something to the ground. Joined by other officers, they detained Mr. Williams and the other man, James Spurlock, then retrieved the discarded object, which was found to be a piece of crack cocaine wrapped in clear

plastic. Both men were searched after they were formally arrested, and the two ten-dollar bills Det. Henry had exchanged for the cocaine were found in Mr. Spurlock's pocket.

On August 27, 1998, Mr. Williams was charged by bill of information in count one with distribution of cocaine, and in count two with possession with intent to distribute cocaine, along with additional charges against his co-defendant, Mr. Spurlock, arising from a search of the residence. After a hearing on March 12, 1999, the trial court denied Mr. Williams' motion to suppress the evidence, but granted the motion as to Mr. Spurlock. Mr. Williams was tried before a twelve-member jury on April 5, 1999.

At trial, the jury heard the testimony summarized above and watched the videotape of Det. Henry's drug purchase. The two "rocks" seized in connection with Mr. Williams' arrest were admitted into evidence, and a criminalist testified that the "rocks" tested positive for cocaine. In addition, despite defense counsel's vigorous objection, the trial court admitted the two ten-dollar bills seized from Mr. Spurlock. Upon consideration of this testimony and evidence, the jury found Mr. Williams guilty as charged on both counts.

On May 24, 1999, the trial court sentenced Mr. Williams to serve five years at hard labor on each count, with the sentences to run concurrently

with each other as well as with the sentences imposed on three unrelated drug convictions. On December 16, 1999, Mr. Williams was adjudicated a second-felony habitual offender, and was resentenced to fifteen years at hard labor, without benefit of parole, probation or suspension of sentence, with credit for time served.

## **DISCUSSION**

### **assignment of error #one**

Mr. Williams first contends that his conviction should be reversed because the trial court erroneously admitted evidence at trial that had been previously suppressed, specifically, the two ten-dollar bills recovered from the person of his co-defendant, James Spurlock.

However, in view of the considerable evidence of Mr. Williams' guilt in this case, any error in admitting the two ten-dollar bills was harmless beyond a reasonable doubt. The jury not only heard Det. Henry and Det. Smith describe the drug transaction and identify Mr. Williams as the individual involved, but they also watched a videotape of the sale made from the passenger side of Det. Henry's vehicle. Two other officers further testified that Mr. Williams was detained at the scene of the sale based upon the description radioed by Det. Henry. Thus, even if admission of the currency was in error, the guilty verdict was surely unattributable to any

such error. See *State v. Snyder*, 98-1078, p. 15 (La. 4/14/99), 750 So.2d 832, 845 (an error is harmless if the verdict rendered was surely unattributable to the error). Accordingly, there is no basis for reversal of Mr. Williams' convictions.

### **errors patent & assignment of error #two**

A review of the record reveals two errors patent in regards to sentencing, one of which is raised as an assignment of error.

The first error patent arises because Mr. Williams was convicted and sentenced on two counts in the instant case, #400-973. However, after he was adjudicated a second offender, the trial court failed to designate which of the two original sentences it was vacating when the fifteen-year sentence was imposed under La. R.S. 15:529.1. Accordingly, Mr. Williams' sentence as a second-felony habitual offender must be vacated, and the original sentences reinstated, pending resentencing, on one count only, as a second felony offender under La. R.S. 15:529.1.

The second error patent, asserted as Mr. Williams' second assignment of error, arises because La. R.S. 40:967 B(4)(b) provides for the denial of parole for only the first five years of imprisonment, and La. R.S. 15:529.1 G specifies only that sentences under The Habitual Offender Statute shall be without the benefit of probation or suspension of sentence. Thus, the trial

court erred in denying Mr. Williams the benefit of parole for his entire fifteen-year sentence as a multiple offender. However, this error has been rendered moot by the vacating of the habitual offender sentence.

### **CONCLUSION**

For the foregoing reasons, Mr. Williams' convictions are affirmed, but his sentence as a second-felony habitual offender is vacated and his original sentences on each of the two counts are reinstated. The case is remanded for the trial court to specify which of the two counts is enhanced based upon the multiple offender adjudication and to vacate that sentence and resentence Mr. Williams as a second offender in accordance with this opinion.

**CONVICTIONS AFFIRMED; SENTENCING VACATED;  
REMANDED FOR RESENTENCING**