

STATE OF LOUISIANA
VERSUS
SHAWNDELL GOODMAN

*
*
*
*
*
*

NO. 2001-KA-1272
COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

CONSOLIDATED WITH:

STATE OF LOUISIANA
VERSUS
SHAWNDELL GOODMAN

CONSOLIDATED WITH:

NO. 2001-K-2002

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 414-220, SECTION "F"
HONORABLE DENNIS J. WALDRON, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Michael E. Kirby, Judge Max N. Tobias, Jr.,
Judge David S. Gorbaty)

HARRY F. CONNICK, DISTRICT ATTORNEY
JULIET CLARK, ASSISTANT DISTRICT ATTORNEY
STEPHENIE LAUTHAN, ASSISTANT DISTRICT ATTORNEY
619 SOUTH WHITE STREET
NEW ORLEANS, LA 70119

COUNSEL FOR PLAINTIFF, STATE OF LOUISIANA

CHRISTOPHER A. ABERLE
LOUISIANA APPELLATE PROJECT
P.O. BOX 8583
MANDEVILLE, LA 704708583
COUNSEL FOR DEFENDANT, SHAWNDELL GOODMAN

STATEMENT OF CASE

On May 3, 2000, the defendant, Shawndell Goodman, was charged with possession of more than twenty-eight grams but less than two hundred grams of cocaine. The defendant pled not guilty to the offense at his arraignment on May 6, 2000. The trial court conducted a preliminary and suppression hearing on June 12, 2000. The trial court found probable cause and denied defendant's motion to suppress the evidence. The defendant was found guilty as charged after a jury trial on August 9, 2000. On December 6, 2000 the trial court sentenced defendant to serve ten years at hard labor without benefit of probation, parole or suspension of sentence, the minimum jail sentence then available under the statute. On that same date, the defendant filed an oral motion to reconsider sentence and motion for appeal. The trial court denied the oral motion to reconsider sentence but granted the motion for appeal and set a return date of February 5, 2001. Thereafter, the defendant filed a written motion to reconsider sentence. Noting that the trial court had not ruled on the written motion to reconsider sentence, this Court

remanded the matter so the trial court could rule on the motion. On September 26, 2001, the trial court granted defendant's motion to reconsider, vacated the original sentence and resentenced the defendant to serve six years at hard labor, with five years without benefit of probation, parole or suspension of sentence. The State objected to the sentence, arguing that the sentence was illegally lenient. The State filed an application for a supervisory writ of review with this Court. The State's writ application, bearing docket number 2001-K-2002, was ordered consolidated with the defendant's appeal.

STATEMENT OF FACT

At approximately 3:00 p.m. on April 19, 2000, Officer Keith Ellis and Sergeant Mark Delpit were patrolling in the two thousand block of Hendee Court in response to citizens' complaints of narcotics activity in the area. As the officers entered a breezeway in the two thousand block of Hendee Court, they observed the defendant standing in the breezeway with his back towards the officers. When the defendant noticed the officers, he dropped a bag and attempted to run out of the breezeway. Officer Ellis retrieved the bag, noticed that it contained a substance that looked like cocaine and pursued the defendant. As the defendant was running, he tripped on a piece of cement, enabling Officer Ellis to apprehend him. The defendant struck

Officer Ellis in the face. Sgt. Delpit assisted Officer Ellis in detaining and handcuffing the defendant. The officers arrested the defendant and conducted a search incident to arrest. The officers found additional cocaine, marijuana and two hundred six (\$206.00) dollars in United States currency in the defendant's pants pockets.

Nhan Huang, a criminalist with the New Orleans Police Department Crime Lab, testified that the white substances found on the defendant tested positive for cocaine and weighed 37.2 grams in toto.

Mignon Motton testified that she was in the courtyard of 2000 Hendee Court on the day that the defendant was arrested. She stated that there were several men standing in the breezeway with the defendant. All the men, except the defendant, ran when they saw the police officers. Ms. Motton testified that the police officers grabbed the defendant and threw him to the ground before they arrested him.

ERRORS PATENT AND STATE'S ASSIGNMENT OF ERROR

NUMBER 1

A review of the record for errors patent supports the State's assignment of error that the trial court imposed an illegally lenient sentence. On September 26, 2001, the trial court granted defendant's motion to reconsider sentence, vacated the original sentence and resentenced defendant

to serve six years at hard labor, the first five years to be served without benefit of probation, parole or suspension of sentence. We note the trial court neglected to impose a fine that was also mandated by statute at the time of the offense. At the time of the defendant's resentencing, the statute had been amended by La. Acts 2001, No. 403 to provide for a five year minimum sentence. The trial court relied upon the amendments to the statute when it imposed the six year sentence.

The State argues that the provisions of this Act cannot be retroactively applied to the defendant's case to authorize the trial court to reduce the defendant's sentence. The State's argument has merit. This Court has considered this issue previously and concluded that La. Acts 2001, No. 403 has prospective effect only and does not apply to persons who violated the statutes prior to the amendment. State v. Serpas, 2001-1477 (La. App. 4 Cir. 10/3/01), 798 So.2d 1178; State v. Legendre, 2001-1483 (La. App. 4 Cir. 10/3/01), 798 So.2d 1179; and State v. Carter, 2001-1560 (La. App. 4 Cir. 10/3/01), 798 So.2d 1181.

Accordingly, this Court will vacate the six year sentence imposed by the trial court at resentencing and remand the matter for resentencing under the statute as it existed at the time of the offense, including imposition of a fine.

DEFENDANT'S ASSIGNMENT OF ERROR NUMBER 1

In his sole assignment of error, the defendant contends that his trial counsel was ineffective for failing to request a mistrial when one of the police officers testified to other crimes evidence. A review of the record reveals that the defendant is mistaken. His trial counsel did request a mistrial when the State introduced testimony from Officer Ellis that the defendant struck the officer in the face and that the defendant was issued a citation for criminal trespass. The trial court denied defense counsel's request for a mistrial.

Further, the trial court was correct when it denied defendant's motion for mistrial as Officer Ellis' testimony was part of the res gestae. La. C.E. article 404(B); State v. Brewington, 601 So.2d 656 (La. 1992). The defendant struck the officer as he was being apprehended and the defendant committed the offense of criminal trespass at the same time he was in possession of the cocaine. These facts were part of the incident which resulted in the defendant's apprehension and arrest.

This assignment is without merit.

CONCLUSION

Accordingly, the defendant's conviction is affirmed. The defendant's sentence is vacated and the matter is remanded for resentencing under the

statute as it existed at the time of the offense, including imposition of a fine.

**CONVICTION AFFIRMED; SENTENCE VACATED;
REMANDED FOR RESENTENCING.**