NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-1303**
VERSUS	*	**COURT OF APPEAL**
COREY M. SPARROW	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 409-931, SECTION "A"
Honorable Charles L. Elloie, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr., and Judge David S. Gorbaty)

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

Pamela S. Moran
LOUISIANA APPELLATE PROJECT
P.O. Box 840030

New Orleans, LA 701840030
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

STATEMENT OF CASE

Appellant Corey Sparrow was charged by bill of information on October 1, 1999 with possession of cocaine between 28 and 200 grams, a violation of La. R.S. 40:967(F)(1), and being a convicted felon in possession of a firearm, a violation of La. R.S. 14:95.1. A nolle prosequi was entered on the firearm charge on July 6, 2001. On October 12, 1999 and on

November 12, 1999, appellant entered a plea of not guilty. The court found probable cause on October 11, 2000 and denied the motion to suppress the confession. Following trial on March 19 and 20, 2001, a twelve-member jury found appellant guilty as charged. He was sentenced on March 29, 2001 to serve ten years at hard labor without benefit of parole, probation, or suspension of sentence. The State filed a multiple bill of information, and on July 6, 2001, appellant admitted to a prior felony conviction. His initial sentence was vacated, and he was resentenced as a second offender to serve thirty years at hard labor. Defendant now appeals.

STATEMENT OF FACT

At trial, William Giblin from the New Orleans Police Crime Lab testified that he tested the substance in six of the eleven plastic bags that were confiscated, and the substance tested positive for cocaine. The net weight of the cocaine that was tested was thirty-four grams.

Detective Ricky Jackson testified that on July 6, 1999, he was part of a surveillance of a known drug trafficker who went into a bottom floor apartment of the Pirogue Cove Apartments. Jackson was in an unmarked vehicle with a confidential informant. While they were sitting in the vehicle watching the first floor apartment, he observed activity coming from apartment 3X. Detective William Marks was in a position where he could

easily see apartment 3X. Marks advised Jackson that someone knocked on the door, and Marks observed what he believed to be a hand-to-hand transaction.

About thirty minutes into the surveillance, Jackson observed a black male, later identified as Darren Robinson, pull up. Robinson exited the vehicle and went up the stairs. He met with a male later identified as appellant. The two met in close proximity and had a brief conversation. Robinson returned to his vehicle, opened the trunk, and retrieved a brown paper bag. He looked around suspiciously as if he was trying to see if anybody was watching him. He then went back to the steps where he met appellant. At that time they were out of Jackson's sight. Jackson advised Marks about what was happening. Marks continued the surveillance on appellant. After Robinson left the apartment, he entered his vehicle and began to exit the apartment complex. Jackson notified Detective Dotsen who was one of the take-down units. Dotsen stopped that subject, advised him of his Miranda rights and the nature of the investigation, and placed him in the back of the police vehicle.

After the warrant was executed on the first floor apartment, Marks entered the third floor apartment to secure the residence. A search warrant was subsequently obtained. One box of sandwich bags, a brown paper bag,

a digital scale, a silver scale, a razor blade, and assorted papers and a Louisiana I.D. card in appellant's name were seized. A .357 pistol and an SKS assault rifle were also found in the apartment.

Tara Vilavasso was in the apartment. She told Jackson that appellant was her live-in boyfriend and they just had a baby together. Vilavasso was not arrested.

Detective William Marks testified that on July 6, 1999, he was involved in a surveillance to serve a search warrant on a first floor apartment. While he was conducting the surveillance from the laundromat, he noticed foot traffic going to a third floor apartment. Based on his years of experience, he recognized it to be drug activity. People were coming to the door, knocking, and a person inside would make a hand-to-hand exchange of white-colored objects for what appeared to be paper money. Marks informed the other detectives of what was happening.

Once the warrant was executed for the first floor apartment, Marks proceeded up the stairs, and met appellant on the middle landing. He identified himself as a police officer, and he told appellant that he was there on a narcotics investigation. Appellant turned and ran back up the stairs. As appellant turned, a bag containing some powdered cocaine hit the ground. Marks picked up the bag and ran up the stairs behind appellant. By the time

Marks reached the third floor landing, the door to apartment 3X was closing. Because he was in hot pursuit, Marks tried the door handle, and the door opened. He announced himself as a police officer. He was met by a female, and before he could say anything else, she screamed that she was in the apartment by herself with her baby. He then noticed a .357 pistol on the floor. He secured the weapon and went into the bedroom where appellant was hiding behind the door. Marks placed him under arrest and advised him of his constitutional rights. Appellant told Marks that a bag containing some powdered cocaine and a scale had just been delivered. Appellant explained that he needed the scale because his scale did not operate correctly and this person brought him a scale along with the drugs. The female stated that she had been living in the apartment with appellant for approximately two months, and they had a baby together. She further stated that she knew that he was supporting them by selling cocaine. She was not arrested because the baby was barely two months old and they thought it would be better if she were allowed to stay with the baby instead of incarcerating her.

The officers did not search the apartment until they had obtained a search warrant. They secured the residence. The pistol and the brown bag were in plain view. The bag was slightly open, and if one stood over it and looked down into it one could see the bags of cocaine; however, they did not

touch it. The scale was on the floor next to the bag. Once the warrant was obtained, the officers began their systematic search. The assault weapon was found underneath the couch.

The defense called Larry Williams. He was not allowed to testify because he was in the court during the taking of testimony, violating the sequestration order. Defense counsel objected stating that Williams was going to testify only as to the foundation of the photographs.

Tara Vilavasso testified that appellant was her boyfriend and her child's father. On July 6, 1999, she was in the bedroom with her two month old daughter. Appellant was in the bathroom. She heard a knock at the door, and she asked who was there. The person identified himself as the pest control man, so she opened the door. About three or four police officers came in. They pushed her out of the way and asked, "Where is he?" All of a sudden, they ran to the bedroom and bathroom area and came out with appellant. They asked if there were any drugs in the house. She told them that no drugs were in the apartment. She stated that she had a two-month old baby, and she would never have anything like that in her apartment. She further testified that a weapon could not have been under her sofa because she vacuums under the sofa a few times a week. Furthermore, she would never leave it on the floor with a baby around. Vilavasso testified that the

officers kept trying to get appellant to give somebody up. Detective Marks got abrupt and told appellant that if he did not give them a name, his girlfriend was going to jail and the baby was going into custody. They searched the apartment without showing her a search warrant. She went to check on the baby, and when she came out appellant and Darren were sitting on the sofa. On the coffee table was a couple of guns and what looked like powder in a bag. She was handcuffed and put on the sofa. Detective Marks kept cursing, and one of the other officers tried to calm him down. They took the handcuffs off her. Vilavasso reiterated that she did not know that any drugs were in the apartment. They kept threatening to take her to jail and to take the baby into custody if appellant did not give up a name. Finally, appellant admitted that the stuff was his to protect the baby and her. About three hours later, they let her call her mother to come get the baby. Her father and her aunt came. Right before they left, she was served with a search warrant. She testified that the search warrant that she was shown in court was not the same one that was given to her. She went back to the apartment the next day to get the warrant, but it was gone.

Vilavasso stated that there was one laundromat in the complex near her apartment. She identified the photograph of the laundromat and stated that she was present when the picture was taken. She stated that she could

vaguely see the door of apartment 3X in the photograph. Between the laundromat and her apartment was a pool, a fence, the tennis court with two big fences and a little grassy area. In the photograph, she was standing in front of her old apartment, but she could barely see herself. A person named Larry took the pictures.

Detective David Dotsen testified that on July 6, 1999, he was part of a surveillance of a lower apartment. There was a large amount of foot traffic going into an upstairs apartment. Based on that, he executed a traffic stop of an individual who had gone to that apartment. The man that he stopped denied being at the apartment. Later, after the scale was recovered, the man stated that he took the scale to appellant.

ERRORS PATENT

A review of the record for errors patent reveals a sentencing error. At the time, La. R.S. 40:967(F)(1) provided for a sentence of imprisonment at hard labor for not less than ten years, nor more than sixty years, and to pay a fine of not less than fifty thousand dollars, nor more than one hundred fifty thousand dollars. Thus, relator's sentence of ten years at hard labor without benefit of parole, probation, or suspension of sentence was illegal. However, appellant was subsequently resentenced under the provisions of La. R.S. 15:529.2 to serve thirty years at hard labor which is a legal

sentence.

ASSIGNMENT OF ERROR NUMBER 1

For his sole assignment of error, appellant argues that the trial court erred by preventing Larry Williams, a defense witness, from testifying due to a violation of the court's sequestration order.

After the State rested its case, the defense attempted to call Larry Williams as its first witness. At this point, the State objected because Williams had been present in court during the taking of testimony, violating the sequestration order. Counsel explained that Williams' testimony was needed to establish a foundation for the introduction of photographs. He was not going to testify regarding any testimony for which he was present.

La. C.E. Art. 616(B) governs violations of sequestration orders:

> A court may impose appropriate sanctions for violations of exclusion order, including contempt, appropriate instructions to the jury, or when such sanctions are insufficient, disqualification of the witness.

This article vests discretion in the trial court to disqualify a witness when a rule of sequestration has been violated. However, a trial judge's ruling on this issue will not be disturbed absent a clear showing of an abuse of his discretion. State v. Kimble, 407 So.2d 693, 697 (La.1981). On appeal, the

reviewing court will look at the facts of each case to determine if a sequestration violation resulted in prejudice to the accused.

Appellant argues that he was severely prejudiced because the testimony of Larry Williams was needed to refute Detective Marks' testimony regarding what he could see from his vantage point inside the laundromat.

Tara Vilavasso testified that she was present when the photographs were taken by Larry Williams. She identified the locations and the people depicted in the photographs. Based on the foundation established by Vilavasso, the trial court admitted the photographs into evidence. As Larry Williams was not asserting any direct knowledge of the events of July 6, 1999, and the photographs were admitted into evidence, no prejudice to appellant resulted from the exclusion of Williams' testimony. If there was any error in the trial court's refusal to allow Williams to testify, appellant suffered no prejudice. Thus, the trial court did not abuse its discretion in excluding the testimony.

Accordingly, Mr. Sparrow's conviction and sentence are affirmed.

AFFIRMED