

STATE OF LOUISIANA

*

NO. 2001-KA-1813

VERSUS

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COURT OF APPEAL

MISTY C. WILLIAMS

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

CONSOLIDATED WITH:

CONSOLIDATED WITH:

STATE OF LOUISIANA

NO. 2001-KA-1814

VERSUS

MISTY C. WILLIAMS

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NOS. 419-694 C/W 419-061, SECTION "F"
Honorable Dennis J. Waldron, Judge

Judge Steven R. Plotkin

(Court composed of Judge Steven R. Plotkin, Judge Patricia Rivet Murray,
Judge Michael E. Kirby)

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REVERSED AND REMANDED.

The issue in this case is whether the two six month terms served consecutively are excessive.

PROCEDURAL HISTORY

Two cases are consolidated in this appeal. In both cases the defendant, Misty C. Williams, was charged with solicitation of a crime against nature in violation of La. R.S. 14:89(A)(2) and convicted of prostitution in violation of La. R.S. 14:82.

In CDC case number 419-061, the trial court found probable cause to bind her over for trial after a hearing. In CDC case number 419-694, the defendant was charged by a bill of information. This case was transferred to Section "F" for consolidation with the case number 419-061. The defendant was arraigned in case number 419-694 and the trial court found probable cause. After a trial a six-person jury found the defendant guilty of prostitution on each count. She was sentenced to serve six months on each conviction; the sentences are to run consecutively.

STATEMENT OF FACTS

At trial Detective W.A. Theodore, Jr., testified that on December 26, 2000, he was working undercover wearing plain clothes and driving an unmarked car on St. Philip Street near Rampart Street and Saint Claude Avenue when a woman yelled at him. The detective, who is part of the vice squad, immediately suspected that she was a prostitute. He drove around the block and radioed his backup team a description of the woman and her location. When he saw her again on Saint Philip Street, she waved and walked to his car. She opened the front passenger door and sat in the passenger seat. She told the officer she did not want to go home and wanted to get something to drink; she suggested going to the Circle K on Esplanade. She asked if he was a policeman, and he replied that he was not. She said that she was not getting along with her "old man" because he did not want her "out here selling my ass."

The detective asked what the price was, and she answered, "you take care of me and I'll take care of you." When they got to the Circle K, she asked for money and went into the store with twenty dollars from the detective; she returned with liquor, beer, cookies and potato chips. When asked again what her price was, the defendant agreed to perform oral and vaginal sex for an additional twenty dollars. The detective then gave the predetermined signal to his backup team, and the defendant was arrested.

Detective Frank Young testified that about 1:50 a.m. on December 26, 2000, he was working as a backup for Detective Theodore. When he received a signal from Detective Theodore, Detective Young stopped Theodore's vehicle and arrested the defendant.

Sergeant John Gagliano testified that he participated in the arrest of the defendant on January 6, 2001. He was working undercover in the French Quarter when he observed her standing on Burgundy Street waving to cars. When he got near her, she maintained eye contact with him and flagged him down. Sergeant Gagliano stopped his car, the defendant ran to his car, got in and asked if he wanted a date. He replied that he wanted a good time. She said, "Well, good time is my game, but I'm looking to make some money." The defendant asked if he was a policeman, and when he said he was not, she asked that he get her something to drink and suggested he drive to the Circle K on Esplanade. She then asked for twenty dollars and bought two bottles of whiskey. They discussed where to go and for what. The officer said he lived in the lower French Quarter, and as they were driving there she offered to "do both, head and a f---" for forty dollars. The officer signaled his backup team, parked, and began walking on Chartres Street. Detective Vincent George stopped them and arrested the defendant.

ERRORS PATENT

The defendant was charged with solicitation for a crime against nature and convicted of prostitution. La. C.Cr.P. art. 814 does not list responsive verdicts for solicitation for a crime against nature. In State v. Simmons, 422 So. 2d 138 (La. 1982), the court stated that the test for determining whether a verdict is responsive is:

[W]hether the definition of the greater offense necessarily includes all the elements of the lesser. Stated in another way for practical application, this merely means that, if any reasonable state of facts can be imagined wherein the greater offense is committed without perpetration of the lesser offense, a verdict for the lesser cannot be responsive.

The offense of crime against nature is defined as “the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation.” La. R.S. 14:89(A)(2). Prostitution is the “practice by a person of indiscriminate sexual intercourse with others for compensation.” La. R.S. 14:82(A)(1). Obviously “unnatural carnal copulation” could occur without “indiscriminate sexual intercourse.”

Moreover, in State v. Lee, 605 So. 2d 1135 (La. 1992), the Louisiana Supreme Court specifically stated that prostitution is not a responsive verdict to the charge of crime against nature. The rendition of a verdict unresponsive to the charge is an error patent, requiring that the convictions and sentences be reversed and the case remanded for a new trial. State v. Thibodeaux, 380 So. 2d 59 (La. 1983); State v. Major, 597 So. 2d 108 (La.

App. 4 Cir. 1992).

ASSIGNMENT OF ERROR

In a single assignment of error, the defendant argues that her two six-month sentences for prostitution are excessive. However, because the convictions and sentences must be reversed and the case remanded, the issue is moot.

CONCLUSION

Accordingly, for reasons cited above, the convictions and sentences are reversed and the case is remanded for a new trial.

REVERSED AND REMANDED.