

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTIAN SIERRA,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 277838

Oakland Circuit Court

LC No. 2005-205998-FC

Before: Whitbeck, C.J., and White and Zahra, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. If the only prior testimony sought to be introduced by defendant were Vega's simple statement that she did not know defendant, I might agree with the majority's analysis. Vega's prior testimony, however, concerns her buying cocaine from Domingo daily during the week before the raid (except the day before the raid), her visits to the house where the raid took place and her participation in cutting the cocaine, her frequent purchases of cocaine from Domingo and Oscar, Domingo's use, during the week before the raid, of a small foreign car containing a block of cocaine in the trunk, his use of multiple cars, and the fact that she did not know Donald Tingley, the prosecution's main witness, although he claimed to be at the house all summer.

The prosecution called Vega as a witness at Domingo's trial. The prosecution's motive and opportunity to elicit at that trial the details of Vega's cocaine purchases, and her activities and observations at the brothers' home were the same as they would have been had defendant been able to present Vega as a live witness. The prosecution offered Vega's testimony as being an accurate account of these activities and observations. Defendant seeks to have this account placed before the jury because it is in conflict with the inferences the prosecution would have the jury draw from the testimony in this case, and directly contradicts part of Tinsley's testimony.

The basic theme of defendant's defense at the prior trial was that no one who had anything to do with the cocaine found in the car trunk ever mentioned defendant until well after the raid. Vega's detailed account of her dealings with the brothers and the cocaine supports this defense. The prosecution's motive and opportunity in questioning Vega at Domingo's trial was sufficiently similar that the jury should be able to hear the testimony and decide for itself whether Vega's testimony is probative of defendant's lack of involvement, or only descriptive of a limited part of the enterprise.

The circuit court's initial ruling on the issue was correct, and the court properly permitted the transcript to be read at defendant's first trial. It was an abuse of discretion to exclude the evidence in the retrial. I would reverse.

/s/ Helene N. White