NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 0623

STATE OF LOUISIANA

VERSUS

LINZIE R. SCOTT

Judgment rendered December 28, 2006.

* * * * * *

Appealed from the
22nd Judicial District Court
in and for the Parish of Washington, Louisiana
Trial Court No. 03 CR3 88646
Honorable Raymond Childress, Judge

* * * * * *

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* * * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J.

The defendant, Linzie R. Scott, was charged by bill of information with one count of possession with intent to distribute cocaine (count I), a violation of La. R.S. 40:967(A)(1), and one count of third offense possession of marijuana (count II), a violation of La. R.S. 40:966(E)(3). He moved to suppress the evidence to be used against him as unlawfully and illegally obtained. Following a hearing, the motion was denied. The defendant sought supervisory relief from this court, but his writ application was denied. **State v. Scott**, 2004-1724 (La. App. 1 Cir. 9/7/2004)(unpublished). He pled not guilty on both counts. Following a jury trial, he was found guilty as charged on both counts. On count I, he was sentenced to ten years at hard labor, the first two years without the benefit of probation, parole, or suspension of sentence. On count II, he was sentenced to ten years at hard labor, to run concurrently with the sentence imposed on count I. Thereafter, in connection with count I, the State filed a habitual offender bill of information against the defendant alleging he was a fourth felony habitual offender. Following a hearing, the defendant was adjudged a third felony habitual offender and was sentenced to twenty years at hard labor. The court vacated the sentence previously imposed on count I and ordered that the sentence previously imposed on count II would run concurrently with the habitual offender sentence.[1]

The defendant now appeals, designating nine assignments of error as follows: (1) the defendant was prejudiced by the State's failure to disclose the reasons Officer Lentz was forced to resign from the Washington Parish Sheriff's Office; (2) the trial court erred in denying the motion to suppress the evidence because there was no reasonable suspicion to stop the defendant; (3) the State did not meet its burden of proving intent to distribute cocaine with the evidence and testimony presented at trial; (4) the State did not meet its burden of proving the defendant guilty of third offense possession of marijuana; (5) the trial court erred in denying the motion for new trial

[1] The habitual offender sentence is deemed to contain the provision of La. R.S. 40:967(B)(4)(b) denying parole for the first two years of the sentence. See La. R.S. 15:301.1(A).

because a witness who was unavailable for trial subsequently became available; (6) the trial court erred in finding the defendant to be a fourth[2] felony habitual offender; (7) the State did not meet its burden of proving the defendant's prior felony convictions; (8) the trial court erred in accepting Detective Royce McGhee as an expert in fingerprint analysis; and (9) the trial court erred in allowing expert testimony from a police officer that exceeded the permissible limits of expert testimony and in failing to give a proper instruction to disregard Detective's McGhee's answer. For the reasons that follow, we affirm the convictions, the habitual offender adjudication, and the sentences.

FACTS

On July 24, 2003, Washington Parish Drug Task Force Officers Lieutenant Lentz, Detective Goings, and Deputy Godwin were patrolling areas of Bogalusa known for high crime and drug activity. At approximately 8:25 p.m., Lieutenant Lentz saw the defendant and another man standing near a car in the parking lot of the Honeycomb Lounge. The men were exchanging something between themselves in an apparent hand-to-hand drug transaction. Following a chase, the defendant threw down approximately 8.4 grams of cocaine. A subsequent pat-down search of his person also revealed a bag of marijuana in the front left pocket of his pants and $215.00 in the front right pocket of his pants.

DISCOVERY VIOLATION

In assignment of error number 1, the defendant argues that the information concerning Lieutenant Lentz's resignation should have been made available to him prior to the morning of trial.

> Prior to trial, the defense moved for discovery and particulars, to-wit:
>
> 51. Describe in detail any and all evidence or information that the State has, either in its possession of which it has knowledge of, that would arguably tend to exculpate or help defendant in the preparation of his defense or to impeach any witness the State intends to use in this prosecution.

On the morning of trial, defense counsel indicated he was under the impression that Lieutenant Lentz no longer worked for the department and left under less than ideal

[2] The defendant was adjudged a third felony habitual offender.

circumstances. Defense counsel indicated he had been told Lieutenant Lentz resigned under pressure, but not due to any sort of illegal reason and not for any reason that would draw into question his credibility and reliability as a witness. Defense counsel made a formal request for **Brady** material in connection with anything at all that would reflect on Lieutenant Lentz's integrity, reliability, and truthfulness as an officer of the law. The State indicated:

> And I think just that the only additional thing that I notified counsel of, and we are on the record, before we got on the record was that he had resigned, that it had to do with his relationship with a female person and that that person had drug charges pending against her at this time, or at the, yeah, at this time and before that.

Defense counsel did not object to the disclosure by the State on the basis of timeliness or on any other basis and did not move for any discovery sanction. At trial, defense counsel cross-examined Lieutenant Lentz concerning whether he still worked for the sheriff's office, and if not, the circumstances surrounding his leaving that office. Lieutenant Lentz indicated he resigned from the Washington Parish Sheriff's Office for monetary reasons and now worked for the Tangipahoa Parish Sheriff's Office.

Initially, we note the defense failed to lodge a contemporaneous objection to the alleged discovery violation. An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the action which he desired the court to take, or of his objections to the action of the court, and the grounds therefor. La. Code Crim. P. art. 841. Accordingly, the instant assignment of error was not preserved for appeal. This assignment of error is without merit.

MOTION TO SUPPRESS

In assignment of error number 2, the defendant argues the testimony of Lieutenant Lentz at the motion to suppress hearing was inconsistent with his testimony at trial. He also argues the abandonment of the drugs was the result of an illegal seizure because there was an actual and imminent stop.

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect persons against unreasonable searches and seizures. A

defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. La. Code Crim. P. art. 703(A). A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the district court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Jones**, 2001-0908, p. 4 (La. App. 1 Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 2002-2989 (La. 4/21/03), 841 So.2d 791.

A three-tiered analysis governs the Fourth Amendment's application to interactions between citizens and police. At the first tier, mere communications between officers and citizens implicate no Fourth Amendment concerns where there is no coercion or detention. **State v. Pennison**, 99-0466, pp. 7-8 (La. App. 1 Cir. 12/28/99), 763 So.2d 671, 676, writs denied, 2000-1105 (La. 10/27/00), 772 So.2d 122, 2000-2308 (La. 10/27/00), 772 So.2d 658, 2000-0298 (La. 11/3/00), 772 So.2d 663.

At the second tier, the investigatory stop recognized by the United States Supreme Court in **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or is about to be, engaged in criminal conduct or is wanted for past criminal acts. Louisiana Code of Criminal Procedure article 215.1(A) provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. However, reasonable suspicion is insufficient to justify custodial interrogation even though the interrogation is investigative. **Pennison**, 99-0466 at 8, 763 So.2d at 676.

Lastly, at the third tier, a custodial "arrest," the officer must have "probable cause" to believe that the person has committed a crime. Louisiana Code of Criminal Procedure article 213 uses the phrase "reasonable cause."[3] The "probable cause" or "reasonable cause" needed to make a full custodial arrest requires more than the "reasonable

[3] The "reasonable cause" standard of Article 213 is equivalent to "probable cause" under the general federal constitutional standard. To read Article 213 as allowing an arrest on less than probable cause would put the article afoul of the Fourth Amendment. **Pennison**, 99-0466 at 8 n.5, 763 So.2d at 676 n.5.

suspicion" needed for a brief investigatory stop. **Pennison**, 99-0466 at 8-9, 763 So.2d at 676.

The Louisiana Supreme Court has recognized that in regard to brief investigatory stops, the level of suspicion required to justify the stop need only rise to some minimal level of objective justification. In determining whether sufficient suspicion existed for the stop, a reviewing court must consider the totality of the circumstances, giving deference to the inferences and deductions of a trained police officer that might well elude an untrained person, while also weighing the circumstances known to the police, not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. See **State v. Huntley**, 97-0965, p. 3 (La. 3/13/98), 708 So.2d 1048, 1049 (per curiam).

State v. Belton, 441 So.2d 1195, 1198 (La. 1983), cert. denied, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984), recognized that flight, nervousness, or a startled response to the sight of a police officer are, by themselves, insufficient to justify an investigatory stop, but nevertheless may be "highly suspicious," and may be considered along with other facts and circumstances in the reasonable cause inquiry. **Jones**, 2001-0908 at 5, 835 So.2d at 707. Under **Illinois v. Wardlow**, 528 U.S. 119, 124-25, 120 S.Ct. 673, 676, 145 L.Ed.2d 570 (2000), however, flight is not the equivalent of a mere refusal to cooperate for purposes of the Fourth Amendment. **State v. Lewis**, 2000-3136, p. 4 (La. 4/26/02), 815 So.2d 818, 821 (per curiam), cert. denied, 537 U.S. 922, 123 S.Ct. 312, 154 L.Ed.2d 211 (2002).

It is well settled that if property is abandoned without any prior unlawful intrusion into the citizen's right to be free from governmental interference, then such property may be lawfully seized. In such cases, there is no expectation of privacy, and, thus, no violation of a person's custodial rights. **Jones**, 2001-0908 at 7, 835 So.2d at 708.

While the Fourth Amendment protects individuals from actual stops, Article 1, § 5 of the Louisiana Constitution also protects individuals from "imminent actual stops." **State v. Tucker**, 626 So.2d 707, 712 (La. 1993). In determining whether an "actual stop" of an individual is "imminent," the focus must be on the degree of certainty that

the individual will be "actually stopped" as a result of the police encounter. This degree of certainty may be ascertained by examining the extent of police force employed in attempting the stop. It is only when the police come upon an individual with such force that, regardless of the individual's attempts to flee or elude the encounter, an actual stop of the individual is *virtually certain*, that an "actual stop" of the individual is "imminent." Although non-exhaustive, the following factors may be useful in assessing the extent of police force employed and determining whether that force was *virtually certain* to result in an "actual stop" of the individual: (1) the proximity of the police in relation to the defendant at the outset of the encounter; (2) whether the individual has been surrounded by the police; (3) whether the police approached the individual with their weapons drawn; (4) whether the police and/or the individual are on foot or in motorized vehicles during the encounter; (5) the location and characteristics of the area where the encounter takes place; and (6) the number of police officers involved in the encounter. **Jones**, 2001-0908 at 7-8, 835 So.2d at 708.

Prior to trial, the defendant moved to suppress the evidence to be used against him as unlawfully and illegally obtained. Following a hearing, the motion was denied.

Washington Parish Sheriff's Office Lieutenant Raymond Lentz testified at the hearing on the motion to suppress. On July 24, 2003, Lieutenant Lentz, Detective Goings, and Deputy Godwin were patrolling areas of Bogalusa known for high crime and drug activity. At approximately 8:15 p.m., Lieutenant Lentz saw the defendant and another man standing near a car in the parking lot of the Honeycomb Lounge. The men were exchanging something between themselves in an apparent hand-to-hand drug transaction. Lieutenant Lentz instructed Detective Goings to stop their vehicle so he could talk to the men. Lieutenant Lentz exited the vehicle, identified himself as a police officer, and stated, "come here, I need to talk to you." Lieutenant Lentz was wearing a shirt with "Sheriff" written across the front of it. He also had his badge on his side. The man with the defendant threw something down, and Lieutenant Lentz instructed Deputy Godwin to stay with the man. The defendant quickly walked away and then began running away, and Lieutenant Lentz and Detective Goings pursued him. The defendant had his hand in

his right, front pocket. The defendant stopped in front of a large oak tree and threw down a large bag of cocaine. Lieutenant Lentz was approximately ten feet away from the defendant. Lieutenant Lentz and Detective Goings handcuffed the defendant. Lieutenant Lentz then retrieved the cocaine and arrested the defendant. Lieutenant Lentz subsequently discovered a bag of marijuana in the front left pocket of the defendant's pants. The man seen with the defendant subsequently claimed he had only been washing the car. Lieutenant Lentz was not questioned concerning whether he had his gun drawn while he chased the defendant. The trial court denied the motion to suppress.

At trial, Lieutenant Lentz gave similar testimony to the testimony he had given at the hearing on the motion to suppress, but did not initially indicate that he had witnessed an apparent hand-to-hand drug transaction. Also, in his testimony at trial, Lieutenant Lentz added that the man with the defendant was washing the car they were standing near. He also indicated he and his fellow officers did not have their weapons drawn when they exited their vehicle.

Defense counsel cross-examined Lieutenant Lentz concerning the discrepancies in his testimony at the suppression hearing and at trial. Lieutenant Lentz explained, at trial, he understood defense counsel to be asking him whether he had initially gone to the Honeycomb Lounge to check on the bar and the general area. He also explained that when he stated the man with the defendant was washing the car, he was referencing information that he learned after the fact.

In the instant case, Lieutenant Lentz initially approached the defendant in public under circumstances that did not signal official detention. At this stage, no justification was required for the attempted encounter with the defendant.

The defendant was not "actually stopped" before he abandoned the cocaine since he neither submitted to a police show of authority nor was he physically contacted until he was captured by Lieutenant Lentz and Detective Goings. See **Tucker**, 626 So.2d at 712 (citing **California v. Hodari D.**, 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)).

Nor was an actual stop of the defendant imminent before he abandoned the cocaine. The defendant was at least several feet away from the police at the outset of the encounter; he was not surrounded by the two officers chasing him; the officers did not have their weapons drawn when they exited their vehicle;[4] the two police officers chased the defendant on foot; and the incident took place at night in an area with numerous locations for the defendant to conceal himself. Therefore, the cocaine was abandoned without any prior unlawful intrusion into the defendant's right to be free from governmental interference and was lawfully seized.

Moreover, even assuming the pursuit of the defendant signaled that an actual stop of the defendant was imminent, the totality of the circumstances known to Lieutenant Lentz at the time; i.e., the defendant's apparent participation in a hand-to-hand drug transaction in a high drug-traffic area, his ignoring police commands to stop, his running with his hand in his pocket, and his headlong flight from Lieutenant Lentz, gave rise to reasonable suspicion for an investigatory stop prior to the abandonment of the cocaine. See **Lewis**, 2000-3136 at 5, 815 So.2d at 821. This assignment of error is without merit.

SUFFICIENCY OF PROOF OF INTENT TO DISTRIBUTE COCAINE

In assignment of error number 3, the defendant argues mere proof that he had 8.4 grams of cocaine in his possession was insufficient evidence of possession with intent to distribute cocaine, citing **State v. Elzie**, 343 So.2d 712, 716-717 (La. 1977).

Elzie involved a conviction for possession with intent to distribute cocaine. **Elzie**, 343 So.2d at 713. The State relied on the defendant's possession of 18.7 grams of a substance containing one percent of cocaine as circumstantial evidence the defendant possessed the cocaine with the intent to distribute. **Elzie**, 343 So.2d at 714-715. The supreme court in **Elzie** reversed the conviction and sentence, noting:

> The defendant at the time of the search had stated that the substance was lactose. Absent evidence that the 1% residue of cocaine found in it was a customary mixture (the evidence is in fact, to the contrary) for street sales, the presence of this substance (containing only minute quantities of

[4] Neither Lieutenant Lentz not Detective Goings were questioned concerning whether they had their weapons drawn at the time they captured the defendant.

cocaine) is more consistent with possession for personal use in mixing or sniffing cocaine than with possession for distribution purposes.

Elzie, 343 So.2d at 715.

Elzie is distinguishable. That decision rejected use of the mixture found in the possession of the defendant as proof of his intent to distribute cocaine, not on the basis of the weight of the mixture, but rather on the basis of the residual amount of cocaine in the mixture. The instant case did not involve a residual amount of cocaine. Further, in the instant case, the State did not rely solely upon the weight of the cocaine to establish the defendant's intent to distribute the cocaine. The State established the defendant's intent to distribute cocaine with testimony from Lieutenant Lentz that he saw the defendant and another man apparently conducting a drug transaction, that the defendant subsequently threw down 8.4 grams of cocaine, and that the size of the pieces of cocaine thrown down by the defendant was more consistent with cocaine held for sale than with cocaine held for personal use. Additionally, Detective Goings testified he saw the defendant throw down something, which Lieutenant Lentz recovered and identified as crack cocaine. This assignment of error is without merit.

SUFFICIENCY OF PROOF OF THIRD OFFENSE POSSESSION OF MARIJUANA

In support of assignment of error number 4, the defendant cites testimony from Probation and Parole Officer Benito Lopez conceding he was not present at the time the defendant pled guilty in connection with a March 12, 1988 possession of marijuana charge and a February 28, 1988 possession of marijuana charge.

At trial, Lieutenant Lentz testified that while patting down the defendant, he recovered a small bag of marijuana from the front left pocket of his pants.

Thereafter, the State introduced into evidence official records from Washington Parish docket #90CR45183 documenting count I, possession of marijuana on March 12, 1988; and count II, possession of marijuana on February 28, 1988.

The State also presented testimony from Probation and Parole Officer Benito Lopez. Officer Lopez indicated he supervised the defendant in connection with

Washington Parish docket #90CR45183, counts I and II, and the defendant was convicted on those counts on June 18, 1990.

On cross-examination, Officer Lopez conceded he was not personally present when the defendant pled guilty on June 18, 1990.

On redirect examination, Officer Lopez indicated although he was not personally present when the defendant pled guilty on Washington Parish docket #90CR45183, counts I and II, the defendant's guilty pleas were reflected in the minutes of the proceedings, and he (Officer Lopez) had supervised the defendant in connection with the convictions.

The State sufficiently established that, in addition to possessing marijuana in the instant case, the defendant had two prior convictions for possession of marijuana. This assignment of error is without merit.

MOTION FOR NEW TRIAL

In assignment of error number 5, the defendant argues the trial court failed to properly inquire into the alleged newly discovered evidence before denying the motion for new trial.

Louisiana Code of Criminal Procedure article 851, in pertinent part, provides:

> The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.
>
> The court, on motion of the defendant, shall grant a new trial whenever:
>
> . . . .
>
> (3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty[.]

Louisiana Code of Criminal Procedure article 854 provides:

> A motion for a new trial based on ground (3) of Article 851 shall contain allegations of fact, sworn to by the defendant or his counsel, showing:

(1) That notwithstanding the exercise of reasonable diligence by the defendant, the new evidence was not discovered before or during the trial;

(2) The names of the witnesses who will testify and a concise statement of the newly discovered evidence;

(3) The facts which the witnesses or evidence will establish; and

(4) That the witnesses or evidence are not beyond the process of the court, or are otherwise available.

The newly discovered whereabouts or residence of a witness do not constitute newly discovered evidence.

Prior to sentencing, the defense moved for new trial, alleging:

I.

Counsel has discovered since the trial of this matter the following evidence:

1. An eyewitness, Cramer Dyson[,] who was not available for trial after diligent research by defense counsel has now come forward. Mr. Dyson, was on the scene of the alleged crime and was arrested along with Mr. Scott, his testimony contained material evidence and should be considered in a [n]ew [t]rial.

The trial court denied all motions for new trial,[5] stating, "[t]his is rather straightforward. I don't know that it would be necessary for me to hear any argument on that."

There was no abuse of discretion in the denial of the Article 851(3) motion for new trial. Notwithstanding any other reasons to deny the motion for new trial, the motion failed to provide any facts that Dyson would establish. See La. Code Crim. P. art. 854(3); **State v. Mince**, 97-2947, p. 4 (La. 5/29/98), 714 So.2d 684, 686 (per curiam). This assignment of error is without merit.

HABITUAL OFFENDER ADJUDICATION

In assignment of error number 6, the defendant argues he was incorrectly adjudged a third felony habitual offender because he pled guilty to various bills on the same day, citing **State ex rel. Mims v. Butler**, 601 So.2d 649 (La. 1992) (on

[5] An additional motion for new trial, not filed on the basis of newly discovered evidence, also appears in the record.

rehearing). In assignment of error number 7, the defendant argues the only evidence offered to prove his identity as the same person convicted of the prior offenses was the testimony of Officer Lopez and the records from the clerk of court's office. In assignment of error number 8, the defendant argues Officer McGhee did not possess the qualifications necessary to be admitted as an expert because he had no experience and no training other than having taken a one-week seminar.

The record reflects the defendant was adjudged a third felony habitual offender in connection with count I (instant offense), on the basis of Washington Parish docket #90CR245182 count I (predicate #1), possession of cocaine on February 28, 1988; and count II (predicate #2), possession of cocaine on March 12, 1988; and Washington Parish docket #90CR245692 (predicate #3), second offense possession of marijuana on April 30, 1990. The defendant pled guilty to predicate Nos. 1, 2, and 3 on June 18, 1990.

Under **Mims**, prior convictions had to precede the commission of subsequent felonies for sentencing enhancement purposes. **State v. Johnson**, 2003-2993, p. 18 (La. 10/19/04), 884 So.2d 568, 579, however, held that **Mims** was incorrectly decided on the basis of an incomplete legislative record and expressly overruled the decision. Thereafter, effective August 15, 2005, La. R.S. 15:529.1(B) was amended: "[m]ultiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section." See 2005 La. Acts No. 218, § 1.

The instant offense was committed on July 24, 2003, prior to the effective date of 2005 La. Acts No. 218, § 1. Additionally, the applicable habitual offender provisions are those in effect on the date the defendant committed the underlying offense. **State v. Parker**, 2003-0924, p. 17 (La. 4/14/04), 871 So.2d 317, 327. Accordingly, the habitual offender law in effect on July 24, 2003, as interpreted by **Johnson** rather than **Mims**, controlled this case. Under the applicable law, there was no bar to the State using all three predicate offenses to enhance the instant offense.

Contrary to the defendant's argument, the record reflects that, in addition to the testimony of Officer Lopez and the records from the clerk of court's office, the State presented testimony from Washington Parish Sheriff's Office Detective Royce McGhee to

establish the identity of the defendant as the person convicted under predicate Nos. 1 and 2. Detective McGhee fingerprinted the defendant on the day of the habitual offender hearing. He compared the defendant's fingerprints to those taken in connection with Washington Parish docket Nos. 90CR245182 and 90CR245692 and concluded the fingerprints belonged to the same individual.

Detective McGhee indicated he was a crime scene investigator and evidence officer. He also indicated he had received specialized training in fingerprint examination. He had attended a weeklong FBI sponsored fingerprint comparison class. He was then certified in fingerprint comparison and classification. Following his certification, he had performed fingerprint examination for the sheriff's department. He had also received fingerprint training at the Slidell Post Academy and the Louisiana State Police Training Academy. Additionally, as a State trooper with the narcotics section, he had taken fingerprints for thirty-five years, and as warden of the parish jail, he took fingerprints for seven years. These assignments of error are without merit.

IMPROPER TESTIMONY

In assignment of error number 9, the defendant argues Lieutenant Lentz exceeded the limits of permissible testimony by stating that the cocaine was for sale and also argues that the trial court failed to instruct the jury to disregard the answer.

As a general matter, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," a qualified expert may testify in the form of an opinion. La. Code Evid. art. 702. Under La. Code Evid. art. 704, a trial judge may admit expert testimony that "embraces an ultimate issue to be decided by the trier of fact," but the expert witness is not permitted to testify to the ultimate issue of a defendant's guilt. **State v. Irish**, 2000-2086, pp. 5-6 (La. 1/15/02), 807 So.2d 208, 212, cert. denied, 537 U.S. 846, 123 S.Ct. 185, 154 L.Ed.2d 73 (2002).

At trial, Lieutenant Lentz indicated that on July 24, 2003, he was in charge of the Washington Parish Drug Task Force. He had been involved in law enforcement for nineteen years and had been involved in narcotics investigations for three years. He had

attended the basic two-week narcotics investigators course at the Regional Counter Drug Training Academy. He had also attended numerous seminars sponsored by the Louisiana Sheriff's Association and the Regional Organized Crime Information Center. He was certified in processing clandestine laboratories. At the seminars, and as a result of his experience working with the drug task force, he had learned how crack cocaine was manufactured. The trial court accepted Lieutenant Lentz as an expert in the street-level interdiction, manufacturing, sale, and packaging of illicit drugs.

Lieutenant Lentz indicated the defendant threw down 8.4 grams of cocaine. Some of the cocaine was in the form of a "cookie." When crack cocaine was manufactured and cooked down, it came out in a round circle called a cookie. A rock of cocaine that someone would smoke in a crack pipe weighed approximately one-tenth of a gram and sold on the street for between $10 and $20. The cocaine thrown down by the defendant included three larger pieces and had a street-value of approximately $250-$300.

On redirect examination, the State asked Lieutenant Lentz if State Exhibit #2, containing the three larger pieces of cocaine, was more consistent with cocaine held for personal use or more consistent with cocaine held for sale. The defense objected to the question as being outside the scope of cross-examination. The trial court allowed the question, and the defense objected to the court's ruling.

Lieutenant Lentz answered, "[t]hat quantity is for sale." The defense objected, arguing the question was "is it consistent" but the answer was "definite it was for sale[.]" The court instructed the jury:

> ... All right, there has been an objection lodged to the response from the witness, which I have sustained. I think the question was, "Is it more consistent with personal use?," and his response may have been, if my recollection is correct that that was for sale, and ultimately that is the issue that you would need to decide, so we are going to strike his answer as non-responsive and if you want to pursue this line of questioning further, you can go ahead.

In response to further questioning by the State, Lieutenant Lentz indicated State Exhibit #2 was not consistent with personal use and, in his opinion and based on his experience and training, it was more consistent with an amount that is commonly sold.

No reversible error occurred. The trial court limited the expert testimony and mitigated prejudice to the defendant from any improper testimony with a limiting instruction. This assignment of error is without merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED.