STATE OF LOUISIANA	*	**NO. 2001-KA-0140**
VERSUS	*	**COURT OF APPEAL**
RANDALL C. AREY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-769, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE
* * * * * *
JAMES F. MCKAY, III
JUDGE
* * * * * *

(Court composed of Chief Judge William H. Byrnes, III, Judge Miriam G. Waltzer, Judge James F. McKay, III)

HARRY F. CONNICK
DISTRICT ATTORNEY OF ORLEANS PARISH
JULIET CLARK
ASSISTANT DISTRICT ATTORNEY OF ORLEANS PARISH
New Orleans, Louisiana
Attorneys for Plaintiff/Appellee

WILLIAM R. CAMPBELL, JR.
LOUISIANA APPELLATE PROJECT
New Orleans, Louisiana
Attorney for Defendant/Appellant

AFFIRMED

Randall C. Arey was charged by bill of information on July 21, 2000, with solicitation for a crime against nature in violation of La. R.S. 14:89(2). At his arraignment on July 26, 2000, he pleaded not guilty. However, after trial on August 9, 2000, a six-member jury found the defendant guilty as charged. On February 20, 2001, the state filed a multiple bill charging Arey as a second offender, and, after being advised of his Boykin rights, the defendant pleaded guilty to the bill. He was then sentenced to serve two and one-half years at hard labor as a second felony offender under La. R.S.15:529.1. The defendant's motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial Detective Vincent George testified that just after midnight on July 11, 2000, he was working undercover wearing plain clothes and driving an unmarked car on Dauphine Street near St. Peter Street when the defendant waved at him. The detective assumed that the defendant was flagging him down, and he drove around the block so that he could stop near the man. Randall Arey asked the detective what he was looking for, and the detective answered, "Whatever." The defendant got into the car and told the detective that he had not been home in five days because he had no

money. The detective told Arey he should get a job, and Arey asked if the officer could help him get one. The detective then answered, "[M]aybe you have one now." Detective George said the "conversation went to a sexual nature," and "he told me he did not like to be f***** but he would give me head." The defendant suddenly became suspicious and asked if George was a policeman. When George denied it, Arey said, "[I]f you're not the police, you need to show me your dick." . The detective unzipped his pants, and when the defendant grabbed his penis, the detective objected that he was driving. Arey answered that he wanted thirty dollars "to finish up with this." Thinking that all the elements of solicitation for a crime against nature had been met, the detective signaled to his backup team. His car was stopped, and the defendant was arrested.

Detective Frank Young testified that he arrested the defendant at the corner of Kerlerec and Chartres Streets.

Dr. Rafael Salcedo, an expert in clinical forensic psychology, testified that homosexuals do not choose their sexual orientation and that while the majority of gays are in long-term relationships, "there is a subset that does seem to be more promiscuous and actively involved in a more flagrant lifestyle." The doctor acknowledged that he had not interviewed the defendant.

In a single assignment of error the defendant argues that the evidence is insufficient to support the conviction.

The Louisiana Fifth Circuit set out the standard for reviewing convictions for sufficiency of the evidence in solicitation for a crime against nature cases in State v. Richmond, 97-1225 (La. App. 5 Cir. 3/25/98), 708 So. 2d 1272; the court held:

> The standard for appellate review in determining the sufficiency of the evidence is, whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Williams, 457 So.2d 902 (La. App. 3rd Cir.1984), writ denied, 461 So.2d 313 (La. 1984).
>
> LSA-R.S. 14:89 A(2) defines crime against nature as: "The solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation." To support a conviction for crime against nature the State must prove that defendant solicited another person with the intent to engage in unnatural carnal copulation for compensation. State v. Wallace, 466 So.2d 714 (La. App. 4th Cir.1985). The trier of fact is entitled to rely upon common knowledge and experience in determining whether the prosecution proved essential elements of the crime beyond a reasonable doubt. State v. Pruitt, 482 So.2d 820 (La. App. 4th Cir.1986), writ denied, 488 So.2d 1018 (La.1986). The question of credibility of witnesses lies within the sound discretion of the trier of fact. State v. Klar, 400 So.2d 610 (La.1981).
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> The defendant argues that the state did not show that her actions met the elements of the crime because there was no evidence of the transaction. Detective Wright testified that the defendant offered to give him a "head job" in exchange for [97-1225 La.App. 5 Cir. 5] twenty dollars. He testified that in his nineteen years of experience on the vice squad, the last three

> specifically in prostitution cases, he understood a "head job" to refer to oral sex. Oral sex is considered unnatural carnal copulation for the purposes of the statute. State v. Grubbs, 93-2559 (La.App. 4 Cir. 10/25/94), 644 So.2d 1105 [writ denied, 94-2880 (La. 5/5/95), 654 So. 2d 323.].

Richmond, at p. 4, 708 So. 2d at 1274.

The defendant in the case at bar contends that two distinct conversations occurred between himself and the detective. In the first he offered to perform oral sex. Then after he became suspicious, he offered to manually masturbate the officer for thirty dollars and that action does not constitute unnatural carnal copulation. At trial the detective testified that the defendant, who was standing in the French Quarter at midnight, waved at him. Then after getting into the detective's car, the defendant solicited him for oral sex for compensation. The totality of the conversation supports the detective's testimony. We find specious the defendant's argument that the conversation between him and the detective broke into two separate and distinct segments in which the terms of the transaction changed. Clearly any rational trier of fact could have found that the state met its burden of proof in this case.

This assignment is without merit.

For the foregoing reasons, we affirm defendant's conviction and sentence.

AFFIRMED