

**STATE OF LOUISIANA**

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**NO. 2001-KA-1284**

**VERSUS**

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**COURT OF APPEAL**

**JESSIE TAYLOR**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 406-449, SECTION "E"  
Honorable Calvin Johnson, Judge

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**Charles R. Jones**  
**Judge**

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(Court composed of Judge Charles R. Jones, Judge James F. McKay III, and  
Judge David S. Gorbaty)

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**CONVICTION AFFIRMED;  
SENTENCE AMENDED AND  
AFFIRMED AS AMENDED**

Jessie Taylor appeals his conviction for possession with the intent to distribute cocaine, and his sentence as a third felony offender to fifteen years imprisonment without benefits. We affirm his conviction, but amend his sentence and affirm the sentence as amended.

**FACTS**

At trial Detective Donald Polk testified that at about 7 p.m. on April 8, 1999, he was working as an undercover agent in a buy/bust narcotics operation in the area of Chef Menteur Highway and Wilson Street. He was wearing a recording device so as to record transactions, and he was carrying money, which had been photocopied. A videotape of the transaction was played for the jury, and the agent commented on what was occurring on the tape. He testified that while he was wearing plain clothes and driving an unmarked car he saw Janie Bird on the street and asked her to help him buy cocaine. She got into his car, and after riding to several locations, suggested they go to Bonita and Grant Streets. Once there, she purchased two rocks of

cocaine from a man who immediately walked away. The agent gave his backup team a description of what the man was wearing, and when Janie Bird got back into his car and handed him the rocks, he said, "Fire, Fire. It looks like fire," which was a prearranged signal to his backup team that the purchase was complete. The agent identified Taylor as the man he saw selling cocaine to Janie Bird.

Detective Nicole Gouch testified at trial that she worked as a spotter during the undercover operation on April 8, 1999. She maintained surveillance of the undercover officer and taped his conversation. She also saw Janie Bird get into the agent's vehicle and heard him speaking to Bird. She followed them to several locations as they attempted to purchase cocaine. At Bonita and Grant Streets, she saw Janie Bird leave the agent's car and approach Jessie Taylor. Bird handed Taylor money, and he gave her something in return. Bird walked back to the agent's car and the detective then received the signal that the transaction was complete, so she began to follow the man who sold the item to Janie Bird as he went down Bonita Street. Detective Gouch also alerted the backup team as to his position. She saw him enter a house at 4604 Bonita Street, and then she drove away from the house to the intersection of Grant and Francisco Verret Streets. At that corner she saw the man again; he was running. She immediately advised the

backup team of his position. (About five minutes passed between the time she saw Taylor entering the house and the time she saw him at the intersection.) She followed him in her car and never lost sight of him. She did not arrest him, but she witnessed his arrest at a school on Viola Street.

Officer George Jackson testified at trial that he was part of the takedown unit in the buy/bust operation in which Jessie Taylor was arrested. He was driving a marked police car and wearing a uniform. He was four blocks away from the site of the transaction. He heard Detective Gouch's description of the vendor running in a westbound direction on Verret Street so he drove to that location where he saw a man fitting the description running through a yard on Viola Street. Officer Jackson chased the man into a schoolyard where there was a scuffle. Then the man hid under a building, but after a few minutes he emerged and was arrested. When searched incident to his arrest, Taylor was carrying \$283; however, he did not have the marked twenty-dollar bill from Detective Polk.

There was a stipulation that the two rocks placed into evidence were tested and proved to be crack cocaine.

Janie Bird, who was thirty-three years old at the time of trial, testified that she quit school after the ninth grade; she also testified that she had been in an auto accident in which she suffered a brain hemorrhage and a paralysis

in the right side of her back. She testified that she remembered Detective Polk who asked her “where he could find something for a headache” as she walked on the street. She got into his car, and he drove around while they looked for someone selling crack. He offered her ten dollars to find him the drug. She found a man who had cocaine and purchased it from him, but that man was not Jessie Taylor. As soon as she gave the cocaine to the driver, police cars appeared. The driver told her to get out of the car, and when she did, she was arrested. Bird admitted to having convictions for possession of cocaine, possession of marijuana, and solicitation for a crime against nature.

Before addressing the assignment of error, we note an error patent in the sentence. Taylor was sentenced to fifteen years at hard labor without benefits under La. R.S. 40:967(B) and La. R.S. 15:529.1(A)(1)(b)(i). La. R.S. 40:967(B) restricts the benefits of parole, probation, and suspension of sentence for the first five years of the sentence, and La. R.S. 15:529.1(G) prohibits probation or suspension of sentence for the entire sentence, but it does not prohibit parole. Thus, Taylor’s sentence must be amended so that parole is prohibited for only the first five years of the fifteen-year sentence.

In his single assignment of error, Taylor argues that the evidence is insufficient to support his conviction in that the state did not prove beyond a reasonable doubt that he possessed or sold cocaine nor did the state negate

the reasonable probability that he was misidentified.

We have consistently stated the standard of review in discussing appellate review of the insufficiency of the evidence, thus we will not recite this standard again. See State v. Johnson, 99-1053 (La. App. 4 Cir. 6/14/00), 766 So. 2d 572, 576-77, this court citing State v. Ash, 97-2061 (La. App. 4 Cir. 2/10/99), 729 So.2d 664, 667-68.

Taylor was charged with and convicted of distribution of cocaine, in violation of La. R.S. 40:967(A), which makes it unlawful for any person to knowingly or intentionally distribute a controlled dangerous substance classified in Schedule II, which includes cocaine. The state must show (1) "delivery" or "physical transfer;" (2) guilty knowledge of the controlled dangerous substance at the time of transfer; and (3) the exact identity of the controlled dangerous substance. State v. Kanost, 99-1822, p. 4 (La. App. 4 Cir. 3/29/00), 759 So. 2d 184, 187, writ denied, 2000-1079 (La. 11/13/00), 773 So. 2d 726. Guilty knowledge need not be proven as fact, but may be inferred from the circumstances. State v. Porter, 98-2280, p. 3 (La. App. 4 Cir. 5/12/99), 740 So.2d 160, 162.

The testimony of Detectives Polk and Gouch established that Janie Bird took money from Detective Polk to purchase cocaine, and

she gave that money to Jessie Taylor in return for the drug. Both detectives witnessed the transaction, and Janie Bird gave the cocaine to Detective Polk. Taylor was seen entering a house and shortly thereafter running down a nearby street. In his brief he maintains that because he was not seen leaving the house, the police were wrong in identifying him as the drug vendor. However, both detectives testified they got a good look at him during the drug transaction, and then Detective Gouch saw him running from the area five minutes after the sale.

The jury heard the testimony of the detectives and that of Janie Bird, believed the detectives and not Janie Bird. A factfinder's credibility decision should not be disturbed unless it is clearly contrary to the evidence. State v. Harris, 99-3147, p. 6 (La. App. 4 Cir. 5/31/00), 765 So. 2d 432, 435. It cannot be said that the jury's credibility decision in the instant case was clearly contrary to the evidence.

There is no merit to this assignment of error.

Accordingly, Jessie Taylor's conviction is affirmed. His sentence is amended so as to provide for fifteen years at hard labor without benefits of probation or suspension of sentence and without

benefit of parole for the first five years.

**CONVICTION AFFIRMED;  
SENTENCE AMENDED AND  
AFFIRMED AS AMENDED**