

People v Weir

2009 NY Slip Op 31475(U)

March 31, 2009

Supreme Court, Kings County

Docket Number: 10986/95

Judge: Jill Konviser

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 26**

----- X
THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

Ind. No. 10986/95

GEORGIA WEIR, :

Defendant. :

----- X

JILL KONVISER, JUSTICE:

On August 30, 1995, the defendant pleaded guilty to attempted criminal sale of a controlled substance in the third degree, (Penal Law §110/220.39[1]), a class C felony, with the understanding that she would be sentenced to one day in jail and five years probation. On October 25, 1995, the promised sentence was imposed. The defendant did not file a direct appeal of her conviction.

The defendant has now filed a motion to vacate the judgment of conviction under Criminal Procedure Law §440.10 on the grounds that: (1) she is innocent; and, (2) her trial counsel provided her with ineffective representation in connection with her guilty plea in that he incorrectly advised her regarding both the level of crime to which she was pleading and the sentence she was to receive, misrepresented that the grand jury would impose a six to twelve month jail sentence if she did not plead guilty and incorrectly told her that she would not be subject to deportation as a result of her guilty plea.¹ The People filed an affirmation and memorandum of law in opposition to the defendant's motion.

On March 9, 2009, a hearing was held before this Court to resolve the factual issues raised by the defendant's motion. The defendant testified on her own behalf and did not call any additional witnesses. The People called the defendant's former counsel. The parties made oral argument. For

¹The defendant's motion was filed in June 2008.

the reasons that follow, the motion to vacate the judgment of conviction is denied.

Procedural History

Felony Complaint

On August 8, 1995, the defendant and co-defendant, Laurenton Rhoden, were arrested and charged, by way of a felony complaint, with criminal sale of a controlled substance in the third degree, criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree. The complaint alleges that on August 8, 1995, at approximately 2:57 p.m. at 550 Liberty Avenue in Kings County, an undercover police officer engaged in a drug related conversation with the co-defendant. Thereafter, the co-defendant directed the undercover officer to the defendant who was standing behind the counter.² The defendant then asked the co-defendant if it was okay to “do” the undercover officer. The co-defendant replied “yes.” Thereafter, the defendant handed the undercover officer a quantity of crack-cocaine in exchange for a sum of United States currency.

The Defendant’s Guilty Plea, Statement to the Department of Probation, and Sentence

On August 30, 1995, the defendant appeared in Court with counsel and pleaded guilty to a superior court information in which she was charged with attempted criminal sale of a controlled substance in the third degree under Penal Law §220.39-1.³ The plea minutes show that the defendant, after being placed under oath, agreed to plead guilty to the charge of attempted criminal sale of a controlled substance in the third degree as set forth in the superior court information in exchange for a sentence of one day in jail and five years probation.

²The premises located at 550 Liberty Avenue in Kings County in 1995 was a convenience store.

³A copy of the plea minutes are attached as exhibit 3 to the defendant’s motion.

The record shows that the defendant told the Court that she: (1) understood what she was doing; (2) was satisfied with the advice she received from counsel; (3) was waiving her right to be indicted by the grand jury; and, (4) was waiving her right to appeal. The defendant further informed the Court she understood that by pleading guilty she was giving up her right to a jury trial, the right to cross-examine the People's witnesses, the right to call her own witnesses and her right to testify or to remain silent.

The record also shows that the Court advised the defendant that attempted criminal sale of a controlled substance in the third degree was a class C felony. The defendant then told the Court, in response to its question, that she was not an American citizen. Thereafter, the following colloquy ensued.

The Court: [T]he Court accepts no responsibility if by chance you are deported because of this plea. Do you understand that?

The Defendant: Yes.

Plea Minutes at 3-4.

The defendant also admitted to the Court that she attempted to sell crack-cocaine.

The Court: Ms. Weir, did you willingly, knowingly, and unlawfully attempt to sell a narcotic drug, namely crack, cocaine?

The Defendant: Yes, your honor.

Plea Minutes at 6.

The case was then adjourned for sentence until October 25, 1995. In the interim the defendant was interviewed by the Department of Probation in connection with its preparation of a pre-sentence report. The report, dated October 23, 1995, contains a section captioned "Summary of Offender's Statement" which states "[t]he defendant admits her guilt in the instant offense, citing

financial gain as her motive for committing the crime.”⁴

On October 25, 1995, the defendant appeared before the Court for sentencing. The sentencing minutes show that counsel, who appeared with the defendant at the time of the plea, was not present and that a different assigned attorney, a Mr. Aponte, was present to represent the defendant at the time of sentence. The sentencing minutes also show that the defendant declined the Court’s offer to make a statement prior to the imposition of sentence.⁵ Sentencing Minutes at 3. Thereafter, the promised sentence of one day in jail and five years probation was imposed.

The Hearing Held in Connection with this Motion

On February 26, 2009, this Court ordered a hearing to resolve the factual issues that the defendant raised in her motion to vacate the judgment of conviction under C.P.L. §440.10. The hearing was held on March 9, 2009. Both the defendant and the People presented evidence at the hearing.

The Defendant’s Hearing Evidence

The defendant testified on her own behalf at the hearing. She testified that she currently resides in Springfield, Massachusetts, has a Bachelor’s Degree in sociology and psychology, and is employed as an inclusion teacher with the City of Springfield public school system. The defendant is a permanent resident of the United States and no deportation proceedings are pending against her.

The defendant testified that between 1995 and 1996 she lived in Brooklyn with her then

⁴Although neither party presented this Court with a copy of the probation report, this Court takes judicial notice of its contents as it is part of the court record and was relied on by the Court at the time of sentence. A copy of the relevant portion of the probation report is attached to this opinion.

⁵A copy of the sentencing minutes are attached as exhibit 4 to the defendant’s motion papers.

boyfriend Laurenton Rhoden, the co-defendant. On August 8, 1995, which was the date of the defendant's arrest, she and Rhoden were standing in Brooklyn outside of a convenience store that was owned by Rhoden's mother. The defendant occasionally assisted Rhoden's family in serving customers who patronized the store.

On August 8, 1995, as the defendant was standing outside of the store talking with Rhoden, she saw a customer walk inside. As there was no else inside the store, the defendant entered the store, walked behind the counter and attempted to assist the customer. The customer said to the defendant "may I have one? The defendant replied, "one of what ma'am?" The customer did not reply and instead "kept on staring" at the defendant. The defendant said to the customer "I don't know what you're asking for." The defendant asked the customer if she was looking for cigarettes or for something else but the customer still did not respond.⁶

At that point, the defendant attempted to call Rhoden by way of a "buzzer" that was in the store to see if he could help her figure out this puzzling customer. Hearing at 11. Rhoden did not reply to the buzzer so the defendant walked outside to look for him. The defendant testified that she spoke to Rhoden outside the store and said to him "I have no clue what this woman wants, can you please go see what she wants." Hearing at 36. The defendant waited outside of the store while Rhoden went inside to assist the customer. She paid no attention to what Rhoden and the customer were doing inside of the store.

Thereafter, Rhoden walked out of the store where he and the defendant had a brief

⁶The defendant, in an affidavit attached as exhibit 2 to her motion papers, described the encounter with the customer inside the store somewhat differently. In her affidavit, the defendant simply stated that after she went behind the counter to assist the customer, the defendant asked the customer if she could help her and the customer "put some money on the counter." Affidavit at 2.

conversation. As the defendant was preparing to leave the location, the police arrived and placed her under arrest. The defendant testified that she did not sell drugs to anyone on that date and did not have any drugs in her possession.

After the defendant's arrest, an attorney, referred to hereinafter as "counsel" was assigned to represent her. Counsel told the defendant, while she was incarcerated prior to her arraignment, that she was being charged with selling a controlled substance. The defendant told counsel that she "never sold anything to anyone." Counsel responded by telling the defendant that:

if I pled not guilty to these charges I would end up doing six months to a year in jail, I would have to go in front of a grand jury. He said there was no way that would not happen because they would not believe me.

Hearing at 47. The defendant testified that she told counsel "over and over again" prior to her arraignment that she was not guilty but that counsel told her that if she pleaded not guilty she:

would have to go in front of a grand jury and they would have to find you guilty on those charges and you would have to do six months to a year in jail. That is what he told me.

Hearing at 50. After the defendant was arraigned she was released on her own recognizance and the case was adjourned until August 30, 1995.

The defendant testified that on August 30, 1995, she met with counsel prior to the court appearance and counsel again told her that if she did not plead guilty she would be required to serve between six months and one year in jail.

[Counsel] told me that I needed to plead guilty or else, you know, pleading not guilty would cause me to go in front of the grand jury and I would get an automatic six months to a year in jail.

Hearing at 17. Thereafter, counsel set forth the terms of the plea arrangement for the defendant. The defendant testified that counsel told her that she would be pleading guilty to a misdemeanor and

that "by pleading guilty I would get one to three years of probation." Hearing at 17. The defendant further testified that counsel told her that her plea of guilty to a misdemeanor would have no impact on her immigration status. Thus, the defendant explained at the hearing that she agreed to plead guilty because counsel:

told me that me pleading not guilty I would have to go in front of that grand jury and they would have to sentence me without any promise, to six months to a year in jail And knowing if I pled guilty I would only have a misdemeanor charge and it wouldn't affect me in any way in terms of my immigration status or anything else further. I would just have to do one to three years probation.

Hearing at 18.

The defendant testified that at the time she entered her guilty plea on August 30, 1995, she lied under oath when she told the Court that she had in fact attempted to sell crack-cocaine. She testified that she falsely told the Court that she had attempted to sell crack-cocaine as counsel told her that that was what she "needed to do in order not . . . to do jail time." Hearing at 19. The defendant also testified that although she heard the judge tell her during the plea proceedings that she was in fact pleading guilty to a felony and that she was to receive a five year probationary sentence, she did not interrupt the plea proceedings and inform the Court that counsel had told her that the plea agreement called for her to receive a misdemeanor and one to three years probation. Moreover, after the defendant realized that the plea agreement announced by the Court was different than that which she had discussed with counsel, she made no attempt during the course of the plea proceedings to discuss this discrepancy with counsel. She also acknowledged at the hearing that she made no effort to speak to the Court or counsel during the course of the plea proceedings after the Court told her that there was a chance that she could be deported as a result of her guilty plea.

The defendant explained her reasons for not saying anything to the Court or counsel during

the course of the plea proceedings after she realized that the plea terms announced by the Court were different than the ones set forth by counsel.

I felt if I had spoken up I would have to go in front of a grand jury and they would find me guilty either way to the six months to a year in jail. I just froze. I heard everything they were saying. I was too scared to speak up.

Hearing at 24. The defendant further testified that she attempted to speak with counsel about the plea during the time period that elapsed between the date of the plea, August 30, 1995 and the date of sentence, October 25, 1995, but that he did not return any of her telephone calls.

On October 25, 1995, the defendant appeared in court for sentence but an attorney other than counsel appeared on her behalf. The defendant testified she expected counsel to appear and was surprised that a different court-appointed attorney, a Mr. Aponte, was in court to represent her. Nonetheless, she testified that she agreed to have him represent her at the time of sentence. Furthermore, the defendant testified that she did not say anything to Aponte prior to sentence regarding the alleged discrepancies between what she was told by the Court and by counsel regarding the plea offer. The defendant also acknowledged that she was given the opportunity to address the Court prior to sentence but chose to say nothing.

The defendant testified that after sentence was imposed she reported to the Department of Probation and served the entire five year probationary period. The defendant filed her current motion thirteen years after her plea. Although she had assigned counsel in connection with the underlying criminal case, she explained that her inability to afford an attorney accounted for the thirteen year delay.

The People's Hearing Evidence

The People called the defendant's former counsel to testify at the hearing. Counsel testified

that after graduating from law school in 1985, he worked for a civil law firm for approximately one and one-half years, was then employed as an Assistant District Attorney with the Queens County District Attorney's office until 1991 when he opened his own criminal defense practice in Kings County. Counsel testified that he did not have a specific recollection of the defendant's case or of any conversations he may have had with her. He also testified that he no longer possessed any files relating to her case.

Counsel, who has been a criminal defense attorney for eighteen years, testified that in 1995 his general practice was to inform defendants charged with a class B felony drug sale that the minimum sentence that could be imposed was one to three years imprisonment and the maximum sentence was eight and one-third to twenty five years imprisonment. He also testified that it is certainly not his practice to advise a person arrested for selling drugs "that a guilty plea to attempted criminal sale of a controlled substance in the third degree is a misdemeanor" as that crime is in fact a felony. Hearing at 92. In addition, counsel testified that the probationary term for a class C felony is five years and the probationary term for a misdemeanor is three years. He further testified that he never told a client the probationary term for a misdemeanor was one to three years or that a possible sentence for a guilty plea to a class C felony in 1995 was one to three years probation. Nor did he ever tell a client that they had to plead guilty.

Moreover, counsel testified that he never told a client that if they testified before the grand jury that they would be found guilty and automatically sentenced to jail. Nor did he ever tell a client that the grand jury metes out punishment. Finally, with respect to the immigration consequences of a guilty plea, counsel testified that his general practice in 1995 was to advise non-citizen clients that deportation in drug sale cases while not mandatory, was certainly possible.

Conclusions of Law

This Court, having observed the defendant's demeanor at the hearing and having considered her testimony in light of all the facts and attendant circumstances in this case, does not find the defendant's hearing testimony to be credible. Counsel's testimony, however, is credited by the Court. The defendant has failed to meet her burden of proving by a preponderance of the evidence every fact essential to support her motion. See C.P.L. §440.30(6). As a result, the defendant's motion to vacate the judgment of conviction is denied.

Defendant's Claim of Actual Innocence

The defendant claims that her plea should be withdrawn and the judgment of conviction vacated as she is innocent of the crimes to which she pleaded guilty. This Court, however, having observed the defendant's demeanor during the hearing held in connection with this case, does not credit her testimony that she was merely an innocent bystander and did not sell or attempt to sell cocaine on the date in question. As a threshold matter, this Court rejects the defendant's claims of actual innocence as they are contradicted by her full allocution, made under oath at the time the plea was entered thirteen years ago, in which she acknowledged that she knowingly attempted to sell cocaine on the date in question. People v. Eschenberg, 275 A.D.2d 719 (2d Dept.), lv. denied, 95 N.Y.2d 963 (2000); People v. McAllister, 248 A.D.2d 641 (2d Dept.), lv. denied, 91 N.Y.2d 1010 (1998). Likewise, the defendant's allegations of innocence are contradicted by the statements she made to the Department of Probation in 1995 in which she admitted that she sold cocaine on the date in question and did so for financial gain.

Moreover, the defendant's claim at the hearing that she lied under oath in 1995 when she admitted her guilt, but is now telling the truth underscores her utter lack of respect for the sanctity

of the oath and undermines the veracity of her current claim of innocence. Furthermore, the defendant's claim at the hearing that she lied at the time of the plea because she was afraid that if she said otherwise the grand jury would sentence her to jail is, for the reasons stated below, preposterous.⁷

Finally, the validity of the defendant's claim of actual innocence is significantly undermined by the thirteen year delay between the date of the defendant's plea and the filing of her current motion. People v. Nixon, 21 N.Y.2d 338, 352 (1967), cert. denied, 393 U.S. 1067 (1969); People v. Hanley, 255 A.D.2d 837, 838 (3d Dept. 1998), lv. denied, 92 N.Y.2d 1050 (1999); People v. Kirkland, 1 Misc.3d 904(A), 2003 WL 23009231 at *4 (Sup. Ct. Kings Co. Dec. 8, 2003) (Schneier, J.).

The defendant's motion to vacate the judgment of conviction on the ground that she is actually innocent of the crime to which she pleaded guilty is rejected.

Ineffective Assistance of Counsel

The defendant claims, on various grounds, that her former counsel provided her with ineffective representation. The Court of Appeals has held that "[i]n the context of a guilty plea, a defendant has been afforded meaningful representation when he or she receives an advantageous plea

⁷The defendant's hearing testimony with respect to her alleged innocence is also not credited by this Court as it provides a somewhat different explanation for her conduct on the date in question than that set forth in the affidavit she prepared in connection with her motion papers. The defendant testified during the hearing that while she was behind the counter a customer said to her "may I have one," the defendant replied "one of what ma'am" and the defendant thereafter attempted to find out what the customer wanted. Hearing at 10. By contrast, the defendant's affidavit states that the customer merely put money on the counter and said nothing at all to the defendant. Affidavit at 2. These discrepancies are further proof that the defendant's claims of actual innocence are not worthy of belief and were manufactured by the defendant to support her motion.

and nothing in the record casts doubt on the effectiveness of counsel.” People v. Ford, 86 N.Y.2d 397, 404 (1995). As this Court finds that the defendant received an advantageous plea agreement and, further, that there is nothing in the record that casts doubt on counsel’s effectiveness, the motion to vacate the judgment on the ground that the defendant received the ineffective assistance of counsel is denied.

The Defendant Received an Advantageous Plea

In this case, the defendant’s ineffective assistance of counsel claim is rejected as it is undisputed that she received an extremely advantageous plea. The top count in the criminal court information charged the defendant with criminal sale of a controlled substance in the third degree, a class B felony. In 1995, the maximum sentence that could have been imposed for this crime was eight and one-third to twenty-five years imprisonment and the minimum sentence was one to three years imprisonment. See 1995 Penal Law §§70.00(2)(b) (3)(b). The defendant, however, through the efforts of her former counsel, pleaded guilty by way of a superior court information to attempted criminal sale of a controlled substance in the third degree, Penal Law §110/220.39(1), a class C felony, a charge that is one count lower than the top charge contained in the original charging instrument. And, although facing eight and one-third to twenty-five years if convicted of the top count, as a result of counsel’s advocacy, the defendant received one day in jail and five years probation.

The extremely beneficial plea arrangement that counsel secured for the defendant demonstrates that she was provided with effective representation. See People v. Ford, 86 N.Y.2d at 404.

Nothing in the Record Casts Doubt on Counsel's Effectiveness

Despite the advantageous plea agreement that she received, the defendant claims, on various grounds, that counsel provided her with ineffective representation. Each of these claims has been considered and rejected as this Court finds there is nothing in the record that casts doubt on the effectiveness of counsel.” People v. Ford, 86 N.Y.2d at 404.

The Defendant's Claim That Counsel Incorrectly Advised her about the Level of Crime to Which she was Pleading Guilty and the Sentence she was to Receive

The defendant claims that her attorney was ineffective as he incorrectly advised her that she was pleading guilty to a misdemeanor and that the probationary sentence she was to receive was for a period of one to three years as opposed to the five year period that was actually imposed. These claims are rejected. Not only does the transcript of the plea minutes unequivocally show that the defendant was advised by the Court that she was pleading guilty to a felony and that sentence to be imposed was five years probation and one day in jail, the defendant also acknowledged during the hearing that she had heard the judge tell her that she was pleading guilty to a felony and that a five year probationary sentence was being imposed. The defendant also acknowledged during the hearing that she remained silent during the sentencing proceeding even though she was given an opportunity to speak prior to the imposition of the five years probation and one day jail sentence, acknowledging further that she could have told the Court at that time that counsel told her that she was to receive a different sentence.

In addition, the validity of the defendant's claim is severely undermined by the fact that she acknowledged during the hearing that she served her entire five year probationary sentence and at no time during that period did she make any effort to contest or challenge the length of the probationary period. Simply put, if the defendant had honestly believed that an incorrect

probationary sentence had been imposed she would not have quietly served the entire five year period and then waited another eight years before registering protest.

Finally, although defense counsel does not have a specific memory of the defendant's case, this Court credits his testimony that he would not have falsely advised a client with respect to the level of crime to which she was pleading guilty and the sentence to be imposed. See People v. Johnson, 41 A.D.3d 1284 (4th Dept.), lv. denied, 9 N.Y.3d 877 (2007). Indeed, it strains credulity to believe that defense counsel would have any reason or motivation to advise a client falsely about the most basic elements of a plea agreement -- the level of crime to which the defendant was pleading and the sentence to be imposed.

A consideration of all of the circumstances set forth above leads to the inescapable conclusion that the defendant did not testify credibly at the hearing when she claimed that counsel told her that she was pleading guilty to a misdemeanor and that the plea agreement called for a probationary sentence between one and three years. The defendant's claim that counsel was ineffective as he incorrectly advised her regarding the level of crime to which she was pleading guilty and the sentence she was to receive is rejected.

The Defendant's Claim That Counsel Coerced her to Plead Guilty

The defendant claims that counsel told her that if she did not plead guilty she would be required to testify before the grand jury and that the grand jury would sentence her to a jail term of between six months and one year. As a result of these alleged remarks by counsel, the defendant claims that her guilty plea was coerced.

This Court finds that the defendant's claim that counsel told her that the grand jury would sentence her to a jail term if she refused to plead guilty is so directly at odds with the most basic

tenets of New York criminal law that it could not possibly be true. Under these circumstances, this Court fully credits counsel's hearing testimony that he would never have made such comments either to the defendant or to any other client. The defendant's claim to the contrary is rejected.

The Defendant's Claim that Counsel told her that her Guilty Plea would not Subject her to Deportation

The defendant, who is not a United States citizen, testified at the hearing that before she entered her guilty plea to attempted criminal sale of a controlled substance in 1995, counsel incorrectly advised her that such a plea would not subject her to deportation.⁸ The defendant's testimony with respect to this issue is not credited by the Court.

The defendant was advised by the Court at the time of the plea that there was a chance she could be deported but made no efforts to advise the judge during the plea or at the time of sentence that counsel had allegedly told her that there would be no deportation consequences. Moreover, in light of the defendant's thirteen year delay in asserting this claim, counsel's testimony that he in fact advised clients in 1995 that deportation was a possibility for individuals pleading guilty to drug sale crimes, and the defendant's complete lack of candor with respect to the other allegations that she has made in connection with this motion, the defendant's claim that counsel told her that her guilty plea would not subject her to deportation is not credited by this Court.

Furthermore, in light of the extremely advantageous plea offer that the defendant received as a result of counsel's efforts, this Court does not credit the defendant's claim, made in her affidavit, that she would have gone to trial had she known that her guilty plea could have resulted in deportation consequences. See People v. McDonald, 1 N.Y.3d 109, 115 (2003).

⁸The defendant testified that there are no deportation proceedings pending against her.

In sum, the defendant has failed to overcome the strong presumption that counsel rendered effective assistance. People v. Louissant, 8 A.D.3d 407 (2d Dept.), lv. denied, 3 N.Y.3d 677 (2004); People v. Myers, 220 A.D.2d 461 (2d Dept.), lv. denied, 87 N.Y.2d 905 (1995); People v. Finch, 199 A.D.2d 278 (2d Dept. 1993), lv. denied, 83 N.Y.2d 804 (1994).

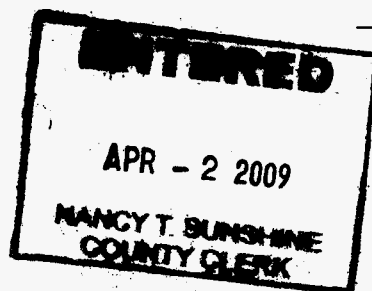
The defendant's motion to vacate the judgment of conviction on the ground that counsel provided her with ineffective representation is denied.


Conclusion

The motion to vacate the judgment of conviction pursuant to C.P.L. §440.10 is denied in its entirety.⁹

This constitutes the Decision and Order of the Court. The Clerk of the Court is directed to mail copies of this Decision and Order to the defendant and to the Kings County District Attorney.

Dated: Brooklyn, New York
March 31, 2009




J.S.C.

HON. J. KONVISER

⁹As this Court has determined that the defendant was provided with the effective assistance of counsel under the New York State Constitution, the defendant's claim that he was provided with ineffective assistance under the Federal Constitution is rejected as our "state standard [for the effective assistance of counsel] offers greater protection than the federal test[.]" See People v. Caban, 5 N.Y.3d 143, 156 (2005) ("Because our state standard [for determining the effective assistance of counsel] . . . offers greater protection than the federal test, we necessarily rejected defendant's federal constitutional challenge by determining that he was not denied meaningful representation under the State Constitution.").

PRESENT OFFENSE

The account which follows is based upon information obtained from the court papers and the records of the District Attorney's office.

Detective Gary Green of the BNSNAG, Shield #4589, is the complainant of record.

DESCRIPTION OF OFFENSE

On 8/08/95, at approximately 2:57 P.M. inside Liberty Grocery Store, located on Liberty Avenue, Brooklyn, an undercover officer approached co-defendant Laurenton who was outside, and asked him if he was working. Laurenton told the undercover officer to go inside. The undercover officer went inside the store and met with defendant Georgia Weir, who was standing behind the counter. The undercover officer approached defendant Georgia Weir and asked for "two."

Defendant Weir then buzzed defendant Laurenton and asked him if it was "okay" to do business with the undercover. Laurenton replied, "Yes." Defendant Weir then gave the undercover officer two vials of crack and received two \$5.00 in pre-recorded "buy money" from the undercover officer.

After the transaction was completed, the undercover officer left the scene and notified his back-up team of the circumstances surrounding the sales, provided a full description of the defendants. Detective Gary Green responded to the scene and placed the two defendants under arrest.

At the time of arrest police recovered \$299.00 from defendant Weir and \$921.00 from defendant Laurenton. The \$10.00 of pre-recorded "buy money" was recovered inside a cigar box at the store.

A subsequent laboratory report confirmed the presence of cocaine with a total weight of 3 grains.

The defendants were released on their own recognizance on 8/09/95. They are at liberty awaiting sentencing.

SUMMARY OF OFFENDER'S STATEMENT

The defendant admits her guilt in the instant offense, citing financial gain as her motive for committing the crime.