

STATE OF LOUISIANA

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NO. 2002-KA-0567

VERSUS

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COURT OF APPEAL

DAVID WALTON

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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. 423-752, SECTION "J"
Honorable Leon Cannizzaro, Judge

JUDGE

JOAN BERNARD ARMSTRONG

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge James F. McKay, III)

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CONVICTION AND SENTENCE
AFFIRMED;
MOTION TO WITHDRAW GRANTED.

The defendant, David Walton, was charged by bill of information on August 6, 2001, with possession of cocaine in violation of La. R.S. 40:967 (C). At arraignment on August 15, 2001 he entered a plea of not guilty. On August 29, 2001 after a hearing, the trial court found probable cause to bind the defendant over for trial and denied his motion to suppress the evidence. A six-member jury found him guilty of the responsive verdict of attempted possession of cocaine after a trial on September 17, 2001.

The defendant was sentenced on December 19, 2001 to serve thirty months at hard labor; his sentence was suspended, and he was placed on five years of active and supervised probation. The defendant's motion to reconsider the sentence was denied by the court, and his motion for an appeal was granted.

At trial Officer Donald Haynes testified that he and his partners, Officers Sidney Cates and Michael DiMarco, were working about 12:30 p.m. on October 17, 2000, when they saw a SUV back into Orleans Avenue from North White Street. The car continued quite rapidly down the street in reverse. The officers stopped the car and ordered the driver, later identified as the defendant, out of the vehicle. An open beer can was observed in the

front seat of the SUV. The defendant was arrested for reckless operation of a vehicle and possibly driving while intoxicated. Officer DiMarco conducted a pat down search and found a glass tube containing a white residue.

Officer DiMarco testified to the same facts as Officer Haynes.

The parties stipulated that the evidence was tested and proved to be crack cocaine.

Counsel filed a brief requesting a review for errors patent. Counsel complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So.2d 528 (La. App. 4 Cir. 1990). Counsel filed a brief complying with State v. Jyles, 96-2669 (La. 12/12/97), 704 So.2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because he believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling which arguably supports the appeal. A copy of the brief was forwarded to the defendant, and this Court informed him that he had the right to file a brief in his own behalf.

As per State v. Benjamin, this Court performed an independent,

thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. The defendant was properly charged by bill of information with a violation of La. R.S. 40:967(C), and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at arraignment, a motion hearing, jury selection, trial and sentencing. A review of the trial transcript reveals that the State proved the offense beyond a reasonable doubt. The sentence is legal in all respects. Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal.

For the foregoing reasons, the defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

**CONVICTION AND SENTENCE AFFIRMED;
MOTION TO WITHDRAW GRANTED.**