

STATE OF LOUISIANA

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NO. 2004-KA-2217

VERSUS

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COURT OF APPEAL

ROLAND JENKINS III

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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NOT DESIGNATED FOR PUBLICATION

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 448-730, SECTION "L"
Honorable Terry Alarcon, Judge

Judge Terri F. Love

(Court composed of Judge Charles R. Jones, Judge Terri F. Love, Judge
Edwin A. Lombard)

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AFFIRMED; MOTION

GRANTED

On May 24, 2004, the State filed a bill of information charging the defendant-appellant Roland Jenkins III with being a convicted felon in possession of a firearm, a violation of La. R.S. 14:95.1. The defendant entered a not guilty plea at his arraignment. Pretrial motions were heard and the court took the matter under submission. The court denied the defendant's motion to suppress the evidence and confession, with written reasons. After waiving the right to a jury trial, the defendant proceeded to trial by the court. The court rendered a verdict of guilty of attempted possession of a firearm by a convicted felon. The court sentenced the defendant to serve two years and six months at hard labor and ordered that the sentence run concurrently with the sentence imposed in case number 448-742 and any other sentence. The court granted the defendant's motion for an appeal.

The defendant was arrested following a routine traffic stop. Officers Christy Huber and Johnny Brumfield of the Second District testified at trial that they were driving on Laurel Street at night when they observed a vehicle

in front of them which had a defective tail light. The vehicle was being driven by Dante Wise; her cousin, the defendant, was the sole passenger, and neither was wearing a seat belt. Officers Huber and Brumfield decided to stop the vehicle for the violations. After the lights on the marked police unit had been activated, the two officers observed furtive movements in Wise's vehicle. It appeared that the defendant handed an item to Wise, who then made a movement toward the center console. Next, the officers saw the defendant reach down toward the floorboard. The vehicle then pulled over and stopped. Officer Huber approached the driver's side while Officer Brumfield approached the passenger's side. Officer Huber testified that she could smell the odor of burning marijuana through the vehicle's open windows. Using her flashlight, she illuminated the interior and saw a hand-rolled cigar in the ashtray. Believing that there was marijuana in the vehicle, the officers directed both Wise and the defendant out of the vehicle. Officer Huber handcuffed Wise and retrieved the cigar; Officer Brumfield handcuffed the defendant. After both suspects were detained at the rear of the vehicle, Officer Brumfield conducted a full search of the interior and found a firearm under the front passenger-side floorboard. According to Officer Brumfield's testimony, when the defendant saw him with the weapon, he volunteered that it was his gun, that he knew he should not have

it, and that he had it only for the protection of himself and his cousin.

During cross-examination, both police officers admitted that Wise's vehicle stopped, by coincidence, in front of 3442 Laurel; which they later learned was the residence of both Wise and the defendant. Officer Huber testified that she did not hear the defendant's inculpatory statement. Officer Brumfield could not recall where his partner was when the defendant made the inculpatory statement to him.

After Officers Huber and Brumfield testified, the parties stipulated that the defendant was the same person who entered a guilty plea to possession of cocaine in 1999. The State introduced certified documents reflecting that conviction.

The defendant testified in his own defense that he was standing a few feet outside his front door holding a cup of water when Officers Huber and Brumfield pulled up in a purple unmarked Ford Taurus. He said the officers approached him, and then Officer Brumfield asked for the cup, which he gave him. Next, according to the defendant, Officer Brumfield took him over to the police vehicle and questioned him about his identity. While Officer Huber ran his name through the computer, the defendant tried to tell the officers that he was not doing anything and that he lived at the residence. The defendant testified that he noticed his cousin, Dante Wise, sitting in her

car and pointed her out to the officers, telling them that she could confirm that he was not trespassing. The defendant testified that he was arrested and placed in another police car, driven by a supervisor who had arrived on the scene, after Officer Huber discovered that he had an attachment from Traffic Court. The defendant admitted that Officer Brumfield searched his cousin's car and found a firearm; however he denied being in her vehicle that night.

Dante Wise, the defendant's cousin and co-defendant in the misdemeanor marijuana case, testified at the trial. She stated that on the night of the arrest, she went to sit in her car to smoke some marijuana after she put her child to sleep. She saw the unmarked police vehicle pass by and then stop outside her residence from which the defendant had just exited. She testified that she saw the police officers handcuff the defendant and talk to him, and then she saw him pointing in her direction. Wise stated that Officer Brumfield came over to her car, asked her if the defendant was her cousin, and asked her for identification. The officer allowed her to retrieve her purse from the trunk of the vehicle. Wise admitted that, when Officer Huber ran her license he determined her license was suspended. Wise further admitted that Officer Brumfield asked her if she had been smoking marijuana and she denied it. She testified that she never lit her marijuana cigarette, stating she saw the police before she had a chance to do so, and

she then concealed the marijuana in the driver's door. She did not dispute that Officer Brumfield searched her car and found the marijuana and a firearm. However, she claimed that the gun was hidden under the floorboard under the back seat, not the front seat. She testified that she had put the gun in the car, having obtained it from a friend a few days earlier for self-protection. She denied that the defendant had any connection with the gun, that he had been in her car, or that she had been driving the car. She did testify that she had the music on in the car.

Officer Brumfield testified on redirect that, as a member of the Second District Task Force, he was required to drive a marked unit. He further testified that his supervisor, a sergeant, came to the scene in an unmarked car, a gold Taurus, solely to sign the gist sheet of the police report.

After taking the matter under advisement, in part to review the police report, the court rendered its verdict on a specific finding that the police officers were more credible than the defense witnesses.

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. 4th 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 she 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 defendant, and this Court informed him that he had the right to file a brief in his own behalf. He has not done so.

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. Defendant was properly charged by bill of information with a violation of La. R.S. 14:95.1, and the bill was signed by an assistant district attorney. Defendant was present and represented by counsel at arraignment, the motion hearing, trial, and sentencing. A review of the trial transcript reveals that the State proved the offense beyond a reasonable doubt. The trial court returned a legally authorized responsive verdict.

Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal. Only one error patent exists, and it pertains to the defendant's sentence. The defendant was sentenced for attempted possession of a firearm by a convicted felon. La.

R.S. 14:27, the attempt statute, requires that a person convicted under that statute be sentenced “in the same manner as for the offense attempted”; La. R.S. 14:95.1, the statute defining the offense of being a convicted felon in possession of a firearm, prohibits the benefits of parole, probation, or suspension of sentence. When the trial court imposed the sentence, the court failed to state that these benefits were prohibited. Thus, the sentence is illegally lenient. However, as per La. R.S. 15:301.1A and State v. Williams, 2000-1725 (La. 11/28/01), 800 So. 2d 790, the sentence is deemed to have been imposed with these restrictions of benefits, even in the absence of the trial court’s failure to delineate them. Thus, there is no need for this court to correct the sentence. See State v. Phillips, 2003-0304 (La. App. 4 Cir. 7/23/03), 853 So. 2d 675.

Defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

GRANTED

AFFIRMED; MOTION