

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 0513

STATE OF LOUISIANA

VERSUS

JOSHUA BENOIT

Judgment Rendered: NOV 07 2014

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 530953

Honorable August J. Hand, Judge Presiding

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Walter P. Reed
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Counsel for Appellee
State of Louisiana

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Counsel for Defendant/Appellant
Joshua Benoit

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

PMC
WBR
/MH

McCLENDON, J.

Defendant, Joshua E. Benoit, was charged by bill of information with two counts of simple burglary, violations of LSA-R.S. 14:62. Defendant entered a plea of not guilty, and was found guilty as charged after a trial by jury. Defendant was sentenced to three years imprisonment at hard labor on each count, to be served concurrently. He now appeals. Contending that there are no non-frivolous issues to argue on appeal, defense counsel filed a brief on behalf of defendant raising no assignments of error and requesting a routine review for error pursuant to LSA-C.Cr.P. art. 920(2). Defense counsel also filed a motion to withdraw as counsel of record. For the following reasons, we affirm the convictions and sentences, and grant defense counsel's motion to withdraw.

STATEMENT OF FACTS

On December 4, 2012, defendant, a windshield repair technician soliciting windshield repairs at Rainforest Carwash Express in Slidell, was observed hanging around and entering two vehicles on the premises. Defendant's job duties included repairing and/or filling any chips or small breaks in windshields. Defendant was not authorized to enter a customer's vehicle. The vehicles in this case belonged to victims Crystal Crowe (who was there to wash and vacuum her vehicle) and Cody Helmke (an employee of Foster Custom Awnings, L.L.C., who was installing shade covers over the vacuum units). Neither Crowe nor Helmke were having work done on their windshields, and both observed defendant hanging around their vehicles. They did not give defendant permission to enter or remove anything from their vehicles. After receiving complaints from Crowe and Helmke regarding their missing cell phones, Daroyl Murray, the assistant manager, viewed surveillance footage and assisted the police in investigating the thefts.¹ Sergeant Kevin Simon of the Slidell Police Department, who responded to the scene, questioned defendant after advising him of his **Miranda** rights.

¹ During the direct examination of Murray, the State introduced and played the footage to show that defendant entered the victims' vehicles and left the area. While the image of the person entering the vehicles (as can be viewed from the surveillance footage of Camera 6) may not be clear, the witnesses (including the victims and Murray) identified the subject hanging around and entering the vehicles as defendant.

After Sergeant Simon viewed the surveillance footage, he arrested and further questioned defendant. At that point, defendant led the sergeant to a garbage can (located near the vacuuming stations) that contained one of the phones and indicated that he threw the other phone in a grassy area. Sergeant Simon recovered both of the phones.

ANDERS BRIEF

Defense counsel has filed a brief containing no assignments of error and a motion to withdraw. In the brief and motion to withdraw, referring to the procedures outlined in **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), counsel indicated that after a conscientious and thorough review of the record, he could find no non-frivolous issues to raise on appeal.

The procedure in **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), used in Louisiana, was discussed in **State v. Benjamin**, 573 So.2d 528, 529-31 (La.App. 4 Cir. 1990), sanctioned by the Louisiana Supreme Court in **State v. Mouton**, 95-0981 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam), and expanded by the Louisiana Supreme Court in **Jyles**, 704 So.2d at 242. According to **Anders**, 386 U.S. at 744, 87 S.Ct. at 1400, "if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw." To comply with **Jyles**, appellate counsel must review not only the procedural history of the case and the evidence presented at trial, but must also provide "a detailed and reviewable assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place." **Jyles**, 704 So.2d at 242 (quoting **Mouton**, 653 So.2d at 1177). When conducting a review for compliance with **Anders**, an appellate court must conduct an independent review of the record to determine whether the appeal is wholly frivolous.

Herein, defense counsel has complied with all the requirements necessary to file an **Anders** brief. Defense counsel has reviewed the procedural history and facts of the case and concludes in his brief that there are no non-frivolous issues for appeal. Further, defense counsel certifies that defendant was served

with a copy of the **Anders** brief and motion to withdraw as counsel of record. Defense counsel's motion to withdraw notes that defendant has been informed of his right to file a pro se brief on his own behalf, and defendant has not filed a pro se brief.

This court has conducted an independent review of the entire record in this matter, including a review for error under LSA-C.Cr.P. art. 920(2). We have found no reversible errors in this case. Furthermore, we agree with defense counsel's assertion that there are no non-frivolous issues or trial court rulings that arguably support this appeal. Accordingly, the defendant's convictions and sentences are affirmed. Defense counsel's motion to withdraw is granted.

CONVICTIONS AND SENTENCES AFFIRMED; DEFENSE COUNSEL'S MOTION TO WITHDRAW GRANTED.