

**STATE OF LOUISIANA**

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**NO. 2002-KA-0254**

**VERSUS**

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**COURT OF APPEAL**

**DEVIN HILLIARD**

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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. 415-293, SECTION "B"  
Honorable Patrick G. Quinlan, Judge

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**Judge Charles R. Jones**

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(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, and  
Judge Max N. Tobias, Jr.)

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**COUNSEL FOR DEVIN HILLIARD**

**AFFIRMED;**  
**MOTION GRANTED**

The Defendant, Devin Hilliard, appeals his conviction and sentence and requests that this Court review the record for errors patent. Appellate counsel, Christopher A. Aberle, seeks to withdraw as counsel for Hilliard on the grounds that he can find no non-frivolous issues to raise on appeal and no ruling of the district court that arguably supports this appeal. Following a review of the record, we agree, and affirm Hilliard's conviction and sentence. Counsel's Motion to Withdraw is granted.

On June 29, 2000, Hilliard was charged by bill of information with two counts of armed robbery in violation of La. R.S. 14:64 and with one count of possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1. The second count of armed robbery on the bill of information was later amended to attempted armed robbery. At his arraignment, he entered a plea of not guilty to all counts. After a two day preliminary hearing on August 11<sup>th</sup> and October 13<sup>th</sup>, 2000, the district court found probable cause and denied Hilliard's Motion to Suppress the Evidence. Hilliard elected to have a bench trial after being advised of his right to a jury. Prior to trial, the State severed the count of attempted armed robbery, and after trial Hilliard was found guilty of the responsive verdict of first degree robbery as to count

one and guilty as charged of possession of a firearm by a convicted felon. On that same day, the State filed a multiple bill charging Hilliard as a second offender, and after being advised of his constitutional rights, he pleaded guilty to the multiple bill. Hilliard was sentenced to serve twenty years at hard labor without benefit of parole, probation, or suspension of sentence as a second offender on the first-degree robbery conviction. He was sentenced to serve ten years without benefits on the possession of a firearm by a convicted felon conviction; the sentences are to run concurrently. A \$1500 fine on the firearms conviction was suspended. Hilliard filed a Motion for Reconsideration of Sentence, which the district court denied, however, his motion for an out-of-time appeal was granted.

At trial, Officer John Washington testified that at approximately 11:30 p.m. on May 10, 2000, he was stopped at a traffic sign at the corner of Second and Willow Streets where he was flagged down by someone who told him of a robbery occurring nearby on Willow Street. As the officer drove down Willow Street, he saw a man pointing a gun at two people. The man put his gun down by his side and ran toward Third Street upon seeing the police car. Officer Washington called for additional police units and began cordoning off the area. A while later, Hilliard was found under a house in a nearby yard; he was wearing the blue Fubu jersey that the officer

had noticed during the robbery. The gun was also retrieved from under the house. About thirty minutes after the incident, the victims identified the man in the Fubu jersey as the person who robbed them.

Mr. Noel Cousins testified at trial that he was walking to Taco Bell at approximately 11:30 p.m. on the evening of the robbery with his brother and a friend. As they were walking toward Willow and Third Streets a white car passed them. Seconds later, Hilliard came around the corner with a pistol. Mr. Cousins realized that the police car that he had noticed earlier was still in the vicinity, so he ran towards Willow and Second Streets. Once he reached the police car, Mr. Cousins told the officer that a robbery was taking place. Mr. Cousins described the gunman as wearing a blue Fubu jersey and a black “rag” around his mouth. Mr. Cousins stated that he did not know Hilliard, but had seen him in the neighborhood.

Mr. Boris Ellis testified at trial that he was robbed while walking on Willow Street to Taco Bell during the night of May 10<sup>th</sup>. He identified Hilliard as the man who robbed him at gunpoint, and he said he had seen the man before in the neighborhood but did not know him. Mr. Ellis described the robbery:

[H]e told me, “Come out your pocket.” So when he told me that, and then I came out of my pocket with the twenty dollars I had and my phone, and he said, “Well, while you’re at it, you can give me the phone too.” And then he asked, he told me

to raise [sic] up my shirt, and I had my beeper. He told me, he asked for the beeper, too. And I gave him all of that.

The gunman turned to the second man and demanded his watch, but before that victim got the watch off his wrist, the police were on the scene. The gunman told the victims to “chill out” and pulled the handkerchief that he had around his mouth down so that it was around his neck. He also put the gun down by his side. However, as soon as Officer Washington got out of the car, Hilliard fled. After Mr. Ellis told the officers that his cell phone was taken, one of the officers dialed Mr. Ellis’s cell phone number. They located the telephone by its ring; it had been buried under the house where Hilliard had been hiding. Mr. Ellis identified Hilliard as the perpetrator at the scene.

Officer John Trevor Reeves testified at trial that he arrested Hilliard. The officer also stated that a loaded handgun was found under the house where Hilliard had been hiding.

At trial, the parties stipulated that Hilliard was convicted of first-degree robbery on November 2, 1995, and that he was subsequently billed as a second felony offender.

In his sole assignment of error, Hilliard requests a review of the record for errors patent. Defense 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 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 district court ruling, which arguably supports this appeal. A copy of the brief was forwarded to Hilliard, and this Court informed him of his right to file a brief on 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 transcript in the appeal record. Hilliard was properly charged by bill of information with violating La. R.S. 14:64 and La. R.S. 14:95.1, and the bill was signed by an assistant district attorney. Hilliard was present and represented by counsel at arraignment, motion hearings, trial and sentencing. A review of the trial transcript reveals that the State proved the offenses beyond a reasonable doubt. The sentences are legal in all respects. Our independent review reveals no non-frivolous issue and no district court

ruling which arguably supports this appeal. The record reveals no errors patent.

**DECREE**

For the reasons stated herein, the conviction and sentence of Devin Hilliard is hereby affirmed, and the Motion to Withdraw as Counsel filed by Christopher A. Aberle is hereby granted.

**AFFIRMED;**  
**MOTION GRANTED**