

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2003-KA-0195**
VERSUS * **COURT OF APPEAL**
MICHAEL FRANCIS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-462, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
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(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay, III, and Judge Dennis R. Bagneris, Sr.)

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CONVICTION AND SENTENCE AFFIRMED

On November 30, 2001 the State filed a bill of information charging the defendant-appellant with one count of possession of cocaine, a violation of La. R.S. 40:967. The defendant entered a not guilty plea at his arraignment on December 18, 2001. The case was subsequently transferred to another section of the District Court, and the defendant was arraigned again on June 13, 2002 at which time he again entered a not guilty plea.

On June 20, 2002, after receiving a copy of the police report, defense counsel withdrew the motion for a preliminary hearing and all discovery motions. The record does not reflect that a motion to suppress was filed. On July 9, 2002 the defendant was tried before a six-person jury which returned a responsive verdict of guilty of attempted possession of cocaine. The District Court ordered a presentence investigation report.

On October 9, 2002 the District Court sentenced the defendant to serve thirty months at hard labor. The District Court then suspended that sentence and placed the defendant on three years active probation with special conditions to include substance abuse counseling and monitoring by the Drug Court and intensive probation personnel. The District Court

further ordered the defendant to pay \$500.00 to the Judicial Expense Fund. The defendant's motion to reconsider sentence was denied; his motion for an appeal was granted.

STATEMENT OF THE CASE

At the trial in this matter each party presented three witnesses. The State's witnesses, Officers Kevin Jackson, Lejon Roberts, and Eric Gillard, testified that they were assigned to the Special Operations Division on November 2, 2001 when, based on information received, they established a surveillance operation in the 1800 block of Conti. Officer Jackson, attired in plainclothes, took up a position in an alley adjacent to a house which was across the street and approximately twenty-five feet away from a gray Riviera which was the target of the surveillance. Officer Jackson observed the defendant enter the vehicle, reach under a cover over the steering wheel, retrieve a group of small objects from which he selected one, replace the balance of the objects, and then walk across the street to meet with an unknown female. Officer Jackson observed the defendant receive currency from the female in exchange for the object in the defendant's hand. As Officer Jackson continued to watch, he twice more saw the defendant enter the vehicle and remove objects. In these latter instances, however, when the defendant walked away from the car Officer Jackson was unable to keep him

in sight.

After the third instance, Officer Jackson decided to terminate the surveillance. He had been maintaining radio communication with Officers Roberts and Gillard, who were in a marked police car a few blocks away, and advised them to stop the defendant. After the officers did so, they relocated with the defendant to the 1800 block of Conti Street. Officer Roberts searched the area of the steering wheel indicated by Officer Jackson. Officer Roberts found two small pieces of what the parties stipulated at trial was cocaine.

Officer Jackson testified that the vehicle from which the cocaine was seized was registered to the defendant at an address on Pauline Street. Officer Roberts stated that the female who was observed in an apparent transaction with the defendant was not stopped because of a shortage of personnel. Officer Roberts further testified that no narcotics or currency was seized from the person of the defendant.

The defendant, in addition to testifying on his own behalf, presented the testimony of his mother, Debra Hunter, and his friend, Gilbert Green. Ms. Hunter testified that her daughter came and told her that the police had arrested her son. She walked to the corner and saw the police pulling the seats out of the defendant's car; they were searching the entire car. She also

saw an officer with a rock of cocaine in his hand and heard him say, “Here it is right here.”

Gilbert Green stated that he lived around the corner from the defendant. They were sitting outside Gilbert’s home with several other people when the police pulled up and asked for the defendant by name. The officers questioned the defendant about an alleged fight; when the defendant replied that he had not been fighting, the officers placed him in the police car and backed up around the corner toward the defendant’s home. Gilbert followed on foot and saw the police searching the defendant’s car. According to Gilbert, the police searched the vehicle for two or three hours.

The defendant testified that he lived at 1820 Conti Street with his mother. He testified, as Gilbert Green had, that the police asked him who he had been fighting with, and when he denied fighting, they placed him in the police car in handcuffs, drove around the corner, and searched his car. According to the defendant, he was initially told he was being arrested for a fight. The defendant denied possessing any drugs, but did state that he had \$20.00 in his possession when the police arrested him.

DISCUSSION

Counsel for the defendant has filed a brief requesting a review of the

record 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.

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and available transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 40:967, relative to possession of cocaine, and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at arraignment, during the trial, and at sentencing. The jury verdict and the defendant's sentence are legal in all respects. Furthermore, a review of the trial transcript shows that the State provided sufficient evidence to prove beyond a reasonable doubt that the defendant committed the crime of

attempted possession of cocaine, the crime for which the jury convicted him.

Counsel for the defendant notes that the District Court failed to advise him of the prescriptive period for post-conviction relief under La C.Cr.P. art. 930.8. However, this Court has repeatedly held that this article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. State v. Handy, 2001-0051 (La. App. 4 Cir. 1/24/01), 779 So. 2d 103, 104, writ denied, 2001-1896 (La. 3/28/02), 812 So. 2d 651; State v. Moore, 99-2684 (La. App. 4 Cir. 12/20/00), 777 So. 2d 600, 608; State v. Echols, 99-2226 (La. App. 4 Cir. 10/4/00), 774 So. 2d 993, 997.

In the interest of judicial economy, we note that La. C.Cr.P. art. 930.8 generally requires that applications for post-conviction relief be filed within two years of the finality of a conviction.

Our independent review reveals no non-frivolous issue and no trial Court ruling which arguably supports the appeal.

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

CONVICTION AND SENTENCE AFFIRMED

