

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2003-KA-0306**
VERSUS * **COURT OF APPEAL**
KELLY J. GEIGER * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-819, SECTION "F"
Honorable Dennis J. Waldron, Judge
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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; APPELLATE
COUNSEL'S MOTION TO WITHDRAW GRANTED**

On December 13, 2001, a bill of indictment was filed against Kelly J. Geiger charging him with second degree murder in violation of La. R.S. 14:30.1. He pleaded not guilty at his arraignment on December 18th. After a hearing on March 12, 2002, the trial court denied a motion to suppress the identification. A twelve-person jury found the defendant guilty as charged at a two-day trial on June 25th and 26th. He was sentenced on July 10th to life imprisonment without benefit of parole, probation, or suspension of sentence. His motion for reconsideration of sentence was denied and his motion for an appeal was granted.

At trial Jason Gross testified that he was in New Orleans in October of 2001 with his brother and sister-in-law, Gerard Gross and Sarah Lenard. About noon on October 9th eighteen-year-old Jason and his family met the defendant and Lester Panter at Jackson Square in the French Quarter. Those five people and another man, whom Jason knew as Perry or Clifford, began drinking Evan Williams whiskey. They finished one bottle, bought another, and walked to the Moonwalk. They consumed it and bought a third bottle; then they went under the Governor Nicholls Street Wharf. Jason explained

that he was going to spend the night under the wharf because his brother, who had gotten arrested, had the keys to the car. The defendant regularly stayed under the wharf and suggested the group go there. The group then consisted of Jason, Sarah, Perry, Lester, and the defendant. They sat on a high slab of concrete drinking. Sarah and Perry went to sleep, and Lester, Jason, and the defendant walked back into the French Quarter to buy another bottle of whiskey. As they walked through Jackson Square, a woman asked them for a cigarette, and the defendant began talking to her. She walked back to the wharf with them because "she was bored." The group returned to sit on the slab of concrete and drink. After four shots, Jason passed out. He woke up because of his own pain from sleeping on concrete and because of the noise made by the defendant and Lester who were hitting the woman with a stick. The defendant and Lester then threw the woman off the concrete block. She landed in the sand at the bottom of the rock, and the defendant and Lester jumped down and began kicking her. The defendant called to Jason to come down and "help us with the body." Jason refused to help, and the defendant said, "Well, if you don't, I'm going to do the same thing to you." Jason jumped down from the rock and grabbed some of the woman's clothes and threw them into the river. He also helped carry the woman to the river. Jason assumed the woman was dead after she fell from

the rock because she was not moving. Before they put her in the river, the defendant and Lester crushed her head with large boulders. Jason saw them push the woman's body into the river. He then woke up his sister-in-law and Perry. The defendant suggested that the group leave "because they [had] just killed the girl." As they were crawling through the fence surrounding the wharf area, they got a citation for trespassing. Jason did not report the murder to the police officer because he was in shock. Shortly thereafter, Jason and Sarah left the group. Jason went to sit in the French Quarter, and Sarah found a police officer and reported the murder. Sometime later, an officer came to get Jason at the Drop-in Center in the French Quarter for questioning in connection with the crime. Jason admitted at trial he had lied to the police officer when he said that he did not put any clothing in the river and that he was not present when the woman was hit with the boulder. Jason was arrested and charged with accessory after the fact to murder. He agreed to testify for the State so as not to be charged for his part in the offense.

Dr. James Traylor, an expert in forensic pathology, testified that he reviewed the autopsy of the woman victim in this case. Dr. Traylor reported the findings of the autopsy: her jaw was fractured on both sides; large scalp lacerations had torn the scalp away from the bone; part of the scalp was missing and brain matter was exposed; and, many of the facial bones were

fractured. The cause of death was blunt head trauma caused by being beaten in the head.

Officer Ryan Maher was on a routine patrol on Decatur Street on October 10th when he was flagged down by Sarah Lenard and Margaret Collins. They told him of a crime at the Governor Nicholls Street Wharf. Officer Maher radioed for help, and Officer LaHare arrived and accompanied Maher and the two women to the crime site. The group approached a large concrete block; there was blood on the side of the block and at its base. On top of the boulder there was a small pool of blood. They noticed drag marks from the pool of blood at the base of the boulder leading away. The officer noticed a skullcap with hair intact. A large bloodstained stick was found. Near the pier in a pool of blood some type of brain matter was seen. At the end of the drag trail, the officer found a jacket.

Officer Michael Riley joined the investigation at the Governor Nicholls Street Wharf. The officer walked underneath the wharf about one-half a mile until he found the victim's body in the river lodged between a docked barge and the cement footing of the wharf.

Officer Michael Carmouche testified that on October 10th he saw the defendant and four other people walk out from underneath the Governor Nicholls Street Wharf. The defendant and Lester Panter were washing off

their arms with river water when he noticed them. As the group climbed up the levee, the officer identified himself. He told them they were violating a trespass ordinance. The officer issued a summons to each person; he also asked for identification from each. He found their names were Kelly Geiger, Sarah Lenard, Lester Panter, Jason Gross, and Clifford Gaines. He did not see blood on any of the five. Later that day Officer Ryan Maher called him and asked him to come back to that area; he identified Sarah Lenard as one of the people he had seen leaving that morning. The officer was later shown a photo lineup from which he selected a picture of the defendant and named him as one of the men exiting the wharf at Governor Nicholls Street.

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 indictment, and transcripts in the appeal record. Defendant was properly charged by bill of indictment with a violation of La. R.S. 14:30.1, and the bill was labeled a true bill and was signed by the foreperson of the Grand Jury. Defendant was present and represented by counsel at arraignment, motion hearings, 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. Defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

CONVICTION AND SENTENCE AFFIRMED; APPELLATE

COUNSEL'S MOTION TO WITHDRAW GRANTED