

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2004-KA-1065**
VERSUS * **COURT OF APPEAL**
STEPHEN STAGE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 440-903, SECTION "F"
Honorable Dennis J. Waldron, Judge
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Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,
and Judge Dennis R. Bagneris, Sr.)

Eddie J. Jordan, Jr.
District Attorney
Claire Adriana White
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

William R. Campbell, Jr.
LOUISIANA APPELLATE PROJECT

700 Camp Street
2004

New Orleans, LA 70130-03702

COUNSEL FOR DEFENDANT/APPELLANT

NOVEMBER 17,

AFFIRMED;

MOTION TO WITHDRAW GRANTED

On July 31, 2003, the State filed a bill of information charging Stephen Stage with aggravated burglary, a violation of La. R.S. 14:60, and with two counts of attempted second degree murder, violations of La. R.S. 14:27(30.1). On August 5, 2003 he pleaded not guilty at his arraignment. A lunacy hearing was held on September 25, 2003, and Stage was found to be competent to go to trial. After a hearing on September 30th, 2003, the district court found probable cause to bind Stage over for trial and denied the Motion to Suppress the statement. On November 4, 2003, the State amended the bill of information on the two counts of attempted second degree murder to charges of aggravated battery. That same day a twelve-member jury found Stage guilty as charged of one count of aggravated battery and not guilty of the other aggravated battery or aggravated burglary charge. Stage was sentenced on February 11, 2004, to serve four years at hard labor. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted. We affirm Stage's conviction and sentence and grant Counsel's Motion to Withdraw.

At trial Tom McGrew, the victim, testified that he lives alone in a house he owns at 4123 Dauphine Street. Stage, who had been a lover and friend for more than thirty years, lived with him until July of 2002. On May 31, 2003, Mr. McGrew invited his friend, Stony Poindexter, to his home to watch videos. Mr. McGrew acknowledged they had a “fair amount” to drink. Stage telephoned many times that evening, but Mr. McGrew turned off the telephone so that the answering machine would pick up the “[h]arrassing” calls. On June 1, 2003, Mr. McGrew was awakened by Mr. Poindexter’s screams, and he realized that Stage was standing nearby with a fireplace poker in his hand which he used to hit Mr. McGrew several times. Mr. McGrew never gave Stage permission to enter the house on June 1, 2003. Mr. McGrew said he could not remember exactly what happened when he was attacked because he lost consciousness several times. Stage entered the house by breaking a latch on a gate opening into a courtyard. From the courtyard, he entered the house through a side door that was left open. Mr. McGrew was taken to Charity Hospital where he received stitches, staples, and an MRI.

Mr. Poindexter testified that on June 1, 2003, he woke up about dawn because someone was hitting him in the head with a fire poker. He had fallen asleep in a chair in the living room. Before he could get up from the

chair, he had been hit three times. Mr. Poindexter screamed, ran out of the house, and alerted a neighbor who called the police. He looked into a window of the house from the safety of the sidewalk and saw a man beating Mr. McGrew with the poker. The man was screaming, "I hate you. I'm going to kill you." Mr. Poindexter recognized the man wielding the poker as Stage because the two had met in a bar previously, and Mr. Poindexter had also seen Stage at Mr. McGrew's house. After Stage left the house, Mr. Poindexter returned to help Mr. McGrew who was on the bathroom floor. Mr. Poindexter had to assist him to the waiting ambulance. Mr. Poindexter received no medical treatment for his wounds.

Mr. Joseph N. Manale, Jr., testified that he was working at the New Orleans Fire Department on the corner of Poland Street and St. Claude Avenue on the morning of the incident when a man walked in and asked him to call the police because he feared he had just killed someone. The man appeared to be very calm.

Officer Willie Franklin testified that on the same day he was called to a Dauphine Street address where he found Mr. Poindexter outside and Mr. McGrew inside the house. The officer learned the name of the man who attacked them and arrested him at the fire station at the corner of Poland Street and St. Claude Avenue.

Officer Thomas Kennedy, a crime scene technician, testified that he photographed the crime scene and collected the fireplace tools.

Stage, the fifty-two year old defendant, testified that he had had a relationship with Mr. McGrew for the past thirty years and during some of that time he had supported Mr. McGrew while he was in school. Most recently, Stage had a teaching position in the St. Bernard School District but he resigned because he found the students too difficult. Stage acknowledged that the deed on the Dauphine Street house was in Mr. McGrew's name, but he claimed that their plan had always been to change the deed so that his name was also on it. However, the two men became estranged before that happened. Stage said he left the house because Mr. McGrew was drinking too much and becoming abusive. Stage said he went to the house on June 1, 2003, at 7 a.m. because he wanted to talk to Mr. McGrew. When he simply pushed open the gate, he gained entrance into the courtyard, and the side door of the house had been left open. He saw Mr. McGrew and Mr. Poindexter in bed together and "lost it." He admitted hitting Mr. Poindexter with the fire poker and after he ran out of the house, Stage turned to Mr. McGrew and hit him until the poker broke. Then he picked up the shovel that was part of the fireplace set, and he hit McGrew three more times with the shovel. Suddenly, Stage realized what he was doing and threw down the

shovel; he then left the house and turned himself in at a nearby fire station.

Stage stated that he was sorry for what he had done.

Counsel, on behalf of Stage, requests a review for errors patent by this Court complying 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 for Stage 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. A copy of the brief was forwarded to Stage, 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. Stage was properly charged by bill of information with a violation of La. R.S. 14:27(30.1), and the bill was signed by an assistant district attorney. Stage 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 of aggravated battery 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.

Decree

For the reasons stated herein, Stephen Stage's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

MOTION TO WITHDRAW GRANTED

AFFIRMED;