

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2007-KA-0096**  
**VERSUS** \* **COURT OF APPEAL**  
**GERALD KRUGER** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 464-810, SECTION "I"  
Honorable Raymond C. Bigelow, Judge

\* \* \* \* \*

**JUDGE MAX N. TOBIAS, JR.**

\* \* \* \* \*

(COURT COMPOSED OF JUDGE JAMES F. MCKAY, III, JUDGE MAX N. TOBIAS, JR., AND JUDGE ROLAND L. BELSOME)

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**CONVICTION AND SENTENCE AFFIRMED; COUNSEL'S MOTION TO  
WITHDRAW GRANTED.**

APRIL 11, 2007

On 7 April 2006 the state charged Gerald Kruger (“Kruger”) with one count of distribution of cocaine. At his arraignment on 3 May 2006, he pled not guilty. On 14 July 2006 the court found probable cause to hold him for trial. He waived his right to a jury, and on 7 August 2006 the court held trial and found him guilty of simple possession of cocaine. The court sentenced him on 18 October 2006 to serve two years at hard labor with credit for time served. The court also granted his motion for appeal. Although the state filed a multiple bill on that date, it withdrew the bill on 18 December 2006.

Kruger’s counsel filed an errors patent brief on 2 February 2007, and the state responded on 13 February 2007. On 5 February 2007 this court notified Kruger that he had thirty days in which to inform this court if he wished to file a brief on his behalf. He has failed to do so.

The testimony adduced at trial shows that Trooper Jude Autin of the Louisiana State Police and Sgt. Cynthia Patterson of New Orleans Police Department were working undercover in the French Quarter on 25 February 2006 during the Mardi Gras season. On that date, they were standing at the corner of St. Louis and Dauphine Streets, in the vicinity of other state troopers who were in uniform. An unknown male walked by them, and

Trooper Autin and the man exchanged greetings. They spoke for a while, and then were joined by an unknown female. The group spoke for a few more minutes, and then Trooper Autin asked the man if he knew where he, Trooper Autin, could get any drugs. The man replied he did not. The man and the woman walked away, and then the man motioned to Trooper Autin to come to him. Trooper Autin complied, and the man told him he could get what he wanted at the Round Up, a bar at 719 St. Louis Street. The unknown couple then went into the bar. Trooper Autin testified that he discussed the matter with Sgt. Patterson, and they agreed that she would go into the bar to try to buy drugs.

Trooper Autin testified that he waited outside while Sgt. Patterson went into the bar. He stated that Sgt. Patterson later came out of the bar and showed him some crack cocaine that she obtained inside the bar. She also described the clothing of the man from whom she obtained the cocaine and told him that the man was in the bar. Trooper Autin got two other troopers to follow him inside the bar, and he saw the unknown man who gave him the tip about the bar as well as Kruger, who matched the description given by Sgt. Patterson. He arrested Kruger, searched him, and found no other drugs or the money Sgt. Patterson used to buy the cocaine. He also searched the man who led them to the bar, but because that man had neither drugs nor money, the officers released him. None of the officers saw the unknown woman in the bar when they entered to arrest Kruger.

Sgt. Patterson's testimony basically mirrored that of Trooper Autin with respect to the events leading up to her entry into the bar. She testified that after she entered the bar, she saw the woman with whom she and Trooper Autin had been speaking on the street. She went to the woman and told her that her "boyfriend" (meaning Trooper Autin) would not enter the

bar because it was a gay bar. The woman told her to accompany her to the ladies' room, and once inside the woman asked Sgt. Patterson what she wanted to buy. When Sgt. Patterson replied that she wanted some cocaine, the woman asked her if crack would suffice. Sgt. Patterson agreed, and the woman asked her how much she wanted. Sgt. Patterson gave her an unmarked \$20.00 bill, and the woman told her wait there. Sgt. Patterson testified that she waited such a long time that she suspected that the woman had stolen her money. Eventually, someone pushed against the door, and she responded that the room was occupied. A man told her it was okay and to let him in. She opened the door, and Kruger entered. She could see that he had something in his hand, and he twice asked her if she was "the law." When she replied no, he told her to hold out her hand. He placed a rock of what appeared to be crack cocaine and a few crumbs of the same substance into her hand. Kruger then left.

Sgt. Patterson testified that she walked out of the ladies' room and through the bar. She saw Kruger standing close to the door with the man with whom Trooper Autin had spoken on the street. She went outside, showed the cocaine to Trooper Autin, and placed the cocaine in an evidence bag. She stated that she pointed out Kruger, who could be seen near the door. She testified that Trooper Autin and other officers entered the bar and arrested Kruger. She stated that she did not see the unknown woman after that woman left the ladies' room.

The state introduced a lab report , which indicated that the substance Sgt. Patterson received from Kruger tested positive for cocaine.

Although defense counsel initially indicated that Kruger would testify, the defense later rested without calling any witnesses.

By counsel's sole assignment of error, she asks for review of the record for patent errors. Such review shows there are none. 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 that 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. The defendant has not done so. Thus, this Court's review is limited to errors on the face of the record. La. C.Cr.P. art. 920.

As per *State v. Benjamin, supra*, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. Kruger was properly charged by bill of information with a violation of La. R.S. 40:967A, and the bill was signed by an assistant district attorney. Kruger was present and represented by counsel at arraignment, during the trial, and at sentencing. The court's verdict and the defendant's sentence are legal in all respects.<sup>1</sup> Furthermore, a review of the trial transcript shows that the state provided sufficient evidence to prove beyond a reasonable doubt that Kruger was guilty of the responsive verdict of possession of cocaine.

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<sup>1</sup> Although at the sentencing hearing, the court mistakenly indicated at sentencing that it had found Kruger guilty of *attempted* possession of cocaine, the trial transcript indicates that the court found him guilty of possession.

Our independent review reveals no non-frivolous issue and no trial court ruling that arguably supports the appeal. Therefore, we affirm Gerald Kruger's conviction and sentence, and we grant appellate counsel's motion to withdraw.

**CONVICTION AND SENTENCE AFFIRMED; COUNSEL'S  
MOTION TO WITHDRAW GRANTED.**