

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 KA 1227

STATE OF LOUISIANA

VERSUS

MANUEL S. WEBER

DATE OF JUDGMENT: DEC 23 2009

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 436502, DIVISION G, PARISH OF ST. TAMMANY

HONORABLE WILLIAM J. CRAIN, JUDGE

* * * * *

Walter P. Reed
District Attorney
Covington, Louisiana

Counsel for Appellee
State of Louisiana

Kathryn W. Landry
Special Appeals Counsel
Baton Rouge, Louisiana

Mary E. Roper
Louisiana Appellate Project
Baton Rouge, Louisiana

Counsel for Defendant-Appellant
Manuel Sam Weber

* * * * *

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED; DEFENSE COUNSEL'S MOTION TO WITHDRAW GRANTED.

KUHN, J.

The defendant, Manuel S. Weber, was charged by bill of information with one count of possession of cocaine (count I), a violation of La. R.S. 40:967(C), and one count of simple burglary (count II), a violation of La. R.S. 14:62. He pled not guilty on both counts. Following a jury trial, he was found guilty as charged on count I and not guilty on count II. He was sentenced to five years at hard labor. He now appeals.¹

FACTUAL BACKGROUND

Judith Friedrich hired Lewis Greenburg to perform yard work at her house in Magnolia Forest subdivision in Pearl River, Louisiana. Greenburg brought the defendant with him to do the work. Following the completion of the work and payment to Greenburg, the defendant returned to the home and demanded more money for the work. Robert Friedrich refused the defendant's demands. The next day, the Friedrichs's home was burglarized and approximately \$40,000 of jewelry, including a distinctive strand of pearls, and prescription pain medication were stolen from the home. An informant, who had provided reliable information in the past, advised the police that the defendant had attempted to sell him a strand of pearls, which he indicated had come from a home in Magnolia Forest.

The defendant and Greenburg lived together in a travel trailer at the corner of Maple and Oak in Slidell. After obtaining a search warrant, the police searched the trailer. Judith Friedrich's pearls were recovered under a drawer, which was under a

¹ The defendant separately appeals from his theft conviction under bill of information #418234. See State v. Weber, 2009-1224 (La. App. 1st Cir. 12/__/09) (unpublished opinion).

bed in the trailer.² None of the other jewelry was ever recovered. Additionally, one rock of crack cocaine was discovered in a fuse box, lying on the nightstand near the bed. After being advised of his **Miranda**³ rights, the defendant admitted that the cocaine belonged to him, but he denied burglarizing the Friedrichs's home. No physical evidence linked the defendant to the burglary. Greenburg was never apprehended.

ISSUES PRESENTED

The defense brief contains no assignments of error and sets forth that it is filed to conform with the procedures outlined in **State v. Benjamin**, 573 So.2d 528 (La. App. 4th Cir. 1990). **Benjamin** set forth a procedure to comply with **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), wherein the United States Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel finds the case wholly frivolous. **Benjamin** has repeatedly been cited with approval by the Louisiana Supreme Court. See **State v. Jyles**, 96-2669, p. 1 (La. 12/12/97), 704 So.2d 241 (per curiam); **State v. Mouton**, 95-0981, p. 1 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam); **State v. Royals**, 600 So.2d 653 (La. 1992); **State v. Robinson**, 590 So.2d 1185 (La. 1992) (per curiam).

After reviewing the procedural history of the case and the evidence against the defendant, defense counsel sets forth that after a conscientious review of the

² Detective Chad Risey, who was assigned to the burglary investigation, testified that the defendant's personal effects were found in the vicinity of the bed under which the strand of pearls was found, and Greenburg's personal effects were found in the vicinity of another bed in the trailer.

³**Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

record, she has found no non-frivolous issues to present on appeal. Accordingly, she has moved to withdraw as counsel in this matter, on behalf of herself and the Louisiana Appellate Project.

Copies of defense counsel's brief and motion to withdraw were sent to the defendant. Defense counsel also informed the defendant that he had the right to file an appellate brief on his own behalf, but the defendant has not filed a pro se brief with this court.

This court has conducted an independent review of the record in this matter, and we have found no reversible errors under La. Code Crim. P. art. 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably support this appeal. Accordingly, the defendant's conviction and sentence are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is hereby granted.

CONCLUSION

For these reasons, we affirm the defendant's conviction and sentence, and we grant defense counsel's motion to withdraw.

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