

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 KA 1672

STATE OF LOUISIANA

VS.

DARRIN ANDERSON

JUDGMENT RENDERED: FEBRUARY 9, 2007

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 09-02-467, SECTION VI,
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE RICHARD "CHIP" MOORE, JUDGE

HONORABLE DOUG MOREAU
DISTRICT ATTORNEY
DARWIN C. MILLER
ASSISTANT DISTRICT ATTORNEY
BATON ROUGE, LA

COUNSEL FOR APPELLEE
THE STATE OF LOUISIANA

PRENTICE L. WHITE
BATON ROUGE, LA

COUNSEL FOR DEFENDANT/APPELLANT
DARRIN ANDERSON

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

MCDONALD, J.

The defendant, Darrin Anderson, was charged by bill of information with possession with intent to distribute cocaine, a violation of La. R.S. 40:967(A) (count 1) and possession of cocaine in an amount greater than twenty-eight grams but less than two hundred grams, a violation of La. R.S. 40:967(F)(1)(a) (count 2). The defendant pled not guilty. A preliminary examination hearing was held, wherein the court found there was probable cause. Subsequently, the defendant withdrew his not guilty plea. Pursuant to a plea agreement with the State, the defendant entered a "best interest" guilty plea at a **Boykin** hearing. In exchange for the guilty plea, the State dismissed count 2 and amended count 1 to possession with intent to distribute marijuana, a violation of La. R.S. 40:966(A)(1). The defendant was sentenced to ten (10) years imprisonment at hard labor. The court suspended the sentence and placed the defendant on active, supervised probation for five years. The court also imposed conditions and a fine. The defendant now appeals, asserting one assignment of error. We affirm the conviction and sentence.

FACTS

On April 30, 2002, at about 7:40 p.m., Baton Rouge City police officer Derrick Evans, who was assigned to the Plank Road District, was on routine patrol in a high crime area in the 4000 block of North Foster. Officer Evans drove his marked unit to a car wash where, in the past, there had been vandalism, gambling, and marijuana arrests. Officer Evans drove toward a truck that was in one of the stalls. The defendant was driving the truck, and James Franklin was the passenger. The truck was not being washed. As Officer Evans pulled behind the truck, the truck pulled out of the stall, and a paper bag was thrown out of the passenger side window.

Officer Evans retrieved the paper bag. Inside the paper bag was a clear plastic bag, which contained what Officer Evans suspected to be cocaine. Officer Evans radioed another police unit to stop the truck. The truck was stopped in the 4600 block of North Foster, and the defendant and Franklin were placed under arrest. Pursuant to a search incident to arrest, about \$2,000.00 in cash was found on the defendant's person. The bag thrown out of the truck window contained about 130 grams of cocaine.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the court erred at the preliminary examination when it found there was probable cause to detain and arrest the defendant for possession of drugs. Specifically, the defendant contends that he was detained for possession of drugs simply because he had \$2,000.00 in cash, and a passenger in his truck dropped a paper bag on the ground.

At the **Boykin** examination, the defendant entered a "best interest" guilty plea. Prior to entering his plea, the State had agreed to amend the bill of information from possession with intent to distribute cocaine to possession with intent to distribute marijuana. The State also agreed not to file a multiple offender bill. The defendant did not claim that he was innocent at the time he entered his guilty plea. Therefore, the plea does not seem to be an **Alford** plea, which reserves the right to appellate review of the factual basis for the plea. See North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

However, even assuming the defendant intended his "best interest" plea to reserve this right, his appeal would still not have merit. The standard under **Alford** is not "whether the State may prevail at trial by establishing the essential elements of the crime beyond a reasonable doubt and negating

all possible defenses, but rather whether the strength of the factual basis, coupled with the other circumstances of the plea, reflect that the plea represents a voluntary and intelligent choice among the alternative[s].” **Orman**, 97-2089 pp.1-2, (La. 1/9/98), 704 So.2d 245 (per curiam), citing **Alford**, 400 U.S. at 31, 91 S.Ct. at 164. Moreover, the testimony elicited during the preliminary examination, which the State expressly incorporated during the subsequent **Boykin** examination, provided a strong factual basis to support a “best interest” plea.

The defendant apparently felt it was in his best interest to plead guilty rather than risk being found guilty at trial and subsequently being adjudicated a multiple felony offender. A plea of guilty normally waives all non-jurisdictional defects in the proceedings prior to the plea. **State v. Crosby**, 338 So.2d 584, 588 (La. 1976). The defendant did not reserve the right for appellate review of any rulings of the trial court prior to entering his guilty plea. Therefore, the question of probable cause for the defendant's pretrial arrest is moot. Also, the evidence supports the court's determination that the defendant's plea was entered voluntarily. See **State v. Castaneda**, 94-1118, pp. 9-10 (La. App. 1st Cir. 6/23/95), 658 So.2d 297, 304. We find no prejudicial error in this record.

CONVICTION AND SENTENCE AFFIRMED.