

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1489

STATE OF LOUISIANA

VERSUS

REGINALD T. AITES

Judgment Rendered: March 23, 2012

APPEALED FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF WEST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 094172, DIVISION "A"

THE HONORABLE JAMES J. BEST, JUDGE

Richard R. Ward
District Attorney
and
Elizabeth A. Engolio
Assistant District Attorney
Plaquemine, Louisiana

Attorneys for Appellee
State of Louisiana

Mary E. Roper
Baton Rouge, Louisiana

Attorney for Defendant/Appellant
Reginald T. Aites

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDONALD, J.

Defendant, Reginald T. Aites, was charged by bill of information with one count of simple burglary of an inhabited dwelling, in violation of La. R.S. 14:62.2. Defendant initially pled not guilty and filed a motion to suppress, which was denied by the trial court. Subsequently, defendant filed a writ application with this court seeking review of the trial court's ruling on his motion to suppress, and we granted that writ application, reversing the trial court's ruling on the motion to suppress. See State v. Aites, 2010-0229 (La. App. 1st Cir. 2/19/10) (unpublished). The State then filed a supervisory writ application with the supreme court. In State v. Aites, 2010-0667 (La. 5/28/10), 37 So.3d 993 (per curiam), the supreme court granted the State's writ application, reinstated the trial court's ruling on defendant's motion to suppress, and remanded this case to the district court for further proceedings. Thereafter, defendant withdrew his prior not guilty plea and entered a plea of guilty as charged pursuant to a sentencing agreement, reserving the right to appeal the trial court's ruling on his motion to suppress under State v. Crosby, 338 So.2d 584 (La. 1976). For pleading guilty, defendant was given a six-year suspended sentence, placed on supervised probation for three years, and ordered to pay a \$1,000.00 fine. Also pursuant to this plea, the State agreed not to file a habitual offender bill of information against defendant.

On appeal, defendant's counsel initially filed a brief presenting no assignments of error and stating that it was filed to conform with State v. Jyles, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam), wherein the Louisiana Supreme Court approved the procedures outlined in State v. Benjamin, 573 So.2d 528 (La. App. 4th Cir. 1990).¹ Defendant's counsel also filed a motion to withdraw. Because defendant had reserved his right to appeal the denial of his

¹ Benjamin set forth a procedure to comply with Anders v. California, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967), in which the United States Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel found the appeal would be wholly frivolous.

motion to suppress under **Crosby**, this court ordered defendant's appellate counsel to file a new brief arguing the denial of defendant's motion to suppress or, in the alternative, a letter certifying that, after discussing the issue with defendant, defendant agreed to waive appellate review of his motion to suppress. Defense counsel opted to file a brief arguing the denial of defendant's motion to suppress. For the following reasons, we affirm defendant's conviction and sentence. Defense counsel's previously filed motion to withdraw is moot.

FACTS

The following facts are taken from the supreme court's recitation of facts in its per curiam opinion on the State's writ application and from the transcript of defendant's motion to suppress hearing.

On June 11, 2009, a Port Allen home was burglarized, resulting in the theft of a Browning Belgium shotgun, two watches, \$3,000.00 in cash, and some liquor. Later that evening, the Chief of Police for the City of Port Allen received an anonymous tip, telling him that he could find two young males and the items stolen in the burglary at 822 Avenue A, Apartment #4, in Port Allen. One of the young males had admitted committing the burglary to the anonymous tipster.²

Four officers then went to the apartment complex, where defendant and another young male were standing outside. While the apartment was searched with the residents' consent, defendant remained outside in the presence of Officer Ben Arceneaux. Nothing was recovered from inside the apartment, but the officers recovered a sixteen-gauge shotgun wrapped in a "black floor mat type of carpet" outside, behind the apartment. Defendant was then arrested and transported to the

² At the motion hearing, Lieutenant Eric Frank, an investigating officer, testified: "Because we had received an anonymous tip that [defendant] and another juvenile were located at these apartments on Avenue A, and that that - he had obtained some information from him where he admitted to the burglary, and that evidence of the burglary was at this location."

police department, whereupon he was advised of his **Miranda**³ rights and gave a full confession to the burglary after executing a written waiver of his rights.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that the trial court erred in denying his motion to suppress. Specifically, defendant argues that he confessed to the burglary only after he was detained by the police based entirely upon an uncorroborated tip.

The Louisiana Supreme Court addressed the merits of defendant's argument when the State sought supervisory writs from this court's action granting defendant's writ application and reversing the trial court's ruling that denied defendant's motion to suppress. The supreme court noted that "[a]lthough the tip in this case conveyed some general information, like the fact that two black men were standing outside an apartment complex, it also conveyed defendant's admission of the burglary to the anonymous tipster, which had occurred earlier that same day, and predicted the police could find items taken in the offense inside the residence." **Aites**, 37 So.3d at 994. The court stated that even though the tip was slightly inaccurate, the police ultimately did find the stolen shotgun outside of the apartment and, at that point in time, the police had a reasonable basis for believing the anonymous tipster was reliable. See Id., citing **Alabama v. White**, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), the Court concluded that, under the totality of the circumstances, the police had probable cause to arrest defendant. See Id.

In addition, the court concluded that the evidence in the instant case established that defendant was not detained during the search of the apartment "because he was free to leave at that time." **Id.** The court found significant the fact that the officers did not detain defendant until after the search, which produced

³ **Miranda v. Arizona**, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966).

the stolen shotgun. **Id.** Because the officers had already corroborated the tip when defendant was detained and, consequently, had probable cause to arrest him, the court determined that defendant's Fourth Amendment rights were observed and that the district court properly denied defendant's motion to suppress. **Id.**

When the supreme court considers questions of admissibility of evidence in advance of trial by granting a pretrial application for supervisory writs (rather than deferring judgment until an appeal in the event of conviction), the determination of admissibility does not absolutely preclude a different decision on appeal, at which time the issues may have been more clearly framed by the evidence adduced at trial. See State v. Humphrey, 412 So.2d 507, 523 (La. 1981) (on rehearing). Nevertheless, judicial efficiency demands that this court accord great deference to the supreme court's pretrial decisions on admissibility, unless it is apparent, in light of the subsequent trial record, that the determination was patently erroneous and produced an unjust result. See Id.

In the instant case, there was no trial where evidence could be presented that could more clearly frame the evidence presented at defendant's motion to suppress hearing. Therefore, there is no new evidence to support a determination that the supreme court's pretrial decision was patently erroneous or produced an unjust result. For that reason, we give great deference to the supreme court's pretrial determination that defendant's motion to suppress should have been denied.

This assignment of error is without merit.

For the foregoing reasons, defendant's conviction and sentence are affirmed. Because defendant's appellate counsel opted to brief the issue reserved by defendant's **Crosby** plea, her motion to withdraw is mooted.

PATENT ERROR REVIEW

The defendant requests that this court examine the record for patent errors. Because this court routinely reviews the record for errors patent, such a request is

unnecessary. Under La. C.Cr.P. art. 920(2), our patent error review is limited to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a thorough inspection of the pleadings and proceedings, we note one sentencing error. For his conviction of simple burglary, defendant was given a six-year suspended sentence, placed on supervised probation for three years, and ordered to pay a \$1,000.00 fine. This sentence was illegally lenient because it failed to provide that defendant be imprisoned at hard labor for at least one year, without benefit of parole, probation, or suspension of sentence. See La. R.S. 14:62.2. However, we recognize that this sentence was imposed pursuant to a plea agreement with the State. Since the sentence is not inherently prejudicial to defendant, and neither the State nor defendant has raised this sentencing issue on appeal, we decline to correct this error. See State v. Price, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d

CONVICTION AND SENTENCE AFFIRMED. MOTION TO WITHDRAW MOOT.