

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

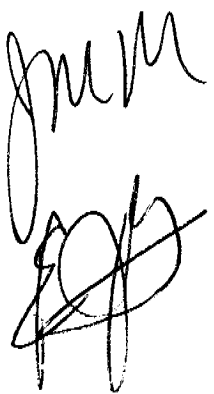
FIRST CIRCUIT

2011 KA 0604

STATE OF LOUISIANA

VERSUS

WARREN D. ANTHONY



Judgment Rendered: November 9, 2011

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 482845, DIVISION "J"

THE HONORABLE WILLIAM J. KNIGHT, JUDGE

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and
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Warren D. Anthony

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDONALD, J.

Hughes, J., concurs.

McDONALD, J.

The defendant, Warren D. Anthony, was charged by bill of information with creation or operation of a clandestine laboratory for the unlawful manufacture of methamphetamine, a violation of La. R.S. 40:983 (count one); possession of methamphetamine, a violation of La. R.S. 40:967(C)¹ (count two); and two counts of cruelty to a juvenile, violations of La. R.S. 14:93 (counts three and four). He pleaded not guilty. The defendant was tried by a jury on counts one and two and was found guilty as charged.² The defendant moved for a postverdict judgment of acquittal and for a new trial. The trial court denied both motions. The defendant was sentenced to imprisonment at hard labor for fifteen years on count one and for five years on count two. Thereafter, the state filed a habitual offender bill of information alleging defendant was a third-felony habitual offender.³

Subsequently, pursuant to a plea agreement, the defendant admitted the allegations in the habitual offender bill. The court vacated the sentence previously imposed on count one. The defendant was sentenced to an enhanced sentence of twenty years at hard labor on count one. The court ordered that the sentence run concurrently with the sentence in count two and with thirty months of a sentence the defendant was serving on a parole violation. For the following reasons, we affirm the defendant's convictions, habitual offender adjudication, and sentences. Additionally, we grant defense counsel's motion to withdraw.

On November 18, 2009, Brandon Brown, a loss prevention control manager at Walmart in Slidell, Louisiana, observed the defendant purchase several packages of lithium batteries and a blender. Mr. Brown had also observed the defendant in the store on previous occasions purchasing pseudoephedrine. Mr. Brown

¹ See also La. R.S. 40:964, Schedule II (C)(2).

² The state reserved the right to proceed to trial on counts three and four at a later date.

³ The habitual offender bill alleged the defendant was previously convicted of possession with intent to distribute methamphetamine and possession of marijuana, second offense.

recognized all of these items as instruments used to manufacture methamphetamine. Mr. Brown contacted the St. Tammany Parish Sheriff's Office to report the suspicious purchases. Mr. Brown followed the defendant out of the store and observed him approach a female, subsequently identified as Shawna Evans, inside a vehicle. Mr. Brown recorded the license plate number of the vehicle and provided it, along with a description of the vehicle, to the police.

Mr. Brown returned to the store and reviewed video surveillance footage showing that Evans had also purchased batteries that same day. Less than two hours later, Mr. Brown observed Evans return to the store accompanied by a second female (later identified as Mary Boyd). Evans purchased a large bottle of Coleman fuel. Mr. Brown contacted the Sheriff's Office again to report the purchases.

Shortly thereafter, St. Tammany Parish Sheriff's officers arrived at Walmart and observed the vehicle driven by the defendant leaving the area. The officers followed the vehicle to a residence on Admiral Nelson Drive. The officers then began surveillance of the residence. Eventually, the officers observed the defendant exit the residence and later go back inside. After observing a small child exit the residence, the officers decided to approach. The officers asked the small child (age seven) to go get his mother. When the child opened the door, the officers observed a haze in the air inside the residence. Mary Boyd eventually came to the door. The officers asked Boyd to have all the other occupants exit the residence. Boyd complied. Everyone inside the residence exited except the defendant. Fearing the defendant was inside the residence attempting to discard evidence, the officers asked for and were granted permission to enter the residence to conduct a protective sweep. The officers knew the defendant was inside the home because they had observed him go inside. During the sweep of the residence, the officers located the defendant and placed him under arrest.

Approximately \$1,196.00 and a package of lithium batteries were removed from the defendant's person.

The officers obtained a search warrant for the residence. During the search, the officers recovered among other things, a Hamilton Beach blender, drain cleaner, several boxes of salt, rubbing alcohol, and dismantled lithium batteries, (all items used to manufacture methamphetamine). Outside on the ground, the officers recovered a coffee filter containing methamphetamine. The defendant and all of the adult occupants of the residence were arrested.

ANDERS BRIEF

The defense brief contains no assignments of error and sets forth that it is filed to conform with **State v. Jyles**, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam) and **State v. Mouton**, 95-0981, pp. 1-2 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam), wherein the Supreme Court sanctioned 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, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967), wherein the U.S. Supreme Court discussed how appellate counsel should proceed when, upon conscientious review of a case, counsel found no issues that are not frivolous. **Benjamin** has repeatedly been cited with approval by the Louisiana Supreme Court. See **Jyles**, 97-1704, 97-1707, p. 1 704 So.2d at 241; **Mouton**, 95-0981, pp. 1-2, 653 So.2d at 1177; **State v. Royals**, 600 So.2d 653 (La. 1992).

In the instant case, the defendant's appellate counsel reviewed the procedural history of the case and the evidence against the defendant. She affirmed that, after a review of the record in this case, she has found no non-frivolous issues to present on appeal, and noted additionally that, under La. C.Cr.P. art. 881.2(A)(2), a defendant cannot appeal a sentence imposed in conformity with a plea agreement that was set forth in the record at the time of the plea, and that no

motion to reconsider sentence was filed. See La. C.Cr.P. art 881.1(E). Accordingly, defense counsel requested that she be relieved from further briefing and has filed a motion to withdraw.

Counsel certified that copies of defense counsel's brief and motion to withdraw were sent to the defendant by defense counsel. Further, defense counsel informed defendant that he had the right to file a brief on his own behalf. The defendant has not filed a pro se brief with this Court.

This Court has conducted an independent review of the entire record in this case, and we have found no reversible errors under La. C.Cr.P. art. 920(2). Furthermore, we conclude there are no non-frivolous issues or trial court rulings that arguably support this appeal. In fact, the defendant received a very favorable plea bargain/sentencing agreement. Accordingly, the defendant's convictions, habitual offender adjudication, and sentences are affirmed. Defense counsel's motion to withdraw, which has been held in abeyance pending the disposition of this matter, is hereby granted.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED; MOTION TO WITHDRAW GRANTED.