

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0650

STATE OF LOUISIANA

VERSUS

MELVIN L. TROSCLAIR

Judgment Rendered: DEC 27 2013

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 05-12-0059

HONORABLE RICHARD D. ANDERSON, JUDGE

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

The defendant, Melvin L. Trosclair, was charged by bill of information with possession of a schedule II controlled dangerous substance (cocaine) with intent to distribute, a violation of Louisiana Revised Statutes section 40:967A(1). The defendant pled not guilty. Following a jury trial, he was found guilty of the responsive offense of possession of a schedule II controlled dangerous substance (cocaine), a violation of Louisiana Revised Statutes section 40:967C. He was sentenced to five years at hard labor. The defendant now appeals, arguing that the district court erred in denying his motion to continue. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On January 17, 2012, around 3:15 p.m., three officers with the Baton Rouge Police Department came into contact with the defendant while making routine checks at convenience stores near the 3000 block of North Street. The officers were driving separate units. As they pulled into the parking lot of one convenience store, they heard loud music coming from the defendant's vehicle which was parked near the front of the store with its windows rolled down. As Officer Scott Hodgins approached the vehicle, he smelled the odor of marijuana. Corporal Jonathan Medine approached the driver's side of the vehicle and asked the defendant to step out. After the defendant was read his **Miranda** rights, the officers asked him if he had marijuana. The defendant initially said no, but then told them that it was in his right front pocket. Corporal Medine reached into the defendant's pocket and pulled out a bag of marijuana. The defendant was handcuffed, and Corporal Medine began to pat him down. As he touched the defendant's front left pocket, the defendant jumped and tried to pull away. Corporal Medine reached into the pocket and pulled out a large rock of crack cocaine. It was unwrapped and approximately the size of a dime. The officers also

located cash in the amount of \$2,747.00 in one of the defendant's front pockets. Sergeant Randy Wiedeman asked the defendant, "What's going on with this cocaine and stuff?" The defendant responded, "You know what I do." The defendant immediately offered to set up a drug deal to "help himself." The officers worked with the defendant in an attempt to set up a deal, but were unsuccessful. The evidence collected at the scene was later tested and determined to be .79 grams of cocaine and 1.4 grams of marijuana.

At trial, the defendant's long-term girlfriend testified that \$2,500.00 of the cash found on the defendant was from her income tax return. However, no documentation was submitted in support of her testimony.

DISCUSSION

In his sole assignment of error, the defendant argues that the district court erred in failing to grant a continuance of his trial to allow his counsel more time to prepare.

On Thursday, October 4, 2012, the day after a jury was selected, defense counsel filed a motion to continue. He claimed that as of Monday of that week, he had not received any discovery and had no time to "meaningfully prepare." He argued that his office was focusing its attention on a "priority case" that had settled on Tuesday. According to defense counsel, he did not discover until Wednesday while reviewing the police reports that the in-car cameras in each of the three police units involved in this arrest were not working. Defense counsel also claimed that it was not until Wednesday that he learned the arrest occurred at a convenience store rather than during a traffic stop and, thus, there was a possibility that a surveillance videotape existed that would help dispute the officers' version of events.

The State responded by pointing out that a preliminary examination was held on May 30, 2012, and that the lead officer, Hodgins, testified therein as to the basic

facts of the case and was subject to cross-examination. In response to one of defense counsel's questions on cross-examination, Officer Hodgins testified that the video and audio recording equipment in his and Sergeant Wiedeman's units were not working on the day of the arrest. The State also pointed out that it gave the defendant an opportunity to accept a plea agreement at the preliminary examination hearing and explained to him that if he did not take the deal, the case would proceed to trial.

The district court denied the motion to continue and pointed out that the case was set for trial four months prior and originally came up for trial in August 2012. It was then continued to October and rolled over from Monday, October 1, 2012, to the following day, and then from October 2 to October 3. According to the court, that should have been a "clear indication" that "this thing is on the trial track."

While the attorneys and the district court were discussing preliminary matters, it was revealed that part of the reason the officers did not put the defendant in the backseat of their unit and question him was because they had an agreement for him to order some drugs and have them delivered so they could arrest the seller. After this was revealed, defense counsel reurged his motion to continue, arguing that he needed to look into this new information that the officers were trying to get the defendant to make a buy as opposed to anything indicating that the defendant was actually selling drugs. The district court denied the motion and stated that the new information was something his client was aware of and could have told him.

A motion for continuance, if timely filed, may be granted, in the discretion of the court, in any case if there is good ground therefor. La. C.Cr.P. art. 712. A motion for continuance shall be in writing and filed at least seven days prior to the commencement of trial. Upon written motion at any time, the district court may grant a motion for continuance after a contradictory hearing, but only upon a

showing that such motion is in the interest of justice. La. C.Cr.P. art. 707. The district court has great discretion in deciding whether to grant a motion for continuance, and this decision will not be disturbed on appeal in the absence of an abuse of that discretion. **State v. Castleberry**, 98-1388 (La. 4/13/99), 758 So.2d 749, 755, cert. denied, 528 U.S. 893, 120 S.Ct. 220, 145 L.Ed.2d 185 (1999). The denial of a motion for continuance, when the motion is based on the ground of counsel's lack of preparedness, does not warrant reversal unless counsel demonstrates specific prejudice resulting from the denial or unless the preparation time is so minimal as to call into question the basic fairness of the proceeding. See State v. Dupre, 408 So.2d 1229, 1231-32 (La. 1982).

Based on the foregoing, we find no abuse of discretion in the district court's denial of defense counsel's motion to continue. Moreover, the defendant has made no showing of specific prejudice because of the district court's failure to continue his trial in order for him to obtain surveillance videos and "look into" the information that he was working with officers to set up a dealer rather than selling the drugs himself. This is particularly true since he was found guilty of possession of cocaine rather than possession with the intent to distribute the cocaine. Accordingly, this assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.