STATE OF LOUISIANA   *   NO. 2000-KA-0130

VERSUS   *   COURT OF APPEAL

WALTER RICHARDSON   *   FOURTH CIRCUIT

    *   STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 395-134, SECTION "C"
Honorable Sharon K. Hunter, Judge
* * * * * *
JUDGE

JOAN BERNARD ARMSTRONG
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin and Judge David S. Gorbaty)

PLOTKIN, J., CONCURS IN PART AND DISSENTS IN PART

HARRY F. CONNICK
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SHERRY WATTERS

REMANDED WITH INSTRUCTIONS

STATEMENT OF THE CASE

On January 23, 1998, the defendant, Walter Richardson, was charged by bill of information with armed robbery. La. R.S. 14:64. He was arraigned and pled not guilty January 28, 1998. After a judge trial, he was found guilty of the lesser included offense of simple robbery on July 6, 1998. La. R.S. 14:65. The State filed a multiple bill. On July 16, 1998, the trial court found the defendant to be a second offender. The defendant filed a motion for new trial. On August 21, 1998, the trial court denied the motion for new trial, and sentenced the defendant to three years at hard labor. He filed a motion for appeal. On December 3, 1998, the trial court vacated the original sentence and sentenced the defendant as a second offender to seven years at hard labor. The defendant now appeals, asserting among other assignments of error, his claim that he did not validly waive his right to a jury trial. For the reasons that follow, we remand this case to the trial court for an evidentiary hearing regarding the jury waiver.

STATEMENT OF THE FACTS

Officer Calvin Brasley viewed a videotape of a robbery at Eckerd's drug store that took place September 24, 1997. He also interviewed the cashier who told him a weapon had been involved. He said he could not see the weapon in the videotape.

William Washington, an employee of the store, said he was working on the night of November 24, 1997, when Janet Robertson, who had been the cashier during the robbery, approached him and told him that the man in the electronics aisle was the man who had robbed the store. Washington called the police, on November 25, 1997, when the man again returned to the store. The police arrested the defendant that night outside of the store.

Robertson said the defendant pulled a gun from a wrapped towel. He demanded money, and as she struggled to open the register, he told her he would kill her. She gave him the money in the register then he fled the scene. The defendant later returned to the store, but he left before police could be summoned. He returned again and was arrested after Robertson recognized him and called the police.

The judge viewed the videotape.

WAIVER OF RIGHT TO JURY TRIAL

In his first assignment of error, the defendant argues that he did not

validly waive his right to a jury trial. The minute entry of January 28, 1998 states that the trial court informed the defendant of his right to trial by jury. The docket master states that the defendant requested trial by jury May 6, 1998. The minute entry of May 6, 1998 states that the defendant requested trial by jury. No transcript of a waiver of trial by jury can be found. Accordingly, we remand this case to the trial court for an evidentiary hearing on the question of whether the defendant validly waived his right to a jury trial through counsel in open court and in his presence before trial. If the evidence shows that the defendant did not make a valid waiver of his right to a jury trial, the district court must set aside his conviction and sentence and grant him a new trial. State v. Nanlal, 97-0786 (La. 9/26/97), 701 So.2d 963. If the waiver was properly made, the appeal should be transferred back to this court for review of this determination and for review of all assignments of error.

REMANDED WITH INSTRUCTIONS