STATE OF LOUISIANA      *      NO. 2002-KA-0632

VERSUS      *      COURT OF APPEAL

ROBERT JENKINS      *      FOURTH CIRCUIT

     *      STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 416-638, SECTION "C"
Honorable Sharon K. Hunter, Judge
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**Judge Dennis R. Bagneris, Sr.**
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(Court composed of Judge Miriam G. Waltzer, Judge James F. McKay, III, and Judge Dennis R. Bagneris, Sr.)

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                                  **REVERSED AND REMANDED**

The state argues that the trial court erred in adjudicating the defendant, Robert Jenkins ("Mr. Jenkins"), not guilty as a second felony offender without conducting a contradictory hearing on the multiple bill. For the following reasons, we agree.

On September 11, 2000, Mr. Jenkins was charged by bill of information with distribution of cocaine in violation of La. R.S. 40:967(A). On September 14, 2000, at his arraignment, Mr. Jenkins pleaded not guilty. On September 19, 2000, after a hearing, the trial court found probable cause to bind Mr. Jenkins over for trial and denied the motion to suppress the evidence.  On September 28, 2000, after a judge trial, Mr. Jenkins was found guilty of attempted distribution of cocaine.  At that time, the state announced its intent to file a multiple bill.  On April 6, 2001, the day set for the hearing, when the fingerprint expert was not immediately available to testify, the trial court held that the state had failed to prove the multiple bill.   On May 10, 2001, Mr. Jenkins was sentenced to serve three years at hard labor; the court recommended Mr. Jenkins be placed in the Impact Program.

The facts of the case are not relevant to the issue on appeal.

On the day set for the multiple bill hearing, the court called the case at 10:38 a.m. and was told that the fingerprint expert was working in another section of court and would be available "in a couple of minutes." The court declared that the day's session began at 8:30 a.m., and the fact that people did not arrive on time was "rude," "unprofessional," and "unethical." The district attorney suggested that a trial from the previous day could be finished, but the court insisted on adhering to its "customary and standard practice" of handling motion hearings and multiple bills prior to trial. When the district attorney admitted the state could not proceed with the hearing until the fingerprint expert arrived, the court stated: "Let the Record reflect, the State being unable to proceed has failed to maintain and prove up its Multiple Bill."

The state points out that under La. C.Cr.P. art. 61, which sets out the district attorney's powers and duties, the district attorney "has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute." Mr. Jenkins contends through counsel that La. C.Cr.P. art. 17 empowers a trial court to exercise the necessary power to conduct criminal proceedings. Specifically, La. C.Cr.P. art. 17 provides:

> A court possesses inherently all powers necessary
> for the exercise of its jurisdiction and the
> enforcement of its lawful orders, including

> authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction.  It has the duty to require that criminal proceedings be conducted with dignity and in an orderly and expeditious manner and to so control the proceedings that justice is done.  A court has the power to punish for contempt.

The articles following La. C.Cr.P. art. 17 delineate the categories of contempt, and the penalties the court may use in controlling proceedings.

Under La. R.S. 15:529.1(D), after a person has been convicted of a felony, the district attorney has the power to "file an information accusing the person of a previous conviction."  Then the court shall have the person brought in and shall inform him of the charges and his rights.  If he denies the charges, the "judge shall fix a day to inquire" into the offenses set out in the bill of information.   Thus, the court does control scheduling the hearing; however, under La. C.Cr.P. art. 17, the court's manner of exercising its authority and penalizing disobedience is through a finding of contempt.  In a case such as this, anyone who disrupts the orderly and expeditious procedure of the courtroom could be held in contempt and fined.  However, the trial court had no authority to find that the state had failed to prove the charges contained in the multiple offender bill of information when a contradictory hearing had not been held.

Although there are no cases exactly on point, appellate courts have

found that when the district attorney files a bill for a multiple offender hearing or a trial, the trial court does not have authority to refuse to hear the case. In State v. Franklin, 599 So.2d 431 (La. App. 4 Cir. 5/12/92), this court considered a situation in which the trial court argued it had discretion to find a defendant was not a habitual offender even though the state had presented sufficient proof of the charge. The trial court had an ex parte plea agreement between the court and the defendant without the approval of the state. This court vacated the sentence imposed by the trial court, finding that the district attorney's "authority to prosecute includes the filing of a bill of information charging a defendant as a habitual offender." Franklin, 599 So.2d at 432, citing State v. McFarland, 578 So. 2d 1014 (La.App. 4 Cir. 4/16/91).

Additionally, in State v. Langley, 93-679, 93-680 (La.App. 3 Cir. 6/3/93), 620 So.2d 1203, the Third Circuit considered whether the trial court had authority to prohibit trial dates being set before a specific date, and the Third Circuit held that under La. C.Cr.P. art. 61, the district attorney, and not the trial court, has responsibility for setting matters for trial.

Accordingly, we reverse the trial court's holding that the state did not prove its multiple bill, and we remand the case for a hearing on the multiple bill.

**REVERSED AND REMANDED**