

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2005-KA-0330**
*
VERSUS * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
WAYNE RICHARD, GERALD *
J. MASSEY AND RUPERT * **STATE OF LOUISIANA**
ROBINSON

*

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 453-696, SECTION "C"
Honorable Benedict J. Willard, Judge

Judge David S. Gorbaty

(Court composed of Judge James F. McKay III, Judge David S. Gorbaty,
Judge Edwin A. Lombard)

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GERALD J. MASSEY AND RUPERT ROBINSON

REVERSED AND REMANDED

On July 21, 2003, the defendants, Wayne Richard, Gerald J. Massey, and Rupert Robinson, were charged with armed robbery in violation of La. R.S. 14:64. The defendants entered pleas of not guilty at their arraignment on August 12, 2003. Defendant Richard filed motions to suppress identification, evidence and statement and a motion for preliminary hearing on August 28, 2003. Defendant Robinson filed similar motions on September 10, 2003. Defendant Massey filed his suppression and discovery motions on November 25, 2003. On the same day, the trial court conducted a hearing on the defendants' motions. The trial court denied the suppression motions and found probable cause as to all three defendants. The trial court set trial for January 26, 2004.

On January 26, 2004, trial was continued upon a joint motion and was reset for March 8, 2004. On March 8, 2004, trial was again continued upon a joint motion. Trial was once more continued to June 16, 2004. A status hearing was held on June 16, 2004, and trial set for July 20, 2004. On July 20, 2004, the State sought a continuance and trial was reset for August 25,

2004. On August 25, 2004, the trial was continued until October 12, 2004, at the request of the defendants. The State was granted a continuance on October 12, 2004 and trial was reset for November 8, 2004. On November 8, 2004, the State nolle prosecuted the charges against the defendants. The State informed the trial court on November 9, 2004, that it intended to re-institute the charges against the defendants.

On November 15, 2004, the State filed a new bill of information in the present case charging the defendants with armed robbery. At the arraignment on December 8, 2004, all three defendants pled not guilty and filed oral motions to quash the bill of information. The trial court granted the defendants' motions, quashing the bill of information as to all three defendants. The State subsequently filed this appeal.

DISCUSSION

The State argues that the trial court erred when it granted the defendants' oral motions to quash the bill of information. The defendants stated at the hearing on December 8, 2004, that they intended to "supplement" their oral motions with written motions. However, there is nothing in the record to indicate that the defendants ever filed written motions to quash.

La. C.Cr.P. article 536 states:

A motion to quash shall be writing, signed by the defendant or

his attorney, and filed in open court or in the office of the clerk of court. It shall specify distinctively the grounds on which it was based. The court shall hear no objection based on grounds not stated in the motion.

The jurisprudence is clear that oral motions to quash are properly not considered. State v. Branch, 00-1668 (La. App. 5 Cir. 3/28/01), 784 So.2d 43; State v. Bentel, 00-0057 (La. App. 5 Cir. 9/27/00), 769 So.2d 1247; State v. Fryer, 96-2745 (La. App. 4 Cir. 2/19/97), 691 So.2d 712; State v. Moore, 93-1632 (La. App. 3 Cir. 5/4/94) 640 So.2d 561.

As such, we find that the trial court clearly erred when it granted the defendants' oral motions to quash. The State's assignment of error has merit.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the trial court is reversed, and this matter is remanded to the trial court for further proceedings.

REVERSED AND REMANDED