

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2007-KA-1247**
VERSUS * **COURT OF APPEAL**
JOSEPH KEYS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 466-107, SECTION "G"
Honorable Julian A. Parker, Judge

* * * * *

Charles R. Jones
Judge

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(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr., and Judge Roland L. Belsome)

Keva Landrum-Johnson, District Attorney
Alyson Graugnard, Assistant District Attorney
1340 Poydras Street, Suite 700
New Orleans, LA 70112-1221

COUNSEL FOR APPELLEE

Sherry Watters
LOUISIANA APPELLATE PROJECT
P. O. Box 58769
New Orleans, LA 70158-8769

COUNSEL FOR APPELLANT

AFFIRMED

The Appellant, Joseph Keys, appeals his conviction and sentence for possession with intent to distribute marijuana. We affirm.

The facts surrounding Keys' arrest are not at issue, thus, they are not discussed herein. On July 27, 2006, Joseph Keys was charged by bill of information with one count of possession of marijuana with intent to distribute. A bench trial was held on April 23, 2007, where Keys was found guilty of possession with intent to distribute marijuana. On May 25, 2007, the state filed a multiple bill of information charging Keys with being a second offender. On July 9, 2007, the district court denied Keys' motion for a new trial and motion for post-judgment verdict for acquittal. Keys was sentenced to five (5) years in the custody of the Louisiana Department of Corrections, concurrent with Case No. 466-172 "G", and with any other pending DOC sentence, granting credit for time served.¹ Keys filed a motion for appeal and designation of record, which was granted by the district court.

On August 30, 2007, Keys' multiple bill hearing was held. Prior to the hearing, he again filed motions for a new trial and for post-trial judgment

¹ Our court recently rendered an opinion in case number 2007 KA 1430, a separate appeal brought by Keys.

of acquittal. He also filed a motion to quash the multiple bill. All of his motions were denied by the district court. The hearing proceeded, and thereafter, Keys was found to be a double offender. His earlier sentence was vacated, and he was sentenced to fifteen (15) years in the custody of the Department of Corrections, concurrent with any other existing sentence, in accordance with La. R.S. 15:529.1. Subsequently, Keys filed two (2) motions to reconsider and they were denied.

Keys raises two (2) issues on appeal. He avers that the district court erred in failing to address him personally to determine whether his waiver of the right to a jury trial was knowingly and intelligently made. Lastly, he requests a review of the record for errors patent.

Keys avers that the district court erred in not addressing him personally to determine whether he knowingly and intelligently, waived his right to a jury trial.

While a defendant's right to trial by jury is protected under La. Const. Art. I, Sec. 17 (1974), La. C.Cr.P. art. 780 (A) provides that except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury and elect to be tried by the judge. At the time of his arraignment, the defendant in such cases shall be informed by the court of his right to waive trial by jury.

Our courts have traditionally insisted upon a knowing, intelligent and voluntary waiver by the defendant. *State v. Abbott*, 92-2731 (La.App. 4 Cir. 2/25/94), 634 So.2d 911. However, Louisiana courts have consistently rejected placing upon the district court the burden of personally ascertaining whether the defendant is aware of his right to trial by jury. *State v. James*, 576 So.2d 611(La.App. 4 Cir. 1991); *State v. Houston*, 94-592 (La.App. 5 Cir. 12/14/94), 648 So.2d 948. For example, in *State v. Phillips*, 365 So.2d

1304 (La. 1978), the court, while recognizing La. C.Cr.P. art. 780, held that the district court committed no error in allowing the defendant to proceed with a judge trial despite the fact that the waiver was not made by the defendant personally. The Louisiana Supreme Court stated:

We find no error in the determination of the trial judge here that the present defendant gave his informed consent to the waiver made in his presence by his attorney, especially in light of the facts that the judge had informed defendant not once, but twice, of his right to choose between a judge trial and a jury trial, and that the defendant was shown to have had prior experience as an accused in the trial of a criminal prosecution.

Phillips , 365 So.2d at 1309.

In *State v. Bryant*, 2006-1154 (La.App. 4 Cir. 1/10/07), 950 So.2d 37, our Court again held that the district court was not required to personally inform defendant of his right to a jury trial where the defendant's counsel informed the court that defendant wished to waive a jury trial and to proceed to trial by judge, where the court addressed defendant personally, and where defendant confirmed that he wished to go to trial by judge rather than jury.

In the instant case, at the beginning of the trial proceedings, the following exchange took place among the district court, Keys' counsel and Keys:

MR. DONNELLY:

In regards to Mr. Keys' trial today, Your Honor, I have advised him that we had initially announced trial by jury. Mr. Keys advises me that he wants a judge trial. I have explained to him the pros and cons in choosing a judge trial.

THE COURT:

That's your right to go with a judge trial. It's certainly your right.

MR. DONNELLY:

We can dismiss the jury.

THE COURT:
All right. Dismiss the jury.

Additionally, the minute entry of the arraignment held on October 20, 2006, reflects that the district court advised Keys of his right to trial by judge or jury. This minute entry, combined with the trial transcript, demonstrates that Keys effectively waived his right to trial by jury. Keys' silence after direct questioning by the district court as to the accuracy of his counsel's statement, while in the presence of a jury panel, can only be interpreted as assent. Therefore, we find that this assignment of error lacks merit.

Additionally, the record was reviewed for errors patent. There were no errors found.

DECREE

For the foregoing reasons, the conviction of Joseph Keys and his sentence are affirmed.

AFFIRMED