

**STATE OF LOUISIANA**

\*

**NO. 2016-KA-0081**

**VERSUS**

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**COURT OF APPEAL**

**LEIGHTON COMRIE**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**BELSOME, J. DISSENTS WITH REASONS.**

I respectfully dissent from the majority and find error in the trial court's failure to wait the mandatory three days between conviction and the imposition of sentence as required by La. C.Cr.P. art. 873. This court has recognized that the purpose of the three day delay is to allow the defendant time to file post-trial motions, including a motion for new trial which must be filed between the verdict and the sentence. *State v. Barra*, 572 So.2d 1187, 1191 (La. App. 4<sup>th</sup> Cir. 1990); *State v. Tarto*, 517 So.2d 1216, 1217 (La. App. 4<sup>th</sup> Cir. 1987). If the defendant does not expressly waive the delay, a sentence imposed within the three day period should be vacated. La. C.Cr.P. art. 873 Official Revision Comments (a) and (c); *Barra*, 572 So.2d at 1190. Because the record is void of any indication that the defendant expressly waived the delay, I would vacate the defendant's sentence and remand for resentencing.