

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 KA 2189

STATE OF LOUISIANA

VERSUS

REGINALD DAVIS

**Judgment Rendered: JUL 03 2014**

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On appeal from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket Number 12-11-0181, Section 5

Honorable Louis R. Daniel, Judge Presiding

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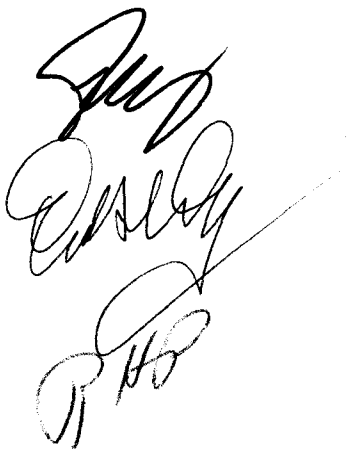
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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.



## **GUIDRY, J.**

Defendant, Reginald Davis, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty and, after a jury trial, was found guilty as charged. The trial court subsequently sentenced defendant to the mandatory term of life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant now appeals, alleging one assignment of error. For the following reasons, we affirm defendant's conviction and sentence.

### **FACTS**

Late in the evening on September 22, 2003, Walter Scott, Kewann Scott, and their two children returned home to the Elm Grove apartment complex in Baton Rouge. No parking spots were immediately available, so Kewann waited in the car while Walter took the children upstairs to eat. As Kewann waited for a spot to become available, defendant began to yell and make advances at her from his own vehicle. When Kewann did not respond, defendant began to call her derogatory names. Eventually, Kewann pulled into an available spot and exited her vehicle. At the same time, Walter came down from the apartment to check on her. Walter noticed that Kewann appeared to be upset, so he inquired about what happened. Kewann told Walter about defendant's actions.

Angered by what Kewann had told him, Walter approached defendant's vehicle and began to yell at him. That yelling turned into a brief altercation between Walter and defendant. The altercation ended when Walter knocked defendant unconscious and left him lying in the parking lot. Walter and Kewann then returned to their apartment. Soon thereafter, Kewann heard defendant's car drive away.

After Walter and Kewann ate, Walter told Kewann that he was going to go outside to talk to James "Red" Harrell, a neighbor. Walter and Red spoke in the

stairwell of one of the apartment complex buildings. As they spoke, Walter spotted defendant and Robert "Tutu" Gray, defendant's cousin who earlier attempted to break up the altercation, standing on a nearby balcony. Walter began to yell at defendant and Tutu about the earlier altercation. Apparently, at some point during the shouting, defendant placed himself near the top of the stairwell. Defendant then drew a revolver and fired approximately three shots at Walter. One shot struck Walter in the forehead, killing him. Defendant fled the scene, but several witnesses identified him as the shooter, and he was arrested the following day.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, defendant contends that the trial court erred in denying his trial counsel's motion to withdraw, filed prior to trial. Specifically, he alleges that his trial counsel, a public defender, had a conflict of interest due to the fact that her office had previously represented Robert "Tutu" Gray in an earlier, unrelated proceeding.

Defense counsel filed a motion to withdraw on February 1, 2013, four days before the beginning of trial. In the motion, she alleged that the Office of the Public Defender had represented Tutu on the charge of attempted second degree murder from his arraignment on October 17, 2007, until his plea to a lesser charge on May 14, 2009. Defense counsel argued that this earlier representation created divided loyalties that rendered her incapable of rendering effective legal assistance to defendant.

During argument of the motion on February 4, 2013, defense counsel stated that she became aware of the alleged conflict when she spoke to others in her office and was informed of the previous representation of Tutu. However, she stated that she had not received any confidential information about his case.

In denying the motion to withdraw, the trial court noted that the only information that defense counsel had about Tutu was his rap sheet. The trial court found that any lawyer representing a defendant would be able to secure a witness's rap sheet. Further, the trial court stated that defense counsel failed to show any actual conflict of interest, because she failed to make any true argument about how her office's earlier representation of Tutu would cause an actual conflict. For those reasons, the trial court denied defense counsel's motion to withdraw as a mere "conclusory" allegation of conflict with no support.

Louisiana State Bar Articles of Incorporation Article XVI, Rules of Professional Conduct 1.9(a) provides that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. Additionally, a lawyer shall not thereafter use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known. La. R. Prof. Cond. 1.9(b).

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from so doing by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm. La. R. Prof. Cond. 1.10(a). The burden of proving disqualification of an attorney or other officer of the court rests on the party making the challenge. See State v. Letell, 12-0180, p. 12 (La. App. 1st Cir. 10/25/12), 103 So.3d 1129, 1140, writ denied 12-2533 (la. 4/26/13), 112 So.3d 838.

The customary remedy for an alleged conflict of interest is disqualification of the attorney or firm with the conflict. In determining whether a conflict exists, courts often look to the Rules of Professional Conduct. Furthermore, the Louisiana Supreme Court has determined that the ethical rules which regulate attorneys' law practices have been recognized as having the force and effect of substantive law. See Walker v. State Dept. of Transp. and Development, 01-2078, p. 3 (La. 5/14/02), 817 So.2d 57, 59-60.

In Walker, the Supreme Court stated that two matters are "substantially related" under Rule 1.9 when they are so interrelated in both fact and substance that a reasonable person would not be able to disassociate the two. Walker, 01-2078 at p. 6, 817 So.2d at 62. Thus, the Supreme Court has established a narrow interpretation of the phrase "substantially related." Walker, 01-2078 at p. 6, 817 So. 2d at 62.

In the instant case, it is clear that the case in which the Office of the Public Defender represented Tutu is not "substantially related" to the instant case. Tutu's prior case involved a 2007 shooting incident at the Elm Grove apartment complex in which he was initially charged with attempted second degree murder but later pled guilty to aggravated battery. Defendant's case arose out of a shooting incident that occurred at the same complex but approximately four years earlier. The Office of the Public Defender never represented Tutu in any proceedings in connection with the instant case, because Tutu was never considered to be a suspect in Walter's homicide.

Clearly, then, these two cases are not so interrelated in both fact and substance that a reasonable person would be unable to disassociate the two. Both cases share similarities in that they involved shootings at the Elm Grove apartment complex, possibly even with weapons of a similar caliber. However, the incidents occurred approximately four years apart, and neither individual was ever a suspect

in the other's case. The case in which the Office of the Public Defender previously represented Tutu was not substantially related to defendant's case.

In addition to finding no substantial relationship between Tutu's and defendant's cases, we also find that defendant's trial counsel apparently had no knowledge of any confidential information about Tutu's case that she used or attempted to use for defendant's benefit. Defense counsel herself did not represent Tutu. She also explicitly stated that she had received no confidential information from anyone in her office. Moreover, the only information that defense counsel appeared to have about Tutu was his rap sheet and a minute entry related to his case. Neither of these items were available to defense counsel solely as a result of her office's earlier representation of Tutu.

The trial court did not err or abuse its discretion in denying defense counsel's motion to withdraw. The motion stated only conclusory arguments and offered no specific reasons supporting withdrawal. Defendant's instant case was in no substantial way related to Tutu's earlier case, and defense counsel did not possess any confidential information about Tutu that she could have used to Tutu's detriment or defendant's advantage.

This assignment of error is without merit.

**CONVICTION AND SENTENCE AFFIRMED.**