

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-2324**
VERSUS * **COURT OF APPEAL**
BOBBY DICKERSON * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 392-232, SECTION "C"
Honorable Sharon K. Hunter, Judge
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Judge Miriam G. Waltzer
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(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer and Judge Michael E. Kirby)

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CONVICTION AND SENTENCE REVERSED AND REMANDED

Bobby E. Dickerson, Jr., was charged by bill of information on 1 October 1997, with attempted first-degree murder, a violation of La. R.S. 14:27(30). At his arraignment on 3 October 1997, he pleaded not guilty. His motion to suppress the identification was granted after a hearing on 8 December 1997. The state objected and took a writ to this court; the writ was granted on 25 March 1998, reversing the trial court. After being advised of his right to a jury trial, the defendant elected a bench trial, which was held on 5th and 13th of August 1998. On 31 August 1998 the judge found the defendant to be guilty as charged. The state filed a multiple bill, and on 7 December 1998, after a hearing, he was sentenced to life imprisonment as a third felony offender under La. R.S. 15:529.1. He was granted an out-of-time appeal on 5 April 1999.

At trial on 5 August 1998, Officer Robert Stoltz testified that he investigated a shooting on 7 July 1997. About 10:30 p.m., the officer arrived at 2216 D'Abadie Street where he saw two victims in two ambulances. One had been shot in the face and the other in the buttocks. The officer interviewed two people who were at the scene and then returned to the Fifth District Station with a man who had been detained. After speaking to several people, the officer determined that the defendant was a suspect. A photographic line-up was shown to one of the victims, who

identified the defendant as the gunman. Bobby Dickerson was arrested on the 8th or 9th July. The second victim, Larry Thomas, was interviewed on 12 July, and he too named Bobby Dickerson as the man who shot him.

On 13 August 1998, Paul Dickerson, the defendant's brother, testified that Bobby Dickerson did not shoot Larry Thomas or Leroy Louding. Paul Dickerson stated that he and a man named Craig Johnson both shot at Thomas and Louding. Under cross-examination, Paul Dickerson said that he could not remember when the shooting occurred or even the time of day it happened. When asked what he had been doing that day, he answered that he was "walking around." He visited his girlfriend, Colita Robinson of Miro Street, but he could not recall the cross street near her house. Paul Dickerson said he had a loaded .357 magnum revolver, and he shot at Larry Thomas because Thomas had threatened to kill him even though the two did not know each other. Paul Dickerson later said that he shot into the air and did not aim at either victim. When asked if he had a drug problem, Paul Dickerson said he did not; however, he admitted to using marijuana "now and then" and having tried cocaine. If he were to take a drug test that day, Dickerson acknowledged he would have marijuana in his system.

The state called Officer Arthur Kaufman in rebuttal. The officer said that he interviewed Paul Dickerson on 5 July, and it was his understanding

that Paul Dickerson was going to confess to the crime. However, at the meeting the officer realized that Dickerson was intoxicated. Paul Dickerson admitted then to having recently taken drugs. After being told his rights, Paul Dickerson refused to make a taped or video statement. Dickerson said that his mother and one of the attorneys wanted him to make a statement. The officer stated that Paul Dickerson did not seem to have any idea of the consequences of the statement he was making. Paul Dickerson told the officer his version of the events in which he and Bobby were at the scene but did not shoot anyone. After listening to his story, the officer did not arrest him.

In a single assignment of error, the defendant argues that his conviction and sentence should be reversed because there is not a complete record of all the evidence upon which the judgment of conviction was based. We find merit in this assignment. The trial transcript of 5 August 1998 has testimony of only one witness while the minute entry indicates that three additional witnesses took the stand.

The Louisiana Constitution, art. I, §19 (1974), provides in pertinent part: "No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based." Furthermore, La.

C.Cr.P. art. 843 requires that in felony cases all proceedings shall be recorded, including the testimony of witnesses.

Bobby Dickerson argues that the omission at issue here is similar to that in State v. Diggs, 93-0324 (La. App. 4 Cir. 6/29/95), 657 So. 2d 1104, where the unavailability of an officer's complete testimony was found to necessitate a new trial. In Diggs, the defendants were convicted of distribution of cocaine based upon alleged sales to undercover police officers. While three officers had participated in the undercover operation, only two of them testified at trial. No record of the cross-examination or redirect exam, if any, was available of one of the officers; only the beginning of his direct examination was transcribed. This court held that this omission necessitated a new trial because it could not be determined whether the missing testimony was substantial or inconsequential, or whether any objections or motions had been made during the officer's testimony.

In the case at bar, according to the 5 August minute entry, trial started at 1:10 p.m., Officer Robert Stoltz testified, and at 1:35 p.m. the court recessed. At 2:26 p.m. trial resumed, and three more witnesses, Officers Arthur Kaufman and Jimmy Ducos and the victim Larry Thomas, testified. The state then introduced fifteen exhibits and rested at 3:40 p.m., and at 4:30 p.m. the court recessed. The trial transcript does not contain any of the

testimony of the three men called after the trial resumed at 2:26 p.m. The court reporter recording the testimony was not the same person who transcribed the testimony. Furthermore, the defense attorney at trial was not the defendant's attorney on appeal.

In State v. Ford, 338 So. 2d 107 (La. 1976), the Louisiana Supreme Court stated:

Without a complete record from which a transcript for appeal may be prepared, a defendant's right of appellate review is rendered meaningless. A slight inaccuracy in a record or an inconsequential omission from it which is immaterial to a proper determination of the appeal would not cause us to reverse defendant's conviction. But where a defendant's attorney is unable, through no fault of his own, to review a substantial portion of the trial record for errors so that he may properly perform his duty as appellate counsel, the interests of justice require that a defendant be afforded a new, fully-recorded trial.

338 So. 2d at 110.

In Ford, the court found the omission of the testimony of four State witnesses, voir dire, and opening statements made it impossible for counsel, who

was appointed for the appeal, to adequately review the record for errors.

Similarly, we find the omissions in the trial transcript of 5 August substantial and preclude a thorough review of the record.

Accordingly for reasons stated above, the defendant's conviction and sentence are reversed and the case is remanded to the trial court for a new trial.

CONVICTION AND SENTENCE REVERSED AND REMANDED