

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2003-KA-0387**
VERSUS * **COURT OF APPEAL**
DEDRICK MATTHEWS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 415-873, SECTION "B"
Honorable Patrick G. Quinlan, Judge
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Judge Terri F. Love
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(Court composed of Chief Judge William H. Byrnes III, Judge Terri F. Love,
Judge Edwin A. Lombard)

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AFFIRMED

STATEMENT OF CASE

On July 26, 2000, the State charged Dedrick Matthews with one count of possession of cocaine, a violation of La. R.S. 40:967. At his arraignment, Matthews entered a plea of not guilty. The court found probable cause, and denied the defense motion to suppress the evidence. The court found Matthews guilty of attempted possession of cocaine. The State filed a multiple bill charging Matthews as a second offender. Matthews pled guilty to the multiple bill of information, waived all delays in sentencing, and was sentenced pursuant to La. R.S. 15:529.1 to fifteen months, with credit for time served, sentence to run concurrent with any other sentence. Thereafter, Matthews filed a *pro se* application for post conviction relief, asserting denial of the right to appeal. The trial court denied Matthews' application. This Court reversed the trial court's denial of the application for post conviction relief, and ordered the trial court to grant Matthews an out-of-time appeal, unless the lower court determined that Matthews waived his right to appeal. On October 11, 2002, the trial court ordered an out-of-time appeal.

STATEMENT OF FACT

Officer Mark Osborne testified that on April 26, 2000, at approximately 10:20 a.m. a man near the House of Blues in the French Quarter flagged him down concerning an assault on a woman that had just occurred. The man described the perpetrator, whereupon Osborne rode his scooter to the House of Blues in search of the perpetrator. As Osborne rode in the 200 block of Chartres Street, he saw the defendant, who fit the description of the suspect, sitting in a red van. Osborne approached the van and asked the defendant for his driver's license. The defendant exited the van and became involved in an altercation with someone on the sidewalk. The defendant then pushed past Osborne on the street and attempted to escape. Osborne pursued the defendant and finally apprehended him in the 700 block of Canal Street after a brief chase and another attempt to escape after Osborne had begun to handcuff him. Osborne frisked the defendant for weapons and then turned him over to another officer for transport to the police station.

Officer Janet Bailey testified that she assisted Officer Osborne in transporting the defendant to the station in her police unit. Once Officer Bailey arrived at the police station, she frisked the defendant again and discovered what appeared to be drugs.

The State and defense stipulated that, if called to testify, NOPD criminalist Harry O'Neil would be qualified as an expert in the analysis and testing of controlled dangerous substances, and that he would further testify that the substance seized from the defendant after his arrest proved to be rock cocaine.

ERRORS PATENT

A review for errors patent on the face of the record reveals none.

ASSIGNMENT OF ERROR

In a sole assignment of error, the defendant argues that the trial court erred in failing to permit him to substitute his counsel on the day of trial.

Prior to commencement of the trial, the following exchange occurred:

THE DEFENDANT:

I can't mess with you. Yesterday you said, Lock me up where I need to be, and that was unprofessional right there, so I don't think I want you to represent me. That was very unprofessional.

He said, Lock me up where I need to be, alone, you know what I'm saying, that mean he not helping me – you know, he not helping me.

DEFENSE COUNSEL:

Your Honor, we have not gotten along very well, that's correct. I can represent Mr. Matthews --

THE DEFENDANT:

No, you can't, not with a statement like that.

THE COURT:

Well, Mr. Matthews, Mr. Whittaker is your attorney –

THE DEFENDANT:

I can't – I can't – I can't work with him. Mr. Quinlan, I'm honest, you know what I'm saying, he told me, Lock me up where I need to be, and I think that was very unprofessional for him to even make a statement like that, you know what I'm saying? I think it was very unprofessional.

THE COURT:

Mr. Matthews, do you understand Mr. Whittaker's – Is he a triple lifer? Is he a triple lifer?

THE STATE:

He's a double, Judge. He's a double.

THE COURT:

Well, Mr. Matthews, Mr. Whittaker is your attorney and he will be your attorney for this trial which we're going to do today.

THE DEFENDANT:

I need to file some type of motion. I don't think – We're not going to make it, your Honor. He not going to give me no type of justice with making statements like that.

THE COURT:

Well, it's going –

DEFENSE COUNSEL:

Your Honor, there's no question Mr. Matthews and I do not see

eye-to-eye. We got in several arguments. He did not like some of the things I was saying about the case or about his legal arguments referencing the case. Having said all that, I'm happy to represent him, I'm prepared to represent him and I'm confident I will do an aggressive and zealous job on his behalf.

THE COURT:

Okay. All right, Mr. Mathews, the Court will note your objection for the record for any appellate purposes you objected to Mr. Whittaker being your lawyer, so on appeal, if an appeal is necessary, that will be one of the issues you can bring up on appeal. But we are going to go forward with it this morning.

In *State v. Lookadoo*, 2002-2516, (La. App. 4 Cir. 4/30/03), 847 So. 2d 645 citing *State v. Harrison*, 2000-0213 (La.App. 4 Cir. 2/21/01), 782 So.2d 86, 91, this Court addressed the issue:

“As a general proposition a person accused in a criminal trial has the right to counsel of his choice.” *State v. Jones*, 97-2593, p. 3 (La.3/4/98), 707 So.2d 975, 977, quoting *State v. Harper*, 381 So.2d 468, 470-71 (La.1980); La. Const. art. I, S 13 (at every stage of a criminal proceeding a defendant “is entitled to assistance of counsel of his choice”). However, the right is not absolute, and it “must be exercised at a reasonable time, in a reasonable manner, and at an appropriate stage within the procedural framework of the criminal justice system.” *State v. Trepagnier*, 97-2427, p. 8 (La.App. 4 Cir. 9/15/99), 744 So.2d 181, 188, quoting *State v. Leggett*, 363 So.2d 434, 436 (La.1978). “Thus, the Louisiana Supreme Court has repeatedly upheld the trial court's denial of motions made on the day of trial based upon the defendant's dissatisfaction with appointed counsel. See *State v. Seiss*, 428 So.2d 444, 447 (La.1983) and cases cited therein.”

“There is no constitutional right to make a new choice of counsel on the very date trial is to begin, with the attendant necessity of a continuance and its disrupting implications.” *State v. Leggett*, 363 So.2d 434, 436 (La.1978).

Id. at 646.

This Court concluded in *Lookadoo* that even if defendant could have arranged for new counsel, he had no constitutional right to make that change the day of trial. *Lookadoo*, 847 So.2d at 647.

In this case, as in *Lookadoo*, the defendant sought a change of counsel on the day of trial, arguing that he had no confidence that defense counsel was acting in his best interest. Additionally, defendant maintains that counsel should have emphasized to the court through vigorous cross-examination that discrepancy in the testimony given by the State's witnesses. Specifically, the defendant contends that counsel should have strenuously argued that Officer Osborne's initial frisk of the defendant failed to discover any contraband, but that Officer Bailey's subsequent frisk of the defendant allegedly did.

During cross-examination in this case, defense counsel did elicit testimony from Officers Osborne and Bailey that Osborne did not find contraband during his initial frisk of the defendant. Officer Osborne explained that as a result of the defendant's repeated attempts to escape, even after Osborne handcuffed him, he (Osborne) "patted him down for weapons real fast and put him the back of Officer Bailey's car." Officer Osborne subsequently acknowledged that contraband was seized from the

defendant, but that “[he] didn’t recover it.” While the defendant may complain that defense counsel should have been more forceful in his cross-examination, counsel’s questioning of the witnesses apprised the trial judge of the discrepancy that Officer Bailey’s frisk of the defendant produced contraband, while Officer Osborne’s had not.

In this case, defense counsel thoroughly cross-examined each witness, and there is nothing in the record to suggest that counsel’s representation was less than that constitutionally guaranteed the defendant.

Considering the facts and circumstances of this case, the trial court did not err in denying the defendant’s request for a change of counsel on the day of and immediately prior to the start of his trial. There is no merit to this assignment of error.

CONCLUSION

We affirm the conviction and sentence.

AFFIRMED