

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 0821

STATE OF LOUISIANA

VERSUS

DENNIS ARTHUR KNOWLES

Judgment Rendered: December 28, 2006

On Appeal from the Twenty-Second Judicial District Court
In and For the Parish of St. Tammany
State of Louisiana
Docket No. 316,513

Honorable William J. Knight, Judge Presiding

Kathryn Landry
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Counsel for Appellee
State of Louisiana

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Slidell, LA

Counsel for Defendant/Appellant
Dennis Arthur Knowles

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

JMC
RHP
guy

McCLENDON, J.

Defendant, Dennis Arthur Knowles, was charged by bill of information with theft (value over \$500.00), in violation of LSA-R.S. 14:67. He initially pled not guilty. Prior to trial, defendant withdrew his not guilty plea and entered a plea of guilty as charged. Following a **Boykin** examination, the trial court accepted defendant's guilty plea. Defendant was sentenced to three years imprisonment at hard labor. The sentence was suspended and defendant was placed on active probation for three years subject to the special condition that he pay restitution to the victim. The trial court stated that defendant would be allowed to withdraw his guilty plea "should an agreeable restitution amount not be reached." Because the parties were unable to agree on an amount, a restitution hearing was held on November 3, 2005. At the conclusion of the hearing, the trial court ordered defendant to pay restitution in the amount of \$29,075.11. Defendant moved for reconsideration of the restitution amount, and the trial court denied the motion. Defendant now appeals, asserting three assignments of error:

1. The trial court erred in denying defendant's continuance of the restitution hearing held on November 3, 2005.
2. The trial court erred in failing to give defendant a payment schedule for his restitution.
3. The trial court erred in finding restitution was due in the amount of \$29,075.11.

FACTS

The bill of information indicates that defendant committed the instant offense during the period of January 1, 1998 to March 6, 1998. Because defendant pled guilty, the facts of the offense were never fully developed in the record.

ASSIGNMENT OF ERROR ONE

In his first assignment of error, defendant contends the trial court erred in denying defendant's continuance of the restitution hearing. On appeal, defendant asserts that because of the devastation caused by Hurricane Katrina and the dislocation of the legal community in the Slidell area, the trial court's failure to allow a continuance was an abuse of discretion. Defendant further asserts that he was prejudiced by this abuse as his counsel was unable to properly prepare for cross-examination of the state's witnesses.

The state contends, however, that the denial of the motion to continue was correct as defendant was sentenced in February of 2003, and the matter was still pending. The state further argues that defendant's motion for continuance was not in writing, nor was it filed at least seven days prior to the commencement of trial, as required by LSA-C.Cr.P. art. 707.

Recognizing the catastrophic effect of the 2005 hurricane season, the supreme court, in **State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State**, 06-2030, pp. 2-3 (La. 8/25/06), 937 So.2d 313, 316-17, stated the following:

On August 29, 2005, Hurricane Katrina devastated the Gulf South region of the United States, including large land areas in the states of Louisiana, Mississippi and Alabama. In the southeastern portion of Louisiana, the storm surge swept across the coastal areas, causing extensive damage to property. In the City of New Orleans, where the levees failed, flood waters swamped large portions of the City. The physical devastation to homes and businesses in the aftermath of the storm itself and the subsequent flooding have additionally resulted in the displacement of a large portion of the population of the State who formerly resided in the storm-devastated areas. These former residents of southeastern Louisiana were scattered across all fifty states by Hurricane Katrina and hundreds of thousands are estimated to still be displaced outside of the State. A staggering number of houses and businesses in Louisiana were either destroyed or suffered major damage.

On September 25, 2005, Hurricane Rita hit the southwestern portion of the State of Louisiana. The storm surge associated with Hurricane Rita inundated coastal communities, leveled buildings and breached levees. As with Hurricane Katrina, mass displacement of residents occurred, this time of the citizens formerly residing in the southwestern segment of the state. Many of these citizens continue to be displaced at this time.

In the aftermath of these two storms, Governor Blanco issued several Executive Orders that extended various legal deadlines that were impossible to meet under the twin circumstances of physical devastation of property and displacement of citizens. See Executive Order Nos. KBB 2005-32, KBB 2005-48 and KBB 2005-67. (Footnote omitted.)¹

In response to these storms, the legislature codified the executive orders, in LSA-R.S. 9:5821, which suspended and extended legal deadlines.²

Louisiana Revised Statute 9:5821, provides:

A. The legislature finds that Hurricanes Katrina and Rita created a statewide emergency disrupting and forcing the closure of certain courts and public offices and further resulting in the displacement of courts, offices, clients, and counsel. This Chapter is enacted for the benefit and protection of the state as a whole and its citizens, and to prevent injustice, inequity, and undue hardship to persons who were prevented by these hurricanes from timely access to courts and offices in the exercise of their legal rights, including the filing of documents and pleadings as authorized or required by law. Therefore, this Chapter shall be liberally construed to effect its purposes.

B. The action of the governor of this state in issuing Executive Orders KBB 2005-32, 48, and 67 is hereby approved, ratified, and confirmed subject to the provisions of R.S. 9:5822 through 5825.

Thus, in view of Hurricanes Katrina and Rita, storms which are recognized as the worst natural disasters ever to have occurred in the United

¹ In the *State* case, the supreme court upheld the constitutionality of statutes extending the prescriptive periods for filing insurance claims arising from Hurricanes Katrina and Rita. *State*, 06-2030 at p. 1, 937 So.2d at 316.

² 2005 La. Acts, 1st Ex. Sess., No. 6, enacted emergency provisions that were re-designated in § 3 and entitled, "Suspension or Extension of Prescription, Peremption, and other Legal Deadlines during Hurricanes Katrina and Rita," comprised of R.S. 9:5821 to 9:5835, respectively.

States, as well as the responses thereto, we look to the specific circumstances of this case.

In his appellate brief, counsel for defendant states that when Hurricane Katrina struck, he was forced to evacuate to Mobile, Alabama, and that both his office and home suffered severe flood damage. He specifically alleges that all of his files relating to defendant herein were destroyed by five feet of flood water. Upon his return to Slidell, counsel stated that he first learned of the restitution hearing set for November 3, 2005, and unable to attend, sent his associate to attend the hearing. At the restitution hearing, counsel for defendant requested a continuance, stating that he had just been retained and that he needed time to review the subject invoices. Despite the fact that counsel had no time to prepare and was without any documentation, the trial court denied defense counsel's request for a continuance.³

Under the specific facts of this case, we find that the trial court abused its discretion in denying defendant's motion for a continuance of the restitution hearing. Barely two months had passed since Hurricane Katrina, and any documentation that defendant's attorney had regarding this matter was destroyed by the storm. Without the benefit of time and with the loss of his file, counsel was unable to prepare a proper defense. We conclude that the interests of justice required granting the continuance. Accordingly, we vacate the restitution order, grant defendant's request for a continuance, and remand this matter for further proceedings.

In light of the action taken herein, we pretermitt discussion of defendant's remaining assignments of error.

³ While we acknowledge, based solely on the record, that defense counsel did not specifically argue the extent of hardship resulting from Hurricane Katrina, we note that a bench conference was held prior to defense counsel's motion.

ORDER OF RESTITUTION VACATED; MOTION FOR CONTINUANCE GRANTED; MATTER REMANDED FOR FURTHER PROCEEDINGS.