NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 1268

EJG
JKW
CEH

STATE OF LOUISIANA

VERSUS

STANLEY LINDSEY

Judgment Rendered: December 28, 2006

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Case No. 003-05-0854

The Honorable Richard Anderson, Judge Presiding

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Doug Moreau District Attorney Stacy L. Wright Assistant District Attorney Baton Rouge, Louisiana	Counsel for Appellee State of Louisiana
Mary E. Roper Baton Rouge, Louisiana	Counsel for Defendant/Appellant Stanley Lindsey
Stanley Lindsey Lake Providence, Louisiana	Pro Se

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

GAIDRY, J.

The defendant, Stanley Lindsey, was charged by bill of information with armed robbery, a violation of La. R.S. 14:64.[1] With counsel present, the defendant pled not guilty. Following a jury trial, the defendant was found guilty as charged. The defendant filed a *pro se* motion for stay of sentencing and for mistrial, which the trial court treated as a motion for a new trial. The trial court denied the motion, and, at the request of the defendant, sentencing was postponed pursuant to the twenty-four hour waiting period between the denial of a motion for new trial and sentencing. The defendant was sentenced to twenty-five (25) years at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

On January 9, 2005, the defendant entered a Circle K convenience store on Nicholson Drive in Baton Rouge and robbed the clerk, Tarongela Smith, at gunpoint.[2] Out of fear of taking too long to retrieve the money, Tarongela handed the defendant the till from the cash register.[3] The defendant, who was wearing a skull cap with a brim on it and sunglasses, left the store with the till. Joshua Williams, a customer who was getting gas at the Circle K, saw the defendant walk out of the store with the till in one hand and a gun in the other hand. Joshua saw the defendant get in a truck and drive away. The police arrived shortly thereafter, and Joshua gave them a description of the truck.

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[1] The defendant was also charged with aggravated criminal damage to property, a violation of La. R.S. 14:55. However, the charge was subsequently dismissed.

[2] The police narrative of the robbery contained in the record indicates that the handgun used by the defendant was a Daisy BB handgun.

[3] The police narrative of the robbery contained in the record indicates the till contained $87.77.

Within minutes of receiving the description of the truck the defendant was driving, Baton Rouge Police Officer Brandon Smith, who was on road patrol, noticed the truck driving on Nicholson Drive. Officer Smith got behind the truck and called for backup. Baton Rouge Police Officer Caleb Eisworth arrived moments later to assist Officer Smith. The officers turned on their lights and sirens and followed the defendant until he came to a stop about a minute later. The defendant then backed up his truck into Officer Smith's vehicle. Following this, the defendant bailed out of the truck and ran. The defendant was the only one in the truck. The officers pursued the defendant on foot, but lost sight of him. A perimeter was set up, and William Clarida, a K-9 police officer, and his police dog were called to the scene. The dog found the defendant hiding behind a residence. The defendant was handcuffed and *Mirandized*. Officer Clarida testified at trial that, prior to any officers asking the defendant any questions, the defendant said that he had robbed the store because he was out of work and he was tired of being broke.[4] The defendant had $78.00 on his person and on the seat of the truck that the defendant was driving, officers found a cash register till, a handgun, sunglasses, and a black stocking cap with a brim.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in refusing to appoint new counsel for him. Specifically, the defendant alleges that his appointed counsel came to see him only one time prior to trial, she was not trying to help him, and she was not acting in his best interest.

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[4] Officer Eisworth also testified he heard the defendant make this statement, but he was unsure whether the defendant made the statement before or after he was *Mirandized*.

On the first day of trial, just prior to jury selection,[5] the defendant requested new counsel because he felt that Tonya Lurry, his court-appointed counsel from the public defender's office, was not acting in his best interest. The defendant explained to the trial court:

> I don't think she's for my best interest. I have talked to her several different -- the one time that she did come see me concerning my case and everything that I talked to her about she was like on the defense toward what I was talking to her about toward my case. In other words, she was like wasn't trying to help me. She wasn't seeing this side of the story, of my side of the story concerning my case. Therefore, I feel like she ain't -- not for my best interest.[6]

Both the federal and state constitutions provide that the accused has the right to counsel of his own choosing to defend him on a criminal charge. However, this right does not permit arbitrary action which obstructs orderly procedures in the courts. Rather the right to choose one's attorney is a right to be exercised at a reasonable time, in a reasonable manner, and at an appropriate stage within the procedural framework of the criminal justice system. There is no constitutional right to make a new choice of counsel on the very date the trial is to begin, with the attendant necessity of a continuance and its disrupting implications to the orderly trial of cases. Once the trial day has arrived, the question of withdrawal of counsel rests largely within the discretion of the trial judge. The Louisiana Supreme Court has frequently upheld the trial court's denial of motions for continuances or withdrawal of counsel made on the day of trial when defendant is dissatisfied with his present attorney but had ample opportunity

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[5] A jury trial commences when the first prospective juror is called for examination. La. Code Crim. P. art. 761.

[6] The defendant filed, among other *pro se* motions, a *pro se* motion captioned, "Motion Requesting The Recusal of Counsel, For Suffiant (sic) Counsel To Be Appointed And Continuance Of Sentencing." The motion is not date stamped, so it is unclear when the motion was filed. Also, the index to the record lists the filing date of this motion as "No Date." It would appear from the contents of the motion that it was filed sometime after the defendant's trial, since the defendant references the date of his trial, January 30, 2006. Following the trial, but prior to sentencing, this motion was taken up for argument on March 31, 2006. When the trial court asked the defendant, in proper person, if he wanted to add anything besides what was in the motion, the defendant responded in the negative. The trial court denied the motion, and the defendant objected.

to retain private counsel. See *State v. Leggett*, 363 So.2d 434, 436 (La. 1978).

In the instant matter, the record before us indicates that the defendant did not ask for new counsel until the first day of trial on January 30, 2006. As early as April of 2005, Ms. Lurry had been representing the defendant. The defendant had adequate opportunity to request or to retain new counsel prior to his trial. As noted by the trial court in denying the defendant's request for new counsel at the beginning of the trial: "We are set for trial today. All of this is really late. She's very competent, and we are ready to have a trial." Under these circumstances, we find the trial court did not abuse its discretion in denying the defendant's request for new counsel. See *State v. Seiss*, 428 So.2d 444, 448 (La. 1983).

We further note that, while never specifically alleged in his brief, the defendant has, in effect, made a claim of ineffective assistance of counsel. He asserts in his brief that his counsel came to see him only once prior to his trial, and that when he tried to explain to the trial court the deficiencies in his counsel's performance, the trial court refused to listen. The defendant argues the trial court should have inquired into more details about the deficiencies of counsel's performance, and whether counsel had been able to devote sufficient time to the preparation of his case. Thus, to the extent the defendant is arguing ineffective assistance of counsel, we will address the issue.

A claim of ineffective assistance of counsel is more properly raised by an application for post-conviction relief in the district court, where a full evidentiary hearing may be conducted. However, where the record discloses sufficient evidence to decide the issue of ineffective assistance of counsel when raised by assignment of error on appeal, it may be addressed in the

interest of judicial economy. *State v. Carter*, 96-0337, p. 10 (La. App. 1st Cir. 11/8/96), 684 So.2d 432, 438.

The allegation of ineffective assistance of counsel raised in the defendant's brief cannot be sufficiently investigated from an inspection of the record alone. Other than the assertion that his counsel came to see him only one time prior to trial, the defendant provides no support in his brief for why he was entitled to new counsel or how his counsel's performance at trial was deficient. Decisions relating to investigation, preparation, and strategy cannot possibly be reviewed on appeal. Only in an evidentiary hearing in the district court, where the defendant could present evidence beyond what is contained in the instant record, could this allegation be sufficiently investigated.[7] Accordingly, this allegation is not subject to appellate review. See *State v. Albert*, 96-1991, p. 11 (La. App. 1st Cir. 6/20/97), 697 So.2d 1355, 1363-1364.

The assignment of error is without merit. Defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.

[7] The defendant would have to satisfy the requirements of La. Code Crim. P. art. 924, et seq., in order to receive such a hearing.