

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

NO: KW 22-00425

Judgment rendered and mailed to all parties or counsel of record on January 31, 2023.

STATE OF LOUISIANA
VERSUS
TRAVIS HEINZE

FILED: 06/29/22

On application of Travis Heinze for Writ of Review in No. 170969 on the docket of the Natchitoches City Court, Parish of Natchitoches City Court, Hon. Robert Charles Owsley.

Philip B. Adams

Counsel for:
Travis Heinze

Cloyd Benjamin

Counsel for:
State of Louisiana

Lake Charles, Louisiana, on January 31, 2023.

WRIT GRANTED AND MADE PEREMPTORY: On June 27, 2022, this court received Defendant's supervisory writ application following his conviction and sentence for resisting an officer. In his writ application, Defendant asserts four assignments of error: the trial court erred when it failed to provide the accused the assistance of counsel in his defense; the court erred when it failed to find Defendant not guilty of La.R.S. 14:108; the court violated Defendant's constitutional rights at trial; and the trial court erred in failing to rule on the merits of his motion for post-verdict judgment of acquittal and his motion for new trial with supplements.

Under *State v. Hearold*, 603 So.2d 731 (La.1992), issues of sufficiency of the evidence are to be reviewed first before considering assignments of trial error. Based on the officers' imputed collective knowledge, the accurate description and tip provided by the librarian, and the officers' observations, this court finds there was sufficient reasonable suspicion to approach, detain, and question Defendant. During the valid investigatory stop, Defendant continually refused to provide his name and any identifying information, in violation of La.R.S. 14:108.

Although sufficient evidence was introduced to support the conviction, Defendant's conviction and sentence should nonetheless be vacated. The supreme court has held that an indigent defendant in Louisiana has the constitutional right to appointed counsel in any misdemeanor case punishable by a term of imprisonment. *State v. Stevison*, 97-3122 (La. 10/30/98), 721 So.2d 843. In this case, Defendant was subject to a term of imprisonment, and Defendant maintained the position that he was indigent. The trial court indicated that it had reached out to the public defender's office which determined Defendant had sufficient resources to hire private counsel; however, no evidence attesting to Defendant's financial status was placed on the record. The trial court then assumed Defendant was choosing to move forward since he did not hire private counsel. However, under *State v. Daigle*, 07-928 (La.App. 3 Cir. 1/30/08), 974 So.2d 869, before a defendant may waive his right to counsel, the trial court must determine whether the defendant's waiver is intelligently and voluntarily made. In the instant case, the trial court failed to adequately advise Defendant of the dangers and disadvantages of self-representation. The record does not establish that Defendant chose self-representation "with eyes open." *Id.* at 876. Thus, without further evidence that Defendant had sufficient funds to hire a private attorney and made the conscious decision to proceed on his own and waive his right, Defendant's constitutional right to be represented by counsel was violated. The trial court should have properly determined if Defendant intelligently and knowingly waived his right to counsel, and this error cannot be considered harmless.

Accordingly, the trial court abused its discretion by proceeding without first finding a valid waiver of Defendant's right to counsel. Therefore, Defendant's conviction and sentence are vacated, and Defendant is hereby granted a new trial. This matter is remanded for further proceedings consistent with this ruling.

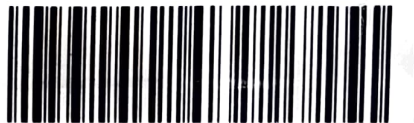
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