

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2007 KA 1344**

**STATE OF LOUISIANA**

**VERSUS**

**ROBERT ROUSSELL**

Judgment Rendered: February 8, 2008

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On Appeal from the 17th Judicial District Court  
In and For the Parish of Lafourche  
Trial Court No. 375781

Honorable Jerome J. Barbera, III, Judge Presiding

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Robert Roussell

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**BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.**

**HUGHES, J.**

The defendant, Robert Roussel, was originally charged by bill of information with distribution of cocaine (count 1), a violation of LSA-R.S. 40:967, distribution of methamphetamine (count 2), a violation of LSA-R.S. 40:967, and distribution of Xanax (Alprazolam) (count 3), a violation of LSA-R.S. 40:969. He was arraigned on June 24, 2002 and pled not guilty to all of the charges. Prior to trial, the state nol-prossed the distribution of methamphetamine charge (count 2). Following a jury trial on the two remaining charges, the defendant was convicted as charged. On the distribution of cocaine conviction, the defendant was sentenced to imprisonment at hard labor for ten years, with the first two years to be served without benefit of probation, parole, or suspension of sentence.<sup>1</sup> He was also sentenced to a concurrent term of five years imprisonment at hard labor on the distribution of Xanax conviction. The defendant now appeals urging in a single assignment of error that the trial court erred in allowing him to be convicted without first arraigning him on the amended bill of information.

Finding no merit in the assigned error, we affirm the defendant's convictions and sentences.

**FACTS**

In early 2002, Narcotics Agent Jason Guidry of the St. Charles Parish Sheriff's Office assisted the Lafourche Parish Narcotics Task Force with an undercover narcotics investigation in Lafourche Parish. Agent Guidry and a confidential informant posed as drug users and purchased drugs from street-

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<sup>1</sup> We note that with regard to the sentence for the distribution of cocaine conviction, the minute entry does not conform to the sentencing transcript in that it does not state that only the first two years of the sentence are to be served without benefit of probation, parole, or suspension of sentence. Where such a discrepancy exists, the transcript prevails. **State v. Lynch**, 441 So.2d 732, 734 (La. 1983), **State v. Smith**, 2000-0423 (La. App. 1 Cir. 11/3/00), 769 So.2d 1280, 1283 n. 2, writ denied, 2001-0993 (La. 12/14/01), 804 So.2d 630.

level drug dealers. On January 18, 2002, the defendant sold eighty dollars worth of crack cocaine to Agent Guidry. Later, on March 6, 2002, the defendant sold Agent Guidry thirteen Xanax pills. Both transactions were captured on videotape.<sup>2</sup>

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, the defendant contends that it was reversible error for the trial court to have convicted him without first arraigning him on the amended bill of information. He argues that although his voluntary absence after the trial commenced waived his right to be present for the remainder of the trial, his voluntary absence did not waive his right to be rearraigned after the state amended the bill of information.

The record before us reflects that the defendant was physically present when the trial began. After the selection of the jury, the trial court recessed for lunch. The court later noted on the record that the defendant was present with his attorney when the court reconvened after the lunch recess. However, the defendant later exited the courtroom and did not return. In response to questioning by the court regarding the defendant's absence, the defendant's attorney advised that he did not know the whereabouts of his client. Upon finding that the defendant voluntarily absented himself after the trial had already commenced, the trial court, over defense objection, ruled that the trial would continue without the defendant.

Immediately thereafter and prior to the reading of the bill of information to the jury, the prosecutor asked whether an earlier amendment of the bill of information, re-designating the distribution of Xanax charges as count 2 because the original count 2 had been nol-prossed, required that the

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<sup>2</sup> The particular facts and circumstances surrounding the commission of the offenses are not relevant to the issue raised in this appeal and will not be discussed herein.

defendant be rearraigned. The trial court indicated that it did. Thereafter, the state requested permission to remove the numerical re-designation to avoid the need for rearraignment. The trial court allowed the state to strike its amendment. Counsel for the defendant indicated that he had no objection to returning the bill of information to its original form.

Handwritten notations on the bill of information contained in the record reflect that the numeral “3” in count 3 was replaced with a numeral “2.” Consistent with the dialog contained in the transcript, the numeral “2” was then stricken and replaced with a “3,” thereby returning the bill of information to its original form. Therefore, contrary to the defendant’s assertions, there was no need to rearraign the defendant. The record in this case clearly reflects that the substance of the charges in the bill of information was never amended, only the numerical designations. After the state dismissed the distribution of methamphetamine charge, the distribution of cocaine and distribution of Xanax charges, to which the defendant had already pled not guilty, remained the same. Even the minor numerical re-designation of those charges (an amendment only to the form of the bill) was subsequently withdrawn by the state, without any objection from defense counsel. Because the bill of information remained as originally charged, in substance and in form, there was no need to rearraign the defendant. The defendant’s June 24, 2002 arraignment was sufficient.

Moreover, the function of an arraignment is to notify the defendant of the charges against him. See LSA-C.Cr.P. art. 551(A). As previously noted, the defendant was arraigned on the original bill of information. His plea of not guilty would have also applied to the amended bill of information since the minor amendment did not alter the nature of the charged offenses. See

**State v. Bluain**, 315 So.2d 749, 752 (La. 1975). See also **State v. Davis**, 385 So.2d 193, 200 (La. 1980). Therefore, under these circumstances, even if the amendment in question had remained, a second arraignment would not have been necessary. This assignment of error lacks merit.

**CONVICTIONS AND SENTENCES AFFIRMED.**