NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

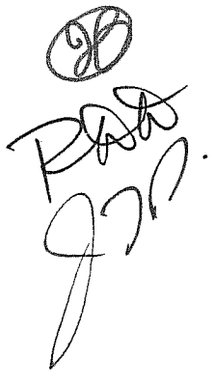
FIRST CIRCUIT

2006 KA 1979

STATE OF LOUISIANA

VERSUS

JERRY MOORE



Judgment Rendered: March 28, 2007

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On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 355706-1

Honorable Donald M. Fendlason, Judge Presiding

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Walter P. Reed
District Attorney
Covington, LA
and
Kathryn W. Landry
Baton Rouge, LA

Counsel for Appellee
State of Louisiana

Mary E. Roper
Baton Rouge, LA

Ernest J. Bauer, Jr.
Mandeville, LA

Counsel for Defendant/Appellant
Jerry Moore

* * * * * * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

HUGHES, J.

The defendant, Jerry Moore, was initially charged by grand jury indictment with one count of first degree murder, a violation of La. R.S. 14:30. He pled not guilty.[1] Thereafter, the charge was amended to one count of second degree murder, a violation of La. R.S. 14:30.1, and the defendant pled not guilty. Following a jury trial, he was found guilty as charged by unanimous verdict. He moved for a new trial, but the motion was denied. He was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. He now appeals, designating three assignments of error. We affirm the conviction and sentence.

ASSIGNMENTS OF ERROR

1. The evidence is legally insufficient to support the conviction of the defendant as a principal to second degree murder of the victim, where there was no evidence that the defendant contemplated the commission of any crime other than a burglary of an inhabited dwelling in his discussions with the man who killed the victim.

2. The defendant should have been provided an interpreter at all stages of the proceedings against him, specifically during interrogation, arraignment, and sentencing.

3. The trial court erred in allowing the statements of two people who allegedly witnessed an argument between the defendant and the victim on the day of the offense at issue and a prior burglary by the defendant of the victim's wife's car two years before the offense.

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[1]Jesse J. Montejo was also charged by the same indictment with the same offense. He was found guilty of first degree murder.

FACTS

The victim, Lewis "Lou" Ferrari, owned and operated ten dry cleaning stores in St. Tammany Parish and Tangipahoa Parish. He employed the defendant for over ten years to repair equipment at the stores. The victim's daily routine included picking up deposits from the Mandeville stores and taking the money to the bank. It was a well-known fact that the victim kept his money in the trunk of his car.

The victim was murdered on Thursday, September 5, 2002, a payday at his businesses. His Thursday routine included visiting his wife at their store on Gause, going to the grocery store after 3:30 p.m., and then meeting his wife and son for dinner at a restaurant between 6:00 p.m. and 6:15 p.m.

Hugh "Captain Humble" Dillard testified at trial. He owned "Captain Humble's," a restaurant on Pontchartrain located next to "Vera's Valet," one of the victim's dry cleaning stores. On September 5, 2002, between 8:15 a.m. and 9:00 a.m., Dillard heard the victim and the defendant having a "really bad, bad fight." Dillard was concerned for the victim's safety and asked his cook, Rich Garris, to come with him to the front of the restaurant to show the victim they were there to support him. The argument ended with the victim slamming the trunk of his car.

Birdie Sue Morrow also testified at trial. She was operations lady at Vera's Valet. On September 5, 2002, at approximately 9:15 a.m. or 9:30 a.m., the defendant and the victim were in the victim's office "loud talking." Thereafter, both men exited the office, and the victim stated to the defendant, "I am not afraid of you." Morrow had heard the victim make the same statement during an argument with the defendant approximately one month earlier. After the victim left Vera's Valet, the defendant left in a blue van driven by Jesse Montejo.

The victim's wife, Patricia Ferrari, indicated that in August and September of 2002 the relationship between the victim and the defendant had "spiraled down considerably" because the defendant would not respond to the victim's calls to work on equipment at the stores. Due to the defendant's failure to work, "the company" had decided to terminate his employment. She indicated the defendant knew the victim's routine and knew that he kept his money in the trunk of his car. Patricia Ferrari last saw the victim alive when he visited her on September 5, 2002 between 3:30 p.m. and 4:00 p.m. On September 5, 2002 at approximately 6:15 p.m., she went to look for the victim after he failed to meet her and their son at a restaurant. She discovered his body at their home. Groceries purchased by the victim were still in their bags on the kitchen counter. The victim's gun, which he kept in the nightstand, was missing. One of two floor safes had been opened.

The victim had been shot in the right eye and in the right side of his chest. The chest wound had been a contact wound. He was shot and killed with ammunition similar in size and with the same class characteristics as the ammunition provided to the police by his family. The victim's body did not reveal signs he had struggled and lividity was not fixed, indicating he had died within six to ten hours of being examined. Scrapings taken from under the nails of the victim's left hand matched the DNA of Montejo with the odds of a random match being approximately one in ten billion.

Patricia Ferrari indicated that in December 2000, the defendant had burglarized her vehicle but had been allowed to come back to work because the victim felt sorry for the defendant's children. Lewis Ferrari, III, the victim's son, also indicated the defendant knew the victim's routine, and that by September 2002, "the company" had decided to terminate the

employment of the defendant due to his unreliability. According to Lewis Ferrari III, at a conference between the victim and Lewis Ferrari III approximately one week before the victim's murder, the defendant walked into the room and stated to the victim, "I think I will just kill you," or "[Y]ou know, I will just kill you."

Police investigation indicated the blue van driven by Montejo had been seen in the victim's neighborhood between 4:15 p.m. and 4:35 p.m. on the day of the murder, and that the victim's car and the van were driven away from the victim's home at a high rate of speed at approximately 5:15 p.m. or 5:30 p.m. Additionally, the police believed that the victim had approximately $2,500 in his car. Approximately one-third of that amount was recovered following a search of the bedroom of Eric Gai (Montejo's stepbrother), and another third was connected to money spent by Montejo in the hours following the murder.

In an interview with the police on September 7, 2002, the defendant claimed Montejo first mentioned "rippin' Lou off" on Tuesday after picking up $20 from the victim. The defendant claimed he told Montejo, "No." The defendant claimed that on the Thursday of the murder, Montejo came over to his house at approximately 1:30 p.m., and then left to have lunch. When Montejo returned, he was asking about the victim, and the defendant claimed he repeatedly told Montejo, "No." The defendant claimed that, at approximately 2:30 p.m., he told Montejo that the Ferraris went out to dinner at approximately 6:00 p.m., and if "[Montejo] wanna go over there then do it." The defendant claimed he called Montejo at 5:00 p.m. and asked where he was. The defendant claimed Montejo stated he was "around the corner[.]" The defendant claimed he then asked if Grant, who ran a cleaner's in Mandeville, had called, and when Montejo answered negatively,

the defendant said "bye." When asked where he thought Montejo was when he said he was "around the corner," the defendant stated he thought Montejo was around the corner from the victim's house. The defendant claimed he next saw Montejo at approximately 7:30 p.m. Montejo looked nervous and stated, "something went wrong." The defendant claimed Montejo told him that Montejo had taken a black man from Algiers with him to the victim's house, and the victim had come home. The defendant claimed that when Montejo revealed that the black man had shot the victim twice, the defendant stated he did not want to hear any more. The defendant claimed Montejo then said that the victim had pulled out a gun and Montejo had shot him. He also stated the other guy had shot the victim. When asked if Montejo had disclosed how much money he got, the defendant claimed Montejo had not, but then added the defendant knew that the victim kept "at least a thousand, two thousand dollars in his car[.]" The defendant indicated he "helped out" with the burglary, but did not know the victim would be coming home and did not know anyone would be killed. The defendant stated he told Montejo that the victim's garage would be open, when the Ferraris would be going out to eat, and that the money would probably be in the bedroom. The defendant claimed Montejo tried to give him $700 or $800, but the defendant refused to take the money, with the exception of $60, which Montejo owed him.

The defendant also testified at trial. He claimed on the day of the murder he spent the morning repairing the toilet in his bathroom. He claimed Montejo came over in the morning, close to lunchtime. Montejo allegedly stated he needed money and asked about burglarizing the victim's house. The defendant claimed he told Montejo that he did not do residential burglaries, but Montejo kept asking about burglarizing the victim's house.

After Montejo left for lunch and returned, the defendant referred Montejo to Grant, who ran a cleaner's in Mandeville, as a potential source of work. The defendant claimed he told Montejo that if he (Montejo) was unable to make money with Grant, the defendant would give Montejo the money he needed.

The defendant claimed Montejo left between 1:30 p.m. and 2:30 p.m., stating he was going to visit his brother. The defendant claimed that a neighbor told him that Terry Boudreaux needed him to come over and bleed the brakes on his van. The defendant claimed that between 3:30 p.m. and 4:00 p.m., he called Montejo to see if he was at his brother's house in Gretna, but Montejo was in Slidell. The defendant claimed he went to Boudreaux's house and did not return back home until close to dark.

The defendant claimed that at approximately 7:30 p.m., Montejo came back to the defendant's house. Montejo handed the defendant some money and stated: "something went wrong." The defendant claimed Montejo stated that the victim had seen him and he had to run. The defendant also claimed Montejo indicated he had taken a black man over to the victim's house. The defendant claimed he tried to stop Montejo from telling him anymore, but Montejo stated the victim had been shot. The defendant claimed he returned the money to Montejo with the exception of $60, which Montejo owed him. The defendant conceded he had four felony convictions.

The defendant claimed he met Montejo approximately three weeks before the murder, while hitchhiking. The defendant claimed he paid Montejo to give him rides to work. The defendant claimed he talked to Montejo about burglaries because Montejo had just been released from prison after serving six years for burglaries. The defendant claimed that, weeks before the murder, Montejo asked to meet him at the victim's house

and asked him if the Ferraris left the garage door open. The defendant told Montejo, "I think so."

The defendant denied being at Vera's Valet and arguing with the victim on the day of the murder. He also denied ever threatening the victim. He claimed Lewis Ferrari, III had misunderstood the defendant's statement, "I'll kill your smile." The defendant denied any knowledge that the victim had a gun. He denied ever having a weapon, and denied seeing Montejo with a gun. He also denied that Montejo had ever spoken about any "violent stuff."

The defendant claimed that on the Tuesday before the murder, the victim wanted him to work at one of his stores, and the defendant sent Montejo to the victim to get $20 for gas. The defendant claimed Montejo showed up later with the $20 and stated, "Man, you know, this guy is loaded." The defendant claimed that Montejo had seen how much money the victim had in his briefcase. The defendant conceded that he may have told Montejo that the Ferraris got off at six and went out to dinner on Thursdays.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number 1, the defendant argues he only discussed the commission of a burglary of an inhabited dwelling with Montejo and did not discuss using a weapon to commit the burglary or to harm the victim.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which

states in part, "assuming every fact to be proved that the evidence tends to prove, in order to convict," every reasonable hypothesis of innocence is excluded. **State v. Wright**, 98-0601, p. 2 (La. App. 1 Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **Id.** at p. 3, 730 So.2d at 487.

The State's main theory at trial was that the defendant was guilty of second degree murder because he was a principal to an aggravated burglary,[2] armed robbery,[3] first degree robbery,[4] or simple robbery[5] at the victim's home, and the victim was killed during the commission of the offense.

Second degree murder is the killing of a human being when the offender is engaged in the perpetration or attempted perpetration of aggravated burglary, armed robbery, first degree robbery, or simple robbery,

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[2]Aggravated burglary is the unauthorized entering of any inhabited dwelling where a person is present, with the intent to commit a felony or any theft therein, if the offender: is armed with a dangerous weapon; or after entering, arms himself with a dangerous weapon; or commits a battery upon any person while in such place, or in entering or leaving such place. La. R.S. 14:60.

[3]Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon. La. R.S. 14:64(A).

[4]First degree robbery is the taking of anything of value belonging to another from the person of another, or that is in the immediate control of another, by use of force or intimidation, when the offender leads the victim to reasonably believe he is armed with a dangerous weapon. La. R.S. 14:64.1(A).

[5]Simple robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon. La. R.S. 14:65(A).

even though he has no intent to kill or inflict great bodily harm. La. R.S. 14:30.1(A)(2)(a).

All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals. La. R.S. 14:24.

However, the defendant's mere presence at the scene is not enough to "concern" him in the crime. Only those persons who knowingly participate in the planning or execution of a crime may be said to be "concerned" in its commission, thus making them liable as principals. A principal may be connected only to those crimes for which he has the requisite mental state. **State v. Neal**, 2000-0674, pp. 12-13 (La. 6/29/01), 796 So.2d 649, 659, cert. denied, 535 U.S. 940, 122 S.Ct. 1323, 152 L.Ed.2d 231 (2002).

State v. Smith, 98-2078 (La. 10/29/99), 748 So.2d 1139 (per curiam), involved the convictions of Jerry Smith, Gerrick Watts, and Bernard Myles for the second degree murder of the victim, Nazier "Mickey" Simmons. **Id.** at pp. 1-2, 748 So.2d at 1139-40. The defendants reached a common understanding that they would take money from the victim's home, which they felt was owed to them for working at the victim's bar. **Id.** at p. 2, 748 So.2d at 1140. While in the victim's home, the defendants were surprised by the unexpected arrival of the victim and his wife at the front door. **Id.** at pp. 3-4, 748 So.2d at 1141. Thereafter, Watts fatally shot the victim. **Id.** According to Watts and the other defendants, only Watts knew of the gun he had concealed in his waistband on the night in question and which he used to shoot the victim. **Id.** at p. 3, 748 So.2d at 1141.

In examining whether defense counsel labored under an actual conflict of interest, the court in **Smith** examined the felony-murder doctrine as applicable under the facts of the case, to-wit:

> In the context of a second degree, felony murder prosecution, Myles and Smith could not defend themselves simply by casting full blame on Watts for the murder of Simmons. Given their self-confessed intent to take Simmons's cash, all three defendants became responsible for the victim's murder if a jury determined that they had made an unauthorized and therefore illegal entry onto the premises, no matter how Smith and Myles sought to distance themselves from the fatal shots fired by Watts and without regard to whether they had even been aware that their companion was armed. In felony murder, "the mens rea of the underlying felony [provides] the malice necessary to transform an unintended homicide into a murder." *State v. Kalathakis*, 563 So.2d 228, 231 (La. 1990) (footnotes and citations omitted); see also 2 Wayne R. LaFave and Austin W. Scott, Jr., *Substantive Criminal Law*, § 7.5, pp. 211-12 (1986). Moreover, under general principles of accessorial liability, *see* La. R.S. 14:24, "all parties [to a crime] are guilty for deviations from the common plan which are the foreseeable consequences of carrying out the plan." 2 LaFave and Scott, *Substantive Criminal Law*, § 7.5, p. 212; *see also State v. Anderson*, 97-1301, p. 3 (La. 2/6/98), 707 So.2d 1223, 1224 ("Acting in concert, each man then became responsible not only for his own acts but for the acts of the other."). The risk that an unauthorized entry of an inhabited dwelling may escalate into violence and death is a foreseeable consequence of burglary which every party to the offense must accept no matter what he or she actually intended. *See State v. Cotton*, 341 So.2d 362, 364 (La. 1976) (if the co-perpetrator in an aggravated burglary was guilty of second degree murder because he shot and killed the victim, then Cotton, "as a principal [in the burglary] was likewise guilty of the same offense."). As we observed in *State v. Lozier*, 375 So.2d 1333, 1337 (La. 1979), "[b]urglary laws are not designed primarily to protect the inhabitant from unlawful trespass and/or the intended crime, but to forestall the germination of a situation dangerous to the personal safety of the occupants ... . In the archetypal burglary an occupant of a dwelling is startled by an intruder who may inflict serious harm on the occupant in his attempt to commit the crime or to escape from the house." A homicide committed during flight from an aggravated burglary, or to facilitate flight from the scene, therefore constitutes felony murder. *State v. Anthony*, 427 So.2d 1155, 1159 (La. 1983).

Smith, 98-2078 at pp. 7-8, 748 So.2d at 1143.

A thorough review of the record in this matter indicates that the evidence presented herein, viewed in the light most favorable to the State, proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of second degree murder and the defendant's identity as a principal to that offense. The evidence thus viewed indicated the defendant knowingly participated in the planning of the robbery or burglary that took the victim's life. The *mens rea* of the underlying felony provided the malice necessary to transform an unintended homicide into a murder. See **Smith**, 98-2078 at pp. 7-8, 748 So.2d at 1143.

This assignment of error is without merit.

ABSENCE OF INTERPRETER AT INTERROGATION, ARRAIGNMENT, AND SENTENCING

In assignment of error number 2, the defendant argues he had the right to an interpreter at interrogation, arraignment, and sentencing on the basis of La. R.S. 46:2361, 46:2363, 46:2364, and 15:270, and thus, the trial court erred in denying his motion to suppress his statements and erred in not providing an interpreter at arraignment and sentencing.

Louisiana Revised Statutes 46:2361 provides:

> It is the policy of this state to secure the rights of persons with hearing impairments who cannot readily understand or communicate in spoken languages and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of the courts, legislative bodies, administrative agencies, licensing commissions, departments, and boards of the state and its subdivisions unless qualified interpreters/transliterators are available to facilitate communication.

Louisiana Revised Statutes 46:2363 provides:

> The right of a hearing-impaired person[6] to the services of an interpreter/transliterator may not be waived except by a hearing-impaired person who requests a waiver. The failure of

[6]A "hearing-impaired" person means a person who, because of a hearing impairment, has difficulty understanding the communication occurring. La. R.S. 46:2362(2).

the hearing-impaired person to request the services of an interpreter/transliterator is not deemed a waiver of that right.

Louisiana Revised Statutes, in pertinent part, provides:

A. Whenever a hearing-impaired person is a party or witness at any stage involving direct communication with hearing-impaired persons or his legal representative or custodian during any judicial or quasi-judicial proceeding in this state or in its political subdivisions, including but not limited to proceedings of civil and criminal court, grand jury, before a magistrate, juvenile, adoption, mental health commitment, and any proceeding in which a hearing-impaired person may be subjected to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter/transliterator to interpret or transliterate the proceedings to the hearing-impaired person and to interpret or transliterate the hearing-impaired person's testimony.

Louisiana Revised Statutes, in pertinent part, provides:

A. In all criminal prosecutions, where the accused is deaf or severely hearing-impaired, he shall have the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the court. In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf or severely hearing-impaired, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court. The qualification of an interpreter as an expert witness is governed by the Louisiana Code of Evidence.

B. (1) In any case where an interpreter is required to be appointed by the court under this Section, the court shall not commence proceedings until the appointed interpreter is in court.

(2) The interpreter appointed in accordance with this Section shall take an oath or affirmation that he will make a true interpretation to the deaf or severely hearing-impaired person accused or being examined of all the proceedings of his case in a language that he understands, and that he will repeat said deaf or severely hearing-impaired person's answer to questions to counsel, court or jury, to the best of his skill and judgment.

(3) Interpreters appointed in accordance with this Section shall receive for their services an amount to be fixed by the judge presiding. When travel of the interpreter is necessary, all of the actual expenses of travel, lodging, and meals incurred by the interpreter in connection with the case in which he is appointed to serve shall be paid at the same rate applicable to state employees.

The issue of whether the defendant was provided an interpreter during questioning was addressed at the hearing on the defendant's motion to suppress his statements.

St. Tammany Parish Sheriff's Office Sergeant James Davis indicated that on September 6, 2002 at approximately 1:30 p.m., he came in contact with the defendant to take a statement from him. Sergeant Davis advised the defendant of his **Miranda** rights, the defendant indicated he understood those rights, and the defendant signed the portion of the rights-waiver form indicating he understood his rights. Sergeant Davis noticed the defendant had a problem with articulating certain words and wore a hearing aid. However, Sergeant Davis spoke loudly, and the defendant answered the questions asked of him and appeared to understand the questions. Sergeant Davis did not ask the defendant if he needed an interpreter, and the defendant did not ask for an interpreter.

St. Tammany Parish Sheriff's Office Detective Ralph Sacks indicated that on September 7, 2002 he came in contact with the defendant to take a statement from him. St. Tammany Parish Sheriff's Office Detective Johnny Morse read the defendant his **Miranda** rights, and the defendant indicated he understood those rights. Detective Sacks noticed the defendant had a hearing loss, and thus, spoke loudly and in close proximity to the defendant. The defendant answered the questions asked of him and appeared to understand the questions. Detective Sacks did not ask the defendant if he needed an interpreter, and the defendant did not ask for an interpreter.

St. Tammany Parish Sheriff's Office Detective Wade Major indicated that on September 7, 2002 at approximately 6:15 p.m., he came in contact with the defendant to take a statement from him. St. Tammany Parish Sheriff's

Office Detective Johnny Morse read the defendant his **Miranda** rights, and the defendant indicated he understood those rights. Detective Major noticed the defendant had a hearing loss, and thus, spoke loudly and faced the defendant as he questioned him. The defendant answered the questions asked of him and appeared to understand the questions. Detective Major did not ask the defendant if he needed an interpreter, and the defendant did not ask for an interpreter.

St. Tammany Parish Sheriff's Office Detective Jerry Hall indicated that on September 6, 2002 he came in contact with the defendant in Gretna, and the defendant agreed to accompany Detective Hall back to St. Tammany Parish. At approximately 3:03 a.m. Detective Hall advised the defendant of his **Miranda** rights, and the defendant indicated he understood those rights, and signed the rights-waiver portion of the rights form. Detective Hall noticed the defendant was wearing a hearing aid, and thus, spoke "fluidly" and looked straight at the defendant while they spoke. Detective Hall did not question the defendant concerning the homicide of the victim. The defendant answered the questions asked of him and appeared to understand the questions. Detective Hall did not offer the defendant an interpreter, and the defendant did not ask for an interpreter.

The defendant also testified at the suppression hearing. He claimed he had suffered from hearing problems his entire life. He claimed he tried to read people's lips, and did not hear people unless they spoke to him directly. He indicated he wore hearing aids in both ears, but the aids did not allow him to understand someone unless he could also read their lips.

On cross-examination, the defendant conceded he had spoken to the victim, Montejo, and others using a telephone and was not able to see the speaker's lips moving. He claimed, however, his telephone amplified voices.

The defendant claimed that at the time he was questioned concerning the offense, he was only wearing one hearing aid with a borrowed mold. He conceded, however, that he read his **Miranda** rights as they were explained to him. At trial, the defense presented testimony from Dr. David Muller, an expert in the field of audiology. Dr. Muller indicated the defendant was legally deaf and had a severe to profound bilateral, sensory neural, non-medically remedial hearing loss. Dr. Muller conceded, however, that the defendant did have residual hearing across many speech frequencies that permitted him to use amplification, i.e., hearing aids, to aid him in his speech-reading ability.

On cross-examination, Dr. Muller indicated that he tested the defendant's hearing while the defendant was not assisted by any hearing aids. Dr. Muller also conceded that he told the defendant that he (Dr. Muller) would be testifying in the defendant's case at trial, and the defendant could have overemphasized his hearing loss during the testing.

The trial court denied the motion to suppress. The court found the defendant understood the rights given to him and had testified he had read the rights forms and knew what they contained. The court noted that if a person has a hearing deficiency to the extent that he requires an interpreter, the burden is on that person to request an interpreter, especially in view of the fact that the officers testified the defendant's responses to their questions were appropriate. The court further noted it had observed the defendant during his testimony and the interpreter's role in the questioning of the defendant.

Initially, even were the defendant to be considered "deaf or severely hearing-impaired," Louisiana Revised Statutes 15:270 does not concern

interrogation, arraignment, or sentencing and thus is inapplicable to the defendant's argument.[7]

Further, as set forth in La. R.S. 46:2361, La. R.S. 43:2363 and 43:2364 concern the rights of persons with hearing impairments who cannot readily understand or communicate in spoken languages. The defendant's testimony, his recorded statements, and the testimony of the interviewing officers do not indicate he is a person with hearing impairments *who cannot readily understand or communicate in spoken languages*.

The defendant failed to move for an interpreter at arraignment or sentencing. An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the action which he desired the court to take, or of his objections to the action of the court, and the grounds therefor. La. Code Crim. P. art. 841.

It is well settled that for a confession or inculpatory statement to be admissible into evidence, the State must affirmatively show that it was freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451. Additionally, the State must show that an accused who makes a statement or confession during custodial interrogation was first advised of his **Miranda** rights. **State v. Plain**, 99-1112, p. 5 (La. App. 1 Cir. 2/18/00), 752 So.2d 337, 342.

The admissibility of a confession is, in the first instance, a question for the trial court; its conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession are accorded great weight and will not be overturned unless they are not supported by the evidence. Whether a showing of voluntariness has been made is analyzed on a case-by-case basis

[7]The defendant moved for, and was granted, an interpreter at trial.

with regard to the facts and circumstances of each case. The trial court must consider the totality of the circumstances in deciding whether or not a confession is admissible. **Plain**, 99-1112 at p. 6, 752 So.2d at 342.

The trial court's conclusions on the credibility and weight of the testimony relating to the voluntary nature of the defendant's statements are supported by the defendant's testimony, his recorded statements, and the testimony of the interviewing officers, and thus, will not be overturned.

This assignment of error is without merit.

TESTIMONY OF MORROW AND DILLARD; EVIDENCE OF BURGLARY OF PATRICIA FERRARI'S VEHICLE

In assignment of error number 3, the defendant argues that the testimony of Birdie Sue Morrow and Hugh "Captain Humble" Dillard regarding an argument between the defendant and the victim that allegedly occurred on the day of the victim's murder was improperly admitted under La. Code Evid. art. 403. The defendant also argues the admission of evidence regarding the prior burglary of Patricia Ferrari's car was also improperly admitted under La. Code Evid. art. 403.

A thorough review of the record indicates the evidence at issue was admitted without objection by the defense.[8] An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the action which he desired the court to take, or of his objections to the action of the court, and the grounds therefor. La. Code Crim. P. art. 841; La. Code Evid. art. 103(A)(1). Accordingly, the challenges to the admissibility of the evidence

[8]In regard to evidence of the defendant's burglary of Patricia Ferrari's vehicle, the State and the defense stipulated that on "August 24, 2004," the defendant had pled guilty to simple burglary of the vehicle on "December 11, 2002." The bill of information concerning the burglary, however, indicated the offense occurred on "December 11, 2000."

at issue were not preserved for appeal. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.