

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 1041

STATE OF LOUISIANA

VERSUS

CRAIG H. WAGER

Judgment Rendered: December 22, 2010

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 463,840

Honorable Richard A. Swartz, Judge

Walter P. Reed, District Attorney
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and
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State – Appellee

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Attorney for
Defendant – Appellant
Craig H. Wager

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

Handwritten signatures and initials in the left margin, including what appears to be 'JW' at the top, a signature that looks like 'R.A. Swartz', and another signature below it.

WELCH, J.

The defendant, Craig H. Wager, was charged by grand jury indictment with one count of aggravated rape, a violation of La. R.S. 14:42, and pled not guilty. He moved to suppress his confession but, following a hearing, the motion was denied. Following a jury trial, he was found guilty as charged. He was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. He now appeals, contending the trial court abused its discretion in denying the motion to suppress because the defendant's incriminating statement was the product of police manipulation and violation of his right to counsel. For the following reasons, we affirm the conviction and sentence.

FACTS

The victim testified at trial. She was seven years old. She identified the defendant in court, and indicated on December 29, 2008, she and her brother went to stay at his house. According to the victim, after her brother went to sleep, the defendant took off her pants and licked her on her "not nice."¹ She also indicated the defendant hurt her "not nice" by touching it with his finger.

On January 9, 2009, the defendant, then thirty-eight years old, gave an audiotaped statement concerning the offense. He denied ever touching the victim sexually, although he acknowledged that he did touch the victim's vagina. The defendant explained that when the victim and her brother were at his trailer, the victim complained about a "bo-bo" burning her on her butt. He stated that the victim pulled her pants down, leaned over his bed, and that he spread her buttocks to look for the sore. The defendant claimed that when he found the sore, he put an antibiotic ointment on it. According to the defendant, his right-hand ring finger did not bend, and he "inadvertently" touched the victim's vagina with the finger

¹ At trial, the State asked the victim, "And where on your body is your not nice? Can you point?" The next entry in the record is "(Witness complies.)" During her videotaped statement, the victim pointed to the vagina on a diagram of a girl as her "nice nice."

while pulling up her pants. The defendant insisted that if any of his saliva or spit was found on the victim's vagina, it was because he accidentally spit on her vagina while talking to her.

MOTION TO SUPPRESS

In his sole assignment of error, the defendant argues the trial court abused its discretion in denying the motion to suppress because his incriminating statement was the product of police manipulation and violation of his right to counsel.

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. Further, the State must show that an accused who makes a statement or confession during custodial interrogation was first advised of his **Miranda**² rights. **State v. Plain**, 99-1112, p. 5 (La. App. 1st Cir. 2/18/00), 752 So.2d 337, 342. Additionally, when a defendant alleges specific instances of police misconduct in reference to the statement, it is incumbent upon the State to specifically rebut the allegations. **State v. Vessell**, 450 So.2d 938, 942-43 (La. 1984).

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 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.

² **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See State v. Green, 94-0887, p. 11 (La. 5/22/95), 655 So.2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589, p. 6 (La. 12/1/09), 25 So.3d 746, 751.

In the instant case, prior to voir dire, the defendant filed a motion to suppress his "confession," arguing, *inter alia*, it was not given freely and voluntarily. Following a hearing, the trial court denied the motion, finding the taped statement obtained from the defendant and the testimony at the hearing indicated the defendant's statement was given freely and voluntarily after advice of rights and was not compelled by duress or inducements.

At the beginning of his audiotaped statement, the defendant indicated he understood he was under arrest, he had been advised of his rights, and he waived his rights. At the end of the audiotaped statement, St. Tammany Parish Sheriff's Office Deputy Scott Davis asked the defendant, "Did anybody with the Sheriff's Department promise you anything, threaten you in any way, in order for you to give this statement?" The defendant replied, "Other than I wouldn't go to prison for the rest of my life, no." Deputy Davis stated, "All right, but you understand you under arrest right now?" The defendant replied, "Yeah." Deputy Davis then stated, "You understand that you charged with a crime and the crime may be that you possibly can go to jail for life within the sentence." He added, "We have not promised you anything." The defendant insisted he had not touched the victim sexually. Deputy Davis asked the defendant, "Have you been beaten on?," and the defendant replied, "No, not by ya'll." Deputy Davis asked the defendant if he had been given water to drink when he asked for it, and he answered affirmatively. Deputy Davis asked the defendant if he had been allowed to "dip" when he wanted

to, and he answered affirmatively. Deputy Davis asked the defendant if he had been treated fairly by the police, and he answered affirmatively. Deputy Davis then asked the defendant, "So we did not threaten you, coerce you or anything for you telling your side?," and the defendant replied, "No, Sir."

Deputy Davis testified at the motion to suppress hearing. He indicated he advised the defendant of his **Miranda** rights when he arrested him. He denied the defendant asked for an attorney. He denied striking the defendant, denied physically abusing him, denied threatening him, denied making any promises to him, and denied offering him any inducements. Deputy Davis transported the defendant to the criminal investigations bureau, where he was advised of his rights using the St. Tammany Parish Sheriff's Department **Miranda** rights form. Deputy Davis read the form to the defendant, and the defendant signed the form indicating he understood the rights, and signed again indicating, "I have read the above statement of my rights and I understand each of those rights, and having these rights in mind[,] I waive them and willingly make a statement." Deputy Davis specifically denied that any promise was made to the defendant that if he gave a statement, he would not get life imprisonment. Deputy Davis also denied talking to the defendant about DNA.

St. Tammany Parish Sheriff's Office Investigative Captain Barney Turney also testified at the hearing on the motion to suppress. He spoke to the defendant, at the defendant's request, after the defendant had been advised of his **Miranda** rights. According to Captain Turney, the defendant did not ask to speak to an attorney. Captain Turney denied coercing the defendant, denied promising him anything, and denied offering him any inducements. He specifically denied making the defendant any promises for a particular sentence. He also specifically denied threatening to hit the defendant in the head.

The defendant also testified at the hearing on the motion to suppress. He

claimed Deputy Davis and another deputy arrested him and immediately started questioning him. The defendant claimed the deputies told him he was a liar and asked him how the DNA got on the victim's vagina. He claimed, "I was told that if I brought a lawyer in, that I would be brought to jail. They wouldn't be able to help me. That the conversations would be over. And that I would face life in prison." The defendant also claimed Captain Turney threatened to hit him in the head if he kept shaking his head no.

There was no error or abuse of discretion in the trial court's denial of the motion to suppress. The court's ruling on the motion to suppress indicates the court accepted the testimony of Deputy Davis and Captain Turney and rejected the testimony of the defendant. The court's conclusions on the credibility and weight of the testimony relating to the voluntary nature of the defendant's statement were supported by the evidence presented by the State.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.