

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 1805

STATE OF LOUISIANA

VERSUS

MICHAEL JEROME THOMPSON

Judgment Rendered: MAY 02 2014

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Trial Court Number 07-09-1025**

Honorable Donald Johnson, Judge Presiding

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Michael Jerome Thompson**

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

UJW
JEW
MJ

WHIPPLE, C.J.

Defendant, Michael Jerome Thompson, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. He pled not guilty and, after a jury trial, was found guilty as charged. The trial court subsequently sentenced defendant to the mandatory term of life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant now appeals, alleging one counseled assignment of error, and several pro se assignments of error. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

On June 5, 2009, at approximately 6:00 a.m., Frank Reynolds encountered his neighbor, Quincy Gibson (the victim), on Dan Drive in Baton Rouge. The two men went together to a nearby convenience store and returned to Dan Drive shortly thereafter. They stood outside Reynolds's home and talked for awhile. As Reynolds and Gibson talked, they noticed defendant – known around the neighborhood as “Peterman” – walking down the street. Reynolds and Gibson told him good morning, and defendant continued walking down the street. Thereafter, Gibson walked across the street to another neighbor's house to wake him so that they would not miss their ride to work. After doing so, he returned and continued to talk to Reynolds.

A few minutes later, Gibson again walked across the street to check on his neighbor. Reynolds saw that as Gibson was walking back in his direction, Gibson and defendant made contact with each other. Soon thereafter, Reynolds saw defendant begin to shoot at Gibson. After being shot several times, Gibson fell to the ground in the middle of Dan Drive. Defendant's gun jammed for a brief time, but he eventually succeeded in unjamming it. At that time, he walked into the

street, stood over the victim, and shot him once more. Defendant then fled the scene.

After the shooting, Reynolds ran into his house and told his wife that Gibson had been shot. Gibson's wife called 911 and then ran down the street to Gibson's home to tell Gibson's mother that Gibson had been shot. Maggie Doty, the victim's mother, ran into the street to her son's side and asked him what happened. The victim told her that "Peterman" shot him. Gibson later died from his wounds. Pursuant to a tip regarding his location, defendant was arrested the following day.

DEFENDANT'S STATEMENTS TO THE POLICE

In his sole counseled assignment of error, defendant alleges that the trial court erred in allowing the state to introduce evidence of defendant's statement regarding the circumstances of his shooting of the victim. Specifically, defendant argues that he made this statement during an interrogation only after he was denied opportunities to eat and sleep by the interrogating detective and after he requested to be taken to prison. In his pro se brief, defendant alleges that his statements should be excluded because he simply told police what they wanted to hear after he was interrogated for over five hours.

When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel, and, if indigent, his right to court-appointed counsel. See Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694 (1966). Before what purports to be a confession can be introduced into evidence, it must be affirmatively shown that it was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. LSA-R.S. 15:451. Whether or not 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. State v. Plain, 99-1112 (La. App. 1st Cir. 2/18/00), 752 So. 2d 337, 342.

Defendant's interrogation lasted approximately five hours. It began around 12:15 p.m. on the day he was arrested. Sergeant Sonia Harden, of the East Baton Rouge Parish Sheriff's Office, advised defendant of his Miranda rights prior to the interrogation, and defendant signed a waiver of rights form. During the initial part of the interrogation, defendant denied killing the victim. Around 12:38 p.m., defendant began to yawn. Near that time, Harden left the room to get defendant a drink. She returned and reengaged defendant in conversation, but he continued to deny that he had shot the victim. Around 1:15 p.m., defendant told Harden, "I said what I said, and you can take me to the parish [prison]." When Harden began to get up and walk toward the door, defendant asked her for a cigarette and thanked her for trying to help him. Harden asked defendant if he wanted to try to help himself. Defendant began to talk about the evidence against him, and he informed Harden that he could not help himself, based on the evidence. Harden left the room around 1:17 p.m.

Harden returned to the interrogation room around 1:40 p.m. She told defendant that he looked like something was really "eating" at him. Defendant and Harden talked further, but defendant maintained that he did not kill the victim. Harden again left the room at 2:15 p.m.

Harden returned again at 2:20 p.m. Upon entering the room, she asked defendant what was going through his head as he heard his uncle shouting not to shoot the victim. Defendant did not answer and instead hid his head in his arms. At 2:23 p.m., Harden asked defendant if he was asleep. Defendant replied that he was tired. Harden left the room again and returned within a couple of minutes. She told defendant to sit up, and he again told her that he was tired. Harden said that she was going to find a crime scene technician to take photographs of

defendant and to obtain his DNA. The crime scene technician entered the interrogation room around 2:31 p.m.

After the crime scene technician finished with defendant, Harden again reentered the interrogation room around 2:38 p.m. She showed defendant three photographic lineups in which his picture had been circled. After more back-and-forth discussion, defendant said to Harden around 2:45 p.m., "I understand you try to help me. You being real. But can you please take me to the parish [prison]?" Harden laughed and asked defendant if he was sure he was ready to go. She grabbed her folders from the table and began to get up to leave the room. As Harden began to leave at 2:48 p.m., defendant asked for a cigarette before he left to go to jail. At 2:56 p.m., Harden and defendant left the room together, presumably so that defendant could go smoke. They returned at 3:09 p.m.

When they reentered the room, Harden and defendant continued to talk. For over an hour, defendant continued to deny his involvement in the victim's shooting. At 4:25 p.m., Harden told defendant that she was going to shut the interview down since he was going to continue to say that he had not done anything. At 4:27 p.m., Harden began to walk out and defendant yelled, "I'm not finished, though. Where you going at?" Harden sat back down and defendant asked her if she was sure that anything he told her could only help him. Harden stated that she did not know what the results of any future statements would be, but she was sure that she could prove he was lying in his previous statements.

After almost another thirty minutes of hypothetical discussions, Harden stood up to leave the room at 4:52 p.m. At that point, defendant immediately said, "We got into an argument. I wanted to fight. He didn't want to fight ... pulled out a knife ... [I left], come back, draw it off, take the knife and hit him up ... We ain't never get a chance to fight. He didn't want to fight." Defendant and Harden

talked for approximately thirty more minutes about the exact details and his remorse. Defendant was then transferred to parish prison.

Prior to trial, defendant filed a motion to suppress his confession. The trial court granted that motion on the basis that Harden's continued questioning of defendant, after he expressed that he was tired and asked to be taken to parish prison, was a violation of his right to remain silent. The state filed a writ application with this court, which was granted, resulting in the reversal of the trial court's ruling granting defendant's motion to suppress. See State v. Thompson, 2010-1244 (La. App. 1st Cir. 9/27/10) (unpublished writ action).

When an appellate court considers a question of admissibility of evidence in a supervisory writ application in advance of trial, the conclusions by the writ panel are not binding on the judges who later consider the case on appeal, at which time the issues may have been more clearly framed by the evidence adduced at trial. See State v. Humphrey, 412 So. 2d 507, 523 (La. 1982) (on rehearing). Nevertheless, judicial efficiency demands that this court accord great deference to its pretrial decisions on admissibility, unless it is apparent, in light of the subsequent trial record, that the determination was patently erroneous and produced an unjust result. See Humphrey, 412 So. 2d at 523.

In granting the state's earlier writ application, this court found that defendant's assertion that he was tired and his request to be taken to parish prison were not invocations of his right to remain silent. The writ panel cited State v. Prosper, 2008-0839 (La. 5/14/08), 982 So. 2d 764, and State v. Blank, 2004-0204 (La. 4/11/07), 955 So. 2d 90, cert. denied, 552 U.S. 994, 128 S. Ct. 494, 169 L. Ed. 2d 346 (2007), as support for these findings. See State v. Thompson, 2010-1244 (La. App. 1st Cir. 9/27/10) (unpublished writ action).

In Prosper, the Louisiana Supreme Court ruled that the defendant did not invoke his right to remain silent by saying, "I don't have nothing else to say sir

‘cause I’m telling the truth. I’m telling the truth. I don’t have nothing else to say,” because that statement did not reasonably suggest a desire to end all questioning. Prosper, 982 So. 2d at 765. In Blank, the Louisiana Supreme Court ruled that despite the defendant’s expressed weariness and his statements regarding being cold and having back pain, the interrogating officers did nothing to render his confession involuntary. Specifically, the court found that the defendant never requested to terminate the interview and that the interrogating officers accommodated his requests for drinks, restroom breaks, and cigarettes when possible. Blank, 955 So. 2d at 106-08.

In the instant case, in light of the subsequent trial record, there is nothing to show that the introduction of defendant’s taped statement was patently erroneous or that it produced an unjust result. The recording of defendant’s interrogation reveals that while he did in fact request twice to be taken to parish prison, these statements alone did not reasonably suggest a desire to end all questioning. In fact, defendant continued to engage Harden in extensive conversation, even after he made these statements. Further, while defendant did express at least twice that he was tired, he never specifically requested to terminate the interview due to his fatigue. Moreover, as in Blank, Harden attempted to accommodate defendant as much as possible by offering him drinks, as well as cigarette and restroom breaks. Based on these facts, and on the record as a whole, we cannot say that defendant’s statement was unlawfully introduced at trial.

This assignment of error lacks merit.

ALLEGATION OF PERJURED TESTIMONY

In his pro se brief, defendant alleges that two of the state’s witnesses – Frank Reynolds and Maggie Doty – committed perjury at his trial. He asserts that the allegedly perjured testimony from each of these witnesses had direct bearing upon the jury’s verdict.

In his pro se brief, defendant alleges multiple instances of perjured testimony by Frank Reynolds. Defendant contends that Reynolds, the actual eyewitness to the shooting, in these respects, lied: when he said that there was no fight between the victim and defendant in the moments before the shooting; when he stated that he told the police that he and the victim had visited a convenience store prior to the shooting; when he said that he never left the victim's side after he was shot; and when he said that the victim placed his food items from the convenience store atop Reynolds's truck. Defendant alleges that a 911 call proved there was a scuffle between the victim and defendant prior to the shooting; the police denied hearing from Reynolds that he and the victim had gone to a convenience store on the morning of the incident; Reynolds went inside his house to call 911; and the police did not find the victim's food items or Reynolds's truck upon their investigation of the scene.

At trial, the jury had the opportunity to consider all of the points defendant now raises in his pro se brief. While Reynolds did testify at trial that there was no fight between the victim and defendant prior to the shooting, the jury also heard recordings of the 911 calls from the morning of the incident. Further, although Reynolds stated he told the police that he and the victim went to the convenience store together, the jury also heard testimony from East Baton Rouge Sheriff's Office Detective Todd Morris, who stated that Reynolds did not inform him about the trip to the convenience store. With respect to defendant's allegation that Reynolds stated he never left the victim's side after the shooting, Reynolds himself testified that he ran inside his home to inform his wife of the shooting. Finally, while Reynolds asserted that the victim left his food items on top of his truck, defense counsel thoroughly cross-examined Reynolds on this statement and argued to the jury that the crime scene photographs depicted neither Reynolds's truck nor the victim's food items.

On all points of alleged perjury by Reynolds that defendant now raises in his pro se brief, the jury heard contradictory evidence throughout the course of the trial. Despite the existence of this contradictory evidence, the jury apparently accepted, at least in part, Reynolds's testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. As the trier of fact, the jury was entitled to accept or reject, in whole or in part, the testimony of any witness. See State v. Lofton, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So. 2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So. 2d 1331. Further, an appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. State v. Calloway, 2007-2306 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam). The jury's decision to accept, at least partially, the testimony by Reynolds, is a matter regarding his credibility, which this court will not overturn.

As with Reynolds's testimony, defendant alleges several instances of purportedly perjured testimony by Maggie Doty, the victim's mother. Defendant alleges that Doty testified at trial that she knew why her son got shot, that she knew who shot her son, and that she did not make a call to 911. However, he also alleges that: Doty had informed a 911 operator she did not know why her son got shot; Doty had told a 911 operator she did not know who shot her son; and Doty was clearly recorded making a 911 call.

Starting with defendant's last allegation first, we note that Doty did not deny calling 911 when she learned her son was shot. Indeed, she admitted that she did call 911. She simply contended that the 911 recording played during her cross-examination was not her voice. Further, there appears to be no evidence in the record, one way or the other, about whether Doty reported knowing why her son

had gotten shot. The closest reference in the record regarding a reason for the victim's shooting involved Doty's testimony regarding her son asking her why he had been shot. During cross-examination, defense counsel questioned Doty about this testimony, which she had apparently shared for the first time during her direct examination. Finally, Doty was adamant that the victim clearly stated that "Peterman" had shot him as soon as she found him lying in the street. Defendant alleges that Doty never relayed this information to the dispatcher, but Doty testified that she made three 911 calls on the morning of the shooting and that the call played for the jury was not her voice.

Again, despite defendant's allegations of perjury in Doty's testimony, the jury was provided evidence that, at least in part, contradicted that testimony. Despite the existence of this contradictory evidence, the jury's verdict indicates that it might have at least partially believed Doty's version of the events. Once again, this decision was one regarding Doty's credibility, and this court will not review that determination.

This assignment of error also lacks merit.

EVIDENCE TAMPERING

In his final pro se assignment of error, defendant alleges that a "Jamie Thomas" contaminated the crime scene when she removed the victim's hat and Gatorade bottle prior to the arrival of law enforcement. Because defendant's theory of the case suggested that the victim first attacked him by drawing a knife, he alleges that this same person could have removed the knife from the scene.

The only testimony at trial regarding the possible removal of evidence from the crime scene came from East Baton Rouge Sheriff's Office Deputy Russell Rose. Deputy Rose was one of the first officers to respond to the crime scene. At the time he arrived, several people were crowded around the victim as he lay in the street. Deputy Rose testified at trial that he observed some shell casings, a hat, and

a Gatorade bottle in the street. He called for an ambulance and attempted to keep individuals out of the crime scene. Deputy Rose testified that at the time he was able to turn the crime scene over to his supervisor, the hat and Gatorade bottle were no longer present. However, he stated that he never saw a knife or a gun at the crime scene.

Defendant's assertion that a "Jamie Thomas" was the person to remove the hat and Gatorade bottle from the crime scene is unsupported in the record. Clearly, these items went missing between the time of Deputy Rose's arrival and his turning over of the crime scene to his supervisor. However, there is no evidence that any knife or other weapon was ever present at the scene. Further, the only eyewitness to the shooting – Frank Reynolds – testified that the victim never possessed a weapon. After a thorough review of the evidence presented at trial, we cannot conclude that defendant has shown a substantial likelihood that any individual removed a weapon from the crime scene.

This assignment of error is without merit or otherwise unreviewable on appeal.

Accordingly, the defendant's conviction and sentence are hereby affirmed.

CONVICTION AND SENTENCE AFFIRMED.