

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2001-KA-0534**  
**VERSUS** \* **COURT OF APPEAL**  
**RODNEY TEMPLE** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 370-257, SECTION "A"  
Honorable Charles L. Elloie, Judge  
\* \* \* \* \*  
**Judge David S. Gorbaty**  
\* \* \* \* \*

(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby,  
Judge David S. Gorbaty)

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**AFFIRMED**

On June 2, 1994, the defendant, Rodney Temple, was indicted for the second degree murder of Edgar Givens. The defendant entered a plea of not guilty at his arraignment on June 30, 1994. On August 26, 1994, the defendant filed discovery and suppression motions. A suppression hearing was held on June 30, 1995, at which time the trial court denied the defendant's motions to suppress statement and evidence. The defendant was found guilty as charged after a jury trial on April 22, 1996. On May 6, 1996, the defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence. Defendant subsequently filed this appeal.

## **FACTS**

At approximately 5:30 a.m. on April 18, 1994, New Orleans Police Officer Len Major and his partner, Officer Mark Delpit, responded to a call of an aggravated battery at 3620 Florida Avenue. Upon reaching the third floor of the building, the officers observed the front door to be partially open. They looked into the apartment and saw the victim in an upright seated position on the sofa with his arms folded and his head back. The victim had suffered numerous gunshot wounds to the head. The officers requested assistance and began canvassing the area for witnesses. The

officers spoke with Naquesha Gray and Quincy Temple. When the defendant returned to the scene, he was turned over to the homicide detectives.

Officer Teddy Fambro, a crime scene technician, processed the crime scene. He took photographs and collected evidence. The officer located a plastic cup near the victim's feet. The officer lifted two partial prints from the cup, but they were not sufficient for identification. The officer also recovered a .38 Taurus revolver at 3613 Dorgenois Street. The revolver contained five casings.

Dr. Richard Tracy, a forensic pathologist with the Orleans Parish Coroner's office, performed an autopsy on the victim. He found three bullets and part of a fourth bullet in the victim's head during the autopsy. He also noted that the victim was shot once in the chest, and the bullet went through the heart. Dr. Tracy testified that any one of the gunshot wounds alone would have been fatal.

Officer Byron Winbush, a firearms examiner, inspected the bullets retrieved from the victim's body during the autopsy. Officer Winbush testified that the bullets, all .38 caliber, were fired from the same weapon.

Officer John Treadway, a senior firearms examiner, testified that he examined the revolver found at the Dorgenois Street residence. The officer

stated that five cartridge cases were fired from the weapon. The officer could not compare the bullets retrieved during the victim's autopsy with the weapon.

Quincy Temple, the defendant's uncle, testified that he and his girlfriend, Naquesha Gray, went to his niece Kim's house on April 18, 1994. The defendant accompanied them to the apartment. They arrived at approximately 9:00 p.m. and planned to spend the night there. They ate pizza and then went to sleep. Quincy and Naquesha slept in the bedroom, while the defendant slept on the sofa in the living room. Quincy woke up when he heard three gunshots. He and Naquesha went into the living room. They saw the victim on the sofa. He had been shot. Quincy and Naquesha ran to Quincy's mother's house and called the police. They returned to Kim's house and gave statements to the police. The defendant also returned to the scene. The defendant's mother arrived on the scene later that morning.

Kim Temple testified that she resided at 3620 Florida Avenue. The victim, her ex-boyfriend, had lived there with her. At the time the victim was killed, Kim was living with her mother. Kim and the victim had argued and separated. Kim stated that she went to the apartment after she had learned that the victim was dead. The witness testified that the day before

the shooting, the victim took her keys to the apartment and messed up the apartment. She had called and reported the incident to the police. The witness stated that the victim had fought with her on previous occasions.

Sgt. Bradley Rhodes participated in the investigation of the homicide. He stated that Det. Adams interviewed Quincy Temple and Naquesha Gray. Upon entering the scene, Sgt. Rhodes observed the victim in a seated position on a loveseat with his upper torso leaning to the left and his head resting on the armrest. Det. Adams interviewed Temple when he returned to the scene, after which the defendant was placed in a police vehicle. After learning that the defendant was a minor, the officers brought the defendant's mother to the scene. Sgt. Rhodes spoke with her and told her that the defendant had been arrested for murder. Both Sgt. Bradley and Det. Adams advised the defendant of his rights in the presence of his mother. The officers allowed defendant and his mother to confer. The officers then obtained a statement from the defendant. The defendant told the officers that he shot the defendant five times and then left the scene and discarded the gun. The defendant showed the officers where the gun was located. The gun was retrieved from underneath the porch at 3613 N. Dorgenois Street. The defendant was then taken to the homicide office, where he refused to make any further statements.

Detective Byron Adams met with the district officers when he arrived on the scene. He interviewed Quincy Temple and Naquesha Gray. The defendant then returned to the scene. The officer asked the defendant if he knew anything about the murder. The defendant said, "Yes, I shot him." Detective Adams then placed the defendant under arrest and advised him of his constitutional rights. He testified that when he learned that the defendant was a juvenile, he sent a police unit to the defendant's residence to locate the defendant's mother. When the defendant's mother arrived on the scene, the officers spoke with her and informed her that the defendant had been arrested for murder. The officers advised the defendant of his constitutional rights in front of his mother and allowed the defendant and his mother to confer. The defendant's mother told the officers that the defendant was willing to give a statement. The defendant gave the officers a verbal statement and showed the officers where he had discarded the weapon. The defendant was then taken to the homicide office. The officers prepared to take a formal statement from the defendant. The officers again advised the defendant of his rights. At that time, the defendant informed the officers that he did not want to give a formal statement.

Helen Temple, the defendant's mother, testified that on the morning of April 19, 1994, two police officers arrived at her house and asked her to

go with them. When she arrived on the scene, the defendant was in the back of a police vehicle. The officers told her that the defendant had killed someone. She stated that she really did not have an opportunity to speak with the defendant. The officers took her and the defendant to the homicide office. The defendant did not wish to give a statement at the homicide office. The defendant told her that he confessed to killing someone. The witness acknowledged that the officers advised her and the defendant of the defendant's constitutional rights both on the scene and at the homicide office. She stated that the defendant did not have a reputation for violence. However, she admitted she did not know that he carried a gun.

Rodney Temple testified that the victim had dated his cousin, Kim Temple. There had been problems between the victim and Kim. On the day before the shooting, Kim had called the police to report that the victim had broken into her apartment and messed up the apartment. The defendant had helped Kim clean up the house. On the evening of April 18, 1994, the defendant, Quincy and Naquesha went to the Kim's apartment. They ate pizza and then went to sleep. Quincy and Naquesha slept in the bedroom while he slept on a sofa in the living room. During the night, the defendant woke up when he sensed someone standing over him. When he looked up, he saw the victim. The victim grabbed him and swung him off of the sofa.

The victim was cursing at him. The defendant fell to his knees. The victim grabbed the defendant by the neck. The defendant then pulled his gun from underneath the sofa. The victim tried to take the gun away from the defendant. As the victim tried to pull the gun away, the victim fell towards the sofa. When the victim hit the sofa, the defendant's finger pulled on the trigger. The victim was shot in the chest. The defendant was trying to pull the gun away when the gun went towards the victim's face and discharged again. The defendant was scared so he ran off. He returned to the scene and spoke with police officers. His mother arrived on the scene later. The defendant stated that he had never been arrested before.

### **ERRORS PATENT**

A review of the record for errors patent reveals none.

### **ASSIGNMENT OF ERROR NUMBER 1**

The defendant complains that he is aggrieved by the trial court's failure to provide him with a transcript of the suppression hearing held on June 30, 1995. A certificate from the court reporter assigned to Section "A" of Criminal District Court indicates that the tapes for June 30, 1995 were searched and "there was nothing regarding State of Louisiana versus Rodney Temple, case number 370-257 on them."



The state constitution provides that "[n]o person shall be subjected to imprisonment . . . without the right of judicial review based upon a complete record of all evidence upon which the judgment is based." La. Const. Art. I, §19. In felony cases, the recording of "all of the proceedings, including the examination of prospective jurors, the testimony of witnesses, statements, rulings, orders, and charges by the court, and objections, questions, statements, and arguments of counsel" is statutorily required. La. C.Cr.P. art. 843. This court has recognized that a complete appellate review of a defendant's conviction and sentence can be accomplished even when there are missing portions of the trial record. In State v. Thomas, 92-1428 (La. App. 4 Cir. 5/26/94), 637 So. 2d 1272, this court found that the record was adequate for full appellate review. Missing from the appeal record were transcripts of the voir dire, jury instructions, opening statements, and closing arguments. The court noted that "[b]ecause the missing portions of the trial record are not evidentiary, their absence does not compromise the defendant's constitutional right to a judicial review of all evidence." Thomas, at 1274. In addition, the minute entries of trial did not indicate that the defendant made any objections during the proceedings missing from the record.

In State v. Lyons, 597 So. 2d 593 (La. App. 4 Cir. 1992), this court

concluded that the appellate record was adequate for review although transcripts of the voir dire, the impaneling of the jurors, opening statements, and a portion of the jury charges were missing. The court noted that the defendant had made no specific assignments of error as to the missing portions of the record except the fact that they were missing.

In State v. Vaughn, 378 So.2d 905 (La.1979), portions of the testimony from the defendant's motion to suppress the identification were not transcribed because of a malfunction in the recording equipment. On appeal, the Supreme Court stated that the missing testimony was hardly relevant or material to the issue presented by the motion to suppress; but, the court further noted that in determining the correctness of a ruling on a pretrial motion to suppress, it was not limited to the evidence presented at the hearing on that motion, but could consider all pertinent evidence adduced at the trial on the merits.

In State v. Byes, 97-1876 (La.App. 4 Cir. 4/21/99) 735 So.2d 758, the court stenographer was unable to locate the transcript of the hearing on the motion to suppress. Byes asserted a denial of constitutional right to review based on the absence of the transcript. This court noted that the only witness to testify at the motion hearing also testified at trial, and gave extensive testimony concerning the seizure of the evidence. Moreover, in an earlier

assignment of error, the Byes court found no error in the trial judge's denial of the motion to suppress the evidence.

In the case at bar, the court reporter has certified that she cannot locate the tapes for the suppression hearing held on June 30, 1995. A minute entry from that date indicates that Officer Byron Adams was the only person to testify at the suppression hearing. Officer Adams testified at the trial concerning the voluntariness of the defendant's statement. In addition, the trial court conducted a suppression hearing during a break of the jury trial to consider the testimony of the defendant's mother. Therefore, as Officer Adams and defendant's mother testified at trial, the defendant has not been prejudiced by the lack of a transcript of the suppression hearing.

This assignment is without merit.

### **CONCLUSION**

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

**AFFIRMED**