

**STATE OF LOUISIANA**

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**NO. 2002-KA-0201**

**VERSUS**

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**COURT OF APPEAL**

**KIRK A. BAHAM**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 419-715, SECTION "J"  
HONORABLE LEON CANNIZZARO, JUDGE

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**JUDGE MICHAEL E. KIRBY**

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(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge  
David S. Gorbaty)

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**STATEMENT OF CASE:**

Defendant Kirk Baham was charged by bill of information with four counts of armed robbery and one count of possession of stolen property valued over five hundred dollars on December 10, 2000. Defendant pleaded not guilty at his February 13, 2001, arraignment. On March 30, 2001, the trial court denied defendant's motion to suppress his statement. On April 23, 2001, a trial was held and the twelve-person jury was unable to reach a verdict. On June 13, 2001, the defendant was re-tried by a twelve-person jury, which found the defendant guilty of one count of attempted armed robbery. On August 13, 2001, the trial court sentenced the defendant to twenty-five years at hard labor without benefit of probation, parole or suspension of sentence.

On that same date, the state filed a multiple bill of information alleging the defendant to be a second felony offender. The defendant pled not guilty to the multiple bill. On August 23, 2001, after a multiple bill hearing the defendant was adjudged a second felony offender. The trial

court vacated its previous sentence and re-sentenced the defendant to twenty-five years at hard labor without the benefit of probation, parole or suspension of sentence. On that same date, the defendant filed an oral motion to reconsider sentence and an oral motion for appeal. The trial court denied the motion to reconsider sentence and granted the motion to appeal.

### **STATEMENT OF FACT**

Dolores Moffet, the owner of the vehicle used in the Sol's Jewelry store robbery, testified that on December 9, 2000, about six p.m. her daughter used her 1994 Buick Century to go to Wendy's restaurant to purchase a hamburger. She further testified that on the next morning when she left her apartment to use her vehicle it was not in the apartment complex parking lot. Ms. Moffet testified that she returned to her apartment and questioned her daughter about where she parked the vehicle. Ms. Moffet's daughter helped her search the parking lot again for the vehicle, and when they could not find it they called the police to report it stolen.

Approximately three weeks later the police informed Ms. Moffet that her vehicle was in their possession. Ms. Moffet testified that when she retrieved her vehicle all four of the tires were flat and the ignition switch had been damaged with a screwdriver.

Detective Jason Gagliano, an auto theft investigator for the New

Orleans Police Department, testified that he was involved in the investigation of a robbery at Sol's Jewelry store. Detective Gagliano further testified that he and Detective David Patroia were working in the seventh district station when a transmission came over the radio of an armed robbery in progress. When the detectives arrived on the scene, Detective Gagliano observed two suspects wearing hoods and masks leading the victims around in the store at gunpoint. The detectives notified the SWAT team to handle hostage negotiations. Detective Gagliano began an investigation on the scene. The detective testified that prior to the arrival of the SWAT team he examined the vehicle used by the defendant and the other suspect and he noticed that the steering column had been defeated. Detective Gagliano testified that he verified that the vehicle had been stolen when he ran the license plate number. The detective also dusted the vehicle for fingerprints, took photographs, and arranged for the vehicle to be taken to the crime lab impound. Once the defendant had been apprehended, Detective Gagliano advised the defendant of his rights and had him fill out a rights of arrestee form before he took an audio taped statement from the defendant.

Detective Byron Adams, of the New Orleans Police Department, testified that he also responded to the radioed call of a robbery in progress. When he arrived on the scene Detective Adams saw that the front of the

building had been secured, so he joined the officers securing the rear of the building. Once the SWAT team arrived the detective testified that he then moved to a safe zone area created by the SWAT team to keep the other officers out of the line of fire. Also, once the situation was brought to a peaceful end Detective Adams advised the defendant and the other suspect of their rights and told them they were under arrest for armed robbery. Detective Adams testified that the two suspects were taken to the seventh district police station where he interviewed the defendant and took his written statement.

Detective David Patroliia, of the New Orleans Police Department, testified that he was also on the scene of the armed robbery of Sol's Jewelry store. Detective Patroliia verified, from photographs, the clothes worn by the defendant, identified the types of guns used during the robbery, and verified the surveillance videotape seized from the store's surveillance system.

Lynette Williamson, a Sol's Jewelry employee, testified that on the day of the robbery at about 5:30 p.m. she was standing outside of the store smoking a cigarette when she noticed a car with two occupants. Ms. Williamson further testified that she was concerned that the two occupants of the vehicle were going to rob the store. The vehicle drew Ms. Williamson's attention because it was Sunday, and the parking lot was fairly

empty, except for the vehicle that sat there for about an hour. Ms. Williamson voiced her concerns to her co-worker, Sadiq Hirani, who was also smoking a cigarette with her. Mr. Hirani entered the store and told a third employee, Mohamed Mohidudin, about the suspicious vehicle in the parking lot. The defendant had exited the vehicle and entered the store first pretending to be a customer. The second suspect entered the store really quickly with a mask over his face and a gun in his hand. Ms. Williamson testified that the second suspect told her to “get inside, this is a robbery.” When the second suspect entered the store the defendant had a gun pointed at Mr. Hirani. The defendant and the other suspect forced all four of the store’s employees into the restroom. The defendant stood at the restroom door with two guns pointed at the employees. The other suspect forced Mr. Hirani back into the front of the store to disconnect the surveillance system and open the cash register. The defendant then demanded money from the store employees as he held them in the restroom. Ms. Williamson testified that hostage negotiators talked the defendant into letting them leave the store.

Mr. Hirani and Mr. Mohidudin testified corroborating Ms. Williamson’s testimony.

Latonya Williams, the defendant’s girlfriend, testified that the

defendant called her from the jewelry store very upset and threatening to commit suicide. Ms. Williams further testified that she talked to the defendant for several hours convincing him not to commit suicide and to let the hostages go.

The defendant testified that Byron Yards coerced him into committing the jewelry store robbery. The defendant further testified that Mr. Yards would frequently give him money to purchase drugs because Mr. Yards knew he was a heroin addict. Mr. Yards wanted the defendant to repay him by robbing the jewelry store. The defendant further testified Mr. Yards told him that Ms. Williamson, a store employee, and the store's owner were working together to fake the robbery for the insurance money. The defendant testified that Mr. Yards also threatened to kill his family if he did not commit the robbery. The defendant alleges he was forced to sign the statements given to the police.

### **ERRORS PATENT**

A review of the record revealed no errors patent.

### **DISCUSSION**

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

The defendant complains the trial court erred in denying his motion to suppress his statement to the police.

The trial court is vested with great discretion when ruling on a motion to suppress. State v. Oliver, 99-1585 p.4 (La. App. 4 Cir. 9/22/99), 752 So.2d 911, 914. Before a confession or inculpatory statement may be introduced into evidence the state must affirmatively show, beyond a reasonable doubt, that the confession or inculpatory statement was free and voluntary. State v. Rogers, 476 So.2d 942 (La. App. 2 Cir. 1985) citing State v. Glover, 343 So.2d 118 (La. 1977). When credibility and weight of testimony relating to the voluntariness of a confession for the purpose of admissibility are at issue, the trial court's determination will not be reversed on appeal in the absence of a clear abuse of discretion. State v. Brown, 486 So.2d 876 (La. App. 1 Cir.1986), citing State v. Brumfield, 464 So.2d 1061 (La. App. 1 Cir. 1985).

In the instant case, the trial court accepted the detective's testimony over that of the defendant. At the March 20, 2001, motion hearing Detective Jason Gagliano testified that he also read the defendant his rights prior to the defendant signing a rights of arrestee form and giving an audio taped statement. At the March 30, 2001, motion hearing Detective Adams testified that prior to taking a typed written statement from the defendant he had him sign a rights of arrestee form that the defendant initialed and signed indicating he understood his rights. At trial Detective Adams also testified



that when the defendant was arrested he personally advised the defendant of his constitutional rights. The defendant was given his Miranda rights at least three times prior to being arrested and prior to each statement he gave. We cannot say the trial court abused its discretion in finding the defendant's statements were given freely and voluntarily. The defendant has failed to put forth any evidence to the contrary.

This assignment of error is without merit.

## **ASSIGNMENT OF ERROR NUMBER 2**

The defendant also complains the district court erred in adjudicating him to be a second felony offender where no fingerprint evidence was introduced and where the state relied on the defendant's admission at trial to provide proof of the defendant's identity.

To obtain a multiple offender conviction, the state is required to establish both the prior felony conviction and that the defendant is the same person convicted of that felony. State v. Neville, 96-0137 (La. App. 4 Cir. 5/21/97), 695 So.2d 534. In attempting to do so the state may present: (1) testimony from witnesses; (2) expert opinion regarding the fingerprints of the defendant when compared with those in the prior record; (3) photographs in the duly authenticated record; or (4) evidence of identical drivers license

number, sex, race and date of birth. State v. Westbrook, 392 So.2d 1043 (La. 1980).

In State v. Payton, 2000-2899 (La. 3/15/02), 810 So.2d 1127, 1132, the defendant in that case, like in the instant case, argued that because the guilty plea form and bill of information from the prior felony lacked fingerprints that the state had failed to prove the defendant was one in the same person convicted of the prior felony. The Louisiana Supreme Court found a conviction may be maintained by competent evidence. Additionally, this court has repeatedly held that the Habitual Offender Act does not require the state to use a specific type of evidence to carry its burden at an habitual offender hearing and that prior convictions may be proved by any competent evidence.

In the instant case the state offered into evidence a certified copy of the defendant's prior conviction, which also contained a waiver of constitutional rights plea of guilty form. The copies also contained the minute entry, which reflected the defendant had been given his Boykin rights and that the defendant was accompanied by counsel. The certified copies offered into evidence reflected the same name, address, social security number and date of birth as the defendant's. Additionally, the state introduced the defendant's trial testimony wherein he admitted that he had

been convicted of the prior felony, and the defendant did not object to the introduction of his testimony. The state's evidence was more than competent to prove the defendant was one in the same person convicted of the prior felony. Therefore, this assignment of error is without merit.

### **CONCLUSION**

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

**AFFIRMED**