

STATE OF LOUISIANA

NO. 18-K-523

VERSUS

FIFTH CIRCUIT

TEDDY CHESTER

COURT OF APPEAL

STATE OF LOUISIANA

September 14, 2018

Susan Buchholz

First Deputy Clerk

IN RE TEDDY CHESTER

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE ELLEN SHIRER KOVACH, DIVISION "K", NUMBER 96-2598

Panel composed of Judges Robert A. Chaisson,
Hans J. Liljeberg, and John J. Molaison, Jr.

WRIT GRANTED

In this writ application, relator/defendant asserts that the trial court erred when it summarily denied his Motion to Suppress Statements without conducting an evidentiary hearing. Relator's argument has merit.

La. C.Cr.P. art. 857 provides that "[t]he effect of granting a new trial is to set aside the verdict or judgment and to permit retrial of the case with as little prejudice to either party as if it had never been tried." According to Official Revision Comments, comment (a), this provision continues the sound rule that "the slate is wiped clean when a new trial is granted." See *State v. Graham*, 375 So.2d 374 (La. 1979).¹

Whether to reopen a suppression hearing, or to permit a second suppression hearing, is within the discretion of the trial court. *State v. Cole*, 434 So.2d 1103 (La. 1983); *State v. Robinson*, 11-12 (La. App. 5 Cir. 12/29/11), 87 So.3d 881, 902, n. 14, writ denied, 12-279 (La. 6/15/12), 90 So.3d 1059. In an unpublished writ disposition, *State v. Harris*, 05-K-463 (La. App. 5 Cir. 5/5/05), this Court previously found that the trial court abused its discretion by denying the defendant's motion to suppress without affording him a hearing, when the indictment had been amended, the motion was before a different judge, the parties had different counsel, and the scope of the issues and evidence the defendant intended to present was different.

In the present case, relator's prior motion to suppress was heard and denied in 1997. Later that same year, relator was convicted of first degree murder. On June 11, 2018, approximately 21 years after his original conviction, relator was

¹ See also *State v. Langley*, 10-969 (La. App. 3 Cir. 4/6/11), 61 So.3d 747, writ denied, 11-1226 (La. 1/20/12), 78 So.3d 139, cert denied, 568 U.S. 841, 133 S.Ct. 148, 184 L.Ed.2d 73, (2012), in which the Third Circuit found that a new trial is a new proceeding, not a subsequent stage of the earlier one, and thus, the "law of the case" doctrine does not apply. In *Langley*, the Court further noted that when the defendant's conviction was reversed and remanded for a new trial, "[t]he pretrial process began again." *Id.* at 770.

granted a new trial by the United States District Court for the Eastern District of Louisiana. *Chester v. Vannoy*, 16-17754, 2018 WL 2970912 (E.D. La. June 11, 2018). On August 16, 2018, the State amended the indictment to charge defendant with second degree murder. On August 31, 2018, relator filed a new Motion to Suppress Statements. The case is now before a different judge, the parties have different counsel, and the scope of the issues and evidence that may be presented is different. Regarding the scope of the issues, relator, in his Motion to Suppress Statements, specifically raises the issue of the free and voluntary nature of his statements based upon his mental limitations. We note that the Louisiana Supreme Court, in its prior opinion in this case, found that relator's trial counsel did not attack the statements' admissibility on the grounds relating to relator's mental limitations. See *State v. Chester*, 15-2304 (La. 12/16/16), 208 So.3d 338, 345.

Considering La. C.Cr.P. art. 857, the prior rulings of this Court, and the applicable caselaw, we find that the trial court, under the circumstances presented herein, abused its discretion by denying relator's Motion to Suppress Statements without conducting an evidentiary hearing. Accordingly, we grant the writ application, set aside the trial court's ruling, and remand this matter for a hearing on the Motion to Suppress Statements.

Gretna, Louisiana, this 14th day of September, 2018.

HJL
RAC

MOLAISON, J., DISSENTS WITH REASONS

As correctly noted by the majority, La. C.Cr.P. art. 857 provides that “[t]he effect of granting a new trial is to set aside the verdict or judgment and to permit retrial of the case with as little prejudice to either party as if it had never been tried.” Additionally, it is within the trial court's discretion as to whether a suppression hearing should be reopened, or a second suppression hearing should be held. My reading of La. C.Cr.P. art. 857 leads to the conclusion that only the verdict itself has been set aside, not all pre-trial rulings preceding that verdict. Here, where defendant initially raised the instant issues on appeal, and they were previously found to be without merit by the Louisiana Supreme Court, I see no abuse of the trial court's discretion in refusing to allow a rehearing. This Court's previously published opinions are consistent with this finding. See, *State v. Robinson*, 11-12 (La. App. 5 Cir. 12/29/11), 87 So. 3d 881, 902, (...[e]ven if defendant had briefed this issue, it is well established that a trial judge has discretion as to whether to permit a second suppression hearing or to re-open a suppression hearing prior to trial. *State v. Cole*, 434 So.2d 1103 (La. 1983).” Further, the unpublished writ dispositions of this court, relied upon by defendant in his writ application, are not properly considered as precedent. Under the specific facts of this case and its unique procedural posture, I find that to require the State to re-litigate all pre-trial motions at this stage is unnecessarily prejudicial and unduly burdensome.

JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **09/14/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU
CLERK OF COURT

18-K-523

E-NOTIFIED

Terry M. Boudreaux (Respondent)
Rachel J. Conner (Relator)
Cecelia T. Kappel (Relator)

MAILED