

STATE OF LOUISIANA

NO. 21-K-186

VERSUS

FIFTH CIRCUIT

RIDGE TURNER

COURT OF APPEAL

STATE OF LOUISIANA

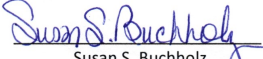
June 23, 2021

Susan Buchholz
First Deputy Clerk

IN RE STATE OF LOUISIANA

APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
VERCELL FIFFIE, DIVISION "A", NUMBER 20,122

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Susan S. Buchholz
First Deputy, Clerk of Court

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Hans J. Liljeberg

WRIT GRANTED

The State of Louisiana, seeks review of the trial court's March 31, 2021 judgment, which granted motions to suppress the confession and identification of defendant, Ridge Turner. For reasons stated more fully below, we grant the State's writ application and reverse the trial court's March 31, 2021 judgment.

Mr. Turner is charged with three counts of attempted second degree murder. He filed boilerplate motions to suppress his confession, identification, and evidence. The trial court held a hearing on the motions on March 10, 2021. At the hearing, Detective Gilberto Castellanos with the St. John Parish Sheriff's Office testified that Mr. Turner was developed as a suspect after victims identified him by name as the shooter before they were transported from the scene of the shooting to the hospital. The Sheriff's Office arrested Mr. Turner at his residence on the evening of the shooting. They also obtained a search warrant and according to Detective Castellanos, seized a handgun used in the shooting from Mr. Turner's residence. Detective Castellanos testified that he interviewed one of the victims following his release from the hospital several weeks after the accident, and the victim reported that Mr. Turner shot him. The victim further stated that the shooting occurred because Mr. Turner owed him money for a video game and that when Mr. Turner exited his vehicle, he started shooting.

With respect to the Mr. Turner's statement, Detective Castellanos testified that following his arrest, Mr. Turner was advised of his *Miranda*¹ rights. Mr. Turner then stated that he did not want to speak to officers without an attorney

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

present. Based on this request, Detective Castellanos testified that officers ceased communication with Mr. Turner. Then on the following day, Detective Castellanos learned that Mr. Turner changed his mind and wanted to talk to officers. According to Detective Castellanos, Mr. Turner's mother contacted Sheriff Mike Tregre and told him that Mr. Turner wanted to talk to officers. Detective Castellanos testified that approximately 12 hours after the first interview, officers met with Mr. Turner again and he was re-advised of his *Miranda* rights. He also testified that Mr. Turner signed a form indicating that he waived his rights and was willing to speak to officers. At first, Mr. Turner told the officers that the incident happened over a video game, but after further questioning, he confessed to shooting at the victims because he was short changed in a drug transaction that occurred the previous night. Detective Castellanos also testified that he obtained a copy of a jail call that Mr. Turner had with his mother prior to the second interview during which his mother told him to talk to the officers to provide his side of the story and Mr. Turner agreed. On cross-examination, defense counsel asked Detective Castellanos if they did anything to obtain a lawyer for Mr. Turner in the time between the two interviews, and Detective Castellanos replied that they did not take steps to obtain a lawyer because Mr. Turner was in jail and it was the weekend.

Following the hearing, the State argued that the issues before the trial court were the suppression of physical evidence, which was the gun recovered from the Mr. Turner's home, and the suppression of Mr. Turner's confession. The State explained that officers obtained a search warrant based on the victims' identification of Mr. Turner by name. The State also argued that the suppression of Mr. Turner's statement was not warranted because after Mr. Turner indicated that he did not want to speak to officers, they ceased communications until they received notice otherwise. The State argued that after learning Mr. Turner changed his mind about speaking with the officers, the detective read Mr. Turner his *Miranda* rights again and Mr. Turner chose to waive those rights and provide a statement.

In response, defense counsel did not address any issues relating to the motions to suppress evidence or identification. He only argued that Mr. Turner's confession should be suppressed because the officers should not have attempted to speak with him again without providing him with a lawyer. The State argued in rebuttal that the officers were allowed to speak with Mr. Turner because he reinitiated contact with law enforcement.

After the parties completed their arguments, the trial court indicated that the matter was submitted and under advisement. Immediately after the trial court took the matter under advisement, the State notified the court that it forgot to introduce its exhibits into evidence. The trial court responded by stating, "[o]nce the case is closed you submitted" and [u]nless [defense counsel] agrees to such."² The State declined this option and indicated that it would take back its exhibits and did not lodge any objections.

The trial court entered a judgment on March 31, 2021, granting the motion to suppress Mr. Turner's confession and identification. The trial court did not render a ruling on the motion to suppress evidence. In its judgment, the trial court

² A trial court is not prohibited from reopening a motion to suppress to allow the introduction of evidence prior to its ruling under these circumstances. *See, e.g., State v. Bazile*, 386 So.2d 349, 352 (La. 1980); *State v. Schexnayder*, 14-479 (La. App. 5 Cir. 12/30/14), 167 So.3d 832, 836.

indicated that it granted Mr. Turner's motions because "[g]iven that the State failed to offer, file and introduce its supporting documents into evidence, this Court has nothing to consider in contradiction to defense's *Motion to Suppress*."

In its writ application, the State argues that despite its failure to introduce its exhibits, the trial court erred in suppressing the confession and identification because the testimony from Detective Castellanos was sufficient to establish that the identification was not suggestive and the confession was voluntary. This Court requested that Mr. Turner file a response to the State's writ application by May 7, 2021, and then granted an extension until June 2, 2021. We have not received a response to the State's writ application.

A trial court is afforded great discretion when ruling on a motion to suppress, and its ruling will not be disturbed absent abuse of that discretion. *State v. Wilder*, 09-2322 (La. 12/18/09), 24 So.3d 197, 198. However, after reviewing the writ application, and particularly, the transcript of the hearing on the motions to suppress, we agree that the trial court erred by failing to apply the appropriate burdens of proof and abused its discretion by failing to consider the evidence in the form of Detective Castellanos' testimony in ruling on the motions to suppress.

La. C.Cr.P. art. 703(D) explains that the burden of proof is on the defendant to prove the grounds of his motion to suppress, "except that the state shall have the burden of proving the admissibility of a purported confession or statement by the defendant . . .". Therefore, a defendant has the burden of proof on a motion to suppress an out-of-court identification. *State v. Smith*, 19-395 (La. App. 5 Cir. 3/13/20), 293 So.3d 732, 741. A defendant who seeks to suppress an identification must prove both that the identification itself was suggestive and that there was a likelihood of misidentification as a result of the identification procedure. *State v. Prudholm*, 446 So.2d 729, 738 (La. 1984); *State v. Wilson*, 14-551 (La. App. 5 Cir. 1/28/15), 167 So.3d 903, 908. Even if an identification is considered suggestive, this alone does not violate due process, for it is the likelihood of misidentification which violates due process, not merely the suggestive identification procedure. *Id.*

Mr. Turner was required to prove both that the identification itself was suggestive and that there was a likelihood of misidentification as a result of the identification procedure. Mr. Turner filed a generic form motion which did not provide any specifics regarding the actual identification he sought to suppress or how it was suggestive. It is also unclear from the transcript which identifications, if any, Mr. Turner sought to suppress. The only identifications mentioned in the transcript were by the victims who identified Mr. Turner at the scene of the shooting and a victim, interviewed by Detective Castellanos several weeks later, who also identified Mr. Turner by name and indicated that Mr. Turner owed him money. Defense did not present any evidence to prove the identifications were suggestive or that a likelihood of misrepresentation existed. Furthermore, defense counsel did not specify grounds to suppress any identifications during his oral argument at the hearing and did not file an opposition to the State's writ application to explain whether Mr. Turner actually contested any identifications by the victims.

Based on the foregoing, we find that the trial court erred and abused its discretion by granting Mr. Turner's motion to suppress identification solely based on the State's failure to offer, file, and introduce exhibits into evidence at the hearing. The burden of proof on the motion to suppress any alleged out-of-court

identification, rested with Mr. Turner, not the State. Mr. Turner did not provide evidence or argument to prove that any identification was suggestive or that there was a likelihood of misidentification as a result of the identification procedure.

We next address the trial court's ruling granting Mr. Turner's motion to suppress his confession. The State has the burden of proving the admissibility of a purported confession or statement by the defendant. La. C.Cr.P. art. 703(D); *State v. Arias-Chavarria*, 10-116 (La. App. 5 Cir. 9/28/10), 49 So.3d 426, 433, *writ denied*, 10-2432 (La. 2/25/11), 58 So.3d 460. Before an inculpatory statement made during a custodial interrogation may be introduced into evidence, the State must prove, beyond a reasonable doubt, that the defendant was first advised of his *Miranda* rights, that he voluntarily and intelligently waived them, and that the statement was made freely and voluntarily and not under the influence of fear, intimidation, menaces, threats, inducements, or promises. *State v. Loeb*, 09-341 (La. App. 5 Cir. 2/23/10), 34 So.3d 917, 924-25, *writ denied*, 10-681 (La. 10/15/10), 45 So.3d 1110. Testimony of the interviewing police officer alone may be sufficient proof that a defendant's statements were freely and voluntarily given. *State v. Hunt*, 09-1589 (La. 12/1/09), 25 So.3d 746, 755; *Arias-Chavarria*, 49 So.3d at 433.

At the suppression hearing, Mr. Turner's counsel argued that officers violated his constitutional rights because after he invoked his right to counsel, they reinitiated contact with Mr. Turner without providing him with a lawyer. In *Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966), the United States Supreme Court found that if a suspect indicates "in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning." *Edwards v. Arizona*, 451 U.S. 477, 481-85, 101 S.Ct. 1880, 1883-85, 68 L.Ed.2d 378 (1981), further held that when an accused either before or during interrogation asks for counsel, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated, custodial interrogation, even if he has been advised of his rights. The accused is not subject to further interrogation by the authorities until counsel is present, unless the accused himself initiates further communication, exchanges, or conversations with the police. *Edwards*, 451 U.S. at 484-85, 101 S.Ct. at 1885.

Under Fifth Amendment jurisprudence, however, nothing prevents an accused party from changing his mind and giving a statement after he has previously declined to do so, as long as the statement is voluntary and intelligently made. *State v. Aguliar-Benitez*, 17-361 (La. App. 5 Cir. 12/10/18), 260 So.3d 1247, 1257, *writ denied*, 19-147 (La. 6/3/19), 272 So.3d 543. When a defendant invokes his *Miranda* right to counsel, the admissibility of a subsequent confession is determined by a two-step inquiry: 1) did the defendant initiate further conversation or communication; and 2) was the waiver of the right to counsel knowing and intelligent under the totality of the circumstances. *State v. Abadie*, 612 So.2d 1, 5 (La. 1993), *cert. denied*, 510 U.S. 816, 114 S.Ct. 66, 126 L.Ed.2d 35 (1993).

As noted above, defense counsel argued that Mr. Turner's confession must be suppressed because officers could not speak with Mr. Turner again until they provided him with counsel. The State argued in response that officers were permitted to speak with Mr. Turner because he reinitiated contact with officers. Detective Castellanos testified that Mr. Turner's mother contacted Sheriff Mike Tregre and told him Mr. Turner wanted to speak with officers.

After invoking his right to counsel, a defendant may initiate further conversation with the police through another person. *State v. Wesley*, 10-2066 (La. App. 1 Cir. 9/14/11), 77 So.3d 55, 58, *writ denied*, 11-2311 (La. 9/21/12), 98 So.3d 322; *State v. Carr*, 530 So.2d 579, 589 (La. App. 1st Cir.), *writ denied*, 533 So.2d 354 (La. 1988), *cert. denied*, 489 U.S. 1098, 109 S.Ct. 1573, 103 L.Ed.2d 939 (1989). In *Wesley*, *supra*, the defendant argued that the trial court erred by denying his motion to suppress his confession because his grandmother, rather than the defendant himself, initiated communication with the police after he invoked his right to counsel. The defendant in *Wesley* learned that detectives were looking for him because he was a suspect in a shooting. The defendant voluntarily went to the police department with his grandmother and stepfather, who worked as a jailer for the police department. After the defendant was advised of his rights and invoked his right to counsel, the detectives exited the interview room and informed the defendant's grandmother and stepfather that the defendant requested an attorney, and they could not talk to him. The defendant's grandmother then asked to talk to the defendant alone in the interview room and after five minutes, she informed the detectives that the defendant wanted to talk to them. The detectives then re-advised the defendant of his *Miranda* rights, and he waived his rights and provided a statement.

On appeal, the defendant in *Wesley* argued that he did not reinitiate communication with the police as required by *Edwards*, *supra*, because his grandmother, rather than he, initiated communication with police after he invoked his right to counsel. The appellate court found that the trial court did not abuse its discretion by denying the defendant's motion to suppress because the defendant reinitiated contact with the detectives through his grandmother and signed a waiver of rights form indicating that he waived his rights and wanted to talk to the detectives. *Id.* at 60. The appellate court further found the totality of the circumstances indicated that the defendant knowingly and intelligently waived his rights. *Id.*

In the present matter, Mr. Turner also argued that his confession should be suppressed because he invoked his right to counsel and did not reinitiate contact with the officers. However, just as in *Wesley*, we find that Mr. Turner reinitiated communications with the officers through his mother who contacted Sheriff Tregre and indicated that Mr. Turner wanted to speak with the officers. Detective Castellanos confirmed the existence of a copy of a jail call between Mr. Turner and his mother, wherein she told Mr. Turner to speak with the officers to tell his side of the story and he agreed. After he was informed of the conversation between Mr. Turner's mother and Sheriff Tregre, Detective Castellanos testified that Mr. Turner was advised again of his *Miranda* rights and that Mr. Turner signed a waiver of rights form indicating that he was waiving his rights and willing to speak with officers. Mr. Turner did not present any evidence to contradict Detective Castellanos' testimony.

Based on the foregoing, we find that the trial court erred and abused its discretion by suppressing Mr. Turner's confession on the grounds that it had no evidence to consider due to the State's failure to introduce its exhibits. The uncontradicted evidence presented at the hearing established that Mr. Turner reinitiated communications with officers through his mother. Furthermore, the totality of the circumstances indicate that Mr. Turner knowingly and intelligently waived his rights.

Accordingly, we grant the State of Louisiana's writ application and reverse the trial court's judgment granting Mr. Turner's motions to suppress his confession and identification.

Gretna, Louisiana, this 23rd day of June, 2021.

HJL
FHW

STATE OF LOUISIANA

NO. 21-K-186

VERSUS

FIFTH CIRCUIT

RIDGE TURNER

COURT OF APPEAL

STATE OF LOUISIANA

JOHNSON, J., DISSENTS, IN PART, WITH REASONS

I, respectfully, dissent, in part, on the issue of whether Defendant, Ridge Turner's, confession should be suppressed. While I agree with the majority's ultimate inference that an officer's testimony may be sufficient to support the admissibility of a confession, I do not agree that an officer's testimony alone is sufficient to prove the existence of a defendant's waiver of rights and confession. Here, the trial court granted Defendant's motion to suppress on the basis that the State failed to offer, file, and introduce supporting documents into evidence and concluded that it had nothing to consider in contradiction of the motion. Because it is the State's burden of proving the admissibility of a purported confession or statement by Defendant, I opine that the State must first offer the waiver of rights form into evidence before an officer's testimony can be used to support the admissibility of a confession. The State failed to meet its evidentiary burden in this matter, and I find that the trial court was not erroneous in its decision to suppress Defendant's purported confession. In all other respects, I agree with the majority disposition.

MEJ

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



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT
NANCY F. VEGA
CHIEF DEPUTY CLERK

SUSAN S. BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

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 **06/23/2021** 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 COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-K-186

E-NOTIFIED

40th District Court (Clerk)
Honorable Vercell Fiffie (DISTRICT JUDGE)
Justin B. LaCour (Relator)

Honorable Bridget A. Dinvaut (Relator)

MAILED

David I. Belfield, III (Respondent)
Attorney at Law
2513 Acacia Street
New Orleans, LA 70122