

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 2011

STATE OF LOUISIANA

VERSUS

THEDRICK EDWARDS

Judgment Rendered: June 12, 2009.

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On Appeal from the  
19th Judicial District Court,  
in and for the Parish of East Baton Rouge  
State of Louisiana  
District Court No. 07-06-0032

The Honorable Richard "Chip" Moore, Judge Presiding

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\* \* \* \* \*

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

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**CARTER, C.J.**

The defendant, Thedrick Edwards, was charged by grand jury indictment with armed robbery (five counts), aggravated rape, aggravated kidnapping (two counts), and attempted armed robbery, violations of La. R.S. 14:64, 14:42, 14:44, and 14:27.<sup>1</sup> The defendant entered a plea of not guilty. The defendant's motion to suppress confession was denied. A jury found the defendant guilty as charged on all five counts of armed robbery, the one count of aggravated rape, and both counts of aggravated kidnapping. The defendant was found not guilty on the attempted armed robbery charge.

The defendant was sentenced to thirty years imprisonment at hard labor on each armed robbery count, without the benefit of parole, probation, or suspension of sentence, with the sentences to be served consecutively. The defendant was further sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence on the count of aggravated rape and on each count of aggravated kidnapping. Those sentences also are to be served consecutively to each other and to the other sentences.

The defendant now appeals, urging in his sole assignment of error, that the trial court erred in denying the motion to suppress his confession. For the following reasons, we affirm the convictions and sentences.

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<sup>1</sup> The indictment originally included further charges for two counts of conspiracy to commit armed robbery and one count of conspiracy to commit aggravated rape, but those counts were dismissed.

## STATEMENT OF FACTS

On May 13, 2006, at approximately 11:30 p.m., Ryan Eaton, who was a student at Louisiana State University, went to the Circle K on State Street and Highland Road and then drove to the apartment of his girlfriend, G.W., on East Boyd Drive near Nicholson Drive. Eaton turned his vehicle off, opened a beer, and opened the driver's door. As Eaton began to step out of his vehicle, a male subject wearing black clothing and a black bandana across his face (from the nose down) pointed a .45 caliber, black, semiautomatic pistol at Eaton's head and told Eaton to get back into his vehicle and unlock the doors. Another male subject, also armed with a gun, entered the back of Eaton's vehicle after Eaton unlocked the back door. The armed subject who entered the front of Eaton's vehicle drove away from the complex. The assailants were later identified as the defendant and Joshua Johnson.

The assailants demanded money and ultimately took the victim to an ATM so that he could retrieve cash. Eaton's accounts were depleted, so he was unable to retrieve any cash from the ATM. According to Eaton, the assailants were angry because he did not have any money. Eaton suggested that the assailants take him to his apartment on Bluebonnet Road and take some of his belongings; the assailants agreed.

After they entered the apartment, the assailants blindfolded Eaton, tied his hands together, began rummaging through his apartment, and took several items. The assailants also took Eaton's cellular telephone, turning on the telephone speaker when G.W. called. The assailants instructed Eaton to speak to G.W. calmly and make arrangements for a meeting. G.W. told

Eaton that she was at Chelsea's Bar and asked him to meet her there. The assailants led Eaton, at gunpoint, back to his vehicle, put him in the front passenger seat, and drove away from his apartment. According to Eaton, the defendant was driving at this point, and Johnson was in the back seat sitting behind Eaton. They drove to Chelsea's Bar, and when the vehicle stopped, Eaton was able to get a good look at the defendant. The assailants responded to text messages sent by G.W. to Eaton, encouraging her to go back to her apartment.

Eaton and his assailants ultimately drove back to G.W.'s apartment where Eaton was instructed, at gunpoint, to knock on the door. By that time, G.W., her roommate R.M., and her friend L.R. were at the apartment. When G.W. answered the door, the defendant and Johnson rushed in behind Eaton. They rummaged through the apartment, finding items to steal. L.R. was vaginally and anally raped at gunpoint and forced to perform oral sex. L.R. was unable to identify her attacker as his face was obscured, but Eaton believed it to be the defendant. R.M. was dragged upstairs and raped. R.M. also was unsure of her attacker's identity. The assailants gathered several items and told Eaton that they would abandon his vehicle nearby. After the assailants left, Eaton walked out of the apartment and used a passerby's telephone to call for emergency assistance.

Two days later, during the early morning hours of May 15, 2006, two assailants began following Marc Verret as he drove through his apartment complex near State Street. After Verret parked, the assailants forced entry into his vehicle. They brandished guns and had bandanas over their faces. One of the assailants entered the front of Verret's vehicle as Verret slid to

the passenger's side, and the other entered the back of the car. Verret was taken to an ATM, where he withdrew funds and gave them to the assailants. The assailants exited the vehicle after taking the money and other items. Verret was able to identify Johnson as one of the armed assailants.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, the defendant contends that the trial court erred in denying the motion to suppress his confession. The defendant notes that he did not testify at the hearing on the motion to suppress; however, he testified at trial that he requested an attorney before his interrogation, but his request was ignored. The defendant further claims that his trial testimony was not rebutted. The defendant concludes that the denial of his motion to suppress was not based on a credibility determination, since the issue of whether he asked for an attorney was not before the court.

The State bears the burden of proving that an accused who makes an inculpatory statement or confession during custodial interrogation was first advised of his constitutional rights and made an intelligent waiver of those rights. **State v. Davis**, 94-2332 (La. App. 1 Cir. 12/15/95), 666 So.2d 400, 406, writ denied, 96-0127 (La. 4/19/96), 671 So.2d 925. In **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court promulgated a set of safeguards to protect the therein delineated constitutional rights of persons subject to custodial police interrogation. The warnings must inform the person in custody that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney,

either retained or appointed. **Miranda**, 384 U.S. at 444, 86 S.Ct. at 1612. In order to introduce into evidence a defendant's statement or confession, in addition to showing that the **Miranda** requirements were met, the State must affirmatively show that the statement or confession was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451.

In **Miranda**, 384 U.S. at 444-445, 86 S.Ct. at 1612, the 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." The United States Supreme Court in **Edwards v. Arizona**, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884-1885, 68 L.Ed.2d 378 (1981), confirmed these views and, to lend them substance, held that when an accused either before or during interrogation asks for counsel, a valid waiver of that right cannot be established only by showing that he responded to further police-initiated, custodial interrogation, even if he has been advised of his rights. Once an individual in custody has expressed his desire to deal with the police only through counsel, 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 484-485, 101 S.Ct. at 1885. **State v. Tilley**, 99-0569 (La. 7/6/00), 767 So.2d 6, 11, cert. denied, 532 U.S. 959, 121 S.Ct. 1488, 149 L.Ed.2d 375. When an accused invokes his **Miranda** right to counsel, the admissibility of a subsequent confession or incriminating statement is determined by a two-step inquiry: did the accused initiate further conversation or communication; and was the

purported waiver of counsel knowing and intelligent under the totality of the circumstances. **Tilley**, 767 So.2d at 11; see La. R.S. 15:452 (No arrestee “shall be subjected to any treatment designed by effect on body or mind to compel a confession of crime.”).

Trial courts are vested with great discretion when ruling on a motion to suppress.<sup>2</sup> Consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion. **State v. Leger**, 2005-0011 (La. 7/10/06), 936 So.2d 108, 122, cert. denied, 549 U.S. 1221, 127 S.Ct. 1279, 167 L.Ed.2d 100 (2007). In determining whether the ruling on the defendant’s motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n. 2 (La. 1979).

At the outset, we note that the defendant’s motion to suppress did not include a claim that he requested an attorney. Sergeant Tillman Cordell Cox of the Baton Rouge City Police Department (BRPD) testified at the motion to suppress hearing that he was the first officer to interview the defendant after he turned himself in. Sergeant Cox read the defendant his **Miranda**

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<sup>2</sup> Louisiana Code of Criminal Procedure article 703G provides as follows:

When a ruling on a motion to suppress a confession or statement is adverse to the defendant, the state shall be required, prior to presenting the confession or statement to the jury, to introduce evidence concerning the circumstances surrounding the making of the confession or statement for the purpose of enabling the jury to determine the weight to be given the confession or statement.

A ruling made adversely to the defendant prior to trial upon a motion to suppress a confession or statement does not prevent the defendant from introducing evidence during the trial concerning the circumstances surrounding the making of the confession or statement for the purpose of enabling the jury to determine the weight to be given the confession or statement.

rights. The defendant indicated that he understood his rights and did not initially give a statement, except to say that he did not have anything to do with the offenses. The interview was terminated, and the defendant was booked. The State asked Sergeant Cox if the defendant requested an attorney, and he responded negatively. Sergeant Cox testified that the defendant was not threatened, not made any promises, and did not appear to be under the influence of alcohol or drugs.

The defendant was subsequently interviewed by Detective Greg Fairbanks of the BRPD. Detective Fairbanks testified at the motion to suppress hearing that he read the defendant his **Miranda** rights, and a waiver of rights form was executed. The defendant confessed to involvement in the armed robberies and the rapes, including details that had not yet been released to the public. During direct examination by the State, Detective Fairbanks specifically testified that the defendant did not ask for an attorney at any point. The second half of the interview with Detective Fairbanks was recorded. On cross-examination, the defense attorney asked Detective Fairbanks if the defendant was offered an attorney or advised of his right to an attorney, and Detective Fairbanks responded positively. The defense counsel further asked if the defendant rejected that right, and Detective Fairbanks stated that the defendant signed the waiver of rights form acknowledging that he understood he had the right to counsel and chose to make statements in the absence of counsel. The defense counsel then asked if the defendant understood that he had the right to counsel at the time of the interview after his arrest, and Detective Fairbanks stated that he made that point very clear to the defendant. Detective Fairbanks also testified that



there were no promises or threats and that the defendant did not appear to be under the influence of drugs or alcohol.

Lieutenant John Attuso of the BRPD, who was present during the untaped portion of Detective Fairbanks's interview of the defendant and participated in the questioning of the defendant, testified at the motion to suppress hearing. Lieutenant Attuso confirmed that the defendant was informed of his rights and that he indicated he understood them. Lieutenant Attuso also testified that the defendant did not invoke his right to counsel. Lieutenant Attuso testified that the defendant was not threatened or coerced, that no promises were made, and that the defendant did not seem to be under the influence of alcohol or drugs.

Sergeant Cox further questioned the defendant after the interview by the other officers, and the defendant made further statements at that point. Although the defendant was concerned with the length of incarceration that he was subject to, no promises or indications were made.

During the argument portion of the motion to suppress hearing, the defense counsel stated that the basis for the motion to suppress was to show that the evidence did not support the confession and that the defendant was given information that he admitted. The State noted that the motion to suppress alleged that the confession was not freely and voluntarily made; rather, the confession was made under the influence of fear, duress, intimidation, threats, inducements, and promises, and without the benefit of counsel. Based on the testimony presented at the hearing and the defendant's demeanor on the videotape, the trial court found that the confession was not coerced and was freely and voluntarily given.

During the defendant's trial testimony, the defendant testified that he confessed to the instant offenses because, "it was more of a force and being naïve and soft-hearted, [I] really wanted to help at the same time." The defendant further testified that the portion of the interview when force was used was not recorded. The defendant specified that Detective Fairbanks and another officer, whose name he could not recall, took him in a room, chained him to a wall, read his **Miranda** rights, and asked if he wanted an attorney. The defendant added, "I told him, yeah, but they act[ed] like they was [sic] ignoring me." The defendant also testified that he was informed that he would not need an attorney if he cooperated.

A new basis for the motion to suppress cannot be articulated for the first time on appeal. The raising on appeal of a new ground for objection is prohibited under the provisions of La. Code Crim. P. art. 841 in order to allow the trial court an opportunity to first consider the merits of the particular claim. See State v. Cressy, 440 So.2d 141, 142-143 (La. 1983). We find that the defendant failed to preserve the instant issue for appeal.

The defendant did not reference in the motion to suppress, nor argue before the trial court, that he was questioned after asserting his right to counsel. At the motion to suppress hearing, the defense counsel only questioned one of the three witnesses as to whether the defendant asked for an attorney, and this witness replied that the defendant did not. The defendant did not testify or offer any testimony regarding an assertion of his right to counsel.

Although the defendant subsequently presented trial testimony regarding an assertion of his right to counsel, this testimony was in direct

conflict with testimony presented by all three officers at the motion to suppress hearing. Moreover, although the defendant claims otherwise, his trial testimony regarding his request for an attorney was rebutted during the trial. During the trial, on cross-examination, the defense attorney asked Detective Fairbanks if the defendant ever asked for an attorney, and he responded, “No, ma’am.”<sup>3</sup>

During the videotaped confession, the defendant expressed hesitancy only to the extent that he was concerned about the number of years of incarceration he would receive. There was no indication that the defendant asked for an attorney. The confession contained ample, unprompted, highly detailed facts that were consistent with statements given by the victims herein, including timelines and locations. Further, there was no indication that the confession was being made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises.

While the issue raised on appeal was not preserved, we further conclude that the record supports the trial court’s denial of the defendant’s motion to suppress the confession. The sole assignment of error lacks merit.

**CONVICTIONS AND SENTENCES AFFIRMED.**

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<sup>3</sup> Detective Fairbanks testified prior to the defendant. However, when a defendant’s allegations are in direct conflict with previous testimony by a State’s witness on direct examination, the State’s witness need not be recalled on rebuttal to repeat what he testified to in the State’s affirmative showing. **State v. Toomer**, 572 So.2d 1152, 1154 (La. App. 1st Cir. 1990).