NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 2271

STATE OF LOUISIANA

VERSUS

RONNIE ALLEN

Judgment Rendered: May 8, 2009.

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On Appeal from the
21st Judicial District Court,
in and for the Parish of Tangipahoa
State of Louisiana
District Court No. 701318

The Honorable Bruce C. Bennett, Judge Presiding

* * * * *

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* * * * *

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

**CARTER, C.J.**

The defendant, Ronnie Allen, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant pled not guilty.[1] The defendant moved to suppress a statement provided to the police during the investigation of the murder. Following a hearing, the trial court denied the motion. At the conclusion of a jury trial, the defendant was convicted as charged. The trial court sentenced the defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

The defendant now appeals urging the following assignments of error:

1. The defendant's challenges for cause were wrongfully denied, thus resulting in reversible error.

2. The trial court erred by failing to suppress the defendant's statement.

3. The trial court erred by allowing inflammatory and cumulative photographs into evidence.

Finding no merit in the assigned errors, we affirm the defendant's conviction and sentence.

## FACTS

On March 10, 2007, Alfred Pea was fishing in the Manchac Canal in Tangipahoa Parish when he discovered the lifeless body of Clarence Nicholes floating in the water. There were numerous abrasions to Nicholes's body and head. Mr. Nicholes's vehicle and wallet subsequently were recovered from an area nearby. In response to information received during the investigation of the matter, the defendant and three co-defendants

[1] Co-defendants George Brown, Lee Michael Brown, and Charles Dexter Martin were also charged in the indictment. The final disposition of the cases against these defendants is unknown.

were charged with the murder. In a taped statement to the police, the defendant confessed his participation in the murder.

In the taped statement, the defendant provided a detailed chronological account of how he and his friends beat the victim and disposed of the body. The defendant stated that he and the codefendants approached Nicholes because they thought he was attempting to break into a residence.[2] According to the defendant, all four men began punching and beating Nicholes causing him to eventually fall onto the ground. The men placed Nicholes inside the trunk of his vehicle and drove him to the Manchac Canal. When they opened the trunk, the defendant started beating Nicholes on the head with a gun. The men eventually dumped Nicholes's body into the canal.

## DENIAL OF CHALLENGES FOR CAUSE

In his first assignment of error, the defendant contends that the trial court abused its discretion in denying the defense challenge for cause of prospective jurors Harold Wright, Edwin Hoover, and Terry Donnow. He specifically submits that because he was required to use three peremptory challenges on prospective jurors who failed to unequivocally commit to follow the law and remain fair and impartial, he was denied his constitutional right to full peremptory challenges.

Both the federal and state constitutions provide a criminal defendant the right to be tried by an impartial jury of his peers. U.S. Const. amend. VI; La. Const. art. 1, § 16. Louisiana Code of Criminal Procedure article 797

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[2] However, testimony provided at trial established that Nicholes knew the owner of the home "quite well," "touched bases with [the owner] at least five or six times a week," and had a key to the residence.

provides the grounds for challenges for cause. The article states in pertinent part:

> The state or the defendant may challenge a juror for cause on the ground that:
>
> * * * *
>
> (2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;
>
> (3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict.
>
> (4) The juror will not accept the law as given to him by the court[.]

When a defendant exhausts all of his peremptory challenges, a trial court's ruling that erroneously denies a defendant's challenge for cause deprives said defendant of his constitutional and statutory rights and requires reversal. See **State v. Jacobs**, 99-1659 (La. 6/29/01), 789 So.2d 1280, 1283-1284. Therefore, to prove that there has been error warranting the reversal of the conviction and sentence, a defendant need only show: (1) the erroneous denial of a challenge for cause; and (2) the use of all of his peremptory challenges. **State v. Lutcher**, 96-2378 (La. App. 1 Cir. 9/19/97), 700 So.2d 961, 966, writ denied, 97-2537 (La. 2/6/98), 709 So.2d 731.

In **State v. Mitchell**, 94-2078 (La. 5/21/96), 674 So.2d 250, 254, cert. denied, 519 U.S. 1043, 117 S.Ct. 614, 136 L.Ed.2d 538 (1996), the

Louisiana Supreme Court ruled that, where the record reveals that a defendant failed to use all his peremptory challenges, a court need not address the issue of whether there is an erroneous denial of a defendant's challenge for cause. Louisiana Code of Criminal Procedure article 799 provides in pertinent part, "[i]n trials of offenses punishable by death or necessarily by imprisonment at hard labor, each defendant shall have twelve peremptory challenges[.]" In this case, the defendant used only nine peremptory challenges. Although the defendant used peremptory challenges to remove the three prospective jurors in question, he still had three remaining peremptory challenges at the close of jury selection. In footnote number two, the **Mitchell** court noted:

> Moreover, even assuming the trial judge erred in denying defendant's challenge for cause of Ms. Devillier, the mere fact that he was required to use a peremptory challenge to remove her does not violate the federal constitution. As stated in *Ross v. Oklahoma*, 487 U.S. 81, 88, 108 S.Ct. 2273, 2278, 101 L.Ed.2d 80 (1988), "so long as the jury that sits is impartial, the fact that the defendant had to use a peremptory challenge to achieve that result does not mean that the Sixth Amendment was violated."

**Mitchell**, 674 So.2d at 254 n. 2.

Accordingly, we do not reach the issue of the alleged erroneous failure of the trial judge to excuse these jurors for cause since the defendant failed to exhaust his peremptory challenges. **State v. Meads**, 98-1388 (La. App. 1 Cir. 4/1/99), 734 So.2d 792, 795-796, writ denied, 99-1328 (La. 10/15/99), 748 So.2d 465.

Thus, this assignment of error is without merit.

## DENIAL OF MOTION TO SUPPRESS

The record in this case reflects that the defendant filed a motion to suppress his statement to the police in connection with the investigation of the victim's murder. Following a hearing, the trial court denied the motion. The defendant filed a supervisory writ application with this court seeking review of the trial court's ruling on the motion to suppress. This court reviewed the defendant's claim and denied the writ application. **State v. Allen**, 2008-0694 (La. App. 1 Cir. 5/12/08) (unpublished).

By this assignment of error, the defendant again seeks review of the trial court's ruling denying the motion to suppress. The defendant contends that the trial court erred in denying his motion to suppress as he was not properly advised of his rights because he was not informed of why he was being detained and questioned prior to his interrogation. The defendant argues that under La. Code Crim. P. art. 218.1, he should have been fully advised of the reason for his detention.

Detective Roy Albritton and Detective Alex Richardson, III, both with the Tangipahoa Parish Sheriff's Office, testified at the motion to suppress hearing. The defendant was taken into custody and questioned about the homicide of Clarence Nicholes. Detective Albritton read to the defendant his **Miranda** warnings from a rights form prior to taking the defendant's taped statement, during the taped statement, and prior to any questions being asked. The defendant indicated that he understood his rights, waived his rights, and gave a statement. The defendant was not promised anything in return for making a statement, nor was he coerced into making the

statement. At no time during his statement did the defendant indicate he wanted a lawyer.

Detective Albritton further testified that, based on a confidential call regarding the homicide, the defendant, along with three other suspects, was picked up by the Tangipahoa Parish Sheriff's Office for questioning. On cross-examination, when asked if the defendant was free to go upon being detained by the police, Detective Albritton responded, "He was not advised of his rights. No, he wasn't free to go. He was asked to come to the Sheriff's Office substation and he voluntarily came along." Following his taped confession, the defendant was arrested.

Following cross-examination, the trial court questioned Detective Albritton. According to Detective Albritton, when the defendant and the other suspects were picked up by the Tangipahoa Parish Sheriff's Office, they were taken into custody, *i.e.*, handcuffed and placed in a police unit, but not placed under arrest. When the trial court suggested that being taken into custody is an arrest, Detective Albritton stated, "Right."

Following a brief argument, the trial court informed the State it would be given the opportunity to further lay a foundation based on its finding that La. Const. art. I, § 13, had been violated because it had not been proven that the defendant had been read his rights upon his arrest. The trial court noted that whether the violation warranted a suppression of the statement is another question. Based on the trial court's finding, the State called Detective Richardson to testify.

Detective Richardson testified that he spoke with the defendant before the defendant went into the interview room to give a taped statement.

Detective Richardson advised the defendant of his **Miranda** warnings with a rights form. The defendant indicated he understood his rights and signed the rights form. This was the same rights form used by Detective Albritton when he advised the defendant of his **Miranda** warnings. About five minutes after Detective Richardson read the defendant his rights, Detective Richardson and the defendant went to the interview room where Detective Albritton was waiting. Both detectives questioned the defendant during his taped statement. Detective Richardson testified that he did not promise the defendant anything in return for his statement, and he did not coerce him into making a statement.

In its reasons for denying the motion to suppress, the trial court stated:

> Okay. I think the State has born [sic] its burden to show that **Miranda** was given and waived and that the statement was voluntarily given.
>
> Ms. Henkels, you argue that there's absolutely no way of knowing what transpired otherwise. I suggest that there is another way and that's to hear from your client should you desire to let your client testify. He can testify at a motion to suppress that he was beaten with rubber hoses or phone books, or whatever, and he has not done that, nor have you introduced any evidence to contradict what the State has proven in this hearing.
>
> I would further note that he can give up that right of silence in a motion to suppress and it not be used against him even in the case in chief except for impeachment purposes, perhaps, so the State has born [sic] its burden.
>
> I do note a technical violation as previously [stated], Article I, Section 13 was violated by the officers, because immediately upon taking into custody an accused person should be properly **Mirandized**. That's the reason for the rule, and quite frankly if that was done in every case we might have a lot fewer of these hearings. And I don't know why officers make arrests without reading the rights. I find that incomprehensible in the year 2007, but nevertheless it happens once in a while.
>
> So my ruling is that the motion is denied.

The defendant contends that the trial court erred in denying his motion to suppress as he was not properly advised of his rights, because he was not

informed of why he was being detained and questioned prior to his interrogation. The defendant further contends that his being handcuffed and transported in a police unit to the Sheriff's station constituted an arrest, but he was not provided his **Miranda** warnings at that time. Instead, he was **Mirandized** for the first time at the police station before being questioned by the police.

Before the State can introduce any inculpatory statement made in police custody, it bears the heavy burden of establishing that the defendant received a **Miranda** warning and that the statement was freely and voluntarily made, and not the product of fear, duress, intimidation, menaces, threats, inducements, or promises. See La. R.S. 15:451; La. Code Crim. P. art. 703D; **State v. Blank**, 2004-0204 (La. 4/11/07), 955 So.2d 90, 103, cert. denied, ___U.S. ___, 128 S.Ct. 494, 169 L.Ed.2d 346 (2007). As a matter of federal constitutional law, any confession obtained by any direct or implied promises, however slight, or by the exertion of any improper influence, must be considered involuntary and inadmissible. **State v. Beaner**, 42,532 (La. App. 2 Cir. 12/5/07), 974 So.2d 667, 676, writ denied, 2008-0061 (La. 5/30/08), 983 So.2d 896. At a suppression hearing, the State bears the burden of proving beyond a reasonable doubt the free and voluntary nature of the confession. **Beaner**, 974 So.2d at 676. The admissibility of a confession is a question for the trial court. **Beaner**, 974 So.2d at 676. A trial court's findings following a free and voluntary hearing are entitled to great weight and will not be overturned on appeal unless not supported by the evidence. **Beaner**, 974 So.2d at 676. Great weight is placed upon the trial court's factual determinations because of its opportunity to observe

witnesses and assess credibility. **Beaner**, 974 So.2d at 676. Testimony of the interviewing police officers alone may be sufficient to prove that the statement was given freely and voluntarily. **Beaner**, 974 So.2d at 676.

At the motion to suppress hearing, Detective Albritton, with the Tangipahoa Parish Sheriff's Office, testified that prior to taking the defendant's taped statement, he read the defendant his **Miranda** warnings from a Tangipahoa Parish Sheriff's Office rights form, which had already been prepared by Detective Richardson. During the taped statement, Detective Albritton again read the defendant his **Miranda** warnings. After each right was read, Detective Albritton asked the defendant if he understood, and the defendant responded "Yes, sir." Particularly, Detective Albritton read to the defendant:

> I knowingly and purposely waive my right to the advice and presence of a lawyer while [I am] being questioned and I understand that at anytime I decide to exercise your [sic] right to a lawyer that all questioning will be stopped and I will not be denied request of a lawyer. Do you understand?

The defendant responded, "Yes sir."

At no time during his questioning did the defendant request a lawyer. At the conclusion of the defendant's taped statement, the following colloquy between Detective Albritton and the defendant took place:

> Albritton: Ok, uh did anybody offer or promise you anything to make this statement?
>
> Allen: No sir.
>
> Albritton: Was this statement made of your own volunteer [sic] free will and accord?
>
> Allen: Yes, sir.

As previously noted, Detective Richardson testified that prior to the defendant being questioned by Detectives Richardson and Albritton, Detective Richardson spoke to the defendant alone. Prior to any questioning, Detective Richardson advised the defendant of his rights from a rights form. The defendant indicated that he understood his rights and signed the form.

The defendant was **Mirandized** at least three times prior to giving a taped statement to the detectives. The testimony of Detectives Albritton and Richardson at the motion to suppress hearing and the transcript of the defendant's taped statement indicate that the defendant sufficiently understood his **Miranda** rights so as to make a knowing waiver. Accordingly, we find that the defendant made a knowing and intelligent waiver of his **Miranda** rights and that his taped statement given to the detectives was free and voluntary.

Insofar as the defendant argues that he was not advised of the reason for his detention, we note that this argument was not raised in connection with the motion to suppress. In the motion to suppress, the defendant asserted that the statement was inadmissible "because it was not made by mover to said police officers or anyone else, freely and voluntarily, but was made under the influence of fear, duress, intimidation, menaces, threats, inducements and promises." Because the reason-for-detention argument against the admissibility of the confession was never articulated to the trial court, it represents a new ground for objection not properly before this Court that cannot be raised for the first time on appeal. See La. Code Evid. art.

103A(l); La. Code Crim. P. art. 841; **State v. Brown**, 594 So.2d 372, 392 (La. App. 1st Cir. 1991).

The defendant further contends that he was not given his **Miranda** warnings at the moment of arrest, which was when he was handcuffed and placed into a police unit to be transported to the police station. Only the detectives (Albritton and Richardson) who interviewed the defendant testified at the motion to suppress hearing. Neither the officer who transported the defendant to the police station nor the officer who sat with the defendant at the police station prior to the defendant speaking to the detectives testified at the motion to suppress hearing. However, at trial, Albritton testified that Deputy Smith, the deputy who initially transported the defendant to the police station, advised the defendant of his **Miranda** rights at a location in Ponchatoula.[3]

Under La. Const. art. I, § 13, "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, [and] his right to the assistance of counsel[.]" See also La. Code Crim. P. art. 218.1. Thus, under the more protective Louisiana constitutional scheme, a person who has been detained is entitled to **Miranda** warnings. As previously noted, Albritton testified that the defendant was advised of his rights by Deputy Smith prior to being transported. Nevertheless, even if the defendant had not been **Mirandized** at that moment (which arguably was the moment of arrest), this

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[3] In determining whether the ruling on 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).

would have no bearing on the admissibility of the confession. While the State bears the burden of showing that the defendant received **Miranda** warnings, proof of whether or not the defendant was **Mirandized** at the moment of arrest prior to arriving at the police station was not necessary because statements, if any, made by the defendant at this time, *i.e.*, while being transported to the police station, were not the subject of the motion to suppress. The "Motion to Suppress Statement" filed by defense counsel states in pertinent part:

> Defendant . . . moves to suppress for use as evidence herein any oral or taped STATEMENT in the possession of the State, more specifically, **A STATEMENT GIVEN TO DETECTIVE ROY ALLBRITTON** [sic] **AND DETECTIVE ALEX RICHARDSON AT THE TANGIPAHOA PARISH SHERIFF'S OFFICE SUB STATION** [sic] **ON OR ABOUT THE 10TH DAY OF APRIL, 2007**, which is inadmissible in evidence because it was not made by mover to said police officers or anyone else, freely and voluntarily, but was made under the influence of fear, duress, intimidation, menaces, threats, inducements and promises.

This point was reiterated by the prosecutor at the motion to suppress hearing. After defense counsel argued that any conversation that took place after the defendant was placed into custody in the vehicle and handcuffed—including the statement at the police station—should be suppressed, the prosecutor stated:

> I don't know that there's been any offer or showing that there was any casual conversation or the nature of that conversation, whether it's inculpatory or not. The only statement which is being offered is after **Miranda** pursuant to a lawful arrest, and I'm not really sure I understand the point of her argument, Judge. We're not offering or trying to introduce any conversation that may have occurred from the ride from Ponchatoula to the substation in Hammond or any brief conversation that may have occurred prior to the time Detective Albritton entered and affirmed the rights[.]

The State sought to prove, and did prove, based on the transcripts of the motion to suppress hearing and the defendant's taped statement, that the defendant was **Mirandized** prior to making his inculpatory statement to the detectives. Nothing more by the State was required. Whether the defendant was **Mirandized** precisely at the moment of arrest is irrelevant. The statement in question was provided by the defendant after being **Mirandized** separately by both detectives.

Considering the foregoing, it is clear that the defendant made a knowing and intelligent waiver of his **Miranda** rights and that his taped statement given to the detectives was free and voluntary. The trial court did not err in denying the defendant's motion to suppress the statement.

This assignment of error lacks merit.

## INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS

In this assignment of error, the defendant contends the trial court erred in allowing the State to admit, over his objection, photographs of the victim's autopsy and of the crime scene. He asserts that the gruesome photographs were cumulative, highly inflammatory, and the prejudicial effect substantially outweighed any probative value thereof. He further asserts the photographs depicting the victim's blood in the vehicle were not disclosed in a timely manner in advance of the trial. For all of the foregoing reasons, the defendant contends the trial court committed reversible error in allowing these items to be introduced into evidence. In response, the State avers that the pictures were properly admitted, as they were necessary to illustrate the severity of the attack upon the victim. The number of photographs introduced was justified by the number of injuries sustained by the victim.

During trial, the State announced its intent to introduce a series of photographs. The photos included various shots of the victim's vehicle as it was dusted for fingerprints and the trunk area where it is alleged the victim's body was kept. The defendant contemporaneously objected to the introduction of the photographs of the bloody trunk based upon the State's untimely disclosure and the cumulative nature of the photos. After viewing the photographs, the trial court overruled the defendant's objections and allowed them to be admitted into evidence. The court found the photographs admissible as they merely provided a visualization of the crime scene and a display to corroborate the description of the vehicle provided by the expert witness.

Louisiana Code of Evidence article 403 provides that otherwise relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. Photographs that illustrate or shed light upon any fact or issue in the case or that are relevant to describe the person, place, or thing depicted, are generally admissible, provided their probative value outweighs any prejudicial effect. See **State v. Steward**, 95-1693 (La. App. 1 Cir. 9/27/96), 681 So.2d 1007, 1011. The State is entitled to the moral force of its evidence, and postmortem photographs of murder victims are admissible to prove *corpus delicti,* to corroborate other evidence establishing cause of death, as well as location and placement of wounds, and to provide positive identification of the victim. **State v. Koon**, 96-1208 (La. 5/20/97), 704 So.2d 756, 776, cert. denied, 522 U.S. 1001, 118 S.Ct. 570, 139 L.Ed.2d 410 (1997). The trial court's admission of

photographs will not be overturned on appeal unless the reviewing court finds that the photographs are so inflammatory as to overwhelm the jurors' reason and lead them to convict the defendant without sufficient other evidence. **State v. Booker**, 2002-1269 (La. App. 1 Cir. 2/14/03), 839 So.2d 455, 466, writ denied, 2003-1145 (La. 10/31/03), 857 So.2d 476.

Upon reviewing the contested photographs, we find that the probative value of this evidence far outweighs any potentially prejudicial effect. As the trial court correctly reasoned, the photographs in question were probative in corroborating the testimony regarding the condition of the victim's vehicle and the crime scene. Insofar as the timeliness of the disclosure of the photographs, the State clearly noted on the record that the photos in question were not taken by the Sheriff's Office and the State came into possession of the photographs (from the Louisiana State Police Crime Lab) only shortly before presenting them to the defense. The purpose of pretrial discovery procedures is to eliminate unwarranted prejudice to a defendant that could arise from surprise testimony. **State v. Mitchell**, 412 So.2d 1042, 1044 (La. 1982). Discovery procedures enable a defendant to properly assess the strength of the State's case against him in order to prepare his defense. **State v. Roy**, 496 So.2d 583, 590 (La. App. 1st Cir. 1986), writ denied, 501 So.2d 228 (La. 1987). If a defendant is lulled into a misapprehension of the strength of the State's case by the failure to fully disclose, such a prejudice may constitute reversible error. **Roy**, 496 So.2d at 590. In ruling on the timeliness of the disclosure in the instant case, the court specifically noted that the late disclosure of the photographs was through no fault of the State. The State obviously could not produce photographs it did not have in its

possession. However, **Kyles v. Whitley**, 514 U.S. 419, 437-438, 115 S.Ct. 1555, 1567-1568, 131 L.Ed.2d 490 (1995), mandates that a prosecutor be held responsible for information held by other state agencies. Nevertheless, even if a discovery violation occurred, it would not constitute reversible error without actual prejudice to the defendant's case. See **State v. Francis**, 2000-2800 (La. App. 1 Cir. 9/28/01), 809 So.2d 1029, 1033. Even if the State did violate the rules of discovery, we note that the defendant has failed to demonstrate any prejudice to his case caused by the State. The record does not reflect any manner in which the defendant might have been lulled into a misapprehension of the strength of the State's case.

Therefore, because the evidentiary value of these photographs outweighs the potential for prejudice, we find no error in the trial court's allowing them to be admitted into evidence. This assignment of error lacks merit.

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

**CONVICTION AND SENTENCE AFFIRMED.**