

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0073

*Wagon
JMM*

STATE OF LOUISIANA

VERSUS

COURTNEY DAVIS

Judgment Rendered: September 10, 2010

**Appealed from the
Twentieth Judicial District Court
in and for the Parish of East Feliciana, State of Louisiana
Trial Court Number 07-CR-752**

Honorable William G. Carmichael, Judge Presiding

**Samuel C. D'Aquila
Kathryn Jones
Clinton, LA**

**Counsel for Appellee,
State of Louisiana**

**Amanda M. McClung
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**Frank Sloan
Mandeville, LA**

**Counsel for Defendant/Appellant,
Courtney Davis**

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

ems *McCleendon, J. concurs with the result reached by the majority*

WHIPPLE, J.

The defendant, Courtney Davis, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. He pled not guilty. Following a trial by jury, the defendant was convicted as charged. The defendant moved for a new trial and for post verdict judgment of acquittal. However, the trial court denied both motions. Thereafter, the defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence. The defendant now appeals, urging in a single assignment of error that the trial court abused its discretion in denying his pretrial motion to suppress the statements he made to the police at the time of his arrest and later during custodial interrogation.

Finding no merit in the assignment of error, we affirm the defendant's conviction and sentence.

FACTS

During the early afternoon hours of September 8, 2007, Sheila Flowers was inside her residence on Johnson Street in Clinton, Louisiana, when she heard two gunshots outside. When she ran to her kitchen door to try to determine the source of the noise, Ms. Flowers saw the defendant standing outside with a gun in hand. According to Ms. Flowers, she asked the defendant what he was doing and he responded by firing a third gunshot into the air. Ms. Flowers immediately contacted 911. Moments later, as Ms. Flowers exited the front door of her residence, she saw the defendant walking down the street with the gun in his hand. The defendant stated, "[h]e deserved it".

When law enforcement officials arrived at Ms. Flowers's residence, they found the lifeless body of the victim, Johnny Lee Sanders, lying face down on the ground in the backyard. Thus, officials began a homicide investigation.

In connection with the investigation, Clinton Police Officer Craig Betrece went to the defendant's residence and spoke with the defendant's sister. Officer Betrece was personally acquainted with the defendant's family. The defendant's sister contacted the defendant on his cellular phone and handed the phone to Officer Betrece. Betrece spoke briefly with the defendant, but without ever advising him of his rights. According to Betrece, the defendant stated that "he had shot a man who had pulled a knife on him." The defendant then terminated the telephone call without providing any additional information.

Approximately one and one-half hours after the shooting, Lieutenant Troy Abshire of the Clinton Police Department was advised, via dispatch, that the defendant had been located at a nearby residence. Todd Collins had discovered the defendant hiding inside a storage shed at his residence. Collins had hit the defendant over the head with a shovel, locked him inside the shed, and contacted the police.

Once Lieutenant Abshire arrived at the residence, he opened the shed and found the defendant sitting in a chair. The defendant was immediately apprehended and orally advised of his Miranda rights. Later, as he was being placed inside the police vehicle, the defendant stated that he was the person who shot the victim. The defendant was transported to the East Feliciana Parish Sheriff's Office (parish jail), where he was again advised of his Miranda rights. This time, Lieutenant Abshire used a written rights form. Lieutenant Abshire signed the form, verifying that he had advised the defendant of his rights. The defendant also signed the form, acknowledging that he had been advised of his rights and that he understood them. The defendant did not initial the portion of the form regarding the waiver of his rights. Next to item number 3, which provides, "I am willing to answer questions and make a statement[,]" the defendant marked over what appeared to have been his initials.

Later, while still in custody, the defendant was questioned by Don McKey and Terrance Miller, officers with the East Feliciana Parish Sheriff's Office, and Al Burns, an officer with the Clinton Police Department. The defendant was again advised of his Miranda rights at this time. After agreeing to waive his rights and to make a statement, the defendant executed another written rights waiver form and then gave an audio-recorded confession. In the statement, the defendant again admitted that he shot the victim, but he claimed he did so in self-defense after the victim pulled a knife on him.

Prior to the trial of this matter, the defendant moved to suppress all statements. After a hearing, the court granted the motion to suppress as to the statement made to Officer Betrece over the phone, but denied the motion as to the defendant's statements to Lieutenant Abshire and the audiotaped statement during the interrogation at the jail.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court abused its discretion in denying his motion to suppress the statement he made to Deputy Abshire while entering the police vehicle and the audio-recorded statement made during the custodial interrogation. Citing the Florida Supreme Court's decision in Florida v. Powell, 998 So. 2d 531, 532 (Fla. 9/29/08), the defendant contends that the recitation of the Miranda warnings provided before each of the aforementioned statements was constitutionally deficient.¹ Specifically, he argues that the oral warnings provided by Lieutenant Abshire failed to specify the right to counsel during any interrogation. He further asserts that the advice-of-rights form used during the custodial interrogation failed to convey the right to the advice of court-appointed counsel before questioning.

¹Notably, on February 23, 2010, shortly before the brief was filed in the instant case, the United States Supreme Court reversed the above-cited Florida Supreme Court's decision in Florida v. Powell, ___ U.S. ___, 130 S. Ct. 1195, ___ L. Ed. 2d ___ (2010).

Louisiana Revised Statute 15:451 provides that before a purported confession can be introduced in evidence, it must be affirmatively shown to be free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. Louisiana Code of Criminal Procedure article 703(D) provides that on the trial of a motion to suppress, the burden is on the defendant to prove the grounds of his motion, except that the state shall have the burden of proving the admissibility of a purported confession or statement by the defendant. A defendant bears the burden of asserting the basis for his motion to suppress in order to give the State adequate notice so that it may present evidence and address the issue. LSA-C.Cr.P. art. 703(E); State v. Jackson, 2004-1388, p. 5 (La. App. 5th Cir. 5/31/05), 904 So. 2d 907, 911, writ denied, 2005-1740 (La. 2/10/06), 924 So. 2d 162.

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See State v. Green, 94-0887, p. 11 (La. 5/22/95), 655 So. 2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589, p. 6 (La. 12/1/09), 25 So. 3d 746, 751.

It is well settled that a defendant is limited, on appeal, to the grounds he articulated at trial; a new basis for the claim, even if it would be meritorious, cannot be raised for the first time on appeal. State v. Johnson, 389 So. 2d 372, 377 (La. 1980). See also State v. Peters, 546 So. 2d 829, 831 (La. App. 1st Cir.), writ denied, 552 So. 2d 378 (La. 1989); State v. Stewart, 465 So. 2d 206, 208-09 (La. App. 3d Cir.), writ denied, 468 So. 2d 571 (La. 1985), and State v. Wright, 441 So. 2d 1301, 1303 (La. App. 1st Cir. 1983) (where the respective courts concluded that the defendants therein forfeited their right to pursue various allegations on appeal by their failure to raise the claims in their pretrial motions to suppress or at the

hearings on the motions). Moreover, articulating a new basis for the motion to suppress for the first time on appeal is prohibited under the provisions of LSA-Cr.P. art. 841, since the trial court would not be afforded an opportunity to consider the merits of the particular claim. See State v. Cressy, 440 So. 2d 141, 142-43 (La. 1983).

In the instant case, the grounds set forth in the defendant's written motion to suppress were general. The testimony and argument presented at the motion to suppress hearing focused solely on whether the defendant was actually advised of his Miranda warnings and whether he was sufficiently coherent -- having possibly suffered a head injury after being struck on the head with a shovel -- to waive the rights. At the close of the evidence at the suppression hearing, the following exchange occurred between the court and defense counsel:

THE COURT:

What's the basis for your motion, specifically, Mr. Howell? Your motion says he wasn't advised of his **Miranda** rights. Now, that's not true. According to the uncontroverted testimony, he was advised of his rights at least three times. I heard once. So, he was advised of his rights. What else?

MR. HOWELL:

Specifically, that he did not waive those rights, as far as the Clinton Police Department went, and that his medical condition would lend itself to him not fully understanding what was going on.

In denying the motion to suppress, the court reasoned:

It is clear to me that he gave the statement voluntarily. The statement, for most of what I could hear, at least, was exculpatory. He is attempting to explain what happened, especially that the alleged victim had a knife. In fact, in testimony during the, on the recording, during the part where Mr. Davis was being explained his rights, he attempted to interrupt to start his statement. They had to stop him and explain to him that first they had to go through the rights, before he could make his statement. I think he voluntarily made his statement. I think he was aware of his rights. And he proceeded to make the statement, thereby waiving his rights. I don't think that whatever that mark is that was made on the rights waiver form done by Mr. Abshire is an unequivocal assertion of his right to counsel. . . . [A]ll the issues relative to his medical condition are purely speculative. From what I

heard on the audio portion of the statement, he was able to converse coherently and make it clear what he thought his excuse was for attacking this individual. I find no basis to suppress any of these statements.

The record reflects that the defendant's counsel orally articulated two specific grounds for the motion to suppress confession and/or statements, namely, that the defendant, factually, did not waive his rights and that his medical condition at the time impaired his ability to understand or knowingly waive his rights. Thus, our review of the defendant's written motion to suppress is limited to the specific grounds raised below and considered by the trial court. See State v. Schaub, 563 So. 2d 974, 975 n.3 (La. App. 1st Cir. 1990). On appeal, the defendant does not challenge the admissibility of the statements based on either of these grounds articulated to the trial court. Specifically, in the proceedings below, the defendant never challenged the sufficiency of the Miranda warnings given. Because the defendant has raised a new basis for the motion to suppress for the first time on appeal, this assignment of error is not properly before us and presents nothing further for our review. Accordingly, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.