

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0791

STATE OF LOUISIANA

VERSUS

CHRISTOPHER SCIENEAX



Judgment Rendered: October 29, 2010

APPEALED FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ASCENSION
STATE OF LOUISIANA
DOCKET NUMBER 21498, DIVISION "D"

THE HONORABLE JANE TRICHE-MILAZZO, JUDGE

Ricky L. Babin
District Attorney
Donaldsonville, Louisiana
and
Donald D. Candell
Assistant District Attorney
Gonzales, Louisiana

Attorneys for Appellee
State of Louisiana

Andre' Belanger
Baton Rouge, Louisiana

Attorney for Defendant/Appellant
Christopher Scieneaux

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McCleendon, J. Concurs and Assigns Returns.

McDONALD, J.

The defendant, Christopher Scieneaux, was charged by bill of information with one count of being a felon in possession of a firearm, a violation of La. R.S. 14:95.1(A), having been previously convicted of simple burglary. He pled not guilty. Following a jury trial, he was found guilty as charged by unanimous verdict. He was sentenced to eleven and one-half years at hard labor without benefit of parole, probation, or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, contending the trial court erred in denying the motion for mistrial. For the following reasons, we affirm the conviction and sentence.

FACTS

On February 23, 2007, Roxie Parent was employed at United Community Bank at 12328 Louisiana Highway 44 in Gonzales. She alerted Calvin Aldridge, the bank's security officer, that she saw a man, later identified as the defendant, stooping down beside bank employee Sandy Lamotte's vehicle. When Aldridge and Lamotte approached the defendant to investigate what he was doing, he had already removed one hubcap and was in the process of removing another hubcap. Aldridge attempted to question the defendant about what he was doing, but the defendant walked away with a crowbar/tire tool and fled in a vehicle, which he had parked at the office next to the bank. Aldridge alerted the police to the incident and provided them with the license plate number and description of the vehicle in which the defendant had fled.

Thereafter, Sergeant Rex Wiley of the Ascension Parish Sheriff's Office initiated a traffic stop of the vehicle, which was registered to the defendant. The

defendant was the only occupant of the vehicle. After Sergeant Wiley ordered the defendant out of the vehicle, the defendant repeatedly asked to be allowed to return to the vehicle "to get a cigarette." Sergeant Wiley refused to allow the defendant to return to his vehicle. Thereafter, Ascension Parish Sheriff's Office Deputies Dykes and Griffin arrived to provide back-up.

Deputy Griffin advised the defendant of his **Miranda**¹ rights and asked him if he had been in the parking lot of the bank, approximately ten or fifteen minutes earlier. The defendant initially denied being in the parking lot, but when confronted with evidence that he had in fact been there, he confessed to trying to take hubcaps from a car. Deputy Griffin then approached the defendant's vehicle and, on the passenger seat, saw a 12-gauge, pump-action, shotgun with pistol grips. A subsequent criminal history check of the defendant indicated he was a convicted felon.

At trial, the State established the defendant had been convicted of simple burglary and had completed his sentence for that offense on July 13, 2004.

NOTICE OF INCULPATORY STATEMENT

In his sole assignment of error, the defendant argues the trial court erred in denying the motion for mistrial because the State violated La. C.Cr.P. arts. 716 and 768 by failing to give notice of the defendant's inculpatory statement.

Louisiana Code of Criminal Procedure art. 716, in pertinent part, provides:

B. Upon motion of the defendant, the court shall order the district attorney to inform the defendant of the existence, but not the contents, of any oral confession or statement of any nature, made by the defendant, which the district attorney intends to offer in evidence at the trial, with the information as to when, where and to whom such oral confession or statement was made.

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

C. Upon motion of the defendant, the court shall order the district attorney to inform the defendant of the substance of any oral statement which the state intends to offer in evidence made by the defendant, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a law enforcement officer.

Further, La. C.Cr.P. art. 768 provides:

Unless the defendant has been granted pretrial discovery, if the state intends to introduce a confession or inculpatory statement in evidence, it shall so advise the defendant in writing prior to beginning the state's opening statement. If it fails to do so a confession or inculpatory statement shall not be admissible in evidence.

An "inculpatory statement" under Article 768 is one made out of court after a crime has been committed, admitting a fact, circumstance, or involvement which tends to establish guilt or from which guilt may be inferred. **State v. Thames**, 95-2105, p. 4 (La. App. 1st Cir. 9/27/96), 681 So.2d 480, 484, writ denied, 96-2563 (La. 3/21/97), 691 So.2d 80.

Failure of the State to comply with discovery procedures does not automatically command reversal. The purpose of giving a defendant sufficient notice of an inculpatory statement or any other evidence the State intends to use is to give the defendant a fair opportunity to meet the issue. If a defendant is misled by State responses relative to its possession of an inculpatory statement or other evidence, is lulled into a misapprehension of the strength of the State's case, and suffers prejudice when the evidence is subsequently introduced at trial, basic unfairness results, which constitutes reversible error. The court must review the entire record and determine whether any prejudice may have resulted from the noncompliance which caused the jury to reach the wrong conclusion. **Thames**, 95-2105 at pp. 4-5, 681 So.2d at 484. See also **State v. Francis**, 2000-2800, p. 6

(La. App. 1st Cir. 9/28/01), 809 So.2d 1029, 1033 (“The technical failures to comply with [pretrial discovery articles] are not dispositive of the ultimate issue before this court. Despite the fact that defendant was not provided notice of the oral statement in pretrial discovery or by the article 768 notice itself, reversal of the conviction is not appropriate. Even if the prosecution fails to provide the proper notice, the error may be harmless if the other evidence against defendant is overwhelming (citations omitted).”).

Louisiana Code of Criminal Procedure article 729.5 prescribes sanctions for failure to honor a discovery right, leaving in the trial judge's discretion the decision of whether to order a mistrial or enter any such other order, other than dismissal, as may be appropriate. As is pertinent here, La. C.Cr.P. art. 775 provides that a mistrial shall be ordered when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial. However, a mistrial is a drastic remedy which should be granted only when the defendant suffers such substantial prejudice that he has been deprived of any reasonable expectation of a fair trial. Determination of whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for mistrial will not be disturbed on appeal without abuse of that discretion. **State v. Berry**, 95-1610, p. 7 (La. App. 1st Cir. 11/8/96), 684 So.2d 439, 449, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603.

Ascension Parish Sheriff's Department Sergeant Jeff Griffin assisted in the traffic stop of the defendant. He saw the shotgun on the passenger's seat of the defendant's vehicle. At trial, the State asked him if the defendant made any statements concerning the shotgun. Sergeant Griffin replied that the defendant

said the shotgun wasn't his; it belonged to his grandfather, and was used for hunting.

Outside the presence of the jury, the defense moved for a mistrial arguing it had never been informed of the statement referenced by Sergeant Griffin and the statement was inculpatory because it established the defendant's knowledge of the weapon. The State indicated it had provided open-file discovery. The defense claimed it had not seen the statement in the police reports. It stated the statement was "in a sense, a confession to the crime" and had it known of the confession, it could have moved to suppress the confession. The State argued the challenged statement was actually exculpatory because, in the statement, the defendant denied ownership of the weapon. The court overruled the objection.

On cross-examination, Sergeant Griffin indicated, although the shotgun had a serial number, he never determined who had originally purchased the gun. He also did not have the shotgun examined for fingerprints or DNA. He indicated that Deputy Dykes's report stated the shotgun was found "in the vehicle" on an inventory search of the vehicle and did not state that the gun was in plain view. Sergeant Griffin also stated the defendant told him that, "he oiled the gun with Crisco or his grandfather oiled the gun with Crisco." Sergeant Griffin stated he never contacted the defendant's grandfather because the defendant, and not his grandfather, was in possession of the shotgun.

The trial court did not abuse its discretion in denying the motion for mistrial. The failure of the State to advise the defense of the defendant's oral statement did not make it impossible for the defendant to obtain a fair trial and did

not cause him such substantial prejudice that he was deprived of any reasonable expectation of a fair trial.

The defendant, a convicted burglar, was arrested for being a felon in possession of a firearm because a shotgun with pistol grips was on the passenger seat of his car after he and the vehicle were stopped following his flight from his commission of attempted theft. It is unlawful for any person “who has been convicted of ... simple burglary, ... to possess a firearm or carry a concealed weapon.” La. R.S. 14:95.1(A). Whether the proof is sufficient to establish possession under La. R.S. 14:95.1 turns on the facts of each case. Further, guilty knowledge may be inferred from the circumstances of the transaction and proved by direct or circumstantial evidence. **State v. Johnson**, 2003-1228, p. 5 (La. 4/14/04), 870 So.2d 995, 998.

The State’s theory of the case was that the defendant was in constructive possession of the shotgun. Constructive possession of a firearm occurs when the firearm is subject to the offender's dominion and control. Louisiana cases hold that a defendant’s dominion and control over a weapon constitutes constructive possession even if it is only temporary and even if the control is shared. However, mere presence of a defendant in the area of the contraband or other evidence seized alone does not prove that he exercised dominion and control over the evidence and therefore had it in his constructive possession. **Johnson**, 870 So.2d at 998-99. The defendant’s claims that the shotgun belonged to his grandfather and that they used it for hunting did not defeat his constructive possession of the weapon at the time of the vehicle stop. Further, the defense learned of the defendant’s oral statement prior

to cross examination of Sergeant Griffin and presented the defendant's theory that "the shotgun wasn't his" to the jury.

This assignment of error is without merit.

REVIEW FOR ERROR

Initially, we note that our review for error is pursuant to La. C.Cr.P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and "error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence." La. C.Cr.P. art. 920(2).

The trial court failed to impose the mandatory fine of not less than one thousand dollars nor more than five thousand dollars. See La. R.S. 14:95.1(B). Although the failure to impose the fine is error under La. C.Cr.P. art. 920(2), it certainly is not inherently prejudicial to the defendant. Because the trial court's failure to impose the fine was not raised by the State in either the trial court or on appeal, we are not required to take any action. As such, we decline to correct the illegally lenient sentence. See State v. Price, 2005-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

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

CONVICTION AND SENTENCE AFFIRMED.

STATE OF LOUISIANA

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VERSUS

CHRISTOPHER SCIENEAUX



McCLENDON, J., concurs and assigns reasons.

Although I have serious concerns about the state's failure to provide notice of defendant's oral statement in violation of LSA-C.Cr.P. art. 716, I agree with the result reached by the majority. The state had overwhelming evidence to support its theory of constructive possession, as the shotgun was located in plain view on the front passenger seat of defendant's vehicle.

Further, although the trial court failed to impose the legislatively mandated fine, given the lack of objection by the state and in the interest of judicial economy, I concur with the majority's decision.