

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 0824

STATE OF LOUISIANA

VERSUS

ROBIN JONES

*RHB
WJK
JEW by RHB*

**On Appeal from the 22nd Judicial District Court
Parish of Washington, Louisiana
Docket No. 10-CR5-111242, Division "B"
Honorable August J. Hand, Judge Presiding**

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Robin Jones**

BEFORE: PARRO, WELCH, AND KLINE,¹ JJ.

Judgment rendered FEB 19 2013

¹ Judge William F. Kline, Jr., retired, is serving as judge pro tempore by special appointment of the Louisiana Supreme Court.

PARRO, J.

The defendant, Robin Jones, was charged by bill of information with production and manufacture of a Schedule II controlled dangerous substance (CDS), methamphetamine, a violation of LSA-R.S. 40:967(A)(1) (count 1); creation or operation of a clandestine laboratory, a violation of LSA-R.S. 40:983 (count 2); and possession of a Schedule II CDS, methamphetamine, a violation of LSA-R.S. 40:967(C) (count 3).² He initially entered a plea of not guilty and filed motions to suppress the evidence and his statement, which the district court denied. The defendant then moved to quash count 3. Following the district court's grant of his motion to quash, he pled guilty to counts 1 and 2 pursuant to a plea agreement with the state, reserving his right to appeal. See State v. Crosby, 338 So.2d 584, 588 (La. 1976). According to the plea agreement, the state would bill the defendant as a habitual offender on count 2 only, and the district court would sentence the defendant to ten years on count 1 and ten years on the habitual offender bill for count 2, both sentences to run concurrently. The district court sentenced the defendant to ten years on each count and indicated count 1 was to be served without the benefit of probation, parole, or suspension of sentence.³

At this stage of the proceeding, the state filed a multiple offender bill of information. The defendant was then adjudicated a second-felony habitual offender on count 2, and the district court vacated its previously-imposed sentence on that count and resentenced the defendant to ten years at hard labor as a second-felony habitual offender.⁴ The defendant's sentences were to be served concurrently. The defendant now appeals, arguing that the district court erred in denying his motion to suppress his statement. For the following reasons, we affirm the defendant's convictions, habitual offender adjudication, and sentences.

² The defendant's brother, Ian Jones, was also charged by the same bill of information. His charges were severed, and he was tried separately. He has filed a separate appeal with this court. See State v. Jones, 12-0825 (La. App. 1st Cir. 2/19/13) (unpublished opinion).

³ See LSA-R.S. 40:967(B)(3)(a).

⁴ See LSA-R.S. 15:529.1(A)(1) and LSA-R.S. 40:983(C).

FACTS

On October 15, 2010, the defendant was riding in a car with his brother and co-defendant, Ian Jones, and his brother's girlfriend, Peggy Temple. Temple was driving the vehicle and was involved in a motor vehicle accident. After the accident, Temple left the scene and drove to a lighted area of a nearby parking lot.

Sergeant Chad Dorset with the Franklinton Police Department responded to a call reporting a hit-and-run and arrived at the parking lot where the defendant was located shortly thereafter. He conducted a plain view search of the vehicle and saw items consistent with a methamphetamine lab, including coffee filters, drain cleaner, funnels, and empty bottles. Sergeant Dorset then searched the passenger compartment of the vehicle and found a Ziploc bag containing a clear liquid and white powder, which he suspected to be methamphetamine and methamphetamine products.⁵ The defendant, his brother, and Temple were placed under arrest and transported to the Franklinton Police Department where they each gave a statement.

MOTION TO SUPPRESS

In his sole assignment of error, the defendant argues that the district court erred in denying his motion to suppress his statement. According to the defendant, the officer conducting his interview promised him that Temple would not be charged if he told what he knew.

On the trial of a motion to suppress, the state has the burden of proving the admissibility of a purported confession or statement by the defendant. LSA-C.Cr.P. art. 703(D). 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 in order to introduce into evidence a defendant's statement or confession. **See State v. Thomas**, 461 So.2d 1253, 1256 (La. App. 1st Cir. 1984), writ denied, 464 So.2d 1375 (La. 1985); LSA-R.S. 15:451; see also State v. Hunt, 09-1589 (La. 12/1/09), 25 So.3d 746, 754. The state must specifically rebut a defendant's

⁵ Although the defendant alleges the search of the vehicle was warrantless, he does not contest the district court's denial of his motion to suppress the evidence obtained in that search.

specific allegations of police misconduct in eliciting a confession. **State v. Thomas**, 461 So.2d at 1256.

The defendant contends that, before he gave his statement, the interviewing officer, Sergeant Craig James, led him to believe that if he gave a statement exonerating Temple, it would result in her not being charged for the drug offenses that he and his brother were facing. He argues that it would have been impossible for him to exonerate Temple without implicating himself.⁶

At the hearing on the motion to suppress, Sergeant James testified that he interviewed the defendant. Prior to conducting the interview, Sergeant James informed the defendant of his **Miranda** rights, and the defendant signed a waiver-of-rights form. After indicating to Sergeant James that he understood his rights, the defendant gave a recorded statement. Sergeant James testified that he did not threaten, coerce, or intimidate the defendant into giving the statement. He also testified that he did not promise the defendant anything in exchange for giving the statement and that the defendant gave a statement of his own free will. According to Sergeant James, during his taped statement, the defendant indicated that Temple had nothing to do with the charges for which he and his brother were arrested. Sergeant James testified that he may have told the defendant that if Temple said the items recovered in the search were not hers and that if he and his brother also said the items did not belong to Temple, then he would not charge her. However, he also testified that there was no deal offered that Temple would be released if the defendant gave a statement.

Before ruling on the motion to suppress the defendant's statement, the district court pointed out that the defendant was properly **Mirandized** and that he executed a waiver form indicating that he wished to give a voluntary statement. According to the district court, the statement given cleared Temple from wrongdoing, but implicated the defendant and his brother in a much worse light. However, the court stated that the defendant's statement was free and voluntary and that it heard no testimony indicating

⁶ The defendant did not testify to the contents of his statement at the hearing on the motion to suppress, and his statement was not submitted into evidence. It appears, from the testimony offered and the district court's comments at the hearing, that the defendant's statement essentially consisted of him accepting responsibility for the contraband discovered and refuting any knowledge of it on Temple's part.

that the statement was forced or coerced in any manner. Before denying the motion to suppress, the court further opined:

There were no, according to [Sergeant] James, [there] was no promise made that anything specific, other than, you know, tell us what you know. And if all facts clear [Temple], and she is not involved, she won't be charged. But no extra or promise or inducement was made in the Court's mind to taint the statements given by [the defendant and co-defendant] relative to the matter.

The admissibility of a confession is, in the first instance, a question for the district court; its conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession will not be overturned unless they are not supported by the evidence. **State v. Sanford**, 569 So.2d 147, 150 (La. App. 1st Cir. 1990), writ denied, 623 So.2d 1299 (La. 1993). The district court must consider the totality of the circumstances in deciding whether a confession is admissible. Testimony of the interviewing officer alone may be sufficient to prove a defendant's statements were freely and voluntarily given. **State v. Maten**, 04-1718 (La. App. 1st Cir. 3/24/05), 899 So.2d 711, 721, writ denied, 05-1570 (La. 1/27/06), 922 So.2d 544. Further, when a district court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the district court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 280-81. As a general rule, this court reviews district court rulings under a deferential standard with regard to factual and other trial determinations, while legal findings are subject to a *de novo* standard of review. **State v. Hunt**, 25 So.3d at 751.

After a careful review of the record, we find that the district court did not abuse its discretion in denying the motion to suppress the defendant's statement. The testimony at the hearing on the motion to suppress and the waiver form clearly establish that the defendant was advised of his **Miranda** rights and that he executed a waiver of those rights. Further, the evidence indicates that the defendant knowingly and intentionally waived his rights. Sergeant James's testimony at the hearing, which the district court found credible, showed that the defendant appeared to understand his rights. The district court also found credible Sergeant James's testimony that he did

not coerce the defendant into implicating himself and exonerating Temple. Although the defendant may have had a genuine concern for the welfare of his brother's girlfriend, it is evident that he was in no way coerced into incriminating himself in order to exonerate Temple. See State v. Brown, 504 So.2d 1025, 1031 (La. App. 1st Cir.), writ denied, 507 So.2d 225 (La. 1987). The test for voluntariness of a confession requires a review of the totality of the circumstances under which the statement was given. **State v. Maten**, 899 So.2d at 721. We conclude, as did the district court, that under a totality of the circumstances, the defendant's confession was voluntary. Therefore, the district court did not err or abuse its discretion in denying the motion to suppress his statement.

This assignment of error is without merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED.