

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0813

STATE OF LOUISIANA

VERSUS

CASEY E. BATTS

Judgment Rendered: DEC 27 2013

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On Appeal from the  
The 18<sup>th</sup> Judicial District Court,  
In and for the Parish of West Baton Rouge,  
State of Louisiana  
Trial Court No. 080324

The Honorable James J. Best, Judge Presiding

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Casey E. Batts

\* \* \* \* \*

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

**CRAIN, J.**

The defendant, Casey E. Batts, was charged by grand jury indictment with second degree battery (count one) and malfeasance in office (count two), violations of Louisiana Revised Statute 14:34.1 and Louisiana Revised Statute 14:134. He pled not guilty to both charges. Following a jury trial, he was found guilty as charged on count one and was acquitted on count two. Timely filed motions for new trial and postverdict judgment of acquittal were not ruled upon by the trial court. The defendant was then sentenced on count one to serve three years in the parish jail, with all but thirty days of the sentence suspended, six months home incarceration, and fined \$2,500.00.

This is the second appeal in this matter. In the first appeal, the defendant urged the following assignments of error: (1) the State violated *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97, 10 L.Ed. 2d 215 (1963) and *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L.Ed. 2d 104 (1972), by failing to disclose "favorable consideration" given to two witnesses who were under indictment at the time of trial; (2) the State violated *Brady* by failing to disclose exculpatory evidence obtained through the Sheriff's investigation under *Garrity v. New Jersey*, 385 U.S. 493, 87 S. Ct. 616, 17 L.Ed. 2d 562 (1967); (3) the State violated the defendant's speedy trial rights; (4) the trial court erred in failing to rule on his motion for new trial and motion for postverdict judgment of acquittal; and (5) the guilty verdict on count one was inconsistent with the not guilty verdict on count two. This court found error in the trial court's failure to rule on the defendant's post-trial motions, pretermitted consideration of the remaining assignments of error, and vacated the sentence on count one. The case was remanded for a hearing and disposition of the outstanding motions. *State v. Batts*, 12-0406, 2012WL5506869 (La. App. 1 Cir. 11/14/12) (unpublished). On

remand, the trial court denied both motions and re-imposed the original sentence.<sup>1</sup> In this second appeal, the defendant re-urges the assignments of error that this court pretermitted in the first appeal. We affirm the conviction and sentence.

### STATEMENT OF FACTS

The defendant is a former Sergeant with the West Baton Rouge Parish Sheriff's Office. On December 17, 2007, the defendant, Deputy Filmore Bradford, and Deputy Gary Frith were present when Stacey Paul was booked into the West Baton Rouge Parish Detention Center. Paul had been arrested for theft after a struggle with the arresting officer during which the officer's leg was broken. At the Detention Center, Paul was sent to the shower area where officers held him down and beat him. The defendant struck him in the face with an object, breaking Paul's jaw. Paul required extensive medical treatment for his injuries, including surgery to insert rods and screws into his jaw.

### ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO

Assignments of error numbers one and two both involve alleged *Brady* violations. In the first assignment of error, the defendant contends that the State failed to disclose a report generated during the internal affairs investigation that followed this incident, which contained a prior inconsistent statement by Bradford. In the second assignment of error, the defendant contends that the State failed to disclose informal deals or promises of leniency made to Bradford and Frith, which prevented him from impeaching their trial testimony.

The rule established in *Brady* is that upon request, the State must produce evidence that is favorable to the accused where it is material to guilt or punishment. *Brady*, 373 U.S. at 87, 83 S.Ct. at 1196-97; *see also State v. Bright*,

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<sup>1</sup> In the defendant's supporting memorandum, the trial court was presented with combined arguments on the posttrial motions. While the trial court stated that it was denying the motion for new trial, the ruling, in effect, applied to both posttrial motions.

02-2793 (La. 5/25/04), 875 So. 2d 37, 41. Failure to do so violates a defendant's due process rights. *Bright*, 875 So. 2d at 41. The *Brady* rule applies to both exculpatory and impeachment evidence, including evidence that impeaches the testimony of a witness when the reliability or credibility of that witness may determine guilt or innocence. *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985); *Bright*, 875 So. 2d at 41; *State v. Knapper*, 579 So. 2d 956, 959 (La. 1991). "A *Brady* violation occurs when the 'evidentiary suppression undermines confidence in the outcome of the trial.'" *State v. Garcia*, 09-1578 (La. 11/16/12), 108 So. 3d 1, 37 (quoting *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S.Ct. 1555, 1566, 131 L.Ed.2d 490 (1995)).

The State does not dispute that the investigative report was not tendered to the defendant during pre-trial discovery. However, the State argues that no *Brady* violation occurred because the alleged exculpatory statement by Bradford was tendered to the defense in other forms, was known by the defense prior to trial, and the defense cross-examined Bradford about the statement during trial. Similarly, the State contends that with regard to the alleged informal deals or promises of leniency made to Bradford and Frith, the defendant has cited no evidence that was not disclosed to the jury; therefore, the defendant received a fair trial and can not articulate a *Brady* violation.

A preliminary examination hearing was conducted on July 8, 2008. Frith testified that he told Major Ritchie Johnson that Paul had a swollen eye and split lip when he arrived at the Detention Center, and that Paul swung at the defendant before anyone touched him. Frith also testified that while he did not see anyone punch Paul in the face or strike Paul with any objects, officers did kick and punch Paul in the body because he was "resisting pretty profusely." Frith stated that reasonable force was used based on Paul's resistance. Major Johnson also testified

at the hearing as to statements made by Paul, the defendant, and other officers during his investigation.

During opening statements at the trial on March 14, 2011, the defense referred to evidence derived pre-trial from several sources showing that Paul swung at the defendant first. The defense then argued that after they were indicted, Frith and Bradford asked Major Johnson for assistance, then changed their stories to the defendant initiating the altercation.

Major Johnson was questioned at trial by the defense attorney regarding his interviews with Bradford and Frith during the internal affairs investigation. Major Johnson acknowledged that Bradford and Frith changed their stories after initially stating that Paul swung at the defendant first. When asked if he made any deals with Bradford and Frith, Major Johnson testified, "The only thing I would ever tell someone I'm interviewing, and it always comes up, 'cause they always ask. You know, what can I get? I'm going to the D.A. with what you told me. If he wants to help you or give you commensurate consideration with what you've told, that's between you and the District Attorney." Major Johnson testified that Bradford and Frith were specifically told that there was no deal. He was cross-examined regarding the timing of the indictment of the deputies and acknowledged that Bradford had asked him if he had the power to help him after he was indicted.

Bradford testified at trial that Paul was taken to the shower area, outside the presence of video surveillance, and that the defendant struck Paul. Bradford admitted that he gave prior inconsistent statements indicating that Paul was the aggressor, and admitted giving false testimony to that effect in a civil proceeding in federal court. He was cross-examined regarding the change in his story occurring after he was indicted and, when questioned about promises made in exchange for his testimony, said that Major Johnson told him "he would be fair."

Frith testified at trial that Paul was “mouthy” the night of the incident and started rambling when the defendant commanded him to disrobe to shower. According to Frith, after the third command to disrobe, Paul said, “Y’all are gonna whoop my ass.” Frith further testified, “I don’t know if Batts got scared, if Stacey Paul being scared, scared him, but he moved his fists toward his face, which it connected.” He said Paul started fighting back and the deputies grabbed him, but he got loose. Frith admitted hitting Paul in the ribs once or twice, but Paul continued to resist. After the defendant forced Paul to the floor, Paul started bleeding from the mouth and was brought to the medical examiner. Frith confirmed that Paul did not take a swing at anyone to initiate the physical struggle, admitted to his prior statements to the contrary, and stated that he felt guilty about lying before the trial. Frith testified that he “came clean” after being indicted. Frith said Major Johnson showed him the indictment and he was given the opportunity to amend his previous account, at which point he admitted that the defendant threw the first punch. Evidence of the prior inconsistent statements of both Frith and Bradford was offered by the defense and admitted in evidence at trial.

*Brady* violations constitute reversible error only when actual prejudice to the defendant’s case is shown. See *State v. Brown*, 12-0752, 2013WL1459156 (La. App. 1 Cir. 4/10/13) (unpublished); *State v. Taylor*, 96-1043 (La. App. 3 Cir. 2/5/97), 688 So. 2d 1262, 1272; *State v. Francis*, 00-2800 (La. App. 1 Cir. 9/28/01), 809 So. 2d 1029, 1033. In this case, the defendant has failed to show that he was prejudiced or denied a fair trial. The defense was aware that Bradford and Frith changed their stories well in advance of trial. Additionally, the evidence of the prior inconsistent statements and the alleged deal between the State and the witnesses was presented to the jury. The defendant was able to effectively cross-examine the witnesses, challenge their credibility, and present his defense.

Additionally, the record does not support a finding that the defendant was lulled into a misapprehension of the strength of the State's case. *See State v. Roy*, 496 So. 2d 583, 590 (La. App. 1 Cir. 1986) (stating that if a defendant is lulled into a misapprehension of the strength of the State's case by the State's failure to disclose evidence, such prejudice may constitute reversible error). Accordingly, we do not find that confidence in the outcome of the trial has been undermined, and do not find reversible error.

### ASSIGNMENT OF ERROR NUMBER THREE

In the third assignment of error, the defendant contends that his constitutional right to a speedy trial was violated.<sup>2</sup> The defendant argues that the State indicted two of the witnesses after a contested March 22, 2010 continuance was granted to the State, which establishes prejudice resulting from the delay. The defendant further claims that any delay was not attributable to the defense and that the reasons for the delay varied from a trial in progress, to this case not being a priority, to the State attempting to gain a tactical trial advantage. The defendant argues that he went from having witnesses testifying that Paul was the aggressor to those same witnesses testifying against him. He contends that after the State realized that he was an innocent man, the State indicted witnesses in an attempt to procure a guilty verdict.

The right to a speedy trial is guaranteed by both the federal and state constitutions. U.S. Const. amend VI; La. Const. art. I, § 16. In *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972), the United States Supreme Court identified four factors to determine whether a particular defendant had been

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<sup>2</sup> On appeal, the defendant specifies that he is not arguing that the statutory time limitations for commencement of trial set forth in Louisiana Code of Criminal Procedure article 578 were violated. He states that the issue presented "is whether [his] constitutional right to a speedy trial was violated even though there was no violation of the statutory time limitation."

deprived of his right to a speedy trial, namely: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant. The first *Barker* factor, the length of the delay, is considered the "triggering mechanism" and if it is determined that the delay is not "presumptively prejudicial," the remaining *Barker* factors need not be considered. *State v. Love*, 00-3347 (La. 5/23/03), 847 So. 2d 1198, 1210. The Louisiana Supreme Court has explained:

Under *Barker*, the peculiar circumstances of the case determine the weight to be ascribed to the length of the delay and the reason for the delay. Something that is acceptable in one case, may not be acceptable in another because the complexity of the case must be considered. The manner of proof must also be considered, as must the gravity of the alleged crime.

*Love*, 847 So. 2d at 1210 (citations omitted).

The delay between institution of prosecution and trial was approximately three years. While we find that a delay of this length is not necessarily presumptively prejudicial, we will consider the remaining *Barker* factors. *Cf. State v. Bell*, 13-0117 (La. 9/27/13), 122 So. 3d 1007, 1107; *Love*, 847 So. 2d at 1210.

The second *Barker* factor to be considered is the reason for the delay. The defendant was indicted on February 7, 2008, and pled not guilty on March 3, 2008. A preliminary examination hearing was held on July 8, 2008. Trial was originally scheduled for July 21, 2008, but was continued to August 18, 2008, due to a trial in progress. At the request of both parties, trial was then continued to January 26, 2009. The trial was continued from that date to August 24, 2009, again due to a trial in progress. At the request of both parties, trial was continued to December 7, 2009. Because there was no criminal jury venire present, trial was continued to April 26, 2010.

Prior to the April 2010 trial date, the defendant filed a motion to quash based upon the violation of his constitutional speedy trial rights. (Prior R. 60). On



May 4, 2010, the trial court denied the motion, finding that procedural matters resulted in several continuances. Trial was scheduled for June 2010, rather than May 2010, to accommodate defense counsel's schedule. The defendant sought review of that decision by both this court and the Louisiana Supreme Court, with the applications for supervisory writs denied in September 2010 and December 2010, respectively. *State v. Batts*, 10-1170 (La. App. 1 Cir. 9/27/10) (unpublished writ action), writ denied, 10-2438 (La. 12/17/10), 51 So. 3d 10. Thereafter, the defendant was tried and convicted on March 16, 2011. Considering the procedural history of this case, we conclude that the record indicates that the delay in this case was prompted by legitimate reasons.

The third *Barker* factor requires consideration of whether the defendant asserted his right to a speedy trial. The defendant's failure to do so will make it difficult to prove that he was denied a speedy trial. *Barker*, 407 U.S. at 529. In this case, the defendant filed a counseled motion for speedy trial on March 27, 2008, thereby asserting his right.

The final *Barker* factor to be considered is the prejudice to the defendant resulting from the delay. The assessment of prejudice involves weighing three of the defendant's interests: (1) to prevent oppressive pretrial incarceration, (2) to minimize anxiety and concern of the accused, and (3) to limit the possibility the defense will be impaired. *Barker*, 407 U.S. at 532. Impairment of a defendant's ability to prepare his case is the most serious form of prejudice normally experienced by an accused whose trial is delayed. The inability of a defendant to adequately prepare his case skews the fairness of the entire system. *Barker*, 407 U.S. at 532.

The crux of the defendant's argument that his constitutional speedy trial right was violated is that he suffered "immeasurable" prejudice because during the time between his indictment and prosecution, Bradford and Frith were indicted and

changed their stories. The defendant contends that if he had been timely tried, "the State's effort to strong-arm testimony by way of indictment would have been thwarted." We note, however, that both Bradford and Frith testified that their testimony at trial, which was unfavorable to the defendant, was truthful, and that their prior statements, which would have been favorable to the defendant, were false. The jury clearly found the witnesses' trial testimony to be truthful and credible.

After considering the record herein and weighing the interests of the defendant, we do not find that the defendant was unduly prejudiced as a result of the delay in prosecution. The defendant was not incarcerated prior to trial, and we cannot conclude that the delay in prosecution caused the defendant unreasonable anxiety or concern. Finally, we do not find that the delay impaired the defendant's ability to prepare his defense. Although Bradford and Frith recanted their previous statements, the record does not establish that the State delayed this matter so that it could institute prosecution against them for the purpose of inducing them to testify against the defendant, as the defendant suggests. Moreover, the defendant does not have a right to present what the record establishes would have been untruthful testimony.

After considering the record in its entirety, and performing the balancing test set forth in *Barker*, we do not find that the defendant's constitutional right to a speedy trial was violated.

#### **ASSIGNMENT OF ERROR NUMBER FOUR**

In the fourth and final assignment of error, the defendant contends that the jury verdicts are illogical since he was found guilty of second degree battery and not guilty of malfeasance in office, though both charges arose from a single incident. He argues that after the jury concluded that he intentionally inflicted serious bodily injury on Paul, it was inconsistent to conclude that he performed his

duties in a lawful manner, and that a rational juror could not differentiate the two charges in this case so as to deliver a conviction on one charge and not the other.

It is well settled that a jury may return a "compromise" verdict for whatever reason they deem to be fair, so long as the evidence supports either the verdict given or the original charge. *See State ex rel. Elaire v. Blackburn*, 424 So. 2d 246, 251 (La. 1982), *cert. denied*, 461 U.S. 959, 103 S.Ct. 2432, 77 L.Ed.2d 1318 (1983). The defendant does not challenge the sufficiency of the evidence to support the conviction on count one. Thus, we find no error in what appears to be a compromise verdict of the jury in finding the defendant guilty of second degree battery, and not guilty of malfeasance in office.<sup>3</sup>

**CONVICTION AND SENTENCE AFFIRMED.**

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<sup>3</sup> The defendant cites Louisiana Code of Civil Procedure article 1813, which relates to inconsistency among a jury's general verdict and its answers to accompanying written interrogatories. However, that article is applicable to civil, not criminal trials.