

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0836

STATE OF LOUISIANA

VERSUS

CARTER V. ANDERSON

Judgment Rendered: FEB 18 2014

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 503016 "C"

Honorable Richard A. Swartz, Judge Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Defendant, Carter V. Anderson, was charged by bill of information with armed robbery (count one) and possession of a firearm or carrying a concealed weapon by a person convicted of certain felonies (count two), violations of LSA-R.S. 14:64 and LSA-R.S. 14:95.1.¹ The trial court denied defendant's motion to suppress his confession. Defendant entered a plea of not guilty and, after a trial by jury, was found guilty as charged on both counts. The State filed a habitual offender bill of information seeking to enhance the sentences on both counts. The trial court subsequently adjudicated defendant a third-felony habitual offender, vacated the original sentences, and imposed sentences of life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence on both counts, to be served concurrently.² Defendant now appeals, assigning error to the trial court's ruling on the motion to suppress the confession. For the following reasons, we affirm the convictions, habitual offender adjudications, and sentences.

STATEMENT OF FACTS

On December 30, 2010, between midnight and 1:00 a.m., Larry Bennett (the victim) was in a Wal-Mart parking lot in Slidell, Louisiana, when an African-American male approached his 1993 Cadillac Seville. The victim, a retired truck driver from Toledo, Ohio, who came to Slidell to purchase a part for his antique airplane, was set to spend the night in his vehicle when the perpetrator suddenly smashed his rear window. When the victim turned towards the back, the perpetrator pointed a gun at the victim's face and told him to get out of the car. When the victim attempted to take the keys out of the ignition, the perpetrator told him to leave the keys in the ignition and get out of the car, and he began

¹ The prior felony conviction used on count two is a 2005 conviction of possession of cocaine, as noted in the bill of information and stipulated by both parties during the trial.

² On count one, the trial court originally sentenced defendant to sixty years imprisonment at hard labor with the first twenty years to be served without the benefit of parole, probation, or suspension of sentence. The original sentence on count two was ten years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The trial court enhanced both counts, adjudicating defendant a third-felony habitual offender based on a 2004 conviction of simple burglary of an inhabited dwelling and a 2005 conviction of possession of a firearm or carrying a concealed weapon by a convicted felon.

striking the victim in the back of his head. Before fleeing the scene in the victim's vehicle, the perpetrator forced the victim to place a blanket that was in his vehicle over his head, as blood from his head injury began to cover his neck. John Binder, a bystander who was in the Wal-Mart parking lot at the time, witnessed the robbery and contacted the police. Binder described the perpetrator as a short, African-American male with dreadlocks. The victim was taken to Ochsner Hospital where he received stitches in the back of his head.

After being released from the hospital, the victim provided the Slidell Police Department (SPD) with the telephone number for the cell phone that he left in the vehicle and with the clothing that he was wearing at the time of the incident. The police accessed the cell phone records and determined that the cell phone was used to call Laura Bolden. Bolden was defendant's girlfriend, with whom he was living at the time in a duplex apartment building at the corner of 11th Street and Cousin Street in Slidell. The victim's vehicle was recovered from an apartment complex within walking distance of the residence. SPD Detectives Daniel Suzeneaux³ and Brian Brown observed surveillance footage⁴ from the apartment complex showing that, shortly after the robbery, the vehicle was dropped off by an individual who fit the description provided by Binder. The victim's cell phone was found at the residence on Cousin Street, and defendant and the others who were present at the residence were asked to come to the police station for questioning. Defendant, before being questioned, initially denied any knowledge or involvement. Defendant was advised of his **Miranda** rights at the scene and again at the police station where a waiver of rights form was executed. Defendant made incriminating statements during an audio-recorded interview at the police station. SPD executed a search warrant for Bolden's vehicle that was at the residence on Cousin Street and found a bag containing a handgun and a traffic ticket in defendant's name. The victim's DNA

³ The detective's name is alternatively spelled as "Seuzeneau" in the record.

⁴ The apartment manager had limited knowledge on the operation of the surveillance system. After the police viewed the surveillance footage, they unsuccessfully attempted to download the footage.

was found during the testing of swabs processed from the recovered handgun. Defendant fit the basic description depicted on the surveillance footage and given by Binder; however, at the time of his arrest he had a short haircut with remaining twists, as opposed to full dreadlocks. During the audio-recorded interview, defendant admitted that his girlfriend recently styled his hair in dreadlocks, but due to the "good" texture of his hair he could not maintain the locks. During the trial, the victim identified defendant as the perpetrator, noting that he was able to focus on the perpetrator's eyes and nose as the gun was being held between the perpetrator's face and the victim's face.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that the trial court erred in denying his motion to suppress his confession. He asserts that detectives threatened him and his girlfriend in order to get him to incriminate himself. Defendant contends that there was no eyewitness identification or DNA evidence linking him to the armed robbery offense. Defendant argues that the convictions should be reversed due to the police's use of coercion, threats, and promises to induce the confession. Defendant contends that the trial court should have granted the motion to suppress after hearing the detectives threatening him on the recording. Defendant notes that he was not the only person who had access to the vehicle and further contends that the police investigation was faulty because they lost evidence and they failed to identify the owner of the items seized from the vehicle that was searched. Defendant contends that he emotionally collapsed under the notion that his girlfriend could be falsely accused of this crime. Defendant notes that the detectives lied about his fingerprints being found in the victim's vehicle and about having a witness who already identified defendant as the perpetrator. Defendant also claims that the detectives promised to help his girlfriend, knowing that they intended to prosecute her.

The Fourth Amendment to the United States Constitution and article I, § 5 of the Louisiana Constitution protect persons against unreasonable searches and

seizures. A defendant adversely affected may move to suppress any evidence from use at the trial on the merits on the ground that it was unconstitutionally obtained. LSA-C.Cr.P. art. 703A. The State bears the burden of proving the admissibility of a purported confession or any evidence seized during a search without a warrant. LSA-C.Cr.P. art. 703D. 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. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his or her **Miranda** rights.

State v. Plain, 99-1112 (La.App. 1 Cir. 2/18/00), 752 So.2d 337, 342. The State must specifically rebut a defendant's specific allegations of police misconduct in eliciting a confession. **State v. Thomas**, 461 So.2d 1253, 1256 (La.App. 1 Cir. 1984), writ denied, 464 So.2d 1375 (La. 1985).

Whether a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. **State v. Benoit**, 440 So.2d 129, 131 (La. 1983). The trial court must consider the totality of the circumstances in deciding whether a confession is admissible. **State v. Hernandez**, 432 So.2d 350, 352 (La.App. 1 Cir. 1983). Testimony of the interviewing police officer alone may be sufficient to prove a defendant's statements were freely and voluntarily given. **State v. Maten**, 04-1718 (La.App. 1 Cir. 3/24/05), 899 So.2d 711, 721, writ denied, 05-1570 (La. 1/27/06), 922 So.2d 544.

A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. **State v. Jones**, 01-0908 (La.App. 1 Cir. 11/8/02), 835 So.2d 703, 706, writ denied, 02-2989 (La. 4/21/03), 841 So.2d 791. Correspondingly, 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 (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, 09-1589 (La. 12/1/09), 25 So.3d 746, 751. When reviewing a trial court's ruling on a motion to suppress, the entire record may be considered, including trial testimony. **State v. Martin**, 595 So.2d 592, 596 (La. 1992).

The following evidence was presented at the hearing on the motion to suppress. Detective Suzeneaux testified that everyone present at the duplex apartment on the day of the robbery, including defendant, was asked to come to the station for questioning regarding the robbery, and everyone agreed. After Bolden was interviewed, Detective Suzeneaux and SPD Detective Luke Irwin interviewed defendant. Detective Suzeneaux denied that defendant was coerced or forced into making a statement at the hearing and again during the trial.

The audio-recorded interview revealed that defendant's rights were read to him, and he stated that he understood his rights and further stated that he wished to make a statement. Defendant denied that he had been physically or verbally abused and confirmed that he was making the statement of his own free will. Defendant initially denied having specific information regarding, or being involved in, the robbery. He implicated his male roommate before eventually making incriminating statements that pointed to his personal involvement, but he did not initially make a full-blown confession. The police relayed some of the information that they had regarding the offense and admittedly used falsehoods. For example, the police indicated that they already knew what happened and that they had fingerprint evidence and witness statements implicating defendant. Vulgar language was also used along with repeated requests for truth, honesty, and details. The police also told defendant that he was not helping himself by lying and that he was being given the chance to tell the truth. Defendant eventually admitted to handling the gun, having personal contact with the stolen vehicle, and knowing that it had been stolen. Defendant ultimately stated that he hit the victim out of fear. The police informed defendant that if he continued

to cooperate they would let his cooperation be known. The police reminded defendant that his child and girlfriend loved him and suggested that defendant may have committed the offense for them, as they continued to question defendant. Before defendant finally confessed, he again admitted that he was not being forced to make the statements. Defendant's emotional breakdown came after he confessed and became even more concerned about the consequences of his actions.

As to the voluntariness of defendant's statements, we note that the police testimony indicated that there were no promises or abuse to induce defendant's agreement to make a statement, and defendant indicated as such during the interview. As noted, defendant was fully advised of his rights and executed a waiver of rights form. We note that statements by the police to a defendant that he would be better off if he cooperated are not promises or inducements designed to extract a confession. **State v. Lavalais**, 95-0320 (La. 11/25/96), 685 So.2d 1048, 1053, cert. denied, 522 U.S. 825, 118 S.Ct. 85, 139 L.Ed.2d 42 (1997). A confession is not rendered inadmissible by the fact that law enforcement officers exhort or adjure a defendant to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or one which implies a promise of reward. Further, a defendant's confession is not inadmissible merely because in making it he may have been motivated by a desire to protect his girlfriend. See State v. Lee, 577 So.2d 134, 143-44 (La.App. 1 Cir.), writ denied, 580 So.2d 667 (La. 1991); **State v. Weinberg**, 364 So.2d 964, 969-71 (La. 1978); **State v. Brown**, 504 So.2d 1025, 1031 (La.App. 1 Cir.), writ denied, 507 So.2d 225 (La. 1987). As did the Louisiana Supreme Court in **Lavalais**, we find in this case that, rather than being promises or inducements designed to extract a confession, the comments in question herein were more likely musings not much beyond what this defendant might well have concluded for himself. **Lavalais**, 685 So.2d at 1053-54. The totality of the interview clearly conveys that the statements were not being made according to any promises, coercion, or threats.

Regarding certain falsehoods used by the police during questioning, the issue is whether or not such tactics were sufficient to make an otherwise voluntary confession or statement inadmissible. See State v. Lockhart, 629 So.2d 1195, 1204 (La.App. 1 Cir. 1993), writ denied, 94-0050 (La. 4/7/94), 635 So.2d 1132. In **Lockhart**, a detective misled the defendant into believing that the police knew more about the case than they really did by telling him that the victims had identified him. Another detective stated that he would inform the district attorney's office that the defendant contended the shootings were accidental. This court found that the detectives' statements to the defendant were not sufficient inducements "to make an otherwise voluntary confession inadmissible." **Lockhart**, 629 So.2d at 1204. Similarly, in **State v. Sanford**, 569 So.2d 147, 150-52 (La.App. 1 Cir. 1990), writ denied, 623 So.2d 1299 (La. 1993), this court determined that a defendant's confession was not rendered involuntary, although the detective apparently misled the defendant into believing that one of his cohorts had confessed by informing him that the other suspects were "singing like birds." **Sanford**, 569 So.2d at 151.

We have carefully reviewed the evidence presented at the suppression hearing and at trial and conclude that the lower court's ruling is supported by the record. While the officers admittedly utilized confrontational language, defendant, who had a criminal record, seemed to be more concerned about his realization that he was a multiple offender and admitted to being terrified in that regard. We find that the totality of the circumstances surrounding the making of the confession by defendant and his responses as a whole show that the confession was made freely and voluntarily. Considering the above, we further find that the trial court did not err or abuse its discretion in denying the motion to suppress. The assignment of error is without merit.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.