

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 1721

STATE OF LOUISIANA

VERSUS

CHRISTOPHER MICHAEL LITTLE

Judgment Rendered: MAR 21 2014

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On Appeal from the Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
No. 655,752

Honorable George J. Larke, Jr., Judge Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.



McCLENDON, J.

The defendant, Christopher Michael Little, was charged by bill of information with armed robbery with use of a firearm, violations of LSA-R.S. 14:64 and LSA-R.S. 14:64.3(A).¹ The defendant pled not guilty. He filed a motion to suppress his inculpatory statement. A hearing was held on the matter, and the motion to suppress was denied. Following a jury trial, the defendant was found guilty as charged. He was sentenced to thirty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence for the armed robbery conviction. He was sentenced to an additional five years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, pursuant to LSA-R.S. 14:64.3, the firearm enhancement statute. The sentences were ordered to run consecutively. The defendant now appeals, designating one assignment of error. For the following reasons, we affirm the conviction and sentences.

FACTS

On January 15, 2013, Roy Labat, Sr., was working at NAPA Auto Parts on Barrow Street in Houma, Terrebonne Parish. Mr. Labat brought a battery to the "battery room," a small storage space attached to the back of NAPA that can be accessed by exiting the store's back entrance. When Mr. Labat opened the door and stepped outside of the battery room, the defendant approached him with a handgun. The defendant pointed the gun at Mr. Labat and ordered him back into the battery room. Mr. Labat complied. The defendant told Mr. Labat to empty his pockets. Mr. Labat removed his wallet, preparing to give the defendant the money inside of it. Instead, the defendant grabbed the wallet, which contained about forty dollars in cash, and kept it. He also took Mr. Labat's cell phone. As the defendant was leaving, he told Mr. Labat to stay inside and count to fifty and that if he saw Mr. Labat go out the door before that, he was going to shoot him. Shortly thereafter, the defendant used one of Mr. Labat's

¹ Two other counts of armed robbery were severed from the instant count. A count for possession of a firearm by a convicted felon was not pressed.

credit cards from his wallet to purchase about twelve dollars worth of items at the Money Market. The defendant was with his girlfriend, and the defendant's purchase was captured on the Money Market's surveillance video. Mr. Labat identified the defendant in a six-person photographic lineup as the person who robbed him. Later that same evening, the police found the defendant hiding under a bed at his girlfriend's house. The gun the defendant used to rob Mr. Labat was also found under the bed. Mr. Labat's credit cards and driver's license were found under the mattress. Mr. Labat's cell phone was not found.

The defendant was taken in and questioned by Detective Trey Lottinger, with the Houma Police Department. The defendant denied that he robbed Mr. Labat. The following day, the defendant, who said he decided to tell the truth, spoke again to Detective Lottinger. At this second recorded interview, the defendant admitted that he robbed Mr. Labat at gunpoint.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to suppress his confession. Specifically, the defendant contends that because he was told by a judge that he would have to hire an attorney, he was under the mistaken belief that he was not entitled to a court-appointed attorney while being questioned by Detective Lottinger.

The defendant argues his confession should have been suppressed because he thought he was not entitled to a court-appointed attorney since he could not afford to hire his own. According to the defendant, shortly before he confessed, he spoke to a magistrate judge (allegedly Judge Bethancourt), who informed the defendant, after speaking with him about his financial situation, that he would have to hire an attorney. The defendant suggests that his communication with Judge Bethancourt led him to believe that, since he could not afford an attorney, he was not entitled to an attorney during questioning by Detective Lottinger. The defendant also alleges he was threatened to provide Detective Lottinger with a second statement.

Before a confession can be introduced into evidence, it must be affirmatively shown that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. LSA-R.S. 15:451. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his **Miranda** rights. **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Since the general admissibility of a confession is a question for the trial court, its conclusions on the credibility and weight of the testimony are accorded great weight and will not be overturned unless they are not supported by the evidence. See State v. Patterson, 572 So.2d 1144, 1150 (La.App. 1 Cir. 1990), writ denied, 577 So.2d 11 (La. 1991). The trial court must consider the totality of the circumstances in determining 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. In determining whether the ruling on defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n.2 (La. 1979).

We note initially that the conversation between Judge Bethancourt and the defendant was not confirmed or corroborated. Thus, it is not clear whether the judge told the defendant he needed to hire his own attorney. In any event, regardless of what the judge may or may not have told the defendant, the conversation had no bearing on what the defendant understood both *before* and after the defendant spoke to the judge.

In his first interview with the defendant on January 15, 2013, Detective Lottinger **Mirandized** the defendant. The detective verbally informed the defendant of each of his rights, and showed the defendant the rights form to allow him to read along with the detective. Specifically, the defendant was told

he had the right to talk to a lawyer for advice before questioning began and to have the lawyer present during questioning; if he could not afford a lawyer, one would be appointed for him before any questioning if he wished; he also had the right to stop answering questions at any time. When asked if he understood his rights the defendant indicated he did. Detective Lottinger then read aloud the paragraph directly below the **Miranda** warnings, which stated:

I have read or have had read to me this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer. I understand and know what I am doing. No promises or threats have been made and no pressure or coercion of any kind has been used against me.

Both the defendant and Detective Lottinger signed the rights form.

In his first interview, the defendant denied that he robbed Roy Labat, Sr. The defendant admitted he had Mr. Labat's credit cards, but indicated that someone he knew had dropped a jacket off to the defendant, and the jacket contained the credit cards. After the interview, when the defendant was being driven to Ashland Jail, the defendant informed the transport officer that he wished to speak to Detective Lottinger again to tell him what really happened. The following day (January 16), Detective Lottinger met with the defendant and **Mirandized** him again. The detective filled out another rights form and went over the defendant's **Miranda** warnings in a virtually verbatim fashion as the day before. In the middle of having his rights explained, the defendant told Detective Lottinger that he did not have a lawyer; that he went to see the judge this morning and he said that if he (the defendant) wanted a lawyer to get one on his own. The detective then continued with the **Miranda** warnings and asked the defendant if he understood. The defendant indicated he understood his rights and signed the rights form. The defendant then admitted that he robbed Mr. Labat at gunpoint.

The defendant also alleges that the officer transporting him to jail after the first interview with Detective Lottinger threatened him. According to the defendant, who testified at the motion to suppress hearing, while Officer Corey Duplantis, with the Houma Police Department, was transporting him to jail, the

officer told the defendant that he needed to go talk to Detective Lottinger again or else his children were going to be taken away from him and his "old lady" would go to jail. In response to this allegation, Officer Duplantis testified at the motion to suppress hearing that he never threatened the defendant, made any promises to him, or induced him to want to talk to the police.

We do not find that the defendant believed he was not entitled to a court-appointed lawyer during his custodial questioning. The defendant simply raised his concerns to Detective Lottinger because he had just recently come from talking to a magistrate about whether he had the financial means to pay for his own attorney. If there was any confusion, however, we find Detective Lottinger made it abundantly clear to the defendant that he was entitled to an attorney during questioning, even if he could not afford one, and that he was entitled to stop answering questions at any time. There is also nothing in the record to suggest the defendant was threatened in any way or induced to talk to Detective Lottinger a second time. The defendant freely and voluntarily confessed that he robbed Mr. Labat, and there was no coercion, threats, or inducements involved in obtaining that confession.

We note also the defendant's familiarity with the criminal justice system. An individual's prior experiences with the criminal justice system are relevant to the waiver of rights inquiry because they may show the individual has, in the past, and, perhaps, on numerous occasions, been informed of his constitutional rights against self-incrimination both by law enforcement and judicial officers. See State v. Robertson, 97-0177 (La. 3/4/98), 712 So.2d 8, 30, cert. denied, 525 U.S. 882, 119 S.Ct. 190, 142 L.Ed.2d 155 (1998); State v. Green, 94-0887 (La. 5/22/95), 655 So.2d 272, 283-84. At the motion to suppress hearing, the defendant testified he had been arrested between ten and twenty times and had four prior convictions. He indicated he had been **Mirandized** as many times as he had been arrested. At sentencing, the trial court discussed the defendant's criminal record, which involved convictions for possession of Vicodin, second degree battery, first degree robbery, possession of cocaine, and a number of

misdemeanor charges. The trial court further noted the defendant's two charges of armed robbery for which he had not yet been to trial.

Moreover, even if the trial court erred in not suppressing the defendant's confession, the admission of it into evidence was harmless error. An error is harmless if it is unimportant in relation to the whole and the verdict rendered was surely unattributable to the error. **State v. Koon**, 96-1208 (La. 5/20/97), 704 So.2d 756, 763, cert. denied, 522 U.S. 1001, 118 S.Ct. 570, 139 L.Ed.2d 410 (1997). The defendant was identified by Mr. Labat in a six-person photographic lineup as the person who robbed him. Mr. Labat unequivocally positively identified the defendant in court as the person who robbed him. Video footage from the Money Market revealed that within an hour of the robbery, the defendant and his girlfriend, Jennifer LeBouef, went inside the store. The defendant can be seen in the video purchasing several items with what appears to be a blue and white card. Jennifer was identified in the video. When the police went to Jennifer's house to search it, they found the defendant hiding in a bedroom under the bed. The handgun the defendant used in the robbery was also found under the bed. Under the mattress of that bed, the police found Mr. Labat's credit cards and his driver's license. Considering the foregoing, we are convinced that even had the defendant's confession been erroneously introduced into evidence, the guilty verdict actually rendered was surely unattributable to the error. See Sullivan v. Louisiana, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); LSA-C.Cr.P. art. 921.

The assignment of error is without merit.

CONCLUSION

For the foregoing reasons, we affirm the defendant's conviction and sentences.

CONVICTION AND SENTENCES AFFIRMED.