NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 KA 1365

STATE OF LOUISIANA

VERSUS

BEAU MATHEW LEDOUX

Judgment Rendered: APR 2 4 2015

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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. 539793

Honorable Martin E. Coady, Judge Presiding

* * * * * *

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCLENDON, J.

Defendant, Beau Mathew Ledoux, was charged by grand jury indictment with five counts of aggravated kidnapping (counts 1, 3, 5, 7, and 9), in violation of LSA-R.S. 14:44, and five counts of armed robbery (using a firearm) (counts 2, 4, 6, 8, and 10) in violation of LSA-R.S. 14:64.[1] Defendant entered a plea of not guilty and not guilty by reason of insanity to all charges. Defendant filed a motion to suppress his inculpatory statement. Following a hearing on the matter, the motion to suppress was denied. Defendant withdrew his pleas of not guilty and not guilty by reason of insanity and entered not guilty pleas to all charges. Following a jury trial, defendant was found guilty as charged on all counts, except for count 10, for which he was found guilty of the responsive offense of attempted armed robbery, a violation of LSA-R.S. 14:27 and 14:64. Defendant filed a motion for new trial, which was denied.

For each aggravated kidnapping conviction, defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence; for each armed robbery conviction, defendant was sentenced to fifty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Under the sentence enhancement provision of LSA-R.S. 14:64.3(A) (gun used in armed robbery), defendant received an extra five-year sentence at hard labor without benefit of parole, probation, or suspension of sentence for each of the armed robbery convictions. Those five-year sentences were ordered to run consecutively to the fifty-year sentences.

For the attempted armed robbery conviction, defendant was sentenced to twenty-five years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Under the sentence enhancement provision of LSA-R.S. 14:64.3(B) (gun used in attempted armed robbery), defendant received an extra five-year sentence at hard labor without benefit of parole, probation, or suspension of sentence, with that sentence to be served

[1] Co-defendant Jonathan Hudson was not tried with defendant.

consecutively to the twenty-five year sentence. All of the aggravated kidnapping and armed robbery sentences were ordered to run concurrently. The State filed a habitual offender bill of information to enhance the armed robbery and attempted armed robbery convictions only. Following a hearing on the matter, defendant was adjudicated a second-felony habitual offender. The trial court vacated the armed robbery and attempted armed robbery sentences (including the five-year enhanced sentences). The court resentenced defendant on each of the armed robbery convictions (counts 2, 4, 6, and 8) to sixty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. For the attempted armed robbery conviction, defendant was resentenced to thirty-five years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Defendant now appeals, designating two assignments of error. For the following reasons, we affirm the convictions, habitual offender adjudications, and sentences.

FACTS

Dr. Mario Zelaya owned a home in River Oaks Subdivision in Covington. In May of 2013, Dr. Zelaya had several relatives from Nicaragua and Honduras living with him, namely, Maria Reina, Andrea Mendoza, nine-year-old J.T., Suzanna Zelaya and Martin Amaya. Maria, Andrea, and J.T. were cousins; J.T. was Suzanna's son, and Suzanna and Martin were Maria's and Andrea's aunt and uncle. On the morning of May 4, 2013, all five of these people were at Dr. Zelaya's house while the doctor, himself, was not home. At about 9:15 a.m., Andrea, who was going somewhere with her aunt that day, went to the garage to put some things in the car. Andrea noticed the laundry room door nearby was wide open. When she approached the room to look inside, defendant and Jonathan Hudson, both armed with guns, confronted her. They pointed their guns at Andrea's head and told her to cooperate or they would kill her. The defendant and Hudson were wearing jeans, dark shirts, and "homemade" masks made from T-shirts. They had black "face paint" around the eyes and wore gloves. They forced Andrea back into the house and into the master bedroom,

which was downstairs. Martin, who was already in the master bedroom, was also subdued by the perpetrators. One of the perpetrators seized J.T. from the living room, while the other perpetrator seized Suzanna as she was coming out of the bathroom. The person who had grabbed J.T. then went upstairs and seized Maria, who was in a bedroom. All of the captives were brought to the master bedroom. Defendant and Hudson forced their victims on the floor and tied up their hands and feet with zip-ties and rope. The feet of Maria, Andrea, and J.T. were all bound together. Martin was hog-tied (his wrists were tied to his ankles).

Defendant had been told days before by someone he knew that there were "a couple million" dollars in the house. Defendant and Hudson demanded this money from their captives, but were told there was no money in the house. They threatened to rape the females if they were not given the money. One perpetrator stayed with the victims while the other went throughout the house, including the attic, looking for money. When they did not find any money, they took all of the cash directly from their victims. They also took jewelry, Rolex watches, cell phones, and prescription medication (pills). They also took several guns, long and short, from a gun safe in the garage, which they were able to open after having demanded the combination from Suzanna. They put the stolen items in a suitcase. They found two sets of car keys in the house. Defendant and Hudson used one of those sets of keys to take the black Mercedes SUV that was in Dr. Zelaya's driveway. Maria managed to get loose from her constraints. She retrieved a knife and freed the rest of her family. Defendant and Hudson drove to a parking lot at Boh Bros. Construction Co., where they were picked up by a friend, Jennica Keebler. Before leaving, they splashed bleach all over the interior of the SUV and left it in the parking lot.

About four weeks later, based on the ongoing investigation of these crimes, the police determined that defendant was a prime suspect and took him in for questioning. Within a few hours of being interviewed, defendant confessed to robbing the family at the home in River Oaks Subdivision.

Defendant provided a detailed account of what he and Hudson did and what they took. At trial, Andrea testified that, despite defendant's face being covered, she got a long look at his eyes when she first encountered him in the laundry room. She testified that defendant had almond-shaped "greyish-blue" eyes, and that he had "really, really rare eyes." Andrea was allowed to approach defendant in court. She identified defendant as one of the perpetrators in the house.

Defendant did not testify at trial.

ASSIGNMENTS OF ERROR NOS. 1 and 2

In these related assignments of error, defendant argues, respectively, the trial court erred in denying the motion to suppress his inculpatory statement; and the trial court erred in denying his motion for new trial. Specifically, defendant contends the State failed to prove that his confession was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises.

Defendant was arrested on June 1, 2013, and taken to the Covington Law Enforcement Complex (Complex) for questioning. Detective Michael Rippol, Jr. and Sergeant Lance Vitter, both with the St. Tammany Parish Sheriff's Office, interviewed defendant about the armed robberies and kidnappings at the River Oaks Subdivision residence. Defendant denied any involvement. About midway through the fifty-minute interview, Sergeant Vitter left. As the interview wore on, defendant asked Detective Rippol if he could smoke a cigarette. The detective agreed and walked defendant out of the interview room. Detective Rippol saw Detective Randy Loumiet, with the St. Tammany Parish Sheriff's Office, in the hallway. Detective Rippol asked Detective Loumiet if he would take defendant outside for a smoke break. Detective Loumiet consented. For about one-and-one-half hours, Detective Loumiet and defendant smoked cigarettes outside. Detective Loumiet testified at the motion to suppress hearing and trial that after talking with defendant outside, defendant agreed to tell him what occurred at Dr. Zelaya's home on May 4, 2013. They went back to the interview

room; Detective Loumiet again **Mirandized** defendant, and defendant confessed that he and Hudson went to the residence, tied up several people in the master bedroom, and took their money, as well as jewelry, watches, and several guns.

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. Confessions obtained by any direct or implied promises, however slight, or by the exertion of any improper influence, are involuntary and inadmissible as a matter of constitutional law. **State v. Brown**, 481 So.2d 679, 684 (La.App. 1 Cir. 1985), writ denied, 486 So.2d 747 (La. 1986). 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. **State v. Patterson**, 572 So.2d 1144, 1150 (La.App. 1 Cir. 1990), writ denied, 577 So.2d 11 (La. 1991). 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. The trial court must consider the totality of the circumstances in determining whether or not a confession is admissible. **State v. Hernandez**, 432 So.2d 350, 352 (La.App. 1 Cir. 1983). The direct testimony of the interviewing police officer can be sufficient to prove a defendant's statement was freely and voluntarily given. See **State v. Sims**, 310 So.2d 587, 589-90 (La. 1975); **State v. Washington**, 540 So.2d 502, 507-08 (La.App. 1 Cir. 1989).

Although the burden of proof is generally on a defendant to prove the grounds recited in a motion to suppress evidence, such is not the case with the motion to suppress a confession. In the latter situation, the burden of proof is with the State to prove the confession's admissibility. LSA-C.Cr.P. art. 703D. The State must prove beyond a reasonable doubt that the confession was made

freely and voluntarily. **State v. Seward**, 509 So.2d 413, 417 (La. 1987). See **State v. Smith**, 409 So.2d 271, 272 (La. 1982). Therefore, if the defendant alleges police misconduct in eliciting a confession, it is incumbent upon the State to rebut these allegations specifically. **State v. Welch**, 448 So.2d 705, 712 (La.App. 1 Cir.), writ denied, 450 So.2d 952 (La. 1984). 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).

Defendant argues in his brief that the State failed to show that his inculpatory statement to Detective Loumiet was given freely and voluntarily. Defendant raises three issues. First, he suggests that after he was arrested, he was brought in, handcuffed to a chair, and left isolated, unattended for upwards of twelve hours. Next, defendant suggests he was subjected to interrogation tactics specifically designed to overcome his will. In particular, defendant contends he was intimidated and placed under duress when Detective Rippol and Sergeant Vitter put him in fear of him, as well as his brother, girlfriend, and cousin, facing lengthy imprisonment; also, defendant was told that his child could end up in the custody of the State. Finally, defendant suggests that when he went outside to smoke with Detective Loumiet, he was induced to give an exculpatory statement in exchange for his brother, girlfriend, and cousin being allowed to leave the complex; also, according to defendant, he was promised he would face no more than five years in jail.

The first issue raised by defendant is not borne out by the facts. Detective Loumiet testified at the motion to suppress hearing that he was involved with defendant's arrest. He testified that defendant was arrested in the evening after 5:00 p.m. (on June 1). Defendant was taken to the Complex and placed in an interview room. Later that same evening, at about 11:15 p.m., Detective Rippol read defendant his **Miranda** rights, and defendant signed a **Miranda** rights/waiver of rights form. Detective Rippol and Sergeant Vitter then

began interviewing defendant. Accordingly, contrary to his assertion, defendant was not left in isolation for twelve hours. Defendant testified at the motion to suppress hearing that he was handcuffed to a chair for hours before being interviewed. There was no testimony by any of the officers to this effect, and our review of the of the video of defendant in the interview room prior to his being interviewed reveals that he was not cuffed to a chair, but was observed pacing back and forth. Defendant did have shackles on his ankles. In any case, nothing in the facts suggests that the duration of defendant's wait prior to questioning, without more, rendered his confession involuntary. Cf. **State v. Blank**, 04-0204 (La. 4/11/07), 955 So.2d 90, 104-05, cert. denied, 552 U.S. 994, 128 S.Ct. 494, 169 L.Ed.2d 346 (2007) (where about twelve hours of interrogation by various police officers did not vitiate the voluntariness of the defendant's statement).

The next issue raised by defendant is that he was induced to confess out of fear that he, his brother, girlfriend (Christina), and cousin would be imprisoned and that his child, a one-year-old daughter, could be turned over to child services. Early in the (first) interview, Sergeant Vitter told defendant that because of some of his actions, "your girlfriend may go to jail and your daughter might end up with OCS." Sergeant Vitter also told defendant that his brother was "in the mix." Both officers intimated that defendant was going to jail for his crimes, but never told him how much time he faced. Sergeant Vitter told defendant that he had the God-given right to play "hardball" with the officers, and that he also had the God-given right to ask for forgiveness. After Sergeant Vitter left the room, Detective Rippol told defendant that all of the evidence pointed to him and that his going to jail was going to happen and that what he needed to be worrying about at that point was how people (including the victims) were going to perceive him, i.e., whether he would be viewed as sympathetic or remorseful since people make mistakes. Detective Rippol specifically told defendant that he could not tell him how many years imprisonment he faced because that was not his decision to make. Later, when

defendant asked him whose decision it was, the detective told him it was the judge's, "when he does sentencing." Detective Rippol told defendant that he was not going home that night but, beyond that, he could not make him any promises.

Based on the foregoing, we find that defendant was not intimidated, threatened, or induced to confess based on fear that he, his brother, girlfriend, or cousin could go to jail, or that his child might be turned over to the custody of the State. We find this particular argument by defendant baseless given that defendant, himself, suggests in the following argument that he confessed because his brother, cousin, and girlfriend (along with their child) were all allowed to leave the Complex without being arrested. Moreover, during the interview, neither officer made any remarks about defendant's cousin or brother (except the vague "in the mix" comment about his brother). We find nothing improper about Sergeant Vitter's suggestion that his girlfriend, Christina, "may go to jail" and his daughter "might end up with OCS." If Christina knew anything about the robberies and kidnappings and did not report that to the authorities, she could be considered an accessory after the fact. Thus, if both parents faced going to jail, it was not unreasonable for Sergeant Vitter to infer that a very real possibility existed that defendant and Christina could lose custody of their daughter. Furthermore, a confession motivated by desire to extricate a friend or relative from a possible good-faith arrest is not involuntary; what renders a confession involuntary is not any threat or promise, but rather a threat or promise of illegitimate action. **United States v. Stewart**, 353 F.Supp.2d 703, 706 (E.D. La. 2004).

In any event, defendant has failed to reference any specific instances of inappropriate tactics or conduct by Sergeant Vitter or Detective Rippol. Any comments to defendant by the officers that he needed to tell the truth, or that he could help himself or his family by confessing, were not promises or inducements designed to extract a confession. See **State v. Petterway**, 403 So.2d 1157, 1160 (La. 1981); **State v. Dison**, 396 So.2d 1254, 1258 (La. 1981).

Further, a confession is not rendered inadmissible because officers "exhort or adjure" an accused to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or which implies a promise of reward. **State v. Robertson**, 97-0177 (La. 3/4/98), 712 So.2d 8, 31, cert. denied, 525 U.S. 882, 119 S.Ct. 190, 142 L.Ed.2d 155 (1998). See **State v. Lavalais**, 95-0320 (La. 11/25/96), 685 So.2d 1048, 1053-54, cert. denied, 522 U.S. 825, 118 S.Ct. 85, 139 L.Ed.2d 42 (1997); **State v. Peters**, 546 So.2d 829, 832 (La.App. 1 Cir.), writ denied, 552 So.2d 378 (La. 1989).

The final issue raised by defendant is that he was induced by Detective Loumiet to give an exculpatory statement in exchange for his brother, girlfriend, and cousin being allowed to leave the complex; also, according to defendant, he was promised he would face no more than five years in jail. At the motion to suppress hearing, defendant testified that Detective Loumiet told him that if he confessed, he would get only a five-year prison sentence. Defendant told the detective that he wanted his family, who was at the Complex, to be allowed to leave. According to defendant, Detective Loumiet agreed and, as defendant sat outside with the detective, he watched his cousin, his brother, and his girlfriend (and daughter) leave the premises. Defendant testified that, following the exit of his family members, he went inside and recited everything they told him to say.

Regarding this alleged agreement between Detective Loumiet and defendant, the following exchange took place on cross-examination at the motion to suppress hearing:

> Q. You didn't trust the detectives that they would release your family until you saw them released?
>
> A. Correct.
>
> Q. And that was before you gave the confession or after you gave the confession?
>
> A. Before.
>
> Q. All right. So, you had not confessed, but you didn't trust them, but when you saw your family leave then you gave the confession?

A. Well, I felt like he was sticking up to his end of the deal, so I had to stick up to my end of the deal and say what he wanted me to.

Q. And for somebody that you didn't trust, you said exactly what he told you to say?

A. Well, that was probably part of him buying my trust is in letting me watch them leave.

Detective Loumiet testified at the motion to suppress hearing that he did not make any promises to defendant. The detective stated that he and defendant were the only two outside. Regarding whether any promises were made, Detective Loumiet testified as follows on cross-examination:

Q. Did you ever mention to him that if he were to cooperate with you in your investigation in this case that his brother would be released and allowed to go home?

A. No, sir.

Q. Did you ever mention to him that if he were to cooperate with you in regards to your investigation with this case, that is, that his girlfriend would be allowed to go home?

A. No, sir.

Q. Did you ever mention to him that if he were to cooperate with you in regards to this case his cousin would be allowed to go home?

A. Who is his cousin?

Q. Darryl Stevens.

A. No, sir.

Q. Did you ever mention to him that if he were to cooperate with you in regards to this case you would ensure he only was charged with home invasion and he would get the minimum sentence of five years?

A. No, sir.

Q. You never told him that that sentence would be concurrent with any probation revocation he had to serve?

A. No, sir.

Q. So, you never told him he would be out of jail in five years and his family members could go home that night?

A. No, sir.

At trial, Detective Loumiet testified that no other officers joined the conversation between him and defendant when they were outside. The detective stated at trial that he never made any promises to defendant that he would get only five years of jail time. He further stated that he never made any promises about letting defendant's family go (his brother, cousin, girlfriend, and child) and that, furthermore, while defendant's family was at the Complex, they were not in custody. Detective Loumiet pointed out, however, that defendant's brother had been arrested at some point. The only person the detective could recall leaving when he and defendant were outside was defendant's cousin. Detective Loumiet also testified that he did not tell defendant anything about the case when they were outside. When asked if he had coached defendant at all or had given him any information for his statement, Detective Loumiet replied, "No, sir."

Accordingly, defendant's claim that he was promised a reduced sentence and the release of his family in exchange for his confession is unsupported by the testimonial evidence. The State rebutted defendant's allegations specifically, and the trial court, in denying the motion to suppress the statement, impliedly found that the testimony of the police officers was more credible than the testimony of defendant and that no promises were made. See **State v. Batiste**, 06-824 (La.App. 5 Cir. 3/13/07), 956 So.2d 626, 634, writ denied, 07-0892 (La. 1/25/08), 973 So.2d 751.

None of the police officers who spoke with defendant on the day he confessed ever threatened, coerced, or mistreated him in any way, or promised him anything. The record before us clearly establishes that defendant was advised of his **Miranda** rights prior to making a confession; that at no time while in police custody did defendant ask for a lawyer or invoke his right to remain silent; and that defendant's confession was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. The trial court's determination on credibility was supported by the

record. Accordingly, the trial court did not err or abuse its discretion in denying defendant's motion to suppress his statement.

In his second assignment of error, defendant argues the trial court erred in denying his motion for new trial because the evidence did not support an affirmative showing that his inculpatory statement was freely and voluntarily given. For those reasons addressed in the first assignment of error, we find no error in the trial court's denial of the motion for new trial.

These assignments of error are without merit.

CONCLUSION

For the foregoing reasons, we affirm defendant's convictions, habitual offender adjudications, and sentences.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.