NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 KA 0955

STATE OF LOUISIANA

VERSUS

BRIAN JAMES WATKINS

Judgment Rendered: DEC 23 2015

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Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case No. 673,597

The Honorable George J. Larke, Jr., Judge Presiding

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BEFORE: McDONALD, McCLENDON, AND THERIOT, JJ.

THERIOT, J.

The defendant, Brian James Watkins, was charged by bill of information with operating a vehicle while intoxicated, fourth or subsequent offense, a violation of La. R.S. 14:98(A).[1] The defendant entered a plea of not guilty and, following a jury trial, was found guilty as charged. He filed motions for new trial and post-verdict judgment of acquittal, both of which were denied. He was sentenced to eighteen years imprisonment at hard labor, with the first three years to be served without the benefit of probation, parole, or suspension of sentence. The district court ordered that no portion of the sentence was to be served concurrently with the remaining balance of any other sentence. The court also imposed a $5,000.00 fine. The defendant now appeals, arguing that the district court erred in denying his motion to suppress he filed prior to trial. He argues that a statement he made to police shortly after the accident at issue should have been suppressed as it was not voluntarily given due to his intoxication. For the following reasons, we affirm the defendant's conviction, but we vacate his sentence and remand this matter to the district court for resentencing.

FACTUAL BACKGROUND

On December 10, 2013, around 9:00 p.m., Louisiana State Police Trooper Christopher Mason responded to a report of a hit-and-run accident near Louisiana Highways 659 and 3087 in Terrebonne Parish. The vehicle that was hit was driven by Ashley Harris. Torrey Matthews, a passenger in Harris's vehicle, provided a description and license plate number of the other vehicle involved in the accident. After speaking with Matthews and

[1] The parties stipulated to the defendant's predicate offences prior to trial, which include his (1) March 20, 2002 conviction for DWI, fourth offense, in Terrebonne Parish under docket number 379,080; (2) March 20, 2002 conviction for DWI, fourth offense, in Terrebonne Parish under docket number 381,877; and (3) January 10, 2011 conviction for DWI, fourth offense, in Terrebonne Parish under docket number 584,864.

investigating the scene, Trooper Mason determined that the vehicle that left the scene was traveling south on Highway 659 and made a left turn in front of the vehicle driven by Harris, which was traveling north on Highway 659, and struck the vehicle driven by Harris at the intersection of Highways 659 and 3087. He determined that the vehicle that left the scene was registered in the name of Keith LeCompte. Trooper Mason drove to LeCompte's house, and LeCompte provided him with the name and address of his nephew, the defendant, to whom he had loaned the vehicle.

Trooper Mason met Trooper Brent Dufrene at the address provided by LeCompte. They observed a vehicle in the driveway that was damaged and matched the description given by Matthews. The troopers approached the residence and knocked on the door. Three people were inside, including the defendant, who was sleeping on a couch. The troopers identified themselves, explained why they were there, and made contact with the defendant. Trooper Dufrene testified that he was unsure whether the defendant was "actually sleeping, whether he was passed out as a result of being intoxicated, or . . . faking and acting like he was sleeping[.]" Trooper Mason woke the defendant. According to Trooper Dufrene, the defendant appeared "discombobulated and intoxicated," but was "not being belligerent." Trooper Mason testified that the defendant appeared impaired.

After Trooper Mason determined that the defendant was impaired, he placed him in handcuffs and patted him down. The defendant was then placed inside Trooper Mason's vehicle and read his **Miranda**[2] rights. Trooper Mason drove the defendant to the scene of the accident. Harris and Matthews were no longer at the scene, nor was the vehicle driven by Harris. While on the scene, the defendant stated that "he was driving and that he

[2] **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

was sorry." At that point, Trooper Mason transported the defendant to the parish jail and placed him under arrest.

Once at the jail, the defendant refused to participate in field sobriety tests. He was taken into the "Intoxilyzer room" and his rights as related to chemical tests were read to him. The defendant refused to submit to a breathalyzer test and told Trooper Mason, "You're wasting your [expletive] time. I'm not blowing." Because the defendant refused, his blood was drawn pursuant to a warrant. The results of his blood test indicated that the defendant had a blood-alcohol content of .14 grams percent. After having his blood drawn, the defendant was transported back to and booked in the parish jail.

ASSIGNMENT OF ERROR

The defendant presents a single assignment of error on appeal:

> The district court erred in denying the defendant's motion to suppress a statement made to Trooper Mason while the defendant was intoxicated, because this statement was not free and voluntary.

DISCUSSION

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. La. 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. See, **State v. Waldrop**, 2011-2363 (La. App. 1st Cir. 6/8/12), 93 So.3d 780, 785. Since the general admissibility of a confession is a question for the district 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. 1st Cir. 1990), writ denied, 577 So.2d 11 (La.

1991). The district 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. 1st 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. Mackens**, 35,350 (La. App. 2nd Cir. 12/28/01), 803 So.2d 454, 463, writ denied, 2002-0413 (La. 1/24/03), 836 So.2d 37.

When a confession is challenged on the ground that it was not freely and voluntarily given because the defendant was intoxicated at the time of the confession, the confession will be inadmissible only when the intoxication is of such a degree as to negate the defendant's comprehension and to make him unconscious of the consequences of what he is saying. Whether intoxication exists and is sufficient to vitiate the voluntariness of a confession are questions of fact, and the ruling of the district court on this issue will not be disturbed unless unsupported by the evidence. **State v. Williams**, 602 So.2d 318, 319 (La. App. 1st Cir.), writ denied, 605 So.2d 1125 (La. 1992).

Although the burden of proof is generally on the 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. See La. Code Crim. P. art. 703(D). In determining whether the ruling on a 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). Because the evaluation of witness credibility often plays such a large role in the context of a motion to suppress, the

district court's denial of a motion to suppress should not be reversed on appeal absent a clear abuse of the district court's discretion, i.e., unless the court's ruling is not adequately supported by reliable evidence. See **State v. Green**, 1994-0887 (La. 5/22/95), 655 So.2d 272, 281.

The defendant asserts in his brief that in addition to alcohol, he had taken Zoloft and trazodone, and "showed clear signs of heavy intoxication when he made a statement admitting he was driving the truck when the accident occurred." He argues that his "intoxication was of such a degree as to negate his comprehension and rendered him unconscious of the consequences of what he said."

At the hearing on the motion to suppress, Trooper Mason testified that the defendant was impaired. According to Trooper Mason, the defendant's speech was slurred, his balance was swayed, his eyes were bloodshot and glossy, and there was a strong odor of alcohol on his breath. However, according to Trooper Mason, the defendant understood basic questions and statements. The trooper read the defendant his **Miranda** rights, and the defendant never indicated that he did not understand them. Trooper Mason testified that he felt that the defendant understood his rights and knowingly and voluntarily waived them. According to his testimony, Trooper Mason drove the defendant to the scene of the accident to refresh his memory. Once they arrived at the scene, the trooper asked the defendant what happened, and the defendant apologized for driving. Trooper Mason stated that he would not have questioned the defendant about the accident if he thought the defendant was unable to understand.

After arriving at the jail, Trooper Mason interviewed the defendant. According to Trooper Mason, the defendant was "coherent to understand" the questions and was not too intoxicated to give a statement. The defendant

stated that he had taken Zoloft and trazodone around 6:00 p.m. that day. Despite his prior statement, he indicated that he was not driving and was not involved in an accident that day. Trooper Mason testified at trial that although the defendant told him that he was not driving or involved in an accident, when asked whether the vehicle he was driving had defects, the defendant stated that the vehicle had transmission problems. The defendant also told Trooper Mason that he had been drinking beer since 6:00 p.m., but had not had any alcoholic beverages since the accident.

After the conclusion of testimony at the hearing, defense counsel argued that the defendant's statement should be suppressed because Trooper Mason did not have articulable knowledge of particular facts sufficient to reasonably suspect the defendant of criminal activity. She argued, in the alternative, that the statement was not free and voluntary because of the defendant's impairment. She further argued that the statement was "suspect" because Trooper Mason changed his "story" as to whether the defendant made the statement on the way to the scene or at the scene. Despite defense counsel's arguments, the district court found that there was enough articulable knowledge of facts to detain the defendant and noted that Trooper Mason testified that he would not have questioned the defendant any further if he thought the defendant was too intoxicated to be aware of his actions. The court also noted that whether the statement was given on the way to the scene of the accident or at the scene was a credibility question for the trier of fact. For those reasons, the district court denied the defendant's motion to suppress his statement made at the scene of the accident wherein he apologized for driving.

We see no reason to disturb the district court's ruling. Nothing in the record before us establishes that the defendant's alleged intoxicated state

was of such a degree as to negate his comprehension or make him unconscious of the consequences of what he was saying to Trooper Mason. The testimony of Trooper Mason indicated that the defendant was cognizant and able to speak to him in a responsive manner. The defendant's reply to the trooper's question was responsive, relevant, and coherent. Giving great weight to the trier of fact's credibility determination, we conclude that the district court's factual finding that the defendant knowingly waived his **Miranda** rights in voluntarily answering Trooper Mason's question is supported by the evidence. Accordingly, the district court's denial of the defendant's motion to suppress his statement is without error.

The defendant's sole assignment of error is without merit.

REVIEW FOR ERROR

In accordance with La. Code Crim. P. art. 920(2), all appeals are reviewed for errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. See **State v. Price**, 2005-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277. After a careful review of the record, we have discovered a sentencing error. The defendant was convicted of driving while intoxicated, fourth or subsequent offense, a violation of La. R.S. 14:98(E). (R. 448). Under the applicable version of La. R.S. 14:98(E)(1)(a) (prior to revision by 2014 La. Acts No. 385, § 1), on a conviction of a fourth or subsequent offense, the offender shall be imprisoned for not less than ten nor more than thirty years, and two years of the sentence shall be imposed without the benefit of parole, probation, or suspension of sentence. Prior to revision by 2014 La. Acts No. 385, § 1, La. R.S. 14:98(E)(4)(b) provided:

> If the offender has previously received the benefit of suspension of sentence, probation, or parole as a fourth offender, after serving the mandatory sentenced required by Subparagraph (E)(1)(a), no part of the remainder of the sentence may be imposed with benefit of suspension of sentence, probation, or parole, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

The district court sentenced the defendant to eighteen years imprisonment at hard labor with the first three years to be served without the benefit of parole, probation, or suspension of sentence. Because the defendant previously received the benefit of suspension of sentence and probation as a fourth offender,[3] the entirety of his sentence should have been imposed without the benefit of suspension of sentence, probation, or parole. Therefore, the sentence imposed by the district court, which restricts benefits for only three years, is illegally lenient.

The correction of this sentence requires the exercise of discretion. The fact that the restriction of benefits on the defendant's sentence applies to the entirety of the term imposed may or may not influence the sentencing decision of the district court. Accordingly, we vacate the defendant's sentence and remand to the district court for resentencing in accordance with La. R.S. 14:98(E)(4)(b). See **State v. Haynes**, 2004-1893 (La. 12/10/04), 889 So.2d 224 (per curiam).

DECREE

For the foregoing reasons, we affirm the defendant's conviction, vacate his sentence and remand this matter to the district court for resentencing.

CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED FOR RESENTENCING.

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[3] The defendant received the benefit of suspension of sentence and probation on each of his three predicate offenses.