

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

2017 KA 0141

STATE OF LOUISIANA  
VERSUS  
DONALD JAVON ROSS

Judgment rendered: SEP 21 2017

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On Appeal from the  
Thirty-Second Judicial District Court  
In and for the Parish of Terrebonne  
State of Louisiana  
No. 694,860

The Honorable Juan Pickett, Judge Presiding

\* \* \* \* \*

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\* \* \* \* \*

**BEFORE: HIGGINBOTHAM, HOLDRIDGE, PENZATO, JJ.**

GH  
ahp  
TMH

**HOLDRIDGE, J.**

The defendant, Donald Javon Ross, was charged by bill of information with armed robbery with the use of a firearm, a violation of Louisiana Revised Statutes 14:64 and 14:64.3(A) (count one), and possession with intent to distribute a Schedule I controlled dangerous substance (marijuana), a violation of Louisiana Revised Statutes 40:966(A)(1). He pled not guilty to both counts and filed a motion to suppress his confession, which was denied. Following a jury trial, the defendant was found guilty as charged on both counts. He filed a motion for postverdict judgment of acquittal, which was denied.

The defendant was then sentenced to a term of imprisonment of twenty years at hard labor without the benefit of probation, parole, or suspension of sentence with an additional penalty of five years at hard labor without the benefit of probation, parole, or suspension of sentence pursuant to Section 14:64.3(A) on count one. On count two, the defendant was sentenced to five years at hard labor. The court ordered the sentences on counts one and two to run concurrently. The defendant filed a motion to reconsider sentence. The district court then amended the defendant's sentence as to count one, ordering that the defendant serve fifteen years at hard labor with an additional penalty of five years pursuant to Section 14:64.3(A), for a total of twenty years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.<sup>1</sup> The district court ordered the amended sentence on count one to run concurrently with the previously imposed sentence on count two. The State orally objected to the amended sentence and made an oral motion to reconsider sentence, which was subsequently dismissed by the State's motion. The defendant now appeals, challenging the denial of his motion to suppress. For the following reasons, we affirm the defendant's convictions and sentences.

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<sup>1</sup> See La. R.S. 15:301.1.

## FACTS

On February 19, 2015, shortly after 10:00 a.m., Deputy Carter Fontenot with the Terrebonne Parish Sheriff's Office responded to an armed robbery call at a Chevron gas station located at 5912 West Main Street in Houma, Louisiana. Upon arrival, Deputy Fontenot made contact with Abdulla Hussein, the victim, who provided a description of the offender as well as a license plate number of the vehicle that he observed leaving the gas station. The victim indicated that he believed, but was not positive, that the offender was the same person who had come into the store approximately thirty minutes prior to the robbery to purchase a cigar. At that time, the victim was removing money from his safe and thought that the person purchasing the cigar saw him counting the money. According to the victim, approximately thirty minutes later, the offender walked into the store holding a gun and said, "I want the money. . . All the money you take [sic] from the safe." The offender then took the money from the victim's pockets, pointed a gun to his leg, and demanded that he let him enter the gas station's office. After approximately fifteen minutes, another customer drove up to the gas station, and the offender ran. The victim described the offender as a black male who was approximately five feet, eleven inches tall, and weighed approximately one hundred fifty or one hundred seventy pounds. The victim stated that the person who robbed him was wearing a makeshift mask that covered his face during the robbery. The deputy immediately ran the license plate number given to him by the victim through dispatch and learned that the defendant was listed as its registered owner.

Deputy Fontenot proceeded to the address listed for the defendant where he met Detective Malcolm Wolfe and Captain Dawn Foret. Detective Cody Voison was also at the residence and briefly spoke with subjects Amos Washington, Kerry Lyons, Richard Shelby, and Alexander Barrow. Neither the defendant nor the

vehicle registered to him were at the residence, but Deputy Fontenot noticed that Lyons matched the description of the offender given by the victim. Once Detective Voison arrived at the residence, Lyons was placed in handcuffs and advised of his **Miranda** rights.<sup>2</sup> Lyons was transported to the Chevron gas station, where the victim identified him as the individual who purchased a cigar prior to the armed robbery. The victim believed the individual who purchased the cigar was the same individual who robbed him. Lyons was then transported to the sheriff's office.

Shortly thereafter, Deputy Fontenot was ordered to return to the defendant's residence to transport the defendant to the sheriff's office. When Deputy Fontenot returned to the residence, the defendant and the vehicle matching the description and license plate number given by the victim were present. The deputy transported the defendant to the sheriff's office and brought him into the interview room. Under the supervision of Detective Wolfe, Lyons was permitted to speak to the defendant. The defendant subsequently confessed to committing the robbery.

A search of the defendant's residence was conducted and a handgun magazine as well as approximately sixty-seven grams of marijuana were located. The defendant testified that he threw the money out of his window while driving because he "got scared[.]"

### **MOTION TO SUPPRESS**

In his sole assignment of error, the defendant argues that the district court erred in denying the motion to suppress his confession. Specifically, the defendant contends that his confession was not free and voluntary because it was "made under duress of fear for his family's safety[.]" According to the defendant, the deputies conducting his interview used Lyons to intimidate him to confess.

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<sup>2</sup> **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

A hearing was held on the defendant's motion to suppress. At the conclusion of the hearing, the district court denied the motion and stated that based on the testimony it heard and documents admitted into evidence, the defendant's statement was given freely and voluntarily.

It is well settled that for a confession or inculpatory statement to be admissible, the State must affirmatively show that it was freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451; La. Code Crim. P. art. 703D. Further, if the statement was elicited during custodial interrogation, the State must show that the defendant was advised of his **Miranda** rights. 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. The district court must consider the totality of the circumstances in deciding whether a confession is admissible. Moreover, where conflicting testimony is offered, credibility determinations lie within the sound discretion of the district court judge, and his ruling will not be disturbed unless clearly contrary to the evidence. Unless the evidence does not support its findings, an appellate court will defer to the district court's determination as to whether a confession was made knowingly, intelligently, and voluntarily. **State v. Williams**, 2001-0944 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 944, writ denied, 2002-0399 (La. 2/14/03), 836 So.2d 135. 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. 1st Cir. 1989).

When a district court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the district court's discretion, *i.e.*, unless such ruling is not supported by reliable evidence. See State v. Green, 94-0887 (La. 5/22/95), 655 So.2d 272, 280-281. However, a

district court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589 (La. 12/1/09), 25 So.3d 746, 751. In determining whether the ruling on the 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).

At the hearing, the State presented the testimony of Detective Voison and introduced a transcript and audio recording of the defendant's interview as well as a copy of the **Miranda** rights form signed by the defendant. The detective testified that two hours and eight minutes elapsed from the time the defendant signed the **Miranda** form until the recording of his statement began, and the defendant did not ask for an attorney during that time nor did he state that he did not want to answer questions. According to Detective Voison's testimony, at no time did he threaten, coerce, or subject the defendant to any sort of duress.

Detective Voison also testified at trial and explained that he sat in the detective bureau and watched the defendant's interaction with Lyons on a television. He testified that the conversation only lasted a few minutes and did not appear to be confrontational. The detective explained that Lyons asked for permission to speak with the defendant because he did not want to be imprisoned for a crime he did not commit.

Detective Wolfe also testified at trial. According to his testimony, Lyons denied involvement and asked to speak with the defendant to "clear his name." Detective Wolfe stood in the doorway of the interview room during the entire conversation and heard "every word" of what he described as a very "passive conversation" between the defendant and Lyons. According to Detective Wolfe, Lyons was "very scared" and "just wanted his name to be cleared." He stated that Lyons pled with the defendant, who began to cry before stating that he would tell

the detectives the truth. Detective Wolfe denied hearing any threats of violence towards the defendant's family.

The defendant testified that he confessed to committing the robbery after talking to Lyons out of fear for the safety of his family. The defendant claimed that Lyons told him that if he did not "take the charges," he would have to "fear for [his] family."

Based on the foregoing, we find that the defendant was not intimidated, threatened, or induced to confess based on his conversation with Lyons. The State rebutted the defendant's allegation with the testimony of Detective Voison and Detective Wolfe. The district court, in denying the motion to suppress the statement, impliedly found that the testimony of Officer Voisin was more credible than the testimony of the defendant and that no threats were made, which was further supported by the testimony of Officer Wolfe at trial. See State v. Batiste, 2006-824 (La. App. 5th Cir. 3/13/07), 956 So.2d 626, 634, writ denied, 2007-0892 (La. 1/25/08), 973 So.2d 751. The record before us clearly establishes that the defendant was advised of his **Miranda** rights prior to making a confession; that at no time while in police custody did the defendant ask for an attorney or invoke his right to remain silent; and that the defendant's confession was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. Accordingly, the district court did not err or abuse its discretion in denying the defendant's motion to suppress.

**CONVICTIONS AND SENTENCES AFFIRMED.**