**NOT DESIGNATED FOR PUBLICATION**

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| **STATE OF LOUISIANA** | * | **NO. 2003-K-1738** |
| **VERSUS** | * | **COURT OF APPEAL** |
| **BRUCE C. BETZER** | * | **FOURTH CIRCUIT** |
| | * | **STATE OF LOUISIANA** |
| | * | |
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SUPERVISORY WRIT DIRECTED TO
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 265-230, DIVISION "D"
Honorable Kirk A. Vaughn, Judge
* * * * * *
**Judge Dennis R. Bagneris, Sr.**
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr., and Judge Leon A. Cannizzaro, Jr.)

EDWARD P. GOTHARD
NOWALSKY, BRONSTON & GOTHARD
3500 NORTH CAUSEWAY BLVD., SUITE 1442
METAIRIE, LOUISIANA 70002
**COUNSEL FOR DEFENDANT/RELATOR**

**WRIT DENIED; CONVICTION AND SENTENCE AFFIRMED**

## STATEMENT OF THE CASE

On June 11, 2002 the defendant was charged in case #265-230 with reckless operation of a vehicle and in case #265-232 with resisting arrest. The defendant pled not guilty at his arraignment on October 21. On August 7, 2003 the court found him guilty as charged in both cases and sentenced him to pay a $100 fine on the reckless operation count and court costs and $50 on the resisting arrest count. The defendant seeks to overturn his convictions and sentences on these two counts.

## FACTS

Agent Richard Jackson of the St. Bernard Sheriff's Office testified that in the mid-morning of May 17, 2002 he was driving an unmarked police vehicle. He testified he was sitting at a red light in the right turn lane of Paris Road at its intersection with Judge Perez Drive in Chalmette. Although that intersection does allow a driver to turn right on red, Agent Jackson testified he did not do so because he was waiting for the traffic to clear. He testified that as he sat at the light, the car behind him, driven by the defendant Bruce Betzer, began honking its horn at him to get him to turn on the red light. Agent Jackson testified he ignored the horn, and when the light turned green he started making his turn onto Judge Perez. He testified

that as he made the turn, he heard the tires of the defendant's car squealing, and he saw the defendant's car come around the back of his truck and close to the left side of his truck, forcing him to remain in the right lane. He testified the defendant's car passed him on the left side before he had completed his turn. He testified the defendant's car then accelerated. He stated he then activated his lights and siren to stop the defendant. However, the defendant continued down Judge Perez toward New Orleans, eventually moving into the right lane. Agent Jackson testified he radioed the police station about the situation and requested a marked unit to help him stop the defendant. He testified that as his and the defendant's vehicles approached a red light, other cars in front of them pulled over to obey the siren and lights. Instead of stopping, however, the defendant drove through the red light and kept going.

Agent Jackson testified that soon thereafter, he noticed two marked police cars driving toward them in the opposite lanes of Judge Perez. He testified the defendant then made a U-turn and started driving back down Judge Perez toward Paris Road. Agent Jackson testified that the defendant finally stopped his car on Judge Perez when it encountered a police roadblock. He and other police officers pulled behind the defendant's car after he stopped. Agent Jackson stated the officers ordered the defendant out

of his car, but the defendant refused to do so. Agent Jackson testified he opened the door and ordered the defendant to exit. The defendant ignored him, and the deputy grabbed him by the arm and pulled him out of the car. He stated the defendant snatched back his arm and began struggling and fighting. He stated the defendant tried to strike him, and then other deputies grabbed the defendant, subdued him on the ground, and handcuffed him. The defendant had a laceration on his head, and he received first aid from firemen from a nearby firehouse.

Agent Jackson testified the defendant's car was unlocked when he ordered the defendant out of the car, and the defendant did not have on his seat belt when he pulled the defendant out of the car. Agent Jackson insisted that although he was dressed in plain clothes when he opened the defendant's door, he had his badge displayed around his neck, and there were other deputies in uniform who had surrounded the defendant's car. He stated he also identified himself as a police officer when he ordered the defendant out of his car. He testified he grabbed the defendant by the arm when he pulled him out of the car. He stated that when the other deputies grabbed the defendant, they took him to the front panel of the side of the car to try to subdue him.

Robert Roger testified he was a St. Bernard Sheriff's Office deputy on

the day of the defendant's arrest, and he was in Agent Jackson's truck during the events that led to the defendant's arrest. He testified he knew the defendant prior to this incident, having seen him in the Thirty-fourth Judicial District courthouse as well as having worked with him elsewhere in the past, but he testified he did not tell his partner he knew the defendant or that the defendant was an attorney. His testimony basically tracked that of Agent Jackson. Agent Roger testified he and Agent Jackson followed the defendant in the left-hand lane until they came to a red light, at which time the defendant switched into the right-hand lane, which had become clear of traffic, to drive through the red light. He testified that soon after the red light the road curved, and after negotiating the curve he could see marked police units coming toward them with flashing lights. At that point, the defendant made a U-turn and began driving back toward Paris Road. He testified that when the defendant finally stopped his car at the roadblock, several officers ordered the defendant to exit his car, but the defendant remained in his car. He testified that when Agent Jackson pulled the defendant out of the car by his left arm, Agent Roger grabbed his right arm. He stated that as he tried to put the defendant's hand behind his back to handcuff him, the defendant began struggling and loosened Agent Roger's grip on his hand. He testified they struggled, and eventually they both fell to

the ground. He stated that once the deputies successfully handcuffed the defendant, he stopped struggling. Agent Roger testified the defendant told him he did not stop because he feared the men in the truck were "blue-light bandits", and he wanted to find a safe area to stop. Agent Roger testified there were many businesses between Paris Road and the place where the defendant made a U-turn.

The defense proffered photographs taken of the defendant right after his arrest, but the trial court refused to allow their introduction.

Dep. Gabe Campo testified he responded to the call from Agent Jackson concerning the defendant's fleeing car. He testified that when he learned the defendant had made a U-turn, he parked his car across the eastbound lanes of Judge Perez at Pakenham Drive. He testified he got out of his police unit when the defendant stopped his car as he approached this roadblock. He testified he drew his weapon and told the defendant to get out of the car. He stated the defendant had time to exit the car after stopping it before Agent Jackson hauled him out of the car. He stated that when Agent Jackson eventually removed the defendant from his car, the defendant briefly struggled with the officers.

Misty Dilburt testified she was working at a clothing store on Judge Perez Drive on the morning of the defendant's arrest. She testified she was

outside the store when she saw several policemen pull up, pull the defendant out of his car, and throw him to the ground. She testified the officers pulled the defendant out of the car immediately after they surrounded his car. She testified the defendant looked like he was getting out of the car when the officers grabbed him, and she insisted she did not see him swing at any officer. Ms. Dilburt admitted, however, that she was across the street from where the officers stopped the defendant, and she could not hear if they had ordered him to exit his car. She testified she did not really notice any of the officers except the two who pulled the defendant from his car, and she testified one of these officers was in plain clothes while the other was in uniform.

Melvin Damiens testified he was sitting at a red light at Judge Perez and Pakenham on the morning of May 17 when he saw a police car parked sideways on Judge Perez and a truck driving up to the scene. He testified he saw two men get out of the truck with their guns drawn. He testified he saw a man he identified as the defendant get out of his car with his hands up just as the police officers came up to him. He stated he saw the officers jump on the defendant, drag him to the back of his car, and throw him down. Mr. Damiens testified he did not see the defendant resist the officers in any way. He stated he did not see anything else in connection with this case. On

cross-examination Mr. Damiens admitted he had a prior conviction for possession of marijuana for which Agent Jackson had arrested him, and he admitted it was possible he had a prior conviction for possessing stolen property. He stated he did not hear anyone tell the defendant to get out of his car prior to his exit from the car. He testified the only marked police car he saw on the scene was the one which had blocked Judge Perez Drive.

Stacy Betzer testified she is the defendant's wife. She stated she was not present on the day her husband was arrested, but she insisted the car he was driving that morning was her car and that it had a current brake tag on that date. She also testified the car's door automatically locked when the car reached fifteen miles per hour.

## DISCUSSION

The relator raises three claims in his application: (1) the evidence was insufficient to support his conviction for reckless operation of a vehicle; (2) the evidence was insufficient to support his conviction for resisting arrest; and (3) the trial court erred by refusing to allow the admission of photographs taken of him sometime after his arrest purportedly showing the extent of the injuries he received at his arrest. The first two claims will be addressed together.

### Sufficiency of Evidence

By his first two assignments the relator argues there was insufficient evidence to support his convictions. The test for determining the sufficiency of evidence to support a conviction was set forth in State v. Armstead, 2002-1030, pp. 5-6 (La. App. 4 Cir. 11/6/02), 832 So. 2d 389, 393:

> In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Green*, 588 So.2d 757 (La. App. 4 Cir.1991). However, the reviewing court may not disregard this duty simply because the record contains evidence that tends to support each fact necessary to constitute the crime. *State v. Mussall*, 523 So.2d 1305 (La.1988). The reviewing court is not permitted to consider just the evidence most favorable to the prosecution but must consider the record as a whole since that is what a rational trier of fact would do. If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. The fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. *Mussall*, 523 So.2d 1305; *Green*, 588 So.2d 757. "[A] reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence." *State v. Smith*, 600 So.2d 1319, 1324 (La. 1992).

The relator was convicted in case #265-230 of reckless operation of a

vehicle. La. R.S. 14:99 defines reckless operation of a vehicle as "the operation of any motor vehicle, aircraft, vessel, or other means of conveyance in a criminally negligent or reckless manner." La. R.S. 14:12 states that criminal negligence occurs when, "although neither specific nor general criminal is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances." See State ex rel. Palermo v. Hawsey, 377 So.2d 338 (La. 1979); State v. Legnon, 464 So. 2d 910 (La. App. 4 Cir. 1985). In State v. Beason, 26,725, pp. 4-5 (La. App. 2 Cir. 4/7/95), 653 So.2d 1274, 1279, a negligent homicide case, the court described criminal negligence:

> Criminal negligence exists when, "although neither specific nor general intent is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation of the standard of care expected to be maintained by a reasonably careful man under like circumstances." LSA-R.S. 14:12. Unlike general or specific criminal intent, criminal negligence is essentially negative. Rather than requiring that the accused intend some consequence of his actions, criminal negligence is found from the accused's gross disregard for the consequences of his actions. *State v. Martin*, 539 So.2d 1235 (La.1989); *State v. Wilcoxon*, 26,126 (La.App. 2d Cir. 06/22/94), 639 So.2d 385. Ordinary negligence does not equate to criminal negligence. Thus, the state is required to show more than a mere deviation from the standard of ordinary care. *State v. Wilcoxon*, *supra.*

In Palermo, an officer stopped the defendant after he pulled out of a parking lot, spun his tires, and accelerated. As a result of this stop, the defendant was ultimately found in possession of drugs. On review of the trial court's denial of his motion to suppress the evidence, the Court found the evidence did not support the finding of probable cause to believe the defendant was driving recklessly because there were no additional factors, such as speeding, weaving lanes, crossing the center line, "or giving any other indication he was operating his vehicle recklessly or in violation of any other traffic provision." Palermo, 377 So. 2d at 340.

Likewise, in State v. Lemoine, 403 So. 2d 1230 (La. 1981), the defendant drove through a small town at a "high rate of speed" while it was raining and in the vicinity of people setting up tents for a festival. The defendant was convicted of reckless operation of a vehicle, but the Court reversed his conviction. The Court noted that although driving at a high rate of speed alone could constitute reckless operation of a vehicle, in that case the officer could only testify that he thought the defendant was driving faster than the speed limit, which the officer thought was twenty-five miles an hour. In addition, the highway was clear at the time the defendant drove through the town, and there was no indication he almost hit anyone or anything.

In Legnon, this court addressed the sufficiency of evidence to support a conviction for La. R.S. 14:99. The defendant was stopped for speeding, and the officer who stopped him testified the defendant reeked of alcohol and failed a field sobriety test. The defendant was convicted of DWI and reckless operation of a vehicle. On appeal, this court affirmed both convictions, noting that driving twenty-nine miles over the speed limit was sufficient evidence of reckless operation of a vehicle.

Other courts have also addressed this issue. In State v. Boudreaux, 504 So. 2d 1165 (La. App. 5 Cir. 1987), the defendant backed out of a driveway, crossed the centerline, gunned the engine, accelerated forward, spun the tires and spewed gravel, and then backed into the driveway. The defendant was arrested for DWI and reckless operation. On appeal, the court found "his action of darting into the street and spinning his tires in the manner here does constitute reckless operation." Id. at 1168. In State v. Washington, 498 So. 2d 136 (La. App. 5 Cir. 1986), the defendant turned a corner, spun his tires which squealed and smoked, and then pulled out in front of a truck, causing the truck to veer to the side. The court found sufficient evidence to support his reckless operation conviction. In State v. Tharp, 459 So. 2d 44 (La. App. 2 Cir. 1984), the defendant pulled his truck out of a parking lot, squealing his tires and fishtailing slightly. An officer

followed him and noticed the truck running onto the shoulder twice. When the officer pulled him over, he discovered the defendant's driver's license had been revoked. On appeal of his reckless operation conviction, the court found these actions were sufficient to support his conviction.

The relator argues the circumstances of his case are close to those in Palermo and Lemoine. He notes that neither officer was able to testify that he was speeding or that he endangered any other vehicles with his driving. Indeed, both officers testified the relator slowed his car at the red light when he approached the other cars sitting there. However, they also both testified the relator then ran the red light when the other cars got out of the way.

Both officers testified the relator was behind them at the stoplight, and when the light turned green and they started their right turn, the relator accelerated, squealed the tires on his car, and pulled around them on the left before they had completed their turn. Agent Roger testified the relator's car almost hit them on the left as he passed them while making his turn. Agent Jackson testified the relator's car forced his truck to remain in the right hand lane during the turn, and that the relator's car turned into the left lane of Judge Perez Drive from the right turn lane of Paris Road. He also testified that after he activated his lights and siren and began following the relator, several cars pulled over to let him by, and at a stop light the relator passed

these cars and drove through the red light. Although Agent Jackson testified that he could only turn into the right lane based upon the relator's actions, he also admitted that he could legally only turn into the nearest lane, i.e. the right lane, and then he would have to move into the left lane. By the same token, however, the relator could only lawfully turn into the nearest lane, i.e. the right lane, but both officers testified the relator passed them on the left and turned into the left lane before they could complete their turn. Thus, the evidence showed the relator unlawfully executed the turn.

The trial court specifically based its ruling on the relator's actions in making the initial right turn, not on the run through the red light. Nonetheless, both officers testified the relator ran the red light as the officers were chasing him, and the relator presented no evidence to contradict this testimony. Given the fact that the officers were *behind* the relator's car when the relator unlawfully entered the intersection, the relator posed a real threat to the driver of any other vehicle entering the intersection from Pakenham Drive who had the green light and who may not have yet seen the lights on the officers' truck.

The relator also argues the trial court abused its discretion by believing the officers' testimony because their testimony was unbelievable and because they beat him when they arrested him. A factfinder's credibility

decision should not be disturbed unless it is clearly contrary to the evidence. State v. Huckabay, 2000-1082 (La. App. 4 Cir 2/6/02), 809 So. 2d 1093; State v. Harris, 99-3147 (La. App. 4 Cir. 5/31/00), 765 So. 2d 432. Although there were a few discrepancies in the officers' testimony, these minor discrepancies were not of such magnitude as to make their testimony unbelievable. Therefore, the trial court did not abuse its discretion by believing the testimony of the officers.

The uncontroverted evidence established the relator executed an illegal right turn at the corner of Paris Road and Judge Perez Drive by quickly passing the officers' truck on the left side and turning into the left lane. Both officers testified the relator almost hit their truck while making his turn. In addition, both officers testified the relator ran the red light at Pakenham Drive. Given these factors, the relator's conduct exceeded mere spinning and squealing of tires and exceeded that of the defendants in Palermo and Lemoine. Thus, viewing the evidence in the light most favorable to the prosecution, the State proved the relator's conduct arose to the level of criminal negligence, thus supporting the trial court's finding the relator guilty of reckless operation of a vehicle. The relator's claim number one has no merit.

The relator also argues the evidence was insufficient to support his

conviction in case #265-232 for resisting arrest. La. R.S. 14:808 defines resisting an officer:

> A. Resisting an officer is the intentional interference with, opposition or resistance to, or obstruction of an individual acting in his official capacity and authorized by law to make a lawful arrest or seizure of property or to serve any lawful process or court order when the offender knows or has reason to know that the person arresting, seizing property, or serving process is acting in his official capacity.
>
> B. (1) The phrase "obstruction of" as used herein shall, in addition to its common meaning, signification, and connotation mean the following:
>
> (a) Flight by one sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest.
>
> (b) Any violence toward or any resistance or opposition to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail.
>
> (c) Refusal by the arrested party to give his name and make his identity known to the arresting officer or providing false information regarding the identity of the arrested party to the arresting officer.
>
> (d) Congregation with others on a public street and refusal to move on when ordered by the officer.

In order to support a conviction for resisting arrest, the State must prove the defendant intentionally resisted, opposed, or obstructed an officer

authorized to make an arrest, and the State must further prove the defendant knew or should have known the officer was acting in his official capacity. See State v. Washington, 98-545 (La. App. 5 Cir. 12/16/98), 725 So. 2d 587; State v. Johnson, 534 So.2d 529, 531 (La. App. 5 Cir. 1988). As noted in Washington:

> Louisiana courts have consistently construed this statute to prohibit conduct that obstructs or interferes with an officer acting in his official capacity while he is attempting to seize property, serve process or to make a lawful arrest. *State v. Nix*, 406 So.2d 1355 (La.1981); *State v. Green*, 97-702, p. 5 (La.App. 5 th Cir. 12/30/97), 706 So.2d 536; *State v. Flanagan*, 29,316 p. 4 (La.App. 2 nd Cir. 4/2/97), 691 So.2d 866, 869. Unless the officer is engaged in one of the three activities, interference with an officer's investigation is not a violation of LSA-R.S. 14:108. *State v. Lindsay*, 388 So.2d 781, 781 (La.1980); *State v. Huguet*, 369 So.2d 1331, 1335 (La.1979); *State v. Green*, *supra*, at 539.

Washington, 98-545 at 6, 725 So. 2d at 590. In Washington, suspects standing near the defendant were arrested for various drug offenses, and the defendant started to leave the area. The officers ordered him to halt; instead he ran, and the officers arrested him for resisting an officer, seizing drugs incident to this arrest. On review of his claim that the trial court should have granted his motion to suppress the drugs, the court found that by refusing to submit to the officers' orders, the defendant interfered with the officers'

duties. The officers then had probable cause to arrest him for resisting an officer, and the drugs were lawfully seized incident to this arrest.

In State v. Smith, 352 So. 2d 216 (La. 1977), officers went to the defendants' home looking for a suspect. The defendants invited the officers inside, but told the officers that the only people in the house were in the same room with the officers. The officers heard a noise in the back of the house, and they asked permission to search the house. The defendants refused, and one defendant tried to block the doorway to the back of the house. Other officers outside advised the officers inside that they saw the suspect exiting a window in the back of the house. The suspect was caught, and the officers arrested the defendants. On appeal, the Court found the evidence was sufficient to support the resisting an officer conviction for the defendant who blocked the officers' way into the back of the house, noting that the defendant interfered with what he knew was the officers' performance on their duty.

In State v. Amant, 2002-907 (La. App. 5 Cir. 1/28/03), 839 So. 2d 271, officers arrested the defendant for disturbing the peace, and the defendant resisted the officers' attempt to handcuff her after telling her she was under arrest. The court found these actions were sufficient to support her conviction for resisting arrest. In State v. Antoine, 98-369 (La. App. 3

Cir. 10/28/98), 721 So.2 d 562, an officer stopped the defendant, as the defendant was dropping off his child at school, for failure to use his seat belt. The defendant walked his child into school as the officer wrote the ticket, and when he returned the officer tried to detain him to arrest him. The defendant resisted the officer and struck him. The officer arrested the defendant for resisting arrest, battery of a police officer, and failure to wear a seat belt. On appeal, the court found that even though the officer was without authority to stop the defendant for the seat belt violation pursuant to the statute (as it existed at the time of the offense), the defendant could still be arrested for and convicted of resisting arrest because the defendant knew the officer was acting in his official capacity in writing the defendant a ticket for failing to wear a seat belt.

By contrast, in State v. Green, 97-702 (La. App. 5 Cir. 12/30/97), 706 So. 2d 536, the defendant was a passenger in a car that was stopped for a traffic violation. The driver of the car fled the scene, and the defendant remained in the car. The officer who stopped the car drew his weapon and shouted at the defendant to get out of the car. The defendant refused, and the officer holstered his gun, opened the door, and pulled the defendant out of the car. The officer arrested the defendant, and incident to this arrest the officer searched the defendant and found a crack pipe. On appeal of his drug

conviction, the court found the officer did not have probable cause to arrest the defendant. The court found the defendant's actions did not interfere with an arrest because the driver had already fled. The court noted that interfering with an *investigation* did not violate La. R.S. 14:108; the officer must be engaged in an *arrest*, seizure of property, or service of process.

Here, the relator argues his actions did not constitute a violation of La. R.S. 14:108 because his actions at best impeded an investigation. However, by the time the officers stopped the relator they had probable cause to arrest him for reckless operation of a vehicle and for running the red light. The defendant notes that Dep. Campo's testimony did not establish that the relator delayed in exiting the car. However, Dep. Campo agreed that the relator had time to comply with Dep. Campo's order to exit his car before Agents Jackson and Roger forcibly removed him from the car. The relator describes Dep. Campo's testimony as "inconsistent" on the issue of whether he was still in his unit when the relator's car finally stopped. Although there was some initial confusion as to this point, a reading of Dep. Campo's testimony shows he was halfway out of his car until the relator stopped, just in case he had to get back in the car if the relator evaded the stop.

Both Agent Jackson and Agent Roger testified Agent Jackson removed the relator from his car when he refused to exit at their order.

Although Mr. Damiens testified the relator got out of his car with his hands up when the officers approached him, he also admitted he had a prior conviction for possession of marijuana for which Agent Jackson had arrested him and that he "might" have had a conviction for possession of stolen goods. Ms. Dilburt testified that it looked like the relator was getting out of his car when the officers approached him, but she admitted she was watching the scene from across the divided street, and she could not hear whether the officers had ordered him to exit. Given the nature of this testimony, the trial court apparently believed the testimony of Agents Jackson and Roger over that of Ms. Dilburt and Mr. Damiens, and nothing in the record before this Court shows the trial court abused its discretion in its credibility determination. See Huckabay; Harris.

Contrary to the relator's argument, the evidence, viewed in the light most favorable to the prosecution, showed the relator impeded the officers' attempts to arrest him by refusing to stop when pursued by the police officers in marked vehicles with their lights and sirens activated, by not exiting his car when ordered to do so, and then resisting the officers' efforts to subdue him once they forcibly removed him from the car. Therefore, there was sufficient evidence to support his conviction. This claim has no merit.

## The Court's Refusal to Admit Evidence

By his final claim, the relator argues the trial court erred by refusing to allow him to introduce photographs of his injuries to impeach the credibility of Agents Jackson and Roger. He notes that both agents testified they grabbed him by the arms, and he argues the photographs, which he insists show scratches on his neck, would have impeached the officers' credibility by showing their bias. Apparently, these photographs were taken in preparation of a civil suit filed by the relator. He argues the trial court's ruling unduly impinged on his right to confront his accusers.

In Huckabay, 2000-1082 at 25-26, 809 So. 2d at 1108, this court discussed a defendant's right to confront his accusers:

> An accused is entitled to confront and cross-examine the witnesses against him. La. Const. art. 1, § 16. La. C.E. art. 611(B) provides that a witness may be cross-examined on any matter relevant to any issue in the case. Due process affords a defendant the right of full confrontation and cross-examination of the State's witnesses. *State v. Van Winkle*, 94-0947, p. 5 (La. 6/30/95), 658 So. 2d 198, 201-202. The trial court has the discretionary power to control the extent of the examination of witnesses as long as the court does not deprive the defendant of his right to effective cross-examination. *State v. Hawkins*, 96-0766 (La.1/14/97), 688 So.2d 473; *State v. Robinson*, 99-2236, p. 6 (La. App. 4 Cir. 11/29/00), 772 So. 2d 966, 971. It has been held that evidentiary rules may not supercede the fundamental right to present a defense. *Id.* However, evidence may be excluded if it is

> irrelevant. See *State v. Casey*, 99-0023, pp. 18-19 (La. 1/26/00), 775 So. 2d 1022, 1037. Further, confrontation errors are subject to the harmless error analysis so the verdict may stand if the reviewing court determines that the guilty verdict rendered in the particular trial was surely unattributable to the error. *State v. Broadway*, 96-2659, p. 24 (La. 10/19/99), 753 So. 2d 801, 817.

This court discussed relevant evidence in State v. Hall, 2002-1098, p. 8 (La. App. 4 Cir. 3/19/03), 843 So. 2d 488, 495-496:

> Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C.E. art. 401. Relevant evidence is generally admissible. La. C.E. art. 402. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403.
>
> A trial court's ruling as to relevancy will not be disturbed absent a clear abuse of discretion. *State v. Lewis*, 97-2854 (La. App. 4 Cir. 5/19/99), 736 So.2d 1004; *State v. Badon*, 95-0452 (La. App. 4 Cir. 11/16/95), 664 So.2d 1291. A trial court is vested with much discretion in determining whether the probative value of relevant evidence is substantially outweighed by its prejudicial effect. See *State v. Lambert*, 98-0730 (La. App. 4 Cir. 11/17/99), 749 So.2d 739; *State v. Brooks*, 98-0693 (La. App. 4 Cir. 7/21/99), 758 So.2d 814.

La. C.E. art. 607 provides for the introduction of evidence for impeachment purposes:

> A. Who may attack credibility. The

> credibility of a witness may be attacked by any party, including the party calling him.
>
> B. Time for attacking and supporting credibility. The credibility of a witness may not be attacked until the witness has been sworn, and the credibility of a witness may not be supported unless it has been attacked. However, a party may question any witness as to his relationship to the parties, interest in the lawsuit, or capacity to perceive or to recollect.
>
> C. Attacking credibility intrinsically. Except as otherwise provided by legislation, a party, to attack the credibility of a witness, may examine him concerning any matter having a reasonable tendency to disprove the truthfulness or accuracy of his testimony.
>
> D. Attacking credibility extrinsically. Except as otherwise provided by legislation:
>
> (1) Extrinsic evidence to show a witness' bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness.
>
> (2) Other extrinsic evidence, including prior inconsistent statements and evidence contradicting the witness' testimony, is admissible when offered solely to attack the credibility of a witness *unless the court determines that the probative value of the evidence on the issue of credibility is substantially outweighed by the risks of undue consumption of time, confusion of the issues, or unfair prejudice.* (emphasis added)

Here, the relator sought to present photographs which apparently showed he had scratches on his neck. He asserts he needed these

photographs to impeach the testimony of Agents Jackson and Roger to show their bias, apparently a reference to a civil suit the relator has filed. The court denied the relator's motion to introduce these photographs, noting that they were more proper for the civil suit. The court noted: "Same thing can be accomplished and has been accomplished by talking about his injuries, which I have already heard. I heard he had to have medical attention on the scene, that he was placed on the curb there, that his head was split open."

Notably, the relator did not try to introduce these photographs to impeach Agent Jackson. Instead, he waited until his cross-examination of Agent Roger to try to introduce them. Thus, he cannot argue his right to confront Agent Jackson was violated. With respect to Agent Roger, this evidence, at best, would have been cumulative of testimony already offered; the court noted it was aware the relator had sustained more than just injuries to his arms where Agents Jackson and Roger admitted grabbing him. In addition, the witnesses all agreed that the officers wrestled the relator to the ground in order to handcuff him, thereby showing how he sustained additional injuries. Therefore, the trial court did not err by refusing to allow the relator to introduce this extrinsic evidence to impeach Agent Roger's testimony. This claim has no merit.

Accordingly, relator's claim does not have merit. The defendant's

convictions and sentences are affirmed.

**WRIT DENIED; CONVICTION AND SENTENCE AFFIRMED**

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