NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2006-KA-0880**
VERSUS	*	**COURT OF APPEAL**
SCHELISSA GOSSERAND	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

*** * * * * * ***

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 454-653, SECTION "I"
Honorable Raymond C. Bigelow, Judge

* * * * * *

Charles R. Jones
Judge

* * * * * *

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray, and Judge Terri F. Love)

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AFFIRMED

Schelissa Monique Gosserand appeals her convictions and sentences for the crimes of manslaughter and obstruction of justice. We affirm.

Gosserand was charged by bill of indictment with second-degree murder, a violation of La. R.S. 14:30.1, and obstruction of justice, a violation of La. R.S. 14:130.1.[1] The district court denied motions to suppress the evidence and her statement, and the district court denied a motion to suppress another statement. Gosserand was tried before a twelve-person jury, which found her guilty of manslaughter, and guilty as charged for obstruction of justice. She was sentenced to twenty years at hard labor on the manslaughter conviction and ten years at hard labor on the obstruction of justice conviction. The district court granted her motion for appeal.

Gosserand was convicted of manslaughter for the October 19, 2004 stabbing death of her husband, Michael Gosserand, and obstruction of justice for disposing of his body and other evidence, and cleaning up the crime scene.

Jill Frisard, the director of property management for Coldwell-Banker Tech Realtors, owner of the Village Townhouse Apartments, testified at trial that she

[1] Defendant was jointly indicted on the obstruction of justice charge with her brother, Jarrod Christopher Hebert, who pleaded guilty as charged on April 18, 2005, and was sentenced on July 8, 2005 to five years at hard labor.

went to that apartment complex, where she noticed a freezer by the dumpster. She did not recall seeing it there before. When she returned to her office, she telephoned a maintenance person and told him to remove the freezer.

Julie Buckley, a resident of the Village Townhouse Apartments in Slidell, Louisiana, testified at trial that she came home for lunch and was flagged down by a maintenance man who needed a cellular phone to call police because he found a body in a freezer.

St. Tammany Parish Sheriff's Office Homicide Detective Marco Demma testified at trial that he was the lead sheriff's office investigator into the killing of Michael Gosserand. The investigation began with a report of a body found in a box-style freezer in the parking lot of an apartment complex located on the I-10 Service Road in Slidell. The body, nude from the waist down, was wrapped in a maroon-colored blanket. An envelope with the return address of 4341 Maple Leaf Drive, New Orleans, Louisiana, was found wrapped around one of the victim's legs. At that address, Det. Demma talked to Ms. Leela Watie Joseph, who identified a photograph of the face of the deceased as Michael Gosserand. Det. Demma learned the victim had resided with his wife on S. Front Street in New Orleans.

Det. Demma and several New Orleans Police officers went to the residence armed with a search warrant, where they found Gosserand and her brother. Det. Demma advised her why they were there and asked her where her husband was. Gosserand began to sob and told the detective she stabbed him. Det. Demma testified that at that point he stopped Gosserand and advised her of her rights.

Gosserand responded that she understood her rights and was willing to talk to him. She said that several days prior the victim came home and they got into an

altercation, he beat and raped her, and that in the course of this she was able to retrieve a knife and stab him. She subsequently put his body in a freezer, and then with her brother rented a U-Haul truck and dropped off the freezer, with the body inside, in Slidell. Gosserand indicated that she was not injured. Det. Demma replied in the negative when asked whether Gosserand indicated that any sort of altercation like that between her and the victim had occurred before. New Orleans police took over the investigation after it was learned that the homicide had occurred in New Orleans.

New Orleans Police Department Homicide Detective Ronald Ruiz testified that he prepared the application for a warrant to search Gosserand's residence, 5814 S. Front Street. Det. Ruiz knew of no evidence recovered from the scene. He testified on cross-examination that Gosserand was sobbing when she told him and Det. Demma about the killing, although he saw no tears.

New Orleans Police Department Second District Homicide Det. Erbin Bush, III, testified at trial that when he arrived at the S. Front Street residence, Gosserand had already made a statement to Det. Demma. She and her brother were transported to the Second District police station. Thereafter, Det. Bush, who assumed the role of lead investigator in the case, searched the residence. He noticed that a small rug was covering a section of the carpeted floor where the carpet and pad had been cut out. Det. Bush also noticed what appeared to be a small spatter of blood on a baby crib in the bedroom of the residence. Det. Bush had the crime lab process the scene. Det. Bush and the commander of the Second District Homicide Unit relocated to the Second District station. Det. Bush advised Gosserand of her rights and presented her with a rights-of-arrestee form, which she signed, waiving her rights. She stated, however, that she would not give a

statement if it were recorded. Det. Bush testified that he handwrote the statement and subsequently typed a transcription of it from his notes. He testified that Gosserand's demeanor varied during the giving of her statement. She would sob and cry, but at other times would stop and speak clearly. Gosserand identified what Det. Bush described as "one small very faded bruise on one of her legs" as an injury from an altercation between her and the victim. Det. Bush testified that he could not tell whether it came from an altercation or from bumping into a piece of furniture. He testified that any significant injuries would have been photographed. He testified that Gosserand did not, during the course of the interview, request any type of medical treatment or request a report as to a rape or sexual assault. He testified that she indicated in her statement that after the stabbing occurred, she and her brother cleaned up, wiped things down and cut out the piece of carpet that had blood on it. Det. Bush testified that he confirmed with a Tulane Avenue U-Haul business that Gosserand's brother had rented a U-Haul truck on the date in question, and the detective identified a rental agreement and receipt for same.

Det. Bush testified on cross-examination that during his career he had "worked Domestic Violence" in the Second District, but that all of the rape investigations were performed by the rape division. He confirmed that Gosserand was one hundred percent cooperative, and he believed that the time period between when she claimed to have been raped by the victim and the time he took her statement was less than seventy-two hours. He admitted that he did not contact the rape unit or order a "rape kit," and did not believe he asked the victim if she wanted a rape kit performed. Det. Bush confirmed that his report reflected that when he asked Gosserand if she had any injuries that were caused by the abuse from the victim, she pointed out some bruises on her upper legs that she said were

caused by strikes from the victim. Det. Bush confirmed that he wrote in his report that Gosserand stated that after initially stabbing the victim she stabbed him continuously out of fear she was still under attack.

Dr. Michael DiFatta, Chief Deputy Coroner in St. Tammany Parish, was qualified by stipulation as an expert in the field of forensic pathology. Dr. DiFatta performed an autopsy on the victim, Mr. Gosserand. He listed the stab wounds as "A" through "I." "A" was a five-inch deep wound in the right upper back that penetrated into the chest cavity in back-to-front direction; "B" was a four-inch deep wound that penetrated through the right upper back and into the right chest cavity, in a back-to-front direction; "C" was a seven-inch deep wound into the soft tissue of the right back that went through the right fifth rib and into the chest cavity; "D" was a two and one-half inch deep wound in the soft tissue of the end of the right arm; "E" was a wound that completely penetrated the right arm, went between two ribs and into the chest cavity for one-inch, and penetrated into the upper lobe of the right lung; "F" was a large irregular wound of the right upper chest, that traveled through soft tissue, through the right third rib, perforating the upper lobe of the right lung in two places, and penetrating the inferior *vena cava*, one of the largest veins in the body, that runs along the course of the body—he said the two perforations of the lung indicated that the knife went in and came out but did not exit, and went back in, with the direction of the wound being front-to-back, right-to-left, and downward; "G" was a five and one-half inch deep wound in the neck, downward and with a slightly front-to-back in direction; "H" was a three-inch deep wound to the neck, front-to-back direction; and "I", a wound to the abdomen at least four and one-half inches deep, that perforated several loops of the bowel, front-to-back in direction.

Dr. DiFatta testified that stab wounds "A," "B," "C," and "E" contributed to bleeding in the chest cavity, and that stab wounds "F" and "I" were fatal. He said a person with those wounds would survive only a matter of seconds to minutes, and would have collapsed within a matter of seconds. Stab wound "D" was consistent with a defensive injury, with the victim most probably raising his arm to defend himself. Dr. DiFatta confirmed on cross-examination that when the victim's body was removed from refrigerated storage it was clothed in a shirt but no pants. He admitted that the stab wounds could have been inflicted while the victim was standing up. He further testified on redirect examination that an individual who had received a stab wound like "F," the one that penetrated one of the victim's largest veins, would only have been able to stand up and do anything for a few seconds at most.

Leela Watie Joseph testified at trial that she and the victim had worked together at Wal-Mart, that they had a good relationship, and that she had been a friend of Mr. Gosserand's for almost four years. She recalled that when the police came to her home and showed her a photograph of the victim, she confirmed that she had occasion to observe interactions between Gosserand and the victim.

Deborah Travis, the first witness to testify on behalf of Gosserand, testified that she was a registered nurse with a master's degree in nursing, and was the director of Charity Hospital's sexual assault nurse examiner program. She testified that a sexual assault nurse examiner is a nurse who has taken a forty-hour class that focuses on all the aspects of the examination of a sexual assault victim. Nurse Travis was qualified by stipulation as an expert in the field of sexual assault as a sexual assault nurse. She testified that the most commonly accepted standard for collecting evidence with a rape kit from a person who complains of being raped is

seventy-two hours post-rape, but that evidence has been found up to eight days after an assault. She testified that they collect evidence up to a week after an assault, if that is what the victim desires. She further testified that a fairly frequent complaint is rape by a husband or sexual partner. As to bruising, Nurse Travis testified that it is very difficult to determine the age of a bruise, because everyone bruises differently. She testified on cross examination that one finds non-genital injuries on victims of sexual assault only about thirty to forty percent of the time, most commonly on the face and arms, but that she has seen multiple injuries all over. She confirmed that there were two ways in which a rape kit can be initiated: by the police and by an individual. However, Nurse Travis testified that in either case the decision as to whether or not an adult victim will proceed with a rape kit is entirely up to the adult victim. She testified that as far as she knew, Gosserand did not request that a rape kit be performed on her. Nurse Travis testified on redirect examination that when a rape kit is performed on a person in custody, a police officer or guard stays in the room to secure the inmate.

Tiffany Mallory testified at trial that she attended massage therapy school with Gosserand, beginning in September 2004—the month before the homicide—and that she and Gosserand had been "massage partners" in the school, performing massages on each other two or three times per week. They ate lunch together almost everyday. Ms. Mallory also worked with the victim's father. She testified that Gosserand talked about her relationship with the victim. Ms. Mallory replied in the affirmative when asked whether she had ever noticed bruises on Gosserand's body during the course of her performing practice massages on Gosserand. Ms. Mallory testified that she noticed them the first time they practiced massages in September 2004, and she continued to see them throughout the next two months.

Ms. Mallory admitted on cross-examination that she did not know how Gosserand came to be bruised.

Della Glenn testified at trial that she resided with Michael Allgood at 5818 S. Front Street, two houses down from Gosserand and the victim. She testified that she never noticed any abuse in the pair's relationship. Ms. Glenn recalled one occasion in September when Gosserand came to her home and placed a 911 call, as Gosserand and the victim did not then have a telephone in their apartment. Ms. Glenn replied in the affirmative when asked whether the police responded to that call. She testified on cross examination that she did not remember what Gosserand's demeanor was when she came over to make the 911 call, and did not remember seeing any bruises on her. Mr. Allgood testified at trial that Gosserand was upset on the evening she made the 911 call, but that he did not observe any injuries on her person.

William Robert Bradley testified at trial that he lived at 5816 S. Front Street, the other side of the double shotgun residence where the Gosserands lived. Mr. Bradley testified that he would hear music, sometimes loud music, coming from the Gosserand's side of the structure. Mr. Bradley testified that the loud music would last for the length of a song. He replied in the negative when asked whether he thought there was any fighting going on when loud music was being played. He admitted that he told police officers that on one occasion a long time ago he was in his kitchen when he heard what sounded like an argument coming from the Gosserands' side of the residence. He also testified that at or shortly before 5:50 a.m. on the morning of October 19, 2004, he heard what he thought was a fight going on in the Gosserands' apartment. He heard some hard running, then a bang

against his bedroom wall. A second or two later he heard some hard pounding on the floor and then another bang against his wall.

Sonata Hebert, Gosserand's mother, testified at trial that "in May" she was staying at the Gosserands' apartment with her daughter and the victim, and the victim became angry at her and asked her to leave. She testified that she proceeded to get her bags, but the victim jumped her from behind, threw her over the bed, and bent her fingers back. Ms. Hebert admitted on cross-examination that she did not want her daughter to go to jail.

Twenty-nine year old Gosserand testified at trial in her own behalf. At the time of the events in question she was working as a pet groomer at Pet Smart, and attending Blue Cliff College. She testified that she had met her husband at Delgado Community College in 1997, and that the victim began verbally abusing her a few months after their 2001 marriage. It then progressed to physical abuse and ended in sexual abuse. She testified that on September 16, 2004, the victim pulled her out of the bed early in the morning demanding: "Well, where's my F-ing cell phone. I know you got my cell phone." She replied to him that she did not know. She testified that the victim proceeded to tear up the house looking for his cell phone and then he came back to her and struck her in the thighs, her chest and arm. She testified that he would never hit her in the face and that she went to call the police from the home of Della Glenn and Michael Allgood. Both she and the victim were issued citations on that day.

As for the day of the homicide, Gosserand said that she arrived home from school at approximately 5:30 p.m. The victim, Michael, was on the couch watching television "at a loud volume" with their daughter. Her daughter came to her saying that she wanted to eat. Gosserand noted that their daughter had not had

a bath and implied she had a dirty diaper. She further noted that she was in the process of potty training their daughter, and that she thought Michael had also been helping to potty train her when Gosserand was not at home. She testified that she cooked, they all ate, she bathed their daughter, and she spent some quality time with her. After that, she and Michael got into an argument about him watching their daughter. She testified that she had mentioned to Michael that she wanted a divorce, and he had told her that even if they got divorced he was going to "violate" her because he still had the right to see his daughter any time he felt like it.

Gosserand testified that she went outside on the porch for approximately forty-five minutes to cool off. When she came back inside, Michael touched her inappropriately, and she pushed him away. They ended up punching and kicking, and he threw her on the bed, pinned her down, flipped her over, and penetrated her anally. Their daughter walked on the side of the bed and was watching. The lights were off, but a bathroom light cast some light in the room. Gosserand testified that she was crying, and their daughter was also crying and screaming, telling Michael not to hurt her. She testified that Michael told their daughter to get her little butt into the living room. Gosserand further testified that she did not want Michael to hit their daughter, so she encouraged the girl to go finish watching her cartoon. Michael next forced Gosserand to orally copulate him, and he ejaculated into her mouth. Afterward, Gosserand testified she went into the bathroom to clean herself off and change her underwear and shorts because she was having her period. She testified that she noticed what she believed was loose tissue hanging from her anal area, and the area was very raw, so she lay in bed for a while because she was in pain. She further testified that her brother arrived about fifteen minutes later, at

approximately 11:15 p.m., and he put his niece to bed, while she and Michael went to sleep.

Gosserand testified that she was awakened at 4:30 a.m. by Michael punching her thighs. He told her not to yell or alert her brother, and he covered her mouth and began to take off her clothes. He pinned her down with his arms and his thighs. He penetrated her vaginally and had her orally copulate him, ejaculating on her stomach. He got up, but said that he was not finished with her, that he was just taking a break to go clean off, as he was nude from the waist down. Gosserand further testified that she was in pain and went to the bathroom to clean herself and change her sanitary pad. When she returned to the bedroom, Michael was standing in the front room. She attempted to go to the back room to alert her brother about what was going on, hoping Michael would stop, but Michael prevented her from doing so. He pushed her into the hallway and into the bedroom, and he hit her from behind with his hand. She fell down, and they kicked and punched each other. He pushed her against the wall between the bedroom and the living room area. Gosserand further testified that at that point she went into the kitchen, while Michael remained in the living room. She grabbed two knives and held them loosely at her sides, intending to scare Michael. She testified that Michael asked her what she was doing that for and ran toward her. He grabbed one of her hands and made her cut her abdomen. She testified that at that point she "felt like it was him and [sic] me," so, she stabbed him in the throat with one knife and in the chest with the other. She then placed the knives on a trunk. She testified that Michael dropped down, but got back up and proceeded to choke her. Gosserand testified that she grabbed one of the knives and stabbed him a few times in the back, and he fell on the bed.

Gosserand testified that about twenty minutes later her brother came to the front part of the house and saw her shaking and crying. He saw Michael's body and said they had to call 911. She testified that she went to Michael Allgood and Della Glenn's apartment, but no one answered the door. She looked around, noticed her next-door neighbor's bicycle was gone, and so she knew he was not at home. She noticed that the truck belonging to the neighbor across the street was gone, so she knew that woman was not at home. She testified that she then went back into the apartment, told her brother about the assaults, and he said he did not know those things went on. When questioned by her counsel as to why she did not go somewhere and call 911, Gosserand replied that she was afraid. She testified that she asked her brother to watch her daughter in the back room, and she dressed her wound. Then she proceeded to cut out the blood-soaked piece of carpet with a box cutter and put the piece of carpet and the knives in a bag. Her daughter had fallen asleep, so Gosserand asked her brother to help her put the body in the freezer so her daughter would not see it. Her brother remembered that he had some errands to run for their mother, so the three of them went to the mother's home in Gretna. Gosserand testified that she did not tell her mother what happened, and she did not call 911 from her mother's home because she was scared and not in the right frame of mind to make that judgment. She testified that they took her mother to pay some utility bills, and because she was not in the right frame of mind to care for her daughter, she asked her mother to watch her daughter for a few days. Gosserand further testified that her brother said he would rent a U-Haul truck, which they did, and went back to the apartment, where they moved the freezer and the bag of evidence. She testified that she went along with her brother in disposing of the body because he was stronger than she was, and also because she did not

want her daughter to see it if she returned home. Gosserand testified that they went to Slidell and discarded the bag of evidence in a dumpster at a business, and then drove to an apartment complex where they left the freezer.

Gosserand testified that on the morning of October 22nd, when the police came to her home, she asked St. Tammany Parish Det. Demma if he could provide her with a rape kit, but he told her that would be handled by New Orleans police. She testified that she was not questioned by New Orleans police until she was interviewed by Det. Bush, and that she showed Det. Bush some of the bruises she had along her body and asked him to take photographs, but he told her that was not necessary and that once she got to Central Lockup they would process that. She further testified that she gave a statement to Det. Bush because she wanted to cooperate with them; that Det. Bush read her Miranda rights to her before she gave her statement, that he took her statement down in shorthand, and that she never saw her typed statement.

Gosserand admitted on cross examination that on a form related to the respective domestic violence citations issued to her and the victim in September 2004, a box indicating "prior history of domestic violence" was checked "No." She testified that the form was not filled out in front of her. She conceded that a Louisiana Uniform Abuse Prevention Order issued on September 21, 2004, in connection with that incident, ordered her to stay away from the victim. However, she pointed out that the victim had also received one of those orders. She testified that if there was something in her statement—that Det. Bush typed up from his shorthand notes—that said the problems in her marriage had only begun a year ago, it would have been incorrect. She testified that she did tell Det. Demma and Det. Bush about the sexual assault that occurred the night before the homicide, as

well as the one that occurred shortly before it. (We are uncertain as to whether Gosserand was referring to the 911 call in September 2004).

Gosserand denied telling Det. Bush that when she and her husband fell asleep the night before the homicide, that her daughter was in bed with them and not sleeping with her brother in the back. Gosserand testified that what she testified to was correct, not what Det. Bush typed as to what she said. She further testified that when she was in Central Lockup she asked authorities to perform a rape test and take photographs of her cut, the bruises along her body, her back, her thighs, and on her lower stomach, but they would not do so. She further testified that she even wrote inmate grievances trying to get examined by a physician, but she had no copies of those with her at trial. When asked whether the only reason she disposed of the carpet and her husband's body was to protect her daughter, Gosserand replied in the affirmative and added that she had also been afraid. She testified that she could not say when she was planning to report what had occurred.

A review of the record for patent errors reveals none.

By her first assignment of error, Gosserand alleges that the district court erred in admitting into evidence inculpatory statements she gave to St. Tammany Parish Sheriff's Office Det. Marco Demma, and to New Orleans Police Department Det. Erbin Bush.

This court set forth the applicable law on the admissibility of inculpatory statements in State v. Butler, 2004-0880 (La. App. 4 Cir. 1/27/05), 894 So. 2d 415, as follows:

> It is well settled that before the state may introduce an inculpatory statement or confession into evidence, it must affirmatively show that the statement was free and voluntary and not the result of fear, duress, intimidation, menace, threats,

> inducements, or promises. La. R.S. 15:451; La. C.Cr.P. art. 703(D); State v. Gradley, 97-0641 (La. 5/19/98), 745 So. 2d 1160, 1166. The State must prove that the accused was advised of his Miranda[2] rights and voluntarily waived these rights in order to establish the admissibility of a statement made during custodial interrogation. State v. Green, 94-0887, pp. 9-10 (La.5/22/95), 655 So.2d 272, 280; State v. Labostrie, 96-2003, p. 5 (La. App. 4 Cir. 11/19/97), 702 So.2d 1194, 1197. A court must look to the totality of the circumstances surrounding the confession to determine its voluntariness. State v. Lavalais, 95-0320, p. 6 (La. 11/25/96), 685 So. 2d 1048, 1053. The testimony of police officers alone can be sufficient to prove the defendant's statements were freely and voluntarily given. State v. Jones, 97-2217, p. 11 (La. App. 4 Cir. 2/24/99), 731 So. 2d 389, 396.

Butler, 2004-0880, p. 4, 894 So. 2d at 418.

A spontaneous and voluntary statement, not given as a result of police interrogation or compelling influence, is admissible in evidence without Miranda warnings even where a defendant is in custody. State v. Smith, 2000-18, p. 4 (La. 5/25/01), 785 So. 2d 815, 817.

Whether a statement was voluntary is a fact question; thus, the trial judge's ruling, based on conclusions of credibility and the weight of the testimony, is entitled to great deference and will not be disturbed on appeal unless there is no evidence to support the ruling. State v. Byes, 97-1876, pp. 11-12 (La. App. 4 Cir. 4/21/99), 735 So. 2d 758, 765; State v. Parker, 96-1852, pp. 12-13 (La. App. 4 Cir. 6/18/97), 696 So. 2d 599, 606.

In reviewing a trial court's ruling on a motion to suppress, an appellate court is not limited to evidence adduced at the hearing on the motion to suppress; it may

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

also consider any pertinent evidence given at trial of the case. State v. Nogess, 98-0670, p. 11 (La. App. 4 Cir. 3/3/99), 729 So. 2d 132, 137.

St. Tammany Parish Sheriff's Office Det. Marco Demma testified at a March 4, 2005, motion to suppress hearing and at Gosserand's trial that after ascertaining the identity of the body discovered in the freezer as the deceased, Michael Gosserand, Gosserand's husband, he and other officers, including New Orleans police officers, went to Gosserand's home. Det. Demma testified at the motion to suppress hearing that at that time he did not suspect Gosserand in the murder of her husband. He testified that he asked her one question, whether she knew where her husband was, and at this point Gosserand became emotional and began to tell him what happened. Det. Demma further testified at trial that at this point he stopped Gosserand and advised her of her right to remain silent, that anything she said could be used against her in trial, that she had the right to have an attorney present before answering any questions, that if she could not afford an attorney one would be appointed to represent and advise her, and that she had the right to have her attorney present during the giving of any statement or the answering of any questions. Det. Demma testified that Gosserand indicated that she understood her rights and was willing to talk to police.

The district court did not error in determining that the evidence established that any spontaneous inculpatory statement made by Gosserand to Det. Demma before she was advised by Det. Demma of her Miranda rights, after Det. Demma asked her if she knew where her husband was, was admissible. Nor was it error for the district court to find that the evidence further established that Det. Demma then advised Gosserand of her Miranda rights, that she understood them, and that she waived them before making further more detailed statements to him. There is no

suggestion in this record that Det. Demma promised Gosserand anything in exchange for her giving him a statement, nor that he in any way forced, coerced or threatened her into giving a statement. The statement was given free and voluntarily. Therefore, the district court did not error in denying Gosserand's motion to suppress any statements she made to Det. Demma.

While appellate counsel argues that Det. Demma was operating in Orleans Parish outside of his St. Tammany Parish jurisdiction, he suggests that for this reason any statement given by Gosserand to Det. Demma should have been ruled inadmissible. However, counsel cites no legal authority for this argument.

As for any statements made to Det. Bush, the detective testified at the motion to suppress hearing that upon being called to the Gosserand's home, he was directed by a superior officer to obtain statements from her and her brother. Det. Bush identified a rights-of-arrestee form signed by Gosserand, indicating that he advised her of her Miranda rights as outlined on the form, and that in fact she wished to cooperate and make a statement. Det. Bush testified in the negative when asked whether he promised Gosserand anything in exchange for her giving him a statement, or that he in any way forced, coerced or threatened her into giving a statement. Det. Bush further testified in the affirmative when asked whether it appeared to him that Gosserand gave the statement voluntarily. He testified at trial that upon his arrival at the scene he was advised by Det. Demma that Gosserand had stabbed the victim and that she wished to cooperate. Det. Bush testified that he confirmed this with Gosserand. His testimony is unclear whether he confirmed that she wished to cooperate or that he confirmed both that she stabbed the victim and that she wished to cooperate. Det. Bush had not read Gosserand her Miranda rights before confirming with Gosserand what Det. Demma had told him.

However, even assuming Det. Bush asked Gosserand, before advising her of her rights, if what Det. Demma told him about her stabbing the victim was true, any error in failing to suppress a statement by Det. Bush that Gosserand confirmed this fact to him was harmless error. The guilty verdict rendered in this trial was not attributable to any error by the district court in failing to suppress Gosserand's confirmation to Det. Bush, before he advised her of her rights, that she had stabbed the victim. See State v. Snyder, 98-1078, p. 15 (La. 4/14/99), 750 So. 2d 832, 845 ("To determine whether an error is harmless, the proper question is whether the guilty verdict actually rendered in this trial was surely unattributable to the error."). The district court properly denied Gosserand's motion to suppress as to her statements to Det. Bush.

Gosserand also argues that the typed recordation of her statement that Det. Bush typed from the shorthand notes he took during her giving of her statement to him should not have been admitted into evidence. However, at the motion to suppress hearing, defense counsel made no particular argument that the nature of this typed statement from Det. Bush's shorthand notes should render it inadmissible for that reason alone. The district court asked if defense counsel had any argument before ruling, and when defense counsel replied in the negative, the district court denied the motion to suppress as to the statement given to Det. Bush. At trial, when the State showed the typed statement to Det. Bush and published it to the jury, the district court specifically asked if there was any objection, and defense counsel stated he had no objection. It is only now, on appeal that Gosserand complains of the nature of the typed statement. A defendant cannot avail himself of an alleged error unless he made a contemporaneous objection at the time of the error. La. C.Cr.P. art. 841(A); State v. Spain, 99-1956, p. 11 (La.

App. 4 Cir. 3/15/00), 757 So. 2d 879, 886. Not only does an objection have to be made, but La. C.Cr.P. art. 841(A) requires that a defendant make known the grounds for his objection, and he is limited on appeal to those grounds articulated at trial. State v. Brooks, 98-0693, p. 9 (La. App. 4 Cir. 7/21/99), 758 So. 2d 814, 819; State v. Buffington, 97-2423, p. 9 (La. App. 4 Cir. 2/17/99), 731 So. 2d 340, 346. Because defense counsel did not urge an objection at the motion to suppress hearing, nor at trial, he cannot raise it on appeal. Moreover, Gosserand's argument as to why the typed statement should have been ruled inadmissible is without merit. The statement is Det. Bush's representation of her confession, which she denied. The jury considered the testimony of both. There is no merit to this assignment of error.

In her second assignment of error, Gosserand argues that the district court erred in excluding admissible testimony. However, while appellate counsel cites one decision by the Louisiana Supreme Court, and the Louisiana Code of Evidence, nowhere in this particular section of the brief on behalf of Gosserand does appellate counsel cite any specific testimony that the district court allegedly erroneously excluded. In another section of his brief, appellate counsel does argue that this assignment of error relates to the district court erroneously preventing unnamed persons from testifying as to what Gosserand told them about the physical and sexual abuse she suffered before the homicide. However, again, appellate counsel fails to specify any particular instance where the district court allegedly erroneously refused to prevent a person from testifying as to what Gosserand told the person about physical sexual abuse she allegedly suffered before the homicide.

In brief, counsel did recite at one point that the district court "would not allow [Tiffany Mallory] to repeat Mrs. Gosserand's explanation of how she was continually, visibly bruised." However, this assertion is unsubstantiated. Ms. Mallory, testifying on behalf of Gosserand, was asked on direct examination if Gosserand had ever mentioned anything about her relationship with the victim. The State objected on the ground of hearsay, but the district court overruled the objection because the question did not specifically ask for a hearsay response. However, the court cautioned defense counsel about asking for hearsay responses. Defense counsel then essentially asked the witness the same question, if Gosserand ever had the opportunity to talk about her relationship. Defense counsel cautioned, "[w]ithout going into what she said." Ms. Mallory replied that Gosserand had, and then was asked if she ever noticed any injuries on Gosserand's body. Ms. Mallory started to say that Gosserand wanted "someone she was comfortable," before the State objected on hearsay grounds. The district court sustained the objection. Defense counsel asked to approach the bench, and then the district court cautioned Ms. Mallory that she could not repeat what someone else told her, that it would be hearsay. Defense counsel then asked Ms. Mallory if she had ever seen any bruises or injuries on Gosserand's body at massage school, while she was practicing her massage technique on Gosserand. After answering that question and a couple of follow-up questions, defense counsel tendered the witness to the State.

Defense counsel at no time asked Ms. Mallory if Gosserand ever told her how she came to be bruised, and the record does not reflect that the district court prevented Ms. Mallory from testifying as to Gosserand's "explanation of how she was continually, visibly bruised."

Counsel argues that such testimony would have been admissible as non-hearsay under La. C.E. art. 801(D)(1)(b), and would have been consistent with Gosserand's testimony and offered to rebut an express or implied charge against her of recent fabrication.

Under La. C.E. art. 801(D)(1)(b), a statement is not considered hearsay if the declarant testifies at trial, as did Gosserand in the instant case, and is subject to cross-examination concerning the statement, as Gosserand would have been, and the statement is consistent with her testimony and is offered to rebut an express or implied charge against her of recent fabrication. Pursuant to La.C.E. art. 801(D)(1)(b), Ms. Mallory could have testified as to what Gosserand had told her as to the cause of her bruises. The State clearly elicited testimony from Det. Bush and Det. Demma seeking to imply that Gosserand had not told them of significant past abuse, implying that any claim of past abuse by Gosserand was a recent fabrication.

However, when the State objected to Ms. Mallory's testimony on hearsay grounds, and the district court instructed the witness that she could not repeat what someone told her, the record does not reflect that defense counsel objected to the court's ruling at all, much less argued that Ms. Mallory's testimony was admissible pursuant to La. C.E. art. 801(D)(1)(b). Counsel raises this issue for the first time on appeal. Once again, we note that it is well settled that a defendant cannot avail himself of an alleged error unless he made a contemporaneous objection at the time of the error. La. C.Cr.P. art. 841(A); State v. Spain, 99-1956, p. 11 (La. App. 4 Cir. 3/15/00), 757 So. 2d 879, 886. Not only does an objection have to be made, but La. C.Cr.P. art. 841(A) requires that a defendant make known the grounds for his objection, and he is limited on appeal to those grounds articulated at trial. State

v. Brooks, 98-0693, p. 9 (La. App. 4 Cir. 7/21/99), 758 So. 2d 814, 819; State v. Buffington, 97-2423, p. 9 (La. App. 4 Cir. 2/17/99), 731 So. 2d 340, 346.

Therefore, had Ms. Mallory been prevented from testifying as to what Gosserand told her caused bruises on her body—which, again, is not born out by the record—because defense counsel did not object to the ruling at trial, much less on the ground that such testimony was admissible pursuant to La. C.E. art. 801(D)(1)(b), Gosserand is precluded from raising this assignment of error on appeal.

Gosserand also argues for the first time on appeal that Ms. Mallory's testimony would have been admissible under, State v. Gremillion, 542 So. 2d 1074 (La. 1989). In Gremillion, the defendant was convicted of manslaughter in the death of the ex-husband of a woman with whom the defendant was drinking in a bar where the victim was also present. The victim reportedly argued with his ex-wife at one point, threatened her, and knocked a drink out of her hand. The victim threatened William Swain and warned him to stay away from his wife. As the victim left the bar he had words with his ex-wife and the defendant, threatening the defendant's life. The defendant punched the victim in the face when the victim reached into his pocket as if to pull out a gun. The victim fell to the floor of the bar. As he lay unconscious, the defendant stomped him several times in the chest and abdomen. There was also evidence that the victim's ex-wife kicked him several times. The defendant was restrained by several bar patrons and escorted outside. Once outside, the defendant wanted to continue the fight, but he was persuaded by some friends to go home. The victim regained consciousness, left the bar, and drove to the home of a friend. Several hours later the victim checked into a hospital and was diagnosed with traumatic pancreatitis, from which he died

eighteen days later. The day following the incident, the victim gave statements to an attending physician and a deputy sheriff that he could not identify his attackers. The victim and the defendant had been close friends, having known each other for eleven years.

At trial, the defendant sought to introduce the statement of the deputy sheriff that the victim could not identify his attackers or say what they were wearing, only that they were three white males. The State objected on hearsay grounds. The Louisiana Supreme Court found that the statement was hearsay and not admissible as part of the *res gestae*, as an excited utterance, as a dying declaration, or under the business records exception. However, the court held that while hearsay evidence should generally be excluded, "if it is reliable and trustworthy and its exclusion would interfere with the defendant's constitutional right to present a defense, it should be admitted," citing La. C.E. art. 804(B)(6), which states:

> **Other exceptions.** In a civil case, a statement not specifically covered by any of the foregoing exceptions if the court determines that considering all pertinent circumstances in the particular case the statement is trustworthy, and the proponent of the evidence has adduced or made a reasonable effort to adduce all other admissible evidence to establish the fact to which the proffered statement relates and the proponent of the statement makes known in writing to the adverse party and to the court his intention to offer the statement and the particulars of it, including the name and address of the declarant, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it. If, under the circumstances of a particular case, giving of this notice was not practicable or failure to give notice is found by the court to have been excusable, the court may authorize a delayed notice to be given, and in that event the opposing party is entitled to a recess, continuance, or other appropriate relief sufficient to enable him to prepare to meet the evidence.

The court also cited "comment (d)" to the article,

which states:

> (d) Although the exception set forth in this Subparagraph is limited to civil cases, under certain circumstances results similar to those authorized by this exception may be mandated by the right of compulsory process when an accused in a criminal case offers reliable trustworthy evidence not fitting within the contours of a legislatively recognized exception to the hearsay rule. See Chambers v. Mississippi, 410 U.S. 284 (1973); Green v. Georgia, 442 U.S. 95 (1979); State v. Webb, 424 So.2d 233 (La.1982); State v. Washington, 386 So.2d 1368 (La.1980).

The court in Gremillion essentially ruled that the victim's hearsay statement to the deputy sheriff had been admissible pursuant to La. C.E. art. 804(B)(6) and reversed the defendant's conviction and sentence. In a subsequent case, State v. Trahan, 576 So. 2d 1 (La. 1990), the court noted that it had emphasized in Gremillion that the exception employed there was a very unusual exception to the rules of evidence and should be "sparingly applied." Trahan, 576 So. 2d at 11, quoting Gremillion, Lemmon, J., assigning additional reasons.

In the instant case, counsel does not apply Gremillion to the facts to establish that, as in Gremillion, Ms. Mallory—or any other witness who would have testified as to what Gosserand told them was the cause of any bruises on her body—was going to offer reliable trustworthy hearsay evidence. Mallory was friendly with Gosserand. She was not, as the witness was in Gremillion, a law enforcement officer to whom Gosserand made a statement as the officer was interviewing the victim about the circumstances surrounding his beating. And, unlike in Gremillion, any such statement offered in the instant case would not have

been a hearsay statement by the victim of the crime for which Gosserand was being tried, but instead would have been a hearsay statement by Gosserand.

Moreover, in the instant case, when the State objected to Ms. Mallory's testimony on hearsay grounds, and the district court instructed the witness that she could not repeat what someone told her, the record does not reflect that defense counsel objected to the court's ruling or argued that the hearsay testimony was admissible pursuant to the narrow exception recognized in Gremillion. Again, counsel raises Gremillion for the first time on appeal. In Trahan, supra, as in the instant case, the district court barred hearsay testimony by a defense witness. The defendant's counsel argued that the testimony was admissible as part of the *res gestae*, but the district court ruled that it was not. Appellate counsel argued for the first time on appeal that the testimony had been admissible pursuant to Gremillion. The Louisiana Supreme Court held that an additional basis for an objection urged for the first time on appeal could not be considered on review, citing La. C.Cr.P. art. 841, but concluding that because the 1989 Gremillion decision had not been available to defense counsel at the time of his trial (Gremillion presumably being decided after the trial), the court would consider the argument. In the instant case, Gremillion was available to defense counsel at the time of trial. Thus, trial counsel's failure to object or assert the particular grounds of the objection at trial precludes appellate counsel from raising the ground on appeal. There is no merit to this assignment of error.

In her third assignment of error, Gosserand argues that the district court erred in obstructing her right to cross-examine witnesses. Counsel argues that the district court prevented trial counsel from questioning Det. Bush as to the details of Gosserand's oral statement that he typed up from shorthand notes. The State

objected twice during defense counsel's questioning of Det. Bush concerning defense counsel's questions pertaining to the "statement."

In the first instance, defense counsel asked Det. Bush if it was correct that Gosserand told him that the victim had been forcing her to have sex with him for approximately a year, and would often abuse or beat her when she refused. The district court sustained the State's objection that the "statement" had already been published to the jury. As previously noted, defense counsel did not object to the publishing of the "statement" to the jury. Det. Bush's typewritten memorialization of Gosserand's October 21, 2004, statement included a two-page narrative that began with Gosserand saying that she and the victim started having problems about a year earlier. The statement went on to note that the victim began verbally abusing her, telling her that she was his wife and had to do what he told her to do. As time went by, the statement notes, these incidents occurred more frequently. Further, the statement continues, he started forcing her to have sex with him, and that if she resisted, he would shove her and sometimes hit her in her legs, arms and body. Gosserand's "statement" was sparse and general as to details about prior abuse. However, even it contained more information as to any such abuse Gosserand suffered before the day of the homicide than what Gosserand herself testified to. Det. Bush testified that he put everything the victim told him in the statement. The question to Det. Bush sought to elicit a response that would, as the district court later said about another question, "rehash" (repeat) everything that was in the statement.

In the second instance, when the State objected during the cross examination of Det. Bush, defense counsel asked: "And in her statement she informed you that this rape had occurred at approximately 5:00 o'clock in the morning on October

the 19th, 2004; is that correct?" The State again objected that the statement had already been published, and the district court sustained the objection, stating that the jury had read the statement and they did not need to rehash everything that was in the statement. Unlike with respect to the first objection discussed above, with regard to this second objection, defense counsel explained to the district court that she was seeking to establish that less than seventy-two hours had elapsed between the time the victim allegedly raped Gosserand and the time she gave her statement. The district court then permitted defense counsel to ask that question.

This court set forth the applicable law on a defendant's right to cross examine witnesses in State v. Huckabay, 2000-1082 (La. App. 4 Cir. 2/6/02), 809 So. 2d 1093, as follows:

> 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 [2000-1082 La. App. 4 Cir. [PG26] 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.

Huckabay, 2000-1082, pp. 25-26, 809 So. 2d 1108.

As to the only instance wherein the district court affirmatively sustained the State's objection to defense counsel's questions of Det. Bush, it cannot be said that the district court abused its discretion in controlling the extent of the cross examination of Det. Bush to prevent defense counsel from eliciting testimony from Det. Bush as to what he had put in the "statement," which "statement" had been published to and read by the jury. Gosserand has not shown that she was denied her right to confront the witnesses against her by the district court's sustaining of that objection. There is no merit to this assignment of error.

In her last assignment of error, Gosserand argues that her sentence for her manslaughter conviction was unconstitutionally excessive. The record reflects that Gosserand failed to file a motion to reconsider sentence, either orally or in writing. The failure to file a written motion for reconsideration of sentence or make an oral objection to the sentence at the sentencing hearing precludes a defendant from raising any objection to the sentence on appeal or review. La. C.Cr.P. art. 881.1(D); State v. Smith, 2005-0375, p. 10 (La. App. 4 Cir. 7/20/05), 913 So. 2d 836, 842; State v. Tyler, 98-1667, p. 14 (La. App. 4 Cir. 11/24/99), 749 So.2d 767, 775. Because Gosserand failed to object to the sentence at the sentencing hearing or file a motion to reconsider sentence, she is precluded from raising on appeal the issue that her twenty-year sentence for manslaughter, one-half of the statutory maximum sentence, is excessive, or that her sentence of ten years for obstruction of justice was excessive.

DECREE

For the foregoing reasons the convictions and sentences of Schelissa Gosserand are affirmed.

AFFIRMED