Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #032

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of September, 2020** are as follows:

PER CURIAM:

2019-KK-01727 STATE OF LOUISIANA VS. DENNIS JEROME BARTIE (Parish of Calcasieu)

We affirm the court of appeal's determination that defendant's statements during the police interview from roughly the 48-minute mark onward were made in violation of Miranda, were not free and voluntary, and therefore are not admissible for any purpose including impeachment at the trial. We reverse the court of appeal's order that the first 48 minutes of the police interview can be used only for impeachment and only if defendant testifies, and we reinstate the district court's ruling that the first 48 minutes are admissible to the extent authorized by the rules of evidence. We also reverse the court of appeal's determination that defendant's statement to the corrections officer at Allen Correctional Facility on the day after the police interview is inadmissible at trial. We remand to the district court to conduct an evidentiary hearing and then rule on the admissibility of that statement in light of our determination that defendant's statements during the police interview following the 48-minute mark were not free and voluntary.
AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4.

Hughes, J., concurs in part and dissents in part with reasons.

09/09/20

SUPREME COURT OF LOUISIANA

No. 2019-KK-01727

STATE OF LOUISIANA

versus

DENNIS JEROME BARTIE

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH OF CALCASIEU

PER CURIAM:[*]

In 2006, defendant stabbed his former girlfriend more than 20 times in front of eyewitnesses in Baton Rouge and then stole her friend's car, which he drove to Lake Charles and abandoned. He was found guilty of attempted second degree murder, La.R.S. 14:30.1 and La.R.S. 14:27, and sentenced to 40 years imprisonment at hard labor. *State v. Bartie*, 11-2209 (La. App. 1 Cir. 6/8/12), available at 2012 WL 2061677. He was serving that sentence at Allen Correctional Center in 2016 when DNA testing connected him to the victim of an unsolved murder committed in 1998.

In 1998, Rose Born was murdered at her donut shop in Lake Charles. She was stabbed more than 30 times. Her car was stolen and then abandoned about 4 miles away. Defendant was 17 years old at the time and lived in Lake Charles. In 2016, DNA analysis showed that a sample from underneath her fingernails matched DNA from defendant. Defendant, then 35 years old, was transported from Allen Correctional Center to the Lake Charles Police Department and interviewed.

The interview lasted more than 7 hours and this court has carefully reviewed

[*] Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4.

the entire video. At the outset, defendant was advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and he indicated he understood his rights and waived them. Despite being confronted with DNA evidence, defendant denied any involvement in or knowledge of the crime.

After about 34 minutes, defendant was first informed that he faced the death penalty. Detectives offered him a "deal" whereby he would "come clean" and fully confess so that Ms. Born's family could achieve a degree of closure, and he would not be sentenced to death. This threat of the death penalty and offer of a "deal" to avoid it later became the dominant theme of the interview.

After about 48 minutes, defendant invoked his right to remain silent, and he continued to try to assert that right several times throughout the interview. His invocations were either ignored or countered by bringing up the potential "deal" to avoid the death penalty. Immediately after his first attempt to invoke his right to remain silent, detectives confronted him with post-mortem photos of the victim, and they continued the interview.

The first two hours of the interview passed without defendant providing any information. Then a fresh detective was brought in to hammer the theme of the death penalty and the potential "deal" to avoid it. The detective listed the names of several inmates on death row who were prosecuted by Rick Bryant. The detective showed defendant photos of death row and described how small and hot the cells are there. The detective pleaded with defendant to cooperate and not let prosecutor Rick Bryant send someone else to death row.[1] In response, defendant began crying

[1] Defendant was even presented with the "deal" in writing, signed by prosecutor Rick Bryant, who detectives described to defendant as a "bad mother f—er" and who detectives boasted had sent many defendants to death row. Defendant repeatedly looked at this document during the interview. Nearly every time detectives threatened defendant with the death penalty, he became

and admitted some involvement in Ms. Born's murder, but claimed he was on drugs at the time and his memory was impaired.

Thereafter, defendant's gradually elicited admissions were vague, tentative, and often spoken in a questioning tone. Detectives on more than one occasion used compound questions in which the question itself provided the desired answer. Defendant frequently tried to backpedal and disavow his earlier admissions as guesses he was making to try to satisfy the detectives, but he was met with threats that he would lose the "deal" and receive the death penalty if he did not confess satisfactorily. Ultimately, defendant admitted he was on drugs and he entered the donut shop intending to steal the owner's car but instead stabbed and killed her during a struggle. Although he said he picked up the murder weapon at the scene of the crime and left it there afterward, he was unable to explain why police did not find it. He was also unable to explain unusual details noticed by police, such as when, why, or how the phone line to the donut shop was cut.

Near the end of the interview, after about six hours and twenty minutes, an emotional defendant sought to confirm that detectives were satisfied with his confession and he would not receive the death penalty. At around the seventh hour of the interview, prosecutor Rick Bryant entered the room to reassure defendant that he would only be charged with second degree murder and armed robbery and he would not receive the death penalty.

Since 2005, defendant has been categorically exempt from capital punishment because he was 17 years old at the time of the crime. In *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the United States

---

emotional and visibly distressed. Nearly every time defendant revealed any new information to detectives, the revelation was preceded by another threat that defendant would lose the "deal" and be sentenced to death.

Supreme Court held that the death penalty is a disproportionate punishment for offenders under the age of 18, and therefore the death penalty cannot be imposed on juvenile offenders. The prosecutor here was clearly aware of the more recently decided *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), which decision relied heavily on *Roper v. Simmons*. In *Miller v. Alabama*, the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. When defendant asked whether he would be sentenced to life in prison without parole, Mr. Bryant informed him that the law had changed and a special sentencing hearing was now required before a person who commits second degree murder as a juvenile can be sentenced to life imprisonment without parole eligibility. In its brief, the State characterizes falsely informing defendant he would receive the death penalty if he did not satisfactorily confess as permissible tactical deception, and argues that, regardless of whether the deception was permissible, it did not render defendant's confession involuntary because he was hardened, experienced in the legal system, and unaffected by the toothless threats. The video, however, shows otherwise.

On the next day after the interview and after defendant was transported back to Allen Correctional Facility, a corrections officer conducted a routine mental health check and asked defendant how he was feeling. Defendant replied, "I am ok they brought me for an old charge that happened in the past. Man Major Vic, I am kind of glad this happened now I don't have to keep looking over my shoulder it's like a weight off me. Now I can put this behind me and move on with my time."

The State gave notice pursuant to La.C.Cr.P. art. 768 of its intent to introduce at trial the recorded police interview and defendant's statement to the

correctional officer on the following day, treating these as two separate and unrelated statements.[2] Defendant filed a motion to suppress the police interview.[3] After conducting an evidentiary hearing, the district court denied the motion to suppress, finding that the totality of the circumstances indicated that defendant's statements during the recorded interview were free and voluntary. Defendant sought supervisory review from the court of appeal.

The court of appeal found that defendant, beginning at around the 58-minute mark of the interview,[4] repeatedly invoked his right to remain silent, but that police ignored the invocation, and thus the entire statement was inadmissible because it was obtained in violation of *Miranda*. *State v. Bartie*, 18-0131 (La. App. 3 Cir. 3/22/18) (unpub'd), *writ denied*, 18-0640 (La. 7/9/18), 247 So.3d 116 (Guidry, Clark, Crichton, JJ., would grant and docket).

Defendant subsequently filed a motion to suppress the statement he made to the corrections officer at Allen Correctional Center. Defendant also filed a motion for clarification concerning defendant's statements during the police interview. In response, the state argued that everything prior to the 58-minute mark of the police interview was admissible, and that the motion to suppress the statement to the corrections officer was untimely. After conducting an evidentiary hearing, the

---

[2] Code of Criminal Procedure art. 768 provides:

> Unless the defendant has been granted pretrial discovery, if the state intends to introduce a confession or inculpatory statement in evidence, it shall so advise the defendant in writing prior to beginning the state's opening statement. If it fails to do so a confession or inculpatory statement shall not be admissible in evidence.

[3] While defendant did not mention his statement to the corrections officer in his original motion to suppress, he argued at the suppression hearing that this statement must also be suppressed as fruit of the poisonous tree.

[4] The court of appeal focused on defendant's invocation of his right to remain silent at around the 58-minute mark. The court of appeal did not discuss defendant's earlier attempt to invoke this right at around the 48-minute mark.

district court ruled that the State would be able to use the police interview prior to the 48:49 mark (where defendant first invoked his right to remain silent), as long as it is relevant and otherwise admissible under the rules of evidence. The district court also found that the remaining portion of the police interview (the portion obtained after his first invocation of his right to remain silent was not honored) could be only used for impeachment purposes if defendant himself testified. Finally, the district court determined that the motion to suppress the statement to the corrections officer was untimely under La.C.Cr.P. art. 521.[5] Defendant sought supervisory review from the court of appeal.

The court of appeal noted that it previously found defendant's invocation of his right to remain silent was not honored, and it further found that the district court erred in determining that defendant's statements were freely and voluntarily made. The court of appeal determined that defendant's statements were the result of an impermissible inducement, i.e. the repeated threats that defendant would be sentenced to death if he did not confess. Therefore, the court of appeal found that the defendant's statements during the police interview following his first invocation of his right to remain silent, which occurred at about the 48-minute mark, would be inadmissible for any purpose at trial. However, the court of appeal found that defendant's statements that preceded his invocation of his right to remain silent were also inadmissible unless defendant testified, in which case the statements preceding the 48-minute mark could be used to impeach him. Finally, the court of appeal found the district court erred in treating defendant's motion to

[5] Code of Procedure art. 521(A) provided at the time, "Pretrial motions shall be made or filed within fifteen days after arraignment, unless a different time is provided by law or fixed by the court at arraignment upon a showing of good cause why fifteen days is inadequate." This article has been amended by 2020 La. Acts 252 to change 15 days after arraignment to 30 days after the receipt of initial discovery.

suppress his statement to the corrections officer as untimely. The court of appeal ruled that defendant's statement to the corrections officer was also inadmissible because the State must not be permitted to use this statement as a way to introduce the contents of defendant's inadmissible police interview to the jury. *State v. Bartie*, 19-0250 (La. App. 3 Cir. 9/25/19) (unpub'd).

The State now concedes there were numerous violations of *Miranda* during the police interview and that defendant's invocations of his right to remain silent, beginning at about the 48-minute mark and continuing after, were not honored. The State argues, however, that the court of appeal erred in placing any restriction on the use of anything defendant said during the police interview that precedes the 48-minute mark because defendant was *Mirandized* and this portion of defendant's statement was free and voluntary.

The State is correct that the court of appeal cited no authority for this part of its ruling, and none can be found. The evidence presented at the suppression hearings supports the district court's conclusion that the initial portion of the police interview, until roughly the 48-minute mark, was conducted after advising defendant of his rights pursuant to *Miranda* and obtaining a waiver of those rights. Defendant did not invoke his right to remain silent until roughly the 48-minute mark. In addition, there is no indication defendant's statements, which consisted primarily of identifying personal information and general denials of any involvement in or knowledge of the crime, were not free and voluntary. Detectives did first threaten defendant that he would be sentenced to death if he did not confess during this initial portion. However, that threat did not become effective until those detectives were replaced with others and the threat repeated and intensified over the course of the interview.

Defendant offers other reasons why the initial portion of the interview might not be admissible at trial, such as the fact that it contains other crimes evidence or information that may not be relevant. However, it is important to note that the district court ruled only that this initial portion of the interview need not be excluded because of any constitutional violation and would be admissible only to the extent allowed by the rules of evidence. In the absence of any indication that defendant's statements up until roughly the 48-minute mark were obtained in violation of *Miranda* or were not free and voluntary, the district court did not err in refusing to suppress them pre-trial, and the restriction placed on their use by the court of appeal is unsupported by law.

The State also contends that the court of appeal erred in finding that the remainder of defendant's statements during the police interview (following the 48-minute mark) were the result of an impermissible inducement. According to the State, threatening a defendant who is categorically exempt from capital punishment with the death penalty is a permissible strategic deception that can be used by police to encourage a suspect to confess, and the use of this tactic did not result in statements that were not free or voluntary under the totality of the circumstances here. Therefore, the State contends the remainder of the statement, while not admissible in the State's case-in-chief, should be admissible to impeach defendant if he testifies, in accordance with *Harris v. New York*, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971), because it was free and voluntary.

"Before what purports to be a confession can be introduced in evidence, it must be affirmatively shown that it was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises." La.R.S. 15:451. If a confession is obtained as the result of promises or

inducements, it is not admissible. *State v. Serrato*, 424 So.2d 214, 222 (La. 1982).

As described above, detectives promised defendant he would not be prosecuted for capital murder and sentenced to death if he confessed. This promise was made in writing and signed by the prosecutor, despite the fact that the defendant was 17 years old at the time he is alleged to have committed the crime and thus he was not eligible for the death penalty. This promise was the dominant theme of the police interview and defendant was threatened repeatedly that he would be sentenced to death if he did not confess.

This court summarized the framework for evaluating the voluntariness of a confession in *State v. Turner*, 16-1841 (La. 12/5/18), 263 So.3d 337:

> The analytical framework for evaluating the voluntariness of defendant's confession is well settled. The Supreme Court previously adhered to the view that any inducement "however slight" taints a confession. *Bram v. United States*, 168 U.S. 532, 542-43, 18 S.Ct. 183, 42 L.Ed. 568 (1897). However, under current standards, voluntariness is determined by the totality of the circumstances, with the ultimate focus on whether "the statement was the product of an essentially free and unconstrained choice or the result of an overborne will." *State v. Lewis*, 539 So.2d 1199, 1205 (La. 1989) (internal quotation marks and citation omitted). *See also Schneckloth v. Bustamonte*, 412 U.S. 218, 236, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) ("In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation."). What survives of *Bram* is the principle that a confession of guilt induced by a government promise of immunity is "coerced" and may not be used against the accused. *Shotwell Mfg. Co. v. United States*, 371 U.S. 341, 347, 83 S.Ct. 448, 9 L.Ed.2d 357 (1963).

State v. Turner, 16-1841, pp. 96–97, 263 So.3d at 399. In *Turner*, the interrogating officer referred to himself as a "lifeline" for defendant. This court found that such a statement was not a promise of immunity from the death penalty. Moreover, in looking at the totality of the circumstances, this court found that it was not the death penalty that ultimately swayed defendant to confess—it was the fact that

defendant was presented with increasingly incriminating evidence linking him to the two murders that ultimately broke down defendant's earlier denials of any involvement. In contrast, defendant here was initially perplexed but unmoved by the DNA evidence. It was the repeated threat of a death sentence that moved defendant both to tears and to confess.

Defendant cannot be sentenced to death for this crime. While a misrepresentation, in and of itself, may not vitiate the voluntariness of an otherwise voluntary confession, *see Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) (misrepresentations are relevant but do not make an otherwise voluntary confession inadmissible), the repeated threats that defendant would be sentenced to death if he did not confess satisfactorily went beyond a mere misrepresentation. It was the theme of the interrogation to which detectives always returned. At one point, a detective even theatrically added defendant's name to a list of persons successfully prosecuted by Rick Bryant and sentenced to death. While voluntariness is determined by the totality of the circumstances, the video makes it clear that the repeated threats here overbore defendant's will and induced him to confess.

Thus, defendant's inculpatory statements during the police interview that follow the 48-minute mark are inadmissible pursuant to La.R.S. 15:451, and those statements may not be used to impeach defendant if he testifies because the State has failed to convincingly show that they are free and voluntary when the video so clearly shows otherwise. *See generally State v. Kent*, 371 So.2d 1319, 1320 (La. 1979) ("As a prerequisite to admission of a confession or inculpatory statement, the state must discharge its burden of proving affirmatively and beyond a reasonable doubt that the statement was freely and voluntarily made and was not

the result of threats, coercion or promises."). To the extent the court of appeal reached the same conclusion, we affirm that part of the court of appeal's decision.

Finally, the State contends the court of appeal erred in finding defendant's motion to suppress his statement to the corrections officer was timely, and in finding this statement must also be suppressed to keep the jury from becoming aware of the inadmissible portions of the police interview. Regarding the latter determination, the State argues that the court of appeal's ruling is unsupported by law.

In response to the State's notice of its intent to introduce at trial defendant's interview with police and his statement to a corrections officer the next day, defendant moved to suppress the former. While defendant neglected to mention the latter in his motion to suppress, the State called the corrections officer to testify about this statement at the suppression hearing, and defendant argued at the hearing that the statement to the corrections officer was "fruit of the poisonous tree." While defendant did not formally move to suppress this statement until two years later, we find good cause for defendant's otherwise late filing under the unusual circumstances here, which include confusion over admissibility resulting from the court of appeal's shifting positions.

Defendant argued the statement to the corrections officer was fruit of the poisonous tree, in this instance the poisonous tree being the coercive police interview from roughly the 48-minute mark onward. "Fruit of the poisonous tree" is a figure of speech drawn from *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), in which the United States Supreme Court held that evidence and witnesses discovered as a result of a search in violation of the Fourth Amendment must be excluded from evidence. The *Wong Sun* doctrine applies as

well when the fruit of the Fourth Amendment violation is a confession. In the context of the Fifth Amendment, however, the doctrine of the "fruit of the poisonous tree" is not applied as broadly as it is in the context of the Fourth Amendment. *See Oregon v. Elstad*, 470 U.S. 298, 306–07, 105 S.Ct. 1285, 1291–92, 84 L.Ed. 2d 222 (1985).[6] For example, it does not apply to every technical violation of *Miranda*; there must also be an underlying Fifth Amendment violation. Thus, despite the fact that patently voluntary statements taken in violation of *Miranda* must be excluded from the prosecution's case, the presumption of coercion, absent actual coercion, does not bar their use for impeachment purposes on cross-examination. *Harris v. New York*, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971). "When a prior statement is actually coerced, the time that passes between confessions, the change in place of interrogations, and the change in identity of the interrogators all bear on whether that coercion has carried over into the second confession." *Elstad*, 470 U.S. at 310, 105 S.Ct. at 1293.

As a general rule, this court reviews trial court rulings under a deferential standard with regard to factual and other trial determinations, while legal findings are subject to a de novo standard of review. *See State v. Hampton*, 98-0331, p. 18 (La. 4/23/99), 750 So.2d 867, 884; *see also* Crichton & Kottle, *Appealing*

---

[6] The United States Supreme Court explained:

> The *Miranda* exclusionary rule, however, serves the Fifth Amendment and sweeps more broadly than the Fifth Amendment itself. It may be triggered even in the absence of a Fifth Amendment violation. The Fifth Amendment prohibits use by the prosecution in its case in chief only of compelled testimony. Failure to administer *Miranda* warnings creates a presumption of compulsion. Consequently, unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under *Miranda*. Thus, in the individual case, *Miranda*'s preventive medicine provides a remedy even to the defendant who has suffered no identifiable constitutional harm.

Elstad, 470 U.S. at 306–07, 105 S.Ct. at 1291–92 (footnote omitted).

Standards: Louisiana's Constitutional Provision Governing Appellate Review of Criminal Facts, 79 La.L.Rev. 369, 382–84 (2018). When a trial court makes findings of fact based on the weight of the testimony and the credibility of the witnesses, a reviewing court owes those findings great deference, and may not overturn those findings unless there is no evidence to support those findings. *State v. Bourque*, 622 So.2d 198, 222 (La. 1993) (A "trial judge's ruling [on a fact question], based on conclusions of credibility and 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.").

Here, however, the district court has yet to rule on whether defendant's statement to the corrections officer constitutes fruit of the poisonous tree because that court found defendant did not timely file a motion to suppress that statement. The court of appeal correctly found the district court erred because there is good cause for the defendant's delay. However, the court of appeal erred in then ruling on the admissibility of the statement in the first instance. Accordingly, we reverse that part of the court of appeal's opinion, and we remand to the district court with instructions to conduct an evidentiary hearing and to decide whether defendant's statement to the corrections officer must be suppressed as fruit of the poisonous tree.

For the reasons above, we affirm the court of appeal's determination that defendant's statements during the police interview from roughly the 48-minute mark onward were made in violation of *Miranda*, were not free and voluntary, and therefore are not admissible for any purpose including impeachment at the trial. We reverse the court of appeal's order that the first 48 minutes of the police interview can be used only for impeachment and only if defendant testifies, and we

reinstate the district court's ruling that the first 48 minutes are admissible to the extent authorized by the rules of evidence. We also reverse the court of appeal's determination that defendant's statement to the corrections officer at Allen Correctional Facility on the day after the police interview is inadmissible at trial. We remand to the district court to conduct an evidentiary hearing and then rule on the admissibility of that statement in light of our determination that defendant's statements during the police interview following the 48-minute mark were not free and voluntary.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

09/09/20

SUPREME COURT OF LOUISIANA

No. 2019-KK-01727

STATE OF LOUISIANA

VS.

DENNIS JEROME BARTIE

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Calcasieu

Hughes, J., concurs in part and dissents in part.

While I agree with most of the majority opinion, I would find the defendant's statement to the corrections officer the next day to be fruit of the poisonous tree.

But for the suppressed portion of his statement, defendant would have had nothing to comment on, and the suppressed portion should not come in the back door.