

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0809

STATE OF LOUISIANA

VS.

JAMES ROSS

JUDGMENT RENDERED: NOV - 7 2007

ON APPEAL FROM THE
EIGHTEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 1316-02, DIVISION D
PARISH OF IBERVILLE, STATE OF LOUISIANA

HONORABLE WILLIAM C. DUPONT, JUDGE

MOLLY L. BALFOUR
BATON ROUGE, LA

ATTORNEY FOR APPELLEE
STATE OF LOUISIANA

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ATTORNEY FOR DEFENDANT/APPELLANT
JAMES G. ROSS

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

MCDONALD, J.

The defendant, James G. Ross, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant entered a plea of not guilty. On February 24, 2005, the defendant filed a motion to quash the indictment. After a hearing, the trial court denied the defendant's motion to quash on June 6, 2005. The defendant filed an application for supervisory writs with this court wherein he alleged that the trial court erred in denying his motion to quash. This court issued the following writ action:

WRIT DENIED ON THE SHOWING MADE.

Relator failed to include the necessary documentation, including copies of all the minute entries and filings in the instant case, and any other documentation that might support his claims, in order for this court to review the merits of his application. Supplementation of this writ application and/or an application for rehearing will not be considered. See Uniform Rules—Courts of Appeal, Rules 2-18.7 & 4-9. Any future filing on this issue should include the entire contents of this application, the missing items noted above, and a copy of this ruling. In the event relator elects to file a new application with this court, the application must be filed on or before December 5, 2005.

State v. Ross, 2005-1629 (La. App. 1st Cir. 10/4/05) (unpublished).

The defendant filed a second writ application, attaching more documentation than was attached to the previously filed application. This court subsequently issued an interim order wherein Judge Dupont was instructed to file a per curiam on or before February 27, 2006. After Judge Dupont filed his per curiam with this court, this court denied the defendant's second writ application. **State v. Ross**, 2005-2504 (La. App. 1st Cir. 5/15/06) (unpublished). The defendant's application for supervisory relief from the Louisiana Supreme Court was also denied. **State v. Ross**, 2006-1336 (La. 9/22/06), 937 So.2d 387. In denying the writ, the supreme court stated, in pertinent part, as follows:

[T]ime is clearly now of the essence, for no matter how responsibility is apportioned, continued delays in the present case risk the loss of witnesses and the fading of memories to an extent that may also place at risk trial as a reliable vehicle for determining whether respondents committed the crime charged against them.

On November 30, 2006, the defendant orally moved to suppress his statements. The motion to suppress was then heard, and the trial court denied the motion on the same date. The defendant's trial by jury commenced January 8, 2007. The defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, raising error as to the trial court's denial of his motion to quash and motion to suppress. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

The body of the deceased victim herein, Dennis Scruggs, was discovered face down on La. Hwy. 327 in Iberville Parish (near St. Gabriel, Louisiana). The victim suffered multiple gunshot wounds. The victim's cause of death was internal bleeding due to a gunshot wound to the chest. The defendant was convicted of the murder of the victim. The particular facts surrounding the victim's murder are not relevant to the instant appeal.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant contends that the State failed to timely commence trial in violation of his constitutional speedy trial rights and the statutory time limitation. The defendant contends that an expert witness died and key items of evidence were lost during the ten-year period from the date of his arrest to the commencement of trial. The defendant claims that the delay was due to the actions of his co-defendants.

The defendant notes that the State requested several continuances. The defendant concludes that his motion to quash the indictment should have been granted. We note that the defendant does not ask that this court order his discharge; rather, the defendant argues that this court should remand the matter for a new trial. The State replies that several motions filed by the defendant, prior to the new indictment, were never ruled upon. The State adds that numerous time limitation suspensions followed the filing of the new indictment. According to the State, the delay was a result of the complexity of the case, the pre-trial motion practice by the defendant, and numerous successions of attorneys and judges presiding over the case. Finally, the State contends that there was no bad faith effort on its part to secure a tactical advantage.

In March 2003, the defendant joined in a motion to quash the indictment based upon the denial of the right to a speedy trial filed by co-defendants James Thomas and Percy Dyer. On August 15, 2003, the trial court denied the motion to quash and set the trial for September 29, 2003. The court gave no reasons for its ruling. Thomas and Dyer sought review with this court. The defendant did not join Thomas and Dyer in seeking review. This court denied Thomas's writ application as untimely, but granted in part and denied in part Dyer's writ application, remanding to the trial court to recalculate the applicable trial limits. **State v. Thomas**, 2003-2033 (La. App. 1st Cir. 9/23/03) (unpublished); **State v. Dyer**, 2003-1922 (La. App. 1st Cir. 3/22/04) (unpublished). Thomas and Dyer filed subsequent motions to quash the indictment. The trial court denied those motions on December 7, 2004. They sought review of said denials with this court. This court granted the writ application and quashed the charges. **State v. Thomas and Dyer**, 2004-2805 (La. App. 1st Cir. 3/7/05)

(unpublished). On March 29, 2005, this court denied the State's request for rehearing and request for extension of stay order. On April 20, 2005, the Louisiana Supreme Court denied the State's request for a stay. On April 27, 2005, the Supreme Court granted the State's writ application and remanded the matter to this court for briefing, argument, and opinion, stating, "In remanding, it is not our intent to dictate a result." **State v. Thomas and Dyer**, 2005-1010 (La. 4/27/05), 901 So.2d 427.

On May 17, 2005, this court issued an order, wherein the Iberville Parish Clerk of Court was ordered to file with this court two copies of the record; Thomas, Dyer, and the State were ordered to file a brief with this court; and the trial court judge, Judge William Dupont, was ordered to file a per curiam, explaining his basis for denying the motion to quash. On February 15, 2006, this court issued an opinion in **State v. Thomas and Dyer**, 2004-2805R (La. App. 1st Cir. 2/15/06), 928 So.2d 649. In that opinion, this court determined that the statutory time limits set forth in La. Code Crim. P. art. 578 had not expired with regard to the charge of second degree murder, as after reindicting Thomas and Dyer, the State had until October 2004 to try them. However, Thomas and Dyer both suspended the prescriptive period by filing motions to quash on March 17, 2003, and March 26, 2003, which were denied on August 15, 2003. After seeking review with this court on May 4, 2004, and on June 10, 2004, both Thomas and Dyer again filed motions to quash which again suspended the prescriptive period. The motions were denied on December 7, 2004. This court determined that at that time, the State had until at least December 2005 to try Thomas and Dyer. Thus, this court determined that the statutory time limitations for trying Thomas and Dyer had not expired.

However, this court did determine under the factors set forth in **Barker v. Wingo**, 407 U.S. 514, 530-33, 92 S.Ct. 2182, 2192-93, 33 L.Ed.2d 101 (1972), that Thomas and Dyer were deprived of their constitutional right to a speedy trial. This court noted that, deducting the time the men escaped, Thomas was held in jail on the murder charges for more than eight years without being tried and Dyer was held for more than seven years.

The Louisiana Supreme Court granted the State's writ application and reversed this court's ruling. **State v. Dyer**, 2006-0619 (La. 7/11/06), 933 So.2d 788 (per curiam), cert. denied, ___ U.S. ___, 127 S.Ct. 945, 166 L.Ed.2d 722 (2007). The supreme court held that the two-year prescriptive period governing prosecution for second degree murder had not expired, despite numerous protracted delays, and thus the defendants were not entitled to an irrebuttable presumption of prejudice arising from the delay. The Supreme Court noted that the prescriptive period was suspended by the defendants' motions to quash and appellate review of rulings on those motions. The Supreme Court further held that the pre-trial incarceration of more than eight years for one defendant and of seven years for the other defendant, excluding a period during which they had escaped, did not violate their Sixth Amendment rights to speedy trial. The Court noted that the delays were not the result of a bad-faith effort by the State to secure a tactical advantage or the State's negligence, but were attributable to the complexity of the case, extensive pre-trial motion practice conducted by the defendants, and resolution of motions to quash. The court also noted the defendants' succession of attorneys before a succession of judges presiding over the case. The court further noted that the defendants failed to show how they were actually prejudiced by the delay or by the loss of witnesses.

As detailed heretofore, the defendant filed a supervisory writ application with this court seeking review of the trial court's ruling on the motion to quash. In an unpublished decision, this court denied the writ application. **State v. Ross**, 2005-2504 (La. App. 1st Cir. 5/15/06) (unpublished). The defendant then filed a supervisory writ application with the Supreme Court, which was also denied. **State v. Ross**, 2006-1336 (La. 9/22/06), 937 So.2d 387.

Although a pre-trial determination of the admissibility of evidence does not absolutely preclude a different decision on appeal, judicial efficiency demands that this court accord great deference to pre-trial decisions unless it is apparent, in light of a subsequent trial record, that the determination was patently erroneous and produced an unjust result. **State v. Johnson**, 438 So.2d 1091, 1104-1105 (La. 1983). **State v. Humphrey**, 412 So.2d 507, 523 (La. 1982) (on rehearing).

By this assignment of error, the defendant again seeks review of the trial court's ruling denying his motion to quash. The assignment of error presents no new argument. There are no pertinent portions of the subsequent trial record for this court to review. Thus, the record is devoid of any additional evidence that would lead us to change the conclusion we reached on the defendant's writ application. Based on the foregoing, this assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In his second assignment of error, the defendant argues that the State failed to prove that his confession was freely and voluntarily given. The defendant contends that the recording of his confession does not indicate that he was given his rights prior to the confession. The defendant further

contends that his confession was coerced. The defendant argues that the case should be remanded for a new trial.

For a confession or inculpatory statement to be admissible into evidence, the State must affirmatively show that it was freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements or promises. La. R.S. 15:451. Additionally, the State must show that an accused who makes a statement or confession during custodial interrogation was first advised of his **Miranda**¹ rights. **State v. King**, 563 So.2d 449, 453 (La. App. 1st Cir.), writ denied, 567 So.2d 610 (La. 1990). The admissibility of a confession is in the first instance a question for the trial court. Its conclusions on the credibility and weight of testimony relating to the voluntariness of the confession for the purpose of admissibility will not be overturned on appeal unless they are not supported by the evidence. **State v. Daughtery**, 563 So.2d 1171, 1177 (La. App. 1st Cir.), writ denied, 569 So.2d 980 (La. 1990). Whether or not a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. **State v. Benoit**, 440 So.2d 129, 131 (La. 1983). The trial court must consider the totality of the circumstances in deciding whether a statement or confession is admissible. **State v. Hernandez**, 432 So.2d 350, 352 (La. App. 1st Cir. 1983). In determining whether the ruling on the defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. **State v. Chopin**, 372 So.2d 1222, 1223 n. 2 (La. 1979).

At the hearing on the motion to suppress the defendant's confession,

¹ **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Detective Rhodes Sanchez of the Iberville Parish Sheriff's Office testified that he arrived at the East Baton Rouge Parish Sheriff's Office shortly after the defendant turned himself in. According to the arrest report, the defendant was booked at the Sheriff's Office at 3:15 p.m. on August 27, 1996. The State introduced an advice of rights and consent to question form. The form indicated that the defendant was advised of his rights at 3:22 p.m. on August 27, 1996. Detective Sanchez was present when the defendant's rights were read to him by Captain Ron Boucher of the East Baton Rouge Parish Sheriff's Office. The defendant indicated that he understood his rights and signed the form in the presence of Detective Sanchez. Detective Sanchez also signed the form. According to Detective Sanchez, the defendant was calm and cooperative and was not coerced or pressured into making a statement. Detective Sanchez further denied any promises or inducements. Detective Sanchez stated, "it's all taped."

The defendant testified at the motion to suppress hearing. The defendant stated that prior to his confession, Chief Pat Nelson of the East Baton Rouge Parish Sheriff's Office told him what he was being charged with and instructed him to give the same statement given by a co-defendant, Carl Nash. According to the defendant, Chief Nelson told him that he would not get the death penalty if he provided a statement consistent with Carl Nash's statement. The defendant further stated that Detective Sanchez then came in and told the defendant that he could see his daughter if he cooperated. The defendant stated that he would not have given a statement without these promises because he did not know what happened. The defendant stated that he was at the Sheriff's Office for approximately fifteen or twenty minutes before Detective Sanchez arrived. The defendant specified that Chief Nelson told him to say that he killed a person and

confirmed that he had been given details. His statement took place within a few minutes of the instructions. The defense introduced an advice of rights form that was executed at 7:58 p.m. on August 27, 1996, wherein the defendant indicated that he did not wish to make a statement.²

After recessing to view the videotape of the defendant's confession, the trial court denied the defendant's motion to suppress. The trial court stated that there was nothing in the statement or the testimony presented at the hearing to indicate that the confession was not voluntarily given.

During the trial, Captain Boucher confirmed that he read the defendant his rights prior to the confession. The rights were read individually and the defendant indicated that he understood each right before the officer proceeded to the next right. Captain Boucher stated that no threats, coercion, or promises were made in his presence. Captain Boucher further stated that no one provided the defendant with any of the facts regarding the offense before the defendant's statement.

After reviewing the evidence presented at the hearing on the motion to suppress and pertinent trial testimony, we find that the record supports the trial court's conclusions on the credibility and weight of the testimony relating to the voluntary nature of the defendant's confession. The videotaped interview wherein the defendant provided a confession was approximately twenty-two minutes long. At the beginning of the interview, the defendant confirmed that his rights had been read and explained to him individually, and that he understood those rights. The defendant also

² Testimony presented at the trial indicates that the form introduced by the defendant at the motion to suppress was executed at the East Baton Rouge Parish Sheriff's Office by Officer Henry Hollins of the St. Gabriel Police Department after the defendant's confession (before the defendant was transported to back to Iberville Parish). Officer Hollins testified that advising a defendant of his rights before transport was standard procedure. However, he did not plan to interrogate the defendant and did not do so. The form was made a part of the appeal record as S-23.

confirmed that he signed the waiver of rights form agreeing to give a statement. The defendant was asked if he had been pressured or coerced and he responded negatively and confirmed that he was giving the statement of his own free will. The defendant appeared calm and lucid and gave a detailed lengthy description of the facts surrounding the offense. The defendant's detailed confession did not sound rehearsed or regurgitated. We find that there was no abuse of discretion in the trial court's denial of the defendant's motion to suppress the confession herein. This assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.