

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0669

STATE OF LOUISIANA

VERSUS

ERIC JOSEPH BURAS

*DATE OF JUDGMENT:* OCT 29 2010



ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT  
NUMBER 407,348, DIVISION G, PARISH OF ST. TAMMANY  
STATE OF LOUISIANA

HONORABLE WILLIAM J. CRAIN, JUDGE

\*\*\*\*\*

Walter P. Reed  
District Attorney  
Covington, Louisiana

Counsel for Appellee  
State of Louisiana

Kathryn W. Landry  
Baton Rouge, Louisiana

Lieu T. Vo Clark  
Slidell, Louisiana

Counsel for Defendant-Appellant  
Eric Joseph Buras

Eric Joseph Buras  
Angola, Louisiana

Defendant-Appellant  
Pro Se

\*\*\*\*\*

BEFORE: KUHN, PETTIGREW, AND KLINE, JJ.<sup>1</sup>

**Disposition: CONVICTION AND SENTENCE AFFIRMED.**

---

<sup>1</sup> The Honorable William F. Kline, Jr. is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

**KUHN, J.**

The defendant, Eric Joseph Buras, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant initially entered a plea of not guilty. The trial court denied the defendant's motions to suppress the identification, confession, and evidence. The defendant withdrew his plea and pled guilty pursuant to **State v. Crosby**, 338 So.2d 584 (La. 1976). The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant now appeals challenging the trial court's ruling on his motions to suppress the identification, confession, and evidence in one counseled and six *pro se* assignments of error. For the following reasons, we affirm the conviction and sentence.

#### **STATEMENT OF FACTS**

The facts in this case were not fully developed because the defendant entered a guilty plea herein. In accordance with testimony presented at the motion to suppress hearing, on or about November 14, 2005, officers of the St. Tammany Parish Sheriff's Office responded to a location off Interstate 59, where a woman's body was found in the Pearl River in St. Tammany Parish. A pair of ladies' jeans, pink plastic shoes, a baseball cap, and duct tape were located along the sandy beach area, and a short distance into the water was the partially-clad body lying face down in the water with duct tape on her hands and mouth. The victim had no outer clothing on the lower portion of her body, and her underwear was partially pulled down. There were indications of a struggle in the sand and drag marks from the clothes to the water. One of the fingers on the female's hand was missing

a fingernail. The body was later identified as Katie Wilkerson, a resident of Bayou La Batre, Alabama. The autopsy indicated that the victim was strangled and drowned. Interviews of the victim's family members and friends led officers to conclude that the victim travelled from Alabama to Louisiana with the defendant before her death. The defendant ultimately pled guilty to the murder of the victim.

### **ASSIGNMENTS OF ERROR**

In defendant's counseled brief and in his *pro se* brief (assignment of error number one), the defendant contends that the State intentionally used false information in the affidavits in support of the search and arrest warrants.<sup>2</sup> The defendant notes that one of the affidavits included statements indicating that the victim had been seen leaving Food World in Bayou La Batre, Alabama, with an individual identified as the defendant in his dark Chevrolet pickup truck en route to Slidell, Louisiana, to purchase illegal narcotics. The defendant contends that testimony at the motion to suppress hearing indicated that the witness was actually unable to identify the male individual who left Alabama with the victim. The defendant contends that the police repeatedly appeared before a judge, swore to the veracity of the statements in the affidavits, and obtained warrants knowing that the affidavits contained false information. The defendant argues that the affidavits in this case contain misrepresentations that were intentionally made to the judges

---

<sup>2</sup>The defendant specifically contests the affidavits in support of the arrest warrant, the search warrants for the defendant's home and vehicle, a search warrant for the defendant's cellular telephone records, and a search warrant for a DNA swab of the defendant.

who were asked to sign the warrants.<sup>3</sup>

In *pro se* assignment of error number three, the defendant argues that the affidavits herein are also deceptive in that they failed to disclose that all of the facts revealed therein were not within the firsthand knowledge of the affiant. The defendant contends that the failure to disclose this information prevented the magistrate from properly evaluating the credibility of the information contained in the affidavit. The defendant specifically contends that much of the information in the affidavit for the arrest warrant was relayed to Detective Joseph Picone by Detective Marco Demma, Jr. The defendant further specifies that many of the facts contained in the affidavits in support of the search warrants for the defendant's home and vehicle were based on information relayed to Detective Richard Bryars by Detective Demma and Detective Scott DeJong.

In the remaining *pro se* assignments of error, the defendant raises additional challenges to the denial of his motions to suppress. Specifically, in *pro se* assignment of error number two, the defendant contends that the face of the affidavit in support of the warrant for his arrest lacks probable cause. The defendant contends that while there was probable cause that a crime was committed, there was only suspicion that the defendant was the perpetrator of the crime.

In *pro se* assignment of error number four, the defendant contends that the buccal swabs for the DNA evidence were taken from the defendant approximately

---

<sup>3</sup> The defendant specifically notes that Detective Richard Bryars testified Detective Scott DeJong incorrectly indicated to him that Latasha Miller positively identified the defendant as the person with whom the victim left Alabama before her body was discovered in Louisiana. The defendant contends that Detective DeJong deceived Detective Bryars, further contending that this constitutes evidence of an intentional misrepresentation to a magistrate.

one hour prior to the issuance of the warrant. Noting that he was in continuous custody at the parish jail, the defendant contends that there were no exigencies or a reason for the detectives to not abide by the warrant requirement. The defendant further argues that the State failed to prove that the warrantless search fell under an exception to the exclusionary rule.

In *pro se* assignment of error number five, the defendant contends that statements he allegedly made were taken during an illegal detention. The defendant states that his ex-wife testified that she did not give the police permission to enter the residence and the police entered anyway. The defendant notes that he was handcuffed during the transport to the station and locked inside the police vehicle prior to questioning. Further, the defendant submits that he was surrounded by officers who drew their guns on him and that the totality of the circumstances surrounding the detention, transport, and questioning of him would lead any reasonable person to believe they were not free to leave.

Finally, in *pro se* assignment of error number six, the defendant contends his constitutional and statutory rights were violated, resulting in an unknowing and involuntary waiver of his rights, in that he was not informed of the reason for his arrest or detention before he was questioned.

### **DISCUSSION**

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. Arrest is defined as “the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested

to the custody of the one arresting him.” La. C. Cr. P. art. 201. Whether a person has been arrested is determined by an objective test; neither the person’s subjective impression nor the lack of formality of the arrest resolves the issue. The determination of whether an arrest occurred depends on the totality of the circumstances, but several factors distinguish an arrest from lesser infringements on personal liberty. A prime characteristic of any Fourth Amendment seizure of a person is whether, under the totality of the circumstances, a reasonable person would not consider himself or herself free to leave. Ultimately, whether a person has been arrested depends on circumstances indicating intent to impose an extended restraint on the person’s liberty. **State v. Fisher**, 97-1133, p. 6 (La. 9/9/98), 720 So.2d 1179, 1183. See also **State v. Dickinson**, 492 So.2d 173, 176 (La. App. 1st Cir.), writ denied, 498 So.2d 14 (La. 1986).

It is well settled that 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 that makes a statement or confession during custodial interrogation was first advised of his **Miranda** rights.<sup>4</sup> **Miranda v. Arizona**, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); **State v. Caples**, 2005-2517, p. 8 (La. App. 1st Cir. 6/9/06), 938 So.2d 147, 153, writ denied, 2006-2466 (La. 4/27/07), 955 So.2d 684. The obligation to provide **Miranda** warnings attaches

---

<sup>4</sup> In **Miranda v. Arizona**, the Supreme Court promulgated a set of safeguards to protect the constitutional rights of persons subject to custodial police interrogation. The warnings must inform the person in custody that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. **Miranda**, 384 U.S. at 444, 86 S.Ct. at 1612.

only when a person is questioned by law enforcement after he has been taken "into custody or otherwise deprived of his freedom of action in any significant way." **Miranda v. Arizona**, 384 U.S. at 444, 86 S.Ct. at 1612; **State v. Payne**, 2001-3196, p. 7 (La. 12/4/02), 833 So.2d 927, 934. Mere communications between officers and citizens implicate no Fourth Amendment concerns if there is no coercion or detention. **State v. Fisher**, 97-1133 at pp. 4-5, 720 So.2d at 1183.

### **Motion to Suppress Hearing**

At the motion to suppress hearing herein, the defendant was described as a white, baldheaded male, wearing eyeglasses. According to the testimony presented at the hearing, the investigators interviewed individuals who ultimately named the defendant as the person with whom the victim travelled from Alabama to Slidell, Louisiana, on the night of November 13, 2005. Specifically, that night, Latasha Miller, the victim's friend, took her to Food World in Alabama between 7:00 and 7:30 p.m. to meet someone named "Eric." Miller informed the police that the victim left Food World with the person known to her as "Eric," who was driving a dark blue Chevy S-10, newer model pickup truck. "Eric" was wearing a baseball cap and eyeglasses at the time. Miller did not get a good look at the male because it was dark, and she did not specifically identify him as the defendant. The police obtained surveillance footage showing the victim getting out of Miller's vehicle and getting into a vehicle as described.

Beth Smith also informed Detective Demma that she knew the victim planned to leave Alabama with "Eric Buras." Smith further stated the victim knew Buras from a trailer park where she used to live. Smith identified the defendant by photograph as the "Eric Buras" to whom she referred. Although she did not see

them on the night in question, Smith had seen the victim with the defendant one or two nights before.

The police then determined the defendant's place of employment and address and discovered that the defendant was not at work on the date of the offense. Moreover, they determined that the defendant drove a blue Chevrolet S-10 pickup truck. The defendant's address was on Irvington-Bayou La Batre Highway, in Irvington, Alabama. Officers of the Mobile County Sheriff's Office and St. Tammany Parish Sheriff's Office went to the defendant's address. Detective Richard Bryars of the Mobile County Sheriff's Office testified that the officers went to the defendant's residence to secure the home and the vehicle while seeking search warrants. Although the defendant and Claudia Jane Buras were divorced at the time of the trial, at the time of the offense Ms. Buras was married to and residing with the defendant. Detective Bryars stated that when he and other detectives approached Ms. Buras, outside of the Buras's residence to ask about the defendant's whereabouts, she stated that the defendant was at work but she granted them permission to enter the residence, stating, "[G]o right ahead," and she walked them to the door.

Captain Barney Tyrney of the St. Tammany Parish Sheriff's Office was present at the defendant's residence. Captain Tyrney testified that Ms. Buras stated that the defendant was not home and when asked if it would be okay for the officers to go inside and look around the home to confirm that, she agreed and escorted them. According to Captain Tyrney, the defendant appeared to be "hiding," when he was discovered just outside the back door to a porch or utility room of the home and looking up through a window. Captain Tyrney grabbed the



defendant and forced him down to check for weapons. After the pat down, the defendant stood up and the "situation was calm at that point." Neither Captain Tyrney nor Detective Buras recalled the defendant being handcuffed or any weapons being pointed at him. Captain Tyrney further testified that the defendant was transported to the station on a voluntary basis.

During cross-examination, Captain Tyrney stated that he may have drawn his weapon before entering the home but he was not certain. He remembered there was a small child inside the home but noted that Ms. Buras was not holding the baby when they first encountered her outside but she did have the child at some point inside the home. Ms. Buras testimony conflicted with that of the officers; Ms. Buras testified that she was holding her baby when she initially encountered the police officers outside.

Captain Tyrney could not recall whether the defendant was **Mirandized** after he was identified at his residence but stated that the defendant was asked if he would come to the station to be questioned, and the defendant agreed. Captain Tyrney further testified that they were only at the defendant's residence for ten or fifteen minutes before they went to the station. He was not certain as to whether the defendant was ever handcuffed; he only knew for certain that he did not handcuff the defendant.

St. Tammany Parish Sheriff's Office Detective DeJong and Detective Demma<sup>5</sup> interviewed Ms. Buras and the defendant. The defendant and Ms. Buras were taken to a substation for a brief period before being relocated to the Mobile County Sheriff's Office Investigations Division. Detective Demma provided

---

<sup>5</sup> At the time of the hearing, Detective Demma no longer worked with the sheriff's office.

consistent testimony regarding the information Ms. Buras provided as to the defendant's actions on the night in question and into the next morning. The officers obtained a recorded statement from Ms. Buras before interviewing the defendant. Detective Demma stated that he was informed of an attorney being present to represent Ms. Buras after she was questioned but before the defendant was questioned. Detective Demma testified that the defendant was not handcuffed and guns were not pointed at him at the station. Detective Demma further testified that the defendant was read his **Miranda** rights before questioning, and the defendant did not initially request an attorney. Detective Demma informed the defendant that they were conducting a homicide investigation and that he was a suspect. After being fully advised of his rights, the defendant was questioned. He admitted that he met the victim on the night in question and drove her to Louisiana. He stated that he ultimately drove her back to Alabama. After the officers informed him that the victim's body had been discovered, the defendant requested an attorney, and the questioning ceased. The officers then sought to obtain a warrant for the defendant's arrest.

The arrest warrant was typed by Detective Picone and dictated by Detective Demma, who noted that the verbiage in the third paragraph of the arrest warrant affidavit was not entirely accurate. The affidavit specifically included the following language:

On Sunday, November 14<sup>th</sup> between 7:30 and 8:00 p.m. Wilkerson was seen leaving Bayou Labatre, Alabama, with Eric Buras in his dark colored Chevrolet pick up truck, enroute to Slidell, Louisiana. According to witness, the two were going to make an illegal narcotics buy in Slidell. This witness positively identified Eric Buras as the individual she left with.

Detective Demma conceded that the statement was misleading in that it implied that one witness specifically identified the driver as the defendant. Detective Demma testified that the police, in actuality, concluded that the victim left with the defendant based on statements made by more than one witness, including Beth Smith, Latasha Miller, and Gene Wilkerson, a relative of the victim. Detective Demma acknowledged that Miller was unable to identify the defendant as the person she knew as Eric, with whom she witnessed the victim get in the blue Chevrolet S-10 pickup truck. Detective Demma testified that the error was inadvertent and although it had been brought to his attention, the incorrect language of the affidavit was used as a pattern for the affidavit for a subsequent search warrant. He testified that his police reports provided an accurate account of the police investigation determinations.

During cross-examination, Detective Demma confirmed that there was no statement in his report that indicated that Miller mentioned the driver as wearing eyeglasses although Detective Demma recalled her stating so. His report also did not state that he informed the defendant of the purpose for the questioning, although he testified that he did so before questioning the defendant. Detective Demma specified that he noticed the error in the affidavit when he reviewed the basis for the search warrant for the defendant's residence at the time of its execution. Detective Demma confirmed that the search warrant for the defendant's vehicle and to obtain DNA evidence from the defendant also tracked the language from the arrest warrant. Detective Demma stated that the officers decided to keep the language for the warrants consistent and stated that it was debatable as to whether the verbiage could be considered false.

Ms. Buras proffered testimony before the motion to suppress hearing before testifying again at the hearing. Her testimony indicated that on November 16, 2005, two officers approached her when she checked the mail just outside of her residence, consistent with the testimony of the police. According to Ms. Buras, she was holding her baby at the time. Ms. Buras stated that she wanted the officers to wait before entering because she needed to change her baby's diaper. During cross-examination, she testified that over ten police officers were at a store next door to her residence when two of the officers approached her. She further stated that the officers did not state their purpose for being there. During her pre-hearing proffered testimony, she stated that she informed them the defendant was not there but testified at the hearing that she informed the officers that she did not know where he was, adding, "because he was somewhere in the house and I really didn't know where he was at the time."

According to Ms. Buras, the officers entered her residence with guns drawn, shoving her onto her sofa while she was holding her baby. When asked if the officers did not have permission to enter the residence at that time, Ms. Buras responded positively. She stated that six officers entered the residence, and the defendant was found on the back porch with their dogs. The defendant was thrown on the ground and patted down before being taken to the police station. Ms. Buras further testified that the police told her that she did not have to come to the station, but she went on her own free will. According to Ms. Buras, the officers were at their house for about an hour to an hour and a half before they were transported to the police station. During that time period, neither of them was handcuffed, and they were outside talking to the officers. Her father, who

lived next door, approached the fence while they were outside and said he would try to get them an attorney. While she was unsure, she stated that the police may have taken possession of the defendant's wallet and its contents and the truck at that time.

Ms. Buras further testified that upon arrival at the substation, they sat in a room about an hour to an hour and a half. A detective they knew came to take the defendant to another substation and handcuffed him. She went with the defendant and waited in a room about two hours. She stated that an attorney was there for her and the defendant, and that she personally talked to the attorney before she was questioned. She testified, however, that she did not need an attorney and did not ask to speak to an attorney. She admitted that she initially lied to the police in an effort to protect her husband. She ultimately informed the police that on November 13, 2005, the defendant left home around dusk, between 6:00 and 6:30 p.m., wearing carpenter jeans, slip-on Dr. Scholl's shoes, and a Jeff Gordon hat with the number twenty-four on it and a Velcro closing, travelling in a blue Chevy S-10 truck. She testified that the defendant was protective of his truck and would not allow her or anyone else to drive it.

Ms. Buras called the defendant several times that night, but he did not answer the phone calls. She stated that the defendant returned about 2:30 to 3:00 a.m., soaked from his waist down. Ms. Buras was awake when he came home angry. The defendant was wearing sandals, as opposed to the slip-on shoes that he had on when he left the night before, and a tank-top shirt with no sleeves, as opposed to the T-shirt that he was wearing when he left. She stated that the defendant took off his wet clothes and began cleaning his truck when he came

home that morning. Ms. Buras noted that she discovered sand in the washing machine after washing the defendant's clothes. Ms. Buras was shown State's exhibits M-1, 2, 5, 6, 7, and 8. She identified the defendant's hat, shirt, shoes, boxers, and wallet. When asked if she knew the victim, Ms. Buras stated that before she and defendant were married, they lived next door to the victim in a trailer park for about two weeks. She stated that she left the police station about 1:30 or 2:00 a.m.

Reginald Collins, Ms. Buras's father, testified that when he came outside and asked his daughter what was going on, she stated that she did not know, and an officer told him that it was not his business. Collins instructed the defendant and his daughter to "keep your mouth shut until I get a lawyer." Collins testified that the officers were outside of the residence with the defendant and Ms. Buras for fifteen to twenty minutes before Collins left to go to his office. According to his testimony, he was able to inform Joe Kulakowski, an attorney, that the incident involved a death, stating that he was informed so by Ron Goldman, the first attorney he contacted. He stated that Kulakowski went to the station and was denied access to the defendant and Ms. Buras. Collins called his daughter on her cellular telephone and told her that the attorney was at the station. Kulakowski called Collins and informed him that he could not represent both the defendant and his daughter, and Collins instructed him to represent his daughter.

Defense witness Officer Michael Futch testified that he assisted detectives in the execution of the DNA search warrant on January 6, 2006. Officer Futch testified that, in accordance with his report, the officers met at the St. Tammany Parish jail that morning at approximately 9:00 a.m. He confirmed that the time

and date on the DNA evidence search warrant signed by the judge was January 6, 2006, 10:05 a.m. During cross-examination, he further confirmed that he was not relying on his independent recollection but on his report. He was, however, certain that the DNA swab was taken subsequent and pursuant to the acquisition of the warrant.

In denying the motions to suppress, the trial court concluded that the police officers had probable cause to believe that the defendant was the person with whom the victim left. The trial court noted that the affidavits reflected an accumulation of information that was gathered by the investigating officers in connection with their investigation of the crime. The trial court did not believe that Detective Demma and Detective Picone made intentional misrepresentations or presented fraudulent information. The trial court further found that if the misleading portion of the affidavit were excised, there was still a basis for probable cause to link the defendant to the offense, noting the statements provided by Ms. Buras and that blue fibers on the duct tape found at the scene may have been from the defendant's truck. Additionally, the trial court found that the statements by Ms. Buras and the defendant were free and voluntary under advisement of **Miranda** rights. It also noted that questioning ceased when the defendant requested an attorney.

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. See State v. Green, 94-0887, p. 11 (La. 5/22/95), 655 So.2d 272, 280-81. However, a

trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589, p. 6 (La. 12/1/09), 25 So.3d 746, 751.

### **Misrepresentations and Probable Cause**

Probable cause for an arrest exists when the facts and circumstances known to the police and of which the police have reasonable trustworthy information are sufficient to justify a person of average caution in the belief that the person to be arrested has committed a crime. **State v. Williams**, 448 So.2d 659, 662 (La. 1984). The fact that a better showing of probable cause could be made by the affiant does not detract from the showing of probable cause that is made. *Id.* at p. 663. Minor inaccuracies in assertions in the affidavit may not affect the validity of the warrant. *Id.* However, if intentional misrepresentations designed to deceive the issuing magistrate are made by the affiant seeking to obtain the warrant, the warrant must be quashed. *Id.* Alternatively, if unintentional misstatements are included, these misstatements must be excised and the remainder used to determine if probable cause for the issuance of a warrant is set forth. *Id.* Similarly, when the affiant omits material facts without intent to deceive, the reviewing court must add the omitted facts to those originally included and retest the sufficiency of the showing of probable cause. *Id.* The term "intentional" means a deliberate act made for the purpose of deceiving the magistrate. **State v. Rey**, 351 So.2d 489, 492 n.1 (La. 1977).

The same body of law applies to search warrants. The making of material and intentional misrepresentations to a magistrate in an effort to secure a search warrant involves a fraud upon the court and results in the invalidation of the warrant and suppression of the items seized. If the misrepresentations or



omissions are inadvertent or negligent, the warrant should be retested for probable cause after supplying that which had been omitted or striking that which had been misrepresented. **State v. Byrd**, 568 So.2d 554, 559 (La. 1990).

Based on the circumstances presented in the instant case, we conclude that the trial court did not err when it denied the motions to suppress based on allegations in the affidavits. The affiant need only specify "to the best of his knowledge and belief" the basic details of the crime alleged to have been committed. The person executing the affidavit upon which the warrant is issued is not required to have firsthand knowledge of the offense alleged to have been committed. **State v. Jenkins**, 338 So.2d 276, 280 (La. 1976). See La. C.Cr.P. art. 202(A).

There is no indication of intentional misrepresentations or deliberate deception. It is clear that the Louisiana and Alabama police officers were working together and relaying information to each other in an effort to investigate the death of an Alabama resident whose body was found in Louisiana. While no witness specifically identified the defendant as the person with whom the victim was seen getting into the defendant's truck on the night in question, the statements that the police obtained from several witnesses contained an abundance of evidence from which one could reasonably conclude that the victim left with the defendant as indicated in the affidavits.

Moreover, if we assume that the information in question (that the witness saw the victim leave with the defendant) was misleading and excise it, the unchallenged information remaining within the affidavits constitutes probable cause for the issuance of the warrants. Miller did see the victim get into a

Chevrolet pickup truck; that portion is not challenged as misleading. The officers' confirmation that the defendant had such a vehicle is documented in the affidavit. Another witness, Smith, informed the police that the victim went to Slidell, Louisiana, with the defendant on the night in question. As stated in the affidavits, a Jeff Gordon baseball cap with the number twenty-four was recovered at the scene along with duct tape with possible white animal hair stuck to the roll. The affidavit further indicates that two white-haired dogs were located at the defendant's residence. Ms. Buras' statements also were included in the affidavit, including the fact that the defendant left their home on the night in question wearing the described baseball cap and returned home with wet clothes, which left sand in her washing machine when they were washed. Thus, the warrants were based on probable cause that the defendant committed the instant offense. The counseled assignment of error and *pro se* assignments of error numbers one, two, and three are without merit.

#### **Buccal Swab/DNA Warrant**

The testimony presented at the hearing does not establish the exact time the buccal swab was taken from the defendant. While the officers may have met at approximately 9:00 a.m., Officer Futch's testimony established that the swab was not taken until *after* the search warrant for the evidence was obtained. Thus, we find there is no merit to the argument raised in the fourth *pro se* assignment of error.

#### **Detention**

In **Payton v. New York**, 445 U.S. 573, 576, 100 S.Ct. 1371, 1374-75, 63 L.Ed.2d 639 (1980), the Court squarely held that the Fourth Amendment, made

applicable to the states by the Fourteenth Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest. However, a consensual entry to effect a lawful arrest does not violate **Payton**. **State v. Penny**, 486 So.2d 879, 885 (La. App. 1st Cir.), writ denied, 489 So.2d 245 (La. 1986).

We conclude that the probable cause for the defendant's arrest, though later bolstered, materialized before the officers transported the defendant from his residence. As noted, among other items, the police discovered a baseball cap at the scene near the victim's body and observed evidence of a struggle. The night before her death, Miller saw the victim get into a Chevrolet pickup truck with someone she knew and identified as "Eric," who was wearing a baseball cap at the time. The police observed surveillance footage showing the victim entering a vehicle as described. The officers confirmed that the defendant had such a vehicle. Smith, who knew the defendant and made a photographic identification of him, told the police that the victim went to Slidell, Louisiana, with the defendant on the night in question. After obtaining the defendant's address and place of employment, the officers confirmed that the defendant was not at work on the date of, or at the time of, the offense. This information, known to the officers before they approached the defendant at his residence, was sufficient to constitute probable cause for the defendant's arrest.

According to their testimony, the officers had consent to enter the defendant's residence. Although their testimony was contradicted by Ms. Buras' testimony, the trial court obviously determined the officers were more credible. Based on the consensual entry and the existence of probable cause for the

defendant's arrest, the defendant was not "illegally detained" at any point after the officers found him at his residence. Thus, we find no merit in the argument raised in *pro se* assignment of error number five.

#### **Reason For Arrest or Detention**

Authorities are also required by the Louisiana Constitution to advise a person "fully of the reason for his arrest or detention" and of his constitutional rights if the person "has been arrested or detained in connection with the investigation or commission of any offense." La. Const. art. I, § 13; see La. C. Cr. P. art. 218.1.

The defendant was not questioned and did not make any statements at his residence. According to the testimony presented at the hearing, the defendant was fully advised of his **Miranda** rights and fully informed of the reason for the questioning before he was questioned and made statements to the police. Questioning was ceased when the defendant requested an attorney. The officers testified that the defendant and Ms. Buras were not threatened or coerced in any manner. Accordingly, we find no merit in the argument raised in *pro se* assignment of error number six.

The record contains ample evidence in support of the factual and credibility determinations by the trial court. Based on the foregoing reasons, we find that the trial court did not err or abuse its discretion in denying the motions to suppress.

#### **DECREE**

For these reasons, we affirm the defendant's conviction and sentence.

**CONVICTION AND SENTENCE AFFIRMED.**