

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0688



STATE OF LOUISIANA

VERSUS

KENTDELL E. LANDRY

Judgment Rendered: February 10, 2011

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Trial Court Number 04-09-0083**

Honorable Richard D. Anderson, Judge Presiding

**Hillar C. Moore, III
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Baton Rouge, LA**

**Counsel for Appellee,
State of Louisiana**

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Mandeville, LA**

**Counsel for Defendant/Appellant,
Kentdell E. Landry**

BEFORE: WHIPPLE, KUHN AND GUIDRY, JJ.

Guidry, J. concurs in the result.

WHIPPLE, J.

The defendant, Kentdell E. Landry, was charged by indictment with one count of aggravated rape, a violation of LSA-R.S. 14:42, and two counts of armed robbery, violations of LSA-R.S. 14:64. The defendant pled not guilty. Prior to trial, the defendant filed a motion to suppress his January 6, 2009 confession, urging he made the inculpatory statements while under the influence of drugs and alcohol. The trial court denied the motion.

Following a jury trial, the defendant was found guilty as charged of aggravated rape and one count of armed robbery. On the third count, the defendant was found guilty of the responsive offense of attempted armed robbery. For the aggravated rape conviction, the trial court sentenced the defendant to life imprisonment at hard labor. The trial court sentenced the defendant to twenty-five years at hard labor for the armed robbery conviction and twenty years for the attempted armed robbery conviction. The trial court ordered that all three sentences be served without the benefit of parole, probation, and suspension of sentence.¹

The defendant now appeals, urging in two related assignments of error that the trial court erred in permitting, over defense objection of unfair prejudice, testimony concerning the defendant's conversation about the meaning of a lyric, which was sexual in nature, in a rap song. For the following reasons, we affirm the defendant's convictions and sentences.

FACTS

On the night of December 23, 2008, R.S. and her friend, K.G., borrowed a movie from a friend and watched it in the living room of R.S.'s apartment.²

¹The minute entry shows the trial court ordered the sentences to run concurrently.

²In accordance with LSA-R.S. 46:1844(W), we have used initials herein when referring to the crime victims.

At some point, they fell asleep. In the early morning hours on December 24, 2009, they were awakened by the sound of the front door of the apartment being forcefully kicked open.

The defendant, whom R.S. and K.G. did not know, entered the apartment holding a gun and wearing a bandana over the lower part of his face. The defendant rushed toward K.G. and hit him. After K.G. fell to his knees, the defendant ordered R.S. to tie K.G.'s hands.

While holding the gun, the defendant told R.S. to take off her clothes. When R.S. cried and objected, the defendant hit her in the face. The defendant then raped R.S. After raping R.S., the defendant took a television, a bag of Christmas presents, a game system, and two cell phones. The defendant then fled from the apartment.

The investigation that followed eventually led the East Baton Rouge Parish Sheriff's Department to focus on the defendant. Detective Jordan Webb and Lieutenant Leonard Moore first contacted the defendant on January 6, 2009, at his residence. In his initial contact with the defendant, Detective Webb noticed that the defendant fit the physical description of the person believed to have perpetrated the crimes. At that point, Detective Webb verbally advised the defendant of his **Miranda** rights. The defendant agreed to accompany the officers to the downtown police office for an interview.

Lieutenant Moore drove the defendant to the police station in a police vehicle, with Detective Webb sitting in the back seat of the vehicle with the defendant. During the transport, the defendant engaged in casual conversation with the officers, including explaining the meaning of a lyric of a rap song that was playing on the radio of the police vehicle.

Before Lieutenant Moore began questioning the defendant at the police station, he advised the defendant of his Miranda rights and the defendant signed a

waiver-of-rights form. The defendant's January 6, 2009 interview was videotaped. During the interview, the defendant admitted to entering the apartment on December 24, 2009, wearing a bandana over his face and brandishing a gun. He confessed to ordering R.S. to tie K.G.'s hands with a zip tie that he brought with him, having sex with R.S., and taking the television and the other items. At that point, the defendant was placed under arrest.

ASSIGNMENTS OF ERROR

In his two related assignments of error, the defendant contends that the trial court abused its discretion in allowing Detective Webb to testify as to the conversation involving the defendant's interpretation of the lyric in the song that was playing on the radio during the drive to the police station, and that this abuse of discretion was not harmless error. Specifically, the defendant urges that whatever probative value the specifics about the song lyric may have had was substantially outweighed by the danger of unfair prejudice, as interpretation of the lyric was sexual in nature and derogative to females. The defendant argues that the testimony was meant to inflame the jury and to call into question his character during his trial for aggravated rape. Conversely, the state contends that the testimony was relevant to establish the defendant's demeanor, the relaxed atmosphere in the car, and the defendant's ease of conversation with the officers, who would ultimately take his recorded statement. The state argues that the testimony was relevant to show the circumstances that led up to the defendant's confession and that the confession was given freely and voluntarily.

Any evidence is relevant if it tends to prove or disprove the existence of any material fact. State v. Mosby, 581 So. 2d 1060, 1065 (La. App. 1st Cir. 1991), affirmed, 595 So. 2d 1135 (La. 1992); see also LSA-C.E. art. 401. All relevant evidence is generally admissible. LSA-C.E. art. 402. However, even relevant evidence may be excluded if its probative value is substantially outweighed by the

risk of unfair prejudice. LSA-C.E. art. 403. The determination of whether the probative value is outweighed by any prejudicial effect is left to the discretion of the trial court and that determination will not be overturned on appeal in the absence of a clear abuse of discretion. See State v. Mosby, 595 So. 2d at 1139; cf. State v. Williams, 615 So. 2d 1009, 1022 (La. App. 1st Cir.), writ denied, 619 So. 2d 543 (La. 1993).

Before a confession can be admitted into evidence, the state must prove that it was given freely and voluntarily and not obtained under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. State v. Godeaux, 378 So. 2d 941, 943 (La. 1979); see also LSA-R.S. 15:451. The record before us reveals the defense's strategy was to cast doubt as to whether the defendant's January 6, 2009 confession to the crimes was voluntary, due to intoxication. Intoxication is among the factors to be considered in determining if a confession is free and voluntary. Intoxication will render an inculpatory statement inadmissible only where the intoxication is of such a degree that the defendant's ability to comprehend the consequences of his statement has been negated. State v. Mitchell, 437 So. 2d 264, 267 (La. 1983).

A ruling upon a motion to suppress that is rendered prior to trial on the merits is generally binding at trial. LSA-C.Cr.P. art. 703(F). Thus, in this case, the trial court's earlier ruling that denied the motion to suppress the defendant's January 6, 2009 confession effectively rendered it admissible at trial. See State v. Brown, 481 So. 2d 679, 684 (La. App. 1st Cir. 1985), writ denied, 486 So. 2d 747 (La. 1986).

Nonetheless, when a ruling on a motion to suppress a confession or statement is adverse to the defendant, the state must, prior to presenting the confession or statement to the jury, introduce evidence concerning the circumstances surrounding the making of the confession or statement for the

purpose of enabling the jury to determine the weight to be given the confession or statement. Brown, 481 So. 2d at 684-85; see also LSA-C.Cr.P. art. 703(G). Accordingly, the trial court's prior determination of the admissibility of the defendant's confession did not relieve the state of its burden at the jury trial to show the circumstances surrounding the defendant's confession which led to its admissibility at trial. Moreover, the adverse ruling on defendant's motion to suppress his confession did not prevent the defendant from introducing evidence during the jury trial concerning the circumstances surrounding the making of the confession. Louisiana Code of Criminal Procedure article 703(G) allows a defendant to introduce such evidence for the purpose of enabling the jury to determine the weight to be given the confession or statement.

The party seeking to introduce testimony over an objection has the burden of showing that the objected to testimony is relevant. State v. Jones, 2003-0829 (La. App. 4th Cir. 12/15/04), 891 So. 2d 760, 767, writ denied, 2005-0124 (La. 11/28/05), 916 So. 2d 140. The record reveals that, as a predicate to the state offering the defendant's recorded January 6, 2009 interview into evidence, Detective Webb and Lieutenant Moore testified regarding the events that occurred and their observations of the defendant's behavior, mood, and demeanor from the time the defendant first came into contact with them until the conclusion of the defendant's confession. The officers testified that the defendant was advised of his Miranda rights prior to agreeing to accompany them to the police station, and again before the defendant was interviewed by Lieutenant Moore. The officers stated they did not detect the odor of alcohol or marijuana on the defendant or emanating from his residence. There was nothing to indicate - and they did not suspect - that the defendant was under the influence of drugs or alcohol. The officers' testimony also included their observation of the nature of the defendant's interaction with them prior to the defendant admitting to the crimes. The conversation that

occurred during the drive to the police station was relevant to show the context and bases for the officers' testimony and observations that the defendant was relaxed, he engaged in casual conversation, and that a casual and relaxed rapport existed between the defendant and the officers. Lieutenant Moore testified that he and the defendant engaged in small talk about the neighborhood where he and the defendant grew up and where they went to high school. At some point, Lieutenant Moore turned on the radio in the car, eventually stopping on a station playing a rap song. The officers and the defendant were listening to the song, when the defendant asked them if they knew what a specific lyric in the song, "superman that ho," meant. When the officers said they did not know what it meant, an exchange ensued that included the defendant's casual, but graphic, explanation of that lyric. Detective Webb was the first to testify about the officers' interaction with the defendant. Over the defense's objection, the trial court allowed the following testimony from Detective Webb:

Q: Detective, describe for us how you had a conversation about music?

A: There was a specific song on with lyrics, something superman that ho. Kentdell asked us if we knew what the term superman that ho meant, which we did not, told him we didn't, and he proceeded to tell us his interpretation of it to be when you have sex with a female from behind, ejaculate on her back, put a towel or some sort of sheet on her and make her walk around like superman.

A trial court determines whether evidence is relevant by deciding whether it bears a rational connection to the fact which is at issue in the case. State v. Chester, 97-2790 (La. 12/1/98), 724 So. 2d 1276, 1287, cert. denied, 528 U.S. 826, 120 S. Ct. 75, 145 L. Ed. 2d 64 (1999). Detective Webb's testimony shows that, during the ride to the police station, the defendant was alert, able to initiate a conversation with the officers about the meaning of a lyric in the rap song, able to effectively communicate what he believed the specific lyric meant, and that the tone in the car

was relaxed. The testimony was probative, relevant and admissible to allow the state to meet its burden of showing the defendant's January 6, 2009 confession was free and voluntary and to enable the jury to determine the weight to be given to it based on the circumstances surrounding the confession.

Once the state showed Detective Webb's testimony was relevant, the burden shifted to the defendant to show it was inadmissible because its probative value was substantially outweighed by the risk of unfair prejudice. See Jones, 891 So. 2d at 767; see also LSA-C.E. art. 403. The record reveals that during the defense's cross-examination of the officers, the defense asked the officers whether the defendant was holding a can of beer when he answered the door on January 6, 2009. Both officers did not recall the defendant holding a beer. The defense's presentation included testimony from the defendant's father stating that he and the defendant began drinking beer soon after they got up and the defendant handed him the beer he was holding prior to leaving with the officers. The defendant also testified on his own behalf at trial. He stated that prior to the officers coming to his door, he was probably on his fourth beer and that he handed his father the beer after answering the door. The defendant recalled smoking "a couple of blunts with some friends."

The defendant also provided the jury with his account of the conversation he had with the officers concerning the meaning of the specific lyric in the rap song. The defendant's version echoes the account provided by Detective Webb and shows the detective did not exaggerate or alter the defendant's interpretation of the lyric. Notably, only a small portion of the officers' trial testimony concerned the discussion in the car about the rap song. Moreover, there is no indication in the record that the state's questioning on this point was excessive or unnecessarily cumulative.

CONCLUSION

Clearly, the defense's cross-examination of the officers and the testimony presented during the defense were intended to question the credibility of the officers' account of the circumstances surrounding the defendant's confession and to cast doubt as to whether the defendant's alleged use of marijuana and consumption of alcohol rendered the confession involuntary. In this context, and considering that the objected to testimony showed not only the tone of the officers' interaction with the defendant, but also that the defendant behaved in a rational manner and clearly comprehended the circumstances and consequences of his statements, we find no abuse of discretion by the trial court in permitting the testimony at issue. For these reasons, we find no merit in the defendant's assignments of error. Accordingly, the defendant's convictions and sentences are hereby affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.