

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 2082

STATE OF LOUISIANA

VERSUS

BRUCE D. HINES

DATE OF JUDGMENT: JUN - 8 2012

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 901086, DIVISION C, PARISH OF TANGIPAHOA
STATE OF LOUISIANA

HONORABLE ROBERT H. MORRISON, III, JUDGE

Scott Perrilloux, D.A.
Patricia Parker Amos, A.D.A.
Amite, Louisiana

Counsel for Appellee
State of Louisiana

Michael Thiel
Timothy Fondren
Hammond, Louisiana

Counsel for Defendant-Appellant
Bruce D. Hines

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: CONVICTIONS AND SENTENCES AFFIRMED.

Guidry, J. concurs in the result.

KUHN, J.

The defendant, Bruce Darnell Hines, was charged by bill of information (as amended) with two counts of armed robbery, violations of La. R.S. 14:64. (R. 15). The defendant entered a plea of not guilty. (R. 1). The trial court granted the defendant's motion to suppress inculpatory statements. (R. 4, 369). The State filed a writ application with this Court seeking review of the trial court's ruling. In granting the State's writ application, this Court vacated the trial court's ruling granting the defendant's motion to suppress and remanded the matter to the trial court for reconsideration. *State v. Hines*, 2010-1993 (La. App. 1st Cir. 12/17/10) (unpublished). Upon remand, the trial court denied the defendant's motion to suppress. (R. 5). This Court denied the defendant's writ application seeking review of the trial court's ruling. *State v. Hines*, 2011-0953 (La. App. 1st Cir. 6/2/11) (unpublished). After a trial by jury, the defendant was found guilty as charged on both counts. The trial court denied the defendant's motion for new trial and supplemental motion for new trial. (R. 10). Subsequently, the defendant was sentenced to fifty years imprisonment at hard labor on each conviction, to be served concurrently. (R. 10-11, 1228, 1242). The defendant now appeals, challenging the trial court's ruling on his motion to suppress upon remand. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On or about January 2, 2009, at approximately 6:30 p.m., armed assailants later identified as Antonio Hines (the defendant's son) and August Jones rang the doorbell at the residence of Reverend Lenach Dokes, Sr., and his wife, Betty

Dokes, located at 12354 Steptoe Road in Tangipahoa Parish.¹ When Reverend Dokes opened the door, the assailants initially requested assistance under the guise of having car trouble, and then gained entry at gunpoint. (R. 849-53; 857-59, 863-64, 872-78). According to Reverend Dokes, Antonio Hines referred to him by his last name as he told him to shut up when the Reverend pleaded with Jones not to comply with Antonio Hines's instruction to shoot Mrs. Dokes. (R. 860, 876-77). The assailants took cash, several firearms, and jewelry before fleeing the home. (R. 860-61, 866, 875-77) The Tangipahoa Parish Sheriff's Office (TPSO) was dispatched to the scene when the victims called 911. (R. 849-50, 863).

Subsequently, Captain Kevin Duvall of the Louisiana State Police Criminal Investigation Unit instructed subordinate detectives to attempt to purchase stolen weapons in an undercover capacity from known criminals. (R. 907-08). As a confidential informant, the defendant assisted the police with controlled purchases of firearms that led to the arrest of his son, Jones, and Quattrick Holmes. (R. 910). Based on statements made by the arrestees, the police determined that the purchased firearms were the ones taken during the armed robberies of the Dokes, and the defendant was implicated in those armed robberies. When the defendant later met officers under the pretense that he would be collecting payment for his cooperation as a confidential informant, he was placed under arrest. (R. 912-14). Statements made by the defendant upon his arrest are at issue herein.

¹ The Dokes did not know the assailants; however, Betty Dokes' niece was married to the defendant, who had been in the Dokes' residence on several occasions before the robbery took place. (R. 864-65, 877-78). The record interchangeably indicates that the victims' home is located in Roseland or Arcola, Louisiana. (R. 36, 81, 857, 872).

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant raises several arguments in support of his challenge of the trial court's ruling upon remand on his motion to suppress. The defendant argues that his due process, fundamental fairness, and confrontation rights were violated, contending that the State failed to give him material and exculpatory evidence that was used at the trial in the form of hearsay. In that regard, the defendant argues that he could not effectively cross-examine the trooper, since his testimony about the confession was based on his memory and the original communication was not available. The defendant contends that the officer admitted during a preliminary motion hearing that he could not remember specifics of the confession, but then remembered specific details of an inculpatory nature during the trial.

Further, the defendant cites La. R.S. 15:450 and *State v. Haynes*, 291 So.2d 771 (La. 1974), in arguing that the State was required to present the confession in its entirety. The defendant further contends that his initial exculpatory statements were not preserved. The defendant argues that the trial court should have suppressed the confession evidence produced by the State or, alternatively, granted a new trial absent the evidence, based on the State's failure to preserve material exculpatory evidence or the exercise of bad faith in not preserving the same. Citing La. C.E. art. 1002, the defendant contends that the Louisiana Code of Evidence precludes the introduction of testimonial evidence in lieu of producing an original writing, recording, or photograph.

The State has the burden of proving the admissibility of a purported confession or statement by the defendant. La. C.Cr.P. art. 703(D). 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 (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*, 09-1589 (La. 12/1/09), 25 So.3d 746, 751.

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. See 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*² rights. The admissibility of a confession is a question for the trial court. As with the testimony relative to the physical evidence, the trial court's conclusions on the credibility and weight of the testimony relating to the voluntary nature of the defendant's confession are accorded great weight and will not be disturbed unless they are not supported by the evidence. *Hunt*, 25 So.3d at 754. The trial court must consider the totality of the circumstances in deciding whether or not a confession is admissible. *State v. Plain*, 99-1112 (La. App. 1st Cir. 2/18/00), 752 So.2d 337, 342. Testimony of the interviewing police officer alone may be sufficient to prove that the statement was given freely and voluntarily. *Hunt*, 25 So. 3d at 755.

The instant record contains two pro se motions and one counseled motion to suppress the statements and/or confession, challenging their voluntary and

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

informed nature. (R. 118-19, 126, 151). The first hearing on the motions took place on August 25, 2010. (R. 365). At the initial hearing, the defendant submitted the issue based on the written motions and the State stipulated that the officers took a statement, that the statement was recorded, and that the recording was no longer in existence. (R. 368). At that point, on a self-asserted basis of spoliation, the trial court granted the motion to suppress, noting that the recording was the absolute best evidence. (R. 368-69). The State then sought supervisory writs with this Court. In considering the State's writ application, this court issued the following action:

WRIT GRANTED. The trial court's ruling granting defendant's motion to suppress is vacated, and this matter is remanded to the district court for reconsideration. When all originals of a recording have been lost or destroyed, other evidence is admissible to prove its contents, unless the proponent has lost or destroyed the recording in bad faith. See La. Code Evid. art. 1004. Further, absent a showing of bad faith, the failure to preserve potentially useful evidence does not constitute a denial of due process. **Arizona v. Youngblood**, 488 U.S. 51, 58, 109 S.Ct. 333, 337, 102 L.Ed.2d 281 (1988), rehearing denied, 488 U.S. 1051, 109 S.Ct. 885, 102 L.Ed.2d 1007 (1989). On remand, the trial court should determine whether the loss or destruction of defendant's recorded statement occurred in bad faith.

State v. Hines, 2010-1993 (La. App. 1st Cir. 12/17/10) (unpublished).

In response to this Court's ruling, the trial court held a full hearing on April 13, 2011. (R. 374). At that second hearing, testimony was adduced indicating the Dokes family named the defendant as a possible suspect for the armed robberies. (R. 395). At the time, the defendant was a state police confidential informant. After the defendant assisted with controlled buys of firearms, Antonio Hines, August Jones, and Quattrick Holmes were arrested. Statements by Antonio Hines and August Jones were recorded by Detective Arthur Gabriel of TPSO, who took

possession of the recordings and had them transcribed, while state police recorded Quattrick Holmes's statement. (R. 394). The statements implicated the defendant in the Dokes robberies. (R. 38, 65, 417-18).

Thereafter, Captain Duvall, Senior Trooper Brian Blount of the Louisiana State Police Criminal Investigation Unit, and Detective Gabriel met the defendant at the old TPSO substation, where he believed he would be collecting payment for his assistance. (R. 395, 418, 448). Upon the defendant's arrival, Trooper Blount immediately handcuffed him and read him his *Miranda* rights and told him he was being arrested for orchestrating the home invasion/armed robberies. Trooper Blount testified that the defendant initially denied any involvement until the officers informed him of the information they had already received. (R. 449). According to the officers, the defendant was not coerced, threatened, or beaten, no promises were made, and he never invoked his right to remain silent or his right to an attorney and did not appear to be intoxicated. (R. 391, 421, 450, 452-53).

Regarding the defendant's ultimate admission, Trooper Blount testified:

He – I believe he informed – he told – pointed out exactly where the house was to Quattrick Holmes – I'm sorry – to Antonio Holmes [sic]. Explained about how the female in the house, where she kept her money, inside her bra. Where the safe was. And I think it was a relative – distant relative – of his, or something, in some way.

(R. 451).

After being transported to the new TPSO substation, the defendant was again advised of his *Miranda* rights, executed a waiver of rights form, and confessed again with more details during a recorded interview. (R. 384-92, 422, 452; MTS-1). According to Detective Gabriel, the defendant stated during the recorded interview that he knew the Dokes family because his wife was a relative

of the family. He further stated that he told his son, Antonio Hines, and August "Petey" Jones that the family would be an easy "lick" because they were older people and they kept cash and a safe in the house. The defendant also noted that the Dokes family would not recognize his son and Jones, who were not from the area. (R. 390). Captain Duvall testified that he also heard the defendant admit his involvement in the robberies. (R. 420).

According to Detective Gabriel, the defendant made additional inculpatory statements while being transported to the Tangipahoa Parish jail in Amite. (R. 392, 402). Although Detective Gabriel could not recall verbatim the statements made by the defendant during transport, he testified that they were consistent with the defendant's recorded statements and that the defendant expressed regret at involving his son in the robberies. (R. 402-04).

Detectives Gabriel and Duvall testified that they never had possession of the recording of the defendant's statement, noting that they used Trooper Blount's recorder, that state police took possession of the tape, and that they did not destroy the evidence or instruct anyone to do so. (R. 393, 423-24). Captain Duvall, during cross-examination, further testified that the departmental policy regarding the handling of a physical microcassette after a statement was recorded was to label the evidence with the date, time, and the defendant's name and signature, and to remove the tabs to prevent rerecording. The evidence would sometimes be reviewed by the detective in preparing his report, and then would be sealed in an evidence envelope, placed in the case report, and routed up the chain. (R. 430).

Trooper Blount testified that he did not know what happened to the recording. (R. 453). Further, Trooper Blount testified that it was common for

electronic devices such as the one he used to record the defendant's statement to malfunction and fail to record. He could not recall whether the device actually recorded the defendant's statement or whether he downloaded the statement to his office computer, and responded negatively when asked if he erased or purposefully lost the recording. (R. 454-56). Trooper Blount could not recall the confession verbatim, but when asked to give his best recollection of the contents of the recorded statement, he testified that the defendant explained how he drove by the residence, informed the other perpetrators of the location of the money and other items, and explained how he orchestrated the incident. (R. 468).

At the end of the second hearing, the trial court deferred ruling. (R. 477). On May 10, 2011, the trial court denied the defendant's motion to suppress and this Court ultimately denied the defendant's writ application seeking review of that ruling. *State v. Hines*, 2011-0953 (La. App. 1st Cir. 6/2/11) (unpublished).³

During the trial, the officers were permitted to testify to the statements made to them by the defendant. The pertinent trial testimony was consistent with the testimony presented at the motion to suppress hearing on remand. Specifically, Trooper Blount testified that the defendant showed the other subjects the location of the home, told them that Mrs. Dokes kept money in her bra, and told them that there was a safe in the home that had money in it. (R. 969). Similarly, Detective Gabriel testified that the defendant stated that he planned the robbery, showed the other subjects the house and informed them that they would not have to cover their faces because they would not be recognized. Detective Gabriel further testified

³ The defendant's original application for review of the trial court's ruling was denied on the showing made. *State v. Hines*, 2011-0884 (La. App. 1st Cir. 5/19/11) (unpublished). As noted above, the writ application later was denied when the defendant re-filed the application.

the defendant stated that the Dokes family had a safe and money in their home, and that it would be an “easy lick to hit.” (R. 1045).

Every confession, admission, or declaration sought to be used against any one must be used in its entirety, so that the person to be affected thereby may have the benefit of any exculpation or explanation that the whole statement may afford. La. R.S. 15:450. The repeal of La. R.S. 15:436 and the adoption of the Code of Evidence resulted in the demise of any broad best evidence rule of exclusion of evidence. *State v. Francis*, 597 So.2d 55, 59 (La. App. 1st Cir. 1992). While La. C.E. art. 1002 requires the original document to prove the contents therein, under La. C.E. art. 1004(1), the original of a writing, recording, or photograph is not always required to prove its contents, and other evidence of the contents of a writing, recording, or photograph is admissible if all originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith.

Moreover, there is no due process requirement that a statement given to the police must be recorded. The law does not require the production of non-existent portions of the confession or portions that cannot be recalled. In the absence of proof to the contrary, the fact that the purported statement of the accused as testified to by the investigating officers does not consist of a verbatim reiteration of the conversation between them due to the witness's inability to recall or other valid explanation does not violate the rights of the accused. *State v. Thibodeaux*, 98-1673 (La. 9/8/99), 750 So.2d 916, 923-24, cert. denied, 529 U.S. 1112, 120 S.Ct. 1969, 146 L.Ed.2d 800 (2000). Further, Louisiana courts have allowed officers to testify in the place of playing taped video or audio recordings of confessions to the jury. See *State v. Gaskin*, 412 So.2d 1007, 1011 (La. 1982)

(which sanctioned an officer's testimony from a transcribed copy of a defendant's confession in lieu of the taped confession, which included reference to a codefendant). See also *State v. Williams*, 32,993 (La. App. 2d Cir. 3/1/00), 754 So.2d 418, 423 (which denied an ineffective assistance of counsel claim based upon counsel's failure to object to an officer's testimony concerning a tape-recorded statement of the defendant where the tape was inaudible); *State v. Johnson*, 30,078 (La. App. 2d Cir. 12/10/97), 704 So.2d 1269, 1273-75, writ denied, 98-0382 (La. 6/26/98), 719 So.2d 1054 (which found admissible the testimony of two police officers and defendant's parole officer as to the inculpatory content of a surveillance videotape that had been erased prior to trial where no bad faith had been demonstrated); and *Francis*, 597 So.2d at 59 (which upheld the admissibility of a police officer's testimony describing the contents of a barely audible tape recording of a drug transaction).

In denying the motion to suppress on remand, the trial court apparently made a credibility determination that the recording at issue was not lost or destroyed in bad faith and determined that the State carried its burden of proving that defendant's confession was given freely and voluntarily. The fact that the recording of the defendant's confession may have been more reliable than the officers' testimony goes to the weight, rather than the admissibility, of the evidence. Further, contrary to the defendant's assertion, the testimony regarding his inculpatory statements was not hearsay. La. C.E. art. 801(D)(2)(a). The defendant's counsel had the opportunity to cross-examine the officers as to the contents of the confession. Under these circumstances, no violation of La. R.S. 15:450 or the defendant's right to confrontation occurred.

Based on our review of the record, we find no error or abuse of discretion in the trial court's ruling denying the motion to suppress on remand. Having found the trial court correctly denied the motion to suppress on remand, we likewise conclude the trial court correctly denied the defendant's supplemental motion for new trial on the same basis. This assignment of error lacks merit.

CONCLUSION

For the reasons assigned, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.