

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 0324

STATE OF LOUISIANA

VERSUS

DARRELL WILLIAMS

DATE OF JUDGMENT: SEP 14 2011

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 08-07-0247, SEC. 7, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE DONALD R. JOHNSON, JUDGE

Hon. Hillar Moore
District Attorney
Baton Rouge, Louisiana

Counsel for Plaintiff-Appellee
State of Louisiana

Mark A. Dumaine
Sarah Tirrell
Assist. District Attorneys
Baton Rouge, Louisiana

Frederick Kroenke
Baton Rouge, Louisiana

Counsel for Defendant-Appellant
Darrell Williams

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Darrell Williams, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. Defendant entered a plea of not guilty. Following a trial by jury, defendant was found guilty as charged. The trial court sentenced defendant to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. Defendant now appeals, assigning error to the trial court's denial of his motion for mistrial, asserting that the State failed to give him notice of the existence of an inculpatory statement by the defendant. The defendant has also filed a pro se brief with a supplemental argument on the same issue. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On July 2, 2007, near 3:00 p.m., Riley Olinde, a resident of 8542 Hickock Drive in Baton Rouge, Louisiana, observed defendant lying in the doorway at 8610 Hickock Drive, next door to Olinde's residence. Olinde observed dried bloodstains on defendant's shirt. Defendant told Olinde that he had been stabbed and Olinde called for emergency assistance. As instructed by the emergency assistance dispatcher, Olinde entered the home and discovered the deceased victim, Sherrie Albert (with whom defendant fathered two children). The victim had multiple stab wounds, including one to the chest that punctured her atrium, and another to the abdomen that punctured her liver. The victim's body and a knife believed to be the murder weapon were discovered in a rear bedroom.

Defendant told responding police that he and the victim had gone to a nightclub and casino and sometime after they arrived at the residence, two

unknown masked men entered the home and attacked them. Defendant further stated that the attack took place during the early morning hours while they were in the bedroom and that he eventually crawled to the doorway to yell for help. Defendant was transported to the Earl K. Long Medical Center emergency room and treated for injuries "secondary to domestic dispute." Defendant had several non-life threatening injuries including superficial lacerations to the chest, arms, legs, and groin. A seven-centimeter laceration on defendant's left wrist, his sole serious injury, went through tendons, tissue, the radial artery and the median nerve, causing him to have lost a life-threatening amount of blood.¹ Defendant's urine drug screen was positive for cocaine, metabolites, and amphetamines. Due to the presence of dried blood and the lack of active bleeding, the emergency room assessment was consistent with defendant having sustained the injuries more than one day before being admitted.

Detective Sonya Harden of the East Baton Rouge Parish Sheriff's Office took a statement from defendant at the hospital. Defendant claimed to have spent time with the victim that entire weekend. According to defendant, before arriving at the residence on the night in question, the victim scratched defendant's face as they were riding in her vehicle when she became upset after he jokingly threw a shoe at her. Defendant also stated that the unknown male subjects barged into the bedroom as he and the victim were about to have sexual intercourse. One of the subjects used a silver-handled knife to stab defendant in the chest and wrist. He was able to maneuver his body to avoid the attempt to stab him in the genital area.

¹ Based on the location of this injury and the other superficial lacerations, Dr. Laura Richey and Dr. David Melton, emergency room attendants, concluded that defendant's injury was more likely self-inflicted as opposed to a defensive wound or one sustained in an attack.

Defendant further stated that he lay atop the victim's body in an attempt to convince the assailants that he was dead and stayed there for many hours before managing to get up to get something to drink and call for help in the doorway.

The police assessment of the physical evidence and the crime scene in its entirety included the discovery of the victim's purse on the back seat of her vehicle, an earring on the floorboard of the vehicle, an earring just outside of the vehicle, signs of a struggle and blood located throughout the home, and the absence of blood in the victim's vehicle. After the police concluded that the statement given by defendant was inconsistent with the crime scene, defendant was considered a suspect in the victim's murder, and they placed him under arrest on July 3, 2007. The DNA profile obtained from the knife handle was found consistent with defendant's DNA profile. Additionally, DNA profiles from all of the evidence collected and submitted for testing were consistent with either the defendant or the victim with an absence of any unknown DNA profile.

COUNSELED AND PRO SE ASSIGNMENT OF ERROR

In the counseled assignment of error, defendant argues that the trial court erred in denying his motion for mistrial based on the State's failure to comply with La. C.Cr.P. art. 716B. Defendant specifically asserts that the statements allegedly made to the emergency room physicians and duly recorded by them in the Emergency Room Record were not *res gestae* and, therefore, should not have been admitted because the State failed to give notice of their existence prior to its opening statement despite defendant's request for notice of inculpatory statements. The motion for mistrial was based on the testimony of Dr. David Melton, an emergency room attendant. In particular, Dr. Melton testified that the medical

records' characterization of defendant's injuries as the result of a domestic dispute (as opposed to a third-party attack) was based on information provided by the defendant. In moving for a mistrial, defendant contended that the testimony destroyed his defense. Defendant contends that mistrial is the only appropriate sanction in this case.

In his pro se brief, defendant urges that the State's failure to notify the defense of its intent to introduce an inculpatory statement violated La. C.Cr.P. art. 768. He asserts that although the defense was provided with the medical report prior to trial, the report does not show that the included information regarding a domestic dispute was based on statements by defendant. While acknowledging that the defense was granted pretrial discovery in this case, defendant argues that the State's failure to inform the defense that the medical report included a statement allegedly made by defendant denied the defense adequate time to prepare.

Before the trial, defendant moved to suppress his emergency room medical records based on the State's failure to comply with La. R.S. 13:3715.1 and the health care provider-patient privilege under La. C.E. art. 510. After the trial court granted the motion to suppress the medical records, defendant orally moved to exclude the testimony of the emergency room doctors under La. C.E. art. 510. The trial court ruled that the medical records and the testimony of the treating emergency room doctors were inadmissible. After the State applied for supervisory writs, this court reversed the trial court's ruling, see *State v. Williams*, 2009-1950 (La. App. 1st Cir. 10/27/09) (unpublished writ action), noting in part:

The mere failure to comply with La. R.S. 13:3715.1 does not render medical records inadmissible. See *State v. Skinner*, 2008-2522 (La.

5/5/09), 10 So.3d 1212. As to the trial court's ruling that the emergency room doctors who examined [the defendant] cannot testify based on health care provider-patient privilege, La. [C.E.] Art. 510(C)(2)(a) provides for an exception to the privilege if the communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense. Thus, the ruling of the trial court granting the defendant's motion to suppress is reversed and this matter is remanded to the trial court.

The Louisiana Supreme Court denied defendant's application for review. *State v. Williams*, 2009-2529 (La. 2/5/10), 27 So.3d 302.

At the trial, defendant objected to the admission of the medical records and noted his disagreement with the rulings of this court and the Louisiana Supreme Court. The trial court noted defendant's objection and admitted the evidence. During the State's direct examination, Dr. Laura Richey of the Emergency Department at Earl K. Long Medical Center testified that the emergency room records were filled out by the physicians attending to defendant. Dr. Richey recited the narrative regarding defendant's injuries including the "secondary to domestic dispute" reference. During cross-examination of Dr. Richey, the defense attorney elicited the following testimony regarding the emergency room medical documentation:

Q. Now, there's a lot of information contained here. If we go to the first page, you narrated it. Something about a domestic dispute?

A. Yes, sir.

Q. Tell me where that information came from.

A. That would have been what we call the current complaint as part of the history of present illness, and so that information would have come from the patient and then any – the EMS personnel, emergency medical services personnel who brought him in, may have contributed some of the information to that history of present illness.

Q. Now, Dr. Melton would be – he wrote this so he could tell us where he got this information; is that correct?

A. I would hope so. ...

The defense attorney asked Dr. Richey to again read the narrative regarding defendant's injuries that included the "secondary to domestic dispute" reference. During cross-examination, the defense attorney asked Dr. David Melton where the pertinent information in the medical report came from and he stated that it came from the patient. Based on this response, the defense moved for a mistrial, arguing that defendant did not receive notice of a statement to the emergency room attendant. In opposing the motion for mistrial, the State noted that the record clearly shows that defendant had notice of the statements in the medical report, specifically citing defendant's pretrial motion *in limine*, motion to suppress, and the rulings of this court and the Supreme Court regarding the motion to suppress.

Louisiana Code of Criminal Procedure Article 716B regulates discovery of statements made by defendant as follows:

Upon motion of the defendant, the court shall order the district attorney to inform the defendant of the existence, but not the contents, of any oral confession or statement of any nature, made by the defendant, which the district attorney intends to offer in evidence at the trial, with the information as to when, where and to whom such oral confession or statement was made.

Under Article 716B, defendant is not entitled to the contents of the statement, but only to notice of its existence as well as when, where, and to whom it was made. The rules of discovery rules are intended to eliminate unwarranted prejudice arising from surprise testimony, to permit the defense to meet the State's case, and to allow proper assessment of the strength of its evidence in preparing a defense.

State v. Harris, 2000-3459 (La. 2/26/02), 812 So.2d 612, 617. In the event of a discovery violation, the court may order the party to permit the discovery, grant a continuance, order a mistrial on motion of defendant, and prohibit the party from introducing into evidence the subject matter not disclosed, or enter such other order, other than dismissal, as may be appropriate. La. C.Cr.P. art. 729.5A. A conviction will not be reversed on the basis of the State's discovery violation unless prejudice is shown. *Harris*, 812 So.2d at 617.

Louisiana Code of Criminal Procedure Article 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.

An "inculpatory statement" under Article 768 is one made out of court after a crime has been committed, admitting a fact, circumstance, or involvement which tends to establish guilt or from which guilt may be inferred. *State v. Thames*, 95-2105 (La. App. 1st Cir. 9/27/96), 681 So.2d 480, 484, writ denied, 96-2563 (La. 3/21/97), 691 So.2d 80.

Mistrial is a drastic remedy and, except in instances in which mistrial is mandatory, is warranted only when trial error results in substantial prejudice to a defendant, depriving him of a reasonable expectation of a fair trial. *State v. Fisher*, 95-0430 (La. App. 1st Cir. 5/10/96), 673 So.2d 721, 725-26, writ denied, 96-1412 (La. 11/1/96), 681 So.2d 1259. Determination of the existence of unnecessary prejudice warranting a mistrial is within the sound discretion of the trial judge. *State v. Manning*, 2003-1982 (La. 10/19/04), 885 So.2d 1044, 1109, cert. denied, 544 U.S. 967, 125 S.Ct. 1745, 161 L.Ed.2d 612 (2005).

By its own terms, Article 768 does not apply when the defendant has been granted pretrial discovery. As the defendant acknowledges in his pro se brief, in this case he was granted such discovery.² It is clear in this case that defendant had notice of the medical records and the statements they contained. As noted by the trial court in denying the motion for mistrial, defendant had equal access to the information at issue. Given that defendant filed pretrial motions challenging the admissibility of the medical reports, any reasonable argument that he had no notice of the statements is without merit. Additionally, the health care provider-patient privilege was in part the basis for defendant's motion to suppress the medical reports and the basis for his motion to exclude the physicians' testimony. Thus, it is apparent that defendant was aware that the medical reports included communications between him and the doctors.³ Considering the foregoing, we cannot say that the trial court abused its discretion in denying defendant's motion for mistrial.

DECREE

For these reasons, we affirm the conviction and sentence of defendant, Darrell Williams.

CONVICTION AND SENTENCE AFFIRMED.

² The emergency room record with the language in question was attached to the "State's Third Supplemental Answer to Discovery Requests."

³ As noted herein, the defense attorney repeatedly drew attention to the challenged evidence.