NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 1740

STATE OF LOUISIANA

VERSUS

LOUIS LEDET

Judgment Rendered: MAY - 4 2007

* * * * * *

On appeal from the
Twenty-Third Judicial District Court
In and for the Parish of Assumption
State of Louisiana
Suit Number 03-118

Honorable Pegram J. Mire, Jr., Presiding

* * * * * *

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* * * * * *

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

The defendant, Louis Ledet, was charged by grand jury indictment with second-degree murder, a violation of La. R.S. 14:30.1. He pled not guilty. Following a jury trial, the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating the following five assignments of error:

Assignment of Error No. 1
A rational trier of fact viewing the evidence of this case in the light most favorable to the State could not have found all of the elements of second-degree murder were proven beyond a reasonable doubt.

Assignment of Error No. 2
The trial court erred in admitting "other crimes" evidence, namely the defendant's alleged sale of cocaine to Eugene Marcel.

Assignment of Error No. 3
The trial court erred in admitting "other crimes" evidence, namely the defendant's alleged sale of cocaine to Ryan Andras.

Assignment of Error No. 4
The trial court erred in admitting "other crimes" evidence, namely the defendant's alleged threat to Ryan Andras some weeks before the incident.

Assignment of Error No. 5
The trial court erred in not granting the motion to suppress the defendant's inculpatory statements to law enforcement officials while he was under the influence of mood and mind altering medicine administered to him during treatment of his injuries.

We affirm the conviction and sentence.

FACTS

On June 18, 2003, the defendant, Alvin Dardar, and Ryan Andras, the victim, were aboard the tugboat "Captain EJ" traveling to Morgan City. The defendant was the master of the vessel, and Dardar and Andras were deckhands. There was no one else on the boat. All three were in the wheelhouse; Dardar was steering. On the dash of the wheelhouse was the defendant's .30 caliber Ruger revolver. At some point while the defendant and Andras were speaking to each other, the defendant grabbed his gun and shot Andras in the head, killing him. The

defendant was taken to the hospital and treated for an avulsion injury to his left forearm.

Because the precise location of the killing was not immediately discernible, law enforcement officers from St. Mary Parish, Assumption Parish, and Terrebonne Parish all investigated the crime scene. When it was determined that the killing occurred in Assumption Parish, the Assumption Parish Sheriff's Office took over the case.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues that the evidence was insufficient to support the conviction of second-degree murder. Specifically, the defendant contends that the State failed to prove the element of intent since the shooting was accidental.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. In reviewing claims challenging the sufficiency of the evidence, this Court must consider "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also La. C.Cr.P. art. 821(B); State v. Mussall, 523 So.2d 1305, 1308-09 (La. 1988). The Jackson standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. State v. Patorno, 01-2585, p. 5 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Louisiana Revised Statutes 14:30.1 provides, in pertinent part:

A. Second degree murder is the killing of a human being:

(1) When the offender has a specific intent to kill or to inflict great bodily harm[.]

Specific intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Such state of mind can be formed in an instant. State v. Cousan, 94-2503, p. 13 (La. 11/25/96), 684 So.2d 382, 390. Specific intent need not be proven as a fact, but may be inferred from the circumstances of the transaction and the actions of defendant. State v. Graham, 420 So.2d 1126, 1127 (La. 1982).

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. State v. Taylor, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932.

We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See State v. Mitchell, 99-3342, p. 8 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. State v. Quinn, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. State v. Captville, 448 So.2d 676, 680 (La. 1984).

In the instant matter, the defendant's hypothesis of innocence was based on the theory that the shooting of Andras was accidental.

Several detectives from different parishes testified at trial about what the defendant told them regarding the shooting. The thrust of the defendant's version of events to the detectives who questioned him was that he and Andras were horseplaying. Andras saw the defendant's gun on the dash in the wheelhouse and kept trying to grab it. To show Andras that this was a serious matter, the defendant picked up his gun and cocked it. According to the defendant, the gun had a hair trigger. The defendant flinched, and the gun accidentally went off.

The defendant's version of what occurred varied depending on to whom he spoke. For instance, according to Detective Gary Driskall with the St. Mary Parish Sheriff's Office, the defendant pulled the gun away from Andras and the gun went off. The defendant was also shot in the process. According to Detective Michael Brown with the Assumption Parish Sheriff's Office, the defendant told Andras to leave the gun alone. When Andras attempted to reach for the gun, the defendant grabbed the weapon and pointed it up toward the ceiling. When Andras approached the defendant, somehow the gun went off. According to Detective Dawn Bergeron with the Terrebonne Parish Sheriff's Office, the defendant told Andras that he could not play with the gun. An argument ensued, and the defendant picked up the gun and held it in the air. They continued to argue about Andras's wanting to touch the gun. To get his point across, the defendant cocked the hammer and, with his finger on the trigger, pointed the gun at Andras. The defendant flinched, and the gun fired. According to Sergeant Byron Parker, who transported the defendant from the hospital to jail, Andras kept "f------ with" the defendant. The defendant told Andras that the defendant was going to make Andras see God, which meant that the defendant was going to kill Andras.

Eugene Marcel testified at trial that he was a deckhand on the Captain EJ about one week prior to the shooting. The defendant showed Marcel a bag of cocaine. The defendant showed Andras his gun and told him, "what happens here on this boat stays on this boat; otherwise, you're a dead m----- f-----." Marcel and Andras then bought some cocaine from the defendant.

Dardar testified on direct examination that Andras and the defendant were engaged in horseplay. When Dardar turned around, he heard, "You going to see God" and the gun went off. On cross-examination, Dardar testified that he took over driving the boat. Andras approached Dardar and the defendant and asked if they were almost there. At that point, the defendant "turned around and put his arm around the little boy's head like this . . . [and the defendant] picked up that gun and cocked the hammer back and put the gun right here." Later on cross-examination, Dardar was asked, "Was Mr. Andras trying to pull the gun away from Mr. Ledet and get the gun in his hands?" Dardar responded, "Well, Mr. Andras was trying to push this gun away from his head." [1]

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[1] Dardar also gave a taped interview to Detective Malcolm Wolfe with the Terrebonne Parish Sheriff's Office. Following are some of the relevant portions of that interview:

> Wolfe: Okay tell explain to me what happened.
> Dardar: Well they was horseplaying like I say and then it got it got (sic) rough. I was at the wheel when I heard the gun go this one that was playing with the gun and then the other one went to pull the gun I guess. I guess he went to pull the gun and next next (sic) thing I know I heard a shot. I turn around and the gun's lying on the dashboard.
> Wolfe: Okay first of all whose gun was it do you know.
> Dardar: I think it was for Louis.
> Wolfe: Okay and before the shooting happened who had the gun in in (sic) their hand.
> Dardar: Before it happened I think it was Ryan that had it if I'm not mistaken I think it was Ryan that had it.
> Wolfe: Okay so you can't be sure who had the gun.
> Dardar: I can't be sure cause (sic) like I say sir I'm standing by the wheel on this side, they on the other side of that radar and all and by other side of that chair.
> * * * * *
> Wolfe: Okay so the gun was there laying on the counter and who picked up the gun.
> Dardar: I wanna say Ryan cause (sic) Ryan came up the stairs . . . and next thing I know they horseplaying and Ryan had the gun and then Louis even had his hand on the gun. I don't know who had the stock and they was horseplaying like I say you know.
> Wolfe: So Ryan would have had the gun first.
> Dardar: I you I yeah you could say that.
> Wolfe: Well no I mean you need you to tell me what you saw.
> Dardar: That's that what I seen they was both both (sic) had their hand (sic) on the gun and Louis had his arm like this, I think it's this arm that got shot.
> * * * * *
> Wolfe: Okay so did it seem like either one of these people was getting angry.

Dr. Celeste Chaudoir, the Assumption Parish Coroner, examined Andras's body at the crime scene.[2] According to her testimony at trial, the bullet entered Andras's head behind his left ear, passed through his upper neck and bottom of his skull, and exited through the back of his neck by his right ear. The cause of death was a gunshot wound to the head, and the manner of death was homicide.

Dr. William Newman, III, a pathologist, performed the autopsy on Andras. He testified at trial that Andras had a muzzle imprint on his skin at the entrance wound, which meant that the muzzle of the gun was tight against his skin. There was also powder staining of the calvarium, or the outer table of the skull. The muzzle print and the powder staining meant that it was "a very tight contact gunshot wound." Dr. Newman indicated he could tell it was a "hard contact" because the gunpowder markings were beneath the surface of the skin. Dr. Newman testified that gunshot wounds that are accidental are usually not tight contact types of gunshot wounds. Dr. Newman further testified that he found

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Dardar: It looked like Louis was getting angry.
Wolfe: Okay what statements you recall him making that led you to believe
Dardar: Uh
Wolfe: That he was angry.
Dardar: well something like I'll make you see God.
Wolfe: Louis made the statement to who.
Dardar: To Ryan.

* * * * *

Wolfe: Okay and also you say that Louis was shot also.
Dardar: Yeah in the arm (inaudible).
Wolfe: And all that happened with one shot.

* * * * *

Dardar: That's all I heard was one shot.

* * * * *

Wolfe: Was there any noise on the boat that you couldn't hear the whole conversation. Or could you clearly hear what they were saying.
Dardar: They were just standing right there horseplaying like I say talking about women and and then then (sic) make you see God and stuff I'll make you see God, just playing around. They got me nervous I know that.

* * * * *

Wolfe: Okay but I'm saying who picked up the gun off the counter when the horseplay started.
Dardar: I'm now I want I wanna show you something I'm I'm at the wheel right here driving looking towards the front, when I look when I can hear them horseplaying I look like that the gun wasn't on the counter they both had their hand on the gun.
Wolfe: And who was holding the the (sic) handle of the gun.
Dardar: I wanna say Louis and they was both holding it like and I don't know how how (sic) he got shot in his own arm. I ain't trying to cover for nobody. It's still got me shook up.

[2] Dr. Chaudoir did not perform the autopsy.

cannabinoids in Andras's urine, but no cocaine or alcohol. He also found a crack pipe in Andras's pocket.

Detective Louis Lambert with the Assumption Parish Sheriff's Office was the evidence officer and crime scene investigator. Detective Lambert testified that he saw a bullet hole in the back window of the wheelhouse, and that the bullet traveled from the inside to the outside of the wheelhouse. He found "tattooing" or powder burns on Andras's left hand, which meant there was close contact with the gun when it was fired. Detective Lambert's theory of how the defendant shot Andras was as follows. The defendant and Andras were face to face. The defendant would have had to have the gun in his right hand while holding Andras around the neck. When the defendant fired the gun, the bullet made entry, then exited. Either the bullet or a skull fragment caused the graze wound on the defendant's arm. From there, the bullet went through the window.

Detective Lambert found three crack pipes on the boat. A pipe that was found in Andras's quarters had marijuana in it. Two pipes that were found in the defendant's quarters had cocaine in them.

Vicki Hall, an expert in trace evidence examination and analysis, testified that she examined gunshot residue kits of the defendant and Andras. The defendant's palms did not test positive for gunshot residue. Andras tested positive for gunshot residue on the palms of both of his hands. She felt that Andras's hands, either in reaching for it or firing it himself, were in close proximity to the gun when it was fired. She also testified that even though there was no gunshot residue found on the defendant, that did not mean that the defendant did not fire a weapon.

Pat Lane, a firearms identification expert, testified that the gun that killed Andras was a single-action-only revolver, meaning that the hammer had to be

manually cocked. He also testified that the gun had a trigger pull of 4 1/2 pounds and that it was "definitely not" a hair trigger.

The defendant testified that he and Andras were very close. He denied the testimony of Marcel and stated that he never sold cocaine to either Andras or Marcel. He brought the gun on the boat so that the children at his friend's house could not get the gun from his truck.[3] He placed the gun on the dash in the wheelhouse because his objective was to kill a deer. Previously while traveling down the Intracoastal Canal, he had seen a deer standing on the bank. All three men were in the wheelhouse. Dardar was steering. Andras and the defendant were horseplaying. Andras kept asking to see the gun, but the defendant told him that he could not play with it, that it was not a toy. Following is the defendant's testimony of the events that transpired at that point:

> Q. Have a seat. Was Mr. Andras trying to get the gun to hold it?
>
> A. Yes. At first, he was just indicating that he wanted to get the gun, saying, asking, and I was denying him, and then, when I picked the gun up, that's when he -- he thought it was still play, and he was reaching but not -- it wasn't like he was trying to take the gun from me or nothing like that. He was like indicating he wanted to -- he was asking me to hold it, and I told him "no," but he was indicating that, you know, he wanted to take it, but not pull it out of my hands or anything. It was just like he wanted to grab it, making the -- the indication he wanted to grab it, not fighting to grab it.
>
> Q. And were you pulling it back away from him?
>
> A. Yeah, it -- well, every time he would reach a hand, I would just do this (indicating).
>
> Q. Did you ever cock that gun?
>
> A. Yes, I did.
>
> Q. Why did you cock it?
>
> A. Okay. When this occurred, I was -- this had been going on for, like I said, oh, another minute or two after the three or four minutes of horseplay, and knowing we were fixing to make the turn to get to the dock we were going to, for some ungodly reason, with the gun still over here, I pulled the hammer back thinking -- now, I'm looking at

[3] The defendant left his truck at a friend's house before going on the boat.

the gun, and I pulled the handle back thinking that he would see then that it was -- it was not play, you know. It was -- it's time to quit is what my thoughts were.

Immediately, after I pulled the hammer back, I looked in his face, and all I could see was play. Ryan -- Ryan was a guy that smiled, and you could -- he smiled with his eyes, and that's what I saw, which I panicked then because I saw he was still indicating play. My thoughts were that being I had empty cartridges on the dash with the gun case, I'm thinking -- and this is all happening in a matter of seconds. I'm thinking that he thinks those bullets are the ones that were in the gun. I'm thinking that he's thinking that I'm bluffing, that I unloaded the gun, but before I knew it, it -- it was all over. The last thing I remember was with the hammer back, with the gun here, the last thing I remember is looking in his eyes having that thought, and I don't remember what happened. I have no idea what happened (indicating).

Q. At any point while all this is going on, did you ever get angry at him?

A. No, sir. No, sir, not -- no. As I said, there was no anger. There was no -- there was never anything between Ryan and I. We were ---

Q. Did you ever point the gun at him.

A. Oh, absolutely not, no, sir. No.

Q. Did you have any specific intent to shoot and kill or harm Mr. Andras?

A. Absolutely not, no. If -- I mean, Ryan was the one hand that I had on board that I really wanted to keep. Mr. Dardar was a good hand because he had experience, but he wasn't the -- he wasn't as eager as -- as willing to work as Ryan was.

Q. Did you make any statement before the gun went off about seeing God or anything like that?

A. Absolutely not. I don't -- no. No. I don't know where all that comes from.

Later, the defendant was asked, "Was this an accident?" The defendant responded, "This was an accident. This -- there was no intent whatsoever." The defendant further testified that his memory of being at the hospital was vague. He did not remember being interviewed by Detectives Brown or Bergeron. The night before the shooting, he took cocaine.

In finding the defendant guilty of second-degree murder, it is clear the jury rejected the claim of accidental shooting, and concluded that the defendant's

version of the events preceding the fatal shot was a fabrication designed to deflect blame from him. The conclusion by the jurors that the defendant did not testify truthfully could reasonably support an inference that the "truth" would have been unfavorable to his claim that Andras's death was the result of horseplay. See Captville, 448 So.2d at 680.

Based on the physical evidence and the testimony of Detective Bergeron, Sergeant Parker, Marcel, Dardar, Dr. Newton, Hall, and Detective Lambert, a rational trier of fact could have reasonably concluded the following. Andras and the defendant engaged in a brief argument, possibly over drugs. The defendant, armed and facing Andras, grabbed Andras by the head with his left arm and pressed his gun against the left side of Andras's head. Andras grabbed the gun with both of his hands in an attempt to either move the gun away from his head, or to wrest the gun from the defendant's hand (or both). At that moment, the defendant shot and killed Andras. Andras died as a result of a gunshot wound to the head from pointblank range. The fact that the defendant shot Andras at such a close range indicates a specific intent to kill or inflict great bodily harm. See State v. Wallace, 612 So.2d 183, 190 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1253 (La. 1993). As such, the hypothesis of accident or lack of intent presented by the defendant falls.

After a thorough review of the record, we find that the evidence sufficiently supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of second-degree murder.

This assignment of error is without merit.

ASSIGNMENTS OF ERROR NOS. 2, 3, AND 4

In these related assignments of error, the defendant argues the trial court erred in admitting into evidence "other crimes" evidence. Specifically, the defendant contends that evidence of the defendant's alleged sale of cocaine to Marcel and Andras, as well as the defendant's alleged threat to Andras, should not have been ruled admissible for trial.

Prior to trial, the State filed a notice of intent to use evidence of other crimes, wrongs, or acts. In the State's notice, the prior crimes, wrongs, or acts were described as follows:

> Louis Ledet, on or about June 7, 2003, after showing Eugene Marcel a large quantity of cocaine and while in possession of a pistol, threatened Ryan Andras by telling him "what happens on this boat stays on this boat, if anything ever leaves, you a dead m----- f-----," all of which took place upon the tugboat, Capt. E.J.

At the pretrial *Prieur* hearing, in ruling this evidence admissible, the trial court stated: "Well, the relevance, I can understand, would be the threat to kill somebody who didn't go by the rule of 'what goes on here stays here,' and obviously that's a connection, and, therefore, the Court's going to allow it."

Generally, evidence of criminal offenses other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. In order to avoid the unfair inference that a defendant committed a particular crime simply because he is a person of criminal character, other crimes evidence is inadmissible unless it has an independent relevancy besides simply showing a criminal disposition. State v. Lockett, 99-0917, p. 3 (La. App. 1st Cir. 2/18/00), 754 So.2d 1128, 1130, writ denied, 00-1261 (La. 3/9/01), 786 So.2d 115.

Louisiana Code of Evidence article 404(B)(1) provides:

> Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity,

intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Marcel testified at trial as follows:

> It was early in the morning. Both Ryan and myself were up. We were fixing breakfast, eating. Captain Louis came in. He -- he looked pretty bad, you know. I made the comment, I said, "Wow, looks like you had a pretty rough night." And he said, "Boy, you wouldn't believe." So, again, I made the comment, I said, "Where's it at?" meaning the cocaine, where's the cocaine. So, he took me up to the wheelhouse, and he pulled out a bag of cocaine, different amounts bagged up in grams, eight balls, whatnot. So, he asked me the question, he said, "What do you think about Ryan?" I said, "I don't know if Ryan does it or not," I said, "but he's all right. He wouldn't say anything."
>
> So, after that, we went back downstairs. I sat down at the table, and Louis was standing. Ryan was still in the galley by the -- by the zink (sp) washing dishes or whatever he was doing. And him and Ryan had a couple of words. I don't remember what it was, but then Louis went upstairs, and he came out with a -- either a blue or black knit cap with a handgun in it, and made the comment, he says, "What happens here on this boat stays on this boat; otherwise, you're a dead m----- f-----."[4]
>
> And after that, we went upstairs. We got the cocaine. Ryan purchased a gram from him. I purchased like two grams from him, and that was pretty much the extent of that.

Dardar was asked at trial if Andras and the defendant started talking about something prior to the shooting. Dardar responded, "I heard something about women, and – and then, 'You ain't going to tell nobody.'(sic) or something like that, and then, they --."

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[4] At the *Prieur* hearing, Marcel testified as follows:

> I went back downstairs, and there was another little discussion about -- Louis said, "What happens here on the boat stays on the boat." There were some other words. I can't remember what. Then, Louis went up to his room, and he came down with -- with a blue knit hat, and he pulled out a weapon. I didn't know what kind it was, but it was a black weapon, a black handgun, and there again, he said, "What happens on the boat stays on the boat. If anything ever leaves," you know, talking to Ryan, he said, "you're a dead m-----f-----."
>
> Q. Just like that?
>
> A. Just like that.
>
> Q. And while he was saying that, he was in possession of that revolver?
>
> A. Yes, sir, he was.

The defendant contends that this "other crimes" evidence was admitted to show his bad character as a drug dealer and that such evidence was highly prejudicial and not probative of any issue listed in La. Code Evid. art. 404. We do not agree. This testimony showed motive, intent, and absence of mistake or accident. As to motive, the defendant could have shot Andras because Andras was going to tell someone, perhaps their boss or the police, that the defendant was selling cocaine. Marcel's testimony was especially significant in that it established intent and absence of mistake or accident, since the defendant's theory was that the shooting was accidental. Marcel's testimony regarding the defendant's threat to Andras that he would be dead if he told anyone about the drugs on the boat was highly relevant in establishing the element of intent. See State v. Galliano, 02-2849, p. 4 (La. 1/10/03), 839 So.2d 932, 934 (per curiam).

The trial court's ruling on the admissibility of other crimes evidence will not be overturned absent an abuse of discretion. We find no abuse of discretion in the trial court's ruling. The evidence of the prior incident had independent relevance to the issues of motive, intent, and the absence of mistake or accident. See Galliano, 02-2849 at 3-4, 839 So.2d at 934. These assignments of error are without merit.

ASSIGNMENT OF ERROR NO. 5

In his fifth assignment of error, the defendant argues the trial court erred in denying his motion to suppress inculpatory statements made to police officers while he was under the influence of mood and mind-altering medicine administered to him during treatment of his injury. Specifically, the defendant contends that his drugged condition while talking to the police at the hospital "rendered him unconscious of the cooperation of his actions."

Before a confession can be introduced into evidence, it must be affirmatively shown that it was free and voluntary and not made under the influence of fear,

duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his *Miranda* rights. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Since the general admissibility of a confession is a question for the trial court, its conclusions on the credibility and weight of the testimony are accorded great weight and will not be overturned unless they are not supported by the evidence. State v. Patterson, 572 So.2d 1144, 1150 (La. App. 1st Cir. 1990), writ denied, 577 So.2d 11 (La. 1991). The trial court must consider the totality of the circumstances in determining whether or not a confession is admissible. State v. Hernandez, 432 So.2d 350, 352 (La. App. 1st Cir. 1983). Testimony of the interviewing police officer alone may be sufficient to prove a defendant's statements were freely and voluntarily given. State v. Mackens, 35,350, p. 13 (La. App. 2d Cir. 12/28/01), 803 So.2d 454, 463, writ denied, 02-0413 (La. 1/24/03), 836 So.2d 37.

When a confession is challenged on the ground that it was not freely and voluntarily given because the defendant was intoxicated at the time of the confession, the confession will be inadmissible only when the intoxication is of such a degree as to negate the defendant's comprehension and to make him unconscious of the consequences of what he is saying. Whether intoxication exists and is sufficient to vitiate the voluntariness of a confession are questions of fact, and the ruling of the trial court on this issue will not be disturbed unless unsupported by the evidence. State v. Williams, 602 So.2d 318, 319 (La. App. 1st Cir.), writ denied, 605 So.2d 1125 (La. 1992).

Detective Brown went to Teche Memorial Hospital in Morgan City to speak with the defendant following the shooting. Detective Brown testified that he walked into the emergency room and saw the defendant laying on a hospital bed with his eyes closed. He walked out of the emergency room and waited a few

minutes. He saw a nurse speak to the defendant, and the defendant responded to the nurse. Detective Brown went back into the emergency room to speak with the defendant, who was alert at that time. He approached the defendant and *Mirandized* him. Detective Brown testified that the defendant understood his rights and that he did not promise, threaten, or coerce the defendant to induce him to make statements. As to what the defendant told him, Detective Brown testified at trial as follows:

> I asked Mr. Ledet what happened to his arm. He stated he didn't know. I asked Mr. Ledet what happened. He stated that Ryan was dead, and I asked him how did Ryan die. Mr. Ledet stated that he was shot. And I asked him to tell us what happened above -- aboard the tugboat. He stated that he and Ryan were on the boat and that he had a weapon aboard the boat and that Ryan wanted to see the weapon. Mr. Ledet stated that Ryan -- he told Ryan that the gun was not made to be played with and that the gun had a hairline trigger or a sharp trigger, which is easily pulled. He stated to Ryan that -- to leave the gun alone, not to touch the gun. Mr. Ledet also stated that Ryan continued to play with the gun and -- and attempted to reach for the gun when Mr. Ledet reached for the weapon and pointed it up towards the ceiling or the roof of the tugboat. Mr. Ledet stated that when Ryan approached him, somehow the gun went off. I asked him what else took place. And then he broke down and started crying that Ryan was dead, Ryan was dead.

Detective Bergeron questioned the defendant about twenty minutes later. Detective Bergeron testified that she *Mirandized* the defendant, that he understood his rights, and that he freely and voluntarily waived those rights. She further testified that no threats or promises, or inducements were offered to the defendant to make him speak to her. As to what the defendant told her, Detective Bergeron testified at trial as follows:

> During the second statement, Mr. Ledet told us -- told Detective Mabile and I that he had been on the boat with Ryan, that Ryan -- that they had fixed some sort of problem with the boat. There was some sort of mechanical problem with the boat. Everything was fine.
>
> They all met back in the -- the central area, and he had his .30 caliber pistol sitting on, I guess you call it, the dashboard, and he advised that Andras want -- or Ryan wanted to -- to play with the gun, and he told Ryan that, no, he couldn't play with the gun. They got into a verbal argument to the point where Mr. Ledet picked up the gun and held it in the air. And they continued to argue about -- about the gun and about who could touch the gun, and Mr. Ledet said that he

> got upset, and he wanted to get his point across to Ryan, so he cocked the hammer on the weapon and wanted to make a statement to him, so he told him he should go see his God and pointed the weapon at Ryan with his finger on the trigger, he flinched, and the gun fired.

Sergeant Parker testified that following the defendant's treatment, the hospital released the defendant to the sergeant's custody. Sergeant Parker *Mirandized* the defendant and advised him that he was being placed under arrest for second-degree murder. The defendant informed him that he understood his rights. Sergeant Parker placed the defendant in the back of his police unit. During the transport, the defendant spoke to Sergeant Parker. Sergeant Parker testified at trial as follows:

> I placed him in the back seat of my unit, and I began my transport. And during the transport, Mr. Ledet started moaning and groaning real loud. I asked him if he can tone it down. He advised me that the -- the guy, Mr. -- I cant' recall his last -- him name right off the top. He stated that that (sic) -- he -- he said that the man was my friend, and I said, "Oh, yeah?" And he says, "Yeah, but he kept f------ with me." And I said, "What do you mean by f------ with you?" He said, "He just kept f------ with me. I told him I was going to make him see God." And I asked him what did he mean by that, and he advised me -- he advised me that I was going to kill him. And he said that -- then, at that point, I told him, I said, "Sir, you do real -- you do realize that you don't have to be speaking to me about this?" And he just got real quiet and kind of faded off to sleep.

The motion to suppress hearing was not made part of the record. However, the record was supplemented with the transcript from the suppression hearing. Following are the relevant portions of the trial court's reasons for judgment:

> Upon arriving at the hospital, the defendant's mental status was checked and he was found to be alert, oriented and cooperative. The defendant advised the emergency room doctor on duty, Dr. Magann, that he had been using cocaine. This was later verified by a drug screen of Ledet's urine.
>
> Dr. Magann testified that the defendant appeared agitated, which made his medical evaluation difficult, so he gave him one milligram of Ativan. Ativan can also be administered to prevent seizures caused by prolonged cocaine use. Because Ledet was experiencing mild pain only, he was not given any pain medication.
>
> Dr. Magann testified that during Mr. Ledet's stay in the emergency room, he was not delirious or confused, only anxious. According to Dr. Magann, the defendant was alert and oriented and he appeared to understand the medical procedures being performed, the

consequences for not taking care of his wound, and when and how to remove his sutures.

While Ledet was being treated in the emergency room, several detectives from the Assumption Parish Sheriff's Office were given permission to speak with the defendant. The officers identified themselves to the defendant and told him they wanted to speak with him about the shooting. The officers found the defendant to be calm, cooperative and able to speak coherently. They then advised the defendant of his Miranda rights. The defendant then stated that he understood his rights, verbally waived them and agreed to talk to the officers about the incident without an attorney being present.

* * * * *

The defendant is arguing that he was not in any physical or mental condition to intelligently waive his rights. The defendant also testified that he did not remember any of the events which occurred at the hospital. The Court however, finds that the testimony and evidence presented by the State regarding the events that occurred at the hospital and immediately thereafter, show that the defendant did in fact understand his rights and freely and intelligently waived them. Four officers testified that the defendant was given his Miranda rights each time a statement was made in the hospital and that he appeared to understand his rights and waive them. According to their testimony, they did not coerce, intimidate or threaten the defendant in any way. The Court also finds that the statement made by the defendant on the way to the jail was freely given and not the result of any questioning on the part of the transporting deputy.

In addition to the testimony of the officers, Dr. Magann testified that the defendant was alert and oriented and even understood the medical procedures being performed on him. The Court finds that the testimony of investigating officers and Dr. Magann negates any claim by the defendant that he was in a heavily medicated state sufficient to vitiate the voluntariness of the statements at issue. Thus, the Court finds that the State has affirmatively proven that the confession made by the defendant was free and voluntary after having been fully advised of his Miranda rights.

Nothing in the record before us suggests that the defendant's medicated state at the hospital was of such a degree as to negate his comprehension or make him unconscious of the consequences of what he was saying to Detectives Brown and Bergeron and Sergeant Parker. We find the trial court's conclusions are supported by the evidence and, thus, will not be overturned.[5] See Patterson, 572 So.2d at 1150.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.

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[5] In determining whether the ruling on 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).