

No. 42,312-KA

ON REHEARING

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA

Appellee

versus

ROY LEE WILLIAMS

Appellant

* * * * *

On Rehearing
Originally Appealed from the
Thirty-Ninth Judicial District Court for the
Parish of Red River, Louisiana
Trial Court No. 99029

Honorable Lewis O. Sams, Judge

* * * * *

CAPITAL ASSISTANCE PROJECT OF LA, INC.

Counsel for
Appellant

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LOUISIANA APPELLATE PROJECT

By: Peggy J. Sullivan

DARYL GOLD

ROY LEE WILLIAMS

Pro Se

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District Attorney

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Appellee

KIM K. McELWEE
Assistant District Attorney

* * * * *

Before BROWN, WILLIAMS, GASKINS, DREW and LOLLEY, JJ.

WILLIAMS, J., dissents adhering to the view expressed in the original opinion.

LOLLEY, J., dissents for the reasons assigned by Williams, J.

DREW, J., on rehearing.

In the early morning hours of Sunday, February 1, 2004, Roy Lee Williams, a convicted rapist on parole, committed numerous atrocities upon a 73-year-old lady from Coushatta. Among other hideous acts, Williams:

- entered her home without permission;
- kidnapped her, while her invalid husband was in another room;
- stole her Buick *Rendezvous*;
- anally raped her;
- beat her face until it was unrecognizable;
- strangled her to death; and then
- discarded her naked body beside a dumpster in Natchitoches.

And he now claims that his rights were violated.

Williams pled guilty to first degree murder and received a life sentence, without benefit of parole, probation, or suspension of sentence. He was allowed to make a *Crosby* plea¹ reserving the right to appeal an unfavorable ruling on his motion to suppress inculpatory statements. On initial appeal, in a 2 - 1 decision, this court found merit in his motion.

On rehearing, we now reverse that previous opinion and affirm the defendant's conviction and sentence in all respects, agreeing with the learned trial court that all statements at issue are legally admissible. We particularly find that any procedural defects below were harmless error.

¹*State v. Crosby*, 338 So. 2d 584 (La. 1976).

CHRONOLOGY OF EVENTS

I. Tuesday, February 3, 2004

After Roy Lee Williams was developed as a suspect, Captain Tracy Scott of the Red River Parish Sheriff's Office secured a copy of an outstanding parole violation warrant,² issued in December 2003.

Williams was arrested by Alexandria Police Corporal Carla Whitstine shortly after 9:00 p.m. on February 3, 2004. The officer did not initially read the defendant his *Miranda* rights, nor did she question him. She merely transported defendant to the Alexandria Police Department.

Travis Trammell, Chief of Criminal Investigations with Natchitoches Parish Sheriff's Office, and Scott met briefly ("five or 10 minutes") with the defendant at 9:25 p.m. on that Tuesday evening. Trammell advised defendant of his *Miranda* rights both orally and in writing. The officers explained that they were investigating the missing vehicle and the disappearance and murder of the victim. The defendant signed the rights form, indicating that his rights had been explained to him and he understood them. He declined to execute the waiver and declined to be questioned, saying he needed to talk to a lawyer. The investigators immediately stopped the interview, although Williams continued to pepper the officers with questions, seeking to find out what they knew about the case.

Corporal Whitstine then transferred defendant from the Alexandria Police Department to the Rapides Parish Jail, booking him on the parole violation warrant, and again advising Williams of his rights as per *Miranda*.

²Williams was out on parole for a previous crime of forcible rape.

He signed the form signifying that he understood his rights. Whitstine again did not ask defendant any questions. Later that evening, he was transferred to the Natchitoches Parish Detention Center.

II. Wednesday, February 4, 2004

Judge Lewis Sams signed a warrant for defendant's arrest for unauthorized use of the victim's motor vehicle. At 3:30 p.m. on that date, Red River Parish Sheriff's Detective Johnny Taylor, along with Natchitoches Sheriff Victor Jones, served the felony warrant on Williams at the Detention Center.³ Taylor told defendant that they were there to serve an arrest warrant on him for unauthorized use of a motor vehicle and proceeded to read defendant his *Miranda* rights. When presented the Advice of Rights form by the two officers, he signed it twice, once to acknowledge his understanding of his *Miranda* rights, and a second time to waive these rights and give a statement. Sheriff Jones testified as follows at the motion to suppress hearing:

After we advised (defendant) of his rights, he immediately said – his first words that he said was, they got me wrong. And at that time I advised him that if he wanted to make a statement or talk to us that we need something in writing requesting to talk to us.

Defendant prepared a handwritten request to speak with Taylor, then admitted his involvement in taking the car about 4:00 a.m. on February 1, but denied that he had killed the lady.⁴ The sheriff asked defendant if he

³Consider this recent holding by the Supreme Court of Florida in a case similar to this one: "Service of an arrest warrant is a routine police procedure. It does not require any response from a suspect; nor can it be reasonably expected to elicit an incriminating response. Thus, this action does not constitute interrogation, and we affirm the trial court's denial of the motion to suppress on this claim." *Everett v. Florida*, 893 So. 2d 1278 (Fla. 2004), *U.S. cert. denied*.

⁴This same general information is contained in each of his statements.

would give a written or recorded statement as to what he had just said.

Defendant said he probably would, but only with an attorney. The interview immediately ended at that point.

III. Thursday, February 5, 2004

Parole Officer Alvie Myers, as required by law, went to see the defendant at the Detention Center to explain a “Notice of Preliminary Hearing” and to advise defendant of the parole violation charges against him. This visit is a routine and mandatory practice by parole officers, when one of their parolees is arrested on another charge. La. R.S. 15:174.7; *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Williams was presented with a two-page document with two sections:

- Rights of the Parolee, including the right to counsel; and
- The “Bill of Particulars” which listed four reasons for his arrest.⁵

When Myers first entered the room, defendant said he wanted to talk about his “situation.” Myers advised him that they needed to first cover the administrative paperwork, and could talk later.

After Myers explained Williams’ parole revocation rights, Williams initialed three waivers on the form:

- Waiver of a Preliminary Hearing (and plea of guilty to all four violations);
- Waiver of Final Parole Revocation Hearing (again admitting that he was in violation of his parole); and
- Agreement to Defer Preliminary Hearing (agreeing to remain in jail until the disposition of all pending felony charges, which included the unauthorized use of a motor vehicle).

⁵Changing residence without permission; Positive drug screen; Consorting with drug dealers; and Unauthorized use of a motor vehicle.

After the parole officer completed his parole-related duties on that Thursday, Myers asked Williams if he still wanted to talk. When the defendant replied in the affirmative, Myers explained that he needed to advise defendant of his rights and have him sign an Advice of Rights form. Having no *Miranda* form with him, Myers requested that Captain William Armstrong bring him one. After being read his *Miranda* rights, Williams signed both sections of the form (Acknowledgment of Rights and Waiver of Rights), all witnessed by Myers and Armstrong. Williams never made a request for counsel in the presence of Myers and Armstrong. His statement was consistent with what he had said to Taylor and Jones the day before.⁶

Defendant then asked Myers if he could speak with Sheriff Jones. After conferring with Sheriff Jones, Myers came back and told defendant that he would need to make a written request before Sheriff Jones would talk with him. Williams did so, and that same day Sheriff Jones met with him. After being Mirandized, he made another statement, again consistent with his February 4 statement. When asked if he would give a written or recorded statement, Williams replied he probably would, but only with a lawyer. The interview was immediately terminated.

IV. Monday, February 9, 2004

This date was the deadline for the state to comply⁷ with La. C. Cr. P. art. 230.1, which requires a discussion between a magistrate and a still-incarcerated prisoner about whether the prisoner needs the appointment of

⁶Williams never denied taking the vehicle, but asserted that he never hurt the lady.

⁷Relative to the defendant's arrest for unauthorized use of a motor vehicle.

counsel. The first three statements had already been made the previous week, at the request of the defendant, with benefit of the advice and waiver of the *Miranda* warnings.

V. February 13, 2004

Williams, still incarcerated, requested to speak with Michael Wilson, an Assistant Chief Investigator with the Natchitoches Parish Sheriff's Office. Wilson asked that he put it in writing, and Williams did. Several days later, Wilson advised defendant of his *Miranda* rights, which defendant waived. Williams made yet another statement consistent with all his prior statements (i.e., he admitted going to victim's residence and taking her car, but denied killing her). When defendant said he would like to talk further but wanted to speak with an attorney first, the interrogation immediately ceased.

VI. February 24, 2004

Wilson arrested defendant for first degree murder pursuant to a warrant, and advised defendant of his *Miranda* rights,⁸ which defendant waived, choosing not to give a statement at that time. There was no interrogation.

VII. February 26, 2004

In the record is a 72-Hour Hearing Report which indicates that some type of a "72-hour hearing"⁹ was held on this date relative to the first degree murder and aggravated kidnapping charge. Although there was a notation

⁸The *Miranda* warnings are required at any arrest in Louisiana, whether or not the officers intend to question the arrestee. La. C. Cr. P. art. 218.1.

⁹This hearing is referred to by different terms in various areas of this state: "72-Hour Hearing," "Initial Presentment," and "Jail Clearance."

on the Hearing Report stating “appoint attorney,” there is no proof in this record that Williams was actually provided counsel until the Capital Assistance Project of Louisiana was appointed on March 10, 2004.¹⁰

VIII. March 22 and 23, 2004

Paula Allen (the mother of defendant’s child) told Taylor that she had recently visited with defendant, who again wanted to speak with Taylor. The detective insisted that defendant make a written request for him to do so, which was in fact received the following day.

Taylor met with defendant the following afternoon, first advising defendant of his *Miranda* rights, which defendant agreed to waive. After a few generalities, Taylor asked defendant if he had spoken with an attorney. Defendant said he had met with several of them. They discussed the death penalty. At one point, Williams said “God had forgave him.” When Taylor asked him what happened after he left in the car, he did not answer.

IX. Chronology of Subsequent Events

- 05/19/04 The defendant, with counsel, pled not guilty.
- 10/25/04 The defendant, through counsel, filed a motion to suppress his inculpatory statements.

¹⁰Counsel was appointed 36 days after his arrest (2/3/04) on the parole violation; 35 days after his arrest (2/4/04) for unauthorized use of a motor vehicle; 15 days after his arrest (2/24/04) for first degree murder and aggravated kidnapping; 13 days after the confusing 72-hour hearing (2/26/04); after his first four statements, but 12 days before his fifth statement; and 33 days before his indictments for first degree murder and aggravated kidnapping (4/12/04).

- 04/08/05 Evidence was received¹¹ on the motion, and the matter taken under advisement.
- 07/19/05 The trial court denied defendant's motion, ruling that defendant was properly advised of and waived his *Miranda* rights before each challenged statement, and noting that each conference came at the express initiation of the defendant. The court declined to suppress any of the five statements.
- 11/30/06 Williams entered a *Crosby* plea of guilty to first degree murder on the conditions noted above.

REASONING

The defendant correctly argues that:

- after he was served with the unauthorized use of a motor vehicle arrest warrant on February 4, 2004, no timely 72-hour hearing was held for that crime, as required by La. C. Cr. P. art. 230.1; and
- there is no notation on the February 26, 2004, "72-Hour Hearing Report Form" that clearly shows that he was actually brought before a judge on that date, nor that he was appointed an attorney.

The defendant then speculates that:

- had he been released on February 9, 2004, as was his remedy under La. C. Cr. P. art. 230.1, he would not have made certain subsequent custodial statements;
- if he had been appointed a lawyer sooner, he may not have talked; and
- he was greatly prejudiced by the lack of a timely 72-hour hearing.

In response, the State asserts that:

¹¹The witnesses who testified on the motion to suppress, either in court or by stipulation, were Red River Parish Sheriff's Office Chief Deputy Tracy Scott, Natchitoches Parish Sheriff's Office Chief Investigator Travis Trammell, Alexandria Police Dept. Corporal Carla Whitstine, Red River Parish Sheriff's Office Detective Johnny Taylor, La. Parole Agent Alvie Myers, Natchitoches Parish Sheriff Victor Jones, Natchitoches Police Dept. Sgt. Julius Armstrong, Natchitoches Parish Sheriff's Office Chief Investigator Michael Wilson and Red River Parish Sheriff Johnny Ray Norman. Despite the protection afforded by La. C. Cr. P. art. 703(E)(1), the defendant neither testified nor called any witnesses.

- admittedly, nothing in the record indicates that the defendant was given a 72-hour hearing relative to his arrest for unauthorized use of a motor vehicle;
- the defendant was also being held on a forcible rape parole violation warrant, for which defendant admitted all allegations, deferred a parole preliminary hearing, and agreed to remain in jail until the disposition of *all felony charges*;
- because of the parole hold, he would not have been released anyway; and
- concerning the first degree murder and aggravated kidnapping charges, defendant was timely brought before a judge on February 26, 2004, for a 72-hour hearing only two days after his arrest for these crimes, though it is disputed as to exactly who was present and what occurred on that day.

La. C. Cr. P. art. 230.1 provides:

A. The sheriff or law enforcement officer having custody of an arrested person shall bring him promptly, and in any case within seventy-two hours from the time of arrest, before a judge for the purpose of appointment of counsel. Saturdays, Sundays, and legal holidays shall be excluded in computing the seventy-two hour period referred to herein. The defendant shall appear in person unless the court by local rule provides for such appearance by telephone or audio-video electronic equipment. However, upon a showing that the defendant is incapacitated, unconscious, or otherwise physically or mentally unable to appear in court within seventy-two hours, then the defendant's presence is waived by law, and a judge shall appoint counsel to represent the defendant within seventy-two hours from the time of arrest.

B. At this appearance, if a defendant has the right to have the court appoint counsel to defend him, the court shall assign counsel to the defendant. The court may also, in its discretion, determine or review a prior determination of the amount of bail.

C. If the arrested person is not brought before a judge in accordance with the provisions of Paragraph A of this Article, he shall be released forthwith.

D. The failure of the sheriff or law enforcement officer to comply with the requirements herein shall have no effect whatsoever upon the validity of the proceedings thereafter against defendant.

Our emphasis added.

In *State v. Manning*, 03-1982 (La. 10/19/04), 885 So. 2d 1044, the supreme court held that the only remedy for violation of La. C. Cr. P. art. 230.1 is pretrial release. The supreme court rejected Manning's argument that the trial court should have suppressed his subsequent inculpatory videotaped statement based on noncompliance with La. C. Cr. P. art. 230.1 because of this exclusive remedy.

While Williams did not have a timely 72-hour hearing on the unauthorized use of a motor vehicle charge, his only remedy for that oversight was pretrial release on that charge. La. C. Cr. P. art. 230.1. However, because of the parole hold and his agreement to remain in jail, he wasn't going anywhere.

Two days after his arrest for first degree murder, a hearing was held. It is unclear as to exactly what happened on February 26, 2004. What is clear, however, is that Williams had made three voluntary inculpatory statements within 42 hours of his arrest on the parole warrant, and within 25 hours of his arrest on the unauthorized use of a motor vehicle warrant. Each statement was initiated by the defendant, and only made after he had duly waived his *Miranda* rights.¹²

Regarding requests for counsel, our supreme court stated in *State v. Holey*, 98-2460 (La. 12/15/99), 752 So. 2d 771, 788, U.S. *cert. denied*:

[O]nce a suspect in custody expresses a desire, at any stage in the process, to deal with the police only through counsel, all questioning must cease, and the accused may not be subject to further interrogation until counsel has been made available to him, ***unless he initiates further communication, exchanges or conversation with the police and validly waives***

¹²Four of the five requests to make a statement were in writing.

his earlier request for counsel. (Emphasis added). *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378 (1981); *Miranda*, 384 U.S. at 444-45, 86 S. Ct. at 1612.

Miranda and *Edwards* are prophylactic rules designed to protect an accused against the inherently compelling pressures of custodial interrogation, whether by police badgering, overreaching or subtle but repeated efforts to wear down an accused's resistance and make him change his mind. *Oregon v. Bradshaw*, 462 U.S. 1039, 1044, 103 S. Ct. 2830, 2834, 77 L. Ed. 2d 405 (1983).

Minnick v. Mississippi, 498 U.S. 146, 153, 111 S. Ct. 486, 491, 112 L. Ed. 2d 489 (1990), reaffirmed *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378 (1981), stating that "when counsel is requested, interrogation must cease; and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney." *Minnick* reconfirms that the defendant may reinitiate an interrogation, which is exactly what happened here.

Louisiana adheres to these same principles. When an accused invokes his right to counsel, the admissibility of a subsequent confession or incriminating statement is determined by a two-step inquiry:

- (1) Did the accused initiate further conversation or communication; and
- (2) Was the purported waiver of counsel knowing and intelligent under the totality of the circumstances.

State v. Abadie, 612 So. 2d 1 (La. 1993).

Here, the answer to these two questions is a resounding affirmative. No evidence contradicts this conclusion. Williams produced nothing at the hearing on his motion to dispute the law officers' account of exactly what

transpired, warts and all. The conduct of the peace officers here, pertaining to these statements, was not just legally acceptable, it was exemplary.

There is a Fifth Amendment right to counsel, which pertains to statements given during custodial interrogation (the privilege against compulsory self-incrimination), and a broader Sixth Amendment right to counsel, focused on assisting a defendant through the complicated maze of proceedings involved in a criminal prosecution, which can include interrogation. These rights are intertwined here. Under these facts, neither amendment, nor any related jurisprudence, requires suppression here.

A defendant has a Sixth Amendment right to counsel only after adversary criminal proceedings have been initiated against him, and then, only at specific, critical stages of the proceedings. *See State v. Carter*, 94-2859 (La. 11/27/95), 664 So. 2d 367.

“The [Sixth Amendment] right to counsel does not attach prior to the initiation of adversary criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” *Kirby v. Illinois*, 406 U.S. 682, 689, 92 S. Ct. 1877, 1882, 32 L. Ed. 2d 411 (1972).

In *State v. Taylor*, 01-1638 (La. 1/14/03), 838 So. 2d 729, 739, *U.S. cert. denied*, our supreme court stated that police are not prohibited from reinitiating contact with defendant:

When a defendant exercises his privilege against self-incrimination the validity of any subsequent waiver depends upon whether police have “scrupulously honored” his right to remain silent. Whether police have “scrupulously honored” an accused’s right to silence is determined on a case-by-case basis under the totality of the circumstances.

Factors going into the assessment include who initiates further questioning, although, significantly, police are not barred from reinitiating contact, (invocation of right to counsel during custodial interrogation has greater protection than invocation of right to remain silent, as **police may not thereafter question defendant unless he initiates further contact**); whether there has been a substantial time delay between the original request and subsequent interrogation; whether *Miranda* warnings are given before subsequent questioning; whether signed *Miranda* waivers are obtained; and, whether the later interrogation is directed at a crime that had not been the subject of the earlier questioning.

Citations omitted. Our emphasis added.

Defendant's statutory right to appointment of counsel for unauthorized use of a motor vehicle pursuant to La. C. Cr. P. art. 230.1 was required not later than Monday, February 9, 2004.¹³ It never happened, meaning that he could not be held under a bail obligation for that charge.

Law enforcement attempted to comply with defendant's statutory right to his 72-hour hearing and presumptive appointment of counsel for first degree murder and aggravated kidnapping, pursuant to La. C. Cr. P. art. 230.1. The officers arranged an initial presentment/72-hour hearing on February 26, 2004, but apparently mistakes were made. Even though the criminal justice system did not function very well on February 26, 2004, this breakdown is certainly not imputable to the law officers involved.

Although defendant can generally waive his Sixth Amendment right to counsel at direct or overt interrogation conducted after his rights have attached, in those cases in which defendant has affirmatively asserted the right to counsel, a later waiver in response to *police-initiated interrogation*

¹³Legal holidays are not figured in the computation of time delays under La. C. Cr. P. art. 230.1.

is irrebuttably presumed invalid. *State v. Carter, supra*. In this matter, the police never reinitiated any questioning; only Roy Lee Williams did.

Starting February 5, 2004, less than two full days after his arrest on the parole violation, and less than one full day after his arrest for unauthorized use of a motor vehicle, defendant admitted that he had violated his parole (including unauthorized use of the victim's Buick) and agreed to remain in jail until the resolution of ***all felony charges***. There was no possibility of his being released from custody, regardless of any subsequent violation of La. C. Cr. P. art. 230.1, on either the unauthorized use of a motor vehicle charge, the first degree murder charge, or the aggravated kidnapping charge.

There was another huge impediment to the defendant's being released from custody. First degree murder is a capital offense. La. R.S. 14:30. One charged with a capital offense is expressly precluded from admission to bail except under strict guidelines. *See* La. C. Cr. P. art. 331. No application for release on bail for this defendant was ever made.

Nothing in the Fifth or Sixth Amendment precludes a suspect, on his own initiative, and even when charged with a crime and represented by counsel, from choosing to speak with police in the absence of an attorney.

The *Carter* case adopts a passage from *Adams v. United States ex rel. McCann*, 317 U.S. 269, 280, 63 S. Ct. 236, 242, 87 L. Ed. 268 (1942):

Although a defendant may sometimes later regret his decision to speak with police, the Sixth Amendment does not disable a criminal defendant from exercising his free will. To hold that a defendant is inherently incapable of relinquishing his right to counsel once it is invoked would be "to imprison a man in his privileges and call it the Constitution."

The officers investigating Roy Lee Williams for this horrific crime scrupulously protected the defendant's rights in all interrogations.

Williams never quit trying to communicate with and finesse law enforcement. Consider these later requests to talk (all ignored) made by the defendant, long after he had multiple lawyers:

- 3/26/04 Inmate Request Form (to see Sheriff Jones);
- 4/15/04 short note mailed to Sheriff Jones;
- 6/1/04 letter mailed to V. Jones on 6/1/04 (Request to talk with Sheriff Jones), with a salutation of "Victor;"
- 7/10/04 letter to Sheriff J. R. Norman, requesting that the sheriff "come & sit and talk" with him; and
- 10/10/04 letter to Detective Taylor, with a salutation of "J. T."

CONCLUSION

This record overwhelmingly supports the trial court's conclusions on the credibility and weight of the testimony relating to the knowing, intelligent, free, and voluntary nature of all of defendant's statements. In making these statements, Williams knew precisely what he was doing. His motion to suppress was properly denied.

DECREE

We affirm the defendant's conviction and mandatory sentence.

AFFIRMED.