

**SUPREME COURT OF LOUISIANA**

**No. 16-KH-1894**

**STATE EX REL. WILLIAM T. CHISOLM**

**v.**

**STATE OF LOUISIANA**

**ON SUPERVISORY WRITS TO THE FIRST  
JUDICIAL DISTRICT COURT, PARISH OF CADDO**

**PER CURIAM:**

Denied. Relator fails to satisfy his post-conviction burden of proof. La.C.Cr.P. art. 930.2. We attach hereto and make a part hereof the district court’s written reasons denying relief.

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator’s claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.

2/23/2018

FILED

STATE OF LOUISIANA  
VERSUS  
WILLIAM CHISOLM

JUN 23 2016  
*[Signature]*  
BARON BLANEY  
DEPUTY CLERK OF COURT  
CADDO PARISH, LOUISIANA

NUMBER: 300,648: SECTION: 3  
FIRST JUDICIAL DISTRICT COURT  
CADDO PARISH, LOUISIANA

RULING

On July 24, 2013, William Chisolm ("Petitioner") was found guilty of Armed Robbery. Petitioner was sentenced to ninety (90) years at hard labor without the benefit of probation, parole, or suspension of sentence. His conviction and sentence were affirmed on appeal. *State v. Chisolm*, 49,043 (La. App. 2d Cir 5/14/15), 139 So. 3d 1091, writ denied, 2014-1203 (La. 3/13/15), 176 So. 3d 1031.

Currently before the Court is Petitioner's "Uniform Application for Post-Conviction Relief" ("Motion"). For the reasons that follow below, Petitioner's Motion is DENIED.

Petitioner raises three claims in his initial motion: 1) the trial judge made a bias statement to the jury; 2) his inculpatory statement should be suppressed because he was not advised of his *Miranda* rights, nor did he waive these rights; 3) his appellate counsel failed to effectively represent him on direct appeal by not raising the issue of a bias judge.

The statement that the Petitioner claims was made by the trial judge was actually made by the prosecutor during his closing argument. Petitioner's counsel objected and the trial judge overruled the objection. Petitioner conceded this point in his "Motion to Supplement Application for Post-Conviction Relief."

Closing arguments are limited to "evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case." La. C. Cr. P. art. 774; *State v. Casey*, 775 So. 2d 1022, 1036 (La. 1/12/00); cert denied, 531 U.S. 840, 121 S.Ct. 104, 148 L.Ed.2d 62 (2000). A prosecutor is given considerable breadth in their closing arguments. *State v. Tolbert*, 716 So. 2d 949, 961 (La. App. 2d Cir 8/19/98); writ denied, 736 So. 2d 207 (La 1/15/99).

The state must base conclusions in their closing argument upon the evidence presented at trial. However, the state and the defendant are permitted to draw their own conclusions as to what the evidence establishes. *State v. Wafer*, 719 So. 2d 156, 164 (La. App. 2d Cir. 9/23/98); writ denied, 747 So. 2d 1137 (La. 10/1/99).

The trial judge is given broad discretion in controlling the scope of closing arguments. *State v. Casey, supra*; *State v. Prestridge*, 399 So. 2d 564, 580 (La. 1981). If the prosecutor

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exceeds these bounds, the court will not reverse a conviction unless "thoroughly convinced" that the argument influenced the jury and contributed to the verdict. See *State v. Casey, supra*; *State v. Martin*, 645 So. 2d 190, 200 (La. 10/17/94); *State v. Jarman*, 445 So. 2d 1184, 1188 (La. 1984); *State v. Dupre*, 408 So. 2d 1229, 1234 (La. 1982).

The Petitioner has failed to show that the statement in question influenced the jury and contributed to the verdict, and fails to meet his burden of proving that relief should be granted. La. C. Cr. P. 930.2.

The Petitioner next claims that the trial court erred in denying his motion to suppress his confession that was "involuntary, unintelligently, and not knowingly made." Specifically that Detective Jack Miller, of the Shreveport Police Department, did not advise him of his Miranda rights. The Petitioner was questioned by Detective Miller on September 29, 2011 at Caddo Correctional Center.

Detective Miller recorded the interview in its entirety. A transcript of the interview has been provided to the Court. Detective Miller did in fact read the Petitioner his Miranda rights, and the Petitioner agreed to waive his rights. The trial court was correct in denying the Motion to Suppress, and therefore this claim lacks merit.

The final claim raised by Petitioner is that his appellate counsel failed to effectively represent him on direct appeal, by not raising the issue that the trial judge was biased and partial. As previously discussed the statement Petitioner claimed was made by the trial judge, was actually made by the prosecutor during his closing statement. Therefore, Petitioner cannot claim that his appellate counsel failed to raise this issue on direct appeal.

The Petitioner has also filed a supplement to his initial Motion. He raises the issue that he never should have been charged with Armed Robbery. However, in the transcript of Petitioner's interview with Detective Miller, he admitted to being armed with a pellet gun that he threw into the river after committing the robbery. The Louisiana 2nd Circuit Court of Appeals held that a gun capable of firing BB's or pellets and which possessed the capacity to inflict great bodily harm is a dangerous weapon. *State v. Woods*, 494 So. 2d 1258, 1261 (La. App. 2d Cir. 1986). The Court further found that the defendant showing his weapon to the victim, implied a threat that the weapon would be used if the victim did not comply with the defendant's demands. *Id.* The 2nd Circuit has repeatedly held that "a BB gun is a dangerous weapon, i.e., an instrument

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which, in the manner used, is calculated or likely to produce death or great bodily harm." *State v. Lewis*, 892 So. 2d 702, 708 (La. App. 2d Cir. 2005).

Whether or not a weapon is dangerous is a question for the fact finder to determine upon considering not only the character of the weapon, but by whom, upon whom, and in what manner it was used. *State v. Hopkins*, 692 So. 2d 538 (La. App. 3d Cir. 3/5/97); *State v. Taylor*, 485 So. 2d 117 (La. App. 2d Cir. 1986). The term "dangerous weapon" is not limited to those weapons that are inherently dangerous, but includes any instrumentality "which in the manner used, is calculated or likely to produce death or great bodily harm." La. R.S. 14:2(3); *State v. Bonier*, 367 So. 2d 824 (La. 1979).

Petitioner also raises claims of misconduct on the part of the Assistant District Attorneys who tried his case. The Petitioner has failed to include any evidence to support this claim.

Accordingly, Petitioner's Motion is **DENIED**. **The Clerk of Court is directed to provide a copy of this Ruling to the District Attorney and Petitioner.**

Signed this 20<sup>th</sup> day of June, 2016, in Shreveport, Caddo Parish, Louisiana.



BRADY D. O'CALLAGHAN  
DISTRICT JUDGE

**DISTRIBUTION:**  
William Chisolm  
Main Prison/Oak-4  
Louisiana State Penitentiary  
Angola, LA 70712

Caddo Parish District Attorney's Office  
501 Texas Street  
Shreveport, LA 71101

CLERK OF COURT  
SHREVEPORT, LA  
JUN 20 2016