

LOUISIANA COURT OF APPEAL, SECOND CIRCUIT

State of Louisiana v. Roy L. Wimberly, Jr.

No. 56,623-KA · No. 56,623-KA · Decided December 17, 2025

SUMMARY

The Louisiana Second Circuit Court of Appeal affirmed Roy L. Wimberly Jr.'s conviction for third-offense operating a vehicle while intoxicated and his five-year sentence. The court held that although the trial court should have suppressed Wimberly's first statement because the State did not establish that Miranda warnings preceded questioning, the error was harmless because a second, post-Miranda statement was admissible. The court also rejected challenges to the sufficiency of the evidence, jury instructions, sentence, and post-conviction-relief advisement.

CASE DETAILS

COURT	Louisiana Court of Appeal, Second Circuit
WRITING FOR THE COURT	Ellender, J.; Pitman, J.; Stone, J.
JURISDICTION	Louisiana Court of Appeal, Second Circuit
DECIDED	December 17, 2025
DOCKET	56,623-KA
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his conviction for third-offense operating a vehicle while intoxicated and his five-year sentence, challenging the denial of his motion to suppress statements, the sufficiency of the evidence, and the constitutional excessiveness of the sentence.
STANDARD OF REVIEW	The voluntariness of a statement is reviewed with great weight given to the trial court's finding; credibility determinations are not disturbed unless clearly contrary to the evidence. A ruling on a motion to suppress is reviewed for abuse of discretion. Sufficiency of the evidence is reviewed under whether, viewing the evidence in the light most favorable to the prosecution, any rational factfinder could have found the essential elements beyond a reasonable doubt under Jackson v. Virginia. Sentencing is reviewed under a two-part inquiry addressing compliance with La. C. Cr. P. art. 894.1 and constitutional excessiveness, with the sentence otherwise reviewed for manifest abuse of discretion.

PRECEDENTIAL VALUE	Published Louisiana Court of Appeal opinion
PARTIES	Roy L. Wimberly, Jr. v. State of Louisiana

TOPICS

miranda rights suppression of evidence criminal procedure burden of proof sentencing

PRACTICE AREAS

criminal law criminal procedure DWI and impaired driving evidence sentencing appellate procedure

QUESTIONS PRESENTED

1. Whether Wimberly's roadside statements were inadmissible because the State failed to prove that Miranda warnings preceded the questioning.
2. Whether Wimberly's later statements were involuntary or tainted by the alleged Miranda violation at the roadside.
3. Whether the evidence was sufficient to support a conviction for third-offense operating a vehicle while intoxicated without proof of a blood-alcohol concentration of at least 0.08 g/%.
4. Whether the trial court properly removed from the jury instructions the requirement that the State prove a BAC of at least 0.08 g/%.
5. Whether the absence of dash-camera and body-camera footage required a presumption against the State or otherwise rendered the evidence insufficient.
6. Whether the five-year sentence was constitutionally excessive or imposed without adequate consideration of the sentencing factors.
7. Whether the trial court's failure to advise Wimberly of the two-year limit for seeking post-conviction relief required resentencing.

HOLDINGS

1. Because the State did not affirmatively prove that Miranda warnings were given before the roadside custodial questioning, the trial court abused its discretion by admitting Wimberly's roadside statement.
2. Any error in admitting the roadside statement was harmless because Wimberly made a second, substantially similar admission after receiving Miranda warnings, and the second admission was admissible.
3. The evidence was sufficient to support the conviction for third-offense operating a vehicle while intoxicated, and the State was not required to prove a BAC of at least 0.08 g/% because intoxication may be established through alternative statutory theories, including being under the influence of alcohol.
4. The trial court did not abuse its discretion by deleting the jury-instruction language requiring proof of a BAC of at least 0.08 g/%, because that language misstated the applicable law and the instruction as given accurately stated the statutory elements.

5. The five-year sentence for third-offense operating while intoxicated was not constitutionally excessive and did not constitute a manifest abuse of the trial court's sentencing discretion.
6. The sentencing court could consider Wimberly's prior DWI convictions as aggravating circumstances, including convictions used as elements of the current offense.
7. The trial court's failure to specifically advise Wimberly of the two-year limitations period for post-conviction relief did not require vacatur of the sentence or resentencing.

KEY QUOTATIONS

"Because the state did not affirmatively show Wimberly's statement at the scene was made following a full advisal of his Miranda rights, we find the trial court's failure to exclude that statement constitutes an abuse of discretion." (at 5)

"Because Wimberly's second admission was properly deemed admissible, we find any error on the part of the trial court in admitting the first set of statements to be harmless." (at 6)

"The law does not require the state to prove an elevated BAC of at least .08 g/% to prove the offense" (at 8)

"Roy Wimberly's conviction and sentence are affirmed." (at 14)

FACTUAL BACKGROUND

A Shreveport police officer stopped Wimberly after he abruptly changed lanes and nearly sideswiped the officer's vehicle. At the roadside, the officer observed swaying, slurred speech, red and glossy eyes, and a strong odor of alcohol; Wimberly admitted drinking beer, although the officer could not recall whether Miranda warnings preceded that admission. In the intoxication room, surveillance video showed behavior consistent with heavy alcohol consumption, and Wimberly again admitted drinking beer after receiving Miranda warnings. He refused additional sobriety testing, a breathalyzer, and a blood test; fingerprint evidence linked him to three prior DWI convictions.

PROCEDURAL HISTORY

Wimberly was charged with fourth-offense operating a vehicle while intoxicated. The trial court denied his motions to quash and motions to suppress, and a jury returned a responsive verdict finding him guilty of third-offense operating a vehicle while intoxicated. The trial court imposed a five-year sentence at hard labor, with the first year without benefits, denied his motion to reconsider sentence, and Wimberly appealed.

DISPOSITION

affirmed

CASES CITED

- Miranda v. Arizona, 384 U.S. 436 (1966)
- State v. Johnson, 52,762 (La. App. 2 Cir. 8/14/19), 277 So. 3d 1263
- State v. Benoit, 440 So. 2d 129 (La. 1983)

- State v. English, 582 So. 2d 1358 (La. App. 2 Cir. 1991), writ denied, 584 So. 2d 1172 (La. 1991)
- State v. Blank, 04-204 (La. 4/11/07), 955 So. 2d 90, cert. denied, 552 U.S. 994 (2007)
- State v. Lee, 05-2098 (La. 1/16/08), 976 So. 2d 109, cert. denied, 555 U.S. 824 (2008)
- State v. Montejo, 06-1807 (La. 5/11/10), 40 So. 3d 952, cert. denied, 562 U.S. 1082 (2010)
- State v. Boswell, 56,200 (La. App. 2 Cir. 4/9/25), 409 So. 3d 491, writ denied, 25-00523 (La. 9/24/25), 417 So. 3d 61
- State v. Smith, 54,489 (La. App. 2 Cir. 6/29/22), 342 So. 3d
- Jackson v. Virginia, 443 U.S. 307 (1979)
- State v. Ramsey, 55,491 (La. App. 2 Cir. 2/28/24), 381 So. 3d 308, writ denied, 24-00379 (La. 10/1/24), 393 So. 3d 865
- State v. Middleton, 55,634 (La. App. 2 Cir. 5/22/24), 386 So. 3d 1283, writ denied, 24-00822 (La. 2/19/25), 400 So. 3d 926
- State v. Smith, 94-3116 (La. 10/16/95), 661 So. 2d 442
- State v. Bass, 51,411 (La. App. 2 Cir. 6/21/17), 223 So. 3d 1242, writ not cons., 18-0296 (La. 4/16/18), 239 So. 3d 830
- State v. Payton, 17-0489 (La. 5/19/17), 219 So. 3d 1095
- State v. Shaw, 27,892 (La. App. 2 Cir. 4/3/96), 672 So. 2d 237
- State v. Johnson, 01-0006 (La. 5/31/02), 823 So. 2d 917
- State v. Caldwell, 56,269 (La. App. 2 Cir. 5/21/25), 411 So. 3d 934
- State v. Benavides, 54,265 (La. App. 2 Cir. 3/9/22), 336 So. 3d 114
- State v. Cozzetto, 07-2031 (La. 2/15/08), 974 So. 2d 665
- State v. Williams, 03-3514 (La. 12/13/04), 893 So. 2d 7
- State v. Abercumbia, 412 So. 2d 1027 (La. 1982)
- State v. Williams, 56,184 (La. App. 2 Cir. 2/26/25), 409 So. 3d 306, writ denied, 25-00372 (La. 5/20/25), 409 So. 3d 218
- State v. Bell, 53,712 (La. App. 2 Cir. 1/13/21), 310 So. 3d 307
- State v. Tyler, 50,224 (La. App. 2 Cir. 11/18/15), 182 So. 3d 1029
- State v. McKnight, 56,309 (La. App. 2 Cir. 7/16/25), 416 So. 3d 891
- State v. Patterson, 51,559 (La. App. 2 Cir. 9/27/17), 244 So. 3d 733
- State v. Williams, 34,936 (La. App. 2 Cir. 9/26/01), 795 So. 2d 1221