NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 1249

STATE OF LOUISIANA

VERSUS

ERIC D. JETT

Judgment Rendered: December 21, 2007.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
District Court No. 385770

The Honorable William J. Knight, Judge Presiding

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BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

Welch J. concurs without reasons.

CARTER, C.J.

The defendant, Eric D. Jett, was charged by grand jury indictment with aggravated rape, a violation of LSA-R.S. 14:42. The defendant pled not guilty. Prior to trial, the defendant tried unsuccessfully to suppress the victim's identification of him as the perpetrator. A hearing was held on the matter, and the motion to suppress was denied. Following a jury trial, the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor[1] without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, designating as his sole assignment of error that the trial court erred in denying his motion to suppress. We affirm the conviction and sentence.

FACTS

On July 14, 2004, between 3:00 a.m. and 3:30 a.m., seventy-five year old E.B., who lived alone in her Pine Tree Street home in Slidell, was awoken by a noise in her bedroom. She turned on her lamp and saw a man standing near her bed holding a pair of scissors. She recognized the man as the stranger who had come to her house a few days before, telling her he was hungry and asking if he could work for food. E.B. had had no work for him, but she had given him a sandwich.

During the early morning of July 14, the man entered E.B.'s house through a window where an air-conditioning unit had been mounted. The man first laid down briefly on the bed with E.B. He then raped E.B. After

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[1] Although the trial court failed to specifically state the sentence was to be served at "hard labor," the trial court did state that in light of the jury's determination that the defendant was guilty of aggravated rape, it was "afforded no discretion in connection with the sentencing." Whoever commits the crime of aggravated rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. LSA-R.S. 14:42D(1).

the rape, the man took $20 from E.B. and left. E.B. called 911 and remained on the telephone until the police arrived. E.B. gave a description of the man who raped her. She described the suspect as a thin black male between his late twenties and early thirties with very short hair, a three-day growth of beard, and wearing a bluish polo-type shirt, baggy blue jeans, and white tennis shoes. The description of the suspect was broadcast over the police radio about 5:30 a.m., and less than an hour later, the defendant was apprehended several blocks away from E.B.'s house. Detective Stevens, with the Slidell Police Department, testified at the trial that he and Lieutenant Matthews were the first officers to find and detain the defendant. As Detective Stevens approached the defendant, the defendant said, "I did it[;] I broke into that lady's house."

The defendant was handcuffed and transported in Sergeant Van Shoubrouek's police unit to E.B.'s house. Sergeant Van Shoubrouek parked his unit in front of E.B.'s house, removed the defendant, and placed him in front of his unit, about twenty to forty feet from E.B.'s house. E.B. remained inside and was brought to her window by a police officer to see if she could identify the defendant as the person who raped her. E.B. immediately identified the defendant as the person who raped her.

The defendant was brought to the Slidell police station and questioned by Detective Stevens and Detective McLain. In a taped statement, the defendant admitted that he broke into E.B.'s house and had sex with her.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that his motion to

suppress the identification should have been granted.[2] Specifically, the defendant contends that the identification of him by E.B. was effected by use of highly suggestive police tactics, namely having the defendant removed from the police unit in handcuffs in front of E.B.'s house and telling E.B. that "we got him" before asking her to identify him.

In reviewing an identification procedure, the court must determine whether the procedure was so unnecessarily suggestive and so conducive to an irreparable mistaken identification that the defendant was denied due process of law. **Manson v. Brathwaite**, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977); **State v. Bickham**, 404 So.2d 929, 934 (La. 1981). A trial judge's determination on the admissibility of an identification should be accorded great weight and will not be disturbed on appeal unless the evidence reveals an abuse of discretion. **Bickham**, 404 So.2d at 934.

One-on-one confrontations between a suspect and a victim, while not favored by the law, are permissible when justified by the overall circumstances. Such identification procedures are generally permitted when the accused is apprehended within a short time after the offense and is returned to the scene of the crime for on-the-spot identification. A prompt in-the-field identification, under appropriate circumstances, promotes accuracy, as well as expedites the release of innocent suspects. **Id.** Even when suggestiveness of the identification process is proved by the defendant or presumed by the court, the defendant also must show that there was a substantial likelihood of misidentification as a result of the identification

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[2] 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).

procedure. **State v. Broadway**, 96-2659 (La. 10/19/99), 753 So.2d 801, 812, cert. denied, 529 U.S. 1056, 120 S.Ct. 1562, 146 L.Ed.2d 466 (2000).

In the instant matter, the one-on-one, in-field identification was closely associated in time with the commission of the crime, as the defendant was immediately apprehended and returned to the scene of the crime. The defendant attacked E.B. sometime after 3:00 a.m., and according to E.B., the defendant remained at her house for about an hour. The description of the defendant was broadcast about 5:30 a.m. Less than an hour from the time of the broadcast, the defendant, as described in appearance and dress by E.B., was brought back to E.B.'s house, and E.B. identified the defendant as her attacker. E.B. positively identified the defendant by his physical appearance and his clothes within only a few hours of being attacked. See **Bickham**, 404 So.2d at 934. E.B.'s light was on when the defendant raped her, and the defendant was in her house for about an hour. Also, E.B. recognized the defendant as the person to whom she had given a sandwich a few days prior to the incident. The defendant's being handcuffed when E.B. identified him did not warrant a finding of undue suggestiveness and, as such, had no bearing on the reliability of the in-field identification. See **State v. Stewart**, 387 So.2d 1103, 1106-07 (La. 1980); **State v. Robinson**, 404 So.2d 907, 909-10 (La. 1981).

We further find no significance in the "we got him" reference noted by the defendant. No officer testified that he told E.B. that "we got him" when the defendant was brought to E.B.'s house. At trial, on both direct and cross-examination, E.B. testified that Officer Campbell was in her house talking on the telephone when he told her "we've got him" ("we got him" on

cross-examination). E.B. was then told that the defendant was being brought to her house to see if she could identify him. It would seem that the statement "we got him" was merely a way to convey to E.B. that the police had in custody a suspect based on her description. In any event, the defendant has failed to show there was a substantial likelihood of misidentification as a result of the identification procedure. See **Broadway**, 753 So.2d at 812.

The defendant also notes that E.B. had taken pain medication the night before the attack for recent back surgery and that during the attack she was "scared out of her mind." As such, the defendant contends, E.B.'s perception of events and the identity of her attacker were subject to suggestion because of her mental state. While E.B. testified that she took a pain pill about 7:00 p.m. the night before she was attacked, and that during the attack, she was very frightened, nothing in her testimony suggests that her ability to perceive or to remember was in any way affected by her medication or her fear. To the contrary, E.B.'s out-of-court identification of the defendant was immediate and emphatic. She also positively identified the defendant at trial.

We conclude that there was no substantial risk of misidentification. The motion to suppress was properly denied. The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.