

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0123

STATE OF LOUISIANA

VERSUS

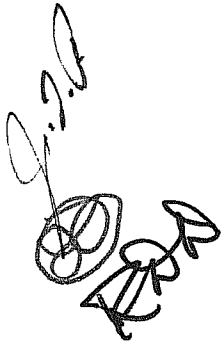
CALVIN LEE CRADDOCK

**Judgment rendered June 8, 2007.**

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Appealed from the  
22<sup>nd</sup> Judicial District Court  
in and for the Parish of St. Tammany, Louisiana  
Trial Court No. 397650  
Honorable Peter J. Garcia, Judge

\* \* \* \* \*



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DEFENDANT-APPELLANT  
CALVIN LEE CRADDOCK

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

## **PETTIGREW, J.**

Defendant, Calvin Craddock, was charged by grand jury indictment with one count of aggravated rape, a violation of La. R.S. 14:42. After entering a plea of not guilty, defendant was tried before a jury. The jury determined defendant was guilty as charged. The trial court sentenced defendant to a term of life in prison at hard labor, without the benefit of probation, parole, or suspension of sentence.

After considering defendant's assignments of error and reviewing the record, we affirm his conviction and sentence.

### **FACTS**

On August 13, 2004, N.J. (the victim, who was twenty-six years old at the time) was living with her father in St. Tammany Parish, approximately two to three miles from her uncle, Carlos Harris. That morning, the victim received a phone call from her uncle, who wanted to see her. The victim thought it involved a letter from her boyfriend, Allen Bell. At that time, Bell was in jail, and the victim was forbidden to have any contact with him because of pending charges against her.

The defendant showed up at the victim's house and offered her a ride to Harris's house. The victim was somewhat acquainted with defendant since he had briefly dated one of her relatives several years earlier.

Defendant and the victim arrived at Harris's house between 9:00 and 9:30 a.m. The victim went inside and sat down near an old piano where she, defendant, and Harris proceeded to smoke a marijuana cigarette. At trial, the victim admitted that she was involved in using marijuana and methamphetamine at this time; however, she denied any use of cocaine.

Harris and defendant kept telling the victim to take off her shoes and make herself more comfortable. The victim testified at trial that this made her feel "weird" and although something told her to leave, she remained. Defendant kept telling the victim that he had a surprise for her on the television in her uncle's bedroom. The victim told defendant that she did not want to go into the bedroom. Instead, she began straightening Harris's living room.

After defendant again made reference to something for her in Harris's bedroom, the victim went to see what it was. Once inside the bedroom, the victim observed a powder on the television, which she figured was some type of narcotic. Defendant appeared in the doorway of the bedroom. Defendant grabbed the victim's hair from behind and held a knife to her throat. Defendant told the victim to do as she was told or he would kill her, adding that because she was a little person and he was a big man, it would not take much to kill her.

The victim testified that she tried to run and fight, but was not successful. The victim thought she could talk her way out of the situation, but defendant then told her to take off her clothing. As she undressed and watched defendant masturbate and begin to undress, the victim tried to run from the bedroom, but defendant hit her and they fought. Defendant then pinned the victim on the bed and forced her to perform oral sex on him, while he held the knife to her throat.

The victim testified she kept screaming for her uncle, who did not enter the room, but turned the stereo louder to cover up her cries. Defendant then began vaginally raping the victim. Defendant stopped, and stated that she "wasn't wet enough." Defendant performed oral sex on the victim, and then began vaginally raping her again. While defendant raped her, he held the knife to her throat. Defendant ejaculated onto the victim's stomach, then wiped his hands on a nearby towel. Defendant then allowed the victim to get up so she could use the bathroom. As the victim stood up, she began to get dressed, telling defendant she did not want her uncle to see her naked. The victim then ran down the hallway and into the living room, where her uncle sat. Defendant followed the victim and blocked the door. An argument ensued between Harris and defendant regarding whether to let the victim outside. The victim then made it onto the porch and began running toward the road.

As the victim ran toward the road, she heard a truck coming and flagged it down. The truck, driven by Charles Singletary, stopped and provided the victim a ride back to her father's house. Singletary and the victim were distant relatives. Singletary testified at trial that the victim was hysterical and crying when he picked her up.

The victim testified that once she got home, she sat in the bathtub for about two hours and "just scrubbed and scrubbed." A friend stopped by and found her crying in the bathtub and contacted the victim's mother and grandmother. The victim testified that she was reluctant to report the rape because defendant had threatened to kill her and her whole family. The police arrived at her home where the victim made an initial report. She was then taken to the emergency room of Slidell Memorial Hospital.

Dr. Archie Tatford, who was accepted by the trial court as an expert in emergency medicine, treated the victim. Dr. Tatford noted that the victim had a bruise on her breast and mild abrasions at the opening of her vaginal vault. The findings of Dr. Tatford's physical exam were consistent with her history of having been raped earlier that day.

Detective Donna Madere, formerly of the St. Tammany Parish Sheriff's Office, met the victim at the hospital and collected the rape kit that had been completed by the medical personnel. Detective Madere noted that the victim was very upset and reported defendant had raped her while he held a switchblade knife. Based on the information gathered from the victim, Detective Madere obtained an arrest warrant for defendant. Defendant could not immediately be located. Defendant was later arrested in Mississippi and extradited to Louisiana in April 2005.

Defendant testified on his own behalf. According to defendant, on August 12, the day before this incident, Harris called him and asked him to get some marijuana and "crystal meth." Defendant obtained these drugs plus some additional "crystal meth" for himself, which defendant claimed he used as a truck driver. Defendant then delivered the drugs to Harris's house. Later that evening, the victim came by, and smoked marijuana, drank beer, and ingested "crystal meth" with he and Harris. At some point in the evening, Harris began grabbing the victim's breast. The victim was angry and wanted to leave. Defendant testified that he and Harris drove the victim home. When they returned to Harris's house, they kept "partying," which included smoking dope and drinking beer.

The next morning, at approximately 7:30 a.m., the victim called and wanted to come over and party. Defendant claimed he did not want to pick her up because he had

been up all night and did not want to risk a DWI and lose his commercial driver's license. At about 9:15 a.m., the victim called again to find out if they were going to come and get her. Defendant and Harris agreed and drove over to the victim's house to get her. According to defendant, he and the victim smoked a joint in the truck. Then the victim stated she wanted some crack cocaine. At first, defendant refused; but the victim stated she knew where to get it, and Harris said he wanted some, too. Defendant stated they went to a place "known highly for drugs" and purchased a gram of crack cocaine for \$50.00. The three returned to Harris's house, and the victim said she wanted some crack. Defendant testified that he asked her how she was going to pay for it since she had no money. Defendant claimed the victim offered to have sex with him in exchange for the drugs. Defendant agreed and gave her the cocaine, after which he and the victim engaged in consensual sexual relations.

Defendant stated that following their sexual intercourse, the victim wanted more crack, but he refused to take her to get more. Defendant claimed the victim threatened him, they argued, and the victim left. Defendant stated he left Harris's home soon thereafter. Defendant admitted a 1983 conviction for aggravated assault with a knife, and a 1990 conviction for possession of crack cocaine.

### **SUFFICIENCY OF THE EVIDENCE**

In his counseled assignment of error, defendant argues the trial court committed reversible error by accepting the jury's guilty verdict even though the testimony at trial revealed that defendant and the victim engaged in consensual sexual intercourse because of their "sex-for-drugs agreement."

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved 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); La. Code Crim. P. art 821.

Rape is the act of anal, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent. La. R.S. 14:41(A). Emission is

not necessary, and any sexual penetration, when the rape involves vaginal or anal intercourse, however slight, is sufficient to complete the crime. La. R.S. 14:41(B).

Louisiana Revised Statutes 14:42 defines aggravated rape, in pertinent part, as:

A. Aggravated rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one of the following circumstances:

. . . .

(3) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.

In his brief to this court, defendant argues that the State's evidence was "gravely insufficient" to support his conviction for aggravated rape. In support of this argument, defendant then summarizes the content of his trial testimony. Defense counsel makes no effort to discuss the victim's testimony.

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. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932.

It has long been held that the testimony of the victim is sufficient to establish the elements of the offense. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Glynn**, 94-0332, p. 32 (La. App. 1 Cir. 4/7/95), 653 So.2d 1288, 1310, writ denied, 95-1153 (La. 10/6/95), 661 So.2d 464.

The guilty verdict in the present case indicates that the jury accepted the victim's testimony that she was vaginally raped and forced to perform oral sex by the defendant while he was armed with a knife. Viewing the evidence in the light most favorable to the prosecution, we conclude that the State proved beyond a reasonable doubt that the defendant was guilty of aggravated rape. This assignment of error is without merit.

## PRO SE ASSIGNMENT OF ERROR

In a pro se brief, defendant argues that the trial court erred in denying his numerous motions for speedy trial. In defendant's pro se brief, he states that he filed motions for speedy trial on July 20, 2005, October 4, 2005, and February 17, 2006. Defendant argues that the failure of the trial court to grant any of these motions prejudiced him in that a witness, Carlos Harris, was dead by the time of trial and unavailable to testify as to the events of the incident.

Louisiana Code of Criminal Procedure article 701, which provides the statutory right to a speedy trial, merely authorizes pre-trial relief. The remedy for a speedy trial violation under Article 701 is limited to release from incarceration without bail or release of the bail obligation for one not incarcerated. Once a defendant has been tried and convicted, any allegation of a violation is moot. **State v. Odom**, 2003-1772, p. 14 (La. App. 1 Cir 4/2/04), 878 So.2d 582, 593, writ denied, 2004-1105 (La. 10/8/04), 883 So.2d 1026.

We note that if the defense files pre-trial motions, and the filing of these motions prevents the trial from being held within the specified time period, the delay is not attributable to the State. Rather, there is a day for day reduction of the statutory delays provided in Article 701, when the defense acquiesces to time delays. **State v. Green**, 2001-3358, p. 5 (La. 2/1/02), 808 So.2d 318, 321 (per curiam).

The record indicates the indictment charging defendant with aggravated rape was filed on June 8, 2005. Defendant filed his first pro se motion seeking a speedy trial under Article 701 on July 20, 2005. On August 11, 2005, defendant filed a motion to recuse the district attorney. On August 19, 2005, defendant filed several motions including a motion for a **Prieur** hearing, a motion to suppress confession, a motion to suppress evidence, a motion to suppress identification, and a motion for discovery.

Defendant's trial was originally scheduled for September 19, 2005. On that date, defendant obtained a motion for continuance. Meanwhile, on October 4, 2005, defendant filed a second pro se motion seeking a speedy trial under Article 701. On motions by

defendant, the trial court granted continuances of the pre-trial motions on November 2, 2005, and November 14, 2005.

On January 23, 2006, defendant withdrew his motion to recuse the district attorney and obtained another continuance of his pre-trial motions. The trial court granted defendant's requests for continuances of his pre-trial motions on February 13, February 21, March 20, and April 12, 2006.<sup>1</sup> On May 15, 2006, the trial court set defendant's trial for September 11, 2006.

On August 11, 2006, the trial court held a hearing on defendant's speedy trial motions and denied the motions. Defendant sought review of that decision from this court. In **State v. Craddock**, 2006-160 (La. App. 1 Cir. 8/31/06)(unpublished), this court denied defendant's writ application on the showing made. On September 11, 2006, defendant's trial commenced.

It is obvious from the record that the delays in bringing this matter to trial rest entirely with defendant and his continued requests for continuances of his pre-trial motions. Under these circumstances, we cannot say these delays are attributable to the State.

In an abundance of caution, we also address defendant's assertion that his constitutional right to a speedy trial was violated. A defendant has the right to a speedy trial under the Sixth Amendment of the United States Constitution and La. Const. art. I, § 16. The right to speedy trial attaches when an individual becomes an accused, whether by formal indictment or bill of information or by arrest and actual restraint. **State v. Odom**, 2003-1772 at 14, 878 So.2d at 593. In **Barker v. Wingo**, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101 (1972), the Supreme Court set out the following four factors to determine whether a defendant's right to a speedy trial has been violated: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of this right to speedy trial; and (4) the prejudice to the defendant. The court held that the

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<sup>1</sup> On February 17, 2006, defense counsel filed this motion for speedy trial.



delay is the triggering mechanism; and, until there is some delay, which is presumptively prejudicial, there is no need to inquire into the other factors. *Id.*

The length of the delay between the filing of the indictment and defendant's trial was one year and three months. We do not find such delay to be presumptively prejudicial. Moreover, as already discussed, the continuances in the resolution of defendant's pre-trial motions were entirely at defendant's request. Although defendant did assert his right to a speedy trial, his continued requests for continuances on important pre-trial issues placed the trial court in an unusual position. Finally, although defendant claims that Harris, an exculpatory witness, died before this matter could be brought to trial, there is no evidence of when Harris died, nor has defendant explained how Harris's testimony would have been material. Accordingly, we find no constitutional or statutory violation of defendant's right to a speedy trial. This assignment of error is without merit.

**CONVICTION AND SENTENCE AFFIRMED.**