

STATE OF LOUISIANA

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NO. 2000-KA-0692

VERSUS

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COURT OF APPEAL

SEANTE MCKNIGHT

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 376-602, SECTION "E"
HONORABLE CALVIN JOHNSON, JUDGE

CHARLES R. JONES
JUDGE

(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, and Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

Defendant/appellant, Seante McKnight, appeals his conviction and sentence for attempted first degree murder, which was committed during the perpetration of a second-degree kidnapping. He pled guilty pursuant to *State vs. Crosby and North Carolina v. Alford*, and the district court sentenced him to fifteen years imprisonment. Following a review of the record, we hereby affirm the conviction and sentence of Seante McKnight.

PROCEDURAL HISTORY

McKnight was charged by bill of information on June 2, 1995, with attempted first-degree murder, a violation of La. R.S. 14:30(A)(1). McKnight pled not guilty at his November 15, 1995 arraignment. Trial commenced on October 31, 1996, but a mistrial was declared on that date. On October 1, 1997, McKnight entered a plea of guilty as charged pursuant to *State v. Crosby and North Carolina v. Alford*. After waiving all delays, he was sentenced to fifteen years at hard labor, without benefit of parole, probation or suspension of sentence. The trial court granted his out-of-time appeal on February 16, 2000.

FACTS

The victim, Kevin Henry Barra, testified at the motion to suppress

hearing that McKnight shot him five times on February 2, 1995, at approximately 11:35 p.m. Mr. Barra testified that he was well acquainted with McKnight, since McKnight resided in the apartment complex that Mr. Barra and his wife managed. In fact, Mr. Barra testified that he had known McKnight for four years prior to the shooting, and he had considered him a friend. Mr. Barra testified that on several occasions he and McKnight watched television and videos and they used to swim in the pool together.

On the night of the shooting, Mr. Barra testified that McKnight asked him to go with him to help him move. Mr. Barra agreed to assist McKnight, and he proceeded to get into McKnight's vehicle. When he entered the vehicle, Mr. Barra noticed McKnight had someone else in the vehicle who he had not met before. Mr. Barra testified that the situation made him uncomfortable. When Mr. Barra attempted to exit the car, the unknown passenger pulled out a gun on Mr. Barra.

Ten to fifteen minutes later, McKnight pulled the car over next to a wooded area with the pretense of retrieving a television set he had placed there. Mr. Barra and McKnight exited the car, and McKnight opened the hood and came around to the side where Mr. Barra was standing. At that point, McKnight accused Mr. Barra of telling McKnight's mother that he was selling drugs out of her house, and that someone was trying to kill him

(McKnight). While Mr. Barra was denying the allegations, McKnight shot him twice in the stomach and once in the leg. Mr. Barra began running away when McKnight shot him again. He testified that he fell to the ground and overheard McKnight say, "hand me the gun." He then testified that McKnight shot him a fifth time. When Mr. Barra was asked if the other individual had also shot him, he replied "Not that I know of." Mr. Barra testified that he did not lose consciousness during the shooting, and he was alert enough to inform the police officer who arrived at the scene that he had been shot by someone he knew as "Sean McKnight."

On February 8, 1995, while in Charity Hospital, Detective Farrell St. Martin conducted a six-photo lineup so that Mr. Barra could identify his assailant. After he was shown six photographs, Mr. Barra identified McKnight as the shooter. Mr. Barra also identified McKnight as the perpetrator during trial. During cross-examination, Mr. Barra testified that he was taking pain medication to help him sleep, but he denies being in any pain at the time he was presented with the photo lineup. He also denied being under the influence of any illegal drugs on the night of the shooting.

New Orleans Police Detective Farrell St. Martin testified that he investigated the shooting and contacted Mr. Barra's wife, who gave him McKnight's correct name. Det. Martin obtained a photograph of McKnight,

and he compiled a photographic lineup containing that photograph and photos of five other individuals. He presented the lineup to Mr. Barra while he was in Charity Hospital. Det. St. Martin testified that Mr. Barra was very coherent at the time, and had no intravenous tubes in him. He further testified that Mr. Barra positively identified McKnight's photograph as the assailant.

ERRORS PATENT

A review of the record reveals no errors patent.

MOTION TO SUPPRESS

In his sole assignment of error, McKnight argues that the trial court erred in denying his Motion to Suppress the identification.

The defendant bears the burden of proving that an out-of-court identification was suggestive, and that there was a substantial likelihood of misidentification as a result of the identification procedure. *State v. Ballett*, 98-2568, p. 17 (La. App. 4 Cir. 3/15/00), 756 So. 2d 587, 597; *State v. Martello*, 98-2066, p. 8 (La. App. 4 Cir. 11/17/99), 748 So.2d 1192, 1198. An identification procedure is suggestive if it focuses the victim's attention on the defendant. *State v. Laymon*, 97-1520, p. 16 (La. App. 4 Cir. 3/15/00), 756 So. 2d 1160, 1172. However, even a suggestive identification will be admissible if it is found reliable under the totality of circumstances. Id. In

Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977), the United States Supreme Court set forth a five-factor test to determine whether an identification is reliable: (1) the opportunity of the witness to view the assailant at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the assailant; (4) the level of certainty demonstrated by the witness; and (5) the length of time between the crime and the confrontation. See also *State v. Green*, 98-1021, p. 12 (La. App. 4 Cir. 12/22/99), 750 So. 2d 343, 350, *writ denied*, 2000-0235 (La. 8/31/00), 766 So. 2d 1274. In reviewing a trial court's ruling on a motion to suppress, an appellate court is not limited to evidence adduced at the hearing on the motion to suppress; it may also consider any pertinent evidence given at trial of the case. *State v. Nogess*, 98-0670, p. 11 (La. App. 4 Cir. 3/3/99), 729 So. 2d 132, 137.

McKnight argues that the identification procedure was suggestive because Mr. Barra testified on direct examination that Det. St. Martin presented him with the photo lineup and asked him to look at it and "see if Sean" was in the lineup. However, there is no evidence that Det. St. Martin suggested to Mr. Barra which photograph to select. Further, we find that the statement was not suggestive. The statement was intended to convey to Mr. Barra that McKnight's photograph was one of the six photos in the lineup.

Det. St. Martin's statement to Mr. Barra only indicated that one of the photos in the lineup was the victim's perpetrator.

McKnight also failed to show that the identification procedure was suggestive. Moreover, even assuming that the identification procedure was suggestive, the evidence clearly establishes that it was reliable. Mr. Barra had known McKnight for four years prior to the shooting. McKnight lived in the apartment complex managed by Mr. Barra and his wife, and Mr. Barra had frequently socialized with him. McKnight verbally attacked Mr. Barra on the night of the shooting. Furthermore, Mr. Barra did not lose consciousness during the shooting—making his identification of McKnight as the perpetrator more credible. In addition, the identification procedure took place only six days after the shooting, and Mr. Barra was very coherent at the time he identified McKnight. Thus, we find no error by the trial court in denying the Motion to Suppress. Accordingly, there is no merit to this assignment of error.

DECREE

For the foregoing reasons, the conviction and sentence of Seante McKnight are affirmed.

AFFIRMED