STATE OF LOUISIANA	*	**NO. 2001-KA-0533**
VERSUS	*	**COURT OF APPEAL**
WILLIE GREEN, JR.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 405-666, SECTION "F"
Honorable Dennis J. Waldron, Judge
* * * * * *
JUDGE

JOAN BERNARD ARMSTRONG
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin and Judge Terri F. Love)

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AFFIRMED.

STATEMENT OF CASE

On March 18, 1999, the defendant, Willie Green, Jr., was indicted on three counts of aggravated rape in violation of La. R.S. 14:42, three counts of aggravated kidnapping in violation of La. R.S. 14: 44, one count of armed robbery in violation of La. R.S. 14:64, and three counts of aggravated crime against nature in violation of La.R.S. 14:89.1. The defendant pled not guilty to all counts at his arraignment on March 22, 1999. The defendant filed motions to suppress on April 21, 1999. Suppression hearings were held on June 11, 1999 and July 2, 1999. The trial court denied the motions to suppress identification and confession on August 27, 1999. On the same date, the trial court ordered a sanity hearing. A sanity hearing was conducted on August 31, 1999, and the defendant was found competent to proceed to trial. The trial court ordered another sanity hearing on February 16, 2000. Another sanity hearing was held on February 29, 2000, and the defendant was again found competent to proceed to trial. The defendant's first trial ended in a mistrial on May 8, 2000. A two day jury trial was held on August 2-3, 2000. The defendant was found guilty as charged on two

counts of aggravated rape (counts one and eight), guilty of simple rape (count four), guilty as charged on two counts of aggravated kidnapping (counts two and nine), guilty of two counts of aggravated crime against nature (counts three and ten), guilty of crime against nature (count six), not guilty of one count of aggravated kidnapping (count five) and not guilty of armed robbery (count seven). A sentencing hearing was held on August 11, 2000. The trial court sentenced defendant to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence on the two counts of aggravated rape and two counts of aggravated kidnapping (counts one, two, eight and nine). The trial court sentenced the defendant to serve fifteen years at hard labor without benefit of probation, parole or suspension of sentence on the two counts of aggravated crime against nature (counts three and ten). The defendant was sentenced to serve twenty-five years at hard labor without benefit of probation, parole or suspension of sentence on the charge of simple rape (count four) and five years at hard labor on the charge of crime against nature (count six). The sentences on counts one, two and three were to be served concurrently with each other but consecutively to the sentences on counts four, six, eight, nine and ten. The sentences on counts four and six were to be served concurrently with each other but consecutively to the sentences on counts one, two, three, eight, nine and ten.

The sentences on counts eight, nine and ten were to be served concurrently with each other but consecutively to the sentences on counts one, two, three, four and six. On appeal, the defendant raises three assignments of error.

STATEMENT OF FACT

Dr. Geoffrey Odom testified that he examined C.C. at the Medical Center of Louisiana in January of 1999. C.C. was taken to the hospital for evaluation and treatment of an alleged assault. C.C. stated that she was assaulted by a single male. The subject threatened her with a knife. Dr. Odom stated that the examination revealed that the victim was having her menstrual cycle. There were no signs of vaginal lacerations or cervical trauma. Dr. Odom further testified that the lack of evidence did not indicate that the victim was not assaulted. He stated that generally one could not tell whether an adult female has had sexual intercourse.

Madelyn Collins, a forensic analyst with the New Orleans Police Department Crime Lab, examined Y.B.'s clothing for blood, hair and seminal fluid. Nothing was found on the victim's jeans and shirt. Hair, blood and seminal fluid were found on the victim's underwear. Hair was also found on the victim's socks. Ms. Collins testified that she also examined clothing retrieved from the scene where C.C. was assaulted. No

hair, blood or seminal fluid were found on a pair of white tennis shoes, a blue and brown jacket, and a blue bandana. Hair was found on a pink long sleeve shirt. Blood samples were located on a pair of pink pants, a pair of white underwear, a pair of gray pants, and a white tee shirt.

Detective Joseph Goins testified that on November 14, 1998, he investigated a rape complaint. He met with the victim, Y.B. The officer stated that Y.B. was upset and her clothes were dirty. The officer went to Y.B.'s home and met with the police officers who had initially responded to the call. Detective Goins spoke with Y.B. and her mother. Y.B. then showed the officer the crime scene. Y.B. was taken to the hospital for treatment. The crime scene was an abandoned house at 9181/2 Flood Street. Detective Goins picked up the rape kit and Y.B.'s clothing from the hospital. The officer later conducted a second interview with Y.B. The officer asked her to assist in completing a composite sketch of the perpetrator. Y.B. did so and the composite sketch was distributed to the other police divisions in January of 1999. Detective Goins testified that he received the name of Carl Singleton as a possible suspect. The officer compiled a photographic lineup which included Singleton's photograph and presented the lineup to Y.B. She did not identify anyone in that lineup as the perpetrator. Detective Goins testified that the defendant was apprehended on January 20, 1999.

After the defendant was apprehended, the officer presented Y.B. with a photographic lineup which included the defendant's photograph. She identified the defendant as the perpetrator.

Y.B. testified that she left her friend's house at approximately midnight on November 14, 1998. As she was walking home on St. Claude Avenue, the defendant approached her. The defendant asked her if she had "a light." She told him no and continued walking. The defendant then came up behind her and grabbed her. He put a sharp object to her neck and told her that if she tried to run, he "would leave her in a puddle of blood." The defendant took her to an abandoned house on Flood Street where he raped and performed oral sex on her. The defendant made her perform oral sex on him. The defendant released her at approximately 4:00 a.m. The defendant walked with Y.B. to the middle of St. Claude Avenue. She testified that she had never seen the defendant before that night. When she got home, Y.B. called a friend and told her what happened. The friend told her to tell her mother. Y.B.'s mother woke up, and Y.B. told her mother about the rape. She and her mother called the police. She gave the officers a statement when they arrived at her house. Y.B. then went to the hospital for an examination. She assisted in compiling a composite sketch of the perpetrator. Y.B. was presented with two photographic lineups. She could

not identify anyone in the first lineup. However, she identified the defendant in the second photographic lineup as the perpetrator. Y.B. identified the defendant at trial as the perpetrator.

At approximately 9:00 p.m. on January 4, 1999, C.C. was walking from her grandmother's house on North Rampart to her friend's house on Egania Street. As she was walking on St. Claude Avenue, the defendant approached her and put a knife to her throat. The defendant told her " Bitch, if you move, I'll kill you." The defendant took her to an abandoned house on St. Maurice Street. The defendant blindfolded her with a handkerchief and then raped her. After approximately one hour, they left the house on St. Maurice Street, and the defendant took her to another abandoned house on Alabo Street. The defendant raped her again and made her perform oral sex on him. The defendant released her near the intersection of St. Claude and Gordon. C.C. went home and called the police. After speaking with the police, she went to the hospital where she underwent a sexual assault examination. C.C. stated that she assisted in compiling a composite sketch of the perpetrator. She was presented a photographic lineup but was unable to identify anyone. A few weeks after the incident, she saw the defendant in her neighborhood. She flagged down a passing police vehicle and told the officers that the defendant was the person who had raped her. C.C.

identified the defendant at trial as the person who raped her. She also stated that the defendant took twenty dollars from her at the time of the rape.

On January 20, 1999, Officer Melody Young responded to a call of a suspicious person. When she arrived on the scene, she met with a young woman who informed her that the defendant was the person who raped her. The officer then arrested the defendant near the intersection of St. Claude and Gordon. The arrest occurred at approximately 10:20 a.m.

Detective Clifton Neely testified that on January 19, 1999, he investigated a rape which occurred in the 4500 block of St. Claude Avenue. The officer spoke with the victim, V.J. The officer stated that V.J. was very upset and distraught. The officer interviewed her and then took her to the hospital for an examination. The victim showed the officer the abandoned house where the rape occurred. Detective Neely presented the victim with a photographic lineup on January 21, 1999. She identified the defendant as the person who raped her. Detective Neely and V.J. returned to the crime scene on January 23, 1999. The officer retrieved the clothing which the victim had left at the scene.

Officer Joseph Tafaro examined V.J.'s clothing for hair, blood or seminal fluid and found nothing on her clothes.

V.J. testified that she was attending the University of New Orleans on

January 19, 1999. She left the UNO campus at approximately noon to go home. She took the Elysian Fields bus to St. Claude where she caught the St. Claude bus. V.J. stated that she soon realized she had taken the wrong bus. She got off of the bus at Desire and St. Claude and started walking towards the St. Claude Bridge. The defendant approached her, put his arm around her neck and stuck a sharp object in her side. The defendant told her not to say anything. He threatened to kill her if she said anything. The defendant took her to an abandoned house where he raped her and performed oral sex on her. She tried to get away, but he grabbed her. The defendant kept her in the house until it was dark outside. The defendant left the house first then V.J. left a short time later. The defendant asked her for money before he left. She told him that she did not have any money. The defendant then took her necklace. She ran to a house in the area and sought help. The police were called. V.J. spoke with the police and then went to the hospital for an examination. She identified the defendant as the perpetrator in a photographic lineup. She also identified the defendant in court as the perpetrator.

Sergeant Adele Bonura took a statement from the defendant. Sgt. Bonura testified that she advised the defendant of his rights, which he indicated he understood. The defendant was not forced or intimidated into

making a statement. The defendant gave the statement freely and voluntarily. The statement was audiotaped. Detectives Ned Gonzalez and Lynne McKendall were present for the statement. The defendant acknowledged having sex with several females during time period in which the rapes took place. However, the defendant stated that the sexual intercourse was consensual. He remembered a woman by the name of Cicely but he could not remember any other names. The defendant directed the officers to the houses where the rapes occurred. The defendant pointed out the houses used in the three rapes as well as additional houses.

Officer Easterlyn McKendall prepared the report taken from the victim, C.C. As Officer McKendall was not available for trial, the parties stipulated to the introduction of her report. The portion of the report concerning C.C.'s condition was read into the record. The officer noted in the report that C.C. admitted to being a crack user and appeared to be having withdrawals.

Dr. Rafael Salcedo, a forensic psychologist, testified that he read the defendant's statement and listened to the audiotape of the statement. Dr. Salcedo stated that he found the defendant's answers to be confusing. He opined that a person taking drugs would be impaired to a certain degree. The person would be in a state of confusion and susceptible to being led to

say something. Dr. Salcedo acknowledged that he did not examine the defendant. The witness also noted that the acute effects of crack use would last only a few hours. The defendant indicated that he smoked crack the night prior to his arrest. The defendant was not arrested until 10:20 a.m. The statement was not taken until 11:45 a.m.

ERRORS PATENT

A review of the record for errors patent reveals none.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, the defendant contends that the trial court erred when it denied the defendant's motion for mistrial. The defendant requested a mistrial contending that some of the jurors saw the defendant when he first walked in the courtroom. Although the defendant was dressed in civilian clothes and not shackled, the defendant argues that the jurors saw the defendant standing next to a prisoner who was handcuffed, thus giving the suggestion that the defendant was incarcerated.

C.Cr.P. art. 775 provides that a mistrial shall be ordered upon motion of the defendant "when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial, or when authorized by Article 770 or 771."

In State v. Payne, 482 So.2d 178 (La. App. 4 Cir. 1986), this Court noted that a mistrial is a drastic remedy warranted only when an error at trial results in substantial prejudice to a defendant which effectively deprives him of a fair trial. The Louisiana Supreme Court has held that the determination of whether to grant a mistrial under Article 775 is within the trial court's discretion, and its denial of a motion for mistrial should not be disturbed on appeal absent an abuse of discretion. State v. Smith, 433 So.2d 688 (La. 1983); State v. Alexander, 351 So.2d 505 (La. 1977). The standard to judge whether a mistrial should have been granted is whether the defendant "suffers such substantial prejudice that he has been deprived of any reasonable expectation of a fair trial." State v. Smith, 433 So.2d at 696; State v. Cushenberry, 407 So.2d 700 (La. 1981).

Ordinarily, a defendant before the court should not be shackled or handcuffed or garbed in any manner destructive of the presumption of his innocence and of the dignity and impartiality of judicial proceedings. State v. Smith, 504 So.2d 1070 (La. App. 1 Cir. 1987). In State v. Spellman, 562 So.2d 455 (La. 1990), the defendant was compelled to trial in prison clothes over his express objection. The Court found the situation to be especially egregious because the defendant was wearing distinctive clothing from Orleans Parish Prison but was on trial in St. Bernard Parish. Furthermore,

several members of the jury venire acknowledged that the defendant's attire bothered them. Under these facts, the Court concluded that "[U]nder the totality of the circumstances in this case, no jury could have been expected to remain impartial and render fair judgment." Id.

In State v. Wilkerson, 403 So.2d 652 (La. 1981), the jury was leaving the courtroom at the end of the first day of trial. Before they left, a sheriff handcuffed the defendant and his co-defendant. Over half the jury passed within three or four feet of the defendant. The defendant argued that the jury must have seen him handcuffed. The Louisiana Supreme Court affirmed the denial of his motion for a mistrial. The Court stated that, if the handcuffing was objected to at the time of trial, the record must show an abuse of the trial court's discretion before the error would be reversible. Wilkerson, 403 So.2d at 659. The Court also analyzed the case in terms of the total circumstances and stated:

> [They] were not handcuffed during trial. They were handcuffed solely for the purposes of transport to and from the courtroom. Under the circumstances, the possibility that on one occasion several jurors may have seen the defendant in handcuffs does not appear to have so prejudiced the defendant as to warrant relief on appeal. (emphasis in original.)

Id.

In State v. Brown, 594 So.2d 372 (La. App. 1 Cir. 1991), trial was recessed after a Saturday of testimony. At the beginning of the trial on

Monday, the defense counsel moved for a mistrial based on the jurors having allegedly viewed him in prison garb and handcuffed while being escorted by a deputy sheriff on the preceding Saturday after the trial court recessed the trial. When questioned by the trial court as to which three jurors had allegedly viewed the defendant, the defense counsel stated that the defendant could clearly identify only one of the three jurors involved, and that he could only identify the other two as white women. The sheriff's deputy was called to the stand and testified that late during the day on Saturday, he escorted defendant from the courthouse to the jail facility across the street from the courthouse. When he rode the elevator with defendant down to the lobby, the defendant was handcuffed and dressed in prison garb. Immediately upon stepping out of the elevator into the lobby, he noticed some people in the lobby. He did not look toward the people and hence could not identify them. The court decided not to question the jurors because to do so would "heighten the incident." The First Circuit found that the trial court had not abused its discretion in denying defendant's motion for mistrial:

> The instant record does not even substantiate the occurrence of the alleged encounter between defendant and one or more jurors. Even assuming arguendo that the alleged encounter occurred, the scenario envisioned by defendant's allegation of one or perhaps as many as three jurors seeing defendant dressed in prison clothes and handcuffed (while defendant was being escorted by a deputy from the courthouse to jail during a recess of the trial) would not have so prejudiced defendant as to warrant relief on appeal.

Brown, 594 So.2d at 393.

In State v. Jackson, 584 So.2d 266 (La. App. 1 Cir. 1991), on the morning of the last day of trial, the defendant was seen in chains, shackles and prison clothing by several jurors. Prior to the continuation of the trial, the defense counsel made a motion for mistrial. The defendant testified at a hearing on the motion. He stated that as he was taken into the courthouse, he saw several jurors standing in the lobby. The defendant could name three of the four jurors he saw, but he could not name the fourth. The three known jurors were individually questioned by the trial court as to whether or not they had seen the defendant in prison garb and its effect, if any, on each juror's deliberations in the case. Each juror questioned testified that the sight of the defendant dressed in prison clothing would not have an effect on his deliberations. Additionally, the trial court advised the jurors, after they answered in the negative, that seeing the defendant in prison clothing was not relevant to the case. The trial judge also asked the jurors not to discuss the incident with any of the other jurors. The trial court in denying the motion, stated:

> Okay, while this occurrence was unfortunate, the court has taken the only precaution it knows how to take. The jurors have stated that that would not effect (sic) their decision one way or the other; therefore, the motion is denied.

Jackson, 584 So.2d at 269.

The First Circuit found that the trial court had not abused its discretion in refusing to grant the mistrial.

In the instant case, the defendant was not clothed in prison attire, handcuffed or shackled. The defendant and a prisoner who was handcuffed had been taken into the courtroom by a deputy. The defendant suggests that if the jurors saw him then it would have given the jurors the belief that he was incarcerated. Defense counsel argued for a mistrial as a result of the jurors seeing defendant standing near a prisoner who was handcuffed.

> MR. JENKINS:
> And, finally, as several of the jurors were walking in, my client, Willie Green, was brought up by one of the deputy sheriffs with the other inmate, who was in handcuffs, and based on that, it would give the jury the idea that he also was incarcerated.
>
> THE COURT:
> No juror saw him in handcuffs.
>
> MR. JENKINS:
> I admit that. None saw him on the jury, but the other inmates were in front of him.
>
> THE COURT:
> I understand.
>
> MR. JENKINS:
> And, in fact, he was ordered to stop and the jurors were stopped, giving them the impression that, perhaps either he may have been in jail or that they were in danger at that point, but they did see him.
>
> THE COURT:
> Okay. Mr. Green was standing behind the partition that

separates the Court bench from the rear wall. I know that when the two lady jurors walked through the double doors, he was already behind the partition. He was not in any handcuffs or anything else. He was dressed in his own clothing. There was one prisoner who was standing off to the right --- to the Court's left, and, of course, I asked the two jurors to wait a moment. The sheriff walked the prisoner around in front, so I don't know that the jurors would have thought anything other than they were waiting to have that prisoner walk into the room. That prisoner was not the defendant.

MR. JENKINS:
May I say something, Judge?

THE COURT:
Please.

MR. JENKINS:
In fact, the way it happened and the way I looked at it, the inmate who was handcuffed was in front of Mr. Green, and they stopped at the door. It was the inmate, it was Mr. Green, and it was the deputy, and the deputy can attest to that, your Honor. Then, as the jurors stood there, at that point, they ordered that Mr. Green and the other inmate who was handcuffed stop.

THE COURT:
Okay.

MR. JENKINS:
Then he walked forward. They clearly saw him.

THE COURT:
Okay. I will presume that the scenario that you have described is the way that it occurred and not the way that I have just stated. With all respect to you, I respect that.

MR. JENKINS:
Thank you.

THE COURT:
If you say that they saw him before he reached the back of the panel here that separates the bench from the wall, I will accept that. I

> will not, in any way, challenge that. I would still deny any request for a mistrial. The gentleman was not in any cuffs or shackles. He stood before the Court then, once those jurors exited the room, as he stands before the Court now, in his own clothing, not shackled, not handcuffed. Thank you.

The trial court denied the request for mistrial concluding that the jurors were not given any indication that the defendant was incarcerated. The reasoning behind the prohibition of wearing prison clothes and/or being handcuffed or shackled during trial is to protect a defendant's presumption of innocence and of the dignity and impartiality of judicial proceedings. In the present case, it is questionable that any jurors saw the defendant standing near the inmate who was handcuffed. The trial judge noted that the defendant, the deputy and the other inmate were standing behind the partition in the courtroom. However, the trial judge said that he would accept the defendant's view in determining the merits of the motion. Even if two of the jurors had seen the defendant standing near an inmate who was handcuffed, there is no evidence to suggest that the jurors would have thought the defendant was incarcerated. As the trial judge noted, there could be several good reasons why the defendant was standing near the inmate. The trial judge also stressed that the defendant himself was not dressed in prison clothing, handcuffed or shackled. The jurors saw him dressed in his own clothing without handcuffs or shackles. The trial court did not abuse its

discretion when it denied the defendant's motion for mistrial.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 2

In this second assignment of error, the defendant contends that the trial court erred in denying the defendant's motion to suppress the confession. The defendant contends that he was intoxicated at the time the statement was given.

The State has the burden of proving that a statement given by a defendant was freely and voluntarily given, not the product of threats, promises, coercion, intimidation, or physical abuse. State v. Seward, 509 So.2d 413 (La. 1987); State v. Brooks, 505 So.2d 714 (La. 1987); State v. Daliet, 557 So.2d 283 (La. App. 4 Cir. 1990). To establish the admissibility of a statement made by an accused person during custodial interrogation, the State must prove that the accused had been advised of his/her Miranda rights and that he/she waived these rights prior to interrogation. Brooks; Daliet. The determination of a statement's admissibility is within a trial court's discretion, and it should not be disturbed unless it is not supported by the evidence. Brooks; Daliet.

When the free and voluntary nature of a confession is challenged on the ground that the defendant was intoxicated at the time of the confession,

the confession will be inadmissible only when the intoxication is of such a degree as to negate the defendant's comprehension and to make him unconscious of the consequences of what he is saying. Whether intoxication exists and is sufficient to vitiate the voluntariness of a confession are questions of fact, and the trial court's ruling on this issue will not be disturbed unless unsupported by the evidence. State v. Williams, 602 So.2d 318 (La. App. 1 Cir. 1992).

In the case at bar, the defendant argues that his statement was not voluntary because he was still intoxicated from smoking crack the night before he was arrested. The defendant relies upon the testimony of Dr. Rafael Salcedo who stated he reviewed the defendant's statement and found defendant's responses to be confusing. Dr. Salcedo opined that a person taking drugs would be impaired to a certain degree and be susceptible to being led to say something. However, Dr. Salcedo admitted that the acute effects of crack use would last only a few hours.

The defendant admitted that he had smoked crack on the night of December 19, 1999. The defendant was arrested at approximately 10:20 a.m. on December 20, 1999. He gave the police officers a statement beginning at 11:45 a.m. Sgt. Adele Bonura, the officer who took the statement from the defendant, testified that he did not appear intoxicated or

impaired. She stated the defendant gave the statement freely and voluntarily.

The evidence does not support the defendant's contention that he was intoxicated at the time he gave the statement. Dr. Salcedo stated that the effects of crack intoxication would only last for a few hours. The defendant stated that he smoked crack on December 19, 1999. Any of the intoxicating effects of crack cocaine would have worn off by the time the defendant was arrested on the morning of December 20, 1999. The trial court did not abuse its discretion when it denied the defendant's motion to suppress the statement.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 3

In this third assignment of error, the defendant also suggests that the State did not produce sufficient evidence to sustain the defendant's convictions for aggravated rape, aggravated kidnapping, aggravated crime against nature, simple rape and crime against nature.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the

crime charged. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jacobs, 504 So.2d 817 (La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. State v. Shapiro, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. La. R.S. 15:438 is not a separate test from Jackson v. Virginia, supra, but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. State v. Wright, 445 So.2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the Jackson reasonable doubt standard. State v. Jacobs, supra.

La. R.S. 14:42 defines aggravated rape as "a rape committed upon a person . . . where the anal or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed . . . [w]hen the victim is prevented from resisting the act because the offender is armed with a dangerous weapon." "Rape is the act of anal or vaginal sexual intercourse with a male or female person committed without the person's lawful consent. . . . Emission is not necessary and any sexual penetration, vaginal or

anal, however slight is sufficient to complete the crime." La. R.S. 14:41.

La. R.S. 14: 44 defines aggravated kidnapping as

> the doing of any of the following acts with the intent thereby to force the victim, or some other person, to give up anything of apparent present or prospective value, or to grant any advantage or immunity, in order to secure a release of the person under the offender's actual or apparent control:
>
> (1) The forcible seizing and carrying of any person from one place to another; or
> (2) The enticing or persuading of any person to go from one place to another; or
> (3) The imprisoning or forcible secreting of any person.

Aggravated crime against nature is defined in La. R.S. 14:89.1, in pertinent part, as "crime against nature committed under any one or more of the following circumstances . . . (2) When the victim is prevented from resisting the act by threats of great and immediate bodily harm accompanied by apparent power of execution; [or] (3) When the victim is preventing from resisting the act because the offender is armed with a dangerous weapon." La. R.S. 14:89 defines crime against nature, in pertinent part, as the unnatural carnal copulation by a human being with another of the opposite sex. Emission is not necessary; and, when committed by a human being with another, the use of the genital organ of one of the offenders of whatever sex is sufficient to constitute the crime.

Y.B. testified that the defendant approached her and threatened her with a knife. The defendant told her that if she tried to run or scream, he

would “leave her in a puddle of blood.” The defendant then took her to an abandoned house where he raped her. The victim testified that the defendant repeatedly had vaginal intercourse with her without her consent. She stated that the defendant penetrated her several times. She also testified that the defendant performed oral sex on her and forced her to perform oral sex on him. She identified that defendant in a photographic lineup and at trial as the person who raped and kidnapped her. Madelyn Collins, a forensic analyst with the police department crime lab, testified that seminal fluid was found on Y.B.’s underwear. Such testimony was sufficient for the jury to conclude that the defendant was guilty of the aggravated rape, aggravated kidnapping and aggravated crime against nature of Y.B..

V.J. testified that the defendant approached her as she walked towards the St. Claude Bridge. The defendant put a screwdriver to her side and told her that if she said anything, he would kill her. The defendant then took her to an abandoned house where he raped her. She stated that he kept her there from 1:00 p.m. until it got dark. While there, the defendant forced her to have vaginal intercourse with him. The sexual intercourse was not consensual. He repeatedly penetrated her. The defendant performed oral sex on her and forced her to perform oral sex on him. At one point, she tried to escape but the defendant caught her. She identified the defendant at trial

and in a photographic lineup as the person who kidnapped and raped her. V.J.'s testimony was sufficient for the jury to conclude that the defendant was guilty of aggravated rape, aggravated kidnapping and aggravated crime against nature.

The defendant was found guilty of simple rape and crime against nature of C.C. Simple rape is defined in La. R.S. 14:43 as a

> rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of a victim who is not the spouse of the offender because it is committed under any one or more of the following circumstances:
>
> (1) When the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause, other than the administration by the offender or any narcotic or anesthetic agent or other controlled dangerous substance and the offender knew or should have known of the victim's incapacity.

C.C. testified that the defendant approached her and threatened her with a knife. The defendant told her that he would kill her if she did not do what he said. The defendant took her to an abandoned house where he raped her, repeatedly penetrating her vaginally. C.C. stated that they left the first house and went to another abandoned house where the defendant continued to force her to have sexual intercourse with him. She testified that the defendant performed oral sex on her and forced her to perform oral sex on him. She identified the defendant at trial as the person who raped and

kidnapped her. The defendant admitted in his statement to having sex with C.C.; however, he contended that the sex was consensual. He stated that he and C.C. smoked crack together and then had sex. Officer McKendall's report, which was introduced at trial, suggests that C.C. was a crack user and was having withdrawals at the time she was being interviewed by the police officers.

The evidence presented supports the jury's verdict of simple rape. The testimony and documentary evidence suggests that C.C. was intoxicated at the time the defendant approached her, and that the defendant knew she was intoxicated and took advantage of the situation to have nonconsensual sexual intercourse with her.

As the evidence was sufficient to support the convictions, this assignment is without merit.

Accordingly, the defendant's convictions and sentences are affirmed.

AFFIRMED.