

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2001-KA-1283**  
**VERSUS** \* **COURT OF APPEAL**  
**KEVIN MURRAY** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\*  
\*  
\*  
\* \* \* \* \*

**APPEAL FROM**  
**CRIMINAL DISTRICT COURT ORLEANS PARISH**  
**NO. 418-025, SECTION "F"**  
**Honorable Dennis J. Waldron, Judge**

\* \* \* \* \*

**Judge Patricia Rivet Murray**

\* \* \* \* \*

(Court composed of Judge Steven R. Plotkin, Judge Patricia Rivet Murray,  
Judge Michael E. Kirby)

Harry F. Connick  
District Attorney of Orleans Parish  
Scott Peebles  
Assistant District Attorney of Orleans Parish  
619 South White Street  
New Orleans, LA 70119  
COUNSEL FOR PLAINTIFF/APPELLEE

Pamela S. Moran  
LOUISIANA APPELLATE PROJECT  
P.O. Box 840030

New Orleans, LA 70184-0030  
COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND  
SENTENCE AFFIRMED

Defendant, Kevin Murray, pled guilty to attempted burglary of an inhabited dwelling and, pursuant to an agreement with the State that he would be charged only as a second offender, entered an admission to the multiple offender bill. Mr. Murray, who pled guilty under State v. Crosby, 338 So.2d 584 (La. 1976), appeals the trial court's denial of his motion to suppress identification.

**STATEMENT OF FACT**

Phil Abadie testified that on October 22, 2000, at approximately twelve noon, he was lying in bed when someone knocked at his front door. He then heard a loud "bamming" at his back door, which sounded as if the whole back of his house was caving in. He phoned 911 and informed the operator that someone was trying to kick in his back door.

Mr. Abadie peered out of his front curtain to look for the police and observed a man proceed from the direction of his back door, down the alley and across his neighbor's yard to the sidewalk. He assumed that the perpetrator had left, and went to the bathroom to change his clothes and

wash up. While doing so, he heard a loud noise coming from the front of his house, which he believed to be the police attempting to enter his house. As Mr. Abadie approached the front of his house, he observed his air conditioner jumping up and down in the window. He yelled "Hey," ran to the front and looked out through the curtain and saw the person he had seen earlier leaving his yard. Mr. Abadie opened the door and hollered "Hey" again. When the man turned and looked back at him, Mr. Abadie saw his face.

Mr. Abadie further testified that the police arrived a few seconds after the defendant turned the corner, explaining that he observed the police car from about two and one half blocks away when the defendant ran onto Prieur Street. Mr. Abadie flagged the police car down and explained that the man about whom he had called had just gone around the corner. He described the man to the police as a black man wearing a blue T-shirt and blue jeans.

About ten minutes later, the police returned with the defendant and Mr. Abadie stated that there was no doubt that the man in the police car was the same man he saw leaving the alley. In court, Mr. Abadie identified the defendant, Kevin Murray, as the man he saw leaving his yard on October 22.

**ERRORS PATENT**

A review of the record for errors patent reveals none.

**ASSIGNMENT OF ERROR NUMBER 1**

Mr. Murray contends that the trial court erred by not suppressing Mr. Abadie's identification of him, arguing that this "show up" identification was unduly suggestive. We disagree.

Although a "one-on-one" confrontation between a suspect and the victim is generally not favored, it is permissible when justified by the overall circumstances, particularly when the accused is apprehended within a relatively short period of time after the crime and has been returned to the crime scene. State v. Walters, 582 So.2d 317, 321 (La. App. 4 Cir. 1991); State v. Peters, 553 So.2d 1026, 1027 (La. App. 4 Cir.1989). Because, the victim's memory is fresh, an identification made under these circumstances promotes fairness by assuring that the identification is reliable and permitting the expeditious release of an innocent suspect. State v. Robinson, 404 So.2d 907, 909 (La.1981); State v. Muntz, 534 So.2d 1317, 1320 (La. App. 4th Cir.1988).

In deciding whether to admit an identification based on a "one-on-one" confrontation, the court must determine if, under the circumstances, there was a substantial likelihood of misidentification. Five factors are relevant to this determination: 1) the victim's opportunity to view the

defendant at the time the crime was committed; 2) the degree of attention paid by the victim during the commission of the crime; 3) the accuracy of any prior description; 4) the level of the victim's certainty displayed at the time of the identification; and 5) the length of time elapsed between the crime and identification. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243 (1977); Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972); State v. Valentine, 570 So.2d at 533, 536 (La. App. 4 Cir. 1990).

Applying these factors to the circumstances of this identification we find that, although Mr. Abadie's opportunity to observe the perpetrator was brief, his degree of attention was more than that of a casual observer and he saw the man's face in broad daylight. The description he gave to the police, although limited to race and clothing, was accurate. In addition, only ten minutes had elapsed between the time Mr. Abadie observed the perpetrator and his identification of Kevin Murray. Based on these circumstances, there is little likelihood that he was mistaken in his identification of Mr. Murray as the man who tried to break into his home.

We find, therefore, that the trial court did not err when it denied Mr. Murray's motion to suppress the identification. The conviction and sentence are affirmed.

**CONVICTION AND SENTENCE AFFIRMED**