

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2015-KA-0675**  
**VERSUS** \*  
**CURTIS W. HAWTHORNE, JR.** \* **COURT OF APPEAL**  
\* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\* \* \* \* \*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. XXX-XXX,<sup>1</sup> SECTION "L"  
Honorable Franz Zibilich, Judge

\* \* \* \* \*

**Judge Joy Cossich Lobrano**

\* \* \* \* \*

(Court composed of Chief Judge James F. McKay, III, Judge Edwin A. Lombard,  
Judge Joy Cossich Lobrano)

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**CONVICTIONS AND SENTENCES AFFIRMED**  
**AUGUST 10, 2016**

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<sup>1</sup> Identification of the district court's docket number has been removed in order to protect the identity of the victim.

Defendant, Curtis W. Hawthorne, Jr., (“Defendant”), appeals his convictions for aggravated rape, in violation of La. R.S. 14:42 (count 1), aggravated kidnapping, in violation of La. R.S. 14:44 (count 2), and, armed robbery, in violation of La. R.S. 14:64 (count 3). Defendant was sentenced to life imprisonment as to both counts 1 and 2 and to fifty years as to count 3, all sentences to run concurrently and to be served without benefit of parole, probation, or suspension of sentence. For the reasons that follow, we affirm his convictions and sentences.

### **Procedural and Factual Background**

On October 17, 2013, the State of Louisiana ("State") charged Defendant with the February 9, 2013 aggravated rape, aggravated kidnapping, and armed robbery of a 23 year-old female tourist from Texas (“Victim”), who was visiting New Orleans with friends for Mardi Gras. Defendant pled not guilty at his arraignment on October 22, 2013 and filed an omnibus motion for discovery, including requests for statements made by Defendant.

Prior to the start of trial on December 1, 2014, the State filed a notice pursuant to La. C.Cr.P. arts. 716, 721, 722, 767 and 768 of its intent to introduce Defendant's statement made to a State's witness on October 7, 2013. The statement was admitted over defense objections that the notice was untimely.

The evidence and testimony offered at trial consisted of the following:

Victim testified that she and her friends arrived in the French Quarter around midday on February 8, 2013. At about 2:30 a.m. on February 9, 2013, Victim became separated from her friends so she decided to hail a taxi and return to her hotel. Victim reported that, although she had been drinking during that day, she was aware of what was happening around her and was not intoxicated at the time she decided to leave Bourbon Street. Victim stated that she did not have a working cell phone with her as hers had been water damaged the night before. After a long, unsuccessful search for a taxi, she flagged down Defendant and asked if he could drive her to her hotel near the Superdome. Defendant asked if she had cash, and when she said yes, he told her to get in the car. Although Defendant's vehicle did not bear any taxi cab insignia, Victim assumed he was an Uber or Lyft driver. After Defendant drove around for a while, Victim became concerned that they had not arrived at her motel. Just then, Defendant stopped the car in a secluded area and demanded that she have sex with him. When she refused, he became agitated, told her that "things could get a whole lot worse" then pulled a silver handgun and ordered her to get into the back seat and disrobe. Defendant also got into the back seat and then orally and vaginally raped her. After the attack, Defendant drove a

short distance to a parking lot and ordered her out of the vehicle as he drove away with her purse and shoes in the back seat. Victim ran into a nearby building and called the police. She told the 911 operator she had been robbed. She explained that she did not mention rape initially because she was so “shocked,” “embarrassed and horrified.”<sup>2</sup> When the police arrived, Victim told them about everything that had happened to her, including the aggravated rape. They drove her to the hospital, where she underwent a physical examination.

A few days after the attack, Victim discovered unauthorized purchases on her credit card, the same credit card that was left in Defendant’s car. Victim reported the unauthorized purchases to the sex crimes detective. Victim testified Defendant forced her to have sex and specifically denied that the sex was consensual.

Former New Orleans Police Department (“NOPD”) Officer Viviana Ferreira (“Officer Ferreira”), an eight-year employee of the NOPD, testified that on February 9, 2013, she was assigned to the Sixth District night watch and was dispatched, along with Sergeant Richard Welch (“Sgt. Welch”), to the Guste Apartments to meet with Victim. Upon arriving, Officer Ferreira noted that Victim was disheveled, crying, distraught, shaking and shoeless. When Officer Ferreira interviewed Victim, Victim was coherent and showed no signs of being

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<sup>2</sup> Victim’s testimony regarding the 911 call was corroborated by the testimony of a New Orleans Police Department 911 Operator, who identified the audio of the 911 call she received from Victim at 5:00 a.m. on February 9, 2013. According to the NOPD 911 Operator, Victim initially reported an armed robbery with a gun. The incident recall report was later amended to reflect that a rape had also occurred.

intoxicated. Officer Ferreira testified regarding Victim's account of the circumstances of the crime, which was consistent with Victim's testimony. After her interview of Victim, Officer Ferreira transported Victim to the hospital, where she underwent a rape examination. Officer Ferreira then notified the sex crimes unit and handed the investigation over to Detective Vernon Haynes.

Sgt. Welch, an officer with the NOPD for seventeen years, testified that he was dispatched to the Guste Apartments to investigate this crime. Sgt. Welch spoke with Victim at the same time Officer Ferreira interviewed her. He corroborated Officer Ferreira's testimony concerning Victim's appearance, demeanor, and account of the crime.

A registered sexual assault nurse examiner ("SANE Nurse") at University Hospital in New Orleans, who was qualified as an expert in the field of sexual assault examination, testified that she performed the rape and pelvic examinations on Victim in the early morning hours of February 9, 2013. SANE Nurse noted that Victim was disheveled, fearful, emotional and crying but able to give a coherent statement. Victim did not appear intoxicated; therefore no toxicology screening was performed. SANE Nurse documented Victim's account of what happened to her and compiled the information into a nine-page "Forensic Sexual Assault Evaluation" report, which was admitted into evidence. According to this report, Victim stated that she was trying to find a taxi cab in the French Quarter when a man pulled up and offered to drive her to her hotel. Instead, the man drove her to a secluded residential area, put his mouth on her vagina and raped her at gunpoint.

Victim reported that Defendant used a condom but SANE Nurse reported swabs were still taken because Victim had reported oral sexual contact. After the attack, the man drove her to another location and forced her out of the vehicle, driving away with her purse and other belongings. SANE Nurse also observed, diagrammed, and photographed the physical injuries to Victim's body, including bruising and abrasions to the hands, knees, hip, and lower left abdomen area. The diagram and photographs were admitted into evidence.

The State and defense stipulated that, during Victim's rape examination, two vaginal, two cervical, two external genitalia, and two rectal swabs were taken, and all contained Defendant's DNA. Additionally, Defendant's seminal fluid was found inside Victim.

Sharon Jupiter also testified at trial. Ms. Jupiter and Defendant have a son together but were no longer living together at the time of this incident. Ms. Jupiter testified that Defendant was scheduled to pick up their son at Ms. Jupiter's residence on October 7, 2013; however, before Defendant arrived, a police officer came to her residence to arrest him. Shortly thereafter, Defendant called Ms. Jupiter and asked whether she had called the police because he saw a police car parked in front of her house. Defendant also asked her if he could pick up their son at the park, rather than at her house. Ms. Jupiter agreed. When Defendant arrived at the park, he showed her a gun he had hidden in his right front pocket, telling her he was wanted by the police. A few minutes later, the police arrived,

and Ms. Jupiter alerted them that Defendant was armed. Defendant ran and was pursued and arrested by the police.

NOPD Detective Devin Joseph (“Det. Joseph”), a member of the Violent Offender Warrant Squad, assisted in the October 7, 2013 arrest of Defendant near a park on the corner of Franklin Avenue and Drew Street. Det. Joseph noticed Defendant holding a bulge in his right waistband and running freely with his other arm. Det. Joseph chased Defendant for about a block to an abandoned lot, where he lost sight of him for about three seconds. The chase continued when Defendant reappeared and ran toward Venus Street. Det. Joseph noticed Defendant was no longer holding his pants with both hands, and the bulge in his waist band had disappeared. Det. Joseph advised his fellow officers that Defendant had thrown away his gun. After Defendant ran another block, Det. Joseph apprehended him, returned to where he had lost sight of Defendant and found the discarded loaded gun.

Detective Vernon Haynes (“Det. Haynes”), of the NOPD Sex Crime Unit testified that he was the lead detective on this case, and he spoke with Victim on February 9, 2013. He noted that Victim could offer little in locating the scene of the attack because she was not from New Orleans. Victim gave him a description of her assailant as an African American male with a dark complexion, in his 20’s, wearing a fisherman style hat with his hair protruding from underneath and a polo shirt. Victim told him her assailant drove off with her purse which contained several bank cards, a little cash, a broken iPhone, and make-up. A short time after

this incident, Victim's bank card reflected unauthorized charges against her account, including transactions at a gas station. Det. Haynes attempted to obtain evidence identifying the perpetrator or his vehicle from the gas station's security video but was unsuccessful. However, from DNA evidence obtained in the case, Det. Haynes was able to identify Defendant as Victim's assailant. Det. Haynes was unsuccessful in speaking to Defendant to get Defendant's side of the story. However, he did speak to a family member of Defendant's, and requested that the family member have Defendant contact him. Det. Haynes noted in his report that Victim admitted drinking alcohol on the day of the incident.<sup>3</sup> However, he testified that he agreed in the decision reached by law enforcement and the district attorney's office that the sexual activity between Victim and Defendant was not consensual and thus secured a warrant for Defendant's arrest.

Defendant, age 23, testified on his own behalf that the sexual activity between him and Victim was consensual. He admitted to having two prior misdemeanor convictions – domestic violence in 2011 and possession of stolen property in 2012. Defendant testified that he and his girlfriend Dariann, who was pregnant with his second child, attended parades on the Friday before Mardi Gras in 2013.<sup>4</sup> After the parades, he and Dariann went to a few bars on Bourbon Street. He drank a beer, after which he and Dariann left the French Quarter. Dariann

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<sup>3</sup> Det. Haynes was the only witness to indicate that Victim was intoxicated at the time she gave her statement. He reported that he "knew" she was intoxicated because Victim reported she had been drinking. He conceded he did not take a recorded statement from the Victim nor did he listen to the 911 calls to determine whether Victim was slurring her speech or had otherwise sounded intoxicated.

<sup>4</sup> Mardi Gras fell on February 12<sup>th</sup> in 2013; thus the Friday before Mardi Gras was February 8.



complained that her feet hurt so Defendant walked alone to retrieve his car. When he returned to the intersection of Canal and Bourbon Streets to pick up Dariann, he could not find her. He claimed that, while he was stuck in bumper to bumper traffic on Canal Street, Victim flagged him down and asked him to help her find her hotel. Victim offered to give him money for gas and got into the front seat of his car. He denied telling Victim he was a taxi driver. He stated that, as he drove Victim around looking for her hotel, they began to talk and get acquainted. Defendant claimed they went to a secluded spot and had sex in the back of his car. Defendant denied raping Victim, threatening Victim in any way, or showing her a gun. He reported that he later drove Victim to the train station, gave her cash to catch a taxi, and then drove to Canal Street to meet Dariann. He denied stealing her purse.

Recounting his arrest, Defendant said he was unarmed, and he denied telling Ms. Jupiter he was wanted by the police. He stated that he ran from the police because he feared being tasered.

On December 2, 2014, the jury found Defendant guilty as charged on all counts. Defendant's motion for new trial was denied on January 5, 2015. On January 9, 2015, Defendant was sentenced to life sentences without benefit of parole, probation, or suspension of sentence as to aggravated rape and aggravated kidnapping, and to fifty years at hard labor without benefit of parole, probation, or suspension of sentence for armed robbery, all sentences to run concurrently. On that date, Defendant filed a motion for appeal.

Counsel for Defendant filed a brief on December 11, 2015, raising two assignments of error: (1) the State failed to present sufficient evidence to uphold Defendant's convictions, and (2) the district court erred in allowing the Defendant's statement to a State's witness to be presented to the jury where the statement had not been provided to the defense in accordance with La. C.Cr. P. art. 716(B). The State filed its responsive brief January 27, 2016. Defendant filed a supplemental *pro se* brief on February 19, 2016, raising the following issues: (1) that the State failed to present sufficient evidence, and (2) the trial court erred in admitting the handgun, which allegedly was discarded by Defendant, into evidence.

### **ERRORS PATENT**

A review for errors patent on the face of the record reveals none.

### **COUNSELED ASSIGNMENT OF ERROR NUMBER 1** **PRO SE ASSIGNMENT OF ERROR NUMBER 1**

In this assignment of error, Defendant argues the evidence was insufficient to support his convictions.

Defendant admits he had sex with Victim,<sup>5</sup> and that the sexual activity occurred in his car. He claims, however, that the sexual activity was consensual. He challenges Victim's account based on her initial failure to report the rape on the 911 call; claims that her statements to the police, the SANE Nurse, and at trial

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<sup>5</sup> The stipulation of the parties that Defendant's seminal fluid and DNA were found on all of the swabs collected during the sexual assault exam eliminated the need for the State to present medical, scientific, and other physical evidence to prove sexual activity between Defendant and Victim. Nevertheless, the State introduced medical evidence of such sexual activity through the testimony of SANE Nurse.

were inconsistent; challenges the lack of corroborating evidence that a rape occurred; and questions Victim's sobriety at the time of the incident. Further, he contends the State failed to prove he was guilty of armed robbery because the State failed to show he used force or intimidation, or was armed with a dangerous weapon when he dropped Victim off in a parking lot and left with her property.

The Louisiana Supreme Court has recently explained:

In reviewing the sufficiency of the evidence to support a conviction, this court has recognized that an appellate court in Louisiana is controlled by the standard enunciated by the United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, *rehearing denied*, 444 U.S. 890, 100 S.Ct. 195, 62 L.Ed.2d 126 (1979). *State v. Tate*, 01-1658 (La. 5/20/03), 851 So.2d 921, 928. Under this standard, an appellate court "must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." *Tate*, 851 So.2d at 928. In applying this standard, a reviewing court is not permitted to second guess the rational credibility determinations of the fact finder at trial, nor is a reviewing court required to consider the rationality of the thought processes employed by a particular fact finder in reaching a verdict. *State v. Marshall*, 04-3139 (La. 11/29/06), 943 So.2d 362, 367. It is not the function of an appellate court to assess credibility or reweigh the evidence. *State v. Stowe*, 635 So.2d 168, 171 (La. 1994).

*State v. Kelly*, 2015-0484, pp. 3-4 (La. 6/29/16), \_\_So. 3d\_\_, 2016 WL 3546432, at

\*2.

Additionally, "[t]he testimony of a single witness, if believed by the trier of fact, is in most cases sufficient to support a conviction." *State v. Watkins*, 2013-1248, p. 14 (La. App. 4 Cir. 8/6/14), 146 So.3d 294, 303 (citing *State v. Wells*, 2010-1338, p. 5 (La. App. 4 Cir. 3/30/11), 64 So.3d 303, 306). Conflicting

testimony as to factual matters is a question of weight of the evidence, not sufficiency. *State v. Jones*, 537 So.2d 1244, 1249 (La. App. 4 Cir. 1989).

“When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 requires that ‘assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.’” *State v. Neal*, 2000-0674, p. 9 (La. 6/29/01), 796 So.2d 649, 657 (quoting La. R.S. 15:438). Ultimately, all evidence, both direct and circumstantial must be sufficient under *Jackson* to prove guilt beyond a reasonable doubt to a rational jury. *Id.* (citing *State v. Rosiere*, 488 So.2d 965, 968 (La. 1986)).

Defendant was convicted of the crimes of aggravated rape, aggravated kidnapping and armed robbery.

At the time of the commission of the crime, La. R.S. 14:42 defined aggravated rape, in pertinent part, as follows:

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 or more of the following circumstances:

- (1) When the victim resists the act to the utmost, but whose resistance is overcome by force.
- (2) When the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution.
- (3) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.

La. R.S. 14:44 defines the offense of aggravated kidnapping, in pertinent part, as follows:

Aggravated kidnapping is 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.

La. R.S. 14:64 defines armed robbery as follows:

- A. Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon.

In this case, Victim testified that Defendant forced her to remain in his vehicle by brandishing a gun and threatening her “that things would get worse” if she did not acquiesce to his demands. He then drove to a secluded area, ordered her to get into the back seat of his vehicle, and raped her both orally and vaginally. After the attack, Defendant drove her to a parking lot, ordered her to get out of the vehicle, and drove away with her purse, which contained her bank card.

Defendant’s assertion that Victim failed to initially report a rape during the 911 call was explained by Victim’s testimony at trial that she was in shock, horrified and embarrassed by what had been done to her at the time she made the call. Furthermore, contrary to Defendant’s insistence that Victim gave inconsistent reports to the police, former NOPD Officer Ferreira and Sgt. Welch, the first responders to Victim’s 911 call, and SANE Nurse all testified consistently regarding how the rape was reported to them by Victim and that Victim told them she was, in fact, raped.

As for Defendant's argument in his *pro se* brief that Victim was intoxicated during and immediately after the incident, neither Officer Ferreira, Sgt. Welch nor SANE Nurse saw any signs to indicate that Victim was drunk or impaired by alcohol consumption. The jury obviously credited the State's evidence over Defendant's assertion on this issue.

Viewing all of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that Defendant (1) orally and vaginally raped Victim, where Victim was prevented from resisting the acts by (a) threats of great and immediate bodily harm accompanied by apparent power of execution and/or (b) while armed with a dangerous weapon (aggravated rape); (2) forcibly imprisoned Victim in his vehicle at gunpoint where he vaginally raped her, with her submitting in order to survive and ultimately be released (aggravated kidnapping);<sup>6</sup> and (3) took Victim's property (purse and its contents) by force or intimidation while armed with a gun (armed robbery). The jury accredited Victim's account of the crimes over Defendant's testimony and this Court must accept the jury's credibility determination. *Kelly*, 2015-0484 at pp. 3-4, 2016 WL 3546432, at \*2. Accordingly, we find that the evidence offered by the State at trial proved beyond a reasonable doubt that Defendant was guilty of the crimes of aggravated rape, aggravated kidnapping, and armed robbery. There is no merit to Defendant's insufficiency of the evidence argument.

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<sup>6</sup> See *State v. Leger*, 2005-0011, p. 96 (La. 7/10/06), 936 So.2d 108, 173 (quoting *State v. Arnold*, 548 So.2d 920 (La. 1989)) (“[T]he question and the issue to be focused upon is whether the defendant sought to obtain something of value, be it sex or money or loss of simple human

## **COUNSELED ASSIGNMENT OF ERROR NUMBER 2**

In a second assignment of error, Defendant argues that the district court erred in admitting into evidence Ms. Jupiter's statement that Defendant told her on October 7, 2013, that he knew he was wanted by the police. Defendant bases his argument on the assertion that he was not given timely notice of the statement pursuant to La. C.Cr.P. art. 716(B).<sup>7</sup>

The record in this case indicates that the defense filed a motion for discovery on October 22, 2013, which sought the disclosure of statements made by Defendant that the State intended to offer into evidence. However, it was not until December 1, 2014, prior to *voir dire*, that the State filed a notice pursuant to La. C.Cr.P. arts. 716, 721, 722, 767 and 768 of its intent to introduce Defendant's statement at trial. Subsequently, the defense twice objected to the admission of the statement during trial and moved for a mistrial. The district judge overruled the defense objections and denied the request for a mistrial.

"Louisiana's criminal discovery rules are intended to eliminate unwarranted prejudice arising from surprise testimony and evidence, to permit the defense to meet the state's case, and to allow a proper assessment of its evidence in preparing a defense." *State v. Allen*, 94-2262, p.4 (La. 11/13/95), 663 So.2d 686, 688

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dignity, by playing upon the victim's fear and hope of eventual release in order to gain compliance with his demands.")

<sup>7</sup> La. C.Cr.P. art. 716(B) provides, in pertinent part:

Statements by the defendant, codefendants, and witnesses

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B. Except as provided by Paragraph C of this Article [inapplicable here], upon written motion of the defendant, the court shall order the district attorney to inform the defendant of the existence, but not the contents, of any oral confession or statement of any nature made by the defendant or any codefendant which the district attorney intends to offer in

(citations omitted). *See also State v. Harris*, 2000-3459, p. 8 (La. 2/26/02), 812 So.2d 612, 617; *State v. Woodberry*, 2014-0476, p. 19 (La. App. 4 Cir. 6/3/15), 171 So.3d 1082, 1094. “The failure of the State to comply with discovery rules does not bring automatic reversal; rather, prejudice must be shown.” *Harris*, 2000-3459 at p. 8, 812 So.2d at 617 (citing *State v. Statum*, 390 So.2d 886, 889-90 (La.1980), *cert. denied*, 450 U.S. 969, 101 S.Ct. 1489, 67 L.Ed.2d 619 (1981)). “When a defendant is lulled into misapprehension of the strength of the State's case as a result of the prosecution’s failure to timely or fully disclose discoverable evidence and the defendant suffers prejudice, basic unfairness results which constitutes reversible error.” *Id.* (citing *State v. Mitchell*, 412 So.2d 1042, 1044 (La. 1982)). A mistrial is a drastic remedy and, except in instances in which the mistrial is mandatory, is warranted only when a trial court error results in substantial prejudice to the defendant, depriving him of a reasonable expectation of a fair trial. *Id.*, 2000-3459, at pp. 8-9, 812 So.2d at 617 (citing *State v. Comeaux*, 514 So.2d 84, 96 (La. 1987)). Determining whether such prejudice has resulted is within the sound discretion of the trial judge. *State v. Smith*, 430 So.2d 31, 44 (La. 1983) (citing *State v. Haynes*, 339 So.2d 328 (La. 1976)).

The defense concedes that the content or substance of the statement may not have been subject to disclosure, but argues that because the State failed to timely notify the defense of the statement in compliance with discovery requirements, it was denied the opportunity to investigate the matter, *i.e.*, locate witnesses who may have testified that the statement was not made. Defendant also complains that he was unable to question the police officers at a motion hearing or during cross-

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its case in chief at the trial, with the information as to when, where, and to whom such oral confession or statement was made.



examination regarding the statement because the defense was unaware of its existence.

Having reviewed the record before us, we find no evidence of prejudice as a result of the State's delay in disclosing the statement made to a testifying witness by Defendant. Accordingly, we find no abuse of the district court's considerable discretion in denying the mistrial and allowing the statement into evidence.

First, La. C.Cr.P. art. 716 does not specify a time frame within which the prosecution must inform a defendant of the existence of a statement made by a defendant. La. C.Cr.P. art. 716 is contained in Title XXIV of the Code of Criminal Procedure titled: "Procedures Prior to Trial"; thus, the State's notice to Defendant prior to trial cannot be found untimely. However, even if the notice was not timely, Defendant has failed to prove he was prejudiced by the State's delay. Defendant was arrested pursuant to the cooperation of Ms. Jupiter; hence, the defense was aware of her potential as a witness at trial and, in fact, had an opportunity to cross-examine her. Moreover, the defense was notified of the statement prior to the commencement of trial, diminishing the element of surprise.

In addition, Defendant took the stand and denied making any statement to Ms. Jupiter about being wanted by the police. Since he was afforded the opportunity to address the issue and was able to cross-examine Ms. Jupiter, we do not find that the State's tardy disclosure of the existence of the statement resulted in an unfair trial. *See State v. Nogess*, 490 So.2d 488, 490 (La. App. 4 Cir. 1986) (State's failure to comply with La. C.Cr. P. art. 716(B) not prejudicial where defendant was given an opportunity to address the issue and clear up conflicting accounts).

The State established Defendant's guilt of aggravated rape, aggravated kidnapping and armed robbery through overwhelming scientific DNA evidence and through the credible, consistent testimony of Victim and corroborating witnesses. Considering the whole of the evidence offered to establish Defendant's guilt, we do not find the State's delay in providing Defendant with notice that his statement made to Ms. Jupiter would be offered at trial adversely affected the outcome of Defendant's trial. This assignment is meritless.

### **PRO SE ASSIGNMENT OF ERROR NUMBER 2**

In a second *pro se* assignment, Defendant claims he was prejudiced when the State was allowed to present testimony which established that he abandoned a gun as he fled the arresting police officers.

Defendant filed a motion to suppress the evidence. After a hearing on January 23, 2014, the district judge determined there was no basis for the motion because the gun had been abandoned, as shown through the testimony of Detective Frankie Watts ("Det. Watts"). Det. Watts testified that he obtained an arrest warrant for Defendant on the instant charges in February 2013. Det. Watts made several unsuccessful attempts to execute the warrant. However, on October 7, 2013, Det. Watts received information that Defendant was in a park near Franklin Avenue, and he enlisted the aid of additional members of the warrant squad to affect Defendant's arrest. When the officers arrived at the park in marked vehicles wearing their NOPD gear, Defendant fled. As Det. Watts and other officers pursued Defendant, Det. Watts noticed Defendant holding the right front side of

his pants. As Det. Watts ran past Ms. Jupiter, she cautioned him that Defendant was armed with a gun. Defendant was eventually apprehended. Since Det. Watts was aware Defendant was armed at the time he fled, officers retraced Defendant's flight path and recovered a gun in a vacant lot.

“[T]rial courts are vested with great discretion when ruling on a motion to suppress and, consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion.” *State v. Carter*, 2012-0317, p. 3 (La. App. 4 Cir. 3/20/13), 112 So.3d 381, 383 (citing *State v. Lampton*, 2011-0775, p. 5 (La. App. 4 Cir. 6/11/12), 95 So.3d 1199, 1202.)

“It is a basic tenet of Fourth Amendment law that warrantless searches and seizures are presumptively unreasonable.” *State v. Jason*, 2010-0658, p. 6 (La. App. 4 Cir. 12/1/10), 53 So.3d 508, 511 (citing *Payton v. New York*, 445 U.S. 573, 587, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980)). “If, however, property is abandoned without any unlawful intrusion into a citizen's right to be free from government interference, then such property may be lawfully seized. In such cases, there is no expectation of privacy and thus no violation of a person's custodial rights.” *State v. Belton*, 441 So.2d 1195, 1199 (La.1983). In this case, Defendant's weapon was seized during the execution of a warrant for his arrest. There was no unlawful intrusion into Defendant's right to be free from government interference; therefore, the gun was properly seized.

Based upon the evidence adduced at the hearing on the motion to suppress, the district judge's ruling was not an abuse of his discretion. This assignment is without merit.

Finding sufficient evidence to support Defendant's convictions for aggravated rape, aggravated kidnapping, and armed robbery, and, finding no error by the district court in admitting into evidence Defendant's statement and the weapon seized during Defendant's arrest, we therefore affirm Defendant's convictions and sentences.

**CONVICTIONS AND SENTENCES AFFIRMED**