NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0903

STATE OF LOUISIANA

VERSUS

JAMES B. HOLTS

DATE OF JUDGMENT: OCT 2 9 2010

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 459880, DIVISION E, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE MARTIN E. COADY, JUDGE

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BEFORE: KUHN, PETTIGREW, AND KLINE, JJ,[1]

Disposition: CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

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[1] The Honorable William F. Kline, Jr. is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

KUHN, J.

The defendant, James B. Holts, was charged by bill of information with forcible rape, a violation of La. R.S. 14:42.1. The defendant entered a plea of not guilty. The trial court denied the defendant's motion to suppress evidence and testimony. After a trial by jury, the defendant was found guilty as charged and was sentenced to twenty years imprisonment at hard labor, two years to be served without benefit of probation, parole, or suspension of sentence. The trial court adjudicated the defendant a fourth-felony habitual offender, vacated the previously-imposed sentence, and resentenced the defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.[2] The defendant now appeals, challenging the trial court's ruling that denied his motion to suppress a recorded statement and evidence relating to articles of clothing seized from him at the jail following his arrest. For the following reasons, we affirm the conviction, habitual offender adjudication and sentence.

STATEMENT OF FACTS

In November 2008, the defendant was renting a room from Charlie English, Jr., at his Slidell, Louisiana residence. Prior to the night in question, English made arrangements to have Amy Evers, a family acquaintance, as his house guest. Evers brought her child and K.B., a female friend, with her for the visit. During the visit, on or about November 10th, K.B. awakened English and Evers in the middle of the night as she screamed and stated that the defendant had raped her. According to the victim, the offense included a physical struggle wherein the

[2] The trial court based the habitual offender adjudication on previous convictions for possession with intent to distribute a Schedule IV controlled dangerous substance, simple robbery, theft, and simple burglary, and imposed life imprisonment as mandated by La. R.S. 15:529.1A(1)(c)(ii).

defendant put his hand around her neck and covered her mouth with his other hand resulting in red marks on K.B.'s neck. The victim punched the defendant in the mouth, he removed his hand from her mouth, and she then began to scream for help. English called for emergency assistance, and officers of the St. Tammany Parish Sheriff's Office were dispatched to the scene. Shortly after the police arrived, the defendant was taken into custody.

At trial, Deputy Tracy Lloyd, who worked for the St. Tammany Parish Sheriff's Office, testified that articles of the defendant's clothing were collected from the living room floor following the incident. However, Tara Brown, a Forensic DNA Analyst for the St. Tammany Parish Coroner's Forensic Science Center in Slidell, Louisiana, testified that clothing collected from the defendant's person during booking was tested for DNA evidence.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant challenges the trial court's ruling on his motion to suppress. The defendant specifically contends that he requested an attorney before answering law enforcement questions and surrendering his clothing. The defendant further contends that the interrogating officers ignored his request for an attorney, continued to interrogate him, and convinced him to sign a waiver form by leading him to believe that it would facilitate his request for an attorney. The defendant argues that his request for an attorney was clear and that additional police questioning and inquiries should have ceased.

Deputy Scott Daussin and Detective Jason Mire (a deputy at the time of the offense) of the St. Tammany Parish Sheriff's Office, two of the officers who

responded to the crime scene in the early morning hours of November 11th, testified at the motion to suppress hearing. The defendant was present at the scene when the police arrived but departed for several minutes. Deputy Daussin spoke with English, the victim, and Amy Evers. Based on their statements, when the defendant returned, he was read his **Miranda**[3] rights at the scene and placed under arrest. The defendant was then transported to the Sheriff's Office in Slidell, where a waiver of rights form was executed. Although the defendant signed the waiver of rights form, he did not give a statement at that time. The defendant was then transported to the Covington Jail. When he was booked, the defendant's jacket, underwear, pants, and shoes were collected as evidence, and he was instructed to change into prison attire. On November 13th, Detective Stacey Callender of the St. Tammany Parish Sheriff's Office again advised the defendant of his rights, and he executed another waiver of rights form. The defendant then gave a recorded statement.

At the beginning of his recorded statement, Detective Callender asked the defendant if he understood the rights that he was informed of and the defendant responded positively, adding, "You also stated I could have an attorney present." Detective Callendar then stated, "However you waived your rights when you signed that you wished to waive your rights and speak to us." The defendant agreed and responded positively when asked again if he understood his rights and his waiver of rights and the interview continued. At the hearing, Detective

[3] The testimony specifically provided that the defendant was informed that he had the right to remain silent, that any statement he made may be used as evidence against him, and that he had a right to the presence of an attorney, either retained or appointed in accordance with the requirements of **Miranda v. Arizona**, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966).

Callender testified that the defendant was simply repeating the right that he was informed of and not making a request for an attorney. The defendant also testified at the hearing, claiming that he made several requests for an attorney before November 13th, and he was told to no avail that he would be given an attorney. He contended that his statement at the beginning of the interview consisted of a request for an attorney and that he did not want to make the statement outside of the presence of an attorney.

While the defendant argues that he requested an attorney before giving the recorded statement on November 13th, we note that, as contended by the State in its appeal brief, the defendant's statement was not introduced into evidence during the trial. Further, the statement at issue was not mentioned in the State's opening or closing arguments. Thus, the defendant was not prejudiced by the denial of the motion to suppress the recorded statement. The issue became moot when the State did not introduce the evidence. **State v. Wilson**, 432 So.2d 347, 348 (La. App. 1st Cir. 1983). However, the defendant's clothing that was collected at the time of booking and derivative DNA evidence were introduced during the trial. Thus, we now turn to the propriety of the trial court's ruling insofar as the motion to suppress pertained to the defendant's clothing.

In denying the motion to suppress this evidence in particular, the trial court concluded that the seizure of the defendant's personal effects at the time of the booking is an exception to the search warrant requirement. In support of that conclusion, the trial court cited **State v. Wilson**, 467 So.2d 503 (La.), cert denied, 474 U.S. 911, 106 S.Ct. 281, 88 L.Ed.2d 246 (1985). When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed

in the absence of a clear abuse of the trial court's discretion unless the ruling is not supported by adequately reliable evidence. See **State v. Green**, 94-0887, p. 11 (La. 5/22/95), 655 So.2d 272, 280-81. However, a trial court's legal findings are subject to a de novo standard of review. See **State v. Hunt**, 2009-1589, p. 6 (La. 12/1/09), 25 So.3d 746, 751.

The Fourth Amendment of the United States Constitution and Article I, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. A search conducted without a warrant is presumably unreasonable unless justified by one of the specifically established exceptions. **Schneckloth v. Bustamonte**, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043-44, 36 L.Ed.2d 854 (1973); see **State v. Farber**, 446 So.2d 1376, 1378-79 (La. App. 1st Cir.), writ denied, 449 So.2d 1356 (La. 1984). The right of the police to conduct a personal effects inventory search at the time of an arrested person's booking is a recognized exception to the search warrant requirement. La. Code Crim. P. art. 228. The police may not, however, seize any item that they choose. The item seized must be contraband, an instrumentality of the crime, a fruit of the crime, or evidence of a crime. For the seizure of the defendant's clothing under these circumstances to be upheld, the State must affirmatively show the existence of probable cause that the thing seized is somehow related to a particular crime. The State must establish a nexus between the item seized and criminal behavior. In the case of "mere evidence," instead of contraband, or instrumentalities or fruits of the crime, probable cause must be examined in terms of cause to believe that the evidence sought will aid in a particular apprehension or conviction. **Wilson**, 467 So.2d at 517.

In **United States v. Edwards**, 415 U.S. 800, 94 S.Ct. 1234, 39 L.Ed. 2d 771 (1974), the United States Supreme Court stated:

> [B]oth the person and the property in his immediate possession may be searched at the station house after the arrest has occurred at another place[,] and if evidence of [a] crime is discovered, it may be seized and admitted in evidence. Nor is there any doubt that clothing or other belongings may be seized upon arrival of the accused at the place of detention and later subjected to laboratory analysis or that the test results are admissible at trial.
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> ... With or without probable cause, the authorities were entitled at that point not only to search [the defendant's] clothing but also to take it from him and keep it in official custody. . . . The police were also entitled to take from [the defendant] any evidence of the crime in his immediate possession, including his clothing. 415 U.S. at 803-805, 945 S.Ct at 1237-38. (footnotes omitted).

The court further stated:

> [T]he police had lawful custody of [the defendant] and necessarily of the clothing he wore. When it became apparent that the articles of clothing were evidence of the crime for which [the defendant] was being held, the police were entitled to take, examine, and preserve them for use as evidence, just as they are normally permitted to seize evidence of crime when it is lawfully encountered. . . . [I]t is difficult to perceive what is unreasonable about the police's examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest. 415 U.S. at 806. 94 S.C5 at 1238. (citations omitted).

In **Wilson**, the Louisiana Supreme Court concluded that the defendant's bloodstained clothing potentially constituted persuasive circumstantial evidence of his involvement in the homicide. **Wilson**, 467 So.2d 517. Similarly, herein we find that the police had probable cause to seize the defendant's clothing as evidence of criminal activity. Prior to the defendant's arrest, the police took statements from witnesses, including the victim. Thus, the police were aware of the potential evidentiary value of the seized clothing in question. We find that the police seizure and retention of such evidence without a warrant was lawful.

Therefore, the trial court did not err in denying the motion to suppress evidence. The assignment of error lacks merit.

DECREE

For these reasons, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.