

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1731

STATE OF LOUISIANA

VERSUS

HOLLIS MATEN

Judgment Rendered: May 3, 2012.

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On Appeal from the  
19th Judicial District Court,  
in and for the Parish of East Baton Rouge  
State of Louisiana  
District Court No. 01-09-0815

The Honorable Richard "Chip" Moore, Judge Presiding

\* \* \* \* \*

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BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

## **CARTER, C.J.**

The defendant, Hollis Maten, was charged by grand jury indictment with two counts of aggravated rape (Counts I and II), violations of Louisiana Revised Statutes section 14:42. The defendant entered a plea of not guilty, and a jury found him guilty as charged on both counts. On each count, the defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The trial court ordered that the sentences be served consecutively.

The defendant appeals, arguing the trial court erred in allowing the introduction of "other crimes evidence" under Louisiana Code of Evidence article 412.2. For the following reasons, we affirm the convictions and sentences on Counts I and II.

### **FACTS**

The victim of Count I, P.M., testified at trial that on March 11, 1986, she was attacked and raped by a man who entered her apartment while she was sleeping.<sup>1</sup> P.M. testified that the rapist was a black male and approximately six feet tall; however, she did not see her attacker's face. A rape examination was performed on P.M., and motile sperm were recovered.

The victim of Count II, C.A., testified at trial that on September 19, 1989, she was raped after being attacked in the laundry room of her apartment complex. Law enforcement testified that C.A. described her rapist as dark complexioned and approximately five feet, nine inches to six feet tall; C.A. did not see her attacker's face. A rape examination recovered sperm.

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<sup>1</sup> The victims are referenced only by their initials. See La. Rev. Stat. Ann. § 46:1844W.

Scientific testing was performed on the sperm samples contained in P.M.'s and C.A.'s rape kits. Susan Bach, an expert in molecular biology and forensic DNA analysis, testified that the sperm profiles of P.M.'s and C.A.'s rapists were identical. Julia Naylor Kirk, an expert in the field of forensic DNA analysis, testified that scientific testing matched the sperm samples from P.M.'s and C.A.'s rape kits to the defendant.

The following facts also were introduced at trial pursuant to Louisiana Code of Evidence article 412.2. B.F. testified that, on the evening of February 20, 1993, an assailant forced his way into her apartment. The assailant pushed B.F. to the floor, choked her, and beat her with a broken beer bottle. B.F.'s clothes were removed, and the assailant placed his hand on her vagina. B.F. offered the assailant money to leave, and he accepted. As a result of the attack, B.F. received thirty-three stitches to her face and suffered a broken nose, a damaged ear, and had one of her teeth knocked loose. On April 21, 1993, the defendant entered a plea of guilty to the aggravated burglary and attempted aggravated rape of B.F.

### **DISCUSSION**

In his sole assignment of error, the defendant argues the trial court erred in interpreting Louisiana Code of Evidence article 412.2 to allow the introduction into evidence of his 1993 guilty plea to the attempted rape of B.F. Specifically, the defendant argues that Article 412.2 is applicable only when the victims are under the age of seventeen, and neither P.M. nor C.A. were under the age of seventeen at the time of the offense. Article 412.2 provides:

A. When an accused is charged with a crime involving sexually assaultive behavior, or with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of

another crime, wrong, or act involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403.

B. In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.

C. This Article shall not be construed to limit the admission or consideration of evidence under any other rule.

Prior to trial, the defendant moved the trial court to rule that evidence relating to the defendant's guilty plea to aggravated burglary and the attempted aggravated rape of B.F. was inadmissible under Article 412.2 because the facts were "factually distinct and irrelevant to the instant matter." At the hearing on the motion, the defense argued that the evidence regarding B.F. was inadmissible because it was factually distinct from Counts I and II, was unfairly prejudicial, and because the prejudice was not outweighed by the probative value of the evidence. The State argued it was offering evidence of the guilty plea to establish the defendant's sexually assaultive nature; to show plan, system, lack of consent, and the defendant's propensity to commit rapes; and because the evidence had probative value in assisting the jury with necessary credibility determinations. The State also argued that the prejudicial effect of the evidence did not substantially outweigh its probative value.

The trial court denied the defendant's motion in limine, concluding that Article 412.2 allowed the introduction of other crimes, wrongs, or acts involving sexually assaultive behavior, subject to the balancing test of Louisiana Code of Evidence article 403, and the probative value of the

evidence at issue outweighed its prejudicial effect. On appeal, the defendant challenges the trial court's allowance of this evidence, arguing for the first time that Article 412.2 is inapplicable because the article is limited to situations in which the victims were under the age of seventeen at the time of the offense.

A thorough review of the record indicates the issue of whether Article 412.2 is limited in application only to cases involving victims under the age of seventeen was not preserved for review. An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the action that he desired the court to take, or his objections to the action of the court, and the grounds therefore. La. Code Crim. Proc. Ann. art. 841; *see* La. Code Evid. Ann. art. 103A(1) ("Error may not be predicated upon a ruling which admits ... evidence unless a substantial right of the party is affected and, ... [w]hen the ruling is one admitting evidence, a timely objection or motion to admonish the jury to limit or disregard appears of record, stating the specific ground of objection[.]").

Moreover, the Louisiana Supreme Court has rejected a similar argument in *State v. Wright*, 11-0141 (La. 12/6/11), 79 So. 3d 309, 316, stating:

[W]e reject defendant's argument that Article 412.2 only applies when the victim is under the age of seventeen. The statute specifically applies in two situations: 1) **when an accused is charged with a crime involving sexually assaultive behavior, or** 2) when an accused is charged with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense.

(Emphasis in original.)

**CONCLUSION**

For the foregoing reasons, the defendant's convictions and sentences on Counts I and II are affirmed.

**CONVICTIONS AND SENTENCES ON COUNTS I AND II  
AFFIRMED.**