NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1812

STATE OF LOUISIANA

VERSUS

IDDO BLACKWELL

DATE OF JUDGMENT: March 23, 2007

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 04 CR 10 89939), PARISH OF WASHINGTON
STATE OF LOUISIANA

HONORABLE WILLIAM KNIGHT, JUDGE

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Walter P. Reed, District Attorney Franklinton, Louisiana and Kathryn Landry Baton Rouge, Louisiana	Counsel for Appellee State of Louisiana
Frank Sloan Mandeville, Louisiana	Counsel for Defendant/Appellant Iddo Blackwell

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTIONS AND SENTENCES AFFIRMED.

Welch J. concurs with reasons.

KUHN, J.

The defendant, Iddo Blackwell, was charged by grand jury indictment with aggravated rape (count one), a violation of La. R.S. 14:42; forcible rape (count two), a violation of La. R.S. 14:42.1; and aggravated incest (count three), a violation of La. R.S. 14:78.1. He pled not guilty to all charges. Counsel for the defendant subsequently requested that a sanity commission be appointed to determine the defendant's competency. Following a sanity hearing, the trial court found the defendant competent to stand trial. The defendant was tried by a jury and convicted as charged on all counts. The defendant moved for a new trial and for post verdict judgment of acquittal. The trial court denied both motions. The defendant was sentenced as follows: count one, life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence; count two, thirty years at hard labor to run consecutively to count one;[1] count three, twenty years at hard labor to run consecutively to counts one and two. The defendant moved for reconsideration of the sentences. The trial court denied the motion. The defendant now appeals, urging the following assignments of error:

1. The trial court erred and/or abused its discretion in denying the motion to suppress the confession.

2. The trial court erred and/or abused its discretion in denying the motion to introduce evidence of the victim's relationship with her boyfriend.

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[1] Under La. R.S. 14:42.1(b), the trial judge was required to impose at least two years of the forcible rape sentence without benefit of probation, parole or suspension of sentence. However, because the trial court's failure to restrict parole eligibility was not raised by the state in either the trial court or on appeal, we are not required to take any action. See ***State v. Price***, 2005-2514, p. 22 (La. App. 1st Cir. 12/28/06), ___ So.2d ___, (en banc). As such, we decline to correct the illegally lenient sentence.

Finding no merit in the assigned errors, we affirm the defendant's convictions and sentences.

FACTS

On November 30, 2003, the fifteen-year-old victim, B.B.,[2] contacted the Washington Parish Sheriff's Office and advised that she had run away from home to escape verbal, physical, and sexual abuse inflicted upon her by the defendant, her biological father. B.B. stated that the defendant had been having sexual intercourse with her several times a week for several years, beginning when she was approximately ten years old. B.B. explained that she was forced to sleep in the bed with the defendant while her mother, the defendant's wife, slept in the living room on the couch. B.B. further explained that the defendant would call her profane names, hit her, and threaten to kill her if ever she resisted his advances.

In response to B.B.'s allegations of abuse, a warrant was issued for the defendant's arrest. When Washington Parish Sheriff's officials arrived to execute the warrant, the defendant fled out of the back of his residence. The deputies pursued the defendant but were unable to catch him.

Meanwhile, on December 3, 2003, JoBeth Rickles, a forensic interviewer with the Children's Advocacy Center, interviewed B.B. During the interview, B.B. described the abuse inflicted upon her by the defendant. B.B. stated that the sexual abuse began when she was approximately ten or eleven years old. Initially, the defendant would fondle her breasts, vaginal area, and buttocks under her clothing. Eventually, the defendant began inserting his penis into her vagina. The

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[2] In accordance with La. R.S. 46:1844(W)(3), the victim herein is referenced only by her initials. The victim's brother, a juvenile, is also referenced by his initials.

defendant did not use a condom, and upon ejaculation he would deposit the semen onto B.B.'s stomach. According to B.B., the defendant made her have sex with him "every two or three nights." If she did not comply, the defendant became violent, cursing and hitting her. B.B. also described an incident wherein the defendant put an unloaded gun to her head and pulled the trigger because he thought she was sexually active with someone other than him. B.B. explained that she ran away from home and contacted the police because she "could not take it anymore."

Later that same day, the defendant turned himself in to the Washington Parish Sheriff's Office. After being advised of and waiving his rights, the defendant provided a videotaped statement. In his statement, the defendant initially denied ever "messing with" or having sex with B.B. He stated that B.B. was fabricating the allegations because she was upset that he punished her. The defendant denied that B.B. ever slept in the bed with him. Thereafter, once the investigating detective explained that if they were to find DNA evidence during their investigation the defendant would not be able to disprove the allegations, the defendant confessed. He initially attempted to minimize his culpability by stating that he had sex with B.B. "one time." He later admitted that he engaged in sexual intercourse with his daughter about once a week. The defendant stated he never threatened B.B. or forced himself on her. He explained, "she asked for it." The defendant claimed B.B. would come into his room, take her clothing off, get into the bed with him and start touching on him. He indicated that when he told her to stop, B.B. asked "why, you don't like it?" According to the defendant, the weekly

sexual encounters went on for approximately two to three years. The defendant denied ever threatening B.B. with a gun.

R.B., B.B.'s younger brother, was later interviewed at the Children's Advocacy Center. R.B. stated that, at some point prior to B.B.'s report of the abuse to the police, she told him the defendant had been having sex with her. R.B. did not initially believe B.B.'s allegations. To prove the truth of the allegations, B.B. told R.B. to listen at the bedroom door that night. R.B. testified that, as he stood near the door, he heard the defendant and B.B. having sex inside the bedroom. B.B. was crying and asking her father to stop, but he did not comply.

At trial, R.B. and B.B. provided testimony consistent with the statements they provided at the Children's Advocacy Center. B.B. further testified that after the defendant's arrest he contacted her, told her he was sorry, and asked her to write him letters recanting her allegations. Because she loved her father, B.B. complied. B.B. testified that she wrote several letters to the defendant wherein she stated that she lied. B.B. testified that the letters were not true and were only written because the defendant told her to do so. Several letters written by B.B. were introduced into evidence and published to the jury at the trial.

ASSIGNMENT OF ERROR NUMBER ONE
DENAL OF MOTION TO SUPPRESS CONFESSION

In this assignment of error, the defendant argues the trial court erred in denying his motion to suppress the confession. Specifically, the defendant asserts that the confession in this case was induced by promises of psychological help and/or treatment and threats of imprisonment. The defendant argues that such inducements and threats, particularly when coupled with the fact that he "is likely

retarded but certainly possessed meager intellectual resources," support his claim that his confession was not voluntary. As additional support for his argument, the defendant claims Detective Justin Brown's testimony at trial regarding the inducements offered to the defendant was inconsistent with his testimony at the motion to suppress hearing.

Louisiana Code of Criminal Procedure article 703(D) provides that on the trial of a motion to suppress, the burden is on the defendant to prove the ground of his motion, except that the state shall have the burden of proving the admissibility of a purported confession or statement by the defendant. La. R.S. 15:451 provides that before a purported confession can be introduced in evidence, it must be affirmatively shown to be free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. **State v. Thomas**, 461 So.2d 1253, 1256 (La. App. 1st Cir. 1984), ***writ denied***, 464 So.2d 1375 (La. 1985).

The admissibility of a confession is, in the first instance, a question for the trial court; its conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession are accorded great weight and will not be overturned unless they are not supported by the evidence. Whether a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. The trial court must consider the totality of the circumstances in deciding whether or not a confession is admissible. ***State v. Guidry***, 93-1091 (La. App. 1st Cir. 4/8/94), 635 So.2d 731, 733-34, ***writ denied***, 94-0960 (La. 7/1/94), 639 So.2d 1163. In reviewing the correctness of a trial court's ruling on a motion to suppress a confession, we are not limited to the

evidence introduced at the hearing on the motion but may consider all pertinent evidence adduced at trial. ***State v. Brooks***, 92-3331, p. 10 (La. 1/17/95), 648 So.2d 366, 372.

Initially, we note that the defendant has not argued that his mental deficiencies rendered his confession involuntary. Instead, he contends his mental deficiencies should be considered with the other circumstances surrounding the confession. We further note that the alleged inconsistencies between Detective Brown's testimony at the motion to suppress hearing and his trial testimony (cited by the defendant as evidence of inducement) are of no moment, as the trial judge personally reviewed the defendant's videotaped confession prior to ruling on the motion to suppress. In denying the motion to suppress, the trial court did not rely solely upon the testimony. By reviewing the video, the trial court was in a position to assess the credibility of the detective, and to also determine what, if any, inducements and/or promises were made during the statement.

At the motion to suppress hearing, Detective Brown, one of the individuals present throughout the time the defendant gave his statement, testified that the defendant was advised of and waived his ***Miranda*** rights. The defendant also signed a waiver of rights form memorializing his understanding of his rights. Detective Brown indicated that defendant appeared to understand his rights. The defendant did not testify at the hearing on the motion to suppress. After reviewing the defendant's videotaped statement, the trial court ruled that the defendant's motion to suppress the confession based upon allegations of inducements and/or threats was not "well-founded."

After reviewing the record, we find no error in the trial court's denial of the defendant's motion to suppress his confession. Based upon Detective Brown's testimony and the detailed confession itself, we conclude that defendant's confession was freely and voluntarily made. The record and the evidence, particularly the videotaped statement, reveal that the thrust of comments and questions by the detectives during the defendant's statement was that defendant would have an easier time if he told the truth. Rather than promises or inducements designed to extract a confession, these comments were "more likely musings not much beyond what this defendant might well have concluded for himself." ***State v. Lavalais***, 95-0320, p. 7 (La. 11/25/96), 685 So.2d 1048, 1053-54, ***cert. denied***, 522 U.S. 825, 118 S.Ct. 85, 139 L.Ed.2d 42 (1997). Therefore, we find the detectives' comments do not constitute illegal inducements sufficient to render defendant's confession involuntary. It is well settled that suggestions that a defendant would be better off by cooperating are not "promises or inducements designed to extract a confession." ***State v. Lavalais***, 95-0320 at pp. 6-7, 685 So.2d at 1053; ***State v. Watts***, 98-1073, p. 7 (La. App. 5th Cir. 5/19/99), 735 So.2d 866, 870. Additionally, a confession is not rendered inadmissible because officers "exhort or adjure" an accused to tell the truth, provided the exhortation is not accompanied by an inducement in the nature of a threat or which implies a promise of reward. ***State v. Robertson***, 97-0177, p. 28 (La. 3/4/98), 712 So.2d 8, 31, ***cert. denied***, 525 U.S. 882, 119 S.Ct. 190, 142 L.Ed.2d 155 (1998). Although the detectives repeatedly advised the defendant that he could receive psychological help and/or treatment if he showed remorse for the offenses, they did not, in any way, promise or lead the defendant to believe that he

would not be prosecuted and incarcerated for the crimes. Instead, the detectives merely advised the defendant that psychological help would be available to him and that they would even recommend he receive the help if he so desired. A statement by a law enforcement officer, prior to a confession, that cooperation would be communicated to possible prosecuting authorities, is not a sufficient inducement to render a subsequent confession inadmissible. ***State v. Peters***, 546 So.2d 829, 832 (La. App. 1st Cir.), ***writ denied***, 552 So.2d 378 (La. 1989). Consequently, the trial judge did not err in finding that the defendant freely and voluntarily confessed. The trial court was correct in denying the defendant's motion to suppress and admitting the defendant's statement into evidence at trial. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER TWO
DENIAL OF MOTION TO INTRODUCE EVIDENCE OF THE VICTIM'S RELATIONSHIP WITH HER BOYFRIEND

In this assignment of error, the defendant contends the trial court erred in denying his motion to introduce evidence of the victim's relationship with her boyfriend. Specifically, he argues that evidence of the victim's relationship with her 18-year-old boyfriend, J.R. Merritt, and evidence of the defendant's disapproval of this relationship, should have been allowed to illustrate the victim's motive for making the sexual abuse allegations in question. He contends this evidence would have cast the letters the victim wrote to the defendant and her recanting the allegations "in an entirely different light." The defendant asserts that the trial court's exclusion of this evidence hampered his ability to present a defense.

The record before us reflects that on July 28, 2005, the defendant filed a "Motion for L. C.E. Art. 412 (IN CAMERA HEARING)" requesting a pretrial determination of the admissibility of evidence reflecting that the victim had an ongoing sexual relationship with J.R. Merritt, and that the defendant did not approve of said relationship. In the motion, the defendant explained that the aforementioned evidence should be deemed admissible as it "establishes a motive, bias, or corruption as to why B.B. would falsely accuse the defendant of the crime." Prior to trial, a hearing was held on the motion. At the conclusion of the hearing, the trial court ruled that any evidence of B.B.'s past sexual behavior was inadmissible.

Counsel for the defendant then made a proffer of testimony from Ernie Corkern (a Washington Parish Sheriff's deputy), Kendall McKenzie (the assistant principal at Pine High School), and Michelle Watts (the defendant's niece and B.B.'s cousin). Corkern and McKenzie testified regarding two instances where B.B. was disciplined at school for conduct relating to her "boyfriend", J.R. Merritt. Once, B.B. left the school campus with Merritt without permission. The school contacted the defendant, who in turn, contacted the police. B.B. was placed on in-school suspension for this infraction. On another occasion, approximately ten days before her report of abuse in this case, B.B. was placed on in-school suspension for six days for kissing Merritt at school. Watts testified that B.B. told her that she was sexually active with Merritt. B.B. even told her once that she believed she might be pregnant. B.B. never told Watts that the defendant "messed with her." Watts further testified that when she questioned B.B.'s truthfulness regarding the allegations against the defendant, B.B. stated that she was going to

make sure the defendant went to jail because he was threatening to bring charges against Merritt for engaging in sexual activity with B.B. According to Watts, B.B. stated, "I'm going to make sure that my daddy goes to jail before J.R. goes to jail."

In denying the defendant's motion to introduce evidence of B.B.'s past sexual history, the court explained:

> The Court specifically has reviewed the cases cited by both counsel. ***State v. Taylor***, ***State v. Decuir***, ***State v. Hotoph***, as well as the testimony which is offered in connection with these matters, and finds that in view of the confession with the tape, that the alleged inconsistencies do not rise to a level which would allow independent use of this testimony for impeachment purposes. This being precisely the type testimony that the rape shield statute protects against.
>
> And for that reason, the Court finds that the testimony will not be allowed. That does not preclude the testimony of these witnesses as to other matters, but only as to the matters relative to alleged prior sexual relations by the alleged victim with individuals other than the defendant.

On appeal, the defendant argues the trial court, in its ruling on the admissibility of the evidence in question: 1) failed to appreciate that the testimony sought to be introduced was not intended to show prior inconsistent statements of the victim but to show how she stood to benefit from having the defendant in jail; 2) failed to appreciate that the ruling on the motion to suppress did not diminish the need of the defense for the testimony in question; and 3) never balanced the probative value against the prejudicial effect as required by La. Code Evid. art. 412(E)(3).

The Sixth Amendment to the United States Constitution and Article I, § 16 of the Louisiana Constitution guarantee an accused in a criminal prosecution the right to be confronted with the witnesses against him. The primary purpose behind this right is to secure for the defendant the opportunity for cross-

examination. ***Davis v. Alaska,*** 415 U.S. 308, 315-316, 94 S.Ct. 1105, 1110, 39 L.Ed.2d 347 (1974). "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." ***State v. Hillard,*** 398 So.2d 1057, 1059 (La. 1981).

An accused also has a constitutional right to present a defense. ***Washington v. Texas***, 388 U.S. 14, 19, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019 (1967). As a general rule, a party may attack the credibility of a witness by examining him or her concerning any matter having a reasonable tendency to disprove the truthfulness of his or her testimony. La. Code Evid. art. 607(C). The right of an accused sex offender to present a defense is, however, balanced against the victim's interests under La. Code Evid. art. 412, which is meant to protect the victim of sexual assault from having her sexual history made public. La. Code Evid. art. 412, also known as the rape shield law, provides, in pertinent part, as follows:

> **A. Opinion and reputation evidence.** When an accused is charged with a crime involving sexually assaultive behavior, reputation or opinion evidence of the past sexual behavior of the victim is not admissible.
>
> **B. Other evidence; exceptions.** When an accused is charged with a crime involving sexually assaultive behavior, evidence of specific instances of the victim's past sexual behavior is also not admissible except for:
>
> > (1) Evidence of past sexual behavior with persons other than the accused, upon the issue of whether or not the accused was the source of semen or injury; provided that such evidence is limited to a period not to exceed seventy-two hours prior to the time of the offense, and further provided that the jury be instructed at the time and in its final charge regarding the limited purpose for which the evidence is admitted; or

> (2) Evidence of past sexual behavior with the accused offered by the accused upon the issue of whether or not the victim consented to the sexually assaultive behavior.

Pursuant to the language of the aforementioned articles, it is clear that the rape shield law is precisely drawn to exclude evidence of the alleged victim's sexual history with persons other than the defendant. The only time a victim's prior sexual history is admissible is if the defendant wishes to demonstrate another possible source of semen or injury within seventy-two hours of the crime charged, or the defendant attempts to prove that the victim consented to the sexual behavior. In this case, there was no issue regarding the source of semen or physical injury and the defendant did not attempt to show that B.B. consented. Therefore, because the defendant did not wish to introduce the evidence in question for either of these purposes, it was inadmissible. There was no error in the trial court's ruling, and thus no prejudice to the defendant.

Furthermore, we find no merit in the defendant's claim that the trial court erred in basing its ruling on the presumption that the defendant sought to use the evidence regarding the victim's sexual relationship with Merritt to impeach her on the basis of prior inconsistent statements. We note, and the state also points out in its brief, when asked if the witness testimony the defense sought to introduce contained inconsistent statements by the victim regarding the relationship, defense counsel responded affirmatively. Counsel stated, "Correct. With respect to one [witness], there is."

Insofar as the testimony regarding the other incidents with Merritt is concerned, we find that the trial court's ruling did not prohibit all evidence of B.B.'s relationship with Merritt and/or the defendant's disapproval of said

relationship. The court's ruling excluded only evidence of any sexual relationship between the victim and Merritt. The court clearly stated, "[t]hat does not preclude the testimony of these witnesses as to other matters, but only as to the matters relative to alleged prior sexual relations by the alleged victim with individuals other than the defendant." The prosecutor, in her argument at the motion hearing, even acknowledged that evidence regarding B.B.'s disagreements with the defendant and/or the defendant's disproval of B.B.'s relationship with "her boyfriend" was admissible to show motive.

Considering the foregoing, we find no error or abuse of discretion in the trial court's ruling prohibiting inquiry into the sexual history of the victim. The trial court's ruling did not, in any way, hamper the defendant's ability to present a defense. Furthermore, it is difficult to see how the defendant could have possibly been prejudiced by the exclusion of the evidence that B.B. was sexually active with Merritt when he confessed to sexually abusing the young victim on a weekly basis for years. This assignment of error lacks merit.

CONCLUSION

For the foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.

STATE OF LOUISIANA **NUMBER 2006 KA 1812**

FIRST CIRCUIT

VERSUS

COURT OF APPEAL

IDDO BLACKWELL **STATE OF LOUISIANA**

WELCH, J., CONCURRING.

JHW I respectfully concur with the result reached by the majority opinion in this case, but write separately to again point out that the majority is ignoring an illegally lenient sentence under the authority of **State v. Price**, 2005-2514 (La. App. 1st Cir. 12/28/06), ___ So.2d ___ (en banc).

On the count of forcible rape, La. R.S. 14:42(b), the trial court was required to, but did not, impose at least two years of the sentence without benefit or probation, parole, or suspension of sentence. This was error. While this error has little or no consequence in this case, because the defendant has been sentenced to life imprisonment, I do not believe the mere fact that the State failed to object to the error means that we should ignore this illegally lenient sentence. An illegal sentence is not a sentence all. See **State v. Johnson**, 220 La. 64, 68 at 55 So.2d 782, 784 (1951). Turning a blind eye to the error, as the majority has done in this case, does not comport with our constitutional and statutory responsibilities under La. C.Cr.P. art. 920(2) and La. C.Cr.P. art. 882(a). When the legislature has imposed a minimum mandatory sentence, we are constitutionally mandated to apply that law. Accordingly, I would impose the minimum mandatory sentence.

For these reasons, I respectfully concur.