

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT**

**2010 KA 1278**



**STATE OF LOUISIANA  
VERSUS  
JEREMY LANDRY**

Judgment Rendered: ~~FEB~~ 11 2011.

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On Appeal from the 23rd Judicial District Court  
In and For the Parish of Ascension  
Trial Court No. 22441, Division B

Honorable Thomas J. Kleibert, Jr., Judge Presiding

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**BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.**

## **HUGHES, J.**

The defendant, Jeremy Landry, was charged by grand jury indictment with aggravated rape, a violation of LSA-R.S. 14:42. The defendant pled not guilty and, following a jury trial, was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals designating one assignment of error. We affirm the conviction and sentence.

### **FACTS**

In 2007, C.L., born November 5, 1993, told her best friend, Josie, that the defendant, C.L.'s stepfather, had sexually abused her. Josie told her mother what C.L. had said and, shortly thereafter, an investigation by the Office of Community Services (OCS) ensued. Myra Borne, a child protection investigator with OCS assigned to C.L.'s case, testified at trial that the abuse began when C.L. was five years old and ended when she was ten years old. Myra set up a Children's Advocacy Center (CAC) interview in Gonzales for C.L. Joelle Henderson with CAC interviewed C.L., and the CAC videotape was submitted into evidence and played for the jury at trial.

C.L. testified at trial that the defendant began inappropriately touching her when she was five or six years old and living in North Carolina. When they moved to a residence on Louis White Road in Ascension Parish, the defendant began having anal and oral sex with C.L. C.L. also performed oral sex on the defendant. In the CAC interview, C.L. stated that in North Carolina when she was five or six years old, the defendant repeatedly placed her on the couch and forced her to perform oral sex on him. The defendant also repeatedly inserted his finger into her anus. When C.L. was seven years old, they moved to Louisiana to a trailer in Bayou Pigeon. When C.L. was eight years old, they moved to a trailer on Louis White Road in Ascension Parish. While in Louisiana, the defendant repeatedly

had anal sex with C.L. on the bed. He also performed oral sex on C.L. and forced her to perform oral sex on him. C.L. stated that she told the defendant's mother and stepmother about the abuse, and they told her to fight back. When C.L. was ten years old, the defendant stopped abusing her "all of a sudden."

### ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court erred in admitting into evidence C.L.'s CAC interview as evidence of other crimes pursuant to LSA-C.E. art. 412.2. Specifically, the defendant contends that the trial court erred in allowing the videotape to be shown to the jury because, pursuant to the balancing test of LSA-C.E. art. 403, the evidence, which introduced incidents that allegedly occurred in North Carolina and another parish other than Ascension Parish, was more prejudicial than probative.

Prior to trial, the State filed a notice of intent to introduce evidence of other wrongs or acts under LSA-C.E. art. 412.2. Louisiana Code of Evidence 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.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. LSA-C.E. art. 401. All

relevant evidence is admissible except as otherwise provided by positive law. Evidence which is not relevant is not admissible. LSA-C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or waste of time. LSA-C.E. art. 403.

Generally, evidence of criminal offenses other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. In order to avoid the unfair inference that a defendant committed a particular crime simply because he is a person of criminal character, other crimes evidence is inadmissible unless it has an independent relevancy besides simply showing a criminal disposition. **State v. Lockett**, 99-0917, p. 3 (La. App. 1st Cir. 2/18/00), 754 So.2d 1128, 1130, writ denied, 2000-1261 (La. 3/9/01), 786 So.2d 115.

Louisiana Code of Evidence article 404(B)(1) provides:

Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Louisiana Code of Evidence article 412.2 was a legislative response to earlier decisions from the Louisiana Supreme Court refusing to recognize a “lustful disposition” exception to the prohibition of other crimes evidence under LSA-C.E. art. 404. **State v. Buckenberger**, 2007-1422, p. 9 (La. App. 1st Cir. 2/8/08), 984 So.2d 751, 757, writ denied, 2008-0877 (La. 11/21/08), 996 So.2d 1104. Ultimately, questions of relevancy and admissibility of evidence are discretion calls for the trial court. Such determinations regarding relevancy and admissibility

should not be overturned absent a clear abuse of discretion. See State v. Mosby, 595 So.2d 1135, 1139 (La. 1992); **State v. Olivieri**, 2003-563, p. 19 (La. App. 5 Cir. 10/28/03), 860 So.2d 207, 218.

The defendant asserts in his brief that the trial court did not properly conduct the balancing test because it did not make “a recorded statement of reasons.” The assertion is meritless. The trial court was not required to conduct a pre-trial hearing prior to admitting evidence demonstrating the defendant’s “lustful disposition towards children.” **State v. Williams**, 09-48 (La. App. 5 Cir. 10/27/09), 28 So.3d 357, 360, writ denied, 2009-2565 (La. 5/7/10), 34 So.3d 860. The record indicates in the instant matter that, just prior to voir dire, the trial court informed defense counsel that it had reviewed the CAC interview of C.L. and that under the balancing test, C.L.’s statements would be admissible. We find no abuse of discretion in the trial court’s ruling. The evidence concerning the incidents with C.L. was clearly admissible under LSA-C.E. art. 412.2 to prove lustful disposition toward C.L., and the probative value of the evidence was not outweighed by the danger of unfair prejudice under LSA-C.E. art. 403. See State v. Verret, 2006-1337, pp. 19-21 (La. App. 1st Cir. 3/23/07), 960 So.2d 208, 220-22, writ denied, 2007-0830 (La. 11/16/07), 967 So.2d 520.

The defendant further contends that the statutory guidelines of LSA-R.S. 15:440.1 *et seq.* were not followed because the State used the CAC videotape to introduce other crimes evidence “which is not the intended purpose of the statute.” LSA-R.S. 15:440.4 and 15:440.5 are designed to ensure the reliability of the videotaped oral statement of a child victim. Louisiana Revised Statute 15:440.4(A) provides five requirements which must be satisfactorily proven before such a videotape can be considered competent evidence. Louisiana Revised Statute 15:440.5(A) provides eight requirements, some of which overlap those in 15:440.4(A), for the videotape to be admissible. **State v. Ledet**, 96-0142, pp. 9-10

(La. App. 1st Cir. 11/8/96), 694 So.2d 336, 342, writ denied, 96-3029 (La. 9/19/97), 701 So.2d 163.

The defendant's reliance on this statutory scheme regarding the admissibility of C.L.'s CAC interview is misplaced. It is not necessary to determine the intended purpose of LSA-R.S. 15:440.1 *et seq.* Whether the purpose of LSA-R.S. 15:440.1 *et seq.* is to allow recorded testimony of the actual crime for which a defendant is being prosecuted or for introducing other crimes evidence (or both), the State properly introduced the CAC videotape pursuant to LSA-C.E. art. 412.2.

**CONVICTION AND SENTENCE AFFIRMED.**