

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1354

STATE OF LOUISIANA

VERSUS

JOSEPH S. HAMPTON

Judgment Rendered: JUN 10 2011

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 457456, DIVISION "H"

THE HONORABLE ALLISON H. PENZATO, JUDGE

Walter P. Reed
District Attorney
and
Kathryn Landry
Special Appeals Counsel
Baton Rouge, Louisiana

Attorneys for Appellee
State of Louisiana

Gwendolyn K. Brown
Louisiana Appellate Project
Baton Rouge, Louisiana
and
Rachel Yazbeck
Covington, Louisiana

Attorneys for Defendant/Appellant
Joseph Hampton

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

Handwritten signatures:
JMM
LAW
PME

McDONALD, J.

The defendant, Joseph S. Hampton, was charged by grand jury indictment with the aggravated rape of T.A., a violation of La. R.S. 14:42. The defendant pled not guilty to the charge and waived his right to a jury trial. Following a bench trial, the defendant was found guilty as charged. He was sentenced to life imprisonment at hard labor without benefit of parole. The defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

The defendant met M.S. in 2001. M.S. had a four-year-old daughter, T.A. For about the next seven years, the defendant, while still married to another woman, lived with M.S. and T.A. in Slidell. In 2008, when T.A. was eleven and twelve years old, the defendant began sexually abusing her. T.A. testified at trial that she performed oral sex on the defendant, and the defendant performed oral and vaginal sex on her. T.A. eventually told her mother, who brought T.A. to the Child's Advocacy Center to be interviewed.

C.P., the defendant's thirty-nine-year-old sister, testified at trial that the defendant sexually abused her from the time she was about eight years old until she was fourteen years old. The defendant had vaginal and anal sex with C.P. The defendant also performed oral sex on C.P. and forced her to perform oral sex on him.

Twenty-six-year-old K.P. testified at trial that when she was twelve years old, she went to a party with her mother. The defendant was also at the party. The party ended and, while everyone else was sleeping, the defendant gave K.P.

alcohol and a pill, and told K.P. to take off her underwear. The defendant inserted his fingers in K.P.'s vagina and anus. The defendant then performed oral sex on K.P. K.P. indicated she kept going to the bathroom until her mother finally "came out" and told K.P. she needed to go to sleep. About a year later, K.P. testified at the trial arising from this incident, and the defendant was convicted by a jury of the charges brought by the State.¹

The defendant testified at trial. He denied ever touching T.A. in an inappropriate manner. The defendant also testified that he never touched K.P. or his sister, C.P., and that C.P. lied on the stand about any sexual contact the defendant allegedly had with her.

ASSIGNMENTS OF ERROR NOS. 1 and 2

In these two assignments of error, the defendant argues the trial court erred in admitting evidence of other offenses at trial. Specifically, the defendant contends that the trial court should not have allowed other victims of the defendant's sexual abuse to testify at trial because the crimes were not sufficiently

¹ The defendant was convicted of oral sexual battery of K.P. and sexual battery of K.P. The defendant was sentenced to seven years at hard labor without benefits. Also, once released from incarceration, the court ordered the defendant to comply with all registration requirements for sex offenders as set forth in La. R.S. 15:542. In the instant matter, the defendant was charged with a second count, the failure to update or renew his sex-offender registration, in violation of La. R.S. 15:542.1. Prior to trial, the State severed this count (count 2) and proceeded to trial on the aggravated rape charge only.

similar.²

The defendant asserts the trial court erred in allowing the testimony of C.P. and K.P. regarding his sexual abuse of them. According to the defendant, the testimony offered by these alleged victims of other crimes revealed that those crimes were not sufficiently similar to the instant offense to provide any probative insight into his "proclivities."

Prior to trial, the State filed notice of intent to introduce evidence of other offenses under La. Code Evid. art. 412.2. The defendant objected to the introduction of such evidence. In ruling the evidence admissible, the trial court stated in pertinent part:

And in reviewing these factors, the Court make[s] the preliminary ruling that the evidence will be admissible. The Court finds that the victims were of similar age. And therefore, the similarities between the other acts and the allegations which the defendant is charged with today are strikingly similar.

The Court has also weighed the balancing test. And while finding that obviously these other acts are prejudicial, the Court finds that based upon 412.2 in particular, and in particular the crime with which this defendant is charged and the other acts which are set forth in connection with the motion, the Court finds that the probative value in this particular case outweighs the prejudicial effects.

Louisiana Code of Evidence art. 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

² In his first assignment of error, the defendant argues the trial court erred in admitting the evidence of other offenses. In his second assignment of error, the defendant states the trial court erred in denying his motion for new trial which was based in part on the trial court's erroneous admission of other crimes evidence. In his brief, the defendant presents only one argument based on the first assignment of error. Presumably, the defendant combined the assignments of error into a single argument. If not, then the second assignment of error is considered abandoned since the new trial issue is not separately addressed. See Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4.

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. La. Code Evid. art. 401. All relevant evidence is admissible except as otherwise provided by positive law. Evidence which is not relevant is not admissible. La. Code Evid. 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. La. Code Evid. 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 (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 art. 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 La. Code Evid. art. 404. **State v. Buckenberger**, 2007-1422 (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 (La. App. 5th Cir. 10/28/03), 860 So.2d 207, 218.

In the instant matter, the victim, T.A., and the two women who testified at trial were young females when they were sexually abused by the defendant. T.A. was eleven and twelve years old. K.P. was twelve years old, and C.P. was abused from the age of eight until she was fourteen years old. All three witnesses testified the defendant performed oral sex on them. T.A. and C.P. testified the defendant forced them to perform oral sex on him. K.P. testified that the defendant told her to “touch him.” It is not clear from K.P.’s testimony what this touching entailed.

Further, it appears the defendant's advances were cut short when K.P.'s mother approached the defendant and K.P. and told K.P. she needed to go to sleep. Both T.A. and K.P. testified that the defendant gave them a pill. T.A. testified the defendant gave her a "muscle relaxer" pill so that it would not hurt when he inserted his penis into her vagina. K.P. testified the defendant gave her an alcoholic drink and a pill before he sexually abused her.

Based on the foregoing, we find no abuse of discretion in the trial court's ruling. The other crimes evidence involving C.P. and K.P. was clearly admissible under La. Code Evid. art. 412.2 to prove the defendant's lustful disposition toward young females, and the probative value of the evidence was not outweighed by the danger of unfair prejudice under La. Code Evid. art. 403. See State v. Verret, 2006-1337 (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. See also State v. Johnson, 43,843 (La. App. 2d Cir. 1/28/09), 2 So.3d 606, 614-16, writ denied, 2009-0464 (La. 11/6/09), 21 So.3d 300; State v. E.J.F., 2008-674 (La. App. 3d Cir. 12/10/08), 999 So.2d 224, 230-31.

These assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.