

Respondent's Appendix

STATE OF LOUISIANA

NUMBER: 506845

DIVISION: F

VERSUS

22ND JUDICIAL DISTRICT COURT

PARISH OF ST. TAMMANY

TAM Q. LE

STATE OF LOUISIANA

FILED

May 8 2017

May 8 2017

REASONS FOR DENYING APPLICATION AND SUPPLEMENTAL APPLICATION FOR POST-CONVICTION RELIEF

Petitioner, Tam Q. Le, was found guilty by a jury on October 31, 2012 of two counts of aggravated rape, with the victims being under thirteen years old. His convictions and sentences were affirmed and became final when the Louisiana Supreme Court denied writs on May 23, 2014. The petitioner filed an "Application for Post-Conviction Relief", and the State filed a response to the application. The petitioner subsequently filed a "Supplemental Application for Post-Conviction Relief" on April 6, 2017. The Court addresses both Applications for Post-Conviction Relief in these Reasons.

1) ORIGINAL APPLICATION FOR POST-CONVICTION RELIEF:

Claim One:

In Claim One, petitioner alleges that his trial counsel was ineffective because he: 1) failed to object to "the lead detective's opinion regarding the credibility of Le and his accusers" and 2) failed to request a limiting jury instruction concerning the admission of "bad character evidence", namely, the fact that the defendant had previously filed for bankruptcy.

In *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), the United States Supreme Court held that to establish a claim for ineffective assistance of counsel, a defendant must show both that 1) that counsel's performance

Resp. A

fell below an objective standard of reasonableness under prevailing professional norms, and 2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect. *State v. Legrand*, 2002-1462 (La. 12/3/03), 864 So. 2d 89.

There is a strong presumption that counsel's performance is within the wide range of effective representation. Effective counsel does not mean errorless counsel and the reviewing court does not judge counsel's performance with the distorting benefits of hindsight but rather determines whether counsel was reasonably likely to render effective assistance. *State Ex Rel. Smith v. State*, 2015-0233 (La. 4/8/16), 188 So. 3d 1042 (2016).

A review of the trial transcript shows that defense counsel, during opening and closing statements, attacked the credibility of Detective Nicaud, by painting a picture that Detective Nicaud, after hearing the allegations against defendant, made a determination in the beginning of the investigation that defendant committed the crimes and failed to following up on anything the defendant told him. Therefore, defense counsel's decision not to object to the testimony may be considered a reasonable trial strategy because it supported the defendant's theory of the case. Because this "might be considered trial strategy," *Strickland*, 466 U.S. at 689, the petitioner has failed to demonstrate that trial counsel performed deficiently by failing to object to that testimony.

The Court points out that petitioner has also failed to demonstrate that had his trial counsel made these objections, they would have been meritorious. Jurisprudence on this issue has allowed lay witnesses to opine as to whether or not they believe a particular individual's statement is credible, as long as those opinions are rationally based upon first-hand perceptions. *State v. Carter*, 10-0614, p. 12-13 (La. 1/24/12),

84 So. 3d 499, 512-513; *State v. Hubbard*, 97-0916 (La. App. 5 Cir. 1/27/98), 708 So. 2d 1099, 1106. Therefore, the petitioner has failed to prove any prejudice.

Petitioner asserts that even though Detective Nicaud was not tendered as an expert, because of Nicaud's position as a law enforcement officer he was given a "high level of credibility" by the jury which prejudiced the petitioner. The Court notes that the jury was instructed on the law as it relates to the testimony of "witnesses". The jury was specifically instructed regarding evaluating the credibility of witnesses and the weight to be given to the witnesses testimony as follows: "In your evaluation you should carefully scrutinize the circumstances under which the witness has testified. You may consider a witness' ability and opportunity to observe and remember the facts, his or her manner while testifying, and any bias or prejudice inherent in their testimony." ("Jury Instructions", Record on Appeal, pp. 513-514) Detective Nicaud was not an expert witness, but an investigating officer on the case who provided testimony based on his personal observations. The petitioner has failed to demonstrate any prejudice.

The petitioner also alleges that his counsel was ineffective because he failed to request a limiting jury instruction concerning the admission of "bad character evidence", specifically that defendant had previously filed for bankruptcy. During cross-examination of the defendant, the prosecutor asked whether the defendant ever had any "money problems", and the defendant answered "Never". (Record on Appeal, at 455:16-455:21) The prosecution then presented evidence that the defendant had previously filed for bankruptcy. The defendant's objection to this evidence was overruled by the Court because, although not relevant to the particulars of the charge, it was relevant to the defendant's veracity.

On appeal, the First Circuit Court of Appeal noted in its decision that "evidence

the defendant had filed for bankruptcy protection was not 'other crimes evidence.' Further, the trial court did not abuse its discretion in allowing the challenged evidence. The evidence was properly admitted to contradict the defendant's testimony that he 'never (had) had money problems.'"¹

The petitioner claims that it was error for the court to fail to provide a limiting instruction to the jury after the admission of other crimes evidence, and that his counsel should have asked the court to instruct the jury "that they could not infer Le's guilt due to the bankruptcy." As the Court of Appeal noted in affirming the defendant's conviction, evidence that the defendant had previously filed for bankruptcy was not other crimes evidence. It was properly admitted to contradict the defendant's testimony that he had never had money problems. Extrinsic evidence contradicting a witness' testimony is admissible when offered solely to attack the credibility of a witness. La. C.E. art. 607 (D)(2). Credibility of the witnesses was a critical issue in defendant's case. The jury was instructed sufficiently on the law. This claim is denied.

As to petitioner's claim of ineffective assistance of counsel on this issue, the Court finds that petitioner has failed to demonstrate that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms or that counsel's performance prejudiced defendant to the extent that the trial was rendered unfair or the verdict suspect. Therefore, the Court finds this claim to be without merit and is denied.

Claim Two:

In claim two, petitioner asserts that Code of Criminal Procedure article 782, which allows for non-unanimous jury verdicts, is unconstitutional. This issue was

¹ State v. Le, 13-0611, p. 8 (La. App. 1 Cir. 11/04/13), 2013 WL 5935677, at *5.

raised on appeal, and the Court of Appeal found no merit to the argument. Therefore, this claim is denied.

2) SUPPLEMENTAL APPLICATION FOR POST-CONVICTION RELIEF:

In petitioner's "Supplemental Application for Post-Conviction Relief" he alleges that the trial court erred in allowing Ms. Denise Matherne to testify as an expert witness for the State because her testimony was not reliable under the factors set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and subsequent jurisprudence. Petitioner cites many medical articles relating to psychology, child sexual abuse, sexual behavior in children and forensic examinations, as well as case law from other jurisdictions. However, none of the medical articles or jurisprudence cited by petitioner can be construed as the discovery of new facts or a new interpretation of constitutional law that would warrant the granting of a new trial.

Further, defendant's reliance on the case of *State v. Ayo*, 167 So. 3d 608 (La. 6/30/15) is also misplaced, as the facts of that case are distinguishable from the facts of petitioner's case. In *Ayo*, the Court found that previously undisclosed pre-trial statements to witnesses by the victim that were inconsistent with statements she gave at trial constituted newly discovered evidence. There is no newly discovered evidence in petitioner's case. The Court also points out that petitioner had the opportunity prior to trial to request a *Daubert* hearing regarding the admissibility of Denise Matherne's testimony, and further did not raise this issue as an error on appeal. This claim is denied.

Petitioner also raises the issue that his counsel was ineffective because he failed to object to the admissibility of Ms. Matherne's testimony. The Court finds that this allegation made by petitioner is conclusory and speculative, and petitioner

has not made the requisite showing that had his counsel objected to the admissibility of Ms. Matherne's testimony or requested a *Daubert* hearing, that the outcome would have been meritorious or would have changed the outcome of the trial. Therefore, this claim has no merit and is denied.

Based on the above, the Court finds defendant's claims in both his "Application for Post-Conviction Relief" and "Supplemental Application for Post-Conviction Relief" lack merit and are denied. Further, based on a review of the record in this matter; the "Application for Post-Conviction Relief", the "Supplemental Application for Post-Conviction Relief"; and the Response by the State of Louisiana, the Court finds it is able to reach a summary disposition of the petitioner's application and supplemental application without the need for an evidentiary hearing.

Accordingly, the "Application for Post Conviction Relief" and "Supplemental Application for Post-Conviction Relief" are dismissed.

Covington, Louisiana, this 4 day of May, 2017.



Judge Martin Coady

STATE of Louisiana

v.

Tam LE

2017 WL 6055438

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeal of Louisiana,

First Circuit.

NO. 2017 KW 1354

December 07, 2017

In Re: Tam Le, applying for supervisory writs, 22nd Judicial District Court, Parish of St. Tammany, No. 506,845.

BEFORE: WHIPPLE, C.J., McDONALD AND CHUTZ, JJ.

Opinion

***1 **1 WRIT DENIED.**

All Citations

Not Reported in So.3d, 2017 WL 6055438, 2017-1354 (La.App. 1 Cir. 12/7/17)

Resp. B

STATE of Louisiana
v.
TAM LE
263 So.3d 422 (Mem)
Supreme Court of Louisiana.
2018-0085 (La. 2/18/19)
02/18/2019

Applying For Supervisory and/or Remedial Writs, Parish of St. Tammany, 22nd Judicial District Court Div. F, No. 506845; to the Court of Appeal, First Circuit, No. 2017 KW 135

**ON SUPERVISORY WRITS TO THE
TWENTY-SECOND JUDICIAL
DISTRICT COURT, PARISH OF ST.
TAMMANY**

PER CURIAM:

****1 Denied.** Relator fails to show he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the

legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral ***423** review. The district court is ordered to record a minute entry consistent with this per curiam.

Hughes, J., would grant and assigns reasons.

Hughes, J., dissents and would grant the writ.

****1** In this case a police officer with twenty-two years experience testified before the jury that the victims were telling "one-hundred percent the truth," and a school counselor was accepted as an expert and testified that from her "professional perspective" that she saw nothing "inconsistent" with sexual child abuse. It cannot be said that the jury's verdict was surely attributable to these errors, and they are therefore not harmless.

All Citations

263 So.3d 422 (Mem), 2018-0085 (La. 2/18/19)

Resp. C

State v. Le, Not Reported in So.3d (2013)

2013-0611 (La.App. 1 Cir. 11/4/13)

2013 WL 5935677

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

NOT DESIGNATED FOR PUBLICATION

Court of Appeal of Louisiana,
First Circuit.

STATE of Louisiana

v.

Tam Q. LE.

No. 2013 KA 0611.

Nov. 4, 2013.

Appealed from the Twenty-Second Judicial District
Court, In and for the Parish of St. Tammany, State of
Louisiana, Docket Number # 506845, Division "F"
Honorable Martin E. Coady, Judge Presiding.

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Defendant/Appellant Tam Q. Le.

Before PARRO, GUIDRY, and DRAKE, JJ.

Opinion

GUIDRY, J.

*1 The defendant, Tam Q. Le, was charged by amended grand jury indictment with two counts of aggravated rape, violations of La. R.S. 14:42, and pled not guilty on both counts. Following a jury trial, he was found guilty as charged on both counts, with ten of twelve jurors voting guilty. On each count, he was sentenced to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The trial court ordered the sentences to run concurrently. The defendant moved

for reconsideration of sentence, but the trial court denied the motion. The defendant now appeals, contending: the trial court erred in allowing the case detective to offer opinion evidence concerning the credibility of the victims and the defendant; the trial court erred in allowing the presentation of other crimes evidence; the trial court erred in giving an 'Allen' charge to the jury; the proceedings were defective, because the jury returned less than unanimous verdicts; and the trial court erred in imposing unconstitutionally excessive sentences. For the following reasons, we affirm the convictions and sentences on counts one and two.

¹ Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896).

FACTS

The victim of count one, N.N.V., was twelve years old at the time of her testimony at trial on October 30, 2012. She indicated that when her mother was in Vietnam, the defendant, her stepfather, tried "to put his private part into mine." She stated the incident happened after she fell asleep while watching a movie in her mother's room. According to N.N.V., when she woke up during the night, her shorts "were gone," and the defendant was on top of her. She picked up her shorts and ran to her room.

The State also played a recording of the February 22, 2011 interview of N.N.V. N.N.V. discussed the incident she had testified about and used sketches of an adult male and a female child to indicate the defendant had tried to put his penis in her vagina. She stated that incident occurred when she was eight or nine years old. He told N.N.V. not to tell her mother what he had done.

The victim of count two, N.D.V., testified her date of birth was October 18, 2000. She indicated the defendant licked her vagina while her mother was in Vietnam. She also indicated the defendant had put his hand in her vagina. She stated the incidents occurred when she was sleeping with the defendant.

The State also played a recording of the February 22,

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2011 interview of N.D.V. N.D.V. used a sketch of a female child to indicate the defendant had licked her vagina. She stated that when she was eight or nine years old, the defendant had called her into her mother's room and told her to lie on the bed. He then took her pants and underwear off, pulled her vaginal lips apart, and licked her vagina. N.D.V. stated the incidents involving the defendant putting his hand into her pants occurred in the living room while her mother was using the computer in her room. In regard to those incidents, N.D.V. stated that, on two or three occasions, the defendant put his hand in her pants and touched or rubbed her vagina after telling her to sit in his lap.

*2 The mother of the victims testified that she had been married to the defendant and had lived with him in Slidell in 2008 and 2009. They had one child together (a son). They separated on January 15, 2009, and divorced on December 13, 2010. On January 15, 2009, she returned from Vietnam, told the defendant she had an affair while there, and she no longer wanted to stay with him. She did not learn of the victims' allegations against the defendant until she was contacted by their school counselor on February 8, 2011. At that time, she was married to someone other than the defendant, and had a son with her new husband. She denied "put[ting] [the victims] up to lying about [the defendant]."

The defendant testified he had never committed any crime in his life and denied molesting the victims. He indicated the victims' mother went to Vietnam between December of 2008 and January of 2009 to get an "extra facial license." He claimed their relationship deteriorated, because she kept talking to the man with whom she had an affair in Vietnam. He stated she was arrested for assaulting him and told him, "I am going to get you when everything done."

IMPROPER TESTIMONY

In assignment of error number 1, the defendant argues the trial court erred in allowing Slidell Police Department Detective Brian Nicaud to "more or less" provide an expert opinion concerning the veracity of the victims, based on his years of experience. He argues that Detective Nicaud improperly gave opinion testimony concerning:

the mother's demeanor being consistent with a person receiving "devastating news"; Vietnamese culture frowning on reporting these kinds of cases; believing the victims had provided consistent testimony and had given "100% truth"; and, although the defendant denied culpability, the defendant's statement confirming Detective Nicaud's belief that an arrest was justified.

La. C.E. art. 702 addresses the admissibility of expert testimony and provides, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Notably, the Louisiana Supreme Court has placed limitations on this codal provision in that, "[e]xpert testimony, while not limited to matters of science, art or skill, cannot invade the field of common knowledge, experience and education of men." *State v. Young*, 09-1177, p. 8 (La.4/5/10), 35 So.3d 1042, 1046-47, cert. denied, U.S., ___ 131 ___, S.Ct. 597, ___ U.S. ___, 131 S.Ct. 597, 178 L.Ed.2d 434 (2010).

Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. However, in a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused. La. C.E. art. 704. Additionally, expert assessment of witness credibility is improper. *State v. Foret*, 628 S.2d 1116, 1130 (La.1993).

*3 Initially, we note Detective Nicaud was neither offered, nor accepted, as an expert witness in this case. He indicated he had worked for the Slidell Police Department for twenty-two years and investigated the instant case. He testified without objection that the demeanor of the victims' mother was "very soft spoken and consistent with a mother that just learned some, you know, devastating news, but she was a little apprehensive." He also testified without objection that she was apprehensive, "just, you know, by what she spoke to me and me asking her questions as far as her culture, this is not something that is reported. It is a disgrace and so, she was a little apprehensive and she even admitted herself that if the school did not notify her and she had learned this information ahead of time she would have dealt with this in the family unit." In response to a State question if there were "other things" consistent with what you have found

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in your experience with child abuse, he replied, without objection, “[y]es. It was consistent.” In response to a State question, “[i]f you had believed that the children were lying to you and that the mother had put them up to it, would you have obtained that arrest warrant?,” he replied, without objection, “[n]o.” In response to a State question, “[a]fter your interview with the defendant, did that change your mind in any way about the status of the case?,” he replied, without objection, “[c]onfirmed it.”

The defense cross-examined Detective Nicaud concerning why he had not interviewed the parents of the victims’s mother. Detective Nicaud replied they were in Vietnam when the allegations were made. The defense asked Detective Nicaud if he had a phone number for the grandparents and, without objection, he replied:

They would be home in about a month and I was very confident that what the girls said and what [the victims’ mother] said that what they said happened, based on my investigation, the initial report from the officer and which is our protocol to do a forensic interview. We did a forensic interview. It was my understanding from my experience and my years of investigations on the Slidell Police Department I felt those girls were telling me one-hundred percent the truth.

The defendant failed to object to the challenged testimony. Accordingly, he failed to preserve the issue of Detective Nicaud’s improper testimony, if any, for review. See La. C.E. art. 103(A)(1) (“Error may not be predicated upon a ruling which admits ... evidence unless a substantial right of the party is affected, and ... a timely objection ... appears of record, stating the specific ground of objection”); La. C. Cr. P. art. 841(A) (“An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence”). The grounds for objection must be sufficiently brought to the court’s attention to allow it the opportunity to make the proper ruling and prevent or cure any error. See State v. Trahan, 93–1116, p. 16 (La.App. 1st Cir.5/20/94), 637

So.2d 694, 704.

*4 This assignment of error is without merit.

OTHER CRIMES EVIDENCE

In assignment of error number 2, the defendant argues the trial court erred in allowing the prosecution’s presentation of “other crimes evidence” not previously ruled admissible and failed to provide a limiting instruction to the jury.

It is well settled that courts may not admit evidence of other crimes to show the defendant as a man of bad character who has acted in conformity with his bad character. See La. C.E. art. 404(B)(1). Evidence of other crimes, wrongs, or acts committed by the defendant is generally inadmissible because of the substantial risk of grave prejudice to the defendant. However, the State may introduce evidence of other crimes, wrongs, or acts if it establishes an independent and relevant reason, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. La. C.E. art. 404(B)(1). Upon request by the accused, the State must provide the defendant with notice and a hearing before trial if it intends to offer such evidence. Even when the other crimes evidence is offered for a purpose allowed under Article 404(B)(1), the evidence is not admissible unless it tends to prove a material fact at issue or to rebut a defendant’s defense. The State also bears the burden of proving that the defendant committed the other crimes, wrongs, or acts. See State v. Rose, 06–0402, p. 12 (La.2/22/07), 949 So.2d 1236, 1243.

Any inculpatory evidence is “prejudicial” to a defendant, especially when it is “probative” to a high degree. State v. Germain, 433 So.2d 110, 118 (La.1983). As used in the balancing test, “prejudicial” limits the introduction of probative evidence of prior misconduct only when it is unduly and unfairly prejudicial. Id. see also Old Chief v. United States, 519 U.S. ... 172, 180, 117 S.Ct. 644, 650, 136 L.Ed.2d 574 (1997) (“The term ‘unfair prejudice,’ as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific

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to the offense charged.”). Rose, 06–0402 at p. 13, 949 So.2d at 1244.

On direct examination, the defendant testified he treated the victims “just like my kid.” He claimed he moved them to Chalmette to provide them with better schools. He also claimed he used money from damages to his house caused by Hurricane Katrina to have a house in Slidell so the victims could have a better education than if they lived in New Orleans. On cross-examination, the State asked the defendant if he was having financial problems around the time of the allegations, and if he had ever had financial problems. The defendant answered, “I never have had money problems.” The State also asked the defendant if he had owned property in Jefferson Parish, and he replied, “[n]o.”

On direct examination of the mother of the victims, the State asked if she was aware the defendant had declared bankruptcy. The defense objected, arguing, “that has nothing to do with this case.” At a bench conference, the State indicated the defendant had testified he never had property on the west bank, never had problems with the property, and never in his life had money problems. The defense questioned the relevance of the evidence. The trial court ruled the evidence was not relevant to the particulars of the charge, but was relevant to the defendant’s veracity, and noted the defense had failed to object when the defendant was questioned about whether he had any financial troubles. Thereafter, the State asked the mother of the victims if it was true the defendant had declared bankruptcy. She replied, “I don’t recall that.” The State showed her a document supporting its claim and asked if the document reflected the defendant had declared bankruptcy, would she have any reason to doubt the document. She replied, “[i]f that’s what it says it is then it is.”

*5 Initially, we note evidence the defendant had filed for bankruptcy protection was not “other crimes evidence.” Further, the trial court did not abuse its discretion in allowing the challenged evidence. The evidence was properly admitted to contradict the defendant’s testimony that he “never [had] bad money problems.” Except as otherwise provided by legislation, extrinsic evidence contradicting a witness’s testimony is admissible when offered solely to attack the credibility of a witness, unless the court determines that the probative value of the evidence on the issue of credibility is substantially outweighed by the risks of undue consumption of time,

confusion of the issues, or unfair prejudice. La. C.E. art. 607(D)(2).

We also note that the defense failed to request a limiting instruction concerning the challenged evidence. A party may not assign as error the failure to give a jury charge unless an objection thereto is made before the jury retires or within such time as the court may reasonably cure the alleged error. The nature of the objection and grounds therefore shall be stated at the time of objection. La. C. Cr. P. art. 801(C).

This assignment of error is without merit.

ALLEN CHARGE

In assignment of error number 3, the defendant argues the trial court erred in providing an *Allen* charge to the jury when they advised they were deadlocked.

An *Allen* charge is an instruction acknowledged to be calculated to dynamite jury deadlocks and achieve jury unanimity. State v. Nicholson, 315 So.2d 639, 641 (La.1975). Such a charge, and any coercive modification thereof, is banned in the courts of Louisiana. *Id.* An *Allen* charge emphasizes that the jury has a duty to decide the matter at hand, which implies that the trial judge will not accept a mistrial in the case. Additionally, when the duty to reach a verdict is coupled with the trial court’s admonition that those in the minority should reconsider their position, there exists an almost overwhelming pressure to conform to the majority’s view. State v. Washington, 93–2221, p. 11 (La.App. 1st Cir.11/10/94), 646 So.2d 448, 454–55.

In the instant case, on October 31, 2012, at 1:03 p.m., the jury retired for lunch and deliberation. They returned to the courtroom at 2:25 p.m. and requested transcripts of the forensic interviews, the letter that the victim of count one wrote to her teacher, and a description of lesser charges. The trial court advised the jury they could not be provided with the requested transcripts or letter, but recharged them on the lesser charges. The jury returned to the courtroom at 4:00 p.m. with a note indicating they were “currently hung.”

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The trial court instructed them as follows:

I have indicated to counsel that your second note came out, it reading currently hung, not disclosing the number you put, that's not appropriate for me to do. All I can ask you is it has been a few day[s] trial. It is a serious matter. You went in around 1:00, you have had lunch, you have been at it a few hours. I would ask you to please go back and consult with one another again, consider each other[']s views, discuss the evidence with the objective of reaching a just verdict. Again, of course, you have to decide the case for yourself, but you have to be open to a discussion with your fellow jurors with the objective of reaching a just verdict.

*6 So, I ask you to please go back and give it another try.

Thank you.

The defense objected to the instruction, stating it was "close to an *Allen* charge," and the court noted the objection, but stated, "I don't believe it is anywhere near an *Allen* charge." Thereafter, the jury returned to the courtroom at 7:00 p.m. and returned a verdict.

The trial court did not give a prohibited *Allen* charge in this matter. The court did not admonish the minority members of the jury to reexamine the reasonableness of their opinion or adherence to their original convictions. Nor did the court state that it would not accept a mistrial. The charge does not appear coercive in its total context and does not rise to an *Allen/Nicholson* level. It was not so fundamentally unfair that it deprived the defendant of due process. The court merely recognized the jury had only been deliberating for a few hours and asked the jurors to consult with one another again, consider each other's views, and discuss the evidence with the objective of reaching a just verdict. Indeed, the note from the jury stated they were "currently hung," and thus, it was logical to conclude that further deliberations might result in their arriving at a verdict.

This assignment of error is without merit.

CONSTITUTIONALITY OF NON-UNANIMOUS
VERDICTS

In assignment of error number 4, the defendant argues the proceedings were defective because the jury returned less than unanimous verdicts.

The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case, the motion shall be denied, no matter upon what allegations it is grounded. La. C. Cr. P. art. 851. The trial court's denial of a motion for new trial will not be disturbed absent a clear abuse of discretion. State v. Maize, 94-0736, p. 28 (La.App. 1st Cir.5/5/95), 655 So.2d 500, 517, writ denied, 95-1894 (La.12/15/95), 664 So.2d 451.

Prior to sentencing, the defendant moved for a new trial, arguing, inter alia, his convictions by "10-2 verdict[s]" were inconsistent with our legal history and violated his Sixth Amendment and procedural due process rights. Following a hearing, the motion was denied.

There was no clear abuse of discretion in the denial of the motion for new trial. The provisions of La. Const. art. I, § 17(A) and La. C. Cr. P. art. 782(A) are constitutional and do not violate the Fifth, Sixth, and Fourteenth Amendments, State v. Bertrand, 08-2215 and 08-2311, p. 8 (La 3/17/09), 6 So.3d 738, 743; State v. Jones, 09-0751, p. 11 (La.App. 1st Cir.10/23/09), 29 So.3d 533, 540. There is no authority to the contrary. Accordingly, the trial court was not, and we are not, at liberty to ignore the controlling jurisprudence of superior courts on this issue. See Bertrand, 08-2215 and 08-2311 at p. 8, 6 So.3d at 743.

This assignment of error is without merit.

EXCESSIVE SENTENCES

*7 In assignment of error number 5, the defendant argues the mandatory life sentences imposed upon him were unconstitutionally excessive, because he was a law abiding citizen prior to the instant offenses; because the factual allegations proffered by the prosecution render application of a life sentence overly broad; because plea negotiations indicated the State "was comfortable" with sentences less than life in this matter; and because the defendant maintained stable employment and honored his

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2013-0611 (La.App. 1 Cir. 11/4/13)

bail obligation.

Article I, Section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. State v. Hurst, 99-2868, p. 10 (La.App. 1st Cir.10/3/00), 797 So.2d 75, 83, writ denied, 00-3053 (La.10/5/01), 798 So.2d 962.

In State v. Dorthey, 623 So.2d 1276, 1280-81 (La.1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounts to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime," he is duty bound to reduce the sentence to one that would not be constitutionally excessive.

However, the holding in Dorthey was made only after, and in light of, express recognition by the court that, "the determination and definition of acts which are punishable as crimes is purely a legislative function. It is the Legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional." Dorthey, 623 So.2d at 1278 (citations omitted).²

² The sentencing review principles espoused in Dorthey were not restricted in application to the mandatory minimum penalties provided by La. R.S. 15:529.1. State v. Henderson, 99-1945 (La.App. 1st Cir. 6/23/00), 762 So.2d 747, 760 n. 5, writ denied, 00-2223 (La.6/15/01), 793 So.2d 1235.

In State v. Johnson, 97-1906 (La.3/4/98), 709 So.2d 672, the Louisiana Supreme Court reexamined the issue of when Dorthey permits a downward departure from the mandatory minimum sentences in the Habitual Offender Law. The court held that to rebut the presumption that the mandatory minimum sentence was constitutional, the defendant had to "clearly and convincingly" show that:

[he] is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.

*8 Johnson, 97-1906 at p. 8, 709 So.2d at 676.

Whoever commits the crime of aggravated rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

La. R.S. 14:42(D)(1). Following the denial of post-trial motions, the defense waived sentencing delays, and the court sentenced the defendant, on counts I and II, on each count, to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The trial court ordered the sentences to run concurrently.

The defendant failed to clearly and convincingly show that, because of unusual circumstances, he was a victim of the legislature's failure to assign sentences that were meaningfully tailored to his culpability, the gravity of the offenses, and the circumstances of the case. Accordingly, there was no reason for the trial court to deviate from the provisions of La. R.S. 14:42(D)(1) in sentencing him. Additionally, the sentences imposed were not grossly disproportionate to the severity of the offenses, and thus, were not unconstitutionally excessive.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED ON COUNTS ONE AND TWO.

State v. Le, Not Reported in So.3d (2013)

2013-0611 (La.App. 1 Cir. 11/4/13)

Not Reported in So.3d, 2013 WL 5935677, 2013-0611
(La.App. 1 Cir. 11/4/13)

All Citations

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STATE of Louisiana

v.

TAM Q. LE.

**140 So.3d 724 (Mem)
Supreme Court of Louisiana.
2013-2828 (La. 5/23/14)
May 23, 2014.**

Prior report: La.App., 2013 WL 5935677.

Opinion

In re Le, Tam Q.;—Defendant; Applying For Writ of Certiorari and/or Review, Parish of St. Tammany, 22nd Judicial District Court Div. F, No. 506845; to the Court of Appeal, First Circuit, No. 2013 KA 0611.

Denied.

All Citations

140 So.3d 724 (Mem), 2013-2828 (La. 5/23/14)

Appendix E

Trial Transcript Record

Wednesday, October 31, 2012

COURT MET THIS DAY PURSUANT TO ADJOURNMENT PRESENT AND
PRESIDING HIS HONOR MARTIN E COADY, JUDGE, DIVISION "F", HAROLD
BARTHOLOMEW, ASSISTANT DISTRICT ATTORNEY, RODNEY J STRAIN, JR.,
SHERIFF AND MALISE PRIETO, CLERK OF COURT (Ronnie Plaisance and Willie
Cooper, Bailiffs and Karen Jenkins, Court Reporter)

506845 STATE OF LOUISIANA

VS

TAM Q LE

The defendant being present in open Court attended by Counsels Marion B. Farmer and James G. Burke III and this matter being on assignment for felony jury trial, the trial having been recessed from October 30, 2012, the jury was brought to their proper seats in the courtroom.

Court-approved Vietnamese Interpreter Hai Hoang was sworn as interpreter and evidence was heard on behalf of the State, with the following named person sworn to testify:

6. Hung Lam

The State rested at this time.

Evidence was heard on behalf of the Defense, with the following named person sworn to testify: 1. Tam Q. Le

Bench conference was held with State and Defense.

Court took a brief recess and the jury was retired to the jury room.

The defendant being present in open Court attended by Counsels Marion B. Farmer and James G. Burke III, the jury was returned to the courtroom.

Evidence was heard on behalf of the Defense, with the following named person sworn to testify: 2. Tuyen Nguyen

Bench conference held with State and Defense. Defense objected to State questioning witness regarding defendant filing for bankruptcy. Argument heard on behalf of State and Defense; whereupon, Court allowed State's line of questioning and noted Defense's objection.

Court took a brief recess and the jury was retired to the jury room.

The defendant being present in open Court attended by Counsels Marion B. Farmer and James G. Burke III, the jury was returned to the courtroom.

Evidence was heard on behalf of the Defense, with the following named persons sworn to

testify: 3. Victoria Le

4. Amber Dang

The Defense rested at this time.

Evidence was offered, introduced and filed on behalf of the State, with the following item: S-10 Westlaw Bankruptcy Filing Record for Tam Q Le

State had no rebuttal evidence.

Closing argument was heard on behalf of the State, followed by closing argument by Defense Counsel and concluding with the State's rebuttal argument.

Court charged the jury, thanked and excused the alternate jurors and retired the jury for lunch and deliberation at 1:03 p.m.

The defendant being present in open Court attended by Counsels Marion B. Farmer and James G. Burke III, the jury was returned to the Courtroom at 2:25 p.m. with note #1, requesting the following: "Transcripts of Forensic Interviews"; "Letter Ngoc Ni wrote to Teacher" and, "Description of Lesser charges". Court advised jury they cannot be given the transcripts or the letter. Court recharged the jury as to the lesser charges and the jury was returned to deliberate at 2:35 p.m.

The defendant being present in open Court attended by Counsels Marion B. Farmer and James G. Burke III, the jury was returned to the courtroom at 4:00 p.m. with note #2, indicating they were currently hung. Court instructed jurors to return to the jury room to discuss further and consider each other's views with the objection to reach a just verdict and the jury was returned to deliberate at 4:02 p.m.

Court ordered note #2 sealed.

Defense objected to Court's instruction to the jury as it was close to being an Allen charge and Court so noted.

The defendant being present in open Court attended by Counsels Marion B. Farmer and James G. Burke III, and after mature deliberation, the jury was returned to the courtroom at 7:00 p.m. and through their foreperson, returned their written verdict to the Court,

STATE OF LOUISIANA

NUMBER: 506845 "F"

22ND JUDICIAL DISTRICT

VERSUS

PARISH OF ST. TAMMANY

TAM Q. LE

STATE OF LOUISIANA

FILED: NOV. 28, 2012

Mary M. Peluz
DEPUTY CLERK

**MOTION FOR NEW TRIAL PURSUANT TO LA. C. CR. P. ART 851
(1), (2), (4) & (5) AND MOTION FOR POST JUDGEMENT OF
ACOUTTAL PURSUANT TO LA. C. CR. P. ART. 821 B & C**

NOW INTO COURT, through undersigned counsel comes defendant, Tam Q. Le who respectfully represents the following:

1.

Defendant was indicted for two counts of aggravated rape.

2.

On October 31, 2012 a twelve person jury returned a ten –two verdict of guilty as charged as to both counts of the indictment.

3.

Defendant now moves for a new trial on both counts of the indictment pursuant to the following provisions of La. C.Cr.P. art.851;

4.

Pursuant to La. C.Cr.P. art 851 (1), the verdict is contrary to the law and the evidence;

5.

Pursuant to La. C.Cr.P. art. 851 (2), the court's rulings on written motions or objections made during the proceedings, shows prejudicial error;

6.

Pursuant to La. C.Cr.P. art. 851 (4) defendant has discovered, since the verdict a prejudicial error or defect in the proceedings that, notwithstanding the exercise of reasonable diligence by him was not discovered before the verdict or judgement.

7.

Pursuant to La. C.Cr.P. art 851 (5) the ends of justice would be served by the granting of a new trial, although defendant may not be entitled to a new trial a matter of strict legal right.

8.

Conjunctively and alternatively, defendant moves for a post verdict judgment of acquittal pursuant to La. C.Cr.P. art 821 B because the evidence, viewed in the light most favorable to the state, does not reasonably permit a finding of guilt.

9.

Alternatively, defendant moves for a motion for post verdict judgment of acquittal pursuant to La. C.Cr.P. art 821 C because the evidence viewed in the light most favorable to the state does not reasonably permit a finding of guilty.

10.

Defendant has filed a memorandum in support of his motions.

WHEREFORE, defendant prays that he be granted a new trial as to both counts of the indictment against him pursuant to La. Cr.P. art 851 (1), (2), (4), (5) and conjunctively and alternatively that he be granted a post verdict judgment verdict of acquittal pursuant to La. C.Cr.P. art 821 B or alternatively 821 C.

Respectively submitted,

JAMES G. BURKE, III #18148
404 EAST GIBSON
COVINGTON, LA 70433
(985) 892-6262

Certificate of Service

I HEREBY CERTIFY that a copy of the pleadings has been served on counsel for all parties by either hand delivery or facsimile on the ²⁷ day of ^{November} ~~May~~, 2012.

JAMES G. BURKE, III

TWENTY-SECOND JUDICIAL DISTRICT
STATE OF LOUISIANA
PARISH OF ST. TAMMANY

FILED

APR 15 2013

SIBARRY E. BAUGH, SR.
DEPUTY

THE STATE OF LOUISIANA

DIVISION: "F"

VERSUS

NUMBER: 506845

TAM Q. LE

THE HONORABLE MARTIN E. COADY
JUDGE

A Transcript of the Proceedings
Taken in Open Court at Covington, Louisiana, on
October 30, 2012

JURY TRIAL

COPY

APPEARANCES:

REPRESENTING THE STATE OF LOUISIANA:

HAROLD BARTHOLOMEW, JR., ESQ.
Assistant District Attorney

REPRESENTING THE DEFENDANT:

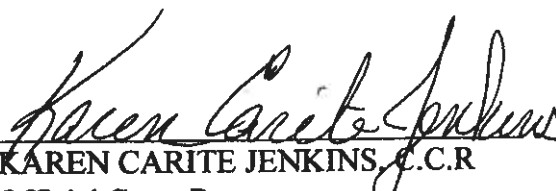
JAMES G. BURKE, III, ESQ.
AND
MARION FARMER, ESQ.

REPORTED BY: KAREN CARITE JENKINS, C.C.R.
Official Court Reporter

C-E-R-T-I-F-I-C-A-T-E

This certificate is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, KAREN CARITE JENKINS, Official Court Reporter in and for the State of Louisiana, employed as an official court reporter by the Twenty-Second Judicial District Court for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with the transcript format guidelines required by statute or by rules of the board or by the Supreme Court of Louisiana, and that I am not related to counsel or to the parties herein nor am I otherwise interested in the outcome of this matter.


KAREN CARITE JENKINS, C.C.R.
Official Court Reporter



1 investigation. They don't want to judge
2 the facts critically. They don't want to
3 look at the facts critically because what
4 all of us do is when we hear allegations
5 like this, we think let's protect the
6 child. So, when the allegations are made
7 and the police get involved, they take
8 Nhi and they take the younger sister to
9 the Children's Advocacy Center, the key
10 word, advocacy, and as Mr. Bartholomew
11 said, it is a non-threatening, interview,
12 because they want to get the child's story
13 across. That interview of both the
14 step-daughters, of Tam's step-daughters
15 was video recorded and their statements
16 are memorialized on DVD's and you will be
17 able to see those as Mr. Bartholomew
18 says. And you will be able to judge,
19 based on those statements, whether or not
20 there are inconsistencies in both girl's
21 testimony, whether certain things don't
22 match up.

23 The big question on all of these
24 cases is why would something like this
25 happen. I don't know if we will ever --
26 and by that I mean why are allegations
27 like this made. What is the motive. I
28 know that's always the big issue for
29 jurors, they want to know what the motive
30 is. We have beliefs that Tam when he
31 married his step-daughter's mother, her
32 name is Tuyet, I believe is the correct

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pronunciation, it was a tumultuous marriage. There may be evidence that maybe threats were made by Tuyet against Tam. We know that Tuyet has a troubled past, mental history and we anticipate that will come out into evidence. Can I one-hundred percent say that Tuyet had the children make these stories up about Tam? I can't tell you that because I wouldn't be able to prove that, but I can say to you with a high degree of certainty is that you will find the two girl's statements when you watch the videos, certain things don't match up. And you will have to decide based on those statements and their testimony and what evidence we present whether or not the State has proved its case beyond a reasonable doubt. At the end of the trial when I come back with my closing argument I will tell you now and I will tell you then, that the correct verdict in this case is not guilty. That's what we will be asking for, not guilty verdict.

Thank you.

BY THE COURT:

First witness, please.

BY MR. BARTHOLOMEW:

The State will call Sergeant Brian Nicaud to the stand, Your Honor.

1 of this?

2 A. Correct.

3 Q. In this particular case, based upon information

4 you initially had was the abuse disclosed

5 immediately after it happened?

6 A. No. It was not.

7 Q. In your experience is the normal, they always

8 disclose immediately after it happened?

9 A. There is really no normal. It is consistent

10 there is time from the actual event to

11 reporting on most cases.

12 Q. What kind of time do you see pass?

13 A. You can see weeks, months, years.

14 Q. What is the first thing that you did in regards

15 to this investigation?

16 A. When the case was assigned to me, I contacted

17 Ms. Tuyet Le, the juvenile victim's

18 mother and asked her if she was available

19 to do a CAC forensic interview in

20 Covington.

21 Q. Is that the protocol that your office follows?

22 A. Correct. What that does is it eliminates the

23 possibility of the children having to say

24 their story over and over again. We like

25 to do it in a very sterile environment, do

26 it one time so we can get the facts and

27 glean the facts from that forensic

28 interview from a trained professional.

29 Q. Are they trained to not use leading questions?

30 A. Yes. They are.

31 Q. Now, were you present at the time of the

32 interview at Hope House in Covington?

1 A. Yes. I was.

2 Q. Were you in the room?

3 A. No. We are not allowed in the room.

4 Q. Who was in the room?

5 A. Ms. Jo Beth Rickles, the forensic interviewer
6 with the victim.

7 Q. Were you afforded an opportunity to view the
8 event as it transpired?

9 A. The way it occurs is very similar to the T.V.
10 you have behind you, we have a large,
11 flat-screen television with audio
12 speakers. I have communication with a
13 walkie-talkie. I watch what is going on,
14 kind of take notes, make sure everything
15 is being done the way it is supposed to
16 be, what disclosures are made. Toward the
17 end I have an opportunity to ask questions
18 with a walkie-talkie. Ms. Jo Beth will
19 clarify anything I may need clarified.

20 Q. Did you arrange for that interview with both
21 girls?

22 A. Both girls.

23 Q. And there is a statutory question I have to ask
24 you, they may sound a little stilted but
25 please explain for the jury, was any
26 attorney for either party present when the
27 statement was made?

28 A. No. There was not.

29 Q. Is the recording both visual and oral, it is
30 electronically recorded to a DVD?

31 A. Yes. Like a DVD.

32 Q. Is the recording accurate?

1 A. Yes. It is accurate.

2 Q. Were the statements made in response to
3 questioning calculated to lead the
4 children to make a particular statement?

5 A. No. They are not.

6 Q. Can you identify every voice on those
7 recordings?

8 A. Yes. I can.

9 Q. Are there two recordings?

10 A. Two.

11 Q. Who would be the people on each recording?

12 A. You have Jo Beth Rickles on both recordings as
13 the forensic interviewer and you have Nhi
14 Vo and Dung Vo on the other.

15 Q. Were you afforded the opportunity to supervise
16 the recording of those interviews?

17 A. Yes.

18 BY MR. BARTHOLOMEW:

19 Your Honor, at this time I would
20 like if I might ask for permission to
21 approach the witness.

22 BY THE COURT:

23 Yes.

24

25 EXAMINATION RESUMED BY MR. BARTHOLOMEW:

26 Q. I will label these State's exhibits 1 and 2,
27 ask if you can identify those for me?

28 A. Number 1 is the recording of the forensic
29 interview with Nhi Vo and number 2 is a
30 recording with Dung Vo with Jo Beth
31 Rickles.

32 Q. Thank you?

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BY MR. BARTHOLOMEW:

At this point in time I would ask the Court to allow me to offer, file and introduce into evidence State's exhibits 1 and 2 and publish them to the jury.

BY MR. BURKE:

No objection, Your Honor.

BY THE COURT:

Let them be received.

(Video played for jury)

EXAMINATION RESUMED BY MR. BARTHOLOMEW:

Q. Now Detective, did you have an opportunity to collect and place into evidence the drawings that were used in that interview?

A. Yes.

BY MR. BARTHOLOMEW:

Permission to approach, Your Honor?

BY THE COURT:

Yes.

EXAMINATION RESUMED BY MR. BARTHOLOMEW:

Q. Can you tell me what those are?

A. These are anatomical drawings of the human body. This is a female and this is the male. This is what Ms. Jo Beth uses as a visual aid.

Q. Are those the ones from that interview?

A. Correct. They are.

BY MR. BARTHOLOMEW:

I offer, file and introduce into

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evidence, State's 3 and 4.

BY MR. BURKE:

No objection.

BY THE COURT:

Let them be received.

BY MR. BARTHOLOMEW:

Since the jury just saw the video, I ask they be published to the jury at this time.

BY MR. BURKE:

No objection.

BY MR. BARTHOLOMEW:

With the Court's permission, I would like to play the jury tape number 2.

(Video played for jury)

EXAMINATION RESUMED BY MR. BARTHOLOMEW:

Q. Detective, did you also collect the paper used in that interview?

A. Yes. I did.

Q. I show you State's exhibits 5 and 6, ask if that's the paper you collected used in that interview?

A. That's the paper we collected from Dung Vo's interview with Jo Beth Rickles. That's the body drawing where she indicated the oral incident occurred. This is just her name where she wrote.

BY MR. BARTHOLOMEW:

I ask to offer, file and introduce that into evidence and since they just

1 watched on video it be published to the
2 jury.

3 BY THE COURT:

4 Let it be received. Go ahead publish
5 it.

6 BY MR. BARTHOLOMEW:

7 With the Court's permission, I would
8 like to go ahead and move the T.V.

9 Thank you your honor.

10

11 EXAMINATION RESUMED BY MR. BARTHOLOMEW:

12 Q. At this point in time had you yet interviewed
13 the mother of the girls?

14 A. Not until after the interview.

15 Q. Did you interview her?

16 A. Yes.

17 Q. Would you describe Tuyet Le's, at the time
18 Tuyet Le's, demeanor when she was in the
19 interview with you?

20 A. Very soft spoken and consistent with a mother
21 that just learned some, you know,
22 devastating news, but she was a little
23 apprehensive.

24 Q. Apprehensive? How did you know she was
25 apprehensive?

26 A. Just, you know, by what she spoke to me and me
27 asking her questions as far as her
28 culture, this is not something that is
29 reported. It is a disgrace and so, she
30 was a little apprehensive and she even
31 admitted herself that if the school did
32 not notify her and she had learned this

1 Q. Was she cooperative?

2 A. Yes.

3 Q. Did you look for inconsistencies in your
4 experience with children between the
5 forensic interview at Children's and the
6 CAC tape and internal inconsistencies
7 within the CAC tapes?

8 A. Correct. I looked for those but there were
9 none.

10 Q. At some point in time did you make a decision
11 to obtain an arrest warrant for Tam Le?

12 A. Yes. I did.

13 Q. How long after you became involved in the
14 investigation was that point in time when
15 you obtained an arrest warrant?

16 A. A little over a month.

17 Q. If you had believed that the children were
18 lying to you and that the mother had put
19 them up to it, would you have obtained
20 that arrest warrant?

21 A. No.

22 Q. Did you make some efforts to reach Mr. Le
23 before obtaining that arrest warrant?

24 A. There were two phone calls made with no answer.

25 Q. Was he eventually arrested?

26 A. Yes. He was.

27 Q. And did you have an opportunity to speak to Mr.
28 Le?

29 A. Yes. I did.

30 Q. When Mr. Le and you had a chance to speak was
31 that the first time he was learning of the
32 allegations?

1 A. No. He knew that he would be arrested for this
2 crime.
3 Q. After your interview with the defendant, did
4 that change your mind in any way about the
5 status of the case?
6 A. Confirmed it.
7 Q. Sergeant, are you aware of the State's
8 obligation to tell the defense about any
9 exculpatory or mitigating evidence?
10 A. Yes.
11 Q. Would you have included any of that such
12 information or evidence in your report?
13 A. Yes. I have.
14 Q. Have you learned anything since writing that
15 report that would tend to show he did not
16 commit the crime you had him arrested for?
17 A. No new knowledge.
18 BY MR. BARTHOLOMEW:
19 Your Honor, we tender the witness.
20 BY MR. BURKE:
21 May we approach, briefly?
22 BY THE COURT:
23 Yes
24
25 (Bench conference held outside of the
26 hearing of the jury)
27
28 BY MR. BURKE:
29 I am just going to ask again maybe
30 like forty-five (45) minutes to an hour
31 with him.
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NGOC DUNG VO

AFTER HAVING BEEN DULY SWORN
WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

EXAMINATION BY MR. BARTHOLOMEW:

- Q. Good afternoon. Would you please tell the ladies and gentlemen of the jury, your full name?
- A. Ngoc Dung Vo.
- Q. How do you spell your first name?
- A. Ngoc.
- Q. How do you spell your middle name?
- A. Thi.
- Q. How do you spell the rest of your name?
- A. Vo.
- Q. Did you have a chance to look at a video tape that you gave to the CAC in Covington? Did I give you a chance to look at a video tape?
- A. Yes.
- Q. Would you tell the ladies and gentlemen of the jury, whether or not you were telling any lies on that video tape?
- A. No.
- Q. Did you do the best you could to tell the truth?
- A. Yes.
- Q. How old are you right now?
- A. Twelve (12) years old?

1 Q. What is jury birthday?
2 A. October 18, 2000.
3 Q. What grade are you in?
4 A. Sixth grade.
5 Q. What school do you go to right now?
6 A. Intercultural Charter School.
7 Q. Do you know Ms. Denise Mathern?
8 A. Yes.
9 Q. Who is she?
10 A. She is the school counselor.
11 Q. Do you know why we are here today?
12 A. Yes.
13 Q. Would you mind telling the ladies and gentleman
14 of the jury why we are here today?
15 A. To find out the truth.
16 Q. Did somebody do something to you that you
17 didn't like?
18 A. Yes.
19 Q. Would you tell these ladies and gentlemen over
20 here what they did?
21 A. I got raped.
22 Q. Well, would you mind telling them exactly what
23 he did?
24 A. He licked my vagina.
25 Q. By he, who do you mean?
26 A. Tam Le.
27 Q. Do you see him in court? Would you mind
28 looking?
29 A. Yes.
30 Q. Would you point him out for us?
31 A. (Pointing).
32 Q. Do you have in your mind a way to tell the

1 ladies and gentlemen of the jury
2 approximately when that happened?
3 A. I don't know.
4 Q. Okay. Do you know -- so you don't know the
5 date?
6 A. No.
7 Q. Was there anything going on in your life at
8 that time that you could tell us about?
9 A. My mom was in Vietnam when it happened.
10 Q. Okay. Did Mr. Tam Le ever do anything else to
11 you except lick you?
12 A. Yes.
13 Q. Would you tell the ladies and gentlemen what he
14 did?
15 A. He put his hand in my vagina.
16 Q. Is that a word you have recently learned?
17 A. Yes.
18 Q. When you gave the interviews on the recordings,
19 did you know that word?
20 A. No.
21 Q. How did you learn that word?
22 A. I went to my therapist.
23 Q. She used that word?
24 A. Uh-huh. (Affirmative response). She told me
25 that the female part was a vagina.
26 Q. Are you in therapy right now?
27 A. Yes.
28 Q. What are you in therapy for?
29 A. My skin picking.
30 Q. Would you tell the jury what that is?
31 A. It is when I have a habit of scratching my
32 skin.

1 BY MR. BARTHOLOMEW:

2 No further questions, Your Honor.

3

4 CROSS EXAMINATION

5

6 EXAMINATION BY MR. BURKE:

7 Q. How do you pronounce your name or what should I
8 call you by?

9 A. Ngoc.

10 Q. Okay. Ngoc, my name is Jim Burke. Okay. I
11 am going to just have a few questions for
12 you. Okay?

13 When your Mom went to Vietnam, what
14 were the arrangements in the house at that
15 time? Who was staying at the house?

16 A. Tam Le.

17 Q. Who else was staying in the house?

18 A. My sister and my little brother.

19 Q. Okay. What is your little brother's name?

20 A. Nieu. (Spelled phonetically) .

21 Q. Did anyone else come in the house while your
22 Mom was gone?

23 A. I don't know.

24 Q. You don't know? Did anyone take care of you
25 like who got you off to school?

26 A. The bus dropped me off.

27 Q. Who got you ready for school back when your Mom
28 went to Vietnam?

29 A. Me.

30 Q. You did? Where was Tam when you got ready for
31 school?

32 A. I don't know.

1 Q. Okay. When you got back from school, who took
2 care of you when your mother went to
3 Vietnam?
4 A. I don't know.
5 Q. Okay. Who cooked your dinner when your mom was
6 off at --
7 A. Tam.
8 Q. Would he cook your dinner every night when your
9 mom was in Vietnam to the best of your
10 memory?
11 A. I don't know.
12 Q. Mr. Bartholomew showed you a tape that you did
13 when you were younger, correct? And you
14 reviewed that; is that right?
15 A. Yes.
16 Q. Okay. When Tam did the things you say that he
17 did to you, did you talk to your sister
18 about it?
19 A. Yes.
20 Q. How often did you talk to your sister about it,
21 more than once, twice, three times?
22 A. I don't know.
23 Q. Okay. What did you tell your sister, what
24 happened to you?
25 A. I told her that he had licked my middle part.
26 Q. And you told her just like that; is that
27 correct?
28 A. No.
29 Q. What did you tell her then exactly to the best
30 of your memory?
31 A. I don't know.
32 Q. Okay. Did your sister tell you what had

1 happened to her?

2 A. Yes.

3 Q. Okay. And what did she tell you that had

4 happened to her?

5 A. I don't remember.

6 Q. Okay. Now, you're in therapy right now; is

7 that correct?

8 A. Yes.

9 Q. And you're in the sixth grade?

10 A. Yes.

11 Q. Okay. Do you like school now?

12 A. Yes.

13 Q. Who took care -- how old is your brother right

14 now?

15 A. Six years old.

16 Q. Who took care of your brother while your Mom

17 was in Vietnam?

18 A. Tam.

19 Q. Tam took care of him. Did Tam work?

20 A. I don't know.

21 Q. Okay. Do you know if Tam had any jobs or did

22 you ever go to a place of employment with

23 Tam?

24 A. Yes.

25 Q. What type of jobs did he have; do you know?

26 A. Restaurant. Waitress.

27 Q. What else? Anything else that you know of?

28 A. Chair massager.

29 Q. You said he was a restaurant waiter; is that

30 correct?

31 A. Yes.

32 Q. Do you know where he was a restaurant waiter?

1 A. No.

2 Q. Do you know if it was -- you know where the
3 City of New Orleans is?

4 A. Yes.

5 Q. Do you know if he worked in the city of New
6 Orleans?

7 A. Excuse me? Could you say where I can
8 understand.

9 Q. I'm sorry. Do you know if Tam worked in the
10 city of New Orleans as a waiter?

11 A. Yes.

12 Q. Okay. Do you know if he worked nights as a
13 waiter?

14 A. I don't know.

15 Q. And did you know whether or not Tam owned a
16 nail shop?

17 A. I don't know.

18 Q. Okay. When your mom got back from Vietnam, her
19 and Tam they stopped going together; is
20 that correct? They stopped living with
21 each other?

22 A. No.

23 Q. Okay. How long did they live with each other
24 when your mom got back from Vietnam?

25 A. I don't know.

26 Q. Would it be more than a few months, more than a
27 year; do you know?

28 A. I think it's more than a few months.

29 Q. Okay. When Tam broke up with your mother,
30 where did you go live?

31 A. With my grandma.

32 Q. Okay. And where did your grandmother live?

1 A. New Orleans.

2 Q. Okay. And did your brother, what is his name
3 again, please?

4 A. Nieu. (Spelled phonetically).

5 Q. Who did he go live with?

6 A. My grandma.

7 Q. And your mother lived with your grandmother; is
8 that correct?

9 A. Yes.

10 Q. And did Tam, after your mom and Tam broke up,
11 did Tam come by to see your brother?

12 A. Yes.

13 Q. Okay. And did he take him swimming?

14 A. I don't know.

15 Q. Did you go with Tam and your brother to his
16 sister's house to go swimming?

17 A. Yes.

18 Q. Now, when -- before your mom went to Vietnam,
19 did she explain to you or tell you what a
20 good touch and a bad touch was?

21 A. No.

22 Q. Did anyone at school before your mom went to
23 Vietnam explain to you what a good touch
24 or a bad touch was?

25 A. I don't know.

26 Q. Okay. Now, it's my understanding that you have
27 testified and you said in your video that
28 Tam did something awful to you, that he
29 put his mouth on your private parts; is
30 that correct?

31 A. Yes.

32 Q. Not the exact date, I don't want to know the

1 exact date, but approximately what time
2 did this happen?

3 A. At night.

4 Q. How late at night was it, just past dinner
5 time, was it when everybody was in bed?

6 A. When everybody was in bed.

7 Q. Okay. Would he come get you out of bed?

8 A. No.

9 Q. Okay. Now, what was the living arrangements in
10 the house? Where did you sleep? Where
11 did your sister sleep?

12 A. My sister slept in her room. I slept with Tam.

13 Q. Was that for the whole time your mom was in
14 Vietnam?

15 A. No.

16 Q. Okay. Did you sleep any where else when Tam
17 didn't do these things to you?

18 A. Yes.

19 Q. Where did you sleep?

20 A. In my room.

21 Q. How far away was your sister's bedroom from
22 Tam's bedroom?

23 A. Two rooms away.

24 Q. Okay. Did your grandparents ever come over to
25 your home and stay the night with you
26 while your mom was in Vietnam?

27 A. I don't know.

28 Q. How many times did Tam tell you to go or ask
29 that you come into his bedroom when your
30 mom was in Vietnam?

31 A. I don't know.

32 Q. Okay. You indicated in the tape with Ms.

1 Rickles that Tam put his hand on your
2 private parts?
3 A. No.
4 Q. Okay. Is that wrong?
5 A. No. He put it in.
6 Q. Okay, in. Did -- how many times did that
7 happen?
8 A. I don't know.
9 Q. And do you remember any of the times that he
10 did that, any specific times that he did
11 that, I think you said on the tape there
12 was a football game on?
13 A. Yes.
14 Q. What football game was on?
15 A. New Orleans and another team.
16 Q. Did anyone ask you that question?
17 A. I don't know.
18 Q. Now, you talked to Mr. Bartholomew about this
19 case, is that right?
20 A. Yes.
21 Q. Okay. And you talked with Ms. Rickles who was
22 on the tape; is that right?
23 A. Yes.
24 Q. And have you talked to your mom about this
25 case?
26 A. Yes.
27 Q. Have you talked to your mom about what Tam did
28 to you?
29 A. Yes.
30 Q. Okay. When Tam put his mouth on your private
31 part, was he clothed or unclothed?
32 A. Clothed.

1 Q. Okay. And do you know what type clothes he was
2 wearing?

3 A. No.

4 Q. You remember what type clothes he was wearing?

5 A. No.

6 BY MR. BURKE:

7 Thank you, ma'am. That's all the
8 questions I have.

9 BY MR. BARTHOLOMEW:

10 Just a couple little questions I have
11 to ask you.

12

13 RE-DIRECT EXAMINATION

14

15 EXAMINATION BY MR. BARTHOLOMEW:

16 Q. Did your mother tell you to accuse Tam of this?

17 A. No.

18 Q. Did your mother ask you to lie about Tam?

19 A. No.

20 Q. Did the things that you have just told this
21 jury about really happen?

22 A. Yes.

23 BY MR. BARTHOLOMEW:

24 Nothing further, Your Honor.

25 BY THE COURT:

26 Thank you. You can step down.

27 BY MR. BARTHOLOMEW:

28 The State will call Ngoc Nhi.

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NGOC NHI VO

AFTER HAVING BEEN DULY SWORN
WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

EXAMINATION BY MR. BARTHOLOMEW:

Q. Good afternoon. Would you please tell the jury your name?

A. Ngoc Nhi.

Q. What is your last name?

A. Vo.

Q. And did I give you a chance to look at a video tape of yourself and Ms. Jo Beth Rickles?

A. Yes, sir.

Q. Was that here in the courthouse?

A. Yes, sir.

Q. Do you remember talking to Ms. Jo Beth Rickles about that on that day?

A. Yes.

Q. Did you lie about anything on that video tape to Ms. Jo Beth Rickles?

A. No.

Q. How old are you now? Tell the jury how old you are now?

A. Twelve. (12).

Q. Are you right now the same age as your sister?

A. Yes, sir.

Q. How did that happen?

A. We are nine months apart.

Q. What grade are you in?

1 A. Seventh.

2 Q. What school do you go to?

3 A. Intercultural Charter School.

4 Q. Do you know Ms. Denise Matherne?

5 A. Yes, sir.

6 Q. How do you know her?

7 A. She is my school counselor.

8 Q. Do you know why you're here today?

9 A. Yes.

10 Q. Does it have something to do with Ms. Mathern?

11 A. Some parts.

12 Q. Tell us how we came to be here today? Why are
13 we here today in your words?

14 A. Because of what my step-dad did to me.

15 Q. What did he -- tell the ladies and gentlemen of
16 the jury what he did to you?

17 A. One day when I was at home, my mom had went to
18 Vietnam and like I was watching a movie in
19 my mom's room. I fell asleep and when I
20 woke up, he was on top of me and my shorts
21 were gone and I like when I woke up, he
22 got off of me and I asked him where was
23 my shorts. He said it was on the ground.
24 I picked it up and I ran to my room.

25 Q. Okay. What was he doing when he was on top of
26 you?

27 A. Trying to put his private part into mine.

28 BY MR. BARTHOLOMEW:

29 Permission to approach the witness,
30 Your Honor.

31 BY THE COURT:

32 Yes.

1 EXAMINATION RESUMED BY MR. BARTHOLOMEW:

2 Q. I will show you what I put some labels on here,
3 they are labeled 3 and 4, ask if you
4 remember seeing those papers before?

5 A. Yes, sir.

6 Q. And did you draw on those papers?

7 A. Yes, sir.

8 Q. What you drew on those papers is that true?

9 A. Yes.

10 Q. Has this been difficult for you?

11 A. Yes, sir.

12 Q. Describe to the jury how it has been difficult
13 for you?

14 A. Because like I really don't want to talk about
15 this. It makes me feel really
16 uncomfortable.

17 Q. How do you feel about Ms. Mathern right now?

18 A. Kind of a little bit mad at her.

19 Q. Why are you mad at Ms. Mathern?

20 A. Because I really didn't want her to tell my
21 mom.

22 BY MR. BARTHOLOMEW:

23 I tender the witness, Your Honor.

24

25 CROSS EXAMINATION

26

27 EXAMINATION BY MR. BURKE:

28 Q. What do I call you by?

29 A. Ngoc Nhi.

30 Q. Ngoc Nhi, my name is Jim Burke. I will have a
31 few questions for you, okay.

32 Can you tell me how Ms. Mathern

1 learned that Tam had done something wrong
2 to you? How did she learn that?

3 A. Because I wrote a note to my teacher saying
4 that he did it.

5 Q. And when you wrote the note to your teacher,
6 what teacher was that?

7 A. Ms. Wilder, my fifth grade teacher.

8 Q. Why did you write the note to your fifth grade
9 teacher?

10 A. It was in my head, I like wanted to like let it
11 out, so I wrote it to her.

12 Q. Did you tell anybody before you told your fifth
13 grade teacher?

14 A. My sister.

15 Q. You told your sister. Anybody else?

16 A. A friend of mine, Faith.

17 Q. And Faith is, she is a friend of yours; is that
18 right?

19 A. (No response).

20 BY MR. BURKE:

21 I will mark the following exhibit 1.

22 Can I approach the witness, Your
23 Honor?

24 BY THE COURT:

25 Yes.

26

27 EXAMINATION RESUMED BY MS. BURKE:

28 Q. Ngoc Nhi, can you read this to yourself first?

29 A. Okay.

30 Q. I don't know if Mr. Bartholomew has shown
31 this to the jury, but read it to yourself
32 first then we will go over it. Okay.

1 When I received this, I didn't know
2 what this was, but you mentioned Faith.
3 In this note, are you writing this to the
4 teacher or are you writing this to Faith?
5 A. To the teacher.
6 Q. You said that Faith said that people would be
7 happy if I was gone. Now, who was Faith
8 referring to? You were having trouble at
9 school?
10 A. (Nods affirmatively).
11 Q. Were you having trouble with your classmates?
12 A. Some of them.
13 Q. Were they picking on you?
14 A. (Nods affirmatively).
15 Q. Were you having a bad time at school?
16 A. (Nods affirmatively).
17 Q. Were people being a bully to you?
18 A. (Nods affirmatively).
19 Q. And they were causing you trouble?
20 A. (Nods affirmatively).
21 Q. Was Faith one of the people that caused you
22 trouble?
23 A. (Nods affirmatively).
24 Q. Was Faith a close friend or not a close friend?
25 A. Not.
26 Q. And it says that Faith said that people would
27 be happy if I was gone. When ever we have
28 fights she might say at least my dad do
29 nothing to me. So, you told Faith
30 something happened to you?
31 A. (Nods affirmatively).
32 Q. And then it says what happened. What are you

1 trying to convey there? See right there.
2 It said what happened. What are you
3 trying to convey there?
4 A. That's what happened when she said like --
5 Q. Speak up louder.
6 A. That's what happened when she said it to me and
7 when I said it back.
8 Q. Then you say, I said some people are gone.
9 What do you mean by that?
10 A. Well, I really don't remember because it was
11 like a long time ago.
12 Q. And then it says, she said people will be happy
13 if you're gone and you said only you.
14 Then she said everybody would; is that
15 right?
16 A. Yes, sir.
17 Q. Then you put that the secret was that you were
18 raped by your step-dad; is that right?
19 A. Yes, sir.
20 Q. But I don't want him to go to jail. I wanted
21 to tell you but I was your --
22 A. But you were the only adult.
23 Q. And I told you about what happened one or two
24 years ago.
25 Okay did Mr. Bartholomew show you
26 the video of your statement to Ms.
27 Rickles?
28 A. Yes, sir.
29 Q. Ms. Rickles in that interview she asked you if
30 you told anyone else; is that right?
31 A. Yes, sir.
32 Q. And you didn't mention that you had told Faith;

1 is that right?

2 A. Yeah. I forgot.

3 Q. Now, in your statement to -- you went to the
4 Children's Hospital; is that right?

5 A. Yes, sir.

6 Q. You gave a statement there; is that right?

7 A. Yes, sir.

8 Q. Did you tell the doctors there?

9 A. No.

10 Q. Now, what was your relationship with your mom
11 back when Tam -- when your mom left to go
12 to Vietnam, were y'all close?

13 A. No, because like when she would get home she
14 will like clean and then she will go to
15 bed.

16 Q. Would you talk to your mom about your grades
17 and things of that nature?

18 A. Sometimes.

19 Q. Would you talk to her about school?

20 A. Only about like certain things.

21 Q. Before you told your teacher, who were you
22 closer to your mom or your teacher?

23 A. Mom.

24 Q. Who did you have more trust in your mom or your
25 teacher?

26 A. My mom.

27 Q. Now, Ngoc Nhi, when your mom went to Vietnam
28 who stayed in the house?

29 A. Tam.

30 Q. Who else?

31 A. My little brother and my sister.

32 Q. Okay. Anyone else stay in the house?

1 A. No.

2 Q. Okay. What time would you wake up to go to
3 school?

4 A. Around 6:00.

5 Q. Who would wake you up?

6 A. I would have like alarm clock or he would wake
7 me up.

8 Q. Who would get you ready for school?

9 A. Myself.

10 Q. What time would you get back from school?

11 A. Around 3:00 or 2:00.

12 Q. Who would be at the house to greet you?

13 A. Well nobody would be there because like I have
14 like a house key and I take care of
15 myself.

16 Q. Who would be there to make dinner for you?

17 A. Tam.

18 Q. Who -- no one else would take care of you
19 during that time; is that right?

20 A. (Nods affirmatively).

21 Q. Do you know if Tam worked during this time?

22 A. No.

23 Q. Do you know if he went to work?

24 A. I don't know.

25 Q. You know how your family was supported when you
26 were living with Tam and your mom? Who
27 was paying the bills?

28 A. My mom and Tam.

29 Q. Okay. Would Tam, when your mom was home where
30 would Tam be? Would he be home also?

31 A. Yes.

32 Q. Do you know what Tam did during the day?

1 A. I guess watch football or something.
2 Q. Did he ever leave the home? Did he have a car?
3 A. Yes.
4 Q. Do you know if he owned a nail shop?
5 A. No.
6 Q. Do you know whether or not he worked as a
7 waiter?
8 A. I don't know.
9 Q. You don't know? When you say that Tam tried to
10 put his penis in your private part, where
11 was your mom?
12 A. She was in Vietnam.
13 Q. Your testimony is that you were sleeping in his
14 bed; is that correct?
15 A. Yes, sir.
16 Q. Do you know where your sister was?
17 A. I don't know.
18 Q. Okay. Do you know what time it happened
19 approximately?
20 A. No.
21 Q. Was it in the night or the day?
22 A. The night.
23 Q. How late at night, do you know?
24 A. No.
25 Q. In your CAC tape or the interview you gave with
26 Ms. Rickles, you said that you screamed
27 when he tried to put his private part into
28 your private part, do you recall that?
29 A. No.
30 Q. Okay. Mr. Bartholomew showed the tape to you;
31 did he not?
32 A. Yes.

1 Q. Do you recall screaming at all when he tried
2 to, when Tam tried to put his private part
3 into your private part?
4 A. No.
5 Q. How far is your sister's room away from your
6 room?
7 A. About five feet.
8 Q. If someone screamed would someone hear it? If
9 I screamed in Tam's bedroom would you hear
10 me scream?
11 A. Yeah.
12 BY MR. BURKE:
13 Thank you. That's all the questions
14 I have.
15 BY MR. BARTHOLOMEW:
16 I just have a couple.
17
18 RE-DIRECT EXAMINATION
19
20 EXAMINATION BY MR. BARTHOLOMEW:
21 Q. When you were talking to your teacher at
22 school, was Tam still living in your
23 house?
24 A. No.
25 Q. Who was living in your house when you were
26 talking to your teacher at school about
27 Tam?
28 A. My other step-dad, my mom, my little brother,
29 me and my sister.
30 Q. Did your mom ever tell you that you needed to
31 say these bad things about Tam?
32 A. No.

1 Q. Are you telling the jury the truth about these
2 things about Tam?

3 A. Yes.

4 Q. Do you still see Ms. Mathern sometimes at
5 school?

6 A. Yes.

7 BY MR. BARTHOLOMEW:

8 No further questions, Your Honor.

9 BY THE COURT:

10 Thank you. You can step down.

11

12 TUYET LE LAM

13 AFTER HAVING BEEN DULY SWORN

14 WAS EXAMINED AND TESTIFIED

15 AS FOLLOWS:

16

17 DIRECT EXAMINATION

18

19 EXAMINATION BY MR. BARTHOLOMEW:

20 Q. Good afternoon. Ma'am. Would you give us your
21 name, please.

22 A. Tuyet Le Lam.

23 Q. How many children do you have?

24 A. I currently have five.

25 Q. That microphone doesn't amplify. You don't
26 need to get too close to it?

27 A. Okay.

28 Q. Do you have two daughters who were involved in
29 this proceeding here today?

30 A. Yes.

31 Q. What are their names?

32 A. Ngoc Nhi Vo and Ngoc Dung Vo.

1 Q. And was Brian Nicaud the first police officer
2 that you talked to?
3 A. No.
4 Q. Did Brian Nicaud tell you what to do at that
5 point in time? Did you do what he told
6 you?
7 A. Yes. I did.
8 Q. And did you at some point in time bring the
9 children to Hope House Children's Advocacy
10 Center in Covington?
11 A. Yes. I did.
12 Q. Did you at some point in time bring them to
13 Children's Hospital in New Orleans?
14 A. Yes. I did.
15 Q. Is either one of your daughters in counselling
16 right now?
17 A. Both of them are right now in counselling but
18 Ngoc Dung went to counselling for two
19 years.
20 Q. Is there -- did you put your girls up to lying
21 about Mr. Le?
22 A. No. I did not.
23 Q. At the point in time that these allegations
24 came out, were you and Mr. Le still in
25 any way having relationship?
26 A. No. We did not.
27 Q. Were you in a relationship with someone else?
28 A. I was married to my husband.
29 Q. What is his name?
30 A. His name is Joshua.
31 Q. Do you have any children with him?
32 A. I do have one.



1 Q. Does that child have an English name?
2 A. Joshua Tran.
3 Q. Do your girls call him by something different?
4 A. Joshua.
5 Q. Do you have -- defense counsel referred to you
6 having a past with psychological problems,
7 did you ever have a psychological problem
8 when you were younger resulted in maybe
9 you being in a hospital?
10 A. Yes. I did.
11 Q. What happened?
12 A. I was -- I commit suicidal and I was laying in
13 a hospital when I was thirteen. (13).
14 Q. And why were you suicidal?
15 A. Part of it because I doesn't want to stay at
16 home and part of it because I was scared
17 of my mom.
18 Q. And did that suicidal result in anything, did
19 the hospital do anything?
20 A. I was just staying in a hospital for a month
21 and the social worker asked me is my house
22 a safe place to get out when I release
23 from the hospital, I say no because I was
24 afraid to go back home because my step-dad
25 was in the house and he was the one that
26 molested me.
27 Q. And did that ever result in a report to law
28 enforcement?
29 A. It was report to social worker and the social
30 worker told my parent, but my mom never
31 believe in me. She said I was scared and
32 make up the story, but it was never

1 reported to authority.

2 Q. Are you aware of the serious nature of these
3 allegations?

4 A. Could you say in a way I can understand it.

5 Q. Were you aware when these allegations were
6 brought to the Slidell Police Department
7 this was serious?

8 A. Yes.

9 Q. That Mr. Le could get in a lot of trouble?

10 A. Yes.

11 Q. Would you have lied to the police yourself to
12 get Mr. Le in that kind of trouble?

13 A. No.

14 Q. Did you put your girls up to lying to Mr. Le
15 about this kind of trouble?

16 A. No.

17 Q. BY MR. BARTHOLOMEW:

18 I tender the witness, Your Honor.

19

20 CROSS EXAMINATION

21

22 EXAMINATION BY MR. BURKE:

23 Q. Should I call you Ms. Le Lam?

24 A. Lam?

25 Q. Lam?

26 A. Yes.

27 Q. Okay. So, I understand your testimony, Ms.
28 Lam, you indicated that when you were
29 young you were molested; is that correct?

30 A. Yes.

31 Q. And that was done by your step-father?

32 A. Yes.

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DENISE MATHERN

AFTER HAVING BEEN DULY SWORN

WAS EXAMINED AND TESTIFIED

AS FOLLOWS:

DIRECT EXAMINATION

EXAMINATION BY MR. BARTHOLOMEW:

Q. Good after noon, ma'am. Would you please tell
the jury your full name for the record?

A. Denise Mathern.

Q. Do you know the victims in this case?

A. Yes.

Q. How do you know them? How did you first come
into contact with them?

A. I work as a school counselor at Intercultural
Charter School.

Q. Do they go to school there?

A. Yes, sir.

Q. Do you have to have qualifications to be a
school counselor?

A. Yes.

Q. What are your qualifications for being a school
counselor?

A. I have a master's degree from Loyola University
in guidance and counseling. I am a
licensed professional counselor and state
certified school counselor.

Q. Is this your first school that you taught at or
been a counselor?

A. I'm sorry. Repeat the question.

Q. Is this your first job as a counselor?

1 A. No, sir.

2 Q. What was your first job?

3 A. My first job was a clinical therapist at Hope
4 Haven Center at Marrero, Louisiana.

5 Q. What kind of children are at Hope Haven?

6 A. Children that are in the State's custody who
7 have gone through various issues, trauma.

8 Q. Now, as part of your job at the Intercultural
9 School, did something unusual happen
10 involving one of the two girls on or about
11 February 8, 2011?

12 A. Yes.

13 Q. Would you tell the jury what unusual happened
14 on that day?

15 A. Yes. The fifth grade teacher of the oldest
16 child had come to me with a note that had
17 some writings on it involving the child's
18 handwriting about being raped. And I
19 looked at it. I talked to the teacher and
20 I obviously had talked to the child as
21 well about that because I needed to get
22 more information, so --

23 Q. Now, when you talked to the child, which child
24 was it?

25 A. Ngoc Nhi Vo.

26 Q. Was anyone else present when you were talking
27 to Ngoc Nhi Vo.

28 A. No.

29 Q. When you were talking to Ngoc Nhi Vo?

30 A. No, sir.

31 Q. Did she disclose things to you that led you to
32 do anything yourself?

1 A. Yes, sir.

2 Q. What did you do as result of those disclosures?

3 A. As result of those disclosures, I had

4 contacted the mother, Ngoc Nhi Vo's

5 mother. Asked her to come to the school

6 and talk to me just about an issue,

7 because it was on the phone, so that's

8 what I did.

9 Q. And did Ngoc Nhi, for lack of a better phrase,

10 blissfully and easily tell you about these

11 disclosures in great detail when you first

12 talked about it?

13 A. Oh no, sir.

14 Q. Can you describe not necessarily what she was

15 saying at that point in time but what her

16 demeanor was when you were having the

17 conversation about that disclosure?

18 A. Okay. Timid, fearful, very, very resistant. A

19 lot of fear.

20 Q. I will return if you don't mind to your

21 qualifications as a counselor. You said

22 you had a master's from Loyola, what was

23 that in?

24 A. Masters of science and guidance in counseling.

25 Q. What is a licensed professional counselor

26 licensed to do?

27 A. Several things. To do psycho therapy, to

28 assist children or adults whatever age

29 group that person works with to cope with

30 stressors, trauma, to deal with changes in

31 their life that they seek to improve on,

32 career decisions. There is a wide array

1 of things that a counselor can do with
2 different ages of people.

3 Q. Did you have a job before the Intercultural
4 School?

5 A. Yes, sir.

6 Q. What was that job?

7 A. Right before the Intercultural School I was a
8 licensed therapist at a partial
9 hospitalization program. I did that for
10 two years. It is called Uptown Mental
11 Health Center.

12 Q. I show you what I labeled State's exhibit 7 and
13 8, ask you to tell me what those are.

14 BY MR. BARTHOLOMEW:

15 Permission to approach, Your Honor.

16 BY THE COURT:

17 Yes

18

19 EXAMINATION RESUMED BY MR. BARTHOLOMEW:

20 Q. If you would please tell the jury what those
21 are?

22 A. This is a copy of my Louisiana State Board of
23 License it said State of Louisiana
24 Licensed Professional Counselor Board of
25 Examiners. A copy of my license.

26 Q. You ever testified in court before?

27 A. No, sir.

28 Q. You're doing fine?

29 A. Thank you.

30 Q. What is the next exhibit?

31 A. My resume as a licensed professional counselor.
32 My educational background and my

1 employment, these two pages.

2 BY MR. BARTHOLOMEW:

3 If I might, Your Honor, I would
4 offer, file and introduce into evidence
5 her resume and a copy of her license and
6 offer her as an expert as a licensed
7 professional counselor.

8 BY MR. BURKE:

9 I don't have any objections to the
10 resume coming in, but I am not still sure
11 what her expertise is in as far as
12 licensed counselor. I don't know what
13 that means per say.

14 BY THE COURT:

15 You can ask her or lay a foundation.
16 You can ask her. She is tendered so now
17 it is your turn.

18

19 TRAVERSE

20

21 EXAMINATION BY MR. BURKE:

22 Q. Ms. Mathern, Mr. Bartholomew tendered you as
23 an expert as a licensed certified
24 counselor, did I get that right?

25 A. Licensed professional counselor and I am also
26 nationally certified counselor. Yes, sir.

27 Q. What is that? What is that expertise then?

28 A. It is a master's degree in mental health and
29 when you think of a counselor you would
30 think of someone who is qualified to do
31 mental health therapy.

32 Q. What type of mental health therapy are we

1 talking about?

2 A. Well, we are talking about anything having to
3 do with anything that is in the DSM4.
4 Depression, anxiety, abuse, trauma, career
5 decision making skills, things like sleep
6 disorders, just basically whatever,
7 stress-related incidents, things like
8 that.

9 Q. Okay. What does a counselor do if a person
10 came in to see you, what do you do?

11 A. What do I do?

12 Q. Uh-huh. (Affirmative response)?

13 A. Okay, well, the first thing you do is, you mean
14 just me in general or a school setting.

15 Q. In general?

16 A. First thing you would do is you would do an
17 in-take which means gather information.

18 Q. Yes, ma'am.

19 A. Hand someone papers, explain to them they need
20 to get information, why they are coming,
21 what is presenting problems, the reason
22 they are coming to see you and after you
23 do that then you will find out their chief
24 complaint and explain to them how and what
25 you see the treatment should be as far as
26 approximately how many sessions and the
27 role of the therapy to explain to them
28 this is a professional relationship and
29 when you come in to have the therapy done
30 it's sometimes therapy, it's -- how can I
31 word it, sometimes it is painful and the
32 main reason people seek therapists is

1 A. Yes, sir. Her demeanor was extremely
2 concerned. Her demeanor was frightened,
3 and extremely, extremely worried and
4 shocking and that pretty much encapsulates
5 her demeanor.

6 Q. Could you describe if anything about her
7 mother's physical appearances or physical
8 behavior that caught your attention as a
9 counselor?

10 A. Yes, sir. The main thing I remember is that
11 her eyes began to well up with tears and
12 also her voice was very shaky. She asked
13 questions to Ngoc Nhi more like also her
14 facial, the color in her face had become
15 more pale. It was more of a shock and a
16 fear and very, very high concern.

17 Q. Did you detect as a counselor anything that
18 would have led you to believe that mom
19 already knew about this?

20 A. No, sir.

21 Q. Did you have a conversation at any point in
22 time with Ms. Le, Tuyet Le or Lisa Le
23 then, to tell her what she needed to do
24 next?

25 A. Your question is did I have --

26 Q. Did you have a conversation with Lisa or Tuyet
27 Le, what she needed to do next?

28 A. Yes.

29 Q. In other words, as an expert, would you rely
30 upon medical records from other
31 practitioners from various places to
32 assist you in counseling children that you

1 counsel?

2 A. Most of the time I would.

3 Q. Did you have an opportunity to review those

4 records sufficient that you are

5 comfortable with the contents of those

6 records?

7 A. Yes.

8 Q. When you first read those records, I want you

9 to keep in mind the disclosures and the

10 dealings you had with both girls, when you

11 first read those records, what was your

12 reaction?

13 A. I became very upset. I had tears in my eyes

14 and it was extremely graphic and it upset

15 me a great deal.

16 Q. Was it more graphic than the disclosures that

17 had been made to you on that day?

18 A. Yes, sir. Absolutely.

19 Q. Did you have an opportunity to review other

20 professionals opinions about the girl's

21 disclosures?

22 A. Other professional's opinions?

23 Q. The professionals who generated those medical

24 records. Did you have an opportunity to

25 review what they wrote in those medical

26 records?

27 A. Oh. Yes. I did.

28 Q. Was there anything in any part of those medical

29 records, the transcripts of what the girls

30 said, the medical records, other people's

31 opinions, that in your mind tended to show

32 that those girls were not telling the

TWENTY-SECOND JUDICIAL DISTRICT
STATE OF LOUISIANA
PARISH OF ST. TAMMANY

FILED

APR 15 2013

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DEPUTY

THE STATE OF LOUISIANA

DIVISION: "F"

VERSUS

NUMBER: 506845

TAM Q. LE

THE HONORABLE MARTIN E. COADY
JUDGE

A Transcript of the Proceedings
Taken in Open Court at Covington, Louisiana, on
October 31, 2012

JURY TRIAL

COPY

APPEARANCES:

REPRESENTING THE STATE OF LOUISIANA:

HAROLD BARTHOLOMEW, JR., ESQ.
Assistant District Attorney

REPRESENTING THE DEFENDANT:

JAMES G. BURKE, III, ESQ.
AND
MARION FARMER, ESQ.

REPORTED BY: KAREN CARITE JENKINS, C.C.R.
Official Court Reporter

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BY THE COURT:

Good morning.

BY MR. BARTHOLOMEW:

Good morning, Your Honor. The State
is ready for trial.

For the record, Your Honor, I call
Hung Lam to the stand.

HUNG LAM

AFTER HAVING BEEN DULY SWORN
WAS EXAMINED AND TESTIFIED

AS FOLLOWS:

HAI HOANG

AFTER HAVING BEEN SWORN TO INTERPRET
FROM ENGLISH INTO THE LANGUAGE
THE WITNESS UNDERSTANDS AND THEN BACK TO
ENGLISH TO THE BEST OF HIS ABILITY

AS FOLLOWS:

DIRECT EXAMINATION

EXAMINATION BY MR. BARTHOLOMEW:

Q. Please state your full name for the record?

A. My name is Hung Lam.

Q. What is your relationship to Tuyet Le Lam?

A. Daughter.

Q. Is Tuyet Le your daughter?

A. Yes.

Q. What is your relationship to Ngoc Dung Vo?

A. Grandchild.

Q. What is your relationship to Ngoc Nhi Vo?

1 A. Grandchild also.

2 Q. Do you know Tam Le, the defendant?

3 A. Yes.

4 Q. Do you see him in court?

5 A. Yes.

6 Q. Was he ever married to Tuyet, your daughter?

7 A. Yes.

8 Q. I will direct your attention to November 28th
9 to January 14th, November 28, 2008 to
10 January 14, 2009, where was Tuyet then?

11 A. Vietnam.

12 Q. When she was in Vietnam, did you help take care
13 of the kids?

14 A. Yes.

15 Q. Did that include Ngoc Nhi and Ngoc Dung?

16 A. Yes.

17 Q. Would you sometimes go to the kid's house after
18 they got off of school?

19 A. Yes.

20 Q. What time would you usually leave after school?

21 A. Between 8:00 to 9:00 P.M.

22 Q. Was Tam Le there when you left?

23 A. Yes.

24 Q. Was Ngoc Nhi and Ngoc Dung there when you left?

25 A. Yes.

26 Q. Did you ever stay there very late or spend the
27 night there, if so how many times?

28 A. Two times sleep overnight.

29 Q. When was that?

30 A. Don't remember between around Christmas time.

31 Q. How old is Tuyet Lam, your daughter?

32 A. Twenty-nine, (29).

1 Q. Is Tam Le older or younger than she is?
2 A. Tam Le older.
3 BY MR. BARTHOLOMEW:
4 No further questions, Your Honor. I
5 tender the witness.
6 Thank you, ma'am
7
8 CROSS EXAMINATION
9
10 EXAMINATION BY MR. BURKE:
11 Q. Ms. Lam, my name is Jim Burke, I represent Tam
12 Le. Have you had any conversations or
13 have you ever been interviewed by
14 Detective Nicaud?
15 A. Yes.
16 Q. When?
17 A. Two days ago.
18 Q. Two days ago. Was that your first
19 conversation with anybody in law
20 enforcement about this case?
21 A. Yes.
22 Q. So, no one from Slidell Police Department had
23 contacted you about this case prior to two
24 days ago?
25 A. Only him two days ago.
26 Q. And have you had conversations with your
27 daughter, Tuyet, about this case?
28 A. No.
29 Q. No conversations at all?
30 A. No.
31 Q. Never talked to her about any of the
32 allegations of this case?

1 A. No.

2 Q. Didn't tell you any of the allegations or
3 anything about what Tam may have done to
4 your granddaughters?

5 A. No.

6 BY MR. BURKE:

7 That's all the questions I have,
8 Your Honor.

9

10 RE-DIRECT EXAMINATION

11

12 EXAMINATION BY MR. BARTHOLOMEW:

13 Q. Was that me that you spoke to two days ago
14 instead of Detective Nicaud?

15 BY MR. BARTHOLOMEW:

16 Let me rephrase it.

17

18 EXAMINATION RESUMED BY MR. BARTHOLOMEW:

19 Q. Was that a phone call?

20 A. Yes.

21 Q. Was that me that she spoke to on the phone
22 call?

23 A. I don't remember because I don't know who it
24 was.

25 Q. She is not sure who it was?

26 BY MR. BARTHOLOMEW:

27 Okay. Thank you. No further
28 questions.

29 BY THE COURT:

30 You may step down.

31 BY MR. BARTHOLOMEW:

32 May the witness be released and the

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translator?

BY THE COURT:

Yes. You're free to go.

Is there anything further from the State?

BY MR. BARTHOLOMEW:

No, Your Honor. Ordinarily we would be publishing, but we have already published. The State would rest.

BY MR. BURKE:

We call Tam Le to the stand, Your Honor.

TAM LE

AFTER HAVING BEEN DULY SWORN
WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

EXAMINATION BY MR. BURKE:

Q. Tam, can you introduce yourself to the jury, please?

A. Yes. My name is Tam, last name is Le.

Q. Now, you are very soft-spoken, so request you speak a little louder so I can hear, so the last juror over here can hear. Okay?

A. Yes, sir. Yes.

Q. You have heard the allegations made by your former step-daughters. What do you have to say about those allegations?

A. I didn't do it. I never do it. I never commit

1 A. Yes. Uh-huh. (Affirmative response).
2 Q. He wasn't hiding anything from you?
3 A. He just tell me what the charge is.
4 Q. And as Mr. Burke asked you a question in that
5 conversati~n with him lasted about an hour
6 of the video tape said it was about an
7 hour?
8 A. I say at least an hour. Yes.
9 Q. So, he listened to your side of what you had to
10 say?
11 A. Yes. He questioned me. I give him an answer.
12 Q. He told you at one point in time in the video
13 the girls had told their teacher what had
14 happened?
15 A. Can you repeat again.
16 Q. He told you that the girls -- this all started
17 when the girls told a teacher, one of the
18 girls told a teacher what had happened?
19 A. He did say the girls tell a teacher.
20 Q. He told you that both of the girls had said
21 their step-father had molested them?
22 A. He tell me that the two girl, yes.
23 Q. He said that the youngest -- he told you the
24 youngest said you would have her sit on
25 his lap, you would fondle her under her
26 panties?
27 A. That's what he tell me. Yes.
28 Q. And that she said you had performed oral sex on
29 her, he told you that?
30 A. Think that he told me that. Yes.
31 Q. And he told you that the oldest girl said that
32 in addition to those things you had

1 attempted to put your penis into her
2 vagina?
3 A. That he -- he told me. Yes. He told me that.
4 Q. She said it hurt and you stopped because of
5 that?
6 A. Yeah. That's what he told me, too.
7 Q. Now, you said you knew for a couple of weeks
8 that the police were looking for you or
9 there had been a complaint?
10 A. The lady that I sold the shop to.
11 Q. She told you about it?
12 A. Yes. She call me, said Tam, can you --
13 Q. Did you call the police to try to find out what
14 was going on at that point in time?
15 A. No.
16 Q. Around that point in time were you having some
17 money problems? Have you ever had bad
18 money problems?
19 A. I never have bad money problems?
20 Q. Never? You never had bad money problems?
21 A. Never.
22 Q. Did you ever own any property in Jefferson
23 Parish?
24 A. Do I own property.
25 Q. Did you own property in Jefferson Parish:
26 A. Jefferson? No.
27 Q. Does Woodmere Estates sound familiar?
28 A. Woodmere?
29 Q. Or let's talk about the property in Slidell,
30 what is going on with the property in
31 Slidell?
32 A. When we went through divorce, the first day she

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of probation or parole, because of
allegations made by his two
step-daughters.

When I talked about, during voir
dire, when I talked about during my
opening statement is what I tried to get
you to understand as jurors, hopefully, I
at least got you thinking about it, is
there is some absolutely unbelievable
sympathy, such incredible bias level for
anyone who is accused of child
molestation, because we as human beings
would never think that a child could make
something up like this. We as human
beings also want to trust children. We as
human beings also want to protect
children, that's our natural inclination.
As people, as a husband, as a father, as a
grandparent, as a mother, as a
grandmother, that is our natural
inclination. So, when we hear something
like that, we automatically believe it.
But you know, in the criminal justice
system, the people that are involved in
the criminal justice system are supposed
to act differently. We can sit outside,
far outside this courtroom and think those
thoughts, but the people involved in the
criminal justice system need to look at
the case in a logical and non-biased
manner and Judge the case on its merits.
I would submit to you that in this case

1 there was a bias against Tam from the very
2 beginning.

3 The allegations were made, the very
4 beginning and no one cared about what Tam
5 had to say. No one. You know when we
6 talk about children, and you hear on the
7 tapes that were played, Jo Beth Rickles
8 who is a forensic interviewer, everybody
9 starts out with a premiss that the
10 allegations are true. They are not fact
11 finders. You heard it from Jo Beth
12 Rickles on the tape. I am here to help
13 children. I am here to protect children.
14 Nothing on that tape is about, I am here
15 to seek the truth. What is the truth? It
16 is to help and protect. Nothing about the
17 truth. That's what this courtroom is for
18 is to seek the truth. No other
19 investigation, whether it is robbery,
20 burglary, murder, starts like that, we are
21 here to help, instead it is to seek the
22 truth. That's where it begins when a
23 child makes an allegation because the
24 police automatically assume that because
25 allegations are made that they must be
26 true. They don't look critically at the
27 facts of the case.

28 I would submit to you that officer,
29 the Slidell officer, Detective Nicaud, I
30 am having a hard time pronouncing words,
31 he looked at this case and was nothing
32 more than a paper pusher. He was a

1 bureaucrat behind a desk. What did he do?
2 Only thing he did was children go to the
3 child forensic interview. Okay he went to
4 Jo Beth Rickles. Sends them over to New
5 Orleans. Then he has a warrant for Tam's
6 arrest, and he interviews Tam. He doesn't
7 follow-up on anything that Tam tells him.
8 That's what we are going to talk about in
9 the next few minutes.

10 When the Detective gets involved in
11 this case, what does he do? He says okay,
12 we will take Ngoc Nhi and Ngoc Dung to the
13 forensic interview, to Jo Beth Rickles,
14 right and the interviews are conducted and
15 he gets to view it. He gets to view those
16 DVD's, he is there, live and in person.
17 He gets to review if he chooses to do so
18 later on. And he, like Mr. Bartholomew,
19 I would submit, you hear these terrible
20 allegations, you hear stuff that you say
21 is unspeakable and the Detective goes,
22 well it must not, it has to be true but he
23 doesn't look critically at the DVD's or
24 the interviews.

25
26 (Portion of the video played)

27
28 EXAMINATION RESUMED BY MR. BURKE:

29 Q. My technology isn't as good as the D.A.'s, but
30 if you can hear that and if you paid
31 attention to that, what did Jo Beth
32 Rickles ask Ngoc Nhi, Mr. Bartholomew

1 didn't play this for you, she said, did
2 you and your sister, I am paraphrasing
3 this, talk about Tam doing those things to
4 you? She shook her head no. Didn't talk.
5 And then when Ngoc Dung is interviewed,
6 what does she say? Ten minutes into the
7 interview, did you and your sister talk
8 about Tam doing those things to you?
9 Remember that? She says, yes. Now, when
10 I first started reviewing this case, you
11 know, there are small differences and the
12 Detective talked about small differences,
13 but then there are big differences, by big
14 differences, things that matter. You
15 know, I would not try to hold any child
16 victim to the exact date or time, but when
17 it matters, if material facts that are of
18 great significance that are differences,
19 Ngoc Nhi we didn't talk about it. Ngoc
20 Dung we did talk about it. And no one
21 seems to care that there is a difference
22 there, the Detective took the stand right
23 here and said, I looked at the DVD's and
24 you know, there was no inconsistencies.
25 Nothing. No inconsistencies because he
26 had already predetermined. All right.
27 Predetermined that Tam did it. Because of
28 the allegations, not because of what was
29 the inconsistencies on the DVD's.
30 Ngoc Dung when she was interviewed,
31 when she said yeah, me and my sister
32 talked about this, and I believe I am

1 indicia of truth. If it is not in there,
2 is it dispositive that Tam is innocent?
3 No, but it is something that you as jurors
4 can use to make your decision about
5 whether or not Ngoc Nhi and Ngoc Dung are
6 being truthful.

7 You know, jurors are only as good as
8 the information they receive. Only as
9 good as the information they receive. You
10 know, if a carpenter does not have the
11 right tools, he might be able to build a
12 house, but it is not going to be a good
13 house, it is not going to be a house that
14 will stand time. You as jurors in order
15 to come down with the right verdict, a
16 just verdict, need all the information.
17 All the information, not just, I got these
18 video tapes and then we go on.

19 Did the Detective interview Tam?
20 Yes. Did you see it? Mr. Bartholomew
21 put it into evidence for you to see, to
22 see how the Detective grilled Tam? See
23 how he held up so you can judge his
24 credibility? To see whether or not Tam
25 appeared truthful when he answered the
26 detectives questions. He asked the
27 questions, well Detective, did he appear
28 truthful or did you think that Tam was
29 being truthful, I guess he said no. Was
30 it played for you to see, for you to hear?
31 It is called hiding the ball. They can
32 introduce it. I can't. I can't do it

1 because it's not an admission against
2 interest, meaning that he didn't confess.
3 So, I can't play it, but he can play it if
4 he wants to, but he didn't do it?

5 BY MR. BARTHOLOMEW:

6 Can we approach Your Honor, not an
7 accurate statement of the law.

8
9 (Bench conference held outside of the
10 hearing of the jury)

11
12 BY MR. BURKE:

13 How is it inaccurate? I can't play
14 it.

15 BY MR. BARTHOLOMEW:

16 First of all it is a personal attack
17 on counsel. If we want to do it there it
18 is. Okay.

19 Second, once I accuse Mr. Le of
20 lying, the prior inconsistent statement is
21 just as admissible as the diary. It is
22 the same thing. It is exactly the same
23 rule. He is trying to frame me for
24 something he is saying I didn't do then
25 turn around and say he can't do it.

26 BY MR. BURKE:

27 I can't play the tape, it is
28 accurate.

29 BY MR. BARTHOLOMEW:

30 Exactly the same as the diary.

31 BY MR. BURKE:

32 Just let me say this.

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BY MR. BARTHOLOMEW:

He could have played this.

BY THE COURT:

You're arguing the law to the jury.
You certainly can point out there has been
no tape. It isn't there. You started out
fine, once you start arguing law to them
you're outside closing argument.

BY MR. BURKE:

I'm sorry.

BY MR. BARTHOLOMEW:

Thank you, Your Honor.

(Bench conference concluded)

BY MR. BURKE:

I want to go back, in this case there
are potential witnesses that could have
confirmed Tam's story or could have said
you know, Tam is full of it. By that I
mean you heard the two girl's Grandma
testify today. The girl's grandmother.
When is the first time anyone, anyone
spoke to her? Two days ago. What did the
grandmother say? She said, you know, I
only came there for afternoons or to fix
them dinner and left. What did she say on
cross that I think is important, because I
don't think she is being entirely
truthful. What did she say on cross? Did
she ever talk to your daughter about this?
No. Did you ever talk to your daughter

1 about this? No. Imagine if your child
2 had been molested, are you going to talk
3 about that with your family members? She
4 was here as an advocate. They talk. She
5 can deny it, but your common human
6 experience would tell you is that mothers
7 and daughters talk. They talk about
8 something like this. All she had to say
9 is, of course we talked about it. They
10 knew why she was coming here today.

11 There is other information that could
12 be used to determine whether or not Tam is
13 the man that the State says he is, that
14 is, you know we read about the paper every
15 day, a sexual predator is arrested and
16 what do they find when they arrest the
17 sexual predator, they get a search
18 warrant, they seize his computers, low and
19 behold what do they find on the computers?
20 Child pornography. Now, the State didn't
21 do it. Detective didn't do it. If they
22 would have seized the computers, or
23 computer and if there was child
24 pornography on it I would think that would
25 be a pretty good indicator that Tam did
26 what they said he did. If it is not on it
27 once again, is dispositive of whether or
28 not he did it? No. But is it an
29 indicator that you know what, just maybe
30 he didn't do it, but they don't care.
31 Because we have allegations made.

32 You know the way that I always try to

1 it something that we can prove? Absolutely
2 not, but I would tell you that when you
3 saw his ex-wife take the stand was she
4 someone that struck you as credible? Was
5 she one that may have struck you as some
6 what petty? Was she someone that may have
7 struck you as vindictive? Was she one
8 that struck you as someone who was stable?
9 She indicated she had problems. She tried
10 to commit suicide, so, when Tam says or we
11 say we believe that she is capable of
12 doing something like this, it is Tam's
13 honest belief, because he can't explain
14 how those two girls have come forward
15 against him.

16 You have to judge his credibility.
17 You got to look at him. You know, it is
18 always, the prosecutor always says, when,
19 you know, a defendant takes the stand
20 well, of course he is going to lie. Of
21 course, you know what has he got to lose?
22 That's what they always say, but you got
23 to see him, you got to judge him, what he
24 had to say. You got to judge his former
25 girlfriend, what she had to say. What did
26 she have to say that I think is important?
27 She said one, Tam was good with the
28 children. Two, she was the disciplinarian
29 of the children. Three, this is
30 important, because they made, the State
31 made a big deal about getting down -- Tam
32 disciplining the children, getting down on

1 their knees, never saw Tam do anything
2 like that. In fact, Tam was the one that
3 asked his ex-girlfriend to lighten up.
4 Who do you think was tougher with these,
5 with Tam's two step-children? You think
6 it was Tam or you think it was his
7 ex-wife? You think he was telling the
8 truth.

9 Mr. Bartholomew is going to, I can
10 see this coming, I only get one time to
11 talk to y'all, so, I can't predict what
12 he is going to say, but I think I know
13 what is going to come. He is going to say
14 you know what, Tam willfully lied to you.
15 That's what he is going to say, something
16 to that effect. I asked him if he had
17 money problems. Tam said no, but you know
18 what that was kind of a trick question,
19 because you know, as lawyers, we usually
20 draw the witness' attention to the time,
21 the date, or you provide them a document.
22 The simple question is, Tam, did you
23 declare bankruptcy in whatever year it
24 was, right. Not a far reaching question.
25 Then Tam could say yes or no. So, if he
26 argues that Tam willfully lied to you, it
27 is not so. If he willfully lied to you
28 you are directed your attention or
29 directed Tam's attention to the
30 bankruptcy, he didn't do it.

31 Just one second, please.

32 You know, Tam is I guess about fifty

1 witness' ability and opportunity to
2 observe and remember the facts, his or her
3 manner while testifying and any bias or
4 prejudice inherent in his or her
5 testimony.

6 Evidence is either direct or
7 circumstantial. Direct evidence is
8 evidence which if believed proves a fact.
9 Circumstantial or indirect evidence is
10 evidence which if believed proves a fact
11 and from that fact you may logically and
12 reasonably conclude that another fact
13 exists. When only circumstantial
14 evidence is presented, you cannot find a
15 defendant guilty unless you excude every
16 reasonable theory of innocence.

17 This trail began with the Clerk
18 reading the indictment. This is merely an
19 allegation made in writing charging the
20 defendant with a crime. It is not
21 evidence.

22 After the reading of the indictment
23 you heard opening statements wherein the
24 attorneys were permitted to tell you the
25 facts the attorneys expected to prove. In
26 closing arguments the attorneys were
27 permitted to present their views on what
28 the evidence has shown or not shown and
29 what conclusions they think may be drawn
30 from the evidence. The opening statements
31 and closing arguments are not evidence.

32 When the Assistant District Attorney

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and defense counsel stipulate or agree to the existence of certain fact or facts, you must accept such stipulated fact or facts as conclusively proven. Since there has been stipulated or agreed facts in this case you are to consider them in connection with all the other evidence.

In this case you heard the testimony of an expert. An expert witness is one who as a result of special training or experience in an art, craft or science has acquired special knowledge or training. The opinions of experts are admissible in evidence if they state the facts upon which their opinion is based. It is the duty of the Court to decide whether an expert possesses the qualifications of an expert. It is the duty of the jurors to consider the opinions of the experts together with all the other testimony and to give them such weight as they deem proper. However, experts are not called into the court for the purpose of deciding the case. You as jurors are the ones in law who must bear the responsibility of deciding the case. The experts are merely witnesses and you have the right to either accept or reject their testimony and opinions in the same manner and for the same reasons for which you may accept or reject the testimony of other witnesses in the case.

1 Guilty of aggravated rape.
2 Guilty of attempted aggravated rape.
3 Guilty of forcible rape.
4 Guilty of attempted forcible rape.
5 Guilty of simple rape.
6 Guilty of attempted simple rape.
7 Guilty of sexual battery.
8 Guilty of molestation of a juvenile.
9 Guilty of attempted molestation of a
10 juvenile.
11 Guilty of indecent behavior with a
12 juvenile.
13 Guilty of attempted indecent behavior
14 with a juvenile.
15 Or not guilty.
16 If you are convinced beyond a
17 reasonable doubt that the defendant is
18 guilty of aggravated rape on a particular
19 count the form of your verdict should
20 read, we the jury find the defendant
21 guilty of aggravated rape.
22 If you are not convinced that the
23 defendant is guilty of the offense charged
24 on a particular count but are convinced
25 beyond a reasonable doubt the defendant is
26 guilty of a responsive offense defined
27 above as to a particular count your
28 verdict should so reflect.
29 If the State failed to prove beyond a
30 reasonable doubt that the defendant is
31 guilty of the offense charged or of a
32 responsive offense as to a particular

1 count the form of your verdict should read
2 not guilty.

3 As jurors you are not to be
4 influenced by sympathy, prejudice, passion
5 or public opinion. You are expected to
6 reach a just verdict.

7 When you enter the jury room you
8 should consult with one another, consider
9 each other's views and discuss the
10 evidence with the objective of reaching a
11 just verdict. Each of you must decide the
12 case for yourself but only after an
13 impartial consideration of the case with
14 your fellow jurors.

15 You are not advocates for one side or
16 the other. Do not hesitate to re-examine
17 your own views and change your opinion if
18 you are convinced you are wrong, but do
19 not surrender your honest belief as to the
20 weight and effect of the evidence solely
21 because of the opinion of a fellow juror
22 or for the mere purpose of reaching a
23 verdict.

24 When you retire to deliberate you
25 must elect one of your members to serve as
26 jury foreperson.

27 When you reach a verdict the
28 foreperson must write the verdict on the
29 verdict form. Ten members of the jury
30 must concur to reach a verdict in this
31 case.

32 After you have reached verdicts as

1 to each of these counts you then will
2 knock on the door, the Bailiff will let us
3 know, we will all return into open court
4 to receive your verdict.

5 Now, the verdict form will go with
6 you to the jury room and there are two of
7 them because there are two counts in this
8 case. Possible verdict, count one,
9 victim, initials N.V., date of birth is
10 indicated on here, and then we will go
11 down all as we just read to you, all the
12 verdicts that may be reached. Once ten
13 out of twelve (12) of you concur, we the
14 jury find the defendant, Tam Le, the
15 foreperson will put in what that verdict
16 is, sign it, date it.

17 Also verdict form just like that but
18 this concerns count 2, concerns victim
19 initials N.V., date of birth October 18,
20 '00.

21 So, with this, I have to thank and
22 excuse our two alternates. Everybody
23 stayed healthy through the case, but I
24 know you paid a lot of attention and I
25 appreciate the work you have done this
26 week. You are free to have a sandwich,
27 you can't be with the jury. You can't be
28 with them anymore. You have to be
29 separated from them, this would be Rebecca
30 McQuary and Nicole Gingrow. So, Deputy,
31 make sure they don't go in the same room.
32 You have to stay while they deliberate but

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you will be separated out.

The Court will be at recess while the jury considers their verdict.

(Court recessed - Court resumed)

(Jury returned to the courtroom)

BY THE COURT:

Have a seat, please.

I received your note, shared it with counsel.

First question was transcript of forensic interviews. I regret to tell you the rules of evidence do not allow us to provide that to you. Nor can we give you the writing of the letter Ngoc Nhi wrote to her teacher.

However, I can re-charge you regarding the lesser charges, that's the third request.

The first lesser charge would be attempted aggravated rape. An attempt is a separate but lesser grade of the intended crime. Any person may be convicted of an attempt to commit a crime all though it appears on trial that the defendant actually committed the completed offense with which he is charged. A person who has a specific intent to commit a crime and who does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty

1 of an attempt to commit the offense
2 intended. It shall be immaterial whether
3 under the circumstances he would have
4 actually accomplished his purpose. Mere
5 preparation to commit a crime shall not be
6 sufficient to constitute an attempt.
7 Using the definition of aggravated rape,
8 specific criminal intent you are to use
9 those in your deliberations.

10 Thus in order to convict the
11 defendant of attempted aggravated rape on
12 a particular count you must find:

13 1. The defendant had the specific
14 criminal intent to commit the crime of
15 aggravated rape of the victim and.

16 2. The defendant did or omitted an
17 act for the purpose of and tending
18 directly toward the commission of the
19 crime of aggravated rape of the victim.

20 Next is forcible rape. Forcible rape
21 is the act of anal, oral or vaginal sexual
22 intercourse which is deemed to be without
23 the lawful consent of the victim because
24 it is committed under one of the following
25 circumstances:

26 1. The victim is prevented from
27 resisting the act by force or threats of
28 physical violence under circumstances
29 where the victim reasonably believes that
30 resistance would not prevent the rape or.

31 2. The victim is incapable of
32 resisting or understanding the nature of

1 the act by reason of stupor or abnormal
2 condition of the mind produced by a
3 narcotic or anesthetic agent or other
4 controlled dangerous substance
5 administered by the offender without the
6 knowledge of the victim.

7 Again, emission is not necessary and
8 any sexual penetration, vaginal or anal
9 however slight is sufficient to complete
10 the crime.

11 Regarding attempted forcible rape.
12 Using the definition of forcible rape,
13 attempt and specific intent, in order to
14 convict the defendant of attempted
15 forcible rape on a particular count you
16 must find:

17 1. That the defendant had the
18 specific intent to commit the crime of
19 forcible rape of the victim and.

20 2. That the defendant did or omitted
21 an act for the purpose of and tending
22 directly toward the commission of the
23 crime of forcible rape of the victim.

24 Next is simple rape. Simple rape is
25 the act of anal, oral or vaginal sexual
26 intercourse without the victim's lawful
27 consent because it is committed under any
28 of the following circumstances:

29 1. When the victim is incapable of
30 resisting or understanding the nature of
31 the act by reason of a stupor or abnormal
32 condition of mind produced by intoxicating

1 agent or any cause other than the
2 administration by the offender and without
3 the knowledge of the victim of any
4 narcotic or anesthetic agent or other
5 controlled dangerous substance and the
6 offender knew or should have known of the
7 victim's incapacity or.

8 2. When the victim is incapable
9 through unsoundness of mind whether
10 temporary or permanent of understanding
11 the nature of the act and the offender
12 knew or should have known of the victim's
13 incapacity.

14 Again, emission is not necessary and
15 any sexual penetration vaginal or anal
16 however slight is sufficient to complete
17 the crime.

18 Attempted simple rape. Again, using
19 the definition of simple rape, specific
20 intent as well as attempt you are to use
21 those in your deliberation as to this
22 offense in order to convict the defendant
23 of attempted simple rape as to a
24 particular count you must find:

25 1. That the defendant had the
26 specific intent to commit the crime of
27 simple rape of the victim and.

28 2. That the defendant did or omitted
29 an act for the purpose of and tending
30 directly toward the commission of the
31 crime of simple rape of the victim.

32 Sexual battery is the intentional

1 engaging of any of the following acts with
2 another person where the offender acts
3 without the consent of the victim or where
4 the act is consensual but the other person
5 who is not the spouse of the offender has
6 not yet attained fifteen (15) years of age
7 and is at least three years younger than
8 the offender:

9 1. The touching of the anus or
10 genitals of the victim by the offender
11 using any instrumentality or part of the
12 body of the offender; or.

13 2. The touching of the anus or
14 genitals of the offender by the victim
15 using any instrumentality or part of the
16 body of the victim.

17 Lack of knowledge of the victim's age
18 shall not be a defense.

19 Molestation of a juvenile.
20 Molestation of a juvenile is the
21 commission by anyone over the age of
22 seventeen (17) of a lewd or lascivious act
23 upon the person of or in the presence of
24 any child under the age of seventeen (17)
25 where there is an age difference of
26 greater than two years between the two
27 persons with the intention of arousing or
28 gratifying the sexual desires of either
29 person, by the use of force, violence,
30 duress, menace, psychological
31 intimidation, threat of great bodily harm
32 or by the use of influence by virtue of a

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position of control or supervision over the juvenile.

Lack of knowledge of the juvenile's age shall not be a defense.

Attempted molestation of a juvenile. I have already given you the definitions of molestation of a juvenile, attempt and specific intent. You are to use these definitions in your deliberations on this responsive verdict.

Thus, in order to convict the defendant of attempted molestation of a juvenile on a particular count you must find that:

1. The defendant had the specific intent to commit the crime of molestation of a juvenile; and.
2. That the defendant did or omitted an act for the purpose of and tending directly toward the commission of the crime of molestation of a juvenile.

Indecent behavior with a juvenile. Indecent behavior with a juvenile is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

1. Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen (17) where there is an age difference of greater than two years between the two persons.

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Lack of knowledge of the child's age shall not be a defense.

Attempted indecent behavior with a juvenile. I have already given you the definitions of indecent behavior with a juvenile, attempt and specific intent. You are to use these definitions in your deliberations on this responsive verdict.

Thus, in order to convict the defendant of attempted indecent behavior with a juvenile on a particular count you must find that:

1. The defendant had the specific intent to commit the crime of indecent behavior with a juvenile; and.

2. The defendant did or omitted an act for the purpose of and tending directly toward the commission of the crime of indecent behavior with a juvenile.

Another verdict you may return on a particular count is not guilty. A verdict of not guilty means that you have found that the State failed to prove beyond a reasonable doubt each and all of the elements defined above for the crime charged or the responsive offenses on a particular count.

Okay. I hope that answers your questions. We will be at recess until you reach your verdict.

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(Court recessed - Court resumed)

BY THE COURT:

I have indicated to counsel that your second note came out, it reading currently hung, not disclosing the number you put, that's not appropriate for me to do. All I can ask you is it has been a few day trial. It is a serious matter. You went in around 1:00, you have had lunch, you have been at it a few hours. I would ask you to please go back and consult with one another again, consider each others views, discuss the evidence with the objective of reaching a just verdict. Again, of course, you have to decide the case for yourself, but you have to be open to a discussion with your fellow jurors with the objective of reaching a just verdict.

So, I ask you to please go back and give it another try.

Thank you.

(Jury exits courtroom)

BY MR. BURKE:

Just to protect myself, we put a formal objection to the Court's instruction to the jury. I believe it may be close to an Allen charge.

BY THE COURT:

Note your objection. I don't believe

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it is anywhere near an Allen charge.

If I could see counsel in chambers.

We are at recess.

(Court recessed - Court resumed)

BY THE COURT:

I understand you were able to reach a verdict?

BY MR. WIDLITZE:

Yes, sir.

BY THE COURT:

Please hand it to the Bailiff.

BY THE CLERK:

State of Louisiana versus Tam Q. Le,
docket number 506845.

We the jury find the defendant, Tam Q. Le guilty of aggravated rape.

Signed foreperson, John Widlitze,
dated October 31, 2012.

BY THE COURT:

Count 1, victim NV, date of birth
12-11-99.

Go to the next part.

BY THE CLERK:

State of Louisiana versus Tam Q. Le,
number 506845, Count 2, victim NV, date of
birth 10-18-00.

We the jury find the defendant Tam Q. Le guilty of aggravated rape.

Signed the foreperson, John Widlitze.
Dated October 31, 2012.

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BY MR. BURKE:

Ask for a poll.

BY THE COURT:

In a few moments, they have asked for a polling of the jury. There will be a sheet given to you. It will ask whether this is your individual verdict.

BY MR. BARTHOLOMEW:

It's my understanding, Your Honor, the ballots will be sealed.

BY THE COURT:

Madam Clerk, is that the verdict of this jury? Check the polls.

BY THE CLERK:

Yes. It is, Judge.

BY THE COURT:

Let that be recorded as the verdict of this jury.

Set sentencing for November 28th, at 9:00 o'clock.

BY MR. BURKE:

Thank you, Your Honor.

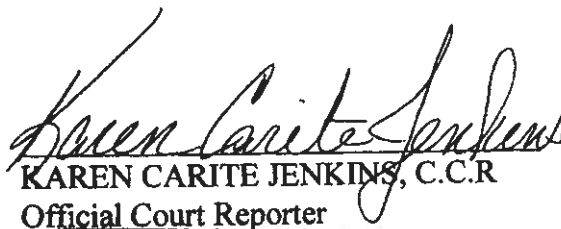
BY THE COURT:

With that, we will recess. I will see the jury in the back.

C-E-R-T-I-F-I-C-A-T-E

This certificate is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, KAREN CARITE JENKINS, Official Court Reporter in and for the State of Louisiana, employed as an official court reporter by the Twenty-Second Judicial District Court for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with the transcript format guidelines required by statute or by rules of the board or by the Supreme Court of Louisiana, and that I am not related to counsel or to the parties herein nor am I otherwise interested in the outcome of this matter.


KAREN CARITE JENKINS, C.C.R.
Official Court Reporter



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victims' grandmother requesting leniency in this matter. I have explained this to them, there is a legal minimum sentence and that there is a method for the defense to question that. I understand that will be followed after this hearing.

BY THE COURT:

First addressing the motions. The Court has reviewed the motions that have been filed for a new trial as well on many grounds and for post judgment of acquittal. The Court will deny all those motions.

BY MR. BURKE:

And Your Honor we respectfully object to the Court's ruling.

BY THE COURT:

Note your objection.

You waive delays for sentencing?

BY MR. BURKE:

Yes, Your Honor.

BY THE COURT:

Mr. Tam Le, as you know, we were here for jury trial in which the jury came back with guilty to two counts of aggravated rape.

The Court has received letters as indicated by the Assistant D.A. regarding this. Of course, I heard the testimony and the nature of the offense itself is of an innocent age of children, the statute recognizes that in terms of prohibiting

1 that activity with a very harsh sentence
2 imposed, mandatory for a conviction of
3 this. Therefor sir, I am going to
4 sentence you in accordance with the
5 statutes as to each count to life
6 imprisonment without benefit of parole,
7 probation or suspension of sentence.
8 Give you credit for time served.
9 Inform you any application of
10 post-conviction relief must be filed
11 within two years of the date this sentence
12 becomes final.
13 And I understand Mr. Burke will be
14 filing reconsideration we will be having
15 some type of hearing.
16 BY MR. BURKE:
17 And Your Honor, this may sound silly,
18 but the Court is silent on whether or not
19 the sentences are concurrent or
20 consecutive.
21 BY THE COURT:
22 They are to run concurrent with each
23 other.
24 BY MR. BURKE:
25 With that, Your Honor, I formally
26 give notice that there will be a motion
27 for appeal that will follow my notice for
28 appeal. I would request the Appellate
29 Project, I will put that in my written
30 motion, be appointed to represent him
31 unless Mr. Le's family hires another
32 private attorney, but I will stay on as