

APPENDIX "A"

State v. Magee, Not Reported in So.3d (2017)

2016-1074 (La.App. 1 Cir. 4/12/17)

2017 WL 1376568

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NOT DESIGNATED FOR PUBLICATION

Court of Appeal of Louisiana,
First Circuit.

STATE of Louisiana

v.

Kaunda Lopaz MAGEE

2016 KA 1074

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DATE OF JUDGMENT: APRIL 12, 2017

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT, NUMBER 12CR4117019, DIVISION F, PARISH OF WASHINGTON, STATE OF LOUISIANA, HONORABLE MARTIN E. COADY, JUDGE

Attorneys and Law Firms

Warren L. Montgomery, District Attorney, Matthew Caplan, Assistant District Attorney, Covington, Louisiana, Counsel for Appellee, State of Louisiana

Lieu T. Vo Clark, Mandeville, Louisiana, Counsel for Defendant–Appellant, Kaunda Lopaz Magee

BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

Opinion

CHUTZ, J.

*1 **2 Defendant, Kaunda Lopaz Magee, was charged by grand jury indictment with aggravated rape,¹ a violation of La. R.S. 14:42 (count 1); aggravated burglary, a violation of La. R.S. 14:60 (count 2); aggravated kidnapping, a violation of La. R.S. 14:44 (count 3); theft of a motor vehicle over \$1500.00, a violation of La. R.S. 14:67.26(C)(1) (count 4); aggravated flight from an officer, a violation of La. R.S. 14:108.1(C) (count 5); possession

of a firearm by a convicted felon, a violation of La. R.S. 14:95.1 (count 6); and four counts of attempted first degree murder, violations of La. R.S. 14:27 and 14:30 (counts 7–10). He pled not guilty. Following a jury trial, defendant was found guilty as charged on counts 1–6 and count 9; he was found guilty of the responsive offense of attempted manslaughter, a violation of La. R.S. 14:27 and 14:31, on counts 7, 8, and 10. The trial court denied defendant's motions for new trial and postverdict judgment of acquittal. The trial court then sentenced defendant as follows: on counts 1 and 3, to life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence; on count 2, to twenty-five years at hard labor; on count 4, to ten years at hard labor; on count 5, to two years at hard labor; on count 6, to twenty years at hard labor, without the benefit of parole, probation, or suspension of sentence, and a \$1000.00 fine; on counts 7, 8, and 10, to twenty years at hard labor for each count; and on count 9, to thirty years at hard labor. All sentences were ordered to run concurrently.

After sentencing, the state filed a habitual offender bill of information, alleging four prior felony convictions and seeking to enhance the sentences on counts 2, 4, 5, 7, 8, 9, and 10.² Defendant stood silent in the face of the habitual **3 offender allegations and filed a motion to quash. At a subsequent hearing, the trial court denied defendant's motion to quash the habitual offender bill of information and adjudicated him a fourth-felony habitual offender as to counts 2, 4, 5, 7, 8, 9, and 10. The trial court vacated the previously imposed sentences on these counts and resentenced defendant on the same to concurrent sentences of life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence. The court ordered these habitual offender sentences to run concurrently with the sentences already imposed in counts 1, 3, and 6. Defendant now appeals, alleging a single assignment of error relating to the non-unanimous jury verdicts rendered in this case. For the following reasons, we affirm the convictions, habitual offender adjudications, and sentences.

FACTS

***2** On the evening of October 3, 2011, C.G.³ (the victim) opened the back door of his home in Pine, Louisiana in order to feed his dogs. When he returned inside, C.G. heard a click and turned to see defendant pointing a gun at his head. Defendant tied C.G.'s hands in front of him and forced C.G. to load some of his belongings (including televisions and guns) into his own truck. After C.G. helped defendant load the truck, defendant forced C.G. to go to his bedroom, where defendant then tied C.G.'s feet and pulled down C.G.'s pants. Defendant bent the victim over a bed and anally raped him while wearing a condom. When defendant finished, he threw C.G. into a closet and drove away in the victim's truck.

C.G. eventually escaped from the closet and called his uncle, who went to C.G.'s house and called 911. Washington Parish Sheriff's Officer Terrel Brumfield responded to the dispatch and issued a "be-on-the-lookout" alert (BOLO) for the victim's truck. Louisiana State Trooper Steven Dan Manning ****4** received the BOLO around 11:23 p.m. and located the vehicle at 11:30 p.m. Trooper Manning attempted to initiate a traffic stop of the vehicle, but the vehicle fled, and a high-speed chase ensued. Multiple officers with the Washington Parish Sheriff's Office and Bogalusa Police Department joined in the chase, including Officer Quinzell Spikes and Sergeant Robert Harris. During the pursuit, the driver of the suspect vehicle fired two shots in the direction of the pursuing officers. Sergeant Harris was able to speed ahead of the chase and attempted to set a roadblock using his vehicle. As the suspect vehicle approached the roadblock, Sergeant Harris was Standing at the rear quarter panel of his vehicle. With his vehicle's headlights shining directly at the suspect vehicle, Sergeant Harris was able to identify defendant as the driver of the vehicle, as he had a prior familiarity with defendant. The suspect vehicle hit Sergeant Harris's vehicle but was still drivable. The driver managed to drive away and evade capture. The stolen vehicle was eventually recovered, but it had been abandoned by the driver.

Defendant evaded capture for over three weeks, until he was located in Mississippi. His fingerprints were positively identified as being on a Coke can and one of the televisions located in the recovered vehicle. The state also used fingerprint evidence to establish defendant's status as a

prior felon. In addition, defendant's DNA was consistent with that extracted from semen present on the condom recovered from the victim's home. Defendant did not testify at trial, but after his arrest, defendant made a Statement that the sexual act between himself and the victim was consensual and had happened many times in the past. He further stated the victim helped load his belongings into his truck in exchange for money he owed defendant.

NON-UNANIMOUS JURY VERDICTS

In his sole assignment of error, defendant contends that the non-unanimous jury verdicts in this case rendered his convictions unconstitutional. Defendant was ****5** convicted by votes of 10–2 on counts 1–6 and 9–10, and by votes of 11–1 on counts 7–8. He raised the issue of non-unanimous verdicts in his motion for new trial, which was denied by the trial court.

[Louisiana Constitution Article I, § 17\(A\)](#) and (B) and [La. Code Crim. P. arts. 493.2](#) and [782](#) allow for non-unanimous jury verdicts of at least 10 of 12 votes in non-capital cases, where the punishment is necessarily confinement at hard labor, or where offenses necessarily punishable by confinement at hard labor are joined with those in which punishment may be confinement at hard labor. With the exception of the charged offense and conviction on count 4, all of the charged offenses and convictions in the instant case were for non-capital felonies where the punishment was necessarily confinement at hard labor. In count 4, defendant was charged with theft of a motor vehicle over \$1500.00, which is punishable by imprisonment, with or without hard labor, for not more than ten years. Defendant did not allege a misjoinder of these offenses, and we note that the joined offenses were all based on the same series of acts, so they were properly joined. See [La. C.Cr.P. art. 493.2](#).

***3** Under both state and federal jurisprudence, a criminal conviction by a less than unanimous jury does not violate a defendant's right to trial by jury specified by the Sixth Amendment and made applicable to the states by the Fourteenth Amendment. See [Apodaca v. Oregon](#),⁴ 406 U.S. 404, 412–14, 92 S.Ct. 1628, 1634, 32 L.Ed.2d 184

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(1972); [State v. Belgard](#), 410 So.2d 720, 726–27 (La. 1982); [State v. Shanks](#), 97–1885 (La. App. 1st Cir. 6/29/98), 715 So.2d 157, 164–65.

Defendant suggests that subsequent legal developments since **Apodaca** should cause this Court to revisit the issue and find Louisiana's non-unanimous verdict scheme unconstitutional. Even though **Apodaca** was a plurality rather than ****6** a majority decision, the United States Supreme Court and other courts have cited or discussed the opinion various times since its issuance. From these decisions, it is apparent that its holding as to non-unanimous jury verdicts represents well-settled law. Thus, [La. Const. art. I, § 17\(A\)](#) and (B) and [La. Code Crim. P. arts. 493.2](#) and [782](#) are not unconstitutional and,

therefore, not in violation of defendant's constitutional rights. See [State v. Hammond](#), 2012–1559 (La. App. 1st Cir. 3/25/13), 115 So.3d 513, 515, [writ denied](#), 2013–0887 (La. 11/8/13), 125 So.3d 442, [cert. denied](#), — U.S. —, 134 S.Ct. 1939, 188 L.Ed.2d 965 (2014).

This assignment of error is without merit.

**CONVICTIONS, HABITUAL OFFENDER
ADJUDICATIONS, AND SENTENCES AFFIRMED.**

All Citations

Not Reported in So.3d, 2017 WL 1376568, 2016-1074 (La.App. 1 Cir. 4/12/17)

Footnotes

- 1** The offense previously known as “aggravated rape” has been redesignated as “first degree rape” for all offenses committed after August 1, 2015. See [La. R.S. 14:42\(E\)](#).
- 2** The predicate convictions were alleged as follows: 1) a September 27, 1993 conviction for armed robbery under 22nd JDC (Washington Parish) docket number 93–CR5–55008; 2) a May 20, 2002 conviction for possession of a schedule II controlled dangerous substance under 22nd JDC (Washington Parish) docket number 01–CR8–83114; and 3) a January 12, 2010 convictions for possession with intent to distribute a schedule II controlled dangerous substance and attempted possession of a firearm by a convicted felon under 22nd JDC (Washington Parish) docket number 08–CR3–99918.
- 3** In accordance with [La. R.S. 46:1844\(W\)](#), the victim herein is referenced only by his initials or as “the victim.”
- 4** Oregon's non-unanimous jury verdict Provision of its state constitution was challenged in **Apodaca**. [Johnson v. Louisiana](#), 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972), decided with **Apodaca**, upheld Louisiana's then-existing constitutional and statutory provisions allowing jury verdicts of guilty on votes of 9–3.

APPENDIX "B"

State v. Magee, 237 So.3d 514 (2018)

2017-1003 (La. 2/23/18)

237 So.3d 514 (Mem)
Supreme Court of Louisiana.

STATE of Louisiana

v.

Kaunda Lopaz MAGEE

NO. 2017–KO–1003

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February 23, 2018

Applying For Writ of Certiorari and/or Review, Parish
of Washington, 22nd Judicial District Court Div. F,
No. *515 12CR4117019; to the Court of Appeal, First
Circuit, No. 2016 KA 1074;

Opinion

**1 Denied.

All Citations

237 So.3d 514 (Mem), 2017-1003 (La. 2/23/18)

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