No.: 18-6975 ORIGINAL

In The
Supreme Court of the United States
_____ Term, 2018

ROY VAN NORTRICK — Appellant

v.

STATE OF LOUISIANA — Appellee(s)

On Petition for a Writ of Certiorari to

LOUISIANA SUPREME COURT

Roy Van Nortrick #708819
MPWY/Hic-4
La. State Penitentiary
Angola, LA 70712

PREPARED BY:
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Angola, LA 70712

QUESTION(S) PRESENTED

1. **Whether reasonable jurist would debate that the State failed to meet its burden of proof of beyond a reasonable doubt that Mr. Van Nortrick is guilt.**
2. **Whether reasonable jurists would determine that it was reversible error for the district court to permit Mr. Van Nortrick's involuntary statements that were the product of duress, inducements, and/or promises to be presented to the jury, over defense counsel's objections.**

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows.

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TABLE OF CONTENTS:

Page

INDEX TO APPENDICES AND EXHIBITS

TABLE OF AUTHORITIES: Page

U.S. CONSTITUTION:

FEDERAL CASES:

LOUISIANA CONSTITUTION:

STATUTORY PROVISIONS:

STATE CASES:

MISCELLANEOUS:

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Appellant respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix "E" to the petition and is the Louisiana Supreme Court in Docket Number 2018-KO-0194.

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Second Circuit Court of Appeals appears at Appendix "C" to the petition and is

[X] reported at 237 So.3d 598 (La. App. 5th Cir. 12/27/17); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was November 14, 2018.
A copy of that decision appears at Appendix "E".

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This conviction was obtained in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Specifically, Mr. Van Nortrick was denied the right to a fair and impartial trial with the district court allowing the jury to view the drawings (with testimonial evidence) during deliberations.

NOTICE OF PRO-SE FILING

Mr. Van Nortrick requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); Mr. Van Nortrick is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

REASONS FOR GRANTING THE PETITION

In accordance with this Court's *Rule X, § (b) and (c)*, Mr. Van Nortrick presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Insufficient Evidence:

The crime of Molestation of a Juvenile is defined in LSA-R.S. 14:81.2, which provides, in pertinent part:

> A. Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age shall not be a defense.

Thus, the essential elements the prosecution must prove beyond a reasonable doubt for the crime of Molestation of a Juvenile are:

(1) Defendant was over the age of seventeen;
(2) Defendant committed a lewd or lascivious act upon the person or in the presence of a child under age 17;
(3) Defendant was more than two years older than the victim;
(4) Defendant committed the lewd or lascivious act by use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by use of influence by virtue of a position of control or supervision over the juvenile.

State v. Watson, 39,362 (La. App. 2nd Cir. 4/20/05), 900 So.2d 325 (emphasis added). Under LSA-R.S. 14:81.2, the State was required to prove that (1) the lewd or lascivious acts occurred, and critically, (2) that they were accomplished by Mr. Van Nortrick's use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or use of influence over MP by virtue of having a position or control or supervision over her. See: *State v. LeBlanc*, 506 So.2d 1197 (La. 5/18/1987) (describing additional "use of force" element in LSA-R.S. 14:81.1 and distinguishing crime of Molestation from crime of Indecent Behavior With a Juvenile based on this additional element).

When the State fails to prove the essential element of "use of influence by virtue of position of control or supervision over the juvenile," the evidence is insufficient to support a conviction of Molestation of a Juvenile, but a responsive verdict of Indecent Behavior With a Juvenile may be

appropriate. See, e.g., *State v. Teague*, 893 So.2d 198, 205 (explaining that when appellate court finds the evidence only supports a conviction of a lesser included offense ... [it] may modify the verdict and render a judgment of conviction off the lesser included responsive offense); *accord*, *State v. Busby*, 94-1354 (La. App. 3rd Cir. 4/5/95), 653 So.2d 140, *writ denied*, 95-1157 (La. 9/29/95), 660 So.2d 854 (holding, in part, that Indecent Behavior With a Juvenile is a responsive verdict to Molestation of a Juvenile); *LeBlanc*, supra.

Applying the foregoing laws and standard of review, Mr. Van Nortrick's conviction should be reversed because the State did not present any evidence that Mr. Van Nortrick used force, threats, intimidation, or use of influence upon MP by virtue of having a position of supervision or control over her in order to facilitate the commission of a lewd or lascivious act upon her.

The "use of influence" element in LSA-R.S. 14:81.2 is the functional equivalent of a non-physical use of force. This alternate means of accomplishing the act of Molestation – where, instead of force or threats, an accused uses a position of supervision or control over a juvenile in order to influence the juvenile into allowing the lewd or lascivious act to occur – is what separates the crime of Molestation of a Juvenile from other sexual crimes against juveniles that do not involve the manipulation of a victim by a person with authority over that victim. In order to constitute Molestation, more is required than simply *having* a position of supervision or control; the offender must actually *use* the influence gained by that position in order to overbear the will of the victim and accomplish the act complained of.

According to *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) and *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), the State has a strict burden of proof beyond a reasonable doubt.

In this case, the alleged victim's testimony failed to support the jury's verdict that Mr. Van Nortrick

was guilty of Molestation of a Juvenile (2 Counts) beyond a reasonable doubt. It appears as though the Courts in the State of Louisiana have failed to consider the fact that both of the alleged victims in this case had "notes" in their aunt's purse that they had prepared for their interview at the Gingerbread House.

Evidence was presented that both of the alleged victims were prepared for their interview with Alex Person.

Furthermore, evidence was presented that both of the alleged victims appeared to be prepared for questioning from the State; yet, stumbled with their answers on cross-examination by the defense counsel.

Improper Use of Mr. Van Nortrick's Statement:

Although state court's factual findings are normally entitled to great deference, ultimate issue of voluntariness of defendant's confession is legal question requiring independent federal determination. Fifth and Fourteenth Amendments to the United States Constitution. Criminal law 519(3), 522(1):

Murder defendant's confession to jailhouse informant was coerced by informant, who asked defendant to confess in order to receive protection against fellow inmates. Fifth and Fourteenth Amendments to the United States Constitution. Criminal law 522(1, 3):

In determining voluntariness of confession, finding of coercion need not depend upon actual violence by government agent; credible threat is sufficient. Fifth and Fourteenth Amendments to the United States Constitution.

"The State's burden of proving that a confession was freely and voluntarily given, as required by La.C.Cr.P. Art. 703(C), LSA-R.S.15:451, and Louisiana Constitution of 1974, Art.1, § 16, is that of proof beyond a reasonable doubt." *State v. Glover*, 343 So.2d 118 (La. 1976); *State v. Trudell*, 350 So.2d 658 (La. 1977). *State v. Jones*, 376 So.2d 125, 128 (La. 1979). CL531(3)

As the United States Fifth Circuit noted, "In considering the voluntariness of a confession, this court must take into account a defendant's mental limitations; to determine whether through susceptibility to surrounding pressures or inability to comprehend the circumstances, the confession was not a product of his own free will." *Jurek v. Estelle*, 623 F. 2d 929, 937 (5th Cir. 1980)(en banc), *cert. denied*, ___U.S.___, 101 S.Ct. 1709, 68 L.Ed.2d 203 (1981). Above cited from *Henry v. Dees*, 658 F. 2d 406 (1981), 409. HN1/CL525

A fundamental concern is a mentally disunite accused's vulnerability to suggestion. See *Sims v. Georgia*, 389 U.S. 404, 87 S.Ct. 639, 17 L.Ed. 2d 593 (1967); *Culombe v. Connecticut*, 367 U.S. 558, 81 S.Ct. 1860, 6 L.Ed. 2d 1037 (1961).

The Supreme Court has recognized educational & mental shortcomings as relevant factors in the voluntariness analysis. See, e.g., *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed. 2d 854 (1973); *Clewis v. Texas*, 386 U.S. 707, 87 S.Ct. 1338, 18 L.Ed.2d 423 (1967); *Davis v. North Carolina*, 384 U.S. 737, 86 S.Ct. 1761, 16 L.Ed.2d 895 (1966); *Fikes v. Alabama*, 352 U.S. 191, 77 S.Ct. 281, 1 L.Ed.2d 246 (1957).

Test of voluntariness of incriminating statement is whether under all attendant circumstances, statement is product of essentially free and unconstrained choice by its maker or whether accused's will has been overborne and his capacity for self-determination critically impaired, and line of distinction is lost and compulsion, of whatever nature or however infused, propels or helps to propel statement. *U.S. ex rel. Mattox v. Scott*, 372 F.Supp. 304, *reversed*, 507 F.2d 919, *on remand*, 389 F.Supp. 1045, *reversed and remanded*, *Mattox v. Finkbeiner*, 519 F. 2d 1404, *stay denied*, 96 S.Ct. 184, 423 U.S. 887, 46 L.Ed.2d 120.

Determination of admissibility of in-custody statements turns upon their voluntariness. *U.S. v. Bear Killer*, 534 F.2d 1253; *U.S. v. Hearst*, 412 F.Supp. 880.

An incriminating statement may be inadmissible and insubmissible because not factually shown to have been freely and voluntarily given, even though requirements of Miranda have been fully met. *Coyote v. U.S.*, 380 F.2d 305, *cert. denied*, 88 S.Ct. 489, 389 U.S. 992, 19 L.Ed.2d 484.

Physical condition of defendant during interrogation is relevant factor in determining voluntariness of inculpatory statements made during interrogation. *U.S. ex rel Ward v. Mancusi*, 414 F. 2d 87.

Confessions are admissible only if they are the product of a defendant's rational intellect and "free will." *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), and *Culombe v. Connecticut*, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961).

During the course of the suppression hearing, the district court erroneously held that the fact that Mr. Van Nortrick had not been able receive his much needed Insulin shot, did not meet the standard for intellect and "free will."

Wherefore, for the reasons stated in the Original Brief on Appeal, the Pro-Se Supplemental Brief on Appeal, and above, Mr. Vincent contends that due to his medical condition, his initial statements were not voluntarily made, and this Honorable Court should invoke its Supervisory Authority of Jurisdiction as the highest Court in the Nation and Grant the Mr. Van Nortrick the necessary relief.

STATEMENT OF THE CASE AND ACTION OF TRIAL COURT

On December 18, 2013, the Caddo Parish District Attorney charged Roy Arlen Van Nortrick with two counts of Molestation of a Juvenile under the age of thirteen (Rec.pp. 6-7). Specifically, the State alleged that Mr. Van Nortrick, being over the age of 17, committed lewd and lascivious acts upon JM, or in the presence JM, whose date of birth was 8/25/1999, where there is an age difference of greater than two years between the two parties, with the intention of arousing and gratifying the sexual desires of either person, by the use of influence by virtue of a position of control and supervision over the juvenile (Rec.p. 7).

Further, the State alleged that, Mr. Van Nortrick being over the age of 17, committed lewd and lascivious acts upon RM, whose date of birth was 8/13/2002, where there is an age difference of greater than two years between the two persons, with the intention of arousing and gratifying the sexual desires of either person, by the use of influence by virtue of a person in control and supervision over the juvenile (Rec.p. 7). On December 18, 2013, after waiving formal arraignment, Mr. Van Nortrick entered pleas of not guilty (Rec.p. 1).

On October 27, 2014, Mr. Van Nortrick filed a Motion to Suppress his statement, claiming that he was unable to understand his rights and intelligently waived them, that detectives made statements and/or suggestions to induce his admissions, and/or that his statements were made under duress and promises (Rec. 2 pp. 90-91). A hearing on the motion occurred on January 21, April 2, and July 13, 2015 (Rec. 2 pp. 232-36). Thereafter, the district court denied the motion (Rec. 2 pp. 335-39).

Jury selection occurred from January 25, until January 26, 2016 (Rec. 3-4). A jury trial followed from January 27 until January 28, 2016 (Rec. 4 pp. 159-64), 416-620). The jury returned a verdict of guilty as charged on both counts (Rec. 4, pp. 166-71, 614-8).

On February 26, 2016, Mr. Van Nortrick filed a Motion for Post-Verdict Judgment of Acquittal, asserting, in part, that the State failed to establish that he used influence by virtue of position of control and supervision over them (Rec.pp. 172-4). On February 26, 2016, Mr. Van Nortrick filed a Motion for New Trial, arguing that the State's rebuttal arguments were improper and prejudiced him (Rec.pp. 175-6).

On June 1, 2016, the trial court sentenced Mr. Van Nortrick to 45 years of imprisonment at hard labor on each count, to be served consecutively, without the benefit of Probation, Parole, or Suspension of Sentence for the first 25 years as to each count (Rec. 5, pp. 621-35).

On June 8, 2016, Mr. Van Nortrick filed a written Motion to Reconsider Sentence (Rec.pp. 183-4). The motion was denied on June 15, 2016 (Rec. 5, p. 185).

On December 3, 2016, Mr. Van Nortrick filed a Motion for an Out-of-Time Appeal, and the Order of Appeal was entered on December 5, 2016 (Rec.pp. 186-7).

On January 29, through counsel appointed with the Louisiana Appellate Project, Mr. Van Nortrick timely filed his Original Brief on Appeal. On August 17, 2017, Mr. Van Nortrick filed his Pro-Se Supplemental Brief on Appeal.

On January 10, 2018, the Louisiana Second Circuit Court of Appeals affirmed Mr. Van Nortrick's convictions and sentences. On January 25, 2018, Mr. Ventura's sought writs to the Louisiana Supreme Court, which was denied on November 14, 2018. This timely Application for Writs of Certiorari now follows, and Mr. Van Nortrick requests this Honorable Court to grant him relief for the following reasons to wit:

STATEMENT OF THE FACTS

In recorded Gingerbread House interviews, which are part of the record herein, JM and RM asserted that Mr. Van Nortrick molested them while he was living with them and their parents in 2009 or 2010 (Rec.p. 544). In a recorded statement given to police, Mr. Van Nortrick admitted that he touched JM's vagina, that JM touched his penis, and that these activities caused him to orgasm (Rec.pp. 541-2). He also admitted that he touched RM's vagina and butt, that he penetrated RM's anus, and that he committed sexual acts with each girl in front of the other girl (Rec.p. 652).

Issues with JM's statement and testimony:

In July 2012, JM was in a severe car accident in which she suffered head trauma that required nine surgeries. She suffered a traumatic brain injury and had several portions of her skull shattered. As a result of these injuries, JM had to undergo physical therapy, speech therapy, and occupational therapy three times a week (Rec.pp. 428-31, 440, 443, 470, 490). As part of this therapy, she had to keep a journal, which allegedly led to the initial report in this matter (Rec.pp. 431-38).

Issues with RM's statement and testimony:

RM had prepared notes before she went for her Gingerbread House interview (Rec.p. 460). She did not bring these notes to the Gingerbread House interview, though some notes were produced at trial (Rec.pp. 460, 504-5). Accordingly, it is impossible to know who, if anyone, was with RM when she prepared these notes and what, if any, impact this person or these persons had on RM's statement and subsequent trial testimony.

Issues with JM's and RM's statements and testimony:

Before the Gingerbread House interviews, RM and JM were aware that Mr. Van Nortrick and their mother were having a sexual affair when Mr. Van Nortrick live with them (Rec.pp. 462, 485, 508). This understandably caused tension.

When Mr. Van Nortrick left Louisiana, he took his young son with him. RM, JM, and their family wanted Mr. Van Nortrick to bring the child back to Louisiana. When Mr. Van Nortrick left Louisiana, RM asked Mr. Van Nortrick to bring his son, her cousin, back to Louisiana (Rec.pp. 511-12).

Issues with Mr. Van Nortrick's statement:

On November 18, 2013, before Mr. Van Nortrick gave his statement to police, he had been arrested in Michigan and flown back to Shreveport through Houston (Rec.pp. 548-49, 561). In fact, Mr. Van Nortrick had been in custody since October 31, 2013, and had received his insulin regularly while in custody in Michigan (Rec.pp. 548-9, 561, 565). Mr. Van Nortrick was driven straight from the airport to the interrogation, with his hands and feet restrained before the interrogation. *Id.*

The Caddo transportation deputies were given Mr. Van Nortrick's insulin (Rec.p. 567). Although the interrogation detective was told that Mr. Van Nortrick was a Diabetic who needed insulin, no inquiry was made by the detective about Mr. Van Nortrick's medication (Rec.pp. 549-51). Mr. Van Nortrick received **no** insulin from November 18, when he was in custody in Michigan, until 4:00pm on

November 20 (Rec.p. 568).

Mr. Van Nortrick had no memory fro the time he was at the Houston airport until November 24 (Rec.p. 566). He did not remember giving his statement (Rec.pp. 566-67).

Mr. Van Nortrick's testimony:

Because of Mr. Van Nortrick's Diabetes, the trial court had to take regular breaks during the trial, so Mr. Van Nortrick could receive his insulin (Rec.pp 442-43, 513-14, 536-37, 555-56).

At trial, Mr. Van Nortrick denied ever touching RM or JM inappropriately (Rec.pp. 568-69). At trial, he was medicated properly.

STANDARD OF REVIEW

In *State v. Ashley*, 33,880, at *3 (La. App. 2nd Cir. 10/04/00), 768 So.2d 817, 819, the Court noted that, "the accused may be entitled to an acquittal ... if a rational trier of fact viewing the evidence in accord with *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the elements of the offense have been proven beyond a reasonable doubt."

In *State v. Beaner*, 42,532, at *14 (La. App. 2nd Cir. 12/5/07), 974 So.2d 667, 675-76, this Court noted that, "[b]efore the State can introduce any inculpatory statement made in police custody, it bears the heavy burden of establishing that ... [the defendant] received a *Miranda* warning and that the statement was freely and voluntarily made, and not the product of fear, duress, intimidation, menaces, threats, inducements or promises." Further, the *Beaner* Court noted that, "[a]t a suppression hearing, the State bears the burden of proving beyond a reasonable doubt the free and voluntary nature of the confession." *Id.* Of course, "[v]oluntariness is determined on a case-by-case basis, under a totality of the circumstances standard." 42,532, at *15, 974 So.2d at 676.

LAW AND ARGUMENT

ISSUE NO. 1

There was insufficient evidence to prove that Mr. Van Nortrick was guilty beyond a reasonable doubt of Molestation of Juvenile Under the Age of 13.

The crime of Molestation of a Juvenile is defined in LSA-R.S. 14:81.2, which provides, in pertinent part:

> A. Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age shall not be a defense.

Thus, the essential elements the prosecution must prove beyond a reasonable doubt for the crime of Molestation of a Juvenile are:

(1) Defendant was over the age of seventeen;
(2) Defendant committed a lewd or lascivious act upon the person or in the presence of a child under age 17;
(3) Defendant was more than two years older than the victim;
(4) Defendant committed the lewd or lascivious act by use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by use of influence by virtue of a position of control or supervision over the juvenile.

State v. Watson, 39,362 (La. App. 2nd Cir. 4/20/05), 900 So.2d 325 (emphasis added). Under LSA-R.S. 14:81.2, the State was required to prove that (1) the lewd or lascivious acts occurred, and critically, (2) that they were accomplished by Mr. Van Nortrick's use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or use of influence over MP by virtue of having a position or control or supervision over her. See: *State v. LeBlanc*, 506 So.2d 1197 (La. 5/18/1987) (describing additional "use of force" element in LSA-R.S. 14:81.1 and distinguishing crime of Molestation from crime of Indecent Behavior With a Juvenile based on this additional element).

When the State fails to prove the essential element of "use of influence by virtue of position of

control or supervision over the juvenile," the evidence is insufficient to support a conviction of Molestation of a Juvenile, but a responsive verdict of Indecent Behavior With a Juvenile may be appropriate. See, e.g., *State v. Teague*, 893 So.2d 198, 205 (explaining that when appellate court finds the evidence only supports a conviction of a lesser included offense ... [it] may modify the verdict and render a judgment of conviction off the lesser included responsive offense); *accord*, *State v. Busby*, 94-1354 (La. App. 3rd Cir. 4/5/95), 653 So.2d 140, *writ denied*, 95-1157 (La. 9/29/95), 660 So.2d 854 (holding, in part, that Indecent Behavior With a Juvenile is a responsive verdict to Molestation of a Juvenile); *LeBlanc*, supra.

Applying the foregoing laws and standard of review, Mr. Van Nortrick's conviction should be reversed because the State did not present any evidence that Mr. Van Nortrick used force, threats, intimidation, or use of influence upon MP by virtue of having a position of supervision or control over her in order to facilitate the commission of a lewd or lascivious act upon her.

The "use of influence" element in LSA-R.S. 14:81.2 is the functional equivalent of a non-physical use of force. This alternate means of accomplishing the act of Molestation – where, instead of force or threats, an accused uses a position of supervision or control over a juvenile in order to influence the juvenile into allowing the lewd or lascivious act to occur – is what separates the crime of Molestation of a Juvenile from other sexual crimes against juveniles that do not involve the manipulation of a victim by a person with authority over that victim. In order to constitute Molestation, more is required than simply *having* a position of supervision or control; the offender must actually *use* the influence gained by that position in order to overbear the will of the victim and accomplish the act complained of.

Before the Legislature enacted the Molestation statute in 1984, LSA-R.S. 14:81 (Indecent Behavior With a Juvenile) proscribed lewd or lascivious conduct with or in the presence of a child under the age

of 17 by a person over the age of 17 and at least two years older than the child, with the intention of arousing or gratifying the sexual desires of either person. LSA-R.S. 14:81(A) provides, in pertinent part:

> "Indecent Behavior With a Juveniles is the commission of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention or arousing or gratifying the sexual desires of either person."

The Molestation statute tracks the language of the Indecent Behavior With a Juvenile statute, but adds an element not included in the definition of Indecent Behavior: commission of the offense either by use of force, threats, or intimidation or by the use of influence by virtue of a position of control or supervision over the juvenile. The Louisiana Supreme Court first clarified the difference between Indecent Behavior and Molestation in *State v. LeBlanc*, 506 So.2d 1197 (La. 1986), in which the Court explained:

> "The definition of the new crime of Molestation of a Juvenile was a verbatim repetition of the definition of the crime of Indecent Behavior With a Juvenile, with the addition of the essential element of the use of force (or use of some other enumerated behavior of the accused). It is therefore evident that the 1984 Legislature intended to create two distinct grades involving lewd acts with juveniles, the distinguishing element being the use of force (or use of some other enumerated behavior)."

LeBlanc, 506 So.2d at 1199. In *LeBlanc*, the Court explained the "use of force" element by analogy to the crime of Simple Robbery in Louisiana, noting that "... [t]he crime of robbery contemplates that some energy or physical effort will be exerted in the "taking" element of the crime and that some additional "use of force" in *overcoming the will or resistance of the victim* is necessary to distinguish the crime of Robbery from the lesser crime of Theft, as defined by LSA-R.S. 14:67, *Id.*, at 1200 (internal citation omitted). The Court found that the lewd and lascivious acts were not committed by the use of force (or other enumerated means of overcoming the victim's will or resistance), and modified Defendant's conviction to the lesser included offense of Indecent Behavior

With a Juvenile. *Id.*, at 1201.

As ***LeBlanc*** and several subsequent decisions have made clear, "the [Molestation statute] describes several ways in which an adult may coerce or influence a child to participate in or witness lewd conduct." ***State v. Shelton***, 545 So.2d 1285 (La. App. 2nd Cir. 1989)(emphasis added). As explained in greater detail below, in the absence of proof that the defendant influenced a child a child to participate in lewd conduct using one of the enumerated means in LSA-R.S. 14:81.2, a conviction for Molestation is subject to reversal on Appeal.

To illustrate, the simple fact that a person is a father (or teacher, or babysitter, or employee) of a juvenile does not transform every lewd or lascivious act into a crime of Molestation. Instead, the person must use the influence gained by virtue of such a position in a manner that acts as an equally culpable substitute for the other enumerated means by which Molestation is accomplished: "force, violence, duress, menace, psychological intimidation, [or] threat of great bodily harm." LSA-R.S. 14:81.2(A).

These "aggravating factors," along with the use of (and influence gained by) a position of control or supervision, are what separate "Molestation of a Juvenile" from other offenses that punish and deter lewd and lascivious acts committed upon juveniles by adults. See: ***State v. Marrero***, 2011-1285, pp. 6-7 (La. App. 1st Cir. 2/10/12), 92 So.3d 21. To this end, it is helpful to consider cases where reviewing courts in Louisiana have determined what does, or does not, constitute sufficiency evidence in the particular context of this "use of influence" element.

In ***State v. Ragas***, 607 So.2d 967 (La. App. 4th Cir. 1992), a 13-year-old victim was sexually abused by her step-uncle on multiple occasions. The Court of Appeals found, however, that the girl was not subject to her uncle's supervision or control, despite her affirmative response to the prosecutor's question about whether the uncle "looked after her" and her sister when they were at his home. *Id.*, at

973. The Court found that, although the uncle had committed lewd and lascivious acts upon her, the State failed to prove the "use of influence" element because the victim "was under no constraints to remain with her uncle nor be subject to his supervision." *Ibid.* In light of this deficiency in the State's evidence, the court modified the defendant's conviction and entered a judgment of conviction for the responsive, lesser included offense of Indecent Behavior With a Juvenile. *Id.*

In *State v. Strother*, 43,363 (La. App. 2nd Cir. 8/20/08), 990 So.2d 130, the appellate court concluded that the defendant did use influence by virtue of a position of supervision of control over his minor victim. In that case, the Defendant hosted and supervised a party attended by minors, provided alcohol to the minor victim and encouraged her to consume it, and then *enforced a rule* that the victim had to remain at his home for the night because she had consumed alcohol and did not have a designated driver. *Id.*, at 10-11. The girl awoke in Defendant's bed while he was having sex with her. *Id.*, at 9. The Court of Appeals aptly described the defendant's use of influence as having "facilitated" his commission of lewd and lascivious acts upon the young girl. *Id.*, at 11. *Strother* provides a paradigmatic example of the conduct proscribed by the Molestation statute, and the distinction between the crimes of Molestation and Indecent Behavior With a Juvenile.

In *State v. Rideaux*, 05-446 (La. App. 3rd Cir. 11/2/05), 916 So.2d 488, 490, this Court thoroughly discussed the "use of force or influence" element and referenced some of the above-cited jurisprudential examples of facts that did, or did not, satisfy the "use of influence element" in LSA-R.S. 14:81.2. Although *Rideaux* did not establish a particular analytical framework for determining whether the "use of influence" element has been proven, the Court did emphasized that the State must adduce evidence proving that a victim was forced to endure a lewd and lascivious act by the Defendant's use of influence, and that this influence must be a product of the Defendant's control or supervision over the victim. See: *generally, id.*

Turning to the facts of this case, there is no evidence to support a finding that Mr. Van Nortrick used force, violence, duress, psychological intimidation, or a threat of great bodily harm in committing any offenses against RM or JM. This leaves only the question of whether or not Mr. Van Nortrick used "influence" he gained over RM or JM as a result of having control or supervision of them in order to facilitate the commission of a lewd or lascivious act.

There is no testimony by RM or JM or any other witness that supports the conclusion that this indispensable "use of force or influence" element of Molestation was proven beyond a reasonable doubt. RM, nor JM testified that Mr. Van Nortrick coerced them into committing these acts. They did not testify that they were afraid of the consequences of prohibiting Mr. Van Nortrick from committing these acts, nor did they testify that Mr. Van Nortrick used his authority over them to accomplish them.

According to RM and JM's testimony, Mr. Van Nortrick touched her in a lewd and lascivious manner, but he did not force her to engage in these acts physically or exert influence over her in such a way that her will to resist was overcome. Even if this Court found that Mr. Van Nortrick held a position of supervision or control over RM and JM, that fact alone would not even be enough to satisfy the force or influence element; Mr. Van Nortrick must have ***used*** his influence over them to force them into participating in these acts against their will. On this Record, the State failed to prove any such conduct on the part of Mr. Van Nortrick.

RM and JM never testified that they had protested or resisted, or that Mr. Van Nortrick said anything to them in order to overcome her will. They went on to describe a relatively continuous pattern of sexual activity between them, but never testified to any facts establishing that Mr. Van Nortrick used his influence over them in order to overbear their will and accomplish them.

Certainly, the State could argue that his role as her mother's boyfriend, alone, should demonstrate that his influence over her enabled him to accomplish these acts. But Molestation requires more: the

affirmative use of influence in order to overbear the will of the victim.

But, Louisiana's Molestation statute requires more: the functional equivalent of non-physical use of force. At most, the acts described by MP constituted the commission of lewd or lascivious acts upon a juvenile, United States were not accomplished "by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the *use of influence* by virtue of a position of control or supervision over the juvenile."

As the Supreme Court's decision in *LeBlanc* and subsequent appellate decisions have unequivocally demonstrated, the offender must effectively *force* a child to participate in the lewd acts by the exertion of influence over the child in order to be convicted of Molestation of a Juvenile. *Shelton*, 443 U.S. 307; *Matthews*, 464 So.2d 298. Alternatively, Mr. Van Nortrick requests that this court modify his conviction for Molestation of a Juvenile and enter a conviction for the responsive offense of Indecent Behavior With a Juvenile. *Teague*, supra; *LeBlanc*, supra; *Busby*, supra; *Ragas*, supra.

Wherefore, for the reasons stated in the Original Brief on Appeal, the Pro-Se Supplemental Brief on Appeal, and above, Mr. Vincent contends that the State has not met their burden of proof of every essential element beyond a reasonable doubt, and this Honorable Court should invoke its Supervisory Authority of Jurisdiction over the lower Courts and grant him relief.

There is no corroborating evidence in this case. The testimony of the accusing witnesses in this case was clearly contradictory and impeached, as shown be the record, notwithstanding the fact that the State suppressed further *Brady* impeachment evidence from the defense at trial ... See: *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Further, incredible, contradictory, or impeached testimony fails to establish a corpus delicti in the first instance, and also goes to the *Winship* standard at trial. See: *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The State produced no physical evidence which would establish that Mr. Van Nortrick had committed any type of sexual offense with either of these alleged victims at anytime, at any place. Indeed, even the question of venue of a crimes rests upon the establishment that an actual crime happened in the first place. The corpus delicti in the instant case is not satisfied by testimony of the prosecutrix without any corroborating circumstances. There is not even a doctor's report in evidence that establishes the possibility of sexual activity of kind.

The fact that impeached testimony, standing alone, cannot uphold a conviction under the law is predicated upon the fact that impeached testimony, standing alone, fails to establish a corpus delicti in the first instance ...

While the credibility of a witness is a matter for the finder of fact, once impeached, that witness's testimony becomes suspect under the law and must be corroborated in order to be convincing evidence of guilt or innocence. This is especially true where the credibility of the witness is paramount to the outcome of the case.

Impeached testimony, as a general rule, cannot stand alone to convict. ***State v. Chism***, 591 So.2d 383, 386 (La. App. 2nd Cir. 1991), *citing*, ***State v. Laprime***, 437 So.2d 1124 (La. 1983); ***State v. Lott***, 535 So.2d 963 (La. App. 2nd Cir. 1988).

In ***State v. Kennedy***, 803 So.2d 916 (La. 2001), in Justice Traylor's dissenting opinion, it is stated that the Louisiana Supreme Court has found that, "The victim's testimony, standing alone, can prove that the act occurred, ..." but is qualified in FN9, "However, we have also ruled post-trial that impeached testimony of a witness, standing alone, cannot prove the offense."

Issues with JM's statement and testimony:

Between the alleged molestation in 2009 or 2010 and the initial reports of the alleged molestation, JM was in a severe car accident in which she suffered head trauma that required nine surgeries. As a

result of her injuries, JM had visions and heard noises (Rec.pp. 489-90). JM also had issues with her long-term and short-term memory after the accident (Rec.p. 543).

During the course of the trial in this matter, evidence was presented that JM (the oldest of the alleged victims), had suffered extensive, traumatic brain injury that she had sustained in an automobile accident. The traumatic brain injury caused JM problems with her long and short term memory, and caused her to hear voices and have visions. JM had undergone nine (9) surgeries in an attempt to correct the physical injuries and the damages to her brain (Rec.pp. 428-31, 444-5, 470, 490).

JM had spent approximately a month in the hospital with a low expectation to live after the automobile accident (Rec.p. 428).

Although JM's aunt (Shelly Clark) had testified to the fact that she had read JM's journal (pages admitted for evidence), when shown the pages that Ms. Clark allegedly took from the journal, JM testified that she was not sure if the pages presented by the State were actually written by her, and failed to identify these pages as coming from her journal (Rec.p. 473).

Although Ms. Clark testified that JM was not aware of her taking any of the pages from the journal (Rec.p. 445), the State failed to obtain a positive identification of such from the person who had allegedly written them.

Ms. Clark also testified to JM's struggles after the automobile accident, informing the jury that JM had nine surgeries and had problems with her long-term and short-term memory, and that JM was hearing voices and having visions (Rec.p. 444-5). Ms. Clark also testified that JM had been hospitalized for approximately a month after the accident, and that there were times the family was notified that JM was not going to survive her injuries (Rec.p. 428).

Alex Person had testified as an "Expert" witness for the State after conducting a forensic interview with both of the alleged victims in this case. Ms. Person testified that she had conducted over 700

forensic interviews during her tenure at the Gingerbread House (Rec.p. 449).

The forensic interview by Ms. Person had been plagued with problems. First, the recording machine had malfunctioned during the course of the interviews (Rec.pp. 221, 454). Next, JM had informed Ms. Person that she had left her "notes" in her aunt's purse that she had prepared for the interview (Rec.p. 460).

Amazingly, although Detective Jared Marshall testified that he had "educated" Ms. Person of MJ's brain injuries (Rec.p. 546), Ms. Person testified that she was not informed of such. Ms. Person also testified that **had** she been informed of such, she would have conducted the interview with JM differently (Rec.p. 460). Ms. Person also stated that she had not been informed, nor had she been aware, of any kind of journal that JM allegedly kept (Rec.p. 462).

During the direct examination of JM, her answers were forthright as if they had been rehearsed. However, during cross-examination, JM had problems answering simple questions from the defense (Rec.p. 484), and could not understand several of the simple questions presented by the defense (Rec.p. 491).

JM testified that during the time of some of these allegations, James (Mr. Van Nortrick's son) was outside by himself (Rec.p. 486). At the time of these allegations, James was about 2 to 3 years of age. It cannot be believed that Mr. Van Nortrick had left James outside by himself at that age. Mr. Van Nortrick had obtained custody of his son by the Court from James' mother after a long custody battle. Therefore, Mr. Van Nortrick would most definitely avoid any situation where he would risk losing custody.

Mr. Van Nortrick was "overly" protective of his son. In fact, Detective Marshall testified that during his interview with Mr. Van Nortrick, Mr. Van Nortrick had asked what he could do to get back to his son (which seemed to be one of Mr. Van Nortrick's main concerns during the interview)(Rec.p.

554).

Issues with RM's statement and testimony:

RM had prepared notes before she went to the Gingerbread House interview (Rec.p. 460). She did bring these notes to the Gingerbread House interview, though some notes were produced at trial (Rec.pp. 460, 504-05). Accordingly, it is impossible to know who, if anyone, was with RM when she prepared these notes and what, if any, impact this person or these persons had on RM's statement and subsequent trial testimony.

RM testified that Mr. Van Nortrick and James (Mr. Van Nortrick's son) stayed with them sometimes (Rec.p. 495). RM also admitted that when Mr. Van Nortrick was moving out of state, she "probably" asked him to bring James back (Rec.p. 512).

RM further testified that she had written notes several days before the interview had been conducted at the Gingerbread House,[1] and that she had left her notes in her aunt's purse (Rec.pp. 504, 511).

It appears as though RM's statements and testimony were solely for the purpose of "supporting" JM's stories through this, as Ms. Clark testified that she had determined that abuse had been committed upon RM after she allegedly read JM's journal (Rec.p. 436).

Although children have a wide variety of names for their private, it's quite strange that RM testified that she referred to her privates as her "toys" (Rec.p. 495).

It also appears that RM's allegations were almost identically "mirrors" the allegations placed against Mr. Van Nortrick concerning JM. The continuous discussions between JM and Ms. Clark discussing this matter, with RM present would show that RM must have based her allegations on the discussions that she had witnessed.

1 It appears as though these "notes" had been prepared in order for RM to "remember" the allegations against Mr. Van Nortrick.

Cumulative review of the evidence:

Mr. Van Nortrick avers that jurists of reason could not have found that the State had met its heavy burden of proof beyond a reasonable doubt in obtaining these convictions.

Mr. Van Nortrick contends that its quite amazing that both of the alleged victims had "notes" in their aunt's purse that they had prepared for the interview at the Gingerbread House. According to standard procedures of forensic interviews, the alleged victim(s) are not supposed to be informed of the purpose of the interview, nor or they informed of the interview with enough time to prepare "notes" for such. In fact, RM testified that she had written notes several days before the interview at the Gingerbread House (Rec.p. 511).

Although the State argues that both of these alleged victims were very descriptive with the description of their allegations, Detective Marshall had admitted during his testimony that both of the alleged victims in this case could have seen Mr. Van Nortrick having sex with their mother (Rec.p. 552). And, Ms. Person testified that both of these alleged victims had disclosed that their mother was having affairs (Rec.p. 462).

Both of these alleged victims had been subjected to a situation where, "Mom had her own room. Dad slept on the couch, and Roy (Mr. Van Nortrick) slept with Mom" (Rec.pp. 485, 508).

Mr. Van Nortrick contends that since **everyone** was aware of his sexual trysts with the alleged victims' mother, surely **someone** would have noticed if anything strange was happening between Mr. Van Nortrick and these young children.

After a review of the Record in its entirety, it must be noted that JM did not come forward with these allegations against Mr. Van Nortrick until Ms. Clark had concluded that she had been sexually abused by two different individuals while, unknown to JM, read JM's journal[2] and contacted the police.

2 As stated above, the State failed to prove that these pages, which were introduced as evidence to the jury, were actually written by JM. After reviewing the pages, JM was unable to verify that these pages had been from her journal.

It also appears that nobody considered the fact that both of these alleged victims had been notified that they were to be interviewed by Ms. Person, with enough time to prepare notes. Who informed them of the upcoming interviews? Who assisted them in preparing the notes? Why were the notes in their aunt's purse? The evidence, in a totality, shows that this is a clear cut case of "coaching" in these alleged victims.

It appears as though these allegations had been lodged against Mr. Van Nortrick because he was moving away from their family and taking his young son. The evidence shows that these family members, in some fashion, asked Mr. Van Nortrick to either stay in Louisiana, or in the alternative, leave James in Louisiana (Rec.pp. 446, 512).

WHEREFORE, for the above stated reasons, and the reasons stated in Mr. Van Nortrick's Original Brief on Appeal, Mr. Van Nortrick humbly requests this Honorable Court, after a careful review of the Record, find that the State failed to meet its burden of proof beyond a reasonable doubt.

Issues with JM's and RM's statements and testimony:

Before the Gingerbread House interviews, RM and JM were aware that Mr. Van Nortrick and their mother were having a sexual affair when Mr. Van Nortrick lived with them (Rec.pp. 462, 485, 508). This understandably caused tension.

When Mr. Van Nortrick left Louisiana, he took his young son with him. RM, JM, and their family wanted Mr. Van Nortrick to bring the child back to Louisiana. When Mr. Van Nortrick left Louisiana, RM asked Mr. Van Nortrick to bring his son, her nephew, back to Louisiana (Rec.pp. 511-12).

Issues with Mr. Van Nortrick's statement:

The Caddo transportation deputies were given Mr. Van Nortrick's insulin (Rec.p. 567). Although the interrogating detective was told that Mr. Van Nortrick was a Diabetic who needed insulin, no inquiry was made by the detective about Mr. Van Nortrick's insulin (Rec.pp. 549-51). Mr. Van Nortrick

received no insulin from November 18, when he was in custody in Michigan, until 4:00am on November 20 (Rec.p. 568).

Mr. Van Nortrick had no memory from the time he was at the Houston airport until November 24 (Rec.p. 566). He did not remember giving his statement (Rec.pp. 566-67).

Mr. Van Nortrick's testimony:

Because of Mr. Van Nortrick's Diabetes, the Court had to take regular breaks during the trial, so Mr. Van Nortrick could receive his insulin (Rec.pp. 441-43, 513-14, 536-37, 555-56).

At trial, Mr. Van Nortrick denied ever touching RM or JM inappropriately (Rec.pp. 568-69, 581). At trial, he was medicated properly.

The issues with RM's and JM's statements and testimony show that their testimony cannot be believed, either because of JM's physical injuries, because of RM's and JM's motivation to lie against Mr. Van Nortrick, because of his sexual affair with their mother, and/or because he took their young cousin from them. The issues with Mr. Van Nortrick's mental and physical state at the time of his confession show that it cannot be trusted and that the conduct of the Caddo deputies endangered Mr. Van Nortrick's health and undermined his ability to give a knowing and intelligent waiver of his *Miranda* rights.

Thus, at trial, there was, at least, one reasonable theory that should have precluded the jury from finding Mr. Van Nortrick guilty. Accordingly, these facts and the remaining evidence introduced at the trial of this case, when viewed under the *Jackson* standard, were insufficient to prove Mr. Van Nortrick's guilt beyond a reasonable doubt. *Compare*: *State v. Wiltchre*, 41,981, at *4 (La. App. 2nd Cir. 5/9/07), 956 So.2d 769, 773 ("In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness' testimony, if believed by the trier of fact, is sufficient for a requisite factual conclusion").

Given the evidence at trial, the State failed to meet its burden of proof. Accordingly, Mr. Van Nortrick's convictions must be reversed, judgments of acquittal should be entered, and his sentences should be vacated.

ISSUE NO. 2

The trial court erred when it allowed the introduction of Mr. Van Nortrick's involuntary statements that were the product of duress, inducements, and/or promises.

Although state court's factual findings are normally entitled to great deference, ultimate issue of voluntariness of defendant's confession is legal question requiring independent federal determination. Fifth and Fourteenth Amendments to the United States Constitution. Criminal law 519(3), 522(1):

Murder defendant's confession to jailhouse informant was coerced by informant, who asked defendant to confess in order to receive protection against fellow inmates. Fifth and Fourteenth Amendments to the United States Constitution. Criminal law 522(1, 3):

In determining voluntariness of confession, finding of coercion need not depend upon actual violence by government agent; credible threat is sufficient. Fifth and Fourteenth Amendments to the United States Constitution.

"The State's burden of proving that a confession was freely and voluntarily given, as required by La.C.Cr.P. Art. 703(C), LSA-R.S.15:451, and Louisiana Constitution of 1974, Art.1, § 16, is that of proof beyond a reasonable doubt." *State v. Glover*, 343 So.2d 118 (La. 1976); *State v. Trudell*, 350 So.2d 658 (La. 1977). *State v. Jones*, 376 So.2d 125, 128 (La. 1979). CL531(3)

As the United States Fifth Circuit noted, "In considering the voluntariness of a confession, this court must take into account a defendant's mental limitations; to determine whether through susceptibility to surrounding pressures or inability to comprehend the circumstances, the confession was not a product of his own free will." *Jurek v. Estelle*, 623 F. 2d 929, 937 (5th Cir. 1980)(en banc), *cert. denied*, ___U.S.___, 101 S.Ct. 1709, 68 L.Ed.2d 203 (1981). Above cited from *Henry v. Dees*,

658 F. 2d 406 (1981), 409. HN1/CL525

A fundamental concern is a mentally disunite accused's vulnerability to suggestion. See *Sims v. Georgia*, 389 U.S. 404, 87 S.Ct. 639, 17 L.Ed. 2d 593 (1967); *Culombe v. Connecticut*, 367 U.S. 558, 81 S.Ct. 1860, 6 L.Ed. 2d 1037 (1961).

The Supreme Court has recognized educational & mental shortcomings as relevant factors in the voluntariness analysis. See, e.g., *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed. 2d 854 (1973); *Clewis v. Texas*, 386 U.S. 707, 87 S.Ct. 1338, 18 L.Ed.2d 423 (1967); *Davis v. North Carolina*, 384 U.S. 737, 86 S.Ct. 1761, 16 L.Ed.2d 895 (1966); *Fikes v. Alabama*, 352 U.S. 191, 77 S.Ct. 281, 1 L.Ed.2d 246 (1957).

Test of voluntariness of incriminating statement is whether under all attendant circumstances, statement is product of essentially free and unconstrained choice by its maker or whether accused's will has been overborne and his capacity for self-determination critically impaired, and line of distinction is lost and compulsion, of whatever nature or however infused, propels or helps to propel statement. *U.S. ex rel. Mattox v. Scott*, 372 F.Supp. 304, *reversed*, 507 F.2d 919, *on remand*, 389 F.Supp. 1045, *reversed and remanded*, *Mattox v. Finkbeiner*, 519 F. 2d 1404, *stay denied*, 96 S.Ct. 184, 423 U.S. 887, 46 L.Ed.2d 120.

Determination of admissibility of in-custody statements turns upon their voluntariness. *U.S. v. Bear Killer*, 534 F.2d 1253; *U.S. v. Hearst*, 412 F.Supp. 880.

An incriminating statement may be inadmissible and insubmissible because not factually shown to have been freely and voluntarily given, even though requirements of Miranda have been fully met. *Coyote v. U.S.*, 380 F.2d 305, *cert. denied*, 88 S.Ct. 489, 389 U.S. 992, 19 L.Ed.2d 484.

Physical condition of defendant during interrogation is relevant factor in determining voluntariness of inculpatory statements made during interrogation. *U.S. ex rel Ward v. Mancusi*, 414 F. 2d 87.

Confessions are admissible only if they are the product of a defendant's rational intellect and "free will." *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), and *Culombe v. Connecticut*, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961).

During the course of the suppression hearing, the district court erroneously held that the fact that Mr. Van Nortrick had not been able receive his much needed Insulin shot, did not meet the standard for intellect and "free will."

Wherefore, for the reasons stated in the Original Brief on Appeal, the Pro-Se Supplemental Brief on Appeal, and above, Mr. Vincent contends that due to his medical condition, his initial statements were not voluntarily made, and this Honorable Court should invoke its Supervisory Authority of Jurisdiction over the lower Courts and grant him relief.

The Caddo transportation deputies were given Mr. Van Nortrick's insulin (Rec.p. 567). Although the interrogating detective was told that Mr. Van Nortrick was a diabetic who needed insulin, no inquiry was made by the detective about Mr. Van Nortrick's insulin (Rec.pp. 549-51). Mr. Van Nortrick received no insulin from November 18 when he was in custody in Michigan until 4:00am on November 20 (Rec.p. 568).

Mr. Van Nortrick had no memory from the time he was at the Houston airport until November 24 (Rec.p. 566). He did remember giving his statement (Rec.pp. 566-67).

Because of Mr. Van Nortrick Diabetes, the trial court had to take regular breaks during the trial (Rec.pp. 441-43, 513-14, 536-37, 555-56).

At trial, Mr. Van Nortrick denied ever touching RM or JM inappropriately (Rec.pp. 568-69, 581). At trial, he was medicated properly.

The Caddo deputies' failure to give Mr. Van Nortrick his insulin, when they had the insulin and knew he needed it, not only endangered Mr. Van Nortrick's health, but also undermined his ability to

give a knowing and intelligent waiver of his *Miranda* rights. *Id.* Accordingly, the State failed to meet its burden of proving beyond a reasonable doubt the free and voluntary nature of Mr. Van Nortrick's confession. Therefore, the trial court erred when it allowed the introduction of Mr. Van Nortrick's involuntary statements that were the product of duress, inducements, and/or promises. Thus, Mr. Van Nortrick's convictions must be reversed, his sentences should be vacated, and this matter should be remanded for further proceedings in light of this Court's decision.

Although state court's factual findings are normally entitled to great deference, ultimate issue of voluntariness of defendant's confession is legal question requiring independent federal determination. Fifth and Fourteenth Amendments to the United States Constitution. 110k519(3), and 522(1).

It has been held that a guilty plea based on a confession [that was illegally obtained] . . . was not voluntary. *United States v. Martinez*, 413 F.2d 61, 64 (7th Cir. 1969)(citing *United States ex rel. Collins v. Maroney*, 287 F. Supp. 420 (E.D. Pa. 1968)).

Under Due Process test, determination as to voluntariness of a defendant's confession depends upon a weighing of circumstances of pressure against the power of resistance of the person confessing. Fourteenth Amendment to the United States Constitution. Furthermore, the Due Process for evaluating voluntariness of defendant's confession requires inquiry into whether defendant's will was overborne by the circumstances surrounding the confession. *Dickerson v. U.S.*, 530 U.S. 428, 120 S.Ct. 2326 (U.S. Va. 2000). Mr. Van Nortrick has shown that this statement was not freely and intelligently given as he had been unable to have his Insulin administered to him.

Generally, voluntariness of a confession is determined by the totality of the circumstances. The following is often considered: intoxication from drugs or alcohol, *Beecher v. Alabama*, 389 U.S. 35, 38, 88 S.Ct. 189, 19 L.Ed.2d 35 (1967); *State v. Narcisse*, 426 So.2d 118, 125-26 (La. 1983) (confession involuntary if it "negates the defendant's comprehension and renders him 'unconscious of

the consequences of what he is saying"); *State v. Borque*, 622 So.2d 198 (La. 1993)(instructing lower courts to look at the defendant's general physical condition, including intoxication); *Gilpin v. United States*, 415 F.2d 638 (5th Cir. 1969)(spontaneous statement in cellblock by drunken defendant involuntary); *Gladden v. Unsworth*, 396 F.2d 373 (9th Cir. 1968) (same); *Townsend v. Sain*, 372 U.S. 293, 307-09 (1963); but see, *State v. Edwards*, 434 So.2d 395 (La. 1983)(blood alcohol level of .10 does not render a confession per se involuntary).

The law in Louisiana is clear that "[b]efore a confession or inculpatory statement may be introduced into evidence, the State must prove affirmatively, and beyond a reasonable doubt, that the statement was freely and voluntarily made." *State v. McGraw*, 366 So.2d 1278, 1281 (La. 1979) (citations omitted); *State v. Bordelon*, 597 So.2d 147, 149 (La. App. 3 Cir. 1992).

During the course of the Motion to Suppress Mr. Van Nortrick's Statement, Detective Jared Marshall testified that Mr. Van Nortrick had said something about, "Eat something or he needed some shots for - - I mean again, I don't understand the medical" (Rec.p. 280). Det. Marshall even admitted that Mr. Van Nortrick received his **last** Insulin shot prior to leaving Michigan (Rec.p. 284), supporting Mr. Van Nortrick's position that his statement was given under duress and coercion as Mr. Van Nortrick was not allowed to have Insulin administered to him until **AFTER** the interview had been completed.

During the course of these proceedings, Mr. Van Nortrick was not even aware of the contents of the interrogation until the tape was played during the trial. Mr. Van Nortrick was adamant about the fact that he could not remember **anything** after arriving in Houston (Rec.p. 566). Mr. Van Nortrick could not even remember the trip from Houston to Louisiana, or that he had been interviewed by the officers.

Whether it was "unintentional" or not, the officers should have been aware of the fact that Mr. Van Nortrick would not be in the right "state of mind" due to the time interval since his **last** Insulin shot before leaving Michigan. These officers were informed in Michigan that Mr. Van Nortrick was "Insulin Dependent"

and that he needed his doses several times a day in order to protect his health.

Sgt. Mike Middleton testified that Mr. Van Nortrick was "submissive" during the interrogation (Rec.p. 239),[3] and that they had picked Mr. Van Nortrick up on the 19th, and, "might have said something about being Diabetic" (Rec.p. 240).

During the hearing, Mr. Van Nortrick testified that his last Insulin shot had been administered to him at 8:00pm the night before the interrogation (Rec.p. 301). According to the Record, approximately 24 hours had elapsed between the time that Mr. Van Nortrick had received is last Insulin to the start of the interrogation (Rec.pp. 284, 262); and that the interview was over three (3) hours (Rec.p. 239), placing Mr. Van Nortrick in a dangerous situation of failing to receive his Insulin for approximately twenty-seven (27) hours, without considering that Mr. Van Nortrick had been subjected to a pre-interview for approximately thirty (30) minutes (Rec.p. 266).

It appears as though the Court failed to give any credibility to the testimony that Mr. Van Nortrick was Insulin Dependent and needed his shot during the interview, and that Mr. Van Nortrick's statement could not be considered voluntarily made, and denied the Motion to Suppress.

The most interesting concern of the improperly obtained statement is the fact that although the Court denied Mr. Van Nortrick's Motion to Suppress Statement because Mr. Van Nortrick had failed to meet his burden, the Court was adamant about ensuring that Mr. Van Nortrick received his Insulin during the trial (Rec.pp. 441-43, 513-4, 555-6), stating that they wanted to "protect Mr. Van Nortrick's health during the trial" (Rec.pp. 377, 382).

It is quite strange that the Court would fail to consider Mr. Van Nortrick's health conditions during the motion hearing, but be overly cautious of such during the trial proceedings.

This prejudicial statement should have been suppressed from the jury. Although the State may

3 This "submissiveness" must be accounted to the fact that Mr. Van Nortrick had not been receiving his regularly scheduled Insulin shots.

contend that there was sufficient evidence to convict Mr. Van Nortrick of the charges, the fact still remains that this statement allows the prosecutors to inform the jury, "Mr. Van Nortrick **admitted** that he did this." Nothing better than a confession, whether improperly obtained or not, to help convince a jury.

Although the State may argue that Mr. Van Nortrick's statement was not a product of inducement, one must remember that Det. Marshall even testified that it appeared that Mr. Van Nortrick's only concern was to return to his son (Rec.p. 544), along with the admission that Det. Marshall informed Mr. Van Nortrick that he, "didn't want to be the one to sit down and tell JM and RM they were liars" (Rec.p. 287), and Det. Marshall admitted that he had led Mr. Van Nortrick to believe that he had interviewed the alleged victims (Rec.p. 552).

In Mr. Van Nortrick's debilitated stage at the time of the interview, Mr. Van Nortrick could not have intelligently waived his rights; nor could his statement be deemed voluntarily made.

Mr. Van Nortrick is to be incarcerated for 90 years, without the benefit of Probation, Parole, or Suspension of Sentence. In sentencing Mr. Van Nortrick to what is, in effect, a sentence of life sentence in violation of Louisiana Constitution of 1974, Art. I, § 20, which prohibits the subjection of any person to cruel, excessive or unusual punishment. It states emphatically that "no law shall subject any person to euthanasia, to torture, or to cruel or unusual punishment. *Id.*

The Louisiana Supreme Court has decreed that although a sentence is within statutory limits, it can be reviewed for constitutional excessiveness. ***State v. Sepulvado***, 367 So.2d 762 (La. 1979). In giving guidance to a review for excessiveness, the Louisiana Supreme Court has explained that when a sentence imposes punishment that is grossly disproportionate to the severity of the offense or constitutes nothing more than needless infliction of pain and suffering, it is unconstitutionally excessive. ***State v. Bonanno***, 384 So.2d 355 (La. 1980); ***State v. Smith***, 839 So.2d 1 (La. 2003).

By imposing what is effectively a sentence of life imprisonment, the trial court made no measurable contribution to acceptable goals of punishment and did no more than purposefully impose pain and suffering. Other than death, a life sentence is the most severe sentence that a person can receive.

Based on the facts of this case, including the fact that Mr. Van Nortrick is a first offender, it is submitted that the sentences herein were excessive. They violated Mr. Van Nortrick's constitutional rights because they serve no purpose. Therefore, Mr. Van Nortrick's should be reversed and set aside with the case remanded for re-sentencing.

SUMMARY

Between the alleged molestation in 2009 or 2010 and the initial reports of the alleged molestation, JM was in a severe car accident in which she suffered head trauma that required nine surgeries (Rec.pp. 489-90). JM also had issues with her long-term and short-term memory after the accident (Rec.p. 543).

RM had prepared notes before she went to the Gingerbread House interview (Rec.p. 460). She did not bring those notes to the Gingerbread House interview, though some notes were produced at trial (Rec.pp. 460, 504-05). Accordingly, it is impossible to know who, if anyone, was with RM when she prepared those notes and what, if any, impact this person or these persons had on RM's statement and subsequent trial testimony.

Before the Gingerbread House interviews, RM and JM were aware that Mr. Van Nortrick and their mother were having a sexual affair when Mr. Van Nortrick lived with them (Rec.pp. 462, 485, 508). This understandably caused tension.

When Mr. Van Nortrick left Louisiana, he took his young son with him. RM, JM, and their family wanted Mr. Van Nortrick to bring the child back to Louisiana. When Mr. Van Nortrick left Louisiana, RM asked Mr. Van Nortrick to bring his son, her cousin, back to Louisiana (Rec.pp. 511-12).

The Caddo transportation deputies were given Mr. Van Nortrick's insulin (Rec.p. 567). Although the

interrogating detective was told that Mr. Van Nortrick was a Diabetic who needed insulin, no inquiry was made by the detective about Mr. Van Nortrick's insulin (Rec.pp. 549-51). Mr. Van Nortrick received **no** insulin from November 18 when he was in custody in Michigan until 4:00am on November 20 (Rec.p. 568).

Because of Mr. Van Nortrick's Diabetes, the trial court had to take numerous breaks during the trial, so Mr. Van Nortrick could receive his insulin (Rec.pp. 441-3, 513-4, 536-7, 555-6).

At trial, Mr. Van Nortrick denied ever touching RM or JM inappropriately (Rec.pp. 568-69, 581). At trial, he was medicated properly.

This issues with RM's and JM's statements and testimony show that their testimony cannot be believed, either because JM's physical injuries, because of RM's and JM's motivation to lie against Mr. Van Nortrick, because of his sexual affair with their mother, and/or because he took their young cousin from them. The issues with Mr. Van Nortrick's mental and physical state at the time of his confession show that it cannot be trusted and that the conduct of the Caddo deputies endangered Mr. Van Nortrick's health and undermined his ability to give a knowing and intelligent waiver of his *Miranda* rights.

Thus, at trial, there was, at least, one reasonable theory that should have precluded the jury from finding Mr. Van Nortrick guilty. Accordingly, these facts and the remaining evidence introduced at the trial of this case, when viewed under the *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), standard, were insufficient to prove him guilty beyond a reasonable doubt.

Given the evidence at trial, the State failed to meet its burden of proof. Accordingly, Mr. Van Nortrick's convictions must be reversed, judgments of acquittal should be entered, and his sentences should be entered, and his sentences should be vacated.

Jurists of reason could not have found the evidence presented during these proceedings sufficient to

convict Mr. Van Nortrick of Molestation of a Juvenile Under the Age of Thirteen. The evidence, even presented in the most favorable light of the prosecution, failed to prove Mr. Van Nortrick guilty beyond a reasonable doubt.

The Record supports Mr. Van Nortrick's theory that these alleged victims must have been "coached" because both of the alleged victims had been previously informed of their upcoming interview with Ms. Person of the Gingerbread House; both alleged victims had "prepared" notes prior to the interview (which were left in their aunt's purse). Both alleged victims had informed Ms. Person that their mother was involved in an affair with Mr. Van Nortrick. And, both victims were upset about Mr. Van Nortrick leaving the state with their younger cousin. The alleged victims' guardian, Ms. Shelly Clark, had also been troubled by the fact that Mr. Van Nortrick was leaving the state with her nephew.

In Mr. Van Nortrick's debilitated stage at the time of the interview, Mr. Van Nortrick could not have intelligently waived his rights; nor could his statement be deemed voluntarily made. Testimony proved that Mr. Van Nortrick had not been administered any Insulin for approximately 24 hours prior to the commencement of the interview, and the interview lasted for approximately 3 hours. This would show that Mr. Van Nortrick had not been administered Insulin for approximately 27 hours.

As Mr. Van Nortrick receives Insulin four (4) times a day, one would not have to wonder what his condition would be after such a long stretch without receiving such.

Alternatively, the State failed to meet its burden of proving beyond a reasonable doubt the free and voluntary nature of Mr. Van Nortrick's confession. The Caddo deputies' failure to give Mr. Van Nortrick his insulin, when they had the insulin and knew he needed it, not only endangered Mr. Van Nortrick's health, but also undermined his ability to give a knowing and intelligent waiver of his *Miranda* rights. *Id.* Accordingly, the trial court erred when it allowed the introduction of Mr. Van Nortrick's involuntary statements that were the product of duress, inducements, and/or promises. Therefore, Mr. Van

Nortrick's convictions must be reversed, his sentences should be vacated, and this matter should be remanded for furthering proceedings in light of this Court's decision.

CONCLUSION

For the reasons stated above and in the previous filings in the State of Louisiana Courts, Mr. Van Nortrick's Writ of Certiorari should be granted, and this matter be remanded to the district court for a new trial. Mr. Van Nortrick has shown that this conviction is contrary to clearly established federal law as established by the United States Constitution and the United States Supreme Court.

Respectfully submitted,

Roy Van Nortrick

Roy Van Nortrick

Date: November 29, 2018