

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NOS. 2004 KA 0628R C/W
2004 KA 0629R AND
2004 KA 0630R

STATE OF LOUISIANA

VERSUS

ELTON CROCHET, JR.

Judgment rendered December 28, 2006.

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On Remand from the Supreme Court of Louisiana on
Appeal from the
23rd Judicial District Court
in and for the Parish of Assumption, Louisiana
Trial Court Nos. 00-49, 00-185, 00-186
Honorable John L. Peytavin, Judge

* * * * *

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ELTON CROCHET, JR.

* * * * *

BEFORE: CARTER, C.J., PETTIGREW, AND McDONALD, JJ.

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PETTIGREW, J.

Defendant, Elton Crochet, Jr., was initially charged by bill of information with one count of molestation of a juvenile (his daughter, M.C.), a violation of La. R.S. 14:81.2. Defendant was subsequently indicted by a grand jury for five counts of aggravated incest of his son, C.C., a violation of La. R.S. 14:78.1. Defendant was also indicted by a grand jury with one count of aggravated rape of his son, C.C., a violation of La. R.S. 14:42(A)(4).

Defendant pled not guilty to all charges. Just prior to trial, the State moved to consolidate all three bills of indictment/information, which the trial court granted. Defendant was tried before a jury. For the charge of molestation of a juvenile, the jury returned a responsive verdict of indecent behavior with a juvenile, a violation of La. R.S. 14:81. The jury also found defendant guilty of two counts of aggravated incest and guilty of aggravated rape.

The trial court sentenced defendant to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence for his conviction of aggravated rape. For his conviction of two counts of aggravated incest, defendant was sentenced to fifteen years at hard labor on each count, with the sentences to be served concurrently. Defendant was sentenced to five years at hard labor for his conviction of indecent behavior with a juvenile. The trial court stated that the sentences for aggravated incest and indecent behavior with a juvenile were to run concurrent with each other, but consecutive to the life imprisonment term given for his conviction of aggravated rape.

The matter is now before this court pursuant to the decision of **State v. Crochet**, 2005-0123 (La. 6/23/06), 931 So.2d 1083 (per curiam), wherein the supreme court held that the consolidation of charges of molestation of a juvenile, aggravated incest, and aggravated rape did not prejudice defendant. The supreme court decision reversed the prior opinion of this court, **State v. Crochet**, 2004-0628 (La. App. 1 Cir. 12/17/04), 897 So.2d 731, and remanded for consideration of defendant's remaining assignment of error.

In this opinion, we address defendant's remaining assignment of error regarding whether the trial court erred in refusing to charge the jury on the responsive verdict of

forcible rape to the charge of aggravated rape. The facts of the offenses can be found in our prior opinion on this matter and the supreme court opinion.

RESPONSIVE VERDICT

Defendant argues that the trial court erred in refusing to charge the jury on the responsive verdict of forcible rape to the charge of aggravated rape. The State and defendant agreed that simple rape would not be presented to the jury as a responsive verdict.

Louisiana Code of Criminal Procedure article 814(A)(8) sets forth the responsive verdicts to aggravated rape. According to Article 814(C), a trial court has the authority to exclude a responsive verdict if, after all the evidence is submitted, the evidence, viewed in the light most favorable to the State, is not sufficient to reasonably permit a finding of guilty of the responsive offense.

Aggravated rape is a rape committed upon a person where the anal or vaginal sexual intercourse (in the applicable version of the statute) is deemed to be without lawful consent of the victim because it is committed under any one or more of the enumerated circumstances found in La. R.S. 14:42. Specifically, we note one of the aggravating circumstances at the time of this offense was when the victim is under the age of 12 years. La. R.S. 14:42(A)(4).

At the time of the instant offense, forcible rape was defined in La. R.S. 14:42.1(A) as follows:

Forcible rape is a rape committed where the anal or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.

The evidence supporting the charge of aggravated rape consisted of the testimony of defendant's son, C.C., who testified defendant anally raped him when he was six or seven years old. The investigation by the Assumption Parish Sheriff's Office established this crime occurred between 1993 and 1995. C.C. was born in 1987, and clearly would have been under the age of 12 at the time of this offense. The evidence did not indicate that C.C. was prevented from resisting the rape by force or threats of

physical violence. Rather, C.C. explained that due to his young age he was not able to understand the nature of the act and did not realize anything was wrong until several years later when he viewed a sex education video at school and realized that defendant's actions were wrong.

There was no evidence that C.C. was overcome by force or threats of physical violence. The age of C.C. at the time of this crime was sufficient. Moreover, although a court must charge the jury with the law applicable to lesser-included offenses under La. Code Crim. P. art. 803, the charges must be pertinent; there must be evidence that would support a conviction of the lesser offense. La. Code Crim. P. art. 807; **State v. Henry**, 449 So.2d 486, 488-89 (La. 1984), see also **State v. Harris**, 627 So.2d 788, 794 (La. App. 2 Cir. 1993), writ denied, 93-3188 (La. 3/18/94), 634 So.2d 851, (wherein defendant was not entitled to a responsive verdict of forcible rape where no evidence that force, threats, or violence was used on the victim).

Accordingly, we cannot say the trial court erred in refusing to charge the jury with the responsive verdict of forcible rape since there was no evidence to reasonably permit a finding of guilty to that offense.

CONVICTIONS AND SENTENCES AFFIRMED.