

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 2210

STATE OF LOUISIANA

VERSUS

CHARLES LACROIX

Judgment Rendered: SEP 04 2014

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On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
No. 1000620

Honorable Elizabeth P. Wolfe, Judge Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

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McDonald, J. dissents

McCLENDON, J.

Defendant, Charles Lacroix, was charged by bill of information with sexual battery, a violation of LSA-R.S. 14:43.1. Defendant entered a plea of not guilty. Thereafter, he filed a motion to quash the bill of information. Following a hearing on the matter, the motion to quash was granted. The State filed an out-of-time appeal. Because the State failed to timely file its appeal, the district court's ruling on defendant's motion to quash is final.

FACTS

Because the motion to quash the bill of information was granted, the facts were not developed. On October 16, 2012, at a motion to suppress hearing, the State introduced into evidence the recorded statement of defendant, which was made part of the record. Defendant was interviewed on March 16, 2005, by Detective Reginald Bryant, with the Tangipahoa Parish Sheriff's Office. Defendant, who was sixteen years old at the time of the interview, stated that he rubbed his penis on the back of his four-year-old nephew.

TIMELINESS OF STATE'S APPEAL

The bill of information alleged the sexual battery occurred "on or about March 2, 2005 - March 16, 2005," "upon the person of J.H. (DOB 11/02/00)." Defendant was sixteen years old when he committed the alleged sexual battery, but was not arrested on the charge until September 18, 2009, when he was twenty-one years old. Defense counsel filed a motion to quash the bill of information and argued that because defendant was sixteen years old at the time of the crime and because under LSA-Ch.C. art. 857 there was no transfer from juvenile court to adult court for the Twenty-First Judicial District Court (21st JDC), the 21st JDC lacked jurisdiction to prosecute the case. On April 22, 2013, the district court granted the motion to quash, finding that the juvenile court never divested itself of jurisdiction.

On May 30, 2013, the State filed a petition in juvenile court against defendant alleging the charge of sexual battery (LSA-R.S. 14:43.1). On August

22, 2013, defense counsel filed a motion to quash and dismiss the petition. In the motion, defense counsel argued the reverse of what was argued in the 21st JDC, that is, that defendant was an adult and was improperly being tried in juvenile court. The juvenile court granted the motion to quash.

The State sought to appeal the judgment of the district court, granting the motion to quash. On September 12, 2013, the State filed a motion and order for out-of-time appeal in the district court, which was granted on November 7, 2013. On February 3, 2014, defendant filed a motion to dismiss the State's appeal. In this motion, defendant argued that the district court's ruling granting his motion to quash was rendered in open court on April 22, 2013, and that the State did not seek to appeal that ruling until September 12, 2013. Because the State's motion for appeal was outside of the delays provided by LSA-C.Cr.P. art. 914, defendant requested dismissal of the State's appeal as untimely.

Pursuant to Article 914, the motion for an appeal must be made no later than thirty days after the rendition of the judgment or ruling from which the appeal is taken. LSA-C.Cr.P. art. 914B(1). Almost five months had lapsed before the State filed its motion for an out-of-time appeal in the district court. Even when the State filed its petition in the juvenile court on May 30, 2013, it had been more than thirty days since the district court's granting of the motion to quash on April 22, 2013. Thus, the district court's granting of the motion to quash became final when the State failed to take a timely appeal on the disputed ruling. **State v. Veazey**, 337 So.2d 1163, 1164 (La. 1976) (where the supreme court ruled "we will continue to follow the directive of article 914 that motions for appeal must be made no later than fifteen days¹ after the rendition of the judgment or ruling from which the appeal is taken."). See **State v. Gray**, 98-2902 (La. 5/7/99), 740 So.2d 1291; **State v. Hall**, 09-1 (La.App. 5 Cir. 5/12/09), 28 So.3d 281, writ denied, 09-2660 (La. 10/19/10), 48 So.3d 270 (per curiam).

¹ At the time **Veazey** was decided, LSA-C.Cr.P. art. 914 allowed fifteen days after the ruling to file an appeal. Article 914 was amended by 2003 La. Acts No. 949, § 1, to permit thirty days to file an appeal following a trial court ruling.

The State's out-of-time appeal is dismissed as untimely. This court is unable to overturn the district court's April 22, 2013 ruling on defendant's motion to quash.

APPEAL DISMISSED.