

STATE OF LOUISIANA

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NO. 2000-KA-2702

VERSUS

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COURT OF APPEAL

BRUCE TIMS

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 409-493, SECTION "K"
Honorable Arthur Hunter, Judge

Judge Patricia Rivet Murray

(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, Judge Patricia Rivet Murray)

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AFFIRMED

20002702OPI

Bruce Tims was charged by bill of information with molestation of a juvenile, a violation of La. R.S. 14:81.2, and with aggravated crime against nature, a violation of La. R.S. 14:89.1. After trial by a twelve-member jury, he was found guilty as charged of molestation of a juvenile and not guilty of aggravated crime against nature. Mr. Tims now appeals his sentence of five years at hard labor. We affirm.

Detective Patrick Young of the New Orleans Police Department testified that on February 14, 1999, he was assigned to investigate physical and sexual abuse of children twelve years old and younger. In connection with that assignment he was called to Children's Hospital where Dr. Baker informed him that a four-year-old child had abrasions indicating possible sexual abuse. After interviewing the child's mother, the detective focused on Bruce Tims as a suspect. The victim, R.P., was interviewed the next day, and afterward Detective Young spoke to Bruce Tims advising him of his rights. Mr. Tims made a statement and signed a consent form to have his residence photographed.

Ms. Madalyn Collins, an expert in forensic serology, testified that she examined the victim's panties and found blood stains. Dr. Albert Baker

testified that he examined the victim in the emergency room of Children's Hospital. The doctor stated that he saw small, inflamed abrasions in the child's vagina with blood oozing from one abrasion. The child told the doctor that "Uncle Bruce did [sic] his finger in my private parts," and "then he stuffed his finger in my private parts and then he put his nuts ... in my private parts." The doctor used a Wood's Lamp to test for sperm, and found a fluorescence indicating that sperm were present. However, no sperm was found when vaginal swabs were tested.

The victim's mother, D.P., testified that her daughter was born on March 3, 1994. In February of 1999 D.P. was working as a security officer at the Burger King on St. Charles Avenue. D.P. wanted her children to go to a parade on February 14th, and, because she had to work that day, she called her cousin, Bruce Tims, and asked if he would take her son and daughter to the parade. He agreed to do so if her mother would accompany them.

After the parade, the group went to Bruce Tims' house, and D.P.'s mother left. Mr. Tims phoned D.P. and asked her to come pick up her children because he had to go get his wife from work. When D.P. arrived at Mr. Tims' house, she found her mother standing on the corner talking with someone and her children playing outside. D.P. gathered up her children and headed home, running a few errands on the way. Once home, as the

family was walking into their house, R.P. complained that her "private part hurts." D.P. got a towel and soap to clean the child, but when she saw the blood on R.P.'s panties, she asked what had happened. When R.P. said "Bruce did it," the mother stopped touching the child and immediately headed for the hospital. Unable to get to Children's Hospital because of a parade, they went first to Touro Infirmary. However, Touro was not set up for the sort of examination R.P. required, so they were transported to Children's Hospital. R.P. was examined by a doctor and D.P. was questioned by two police officers, then met later that same night with Detective Young.

Under cross examination, D.P. said that she has known Mr. Tims, her cousin, all her life and that she and her two children lived with him and his family for six months. Bruce Tims has frequently watched her children while he was caring for his own children, and R.P. had never had any complaints about being there. D.P. further testified that she had never heard any rumors that Mr. Tims was "fooling with young girls," and that her daughter had had no change in demeanor or attitude since this incident.

R.P., who was five years old at the time of trial, took the stand and identified the defendant as her "Uncle Bruce." When she was shown her panties, she noted that she had been bleeding because of Uncle Bruce. R.P.

said that her uncle walked her into his bedroom where he took off her pants and "underwears," then he took off his own pants and underwear. After lying down on the bed with her, Uncle Bruce put "his hand and his nuts" in "my private part." R.P. also testified he had placed "his nuts" in her mouth.

The defense called several character witnesses, beginning with Gerald Belonga, who worked at Children's Hospital with Bruce Tims. Mr. Belonga testified that in the ten years he had known Mr. Tims, he had never heard any gossip about any misconduct or immorality by Mr. Tims. Ms. Trina Dillon, who also worked with the defendant at Children's Hospital, testified that during the 14-15 years she has known Mr. Tims, he and his wife have babysat her children; even now, she would not hesitate to leave her five-year-old daughter with them. She had never heard anyone question Mr. Tims' sexual morality or reputation for telling the truth. Ms. Mamie Bevrotte, who has known the defendant for ten years, also vouched for his veracity and reputation for morality. Reverend Ronald Mitchell, Sr., testified that he has known Mr. Tims, an active member of his church, for 16-17 years. Rev. Mitchell stated that Mr. Tims had been selected to be a deacon because of his veracity, fairness, and general reputation. Although he has talked and prayed with Mr. Tims concerning these charges, Rev. Mitchell admitted that he had not been given details of the victim's account

of the incident.

Michelle Tims, the defendant's wife, testified that they have two children of their own, and she and her husband babysit for family members frequently. During the months that D.P. and her children lived with the Tims, Bruce Tims was not working and he cared for D.P.'s two children as well as for his own children. Ms. Tims described her apartment as a living room with a television, a master bedroom immediately off the living room, and a children's bedroom with a Nintendo right off the master bedroom. It was not unusual for any of the children to fall asleep in the master bedroom. Ms. Tims said that they had no pornography in their home.

Ms. Tims was working on February 14, 1999, but she knew that her husband had agreed to take D.P.'s children to the parade with his family. When she called home between 3:30 and 4:00 p.m., D.P.'s mother told her that Mr. Tims was not there and all of the children were playing. At 5:30 p.m., when Mr. Tims picked her up after work, he seemed completely normal to her. Ms. Tims did not find out until two days later that her husband had been accused of molesting R.P., and has no reason to believe that the accusation is true. Using the State's photographs, she explained that someone in either the living room or the children's room would be able to see into the master bedroom.

Eleven-year-old Ashley Tims testified that she remembered her cousins, R.P. and her brother, coming to her house to go to a parade. The children watched TV for about an hour, then Ashley's father took them to see the parade. After they returned home, her brother and R.P.'s brother went into the children's room to play Nintendo, while she and R.P. played jumprope outside. Later, R.P. began to fall asleep in the living room while watching television, so Mr. Tims suggested she go into the master bedroom to sleep. During this time, Ashley saw her father cooking and playing Nintendo until it was time to pick her mother up from work. Later, R.P. and her brother went home, while Ashley and her brother went with Mr. Tims.

Ashley never saw R.P. undressed in the bedroom and never saw her father in bed with R.P. When R.P. woke up, she came into the living room to play dolls with Ashley, and never said anything or showed in any way that something had happened to her that afternoon. On cross examination Ashley said that children are not allowed to sleep in the master bedroom.

Bruce Tims, aged thirty-two, testified that he is employed in a construction business. He denied molesting R.P. or any other child. He acknowledged that he had taken care of R.P. overnight on occasion and stated that he had never touched her sexually. He recounted the events of February 14, 1999, when he and his aunt (R.P.'s grandmother) took his two

children and D.P.'s two children to the parade. When the family returned home at about 2:30 p.m., he began preparing dinner while occasionally joining his son and R.P.'s brother as they played Nintendo in the children's room. Mr. Tims' aunt left on an errand, and Ashley and R.P. went outside to play. After a short time, the girls came inside and he noticed R.P. was sleepy, so he told her to go into the master bedroom, away from the noise from the TV and the Nintendo, to sleep. Mr. Tims denied that he had walked R.P. into the bedroom, removed her clothes or his, or touched her in any way. He testified that nothing else happened that afternoon, and that R.P. had not said or done anything unusual throughout the day. According to Mr. Tims, there was no rule against children in his bedroom, and his sister's son is often put in there to sleep. Mr. Tims further stated that he had never been arrested for anything other than a traffic offense until now.

In his sole assignment of error, Mr. Tims contends that his sentence of five years at hard labor is excessive. However, Criminal Procedure article 881.1 D. states:

Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.

Neither an oral or a written motion to reconsider the sentence was made or

filed in this case. Accordingly, appellate review of this claim of an excessive sentence is precluded under Article 881.1. *State v. Meyers*, 97-2584, p. 13 (La. App. 4th Cir. 11/24/99), 748 So.2d 554, 562-63, *writ denied*, 00-0598 (La. 11/3/00), 772 So.2d 663.

Therefore, Mr. Tim's conviction and sentence are affirmed.

AFFIRMED