



SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES

Court of Appeal

FIFTH CIRCUIT

STATE OF LOUISIANA

101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
WWW.FIFTHCIRCUIT.ORG

CURTIS B. PURSELL
CLERK OF COURT

NANCY F. VEGA
CHIEF DEPUTY CLERK

SUSAN S. BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

July 22, 2021

RE: **Case No. 21-K-283**
State of Louisiana
Versus
Patrick Bolden

To all recipients of the opinion in the above referenced case:

On June 30, 2021, an opinion was rendered in the above case. After reviewing the opinion, the following correction has been made:

Page 5, Footnote 3, line 3-4

"*See State v. Gros*, 17-374 (La. App. 5 Cir. 10/17/01), 800 So.2d 938, 950, *writ denied*, 18-473 (La. 12/17/18), 259 So.3d 343."

has been changed to

" *See State v. Gros*, 17-374 (La. App. 5 Cir. 2/21/18), 239 So.3d 448, *writ denied*, 18-0473 (La. 12/17/18), 259 So.3d 343."

A copy of the corrected page is enclosed. Please substitute the corrected page in the opinion previously sent.

Kind Regards,

CURTIS B. PURSELL
CLERK OF COURT

CBP/nfv

(La. 9/24/19), 279 So.3d 931, the defendant argued that the trial court erred in granting the State's motion in limine to exclude allegations of sexual assault previously made by the victim against another individual, which did not result in criminal charges against that individual. This Court noted that at the hearing on the motion, the defendant only argued that the victim's reports of the other allegation were inconsistent, which was not evidence that the victim's prior allegation of abuse was false. This Court held that the trial court did not abuse its discretion in granting the State's motion in limine prohibiting the defendant from questioning the child victim about her allegation of sexual abuse against an individual other than the defendant. *Id.* at 572-74.

Further, in *State v. Bryant*, 12-591 (La. App. 5 Cir. 2/21/13), 110 So.3d 1191, *writ denied*, 13-648 (La. 10/11/13), 123 So.3d 1218, this Court found that the defendant's mere assertion that a victim's allegations were false did not meet the *Smith* test for admissibility. *Bryant*, 12-591 at 12, 110 So.3d at 1198 (citing *Wallace*, 788 So.2d at 584, *writ denied*, 01-1849 (La. 5/24/02), 816 So.2d 297, 587-88).³

Based on the foregoing, we find that the trial court properly granted the State's motion in limine disallowing the questioning of the victim about her allegations of sexual abuse against an individual other than defendant. First, none of the exceptions to La. C.E. art. 412 apply in this case. There was no issue as to whether defendant was the source of semen or injury and the evidence of past sexual incidents was with persons other than relator. Second, at the hearing, relator asserted that because T.S. did not have a sexually transmitted disease and A.T. did, the victim's allegation had to be false. However, although relator argued

³ This Court has previously upheld the trial court's grant of the State's motion in limine where the victim had not recanted the earlier allegation, and there was no independent witness to testify that the allegation was false. *See State v. Gros*, 17-374 (La. App. 5 Cir. 2/21/18), 239 So.3d 448, *writ denied*, 18-0473 (La. 12/17/18), 259 So.3d 343.