NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 1048

STATE OF LOUISIANA

VERSUS

RONNIE HOWARD, SR.

Judgment Rendered: MAR 09 2015

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Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case No. 627292

The Honorable George J. Larke, Jr., Judge Presiding

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Bertha M. Hillman
Thibodaux, Louisiana

Counsel for Defendant/Appellant
Ronnie Howard, Sr.

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District Attorney
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Assistant District Attorney
Houma, Louisiana

Counsel for Appellee
State of Louisiana

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

THERIOT, J.

Defendant, Ronnie Howard, Sr., was charged by grand jury indictment with aggravated rape, a violation of La. R.S. 14:42. He pled not guilty and, following a jury trial, was found guilty as charged. Defendant filed a motion for new trial, which the trial court denied. Subsequently, the trial court sentenced defendant to life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant appeals, alleging one assignment of error. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

In 1995, J.V.[1] (the victim) moved in to his great-grandmother's home in Houma, Louisiana. Also living at the home were his great aunt, her husband (defendant), and their three children. J.V. lived in the home for the entirety of his kindergarten school year while his mother attended nursing school in Baton Rouge, Louisiana.

On multiple occasions throughout J.V.'s stay at the Houma house, defendant would summon him into the bathroom and lock the door. The defendant would use a wet towel to wipe J.V.'s anus area. After wiping J.V., defendant would put a condom onto his own penis and place J.V. on his lap. At that point, he would use his penis to penetrate J.V.'s anus. During this process, defendant held his hand over J.V.'s mouth and told him to be quiet.

In 1999, another incident of sexual abuse occurred between defendant and the victim. On this occasion, J.V. was at defendant's house playing with his cousins. In the course of their play, J.V. and his cousins broke a window. That night, J.V. slept over at the house. The following day, J.V.

[1] In accordance with La. R.S. 46:1844(W), the victim herein is referenced only by his initials, or referred to as "the victim."

and his cousins were again playing outside when defendant called J.V. into the home. J.V. found defendant in the bedroom, where defendant proceeded to lock the door. Defendant told J.V. that he owed him for breaking his window and asked if J.V. remembered what they used to do. Defendant forced J.V. to turn around against the bed, again used a wet towel to wipe J.V.'s anus, and forcefully engaged in anal sex with J.V.

J.V. eventually reported the abuse to his mother after she discovered pornography on their shared computer. J.V. participated in counseling for several months before he eventually decided to report the abuse to the police.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant contends that the trial court erred in excluding J.V.'s mother from the sequestration order. He contends that excluding J.V.'s mother from the sequestration order allowed her to tailor her direct and rebuttal testimony to bolster J.V.'s credibility.

On its own motion the court may, and on request of a party the court shall, order that the witnesses be excluded from the courtroom or a place where they can see or hear the proceedings, and refrain from discussing the facts of the case with anyone other than counsel in the case. In the interests of justice, the court may exempt any witness from its order of sequestration. La. Code Evid. art. 615(A). However, Article 615 explicitly states that its terms do not authorize exclusion of "[t]he victim of the offense or the family of the victim." La. Code Evid. art. 615(B)(4).

Prior to trial, defense counsel asked for sequestration of all witnesses in the case, including the victim. When the trial court read Article 615(B)(4) to defense counsel, he replied: "I don't contest the accuracy of the rule, but I'm just saying that for all practical purposes, I'm still objecting for the

record despite the existence of 615." On appeal, defendant now argues that the disjunctive "or" in Article 615(B)(4) required that either the victim or his mother be excluded from the courtroom during trial. Although that argument was not presented to the trial court in defendant's initial objection, defense counsel raised that particular justification when he argued defendant's motion for new trial. In denying the motion for new trial, the trial court reasoned that Article 615 does not allow for the exclusion of either the victim or his family.

The resolution of sequestration problems is within the sound discretion of the trial court. *State v. Lutcher*, 96-2378, p. 14 (La. App. 1st Cir. 9/19/97), 700 So.2d 961, 971, writ denied, 97-2537 (La. 2/6/98), 709 So.2d 731. In the present case, we find that the trial court did not err or abuse its discretion in exempting both the victim and his mother from the sequestration order. While subsection (4) of Article 615(B) does in fact use the disjunctive "or," the article in its entirety states that exclusion of "any" of the following is not authorized. Therefore, read in its entirety, Article 615(B)(4) allows both the victim and his family to remain in the courtroom over an order of sequestration.

Defendant cites *State v. Chester*, 97-2790, pp. 8-9 (La. 12/1/98), 724 So.2d 1276, 1282-83, cert. denied, 528 U.S. 826, 120 S.Ct. 75, 145 L.Ed.2d 64 (1999), as evidence that a trial court has discretion in determining whether a victim's family may remain in the courtroom despite a sequestration order. However, *Chester* was decided prior to the amendment of La. Code Evid. art. 615 by 1999 La. Acts. No. 783, § 2, which added the exceptions of section (B) to the article. This amendment effectively removed the need for the trial court's discretion in allowing a victim's family members to remain in the courtroom over a sequestration order. As a result,

the trial court was correct to allow both the victim and his mother to remain in the courtroom throughout defendant's trial.

This assignment of error is without merit.

DECREE

For the reasons set forth herein, defendant's conviction and sentence are affirmed. Costs of this appeal are assessed to defendant, Ronnie Howard, Sr.

CONVICTION AND SENTENCE AFFIRMED.