

STATE OF LOUISIANA

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NO. 2002-KA-0203

VERSUS

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COURT OF APPEAL

FAISAL PUCKETT

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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PLOTKIN, J. DISSENTING

I would reverse the defendant's conviction and sentence in this case and remand the case to the trial court for a new trial. The trial court erred when it allowed the State to play the audiotape of Keisha Edgard. The majority correctly notes that the statements made in the tape were relevant. However, permitting Ms. Edgard to testify solely through the audiotape, denied the defendant his sixth amendment right to face his accusers.

The majority contends that the tape should be admitted into evidence based on a hearsay exception. La. C.E. 607(D)(1), relied on by the majority, states "extrinsic evidence to show a witness' bias, interest, corruption or defect of capacity is admissible to attack the credibility of the witness." The majority asserts that Ms. Edgard's statement constitutes evidence of Ms.

Quest's bias or corruption. This hearsay exception only applies to introduction of evidence that shows the witness' bias. In this case, the tape is being used in an effort to demonstrate that Ms. Quest, not Ms. Edgard, is biased. Therefore, it would be impermissible hearsay to permit introduction of this tape when Ms. Edgard is not available for cross examination.

Further, in affirming the conviction and sentence the majority found that the tape was admissible since it was used to impeach Shirley Quest's trial testimony. The majority claims that even if it was error to admit the tape, the defendant has failed to show how he was prejudiced by the admission. "The probative value of the evidence should not be substantially outweighed by the danger of unfair prejudice." La. C.E. 403. In the instant case, the defendant would be substantially prejudiced by the introduction of this tape. The audiotape effectively undermines Mr. Puckett's alibi defense. Ms. Edgard states on the tape that she did not recall seeing the defendant on the date of the robbery. She also states that the defendant's mother was the one who kept pressuring her to testify on the defendant's behalf. These statements not only conflict with Ms. Quest's version of the facts but it also questions her credibility as an alibi witness. Thus, the playing of the audiotape was clearly prejudicial and should have been excluded as hearsay.

For the foregoing reasons, the defendant's conviction and sentence should be

reversed and the case remanded for a new trial.