

STATE OF LOUISIANA

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NO. 2015-KA-0017

VERSUS

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COURT OF APPEAL

NOVELL CAMPBELL

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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LOMBARD, J., CONCURS IN THE RESULT,

I concur in the result. The items found in the kitchen of the main house, along with the nine rocks of cocaine and \$200.00 found in the shed with the defendant are suspicious and, in conjunction with the controlled purchase, clearly constitute evidence of an intention to distribute under *State v. Hearold*, 603 So.2d 731, 735-736 (La. 1992). Absent the evidence of the controlled purchase, however, I am not certain of the same result. Thus, if the evidence pertaining to the controlled purchase was erroneously admitted, I do not agree that it was harmless. A review of the record reveals, however, that the harmless error analysis is unnecessary.

Evidence of “other crimes, wrongs, or acts” is generally “not admissible to prove the character of a person,” but may “be admissible for other purposes, such as proof of . . . intent. . . . provided that *upon request by the accused*, the prosecution in a criminal case shall provide reasonable notice in advance of trial for such purposes or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.” La. Code Evid. art. 404(B); *see also* La. Code Crim. Proc. art. 720 (“Upon written motion by defendant, the court shall order the district attorney to inform the defendant of the state’s intent to offer evidence of the commission of any other crime admissible

under the authority of Code of Evidence Articles 404 and 412.2.”). Thus, in order for the State to be required to give notice of its intent to submit evidence of “other crimes, wrongs, or acts,” the defendant must request such a notice.

Although the requisite request to the State for notice of intent to produce evidence of “other crimes, wrongs, or acts” would seemingly be a boilerplate defense motion automatically filed in every case, a review of the record in this case shows that defense counsel did not file such a request or motion. Rather, the defense included in its Motion for Discovery and Inspection, under No. 19 of the subheading “Evidence” the following question: “Does the state intend to offer at trial evidence of other crimes admissible under the authority of La. R.S. 14:445 or R.S. 15:446?”¹ Notably, La. Rev. Stat. 14:445 is nonexistent and La. Rev. Stat. 15:446 was repealed by Acts 1988, No. 515, § 8, effective on January 1, 1989. I do not find a query as to the State’s intent to offer evidence of other crimes based on the authority of a non-existent or long-repealed statute constitutes the requisite request or motion, respectively, under La. Code Evid. art. 404(B) or La. Code Crim. Proc. art. 720 and, as such it appears that the State’s burden to provide prior notice of its intent to produce evidence of the controlled buy for the purpose of proving intent to distribute was effectively waived by defense counsel’s failure to file an appropriate (or current) request or motion. Therefore, under the totality of the circumstances of this case, the evidence is sufficient to support the defendant’s conviction for possession with intent to distribute.

¹ Subsection (A) of No. 19 stated “If the answer to #19 is yes, please state the time, place and circumstances of the “other crimes” evidence and the purpose for which it is offered.”