

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-3712  
Summary Calendar

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LESTER MORAN,

Petitioner-Appellant,

VERSUS

JOHN P. WHITLEY, Warden, Louisiana State Penitentiary  
and RICHARD P. IEYOUB, Attorney General, State of Louisiana,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA 92 CV 950)

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(December 27, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant Lester Moran was convicted of aggravated rape and attempted aggravated kidnapping and seeks relief under 28 U.S.C. § 2254, which was denied him by the district court. We affirm.

Appellant complains first of the admission of testimony by one of the investigating officers concerning a statement made to her by the victim sixteen days after the incident. Appellant raised this issue on direct appeal and the state appellate court held that the

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

testimony was admissible as the prior statement of a witness which is consistent with the declarant's testimony and is one of initial complaint of sexually assaultive behavior and, therefore, an exception to the hearsay rule. La. Code Evid. art. 801. The district court agreed and found that while the victim's pre-trial statement was slightly more detailed than her trial testimony they were not materially inconsistent. The district court also held that, considering the victim's physical and mental health following the assault, her statement to the officer was made at the first reasonable opportunity. Our review of the record convinces us that these findings are not clearly erroneous, and the evidence was properly admitted. See Hernandez v. Estelle, 674 F.2d 313, 315 (5th Cir. Unit A 1981).

Appellant's contention that his right of confrontation was compromised by the admission of the testimony is unavailing. See White v. Illinois, 112 S.Ct. 736 (1992). The victim testified at trial and was fully cross examined. Her testimony was consistent with the prior statement. See State v. Moran, 584 So.2d 318, 323 (La. App. 4th Cir. 1991), cert. denied, 585 So.2d 576; White, 112 S.Ct. at 742; Delaware v. Fensterer, 474 U.S. 15, 19 (1985).

As his second point of error Appellant contends that the evidence was insufficient to prove sexual penetration. At the time of this crime Louisiana defined rape to include "any sexual penetration...however slight...." La. Rev. Stat. Ann. 14:42 (West 1986). Our review of the evidence convinces us beyond any doubt that the evidence was sufficient to prove the requisite

penetration.

Finally Appellant complains that the evidence is insufficient to convict him of attempted aggravated kidnapping. Again we disagree. The state established that Appellant forcibly seized the victim, carried her to another place with the intent to force her to give him something of value, sexual intercourse, in order to secure her release. This proves the crime charged. State v. Arnold, 548 So.2d 920, 923 (La. 1989).

AFFIRMED.