

SUPREME COURT OF LOUISIANA

State of Louisiana v. Issa L. Lamizana, Jr.

263 So. 3d 872 (La. 2019) · No. 2017-K-1490 · Decided January 30, 2019

SUMMARY

The Louisiana Supreme Court reviewed the reversal of Issa L. Lamizana Jr.'s aggravated rape convictions and life sentences based on the exclusion of testimony from a Department of Children and Family Services investigator. Because the record lacked the district court's subpoena ruling, the investigator's file, and a proffer of her testimony, the court reversed the court of appeal and remanded for an evidentiary hearing.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	January 30, 2019
DOCKET	2017-K-1490
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought review by writ of certiorari of the Louisiana Fourth Circuit Court of Appeal's reversal of defendant's aggravated-rape convictions and life sentences.
STANDARD OF REVIEW	The court could not determine the correctness and effect of the alleged evidentiary exclusion because the appellate record was inadequate.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential
PARTIES	State of Louisiana v. Issa L. Lamizana, Jr.

TOPICS

[appellate procedure](#)[evidence](#)[criminal procedure](#)[harmless error](#)[preservation of error](#)

PRACTICE AREAS

[Criminal law](#)[Evidence](#)[Appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the court of appeal properly reversed defendant's convictions and sentences based on the district court's alleged exclusion of the Department of Children and Family Services investigator and related records.
2. Whether the existing record was sufficient for the Louisiana Supreme Court to determine whether the investigator was improperly excluded and whether the exclusion affected the verdicts.
3. Whether the matter should be remanded for an evidentiary hearing to develop the record.

HOLDINGS

1. The record was inadequate to determine whether the investigator was improperly excluded and what effect, if any, her exclusion had on the verdicts.
2. The court of appeal's judgment was reversed and the matter was remanded to the district court for an evidentiary hearing concerning the investigator's testimony, the related evidence, and the district court's ruling.

KEY QUOTATIONS

“Although the defense made a general statement in the district court as to what the defense believed her testimony would prove, she was not called and her testimony was not proffered to the district court.” (263 So. 3d at 872)

“Given these deficiencies in the record, we are unable to determine whether this witness was improperly excluded and what affect her exclusion had on the verdicts.” (263 So. 3d at 872)

“[T]he appellate court, when reviewing an erroneous ruling that improperly excludes evidence, must be convinced that the excluded evidence would not have affected the jury’s determination.” (431 So.2d at 371 n.8)

FACTUAL BACKGROUND

Defendant was convicted of aggravated rapes involving his two stepchildren and received two life sentences without parole eligibility. The defense sought to call a Department of Children and Family Services investigator who had first interviewed the victims and their mother, but the investigator did not testify and her file was not included in the record. The parties disputed the circumstances surrounding her appearance and exclusion, and the defense did not proffer her testimony.

PROCEDURAL HISTORY

Defendant was convicted in the Orleans Parish district court of two aggravated rapes and sentenced to two terms of life imprisonment without parole eligibility. The Louisiana Fourth Circuit reversed, concluding that the district court erred by quashing a subpoena for a Department of Children and Family Services investigator and preventing the defense from calling her as a witness. The Louisiana Supreme Court reversed the court of appeal because the record was inadequate to determine whether the investigator was improperly excluded or whether her exclusion affected the verdicts, and remanded for an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct an evidentiary hearing consistent with the court's opinion, at which the investigator may testify and the parties may present additional evidence pertinent to the district court's ruling. After the hearing, defendant may again appeal his convictions and sentences.

CASES CITED

- State v. Lamizana, 16-1017 (La. App. 4 Cir. 5/31/17), 222 So. 3d 58
- State v. Vaughn, 431 So. 2d 358, 371 n.8 (La. 1982)

OPINION

PER CURIAM.

Supreme Court of Louisiana FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #005 FROM: CLERK OF SUPREME COURT OF LOUISIANA The Opinions handed down on the 30th day of January, 2019, are as follows: PER CURIAM: 2017-K-1490 STATE OF LOUISIANA v. ISSA L. LAMIZANA, JR. (Parish of Orleans) The court of appeal reversed defendant's convictions for aggravated rape and sentences of life imprisonment because it found the district court erred in quashing the subpoena of a Department of Children and Family Services investigator, who was the first person to interview the victims and their mother, and in refusing to allow the defense to call this investigator to testify at trial.

We granted the State's application to examine the correctness of that ruling. Upon additional review, however, it became apparent that the record is inadequate to make that determination. Therefore, we reverse the court of appeal, and remand to the district court to conduct an evidentiary hearing consistent with the views expressed here.

After the district court conducts the evidentiary hearing, defendant can again appeal his convictions and sentences. REVERSED AND REMANDED 01/30/19 SUPREME COURT OF LOUISIANA No. 2017-K-1490 STATE OF LOUISIANA VERSUS ISSA L. LAMIZANA, JR. ON WRIT OF CERTIORARI TO THE COURT OF APPEAL FOURTH CIRCUIT, PARISH OF ORLEANS PER CURIAM Defendant was found guilty of the aggravated rapes of his two stepchildren, La. R.S.

14:42, and the district court sentenced him to two terms of life imprisonment without parole eligibility. The court of appeal reversed the convictions and sentences because it found the district court erred in quashing the subpoena of a Department of Children and Family Services investigator, who was the first person to interview the victims and their mother, and in refusing to allow the defense to call this investigator to testify at trial.

State v. Lamizana, 16-1017 (La. App. 4 Cir. 5/31/17), 222 So.3d 58. The court of appeal found that, although it could not “discern whether the testimony of [the investigator] or the records relating to her interview would undermine the credibility of the victims’ testimony and, if so, the extent to which the absence of [the investigator’s] testimony or records relating to her interview contributed to the verdict,” the trial court’s action nonetheless “undermines our confidence in the verdict.” Lamizana, 16-1017, pp. 7–8, 222 So.3d at 63.

We granted the State’s application to examine the correctness of that ruling. Upon additional review, however, it became apparent that the record is inadequate to make that determination. No ruling by the district court judge regarding the subpoena appears in the record, and the circumstances under which the investigator appeared but was not permitted to testify are disputed.

The investigator’s file also does not appear in the record. Although the defense made a general statement in the district court as to what the defense believed her testimony would prove, she was not called and her testimony was not proffered to the district court. Given these deficiencies in the record, we are unable to determine whether this witness was improperly excluded and what affect her exclusion had on the verdicts.

See generally State v. Vaughn, 431 So.2d 358, 371 n.8 (1982) (on reh’g) (“[T]he appellate court, when reviewing an erroneous ruling that improperly excludes evidence, must be convinced that the excluded evidence would not have affected the jury’s determination.”). During oral argument, the State agreed that the record was inadequate, and the State proposed in the interest of fairness and economy that the matter be remanded to the district court to conduct an evidentiary hearing, at which the investigator can be called to testify and the parties can present additional evidence pertinent to the district court’s ruling.

In light of the State’s reasonable proposal, we reverse the court of appeal, and remand to the district court to conduct an evidentiary hearing consistent with the views expressed here. After the district court conducts the evidentiary hearing, defendant can again appeal his convictions and sentences. REVERSED AND REMANDED 2