

**Fifth Circuit Court of Appeal**  
**State of Louisiana**

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No. 25-KA-581

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STATE OF LOUISIANA

*versus*

EVELYN M. MILLER

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ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 20-1194, DIVISION "K"  
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

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May 28, 2026

**SCOTT U. SCHLEGEL**  
**JUDGE**

Panel composed of Judges Fredericka Homberg Wicker,  
John J. Molaison, Jr., and Scott U. Schlegel

**SENTENCES VACATED; MATTER**  
**REMANDED FOR RESENTENCING**

**SUS**  
**FHW**  
**JJM**

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JALISA WALKER  
DEPUTY CLERK

COUNSEL FOR DEFENDANT/APPELLANT,  
EVELYN MILLER

Remy V. Starns  
Caitlin T. Fowlkes

COUNSEL FOR PLAINTIFF/APPELLEE,  
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.  
Thomas J. Butler  
Darren A. Allemand  
Carolyn Chkautovich

**SCHLEGEL, J.**

Defendant, Evelyn M. Miller, challenges the sentences imposed for her convictions for aggravated assault with a firearm and aggravated criminal damage to property. For the following reasons, we find that an error patent in the record requires this Court to vacate the sentences imposed and remand this matter for resentencing.

**STATEMENT OF THE CASE**

This is defendant's second appeal in this matter.<sup>1</sup> The Jefferson Parish District Attorney initially charged defendant with second degree kidnapping of a juvenile while armed with a dangerous weapon on or between February 14, 2020 and February 15, 2020, in violation of La. R.S. 14:44.1(A)(5) (count one); five counts of aggravated assault with a firearm in violation of La. R.S. 14:37.4 (counts two through six); and aggravated criminal damage to property in violation of La. R.S. 14:55 (count seven). On August 24, 2022, the State amended the bill of information to dismiss the second degree kidnapping charge. On that same date, defendant withdrew her pleas of not guilty to counts two through seven and entered pleas of guilty as charged. The plea agreement indicated that defendant's sentences would be determined following a sentencing hearing. After hearing victim impact statements and defendant's testimony, the trial court sentenced defendant to ten years at hard labor on counts two through seven, to run concurrently with one another.

Defendant filed an appeal challenging her sentences imposed by the trial court. On error patent review, this Court vacated defendant's sentences as indeterminate due to issues relating to restitution, fines, and fees ordered in the trial

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<sup>1</sup> The underlying facts are set forth in this Court's prior opinion, *State v. Miller*, 23-63 (La. App. 5 Cir. 10/31/23), 374 So.3d 218.

court's minute entry. Thus, this Court remanded the matter for resentencing. *See Miller*, 374 So. 3d at 221.

On April 4, 2024, the trial court resentenced defendant to ten years imprisonment at hard labor on each count two through seven, all to run concurrently with one another. The trial court imposed "fines and fees" totaling \$650.00, which included \$150.00 to the Jefferson Parish Public Defender's Office. With respect to count seven, the trial court ordered \$1,000.00 restitution to be paid to the victim, Ashley McVile, and took judicial notice that the defendant had already paid this restitution.

On September 11, 2025, defendant filed a motion for an out-of-time appeal, which the trial court granted on September 23, 2025. On appeal, defendant argues that her sentences are excessive and that the trial court failed to conduct a financial hardship hearing required by La. C.Cr.P. art. 875.1.

### **ERRORS PATENT**

Before considering the merits of the assignments of error raised on appeal, we find that an error patent requires this Court to vacate defendant's sentences and remand this matter for resentencing.<sup>2</sup>

The record reflects that defendant appeared via Zoom when the trial court resentenced her on April 4, 2024. La. C.Cr.P. art. 835 governs issues relating to a defendant's presence during sentencing and provides:

A. Except as provided in Paragraph B of this Article, in felony cases the defendant shall always be present when sentence is pronounced and, in misdemeanor cases, the defendant shall be present when sentence is pronounced unless excused by the court. If a sentence is improperly pronounced in the defendant's absence, he shall be resentenced when his presence is secured.

B. Nothing in this Article prohibits the court, by local rule, from providing for a defendant's appearance at the pronouncement of

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<sup>2</sup> This Court conducts an errors patent review in accordance with La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990), whether or not the defendant or state requests such a review.

sentence by simultaneous audio-visual transmission in accordance with the provisions of Article 562.

La. C.Cr.P. art. 562(A) further states, in pertinent part, “In a case where the offense is a noncapital felony or a misdemeanor, the defendant, who is confined in a jail, prison, or other detention facility in Louisiana, may, with the court’s consent and the consent of the district attorney, appear at . . . sentencing by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant’s appearance in this manner and the defendant waives his right to be physically present at the proceeding.” La. District Court Rules, Rule 3.5 states, “Courts may authorize simultaneous appearance by a party or witness by audio-visual transmission as allowed by law and/or by order of the Louisiana Supreme Court. See Appendix 3.5 for courts enacting rules related to simultaneous appearance by a party or witness by audiovisual transmission.” In April 2024, Appendix 3.5 only included a local rule for Jefferson Parish Juvenile Court, not for the 24th Judicial District Court.<sup>3</sup>

La. C.Cr.P. art. 835 permits a defendant’s presence by Zoom if it is done in accordance with La. C.Cr.P. art. 562, which permits such an appearance if a local rule allows it and if the defendant waives her physical presence. *State v. Au*, 24-249 (La. App. 5 Cir. 3/12/25), 411 So. 3d 42, 45. After consideration of the rules of law in place at the time of defendant’s April 4, 2024 resentencing, we find that defendant’s appearance via Zoom was not in compliance with La. C.Cr.P. art. 562. Consequently, defendant must be resentenced.

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<sup>3</sup> The 24<sup>th</sup> Judicial District Court adopted a local rule, effective March 26, 2025, which provides for the circumstances when an appearance by simultaneous audiovisual transmission may be allowed in criminal court proceedings. But this rule does not apply to the present matter, because it became effective after defendant’s April 4, 2024 sentencing date currently at issue.

**DECREE**

Accordingly, we pretermitted addressing defendant's assignments of error, vacate her sentences, and remand this matter to the trial court for resentencing.

**SENTENCES VACATED;**  
**MATTER REMANDED FOR**  
**RESENTENCING**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISON, JR.  
SCOTT U. SCHLEGEL  
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

[www.fifthcircuit.org](http://www.fifthcircuit.org)

CURTIS B. PURSELL  
CLERK OF COURT

SUSAN S. BUCHHOLZ  
CHIEF DEPUTY CLERK

LINDA M. TRAN  
FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MAY 28, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**25-KA-581**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE ELLEN SHIRER KOVACH (DISTRICT JUDGE)

CAITLIN T. FOWLKES (APPELLANT)

HONORABLE PAUL D. CONNICK, JR.  
(APPELLEE)

REMY V. STARNS (APPELLANT)

MICHAEL A. MITCHELL (APPELLANT)

THOMAS J. BUTLER (APPELLEE)

CAROLYN CHKAUTOVICH (APPELLEE)

DARREN A. ALLEMAND (APPELLEE)

**MAILED**

NO ATTORNEYS WERE MAILED