

# Fifth Circuit Court of Appeal State of Louisiana

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No. 26-K-96

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STATE OF LOUISIANA

*versus*

SATURNINO PENA

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IN RE STATE OF LOUISIANA  
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT  
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE  
STEPHEN D. ENRIGHT, JR., DIVISION "N", No. 21-3513

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TRUE COPY

March 10, 2026



LINDA TRAN  
DEPUTY CLERK

Panel composed of Judges Jude G. Gravois,  
Stephen J. Windhorst, and John J. Molaison, Jr.

## **WRIT DENIED; STAY DENIED**

Relator, the State of Louisiana, seeks supervisory review of the trial court's evidentiary ruling excluding an audiotaped statement of the child victim in this case from trial. On the showing made, at this time, we conclude that relator has not shown that the trial court abused its discretion in excluding the audio statement.

This is not a conclusion on our part that the audio tape is necessarily inadmissible under La. C.E. art. 801 D (1)(b) and 801 D (1)(e). The trial court may revisit and reconsider this issue during the course of

the trial, should the circumstances warrant and if the proper foundation is laid.

Accordingly, on the showing made, we deny this writ at this time.

We also deny relator's request for a stay.

Gretna, Louisiana, this 10th day of March, 2026.

**SJW**  
**JGG**

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

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NO. 26-K-96

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STATE OF LOUISIANA

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**MOLAISON, J., DISSENTS WITH REASONS**

I respectfully dissent from the majority opinion. The audio recording serves as pivotal evidence for several compelling reasons. Primarily, it unmistakably identifies the defendant as the perpetrator. More importantly, it captures the allegations of the defendant's sexual abuse, which the doctor used as a critical component in assessing whether the victim required medical treatment.

The State emphasizes that the defendant will have the opportunity to cross-examine both the victim and the treating physician regarding the tape's content. Nevertheless, the tape remains admissible, even if the treating physician and victim are unavailable to testify, as per La. C.E. Art. 803(4).

Furthermore, the fact that evidence may be cumulative does not render it inadmissible. This is supported by precedent in *State v. Davis*, 92-1623 (La. 5/23/94), 637 So.2d 1012, 1026, *cert. denied*, 513 U.S. 975, 115 S.Ct. 450, 130 L.Ed.2d 359 (1994), citing *State v. Garrison*, 400 So.2d 874 (La. 1981).

Additionally, the defendant has not demonstrated any compelling reason to exclude the audio recording.

**JJM**

SUSAN M. CHEHARDY  
CHIEF JUDGE

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

JUDGES



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CURTIS B. PURSELL  
CLERK OF COURT

SUSAN S. BUCHHOLZ  
CHIEF DEPUTY CLERK

LINDA M. TRAN  
FIRST DEPUTY CLERK

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**NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **03/10/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**26-K-96**

**E-NOTIFIED**

24th Judicial District Court (Clerk)

Honorable Stephen D. Enright, Jr. (DISTRICT JUDGE)

A. Bruce Netterville (Respondent)

Thomas J. Butler (Relator)

Honorable Paul D. Connick, Jr. (Relator)

Darren A. Allemand (Relator)

**MAILED**