01/15/02 “See News Release 004 for any concurrences and/or dissents.”

SUPREME COURT OF LOUISIANA

NUMBER 2000-K-1158

STATE OF LOUISIANA

versus

ALLEN MAISE (Sentenced as “Alan Maise”)

KNOLL, Justice, concurring

Although I agree with the majority opinion, I concur to offer additional reasons in support of the conclusions reached therein.

In State v. Malone, 403 So. 2d 1234, 1239 (La. 1981), Chief Justice Calogero, then Justice, writing for the majority, recognized that “[a]n individual on probation does not have the same freedom from governmental intrusion into his affairs as does the ordinary citizen.” In addition, the majority in Malone stated that “[a] probationer has essentially the same status as a parolee; in our view both must necessarily have a reduced expectation of privacy.” Id. at 1238. Although Malone did not reach the question of whether admissions to a probation officer required prior Miranda warnings, in State v. Lassai, this Court stated:

> Defendant’s admissions made to his probation officer were properly admitted by the trial judge in spite of the absence of Miranda warnings; the Miranda rule has not been extended to probation hearings.

State v. Lassai, 366 So. 2d 1389, 1390 (La. 1978), citing United States v. Johnson, 455 F.2d 9832 (5th Cir. 1972), cert. denied, 409 U.S. 856 (1972). See also State v. Edwards, 440 So. 2d 845 (La. App. 2 Cir. 1983) (holding that a probationer’s admissions to a probation officer are admissible at a revocation hearing in spite of the absence of Miranda warnings). Even though Lassai did not involve the use of the defendant’s admissions at a separate criminal proceeding to adjudicate his guilt of the

newly committed crime, it seems logical to conclude that these admissions would be equally admissible in such an instance.[1] See United States ex rel. Santos v. New York State Bd. of Par., 441 F.2d 1216, 1218 (2nd Cir. 1971), cert. denied, 404 U.S. 1025 (1972) (finding that "[t]o hold that evidence obtained by a parole officer in the course of carrying out this duty cannot be utilized in a subsequent prosecution would unduly immunize parolees from conviction.").

Moreover, as Malone recognized, a person on probation has severely truncated constitutional rights because of his status as a probationer. Malone, 403 So. 2d 1238-39. In State v. Patrick, 381 So. 2d 501 (La. 1980), we found that a parole officer's warrantless search of a parolee's person and residence was *reasonable*, even though less than probable cause was shown. Likewise, because the status of probationer is equated to a parolee, I find it important that as a condition for parole, a parolee "[p]romptly and truthfully [shall] answer all inquiries directed to him by the probation and parole officer." LA. REV. STAT. ANN. § 15:574.4(g). In the present case, it was under just such a scenario that the defendant made admissions to his probation officer.

I write to further express my opinion on the admissibility of the other crimes evidence which the majority finds inadmissible under State v. Kennedy, 2001-1554 (La. 4/3/01), 2001 WL 315170.[2] In the present case, the defendant contested the occurrence of penetration, an essential element of the aggravated rape charge. Because the expert in pediatric forensic medicine was unable to find any indication of sexual abuse, I find that the evidence of the prior crime which involved penetration was

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[1] In actuality, the question raised herein was presented in just such a setting in State v. Malone, 403 So. 2d 1234 (La. 1981). However, the question remained unanswered in that opinion because it was found that the defendant's admissions were not made to the probation officer. Instead, the defendant's admission of guilt was made to the arresting officers after he had been Mirandized.

[2] I was not on the panel which decided Kennedy. Had I been a member of that panel, I would have joined the dissenting justice.

admissible as evidence of pattern because both crimes have numerous similarities. As we stated in State v. Jackson, 625 So. 2d 146 (La. 1993), at least one of the enumerated purposes in LA. CODE EVID. art. 404(B) "must be at issue, have some independent relevance, or be an element of the crime charged in order for the evidence to be admissible." Jackson, 625 So. 2d at 149. Thus, it is clear to me that the other crimes evidence related to a genuinely controverted issue and was not introduced in the present case solely to paint the defendant as a person of criminal character. Accordingly, I find that the trial court properly admitted this other crimes evidence and do not find it necessary to reach the harmless error argument which the majority ultimately relies upon.