LOUISIANA SUPREME COURT REPORTS

LSCR

A monthly digest of all current Louisiana Supreme Court opinions

Vol. 21, No. 10 ❖ Copyright 2013 Krystil Borrouso Lawton* ❖ October, 2013

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CONTRACTS

Plaintiffs entitled to recover damages and attorney's fees from home builder under Residential Property Disclosure Act for misrepresentations on disclosure form.

James S. Stutts v. Chad Z. Melton, 2013-C-0557 (La. 10/15/13) [15 pp.]

Defendants are Chad Melton and his wife. Melton was the builder of a residential home in Walker, Louisiana. After construction was completed in December 2004, defendants moved into the home and lived there for about nine months. While there, they discovered color bleeding on the walls due to a defect in the roof. They entered into a settlement agreement with the roofing manufacturer, which paid them $13,600.00 for a replacement roof. Instead of replacing the roof, defendants kept the money, cleaned the color bleeding, and installed gutters to prevent further color bleeding. On September 30, 2005, sixty days after the settlement, defendants sold the home to plaintiffs. A few days before the sale, defendants gave plaintiffs a residential property disclosure form pursuant to the Residential Property Disclosure Act (RPDA), La. R.S. § 9:3196, *et seq*. On the form, defendants stated there were no known defects in the roof. In the summer of

Krystil Borrouso Lawton, editor of LSCR, is an attorney practicing in New Orleans. She is a 1991 graduate, magna cum laude, of Loyola Law School, where she served on the editorial board of the Loyola Law Review and as a member of the National Moot Court Team. She is a former law clerk to the Honorable Judge Adrian G. Duplantier, United States District Court for the Eastern District of Louisiana.

2006, plaintiffs noticed color bleeding on the walls and learned about the settlement. They filed suit against defendants for fraud, seeking the cost of a new roof and repairs, as well as interest and attorney's fees. The district court granted summary judgment for plaintiffs, awarding damages and attorney's fees. It rejected defendants' argument that plaintiffs' exclusive claim was under the New Home Warranty Act (NHWA), La. R.S. § 9:3141, *et seq.*, and that such a claim was untimely. On appeal, the First Circuit reversed, concluding that plaintiffs' sole remedy was a perempted claim under the NHWA. Two judges dissented.

The Court granted a supervisory writ and reversed. The NHWA provides mandatory warranties for purchasers of new homes in Louisiana and the exclusive remedies between builders and owners relative to home construction. Under the NHWA, plaintiffs' defective roof claim would have been untimely. However, plaintiffs were entitled to relief under the RPDA, which applies to transfers of residential property and requires the completion of the disclosure form. Although the RPDA does not apply to transfers of residential property that have never been occupied, it applied in this case because defendants occupied the home prior to selling it to plaintiffs. Under the statute and pursuant to the Civil Code's fraud articles, a seller who makes a willful misrepresentation on the disclosure form is liable to the purchaser. Defendants were liable because they made a knowing misrepresentation that the roof was free from defects and covered up evidence of the defect. As to damages, the Court considered whether plaintiffs were entitled to recover attorney's fees as well as actual damages and concluded that they could recover attorney's fees. Under Code of Civ. Proc. art. 1958, the party against whom rescission is granted because of fraud is liable for damages and attorney's fees. The Court resorted to equity and concluded plaintiffs were entitled to recover attorney's fees even though they were not seeking rescission of the entire contract under art. 1958. Justice Weimer concurred, concluding that the Court need not have resorted to equity to award attorney's fees, which were recoverable under the Civil Code articles on redhibition. Reversed; district court judgment reinstated; remanded.

Per Victory, J.; Weimer, J., concurs and assigns reasons.

MEDICAL MALPRACTICE

Defendants not enrolled in PCF at time of tortious act were not entitled to rely on PCF letter erroneously designating them qualified health care providers.

George T. Luther v. IOM Company LLC, 2013-C-0353 (10/15/13) [16 pp.]

On October 30 and November 1, 2007, plaintiff underwent successive back surgeries that resulted in neurological damage, including paralysis. During the October 30 surgery, Intra-Op Monitoring Services, LLC provided electro-diagnostic monitoring services to the operating surgeon, with remote monitoring by Dr. Dan Joachim. In September 2008, IOM Company, LLC, purchased Intra-Op. In October 2008, pursuant to Louisiana's Medical Malpractice Act (MMA), plaintiff requested a medical review panel to evaluate the asserted medical malpractice of his surgeon and the hospital. He amended the request in June 2009 to assert the negligence of defendants, IOM and Dr. Joachim, in failing to notify the surgeon of "salient medical facts which would or could have altered the surgical result." The Patient's Compensation Fund (PCF) indicated by letter in July 2009 that defendants were qualified health care providers (QHCPs) under the MMA, although the PCF reserved its right to revise that qualification. In August 2010, plaintiff and defendants agreed to settle the claim, with defendants paying $100,000 for a release of liability, subject to court approval. When the PCF reviewed the matter in connection with court approval of the settlement, it discovered that defendants had not applied to be enrolled in the PCF until November 16, 2007, about two weeks after plaintiff's surgery. A computer malfunction had caused the erroneous July 2009 PCF letter to be sent out. The PCF notified the parties that defendants were not QHCPs. Plaintiff filed suit against defendants, who filed a third party demand against the PCF for a declaration that they were QHCPs under the MMA. The district court granted summary judgment for the PCF and dismissed the third party demand.

On review, the Second Circuit reversed and rendered judgment for defendants, prohibiting the PCF from withdrawing its July 2009 certification of defendants as QHCPs.

The Court granted a supervisory writ and reversed. The MMA gives QHCPs two substantial advantages in actions against them for malpractice: (1) a limit on the amount of damages recoverable and (2) the requirement that the claim be reviewed by a medical review panel before suit is commenced. To be qualified under the MMA, a health care provider must (1) file proof of financial responsibility with the PCF and (2) pay a surcharge necessary to provide monies for the fund. It was undisputed that defendants were not enrolled until after plaintiff's surgery. Instead, they argued that they had relied to their detriment on the PCF's erroneous July 2009 letter in agreeing to settle with plaintiff. To establish detrimental reliance, a party must prove three elements: (1) a representation by conduct or word, (2) justifiable reliance, and (3) a change in position to one's detriment because of the reliance. The PCF argued that the Court should use a more burdensome standard applicable to claims against government agencies. The Court concluded that defendants were not entitled to relief based on either the general or more burdensome detrimental reliance standard because defendants did not *reasonably* rely on the PCF's representation. Defendants knew that they were not enrolled prior to plaintiff's surgery. Further, they were expressly advised by statements in the PCF application form that they would not have PCF coverage for claims prior to November 16, 2007. The district court correctly ruled defendants were not QHCPs. Court of appeal judgment reversed and vacated; district court judgment reinstated; remanded.

Per Hughes, J.

TAXATION

Notices of tax assessments did not comply with statutory requirements and were not final judgments: two related cases.

Catahoula Parish School Board v. Louisiana Machinery Rentals, 2012-C-2504 (La. 10/15/13) [26 pp].

Defendants sell, lease, and/or repair Caterpillar equipment and machinery throughout the state. After a multi-parish audit, taxing authorities from numerous parishes began tax collection proceedings against defendants, alleging that they failed to charge and collect sales and use taxes from their customers from December 1, 2000, through June 30, 2007. In November 2009, the Catahoula Parish taxing authority (Collector) sent defendants notice of intent to assess additional taxes, penalties, and interest in these consolidated cases in accordance with La. R.S. § 47:337.48(B). Defendants did not protest the notices. The Collector then formally assessed the taxes and issued each defendant a formal notice of assessment, pursuant to § 47:337.51. Although defendants provided additional tax records, they did not formally respond to the assessments. In February 2010, the Collector issued a first revised notice of assessment giving defendants additional time to respond, but they did not do so. They again supplied additional information. The Collector substantially reduced the assessments based on the new information and issued a second revised notice of assessment, providing, *inter alia*, that defendants had thirty days to file a written protest and request a hearing or, if a protest and hearing request were not filed, that defendants had sixty days to (1) pay the amount assessed, (2) pay under protest under § 47:337.63 and file suit within thirty days of payment, or (3) within thirty days from receipt of the second revised notice of assessment, file suit and post a commercial bond. Defendants did not respond.

In September 2010, the Collector filed summary proceedings against defendants in the district court for payment of taxes, penalties, and attorney's fees pursuant to local ordinances. Defendants answered and asserted exceptions and affirmative defenses. In October 2011, the Collector filed amending petitions alleging the proceedings also were brought under §§ 47:337.33 and 337.61. Again, defendants responded and asserted exceptions, defenses, and answers. They specifically asserted that the notices did not comply with the requirements of § 47:337.51(A) and were not valid and enforceable. The Collector filed motions

for partial summary judgment, seeking declarations that the second revised notices of assessments were final and executory judgments of the court. The district court granted the motions. On appeal, the Third Circuit reversed, finding that the notices of assessments were deficient and invalid because they did not comply with § 47:337.51(A) and, thus, the assessments did not have the legal effect of denying defendants the right to present defenses.

The Court granted a supervisory writ and affirmed the Third Circuit. The Uniform Local Sales Tax Code, § 47:337.1, *et seq.* was enacted in 2003 to promote uniformity in the assessment, collection, and enforcement of sales and use taxes. It provides several enforcement mechanisms to a tax collector. Section 47:337.45(A) provides alternative remedies and procedures, including assessment and distraint. In these cases, the Collector attempted to follow the notice and other requirements of the assessment and distraint procedure pursuant to § 47:337.51 and then pursued summary proceedings pursuant to § 47:337.61, moving for summary judgment based on the alleged finality of the assessments. At issue was the proper interpretation of § 47:337.51, which provided at Section A that the notice of assessment "shall inform the taxpayer of the assessment and that he has sixty calendar days from the date of the notice to (a) pay the amount of the assessment; (b) request a hearing with the collector; or (c) pay under protest in accordance with R.S. 47:337.63." Further, Section B provided that a "dealer" may "within thirty days of the receipt of the notice of the assessment ... file a protest with the collector in writing [setting] forth the reason therefor, and may request a hearing." The assessments in these cases did not comply with Section A because they did not inform defendants that they had sixty days to request a hearing with the Collector. The Court rejected the Collector's argument that because defendants also were "dealers" under the terms of the statute, the notice requirements for them were governed by Section B. Section B was not an alternative to Section A. Because the notices were deficient under Section A, they did not become final, and defendants were not barred from presenting their defenses in response to the Collector's claims. Being unable to rely on the assessments as indisputable proof of the substance of the tax claims, the Collector was not entitled to partial summary judgment.

Further, on remand, defendants could pursue defenses asserted in response to the Collector's original petitions, as well as those asserted in response to the amended petitions, despite a requirement in § 47:337.61(2) that a taxpayer plead all defenses at the same time. The issue of the validity of the notices constituted an essential element of the Collector's claims rather than a defense. Moreover, the Collector's amended petitions made new allegations and asserted for the first time claims based on the finality of the assessments. Any defenses based on the amended petitions could not have been presented at the same time as the originally-filed defenses. Justice Guidry dissented, opining that the notices fully complied with the requirements of § 47:337.51 because defendants were "dealers" under the terms of the statutes. Affirmed.

Per Johnson, C.J.; Guidry, J., dissenting with reasons.

Washington Parish Sheriff's Office v. Louisiana Machinery Co., 2013-C-0583 (La. 10/15/13) [12 pp.]

In this related case, the Washington Parish taxing authority (Collector) also pursued defendants for additional taxes as a result of the multi-parish audit. In November 2009, it sent defendants a notice of intent to assess, which defendants did not protest. In December 2009, it issued a notice of assessment pursuant to § 47:337.51. Defendants did not formally respond, but provided additional tax records. The Collector adjusted the assessments and issued a revised notice of assessment with language identical to the notice described above. Defendants did not respond, and in October 2010, the Collector filed summary proceedings in the district court under §§ 47:337.33 and 337.61. Defendants filed answers, exceptions, and affirmative defenses on December 6, 2010. On December 13, 2010, they filed supplemental and amending answers and affirmative defenses. The Collector moved to strike the supplemental responses because they were not filed at the same time as the original defenses, as required by § 47:337.61(2). It also filed motions for partial summary judgment seeking a declaration that the revised notices were final and executory judgments. The

district court granted the Collector's motions to strike and for partial summary judgment. On appeal, the First Circuit affirmed.

The Court granted a supervisory writ and reversed the First Circuit. As above, it concluded that the notices of assessments did not comply with § 47:337.51(A) and, therefore, the assessments were not final. As to the defenses available on remand, those asserted on December 6 were timely. However, any defenses asserted solely in the December 13 filings were not timely because they were not "presented at one time" under § 47:337.61(2) and could not be considered on remand. The Court again explained that the issue of the validity of the notices was an element of the Collector's claims, and not a defense. Justice Guidry again dissented, opining that proper notice was given and that the judgment of the district court was correct. Reversed and remanded.

Per Johnson, C.J.; Guidry, J., dissenting with reasons.

STATE AND LOCAL GOVERNMENT

Rice Statutes, allowing imposition of assessment on rice producers for payment to Rice Boards, violated Louisiana Constitution.

Carl Krielow v. Louisiana Department of Agriculture and Forestry, 2013-CA-1106 (La. 10/15/13) [21 pp.]

In 1972, the Louisiana Legislature enacted a statutory scheme establishing the Rice Promotion Board and the Louisiana Rice Research Board to promote the growth of the rice industry. The Rice Statutes, La. R.S. §§ 3:3534 and 3544, obligate rice producers to pay an assessment on rice produced in Louisiana "not to exceed three cents per hundredweight." The assessment, paid to the Rice Boards after collection by the Commissioner of Agriculture, is not imposed unless approved by a majority referendum vote of the producers. If approved, the assessment is effective for five years and may be extended indefinitely in increments of five years by ratification and approval by a majority of all the rice producers who voted in the referenda. Although the Rice Statutes originally provided for a refund procedure, they were amended in 1992 to allow the voting majority of rice producers to abolish the refund procedure. The assessments have been approved since the statutes went into effect, and the refund provisions were abolished in the 1992 referendum. Plaintiffs are approximately forty rice producers who filed suit against the Louisiana Department of Agriculture and Forestry (LDAF), alleging that the Rice Statutes violated the Louisiana Constitution. The district court granted summary judgment to plaintiffs in part, finding that the sections of the Rice Statutes regarding abolishment of the refunds, §§ 3:3534(G)(2), (3) and 3544(E)(2), (3) were an improper and unconstitutional delegation of legislative authority. The LDAF appealed. Plaintiffs answered the appeal and asserted that the Rice Statutes were unconstitutional in their entirety.

On direct appeal pursuant to La. Const. art. V, § 5, the Court concluded that the Rice Statutes, §§ 3:3534 and 3544, clearly violated the non-delegation doctrine of the Louisiana Constitution. The Legislature did not have the authority to delegate the question of imposition of the assessment to the rice producers. The Legislature cannot condition the imposition of a law upon the vote of a private group. Further, the statutes violated the non-delegation doctrine by giving a private group the power to decide whether the law governing the refunds would change, essentially granting a majority of rice producers the power to repeal the Legislature's grant of a refund. The statutes also unconstitutionally delegated legislative power to the rice producers to set the rate of the assessment, subject to the three-cent maxima. The statutes failed to set forth sufficient standards to guide the Rice Boards in execution of the legislative policy, and there were no procedural safeguards to protect against abuse of the Rice Boards' discretion. The statutes were facially unconstitutional in their entirety. Affirmed as amended.

Per Johnson, C.J.

Healthcare provider's claim for payment under workers' compensation provisions could be assigned; parties novated original agreement.

Rebel Distributors Corp., Inc. v. LUBA Workers' Comp., 2013-C-1749 (La. 10/15/13) [31 pp.]

Plaintiff is a wholesale distributor of pharmaceuticals. In 2007, plaintiff and the St. Thomas Clinic entered into a "Pharmaceutical Service and Prescription Claims Assignment Agreement" (2007 Agreement). The Clinic was owned and operated by Dr. Michael Heard, who dispensed medications directly to his patients through an in-office pharmacy program with pharmaceuticals provided by plaintiff. By way of the 2007 Agreement, the Clinic assigned full ownership of its workers' compensation prescription transactions to plaintiff. Upon receipt of notice from Dr. Heard that plaintiff's pharmaceuticals had been dispensed to an injured employee, plaintiff would forward an invoice to the appropriate employer and/or workers' compensation insurer demanding payment. In 2008, LUBA Casualty Insurance Company, a workers' compensation insurer, began refusing to pay plaintiff for medications dispensed by Dr. Heard. In these nineteen consolidated cases, plaintiff filed disputed claims for compensation with the Louisiana Office of Workers' Compensation (OWC) against LUBA and certain employers, identifying itself as a healthcare provider and seeking payment of outstanding invoices, penalties, and attorney's fees. In 2010, plaintiff and Dr. Heard executed another agreement bearing the title "Principal - Agent Agreement," expressing their intention to establish a principal/agent relationship and to novate the 2007 agreement. Ultimately, judgment was rendered for plaintiff by the OWC, but only for the unpaid invoices, subject to a statutory cap of $750 per injured employee. Plaintiff appealed the decision to limit its recovery, and LUBA answered the appeal, arguing that plaintiff was not a healthcare provider pursuant to La. R.S. § 23:1021(6). On its own motion, the Third Circuit concluded that plaintiff had no right or cause of action under the workers' compensation laws. It also found that the 2007 agreement did not establish an agency relationship, that assignment of the accounts to plaintiff was prohibited, and that the 2010 agreement did not novate the 2007 agreement. It reversed the OWC's decision and entered judgment for defendants, dismissing plaintiff's claims.

The Court granted a supervisory writ and reversed. A health care provider has a right to file an administrative proceeding with the OWC to obtain payment for pharmaceuticals dispensed by a physician to an injured employee. The Court addressed three issues in concluding that plaintiff could pursue such a claim for pharmaceuticals dispensed by Dr. Heard. First, Dr. Heard's claim for payment could be assigned to plaintiff. Under Louisiana Civil Code art. 2642, all rights may be assigned with the exception of those pertaining to obligations that are strictly personal. Nothing suggested that Dr. Heard's right to collect payment from LUBA was strictly personal. Further, although § 23:1205(A) prohibits the assignment of claims belonging to injured workers, it does not prohibit the assignment of *all* claims brought pursuant to the workers' compensation laws. Second, the obligations provided for in the 2007 Agreement were expressly novated retroactively by the 2010 Agreement as authorized by Civil Code art. 1881, despite similarities between the two agreements. Finally, § 23:1021(6) contemplates that an agent acting in the course and scope of his employment can be considered a health care provider. Plaintiff, acting as an agent of Dr. Heard, fell within the statutory definition of health care provider and could bring the suit. The Court remanded the case to the court of appeal to consider other issues not considered in the original appeal. Justices Victory and Guidry dissented separately, both opining that the anti-assignment language of § 23:1205(A) prohibited assignment of the claim. Justice Guidry additionally explained his view that the majority's second and third conclusions were *dicta* in light of the remand order. He would have affirmed the court of appeal opinion in its entirety. Reversed and remanded.

Per Weimer, J.; Johnson, C.J., dissenting; Victory, J., dissenting with reasons; Guidry, J., dissenting with reasons.

Employer entitled to offset for workers' compensation benefits paid simultaneously with disability retirement benefits, despite alleged representations to employee.

Louisiana Department of Risk Management v. Patrick Richard, 2013-C-0890 (La. 10/15/13) [8 pp.]

After Patrick Richard sustained a work-related injury while employed by Louisiana's Department of Transportation and Development (DOTD), DOTD began paying him workers' compensation benefits. He took disability retirement in April 2007. Upon retiring, he spoke with a DOTD employee, Ms. Dodge, who he claimed told him that his workers' compensation would not "affect his retirement." He began receiving disability retirement benefits through the Louisiana State Employees Retirement System while simultaneously receiving workers' compensation benefits. In January 2011, the DOTD filed a disputed claim for compensation, seeking an offset pursuant to La. R.S. § 23:1225(C)(1). Richard filed an exception of prescription. The OWC denied the exception of prescription and concluded that DOTD was entitled to an offset of $224.05 per week as of April 21, 2007, until Richard converted to regular retirement benefits at age sixty. On appeal, the Third Circuit affirmed denial of the exception of prescription but reversed as to the offset. The court of appeal concluded the State was estopped from claiming an offset, considering the assurances of Dodge and the fact that DOTD had continued to pay Richard disability retirement benefits for more than three years while acknowledging it might be entitled to an offset.

The Court granted a supervisory writ as to the sole issue of whether the DOTD was entitled to an offset. Under § 23:1225(C)(1), if an employee receives remuneration from benefits under a disability benefit plan, workers' compensation benefits shall be reduced, unless there is an agreement to the contrary between the employee and the employer liable for payment of the workers' compensation benefits. In this case, DOTD satisfied its burden of proving entitlement to an offset by producing undisputed evidence that Richard received both disability retirement and workers' compensation benefits. The court of appeal erred in holding DOTD was estopped from claiming an offset. Richards did not establish that his reliance on any purported representation by Dodge was reasonable. He did not know Dodge's title or position at DOTD and did not perform any additional investigation. Further, nothing in his conversation with her should have caused him to believe his workers' compensation benefits would not be reduced once he took disability retirement. Likewise, there was no evidence of any agreement between Richard and DOTD that DOTD would continue to pay workers' compensation benefits despite Richard's receipt of disability retirement benefits. The OWC's findings were supported by the record and were not clearly wrong. Reversed; judgment of OWC reinstated and affirmed.

Per curiam.

DOMESTIC RELATIONS

Fact that spouse homeschooled children could be considered in award of final support.

Timothy John Rhymes v. Dina Constantin Rhymes, 2013-C-0823 (10/15/13) [14 pp.]

Timothy and Dina Rhymes, both mechanical engineers, were married in 1990. After their first child was born in 1999, they agreed that Dina would stop working to care for the child at home. After their second child was born in 2003, they agreed that Dina would homeschool the children. The parties separated in 2008 and divorced in 2009. Under a joint custody decree, Dina was named domiciliary parent and awarded child support. By consent judgment, she was found to be without legal fault in the dissolution of the marriage. She sought final support from Timothy, claiming that her homeschooling the children should be considered in awarding her support. After Timothy filed a rule to show cause why the children should not be enrolled in

public school, the parties stipulated that the homeschooling would continue. The district court awarded Dina final support of $500 per month for twelve months and a payment of not more than $2,400 to enable her to update her training as a mechanical engineer. The district court refused to consider homeschooling as a factor in the determination of support. Dina appealed the single issue of whether homeschooling could be a factor in determining final support. A plurality of the Third Circuit affirmed the district court, opining that the duty to support one's children outweighs the desire to homeschool them. Judge Amy concurred, and Judge Conery dissented.

The Court granted a supervisory writ and reversed. Under Louisiana Civil Code art. 112, a court *shall* consider *all* relevant factors in determining the amount and duration of final support. The article lists factors that *may* be included. The fact that homeschooling is not expressly listed does not preclude its consideration. On a case-by-case basis, a court may consider the relevance of homeschooling as it affects the earning capacity of the parent undertaking the children's instruction. In this case, where the children were well-educated and thriving in the homeschool environment and Dina spent approximately 27.5 hours each week on their school work, homeschooling should have been considered in determining final support to Dina. Justice Weimer concurred to address the burden of proof going forward. Justice Knoll additionally concurred to respond to Justice Weimer and opine that it was inappropriate for the Court to attempt to direct the district court's determination on remand. Justice Hughes dissented and would have affirmed the lower courts. Vacated and remanded to the district court.

Per Knoll, J.; Knoll, J., additionally concurring; Weimer, J., concurring with reasons; Hughes, J., dissenting with reasons.

CRIMINAL

Louisiana statute regarding operation of motor vehicles by aliens not possessing documentation of lawful presence was preempted by federal law: three related cases.

State v. Alexis Sarrabea, 2013-K-1271 (La. 10/15/13) [28 pp.]

In response to the September 11, 2001, terrorist attacks, the Louisiana Legislature enacted, among other laws, La. R.S. § 14:100.13, which prohibits the operation of a motor vehicle by an alien student or nonresident alien who does not possess documentation demonstrating lawful presence in the United States. Violation of the statute is a felony that carries a fine of not more than $1,000 and/or imprisonment for not more than one year, with or without hard labor. Defendant was convicted of violating the statute. He entered a *nolo contendre* plea, reserving his right to appeal on the basis that the statute was preempted by federal law. On appeal, the Third Circuit agreed with plaintiff's argument and held that § 14:100.13 is preempted by federal law. It set aside defendant's conviction and sentence.

The Court granted a supervisory writ to consider this matter as well as two related cases, discussed below, to resolve a split within the Third Circuit. The Court affirmed the court of appeal's decision to reverse defendant's conviction and sentence. Although the statute's goal of preventing acts of terrorism was laudable, based on the Supreme Court case of *Arizona v. United States*, 132 S. Ct. 2492 (2012), the Court was constrained to find that § 14:10013 operated in the field of alien registration and was, therefore, preempted by federal law under the Supremacy Clause of the U.S. Constitution. In *Arizona*, the U.S. Supreme Court reaffirmed that the federal government has broad, undoubted power over immigration and the status of aliens and that, by virtue of the Supremacy Clause, it has virtually unfettered power to preempt state law. Where Congress occupies an entire field, as it does in the field of alien registration, even complementary state regulation, like § 14:100.13, is impermissible. Justice Victory dissented, disagreeing with the majority's assumption that anything having to do with alien registration documents was preempted

and disagreeing with the majority's interpretation of § 14:100.13. He opined that there was no evidence that Congress intended to preempt states from punishing aliens who drive without lawful presence, especially given that proof of lawful presence is a requirement for obtaining a driver's license. Justice Hughes also dissented, viewing the statute as a legitimate measure to protect Louisiana citizens. Affirmed.

Per Weimer, J.; Victory and Hughes, J.J., dissenting with reasons.

State v. Bonifacio Rameriz, 2013-KK-0276 (La. 10/15/13) [6 pp.]

In this case, also challenging § 14:100.13, the district court denied defendant's motion to quash the indictment against him for violating the statute, concluding that the State had the "power to regulate driving" in the state. The Third Circuit denied defendant's writ application, finding no error in the district court's ruling. Judge Gremillion dissented. The Court granted a supervisory writ and consolidated the case with *U.S. v. Sarrabea*, above, and *U.S. v. Marquez*, below. For the reasons outlined in *Sarrabea,* the Court found the statute was preempted by federal law and reversed the district court's judgment. Reversed; judgment rendered granting defendant's motion to quash.

Per Weimer, J.; Victory and Hughes, J.J., dissenting with reasons.

State v. Rosa Lugo Marquez, 2013-KK-0315 (La. 10/15/13) [6 pp.]

In this third consolidated case challenging § 14:100.13, the district court denied defendant's motion to quash the indictment against her, finding that the statute merely involved driving requirements and was not preempted. Again, the Third Circuit found no error in that ruling, with Judge Gremillion dissenting. As in *U.S. v. Sarrabea* and *U.S. v. Ramirez*, above, the Court granted a supervisory writ and concluded that the statute was preempted by federal law. Reversed; judgment rendered granting motion to quash.

Per Weimer, J.; Victory and Hughes, J.J., dissenting with reasons.

Defendant not entitled to post-conviction relief based on victim's credibility issues under *Conway* or Code Crim. Proc. art. 851(3).

State v. Albert Norman Pierre, 2013-KP-0873 (10/15/13) [15 pp.]

Defendant was charged with aggravated rape on the basis of allegations made by C.C., the twelve-year-old granddaughter of defendant's live-in partner. As a result of the allegations, C.C. was removed from defendant's household and lived for a brief time with her father and then with other relatives, including a cousin and her husband, Michael Percle. Defendant was tried in June 2008 and denied abusing C.C., attributing her allegations to the fact that he was the disciplinarian in the household. Defendant was found guilty and sentenced to a mandatory term of life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. The First Circuit affirmed, and the Court denied review. In February 2009, C.C. reported to police that a teenage boy had forced her and a friend to perform sexual acts, but she later admitted the report was false and that the sex had been consensual. Further, in October 2009, C.C. revealed that Michael Percle had been sexually abusing her during the same time period as defendant, although at defendant's trial she had denied having sexual activity with anyone but defendant. Investigation of her claims against Percle did not result in his prosecution. In March 2011, a prosecutor wrote to defendant's appeal counsel advising him of C.C.'s allegations against Percle. Defendant contended in post-conviction proceedings that these post-trial allegations, coupled with the fact that C.C.'s father was a convicted child molester, were highly probative and damaging to her credibility and very likely would have caused the jury to render a different verdict. C.C. testified at post-conviction hearings that she did not reveal Percle's abuse earlier because she feared being removed from her cousin's home and that she had lied about sex with the teenage boy to protect herself and her friend. The district court concluded that defendant had made a successful free-standing claim of actual innocence not based on DNA evidence, pursuant to *State v. Conway*, 01-2808 (La. 4/12/02) 816 So. 2d 290. The First Circuit summarily denied review, with Judge Crain dissenting.

The Court granted a supervisory writ and reinstated the conviction and sentence. Before the Court, post-conviction counsel conceded that defendant had not met the *Conway* standard and that defendant had not made a *bona fide* claim of actual innocence. Defendant argued, instead, that he was entitled to relief because the prosecutor delayed disclosing C.C.'s allegations against Percle until March 2011 and thereby deprived defendant of due process by denying him an opportunity to timely move for a new trial based on newly discovered evidence under Code of Crim. Proc. art. 851(3). The Court discussed *Conway* and explained, as defendant conceded, that he lacked new, reliable evidence of such persuasiveness that no reasonable juror would have convicted him in light of the new evidence. Defendant also failed to show he was deprived of the opportunity to file a motion for new trial on grounds of newly discovered evidence. Under La. Code Crim Proc. art. 853, a motion for new trial based on newly discovered evidence must be filed "within one year after verdict or judgment of the trial court, although a sentence has been imposed or a motion for new trial has been filed." The jury returned its verdict against defendant in June 2008. The prosecutor was not chargeable with knowledge of C.C.'s allegations against Percle until November 2009. Even assuming the prosecutor had a duty to disclose the allegations at that time, the timing of the disclosure had no bearing on defendant's opportunity to file a motion for new trial. The time for filing such a motion already had expired. Conviction and sentence reinstated; case remanded.

Per curiam.