

6/29/01

SUPREME COURT OF LOUISIANA

99-KO-1895

STATE OF LOUISIANA

versus

MATTHEW WAYNE MORGAN

**ON WRIT OF CERTIORARI
TO THE THIRD CIRCUIT COURT OF APPEAL**

TRAYLOR, J. (dissenting)

The admission of the other crimes evidence is subject to harmless-error analysis under *Chapman v. California*, 386 U.S. 18 (1967). See *State v. Johnson*, 94-1379 (La. 11/27/95), 664 So. 2d 94. In *McArthur*, "numerous inconsistencies" existed, such as the victim's testimony, and the testimony from defense witnesses about the relationship between the victim and defendant and their history of drug use together, which cast doubt on "whether admitting the evidence was harmless beyond a reasonable doubt and the jury verdict was unattributable to the error." 719 So. 2d at 1043.

In contrast, the other crimes evidence in this case merely corroborated what the jury already knew through the victim's testimony. The victim testified that the defendant, during commission of the rape, stated "I was in jail in Oklahoma for rape for six years." That testimony was validly admitted as the *res gestae* of the crime. See *State v. Wilson*, 363 So. 2d 481 (La. 1978). Thus, even without the testimony of the other witnesses, the State had presented ample evidence, including evidence of other crimes through the victim's testimony, to make the trial testimony by the prior victims harmless beyond a reasonable doubt and the jury verdict unattributable to the error.