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Court upholds death sentence for child rape

- Louisiana Supreme Court rules in favor of death penalty for child rape
- Lawyers say test case could go to U.S. Supreme Court
- 1977 ruling says execution is cruel and unusual punishment in sex cases
- Patrick Kennedy, 42, convicted of raping relative as she sorted Girl Scout cookies

NEW ORLEANS, Louisiana (AP) -- Louisiana's Supreme Court ruled Tuesday that a man may be executed for raping an 8-year-old girl, and lawyers say his case may become the test for whether the nation's highest court upholds the death penalty for someone who rapes a child.

Both sides say the sentence for Patrick Kennedy, 42, could expand a 1977 U.S. Supreme Court ruling that held the death penalty for rape violated the Eighth Amendment protection against cruel and unusual punishment. The high court said then that its ruling applied only to adult victims.

Attorney Jelpi Picou, director of the New Orleans-based Capital Appeals Project, said he will ask the Louisiana Supreme Court for a rehearing and, if rejected, will go to the U.S. Supreme Court.

"As horrid as (rape) is and as harshly as we believe it should be condemned, death is inappropriate in this case," Picou said.

Louisiana law allows the death penalty for the aggravated rape of someone less than 12 years old.

"He's the only person in the United States on death row for non-homicide rape," Picou said.

Kennedy was convicted in 2003 of raping a relative as she sorted Girl Scout cookies in the garage of her home in suburban New Orleans. He bragged to one man that the girl "became a lady today," deputies said.

His defense attorney at the time argued that blood testing was inconclusive and that the victim -- who didn't report that Kennedy was her rapist until 21 months later -- was pressured to change her story.

In Tuesday's opinion, Justice Jeffrey Victory wrote, "Our state Legislature and this court have determined this category of aggravated rapist to be among those deserving of the death penalty, and, short of a first-degree murderer, we can think of no other non-homicide crime more deserving."

Victory wrote that the Louisiana law meets the U.S. Supreme Court test requiring an aggravating circumstance -- in this case the age of the victim -- to justify the death penalty.

The governors of South Carolina and Oklahoma signed laws last year allowing the death penalty for people who repeatedly rape children. Richard Dieter of the Death Penalty Information Center in Washington, D.C., said he doesn't know of any successful prosecution under either of those laws.

A bill that would allow the death penalty for a second offense of child rape is awaiting the governor's decision in Texas.

Georgia law allows death as a penalty for rape. Dieter said Florida and Montana also have such laws, but authorities have said the penalty

would be invoked only for rape of a child.

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