NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 2096

STATE OF LOUISIANA

VERSUS

FRANKLIN DALE CHURCH

Judgment Rendered: SEP 2 4 2014

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APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF LIVINGSTON
STATE OF LOUISIANA
DOCKET NUMBER 28283, DIVISION B

HONORABLE BRUCE C. BENNETT, JUDGE

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BEFORE: PARRO, McDONALD, AND CRAIN, JJ.

McDONALD, J.

The defendant, Franklin Dale Church, was charged by bill of information with nine counts of indecent behavior with juveniles, violations of LSA-R.S. 14:81.[1] The defendant pled not guilty and, following a jury trial, was found guilty as charged on all counts. For each conviction, he was sentenced to seven years imprisonment at hard labor. All nine sentences were ordered to run consecutively to each other. The defendant now appeals, designating two counseled assignments of error and one pro se assignment of error. We affirm the convictions and sentences.

FACTS

In October of 2010, the mother of thirteen-year-old R.B.[2] learned that R.B. had been texting and talking on Facebook to the defendant, who was forty-four years old. R.B.'s mother read a text on R.B.'s cell phone from the defendant instructing R.B. to delete the texts between them. R.B.'s mother called the police, who went to her home in Livingston, Louisiana. One police officer read a text from the defendant on R.B.'s cell phone asking if she was a virgin. The police monitored R.B.'s Facebook account and observed that the defendant was writing to R.B. asking to meet her, and asking if she could walk outside of her house so that he could see her. The defendant also wrote to R.B. that he would get her cigarettes in exchange for inappropriate sexual activity. Posing as R.B., the police responded on Facebook that R.B. would meet him at the ballpark near her home. Chief Randy Dufrene and Officer Wade Stanberry, both with the Livingston Police Department, and Corporal Calvin Bowen, with the Livingston Parish Sheriff's Office, drove to the ballpark at the designated meeting time and found

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[1] Louisiana Revised Statute 14:81 provides, in pertinent part:

> A. Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:
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> (1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense; or
>
> (2) The transmission, delivery or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. It shall not be a defense that the person who actually receives the transmission is not under the age of seventeen.

In counts 1 and 4 through 9, the defendant was charged under LSA-R.S. 14:81(A)(1). In counts 2 and 3, the defendant was charged under LSA-R.S. 14:81(A)(2). The victim in count 1 is V.O. The victim in all other counts is R.B.

the defendant parked at the ballpark in his work truck, facing R.B.'s house. The defendant had an opened laptop computer in his lap. When he saw the police, the defendant closed his laptop computer and tossed it on the passenger seat. He attempted to back up, but his truck was hemmed in. When he exited his truck, the defendant refused to be placed in handcuffs and resisted arrest until he was finally pepper sprayed, taken to the ground, and subdued; his laptop computer was seized. In the defendant's truck, the police found handcuffs, a condom wrapper, and a brand new pack of Marlboro smooth menthol cigarettes. The defendant was not known to smoke. The defendant was arrested, subsequently bonded out of jail, and was ordered to stay away from R.B.

In early 2012, the defendant and R.B. began texting and communicating again on Facebook, both using bogus account names. R.B. began sneaking out of her house to have sex (vaginal, oral, and attempted anal) with the defendant in a truck. Soon, R.B. was meeting the defendant at his house in Holden, Louisiana, where he continued to have sex with her. R.B.'s mother learned what R.B. was doing, this time through Kindle texting, and called the police. R.B. was interviewed at the Children's Advocacy Center (CAC) in Denham Springs, Louisiana, where she described the various sexual acts in which she had engaged with the defendant. R.B. also testified at trial about the sexual acts between her and the defendant over a period of several months in 2012.

The defendant's sister and three of his female cousins testified at trial. All four witnesses, now adults, testified that, when they were children, the defendant sexually abused them, and the abuse lasted for years. V.O., a friend of the defendant's son also testified at trial. According to her testimony, when she was thirteen years old, she was inside the defendant's residence when the defendant approached her and began fondling her. He pulled off her shorts and underwear and inserted a sexual device in her vagina. The defendant did not testify at trial.

COUNSELED ASSIGNMENT OF ERROR NUMBER ONE

In his first counseled assignment of error, the defendant argues the trial court erred in allowing the introduction of other crimes evidence at the trial. Specifically, the

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[2] The victims are referenced only by their initials. See LSA-R.S. 46:1844(W).

defendant contends that the other crimes evidence was not similar to the instant crime.

Prior to trial, the State filed notices of intent to introduce evidence of other crimes or bad acts pursuant to LSA-C.Cr.P. art. 720 and LSA-C.E. arts. 404(B) and 412.2. At the **Prieur** hearing, three of the defendant's female cousins testified the defendant regularly sexually abused them. According to S.T., when she was three years old, the defendant molested her. He tried to vaginally penetrate her, but could not. In 1986, when she was twelve years old, the defendant, who was then nineteen or twenty years old, molested her and tried to have sex with her. When the defendant was married, he would still ask S.T. to come spend the night so he could sexually abuse her. D.M. testified that when she was seven years old, the defendant tried to vaginally penetrate her, but could not. There were more incidents of sexual abuse, but the last time was when she was fourteen years old and the defendant was twenty or twenty-one years old. C.S. testified the defendant began molesting her when she was three or four years old. The acts included the defendant performing oral sex on C.S., and the sexual abuse by him continued for several years. The defendant's sister, T.H., also testified at the hearing. According to T.H., the defendant began sexually abusing her when she was six years old and the defendant was about twelve years old. In 1989, when T.H. was sixteen years old, she moved in with the defendant and his wife because T.H.'s parents were moving to Tennessee. During the few months that T.H. lived with the defendant, he raped her.

The trial court granted the State's motions and ruled the other crimes evidence admissible at trial. According to the trial court, "the evidence will be admissible in all respects" and "[a]ll of the witnesses may so testify[.]"

At trial, R.B. testified that in 2010 when she was thirteen years old, she and the defendant began communicating with each other on Facebook and through texting. By 2012, after the defendant had bailed out of jail and was ordered to stay away from R.B., he used a fake name on Facebook to keep in touch with R.B. R.B. began sneaking out of her house to meet the defendant in his truck, where he would have oral and vaginal sex with R.B. On one occasion, he attempted anal sex. Eventually, R.B.

began meeting the defendant at his house, where they continued to have sex. According to R.B., they had sex more than a dozen times.

V.O. testified at trial that she was a friend of the defendant's son. When V.O. was thirteen years old, she was riding four-wheelers with the defendant's son. She got overheated, so she went inside the defendant's house to cool down. As she sat on the couch, the defendant sat down beside her and began groping her. He put his hands down her shirt and shorts and asked her if it felt good. She tried to push him away, but could not. The defendant then pulled her shorts and underwear down. He went to his room, then returned with a "toy" that looked like a penis. He inserted the toy in her vagina. She finally pushed the defendant away, got dressed, and went outside.

According to the defendant, the other crimes evidence should not have been allowed because it served no purpose other than to depict him as a chronic offender and molester. The defendant suggests the evidence is "specious at best," because his three cousins and sister admitted they had not reported the matter to the authorities; further, when they did say anything, they were punished as liars or instigators by their aunt, the defendant's mother, or grandmother. The defendant asserts that the graphic testimony allowed into evidence by the trial court was clearly more prejudicial than probative.

Louisiana Code of Evidence article 404(B)(1) provides:

> Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Generally, evidence of criminal offenses other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. In order to avoid the unfair inference that a defendant committed a particular crime simply because he is a person of criminal character, other crimes evidence is inadmissible unless it has an independent relevancy besides simply showing

a criminal disposition. **State v. Lockett**, 99-0917 (La. App. 1 Cir. 2/18/00), 754 So.2d 1128, 1130, writ denied, 00-1261 (La. 3/9/01), 786 So.2d 115.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. LSA-C.E. art. 401. All relevant evidence is admissible, except as otherwise provided by positive law. Evidence which is not relevant is not admissible. See LSA-C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, or waste of time. LSA-C.E. art. 403.

Louisiana Code of Evidence article 412.2 provides:

> A. When an accused is charged with a crime involving sexually assaultive behavior, or with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403.
>
> B. In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.
>
> C. This Article shall not be construed to limit the admission or consideration of evidence under any other rule.

Article 412.2, enacted in 2001, was a legislative response to earlier decisions from the Louisiana Supreme Court refusing to recognize a "lustful disposition" exception to the prohibition of other crimes evidence under LSA-C.E. art. 404. **State v. Buckenberger**, 07-1422 (La. App. 1 Cir. 2/8/08), 984 So.2d 751, 757, writ denied, 08-0877 (La. 11/21/08), 996 So.2d 1104. Ultimately, questions of relevancy and admissibility of evidence are within the discretion of the trial court. Such determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. See **State v. Mosby**, 595 So.2d 1135, 1139 (La. 1992); **State v. Olivieri**, 03-563 (La. App. 5 Cir. 10/28/03), 860 So.2d 207, 218.

We find no abuse of discretion in the trial court's ruling allowing the introduction of the testimony of S.T., D.M., C.S., and T.H. at trial. The sexual crimes against the defendant's three cousins and sister over several years started when they were all young and continued over several years. In all of the cases, the defendant molested his victim and had or attempted to have sexual and/or oral intercourse with her. Also in all of the cases, the defendant knew, or was friendly with his victims, and used that familiarity to take advantage of them. Most strikingly, for many years the defendant has exhibited a clear pattern of behavior made manifest by the continuity and consistency with which the other crimes were committed. His predilection to pedophilic activities appears long standing and firmly entrenched. See **State v. Driggers**, 554 So.2d 720, 727 (La. App. 2 Cir. 1989).

The defendant argues in his brief that, "[a]s noted above, evidence of other crimes is admissible only if it is offered for one of the enumerated purposes," such as plan, knowledge, identity, or absence of mistake or accident, and has some independent relevance. In other words, the defendant throughout this assignment of error focuses on evidence admissible pursuant to LSA-C.E. art. 404(B)(1), rather than LSA-C.E. art. 412.2. The trial court found the defendant's prior sexual acts with his relatives admissible under both Article 404(B)(1) and Article 412.2. While we agree that the evidence was admissible under Article 404(B)(1), in that the evidence showed motive, opportunity, and intent, we find the evidence is independently admissible under Article 412.2 and, as such, no separate analysis of relevance under Article 404(B)(1) is required. Relevancy and the balancing test are the prerequisites for the admissibility of evidence under Article 412.2. Thus, evidence of a prior sexual offense indicating that the defendant has a lustful disposition toward young females is admissible if it is relevant and if the probative value of the evidence outweighs its prejudicial effect. See **State v. Williams**, 09-48 (La. App. 5 Cir. 10/27/09), 28 So.3d 357, 364, writ denied, 09-2565 (La. 5/7/10), 34 So.3d 860. See also **State v. Fisher**, 09-1187 (La. App. 4 Cir. 5/18/10), 40 So.3d 1020, 1026-27, quoting, **State v. Driggers**, 554 So.2d at 727.

Accordingly, we find the trial court did not abuse its discretion in finding that the other crimes evidence involving these victims was clearly admissible under LSA-C.E. art. 412.2 to prove the defendant's lustful disposition toward young females. Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice under LSA-C.E. art. 403. See **State v. Verret**, 06-1337 (La. App. 1 Cir. 3/23/07), 960 So.2d 208, 220-22, writ denied, 07-0830 (La. 11/16/07), 967 So.2d 520. See also **State v. Johnson**, 43,843 (La. App. 2 Cir. 1/28/09), 2 So.3d 606, 614-16, writ denied, 09-0464 (La. 11/6/09), 21 So.3d 300; and, **State v. E.J.F.**, 08-674 (La. App. 3 Cir. 12/10/08), 999 So.2d 224, 230-31.

This counseled assignment of error is without merit.

COUNSELED ASSIGNMENT OF ERROR NUMBER TWO

In his second counseled assignment of error, the defendant argues his total sentence is excessive. Specifically, the defendant contends the trial court erred in ordering all of his sentences to run consecutively rather than concurrently.

A thorough review of the record indicates the defendant did not make or file a motion to reconsider sentence following the trial court's imposition of the sentences. Under LSA-C.Cr.P. arts. 881.1(E) and 881.2(A)(1), the failure to make or file a motion to reconsider sentence shall preclude the defendant from raising an objection to the sentence on appeal, including a claim of excessiveness. See **State v. Mims**, 619 So.2d 1059 (La. 1993) (per curiam). The defendant, therefore, is procedurally barred from having this assignment of error reviewed, because he failed to file a motion to reconsider sentence after being sentenced. See **State v. Duncan**, 94-1563 (La. App. 1 Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam).

This counseled assignment of error is without merit.

REVIEW FOR ERROR

In his counseled brief, the defendant asks this court to examine the record for error under LSA-C.Cr.P. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under LSA-C.Cr.P. art. 920(2), our review is limited to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in

these proceedings, we have found no reversible errors. See **State v. Price**, 05-2514 (La. App. 1 Cir. 12/28/06), 952 So.2d 112 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So.2d 1277.

PRO SE ASSIGNMENT OF ERROR

In his sole pro se assignment of error, the defendant argues the trial court erred in denying his motion for post verdict judgment of acquittal. Specifically, the defendant contends the evidence was insufficient to prove each of the nine counts of indecent behavior with juveniles.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; LSA-Const. art. I, §2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See LSA-C.Cr.P. art. 821(B); **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 660; and, **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, in order to convict, the factfinder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 01-2585 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

Before addressing the individual counts, the defendant suggests that the State's memorandum in support of allowing LSA-C.E. art. 412.2 evidence at trial contains statements that were inconsistent with the testimony at the Article 412.2 hearing; and further that there was contradictory testimony at the hearing. When all evidence had been presented at the Article 412.2 hearing, the trial court deferred ruling to give counsel the opportunity to submit briefs. In the State's memorandum in support of evidence submitted, the prosecutor stated that while Ronald, the father of the defendant's three cousins, spoke to someone at the Livingston Parish Sheriff's Office,

"he chose not to press charges for many reasons, including the fact that the [girls'] mother had recently been killed in a car accident. He did not wish the girls to endure any more stress." The defendant notes in his pro se brief that Ronald never testified at the Article 412.2 hearing that he chose not to press charges. Regarding testimony at the hearing itself, the defendant suggests there was inconsistent testimony. For example, while C.S. testified she was molested at her grandmother's house and remembered D.M. walking into the room while the defendant was abusing her, D.M. testified she was at her aunt's house when she walked in the room and found the defendant sexually abusing C.S. The defendant also points out that Ronald and D.M. provided conflicting testimony as to why D.M. went into foster care. Finally, the defendant avers that S.T. testified at the hearing that she had told a school counselor about the abuse. According to the defendant, however, "[k]nowing state law that school counselor had to notify the police, no police report was produced."[3]

This entire line of argument by the defendant is baseless. The trial court presided over the Article 412.2 hearing and presumably read the submitted briefs of counsel following the hearing. A trial court's ruling on the admissibility of evidence pursuant to LSA-C.E. art. 412.2 is reviewed for an abuse of discretion. **State v. Wright**, 11-0141 (La. 12/6/11), 79 So.3d 309, 316. See **State v. Cosey**, 97-2020 (La. 11/28/00), 779 So.2d 675, 684, cert. denied, 533 U.S. 907, 121 S.Ct. 2252, 150 L.Ed.2d 239 (2001). Despite any alleged contradictions or inconsistency between the State's memorandum and the testimony hearing, or within the testimony itself, the trial court clearly found the witnesses credible and the testimony relevant insofar as being indicative of defendant's lustful disposition toward young girls. The trial court clearly found that the evidence was to be allowed at trial and that its probative value was not substantially outweighed by the danger of unfair prejudice. See LSA-C.E. art. 403. We find no abuse of discretion in the ruling of the trial court. Moreover, the Article 412.2 hearing was a pretrial hearing and, as such, the jury heard none of the testimony given there. If the same alleged contradictions or inconsistencies arose at trial, defense

[3] For the sake of clarification, we note that S.T. did not testify she had told a school counselor, but rather stated, "There are people at school that -- counselors at school that knew."

counsel could have addressed those concerns with contemporaneous objections and effective cross examination.

Regarding the actual sufficiency issues, the defendant argues the evidence supporting count 1, where V.O. was the victim, was insufficient, because V.O.'s testimony contradicted R.B.'s testimony about her relationship with the defendant, and V.O. never told anyone of the 2009 incident until 2012. It is not at all clear, however, how V.O.'s testimony was in conflict with R.B.'s testimony. Moreover, V.O. testified at trial that the defendant inserted a sex toy inside her vagina. V.O.'s testimony alone clearly established the elements of LSA-R.S. 14:81(A)(1).

Count 2, where R.B. was the victim, charged that, pursuant to LSA-R.S. 14:81(A)(2), the indecent behavior by the defendant occurred with the transmission, delivery, or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. The defendant argues the State did not prove that R.B. was communicating with the defendant on Facebook, rather than with the defendant's son, on October 30, 2010, and November 1, 2011. R.B. testified at trial that she was communicating with the defendant on Facebook on those dates. Officer Wade Stanberry, with the Livingston Police Department, was at R.B.'s house when she and the defendant were "talking" on Facebook. Officer Stanberry testified that R.B. confirmed that it was the defendant with whom she was communicating. Moreover, the Facebook chats extracted from R.B.'s computer by a forensics expert indicated the names of "Dale Church" and R.B. as the two people conversing with each other. During these conversations, the defendant told R.B. he wanted to meet with her and that he would get her some cigarettes. He also asked if she had ever been "fingered" before. When they agreed, through Facebook, to meet at the ballpark, it was the defendant's very presence at the ballpark with the pack of unopened cigarettes that confirmed he was the person chatting with R.B. on Facebook.

Count 3, where R.B. was the victim, also charged that, pursuant to LSA-R.S. 14:81(A)(2), the indecent behavior by the defendant occurred with the transmission,

delivery, or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. The dates of the offense for count 3 were from March 1, 2012 to June 30, 2012. Thus, while count 2 addressed the period of time when the defendant and R.B. first began communicating, count 3 addresses that time, about fourteen months later, when the defendant began having sex with R.B. The defendant argues that, during this latter time period, there was no textual or written communication or images to R.B. depicting lewd or lascivious conduct. R.B.'s mother testified, however, that when she discovered R.B. was still talking to the defendant, she took R.B. to Florida at the end of June of 2012. While in Florida, R.B.'s mother found R.B. in the bathroom using her mother's Kindle to communicate with the defendant. R.B.'s mother looked at the Kindle texts and noticed R.B. was calling the defendant "Daddy." R.B. confirmed in her own testimony that she called the defendant "Daddy" at the defendant's behest. When they returned home shortly thereafter, R.B.'s mother turned over R.B.'s cell phone to Sergeant Jennifer Duet, with the Livingston Parish Sheriff's Office. Sergeant Duet testified she became involved in the investigation of the defendant in July 2012. When R.B.'s mother gave her R.B.'s cell phone, Sergeant Duet looked through the text messages. She testified that she "saw some text messages between [R.B.] and a subject that she was calling Daddy. They were very sexually explicit in nature." Moreover, R.B. testified that during this four-month period, March 1, 2012 to June 30, 2012, when she was having sex with the defendant, they were also "sexting." Following is the relevant exchange between R.B. and the prosecutor on direct examination:

> Q. Okay, I got it. That's all right. So now tell us about Daddy.
> A. We got in an argument, I think, and he just said, from now on I want you to call me Daddy. I was just like, yes, Daddy. At that point, I was at [C's], and [she] was really mad because she was reading my texts, but she didn't know who I was talking to.
> Q. And how would he speak to you, [R.B.]?
> A. Sometimes he would be nice and sometimes he wouldn't.
> Q. When you say he wouldn't sometimes, wouldn't sometimes be nice?
> A. Uh --
> Q. What would he say to you?
> A. I don't know if I can say that.

Q. What?
A. I don't know if I can say that.
Q. Just say it to me.
A. Sometimes he would either call me a slut or a whore or a bitch.
Q. And would you say anything back to him when he would call you that? What would be going on that he would call you that?
A. Sometimes it was just when we were having sex or sometimes it would be if we were sexting or --
Q. Did you ever tell him that you don't want to be called that?
A. I just did whatever I was told.

Counts 4 through 9 charge that, pursuant to LSA-R.S. 14:81(A)(1), the defendant committed lewd or lascivious acts upon the person of R.B. between March 1, 2012 and June 30, 2012. In his pro se brief, the defendant simply suggests that, for these six counts, the evidence was insufficient to convict him. The only support for this argument is that DNA found on a rope in the defendant's bedroom could have been either the defendant's or his son's. Regardless of whose DNA may have been on the rope in the defendant's bedroom, R.B.'s testimony, as well as R.B.'s CAC interview, clearly established the defendant committed lewd or lascivious acts upon R.B. over a period of several months. The testimony of the victim alone is sufficient to prove the elements of the offense. **State v. Orgeron**, 512 So.2d 467, 469 (La. App. 1 Cir. 1987), writ denied, 519 So.2d 113 (La. 1988). According to R.B., at first she had oral and attempted anal sex with the defendant in his vehicle. Eventually, she began meeting the defendant at his house where at different times the defendant engaged R.B. in vaginal, anal, and oral sex. R.B. testified they had sex thirteen or fourteen times. Also, R.B.'s mother discovered R.B. had both of her nipples pierced. R.B. explained to her mother that the defendant had pierced them for her because he liked body jewelry. Accordingly, the evidence clearly established the elements of LSA-R.S. 14:81(A)(1) for each count.

The jury heard the testimony and viewed the physical evidence presented to it at trial and found the defendant guilty as charged on all counts. In the absence of internal contradiction or irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. **State v. Higgins**, 03-1980 (La. 4/1/05), 898 So.2d 1219, 1226, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). The trier of fact is free to accept or reject,

in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1 Cir. 1985).

When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. See **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). In this case, the jury's verdicts reflected the reasonable conclusion that based on the physical evidence and testimony, the defendant committed lewd or lascivious acts upon the persons of R.B. and V.O. and sent lewd or lascivious texts to R.B. In finding the defendant guilty, the jury clearly rejected the defense's theory of innocence. See **Moten**, 510 So.2d at 61-62.

After a thorough review of the record, we find the evidence supports the jury's verdicts. We are convinced that, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of nine counts of indecent behavior with juveniles. See **State v. Calloway**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

The trial court did not err in denying the defendant's motion for post verdict judgment of acquittal. Accordingly, the pro se assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.