NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 KA 0631

STATE OF LOUISIANA

VERSUS

CHRISTOPHER GAUDET

Judgment Rendered: OCT 31 2016

* * * * * * * *

Appealed from the
17th Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
Case No. 541211

The Honorable Steven M. Miller, Judge Presiding

* * * * * * * *

Margaret S. Sollars
Thibodaux, Louisiana

Counsel for Defendant/Appellant
Christopher Gaudet

Camile A. Morvant, II
District Attorney
Joseph S. Soignet
Assistant District Attorney
Thibodaux, Louisiana

Counsel for Appellee
State of Louisiana

* * * * * * * *

BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

THERIOT, J.

The defendant, Christopher Gaudet, was charged by grand jury indictment with aggravated rape on counts one, two, and three in violation of La. R.S. 14:42(A)(4), and with cruelty to juveniles on counts four, five, and six in violation of La. R.S. 14:93. He pled not guilty on all six counts.[1] After commencement of a trial by jury, on counts four, five, and six, the defendant was re-arraigned, withdrew his former not guilty pleas, and pled guilty as charged. The jury subsequently found the defendant guilty as charged on counts one, two, and three. The trial court denied the defendant's motion for post-verdict judgment of acquittal and motion for new trial. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on each of counts one, two, and three; to five years imprisonment at hard labor on each of counts four, five, and six; all to be served concurrently. The defendant now appeals, assigning error to the sufficiency of the evidence on the aggravated rape convictions, to six State challenges for cause granted by the trial court, and to a defense challenge for cause denied by the trial court. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On July 15, 2014, the Lafourche Parish Sheriff's Office (LPSO) received a complaint of physical and sexual abuse of the seven-year-old male victim in this case, T.T., and subsequently uncovered similar allegations of abuse of his nine-year-old brother G.T., and his three-year-old

[1] As to counts one, two, and three, we note that the title of La. R.S. 14:42 was amended to "first degree rape" by 2015 La. Acts No. 184, § 1 and 2015 La. Acts No. 256, § 1, but these amendments did not materially alter the substance of the provision. Because the instant offenses took place prior to August 1, 2015, we reference the previous title. See La. R.S. 14:42(E).

brother L.T., the other victims herein.[2] The defendant began dating B.T. in 2013, and she and her four children (the victims and their sister A.T.) moved into the defendant's home during the summer. On alternating weekends, the children routinely stayed with their grandmother, where T.T.'s biological father T.L. was living at the time. In mid-July of 2014, T.T. revealed to T.L. that the defendant was forcing his "dick" into T.T.'s mouth. Upon T.T's disclosure, T.L. questioned the oldest child G.T., who used similar language to indicate that the defendant forced him to have oral sex with him. T.L. immediately informed the victims' grandmother of the disclosure, and they confronted B.T., who denied any abuse by the defendant. After later observing bruises on T.T.'s body, T.L. contacted the Sheriff's Office and reported allegations of abuse of his son.

In response to T.L.'s complaint, Deputy Aaron Schneck and Detective Dale Savoie arrived at the victims' grandmother's residence (in Raceland, Louisiana). Detective Savoie, who was assigned to the case, noted that T.T. had severe bruises on his right upper leg, and had other minor bruising, including a red mark on his back. The officers took photographs of the bruises on T.T.'s leg, back, and neck. The following day, July 16, 2014, Detective Savoie contacted the Children's Advocacy Center (CAC) and the Department of Children and Family Services (DCFS), a forensic interview of the victim took place, and additional photographs of the victim were taken. That evening, after T.T.'s CAC interview, Detective Savoie returned to the residence, L.T. was photographed, and CAC forensic interviews of the other three children were conducted. During their CAC interviews, G.T. and

[2] G.T.'s date of birth is December 10, 2004, L.T.'s date of birth is July 21, 2010, and T.T.'s date of birth is December 20, 2006. The child victims, their mother, and T.T.'s biological father are referenced by initials only. See La. R.S. 46:1844(W).

L.T. alleged that the defendant forced all three of the boys to have oral sex with him.

ASSIGNMENT OF ERROR NUMBER ONE

In assignment of error number one, the defendant argues that the evidence was insufficient to support the aggravated rape convictions. The defendant contends that the State asked the jury to disregard the lack of any physical evidence and inconsistencies between the children's pretrial statements and testimony. The defendant further claims that T.L. had a motive for reporting sexual abuse to the police, noting that T.L. wanted B.T. to leave the defendant but she refused to do so. The defendant notes that while T.L. had made previous reports of negligence and physical abuse, the children were not removed from the home until the allegations of sexual abuse were made. The defendant also notes that T.L. was a convicted felon and that he waited four days before reporting sexual abuse allegations. The defendant argues that T.L. and the victims' grandmother would have immediately reported the allegations if they really believed that the victims had been sexually abused.

Further, the defendant notes that T.L.'s son, T.T., denied being sexually abused during the CAC interview and tried to leave twice during the interview. The defendant notes that L.T. left the interview room twice, only disclosed sexual abuse after twice being coaxed to return to the room, and used the word "tick" in claiming that the defendant put something in his mouth, while the CAC interviewer assumed that he used the word "dick." The defendant further notes that L.T. later testified that he was told to say that the defendant put his private in his mouth. The defendant contends that G.T.'s trial testimony was inconsistent with statements made during his CAC interview, specifically contending that G.T. was inconsistent as to

where they showered and as to whether he saw the defendant rape A.T. while she had overnight guests sleeping next to her. The defendant also cites various other statements by G.T. as being inconsistent, noting for example that G.T. initially stated that the defendant went to jail for smoking cigarettes and hitting them, and subsequently stated that he did not know why the defendant was in jail. The defendant argues that A.T.'s pretrial statements were not credible, noting that she claimed that the house was haunted, that she used the word "rape" even though she did not know what the word meant, and that she further stated that her mother raped people. The defendant also notes that A.T. claimed that she saw what happened in the bathroom from outside even though the window had been boarded up for years. The defendant asserts that "all the lies that were told" and the "horrible conditions" that the children were living in possibly influenced the children to make the accusations of sexual abuse. The defendant also argues that two of the children were obviously coached, in concluding that the jury should have found reasonable doubt.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether, 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 also La. Code Crim. P. art. 821(B); **State v. Ordodi**, 2006–0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308–09 (La. 1988). The **Jackson** standard of review, incorporated in Article 821(B), is an objective standard for testing the overall evidence, both direct and circumstantial, for

reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the fact finder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001–2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

La. R.S. 14:42(A)(4) specifically defines the crime of aggravated rape as a rape committed where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed when the victim is under the age of thirteen years. The testimony of the victim alone can be sufficient to establish the elements of a sexual offense, even where the State does not introduce medical, scientific, or physical evidence to prove the commission of the offense. **State v. James**, 2002–2079 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 581.

At the trial herein, T.L. testified that he was living with the victims' grandmother in July of 2014. During that time period, T.L. would routinely pick the children up from their home with the defendant and B.T. on alternating weekends, and they would stay at their grandmother's residence overnight. T.L. testified that as he, T.T., and L.T. were in the living room watching cartoons, he overheard L.T. suggesting that they tell him something. Specifically, he testified that L.T. stated, "[T.L.] will make him stop … beat him up." At that point, T.L. told the boys to tell him what they were talking about and T.T. made the initial disclosure that the defendant was forcing his "dick" into T.T.'s mouth. T.L. testified that upon his son's disclosure, T.L. spoke to the oldest child, G.T., noting that G.T. trusted him. T.L. explained to G.T. that it was okay to tell him the truth and further reassured him he would protect them before asking him "if he ever knew or seen anything about the boys being touched or forced from Chris." At that point, G.T. put his head down and started crying and stated, "Yeah, [T.L.],"

adding that he tried to stop the defendant but was unable to do so. T.L. further testified that G.T. specifically told him that the defendant forced him to have oral sex, noting that the victim used the words, "suck his dick." T.L. testified that he and the victims' grandmother discussed the issue, noting that they were previously aware of the fact that the defendant was "hitting on them (the victims) and stuff like that," and decided to confront and question B.T. with the accusations. T.L. surmised that the victims' disclosure occurred on a Saturday or during the weekend. They were able to contact B.T. either later on the day of the disclosure or the next day, and told her about the boys' disclosure. B.T. denied that it happened, and they told her that since the boys stated otherwise the matter needed to be investigated. T.L. further testified that the Monday following the disclosure, G.T. was scheduled to go to New Orleans for surgery due to a hernia, delaying their plans to separate the victims from the defendant and B.T. to allow them to report the claims.

The day after G.T.'s procedure, the children returned to their grandmother's house. T.L. further testified that T.T.'s grandmother immediately alerted him upon observing bruises on T.T.'s body while bathing T.T. T.L. observed T.T.'s injuries and questioned T.T., who indicated that the defendant kicked him, punched him, and hit him after B.T. told the defendant about the victims' disclosure of sexual abuse. At that point, T.L. called the Sheriff's Office and reported T.T.'s disclosure of sexual and physical abuse by the defendant. T.L. confirmed that he had previous convictions for possession of cocaine and misdemeanor offenses. T.L. further confirmed during cross-examination that up to a month before the victims' disclosure, T.L. contacted DCFS several times to report that the victims were being abused and neglected. T.L. stated that he contacted

DCFS because B.T. would "take off with the kids at two or three in the morning walking down the highway and stuff like that," further noting that T.T. twice informed him that the defendant punched him in his chest and knocked him against a wall. T.L. confirmed that he wanted the children to be removed from that situation and into a safe environment. He also confirmed going to the children's school and asking for assistance. When asked why he did not immediately call the police over the weekend when the children made the disclosure, T.L. stated that the accusations were serious and he wanted to be sure before pressing charges, noting that seeing T.T.'s physical injuries preceded the immediate police report. On re-direct examination, T.L. denied telling the victims to make the instant accusations.

Deputy Schneck and Detective Savoie confirmed that T.L.'s July 15, 2014 complaint only involved the physical and sexual abuse of T.T., his biological son. Detective Savoie testified that prior to the first CAC interview (T.T.'s interview), he provided the forensic interviewer Shannon Gros with names and ages, and relayed the nature of the complaint as suspected physical and sexual abuse, without further details. Detective Savoie noted that while sexual abuse was initially suspected only as to T.T., he suspected physical abuse as to all three victims, noting that T.L. and T.T. had informed him that all of the children received beatings and spankings.

At the beginning of the CAC interview, Gros questioned T.T., who was then seven years old, regarding his knowledge of the difference between the truth and a lie. T.T. described a lie as something "bad" and was further able to distinguish the truth from non-truths. T.T. stated that his "Mo-mo" brought him to the interview and noted that he lived with her and T.L., whom he referred to as "Mo-mo's husband." He further stated that he did not like T.L. because he was angry and grouchy. When asked if anyone ever

did anything to him he initially responded negatively, but stated, "yes" when asked if anyone ever hurt him. T.T. specifically added that Chris, whom he also referred to as "Mommy's husband," punched him on his leg and back, and "slung" him. After being asked if Chris ever did anything else or made him do anything or did anything to anyone else, T.T. paused before ultimately stating that L.T. was punched by the defendant. When asked if anyone ever touched him where he should not be touched, or used any part of their body or his body, T.T. gave a delayed, negative response. Gros showed the victim anatomically correct drawings of a boy and a girl in order to have the victim identify body parts. The victim denied that anyone ever touched the body part that he called a "weenie" or made him touch theirs, and denied ever seeing anyone else's "weenie" before stating that he wanted to go back to the room with his grandmother. When asked about his bruises, he stated that the defendant bruised him, and that he did not know why the defendant did so. The interview was then concluded.

L.T., who was only three years old at the time of the CAC interviews, could not speak clearly and sometimes used the wrong consonant to begin a name or word. L.T. did not want to remain seated during the interview, and sometimes became distracted and unresponsive.[3] When necessary, Gros repeated questions and allowed L.T., who did not hesitate in doing so, to correct him when he was misheard or misunderstood. When asked who his mother and father were, L.T. attempted to, but could not, correctly pronounce the defendant's first name, and later referred to the defendant as "my Taddy" when asked for clarification. When asked if he liked living

[3] Though he was three years old based on the birthdate in the bill of information, L.T. stated that he was two years old at the beginning of the interview. By the time of the trial he knew his correct age and, consistent with the bill of information and his mother's testimony, testified that he was five years old.

with the defendant, L.T. responded positively. He added, "I love him but him, him fighting on my mama." L.T. corrected Gros when he asked him if the defendant would bite his mother, indicating that the defendant would "fight" and "punch" his mother. He stated that he did not like it when the defendant would hit his mother and responded positively when asked if the defendant ever hit him, stating that the defendant would punch him on the leg and hit him in the face. He also stated that the defendant would hit and punch his siblings. When Gros asked L.T. if the defendant did anything else to any other part of his body, L.T. stated that the defendant would make him mad. L.T. seemed to further indicate that the defendant told him that he would take his eye out with a knife.[4]

After being asked if anyone ever told him not to say something that was done to him, L.T. stated, that Chris "put his tick in our mouth." Though L.T. was unable to pronounce the words clearly, he pointed to his front private area in describing the part of the defendant's body that was placed in his and the other victims' mouths, specifically naming all three of his siblings, including his sister. He also referred to the "tick" as the defendant's "pole" and stated that it tasted "nasty." L.T. responded positively when asked if something came out of it, but did not respond when questioned as to what came out of it, repeatedly referring to it as a "pole." By turning away and telling him that he did not have to show him, Gros stopped L.T. when he attempted to pull his pants down to show the interviewer the specific body part to which he was trying to make reference. L.T. also stated that the defendant was "humping" his mother "in and out,"

[4] L.T. began walking around the room at the beginning of the interview, and at one point walked out of the room, stating that he was "coming right pack." As it appeared in the video and as Gros testified, L.T. walked back into the room on his own accord and the interview resumed.

before walking out of the room for the second time. At that point, Gros discontinued the interview.

Gros also interviewed the victims' sister, A.T., who was six years old. A.T. confirmed that she knew the difference between a lie and the truth and was instructed to tell the truth. A.T. stated that the defendant was in jail for abusing her, her mother, and her brothers. She stated that the defendant would fuss at her for nothing and would fight with her mother, specifically stating that he gave her mother a black eye and a bloody lip and stepped on her head on one occasion. When asked what the defendant was saying when he stepped on her mother's head, she used the words "raping other boys." As one of her brothers opened the door of the interview room and interrupted the interview, A.T. stated that T.T. and L.T. were "the most baddest" ones and would hit people and lie sometimes, and stated that she would also lie sometimes. A.T. stated that the defendant would whip her sometimes with a belt on her butt and denied that he would whip her anywhere else. When asked if the defendant did anything else he was not supposed to do, she indicated that the defendant would whip her siblings, "for doing nothing." When questioned in that regard, A.T. identified "privates" as a place where someone should not touch her, and denied that anyone ever did anything to her privates or made her do anything with their privates or talked to her about "privates." She confirmed that the defendant told her not to say certain things, specifically stating that he told her not to tell the police about him fighting with her mother. A.T. specifically denied seeing the defendant's private. She also denied that he had made her do anything with his private.

Gros questioned A.T. about L.T.'s claim that someone put his private in their mouths. A.T. stated that it happened to her and her siblings a "long

time ago" and that she did not know who did it to them, but added that her mother told the person to stop. She then stated that it only happened to L.T., and when questioned about L.T. possibly claiming that it was the defendant, A.T. stated, "it would be true," adding, "I just was scared to tell you." A.T. confirmed that the defendant did the same thing to her brothers, but specifically added that he "never" did so with her. When asked what happened to her brothers, she stated that the defendant told the boys to come with him into her (A.T.'s) bedroom and that they closed the door. She then went outside, and "climbed up" and looked at them through her window. When Gros asked what she saw the defendant doing, she stated, "making [T.T.] and [G.T.]," and she paused. When Gros stated that he did not understand what Chris was making her brothers do, A.T. continued to color and did not respond. When asked how T.T.'s body was moving when the defendant was making him do something, A.T. stated, "he was trying to take Chris private out of his mouth." She further stated that Chris was whipping T.T., as T.T. started crying and continued to try to push the defendant's private out of his mouth. She stated that she saw the defendant do the same thing to G.T., and that G.T. also tried to get the defendant's private out of his mouth. She stated that her mother was outside watering plants at the time.

A.T. stated that she and her brothers told her mother what happened, and that her mother asked the defendant, "Chris why you been doing that?" She further stated that the defendant acted like he did not know what her mother was talking about. She stated that her mother told the defendant to get out of the house, and further told the defendant that the house was haunted. As she changed the subject, A.T. elaborated on the house being haunted, noting that one of the doors would close by itself. Gros, in an attempt to get back on subject at issue, asked A.T. if the defendant ever put

anything in her mouth and she responded negatively. She confirmed that he did so to L.T. along with her other brothers, but that she was not present when it happened to L.T., before again changing the subject to ghosts. Gros then concluded the interview.

During the final CAC interview, G.T. (who was nine years old) stated that he lived with his mother and Chris, "the man who went to jail" for "being bad." When asked what the defendant did, G.T. stated that he was smoking cigarettes and "hitting us" on the leg, back, and arms. G.T. described an incident of the defendant punching his mother and stated that he did not like the defendant. G.T. stated that the defendant, "touched my private," forced T.T. to "do it," and forced "me to do it." He specified that this happened before he got his cut (referring to the procedure that he had) and that it happened when they were in the shower. G.T. paused when asked what the defendant forced him and T.T. to do, and confirmed that he would rather write it down. Though unclear, his writing appeared to include the words "suck" and "dike." G.T. was asked to pronounce what he wrote and clarified it as being the claim that the defendant made them suck his "dick." G.T. stated that the defendant forced him, T.T., and L.T. to put it in their mouths and that something clear came out of it. He stated that it happened more than once, when they were in the shower naked. When asked how the defendant forced them, G.T. stated that the defendant told them that he would ground them for life and never let them go outside, and that he grabbed his belt and started whipping them.

G.T. stated that he told T.L. what happened. G.T. stated that T.L. was a drug dealer and added that T.L. was the only person that he trusted, noting that he grew up with him. However, G.T. also stated that he did not like the fact that T.L. did the same thing as Chris. When asked to elaborate, he

stated that they laid in the bed all day, and would not feed him and his siblings, and would whip them. G.T. denied that T.L. ever did anything that involved private parts. When asked if the defendant did anything else with privates, G.T. stated that the defendant tried to make A.T. "do it," but she said, "no, stop it." He stated that he did not see the attempt but could hear A.T. crying. G.T. noted that T.L. said that he would "kick mama's ass" if she went back to "that man." When asked how the defendant's private looked, G.T. used the words big, hairy, and ugly. He confirmed that the incidents occurred before his hernia surgery.

After the CAC interviews were played, the victims were questioned in a separate room from the jury.[5] Each of the victims confirmed their ability to be truthful. T.T. was asked about the bruises in the photographs and consistently testified that the defendant put the bruises on his body. T.T. was not required to testify about the rape claim.

L.T. confirmed that the defendant put the bruises on his body as photographed. He stated that the defendant was in jail because he "beat up mama." On cross-examination, L.T. pointed downward when asked what else the defendant did to him besides hitting him. He responded negatively when asked if anyone ever told him to say what the defendant did to him, and again responded negatively when specifically asked, "Did [T.L.] ever tell you to say that?" L.T. finally provided a positive response when the defense revisited the inquiry, specifically asking, "Did anybody ever tell you to say that Mr. Chris put his private in your mouth? Is that a yes?" However, he did not respond when asked who did so. On redirect examination, L.T. confirmed that he told the truth and responded positively

[5] By court order, in conformity with La. R.S. 14:283, and without objection, the children testified in a room other than the courtroom.

when questioned as follows, "Mr. Tracy asked you if Mr. Chris made you put his [sic] mouth on his bird? Did he ever make you do that?"

When asked to identify the defendant, G.T. testified that he was the man who touched them in the wrong places. G.T. further testified that the writing that he created during the CAC interview was his attempt to write "Suck dick." G.T. then testified as follows regarding the defendant's actions, "He made [L.T.] and [T.T.] suck his dick and he had tried to rape [A.T.]. When asked what he meant by the word rape, he stated that the defendant, "Got on top of her." G.T. confirmed that he saw the defendant do these things, and that he was in the bathtub with his siblings and the defendant at the time. He stated that "some clear stuff" came out, when asked what came out of it (the defendant's "dick"). On cross-examination, G.T. denied that T.L. told him to make the accusations at issue.

The victims' mother, B.T., testified at the trial and confirmed that she had been convicted of cruelty to a juvenile relating to the claims in this case. B.T. testified that she and the defendant dated for a year and seven months and were living together in July of 2014, along with the defendant's sister Karen Harris and her husband Willie Harris, and the victims. B.T. confirmed that the defendant sometimes took showers with the boys and explained that they did so because, "the money situation started getting tight." She testified that she never saw the defendant touch the children or make them touch him inappropriately. Harris also testified, confirming that she took photographs to show that the windows were boarded up when the defendant and the victims lived there, and that there was one bathroom in the house.

As the final witness, the defendant denied ever touching the children in a sexually inappropriate way. The defendant confirmed that he pled guilty

to three counts of cruelty to juveniles in this case. The defendant testified that the children lied about the claims of sexual abuse and stated that he had no idea as to why they would concoct the claims. He added that the children did not have a good life and were growing up in an environment that included him drinking and doing drugs specifically stating, "They looking at two parents high." The defendant confirmed that the boys would take a shower together, but denied that he took showers with them. When asked if the boys ever saw his private part, he stated that it was possible that they saw him when he would get out of the shower to get a towel.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, where 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. **State v. Richardson**, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). 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 fact finder's determination of guilt. **State v. Taylor**, 97–2261 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. Further, a reviewing court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. See **State v. Calloway**, 2007–2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676,

680 (La. 1984). Herein, the trier of fact obviously found the victims credible. The youthful victims described acts of oral sexual intercourse being forced upon them by the defendant. The victims were largely consistent, and did not seem to be rehearsed or coached into making the accusations.

In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **Ordodi**, 946 So.2d at 662. The evidence presented, including the testimony regarding the initial disclosure of oral sex to T.L. by T.T. and G.T., the evidence of physical abuse, the victims' CAC interviews and trial testimony, and the victims' sister's CAC interview, was sufficient to support the verdicts regarding the three victims. Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found the essential elements of the three offenses of aggravated rape were proven beyond a reasonable doubt. We find no merit in the first assignment of error.

ASSIGNMENT OF ERROR NUMBER TWO

In assignment of error number two, the defendant argues that as a former prosecutor, the trial judge "appeared to be predisposed to initiate and grant questionable challenges for cause." The defendant specifically contests six State challenges for cause granted by the trial court. Noting the life-changing effect of a guilty verdict, the defendant argues that the trial court abused its discretion in overruling defense objections in excusing the prospective jurors at issue. The defendant argues that some of the prospective jurors were rehabilitated and gave responses indicating they would take jury duty seriously. As the defendant further notes, the State used eleven peremptory challenges.

The purpose of voir dire examination is to determine prospective jurors' qualifications by testing their competency and impartiality and discovering bases for the intelligent exercise of cause and peremptory challenges. **State v. Burton**, 464 So.2d 421, 425 (La. App. 1st Cir.), writ denied, 468 So.2d 570 (La. 1985). Pursuant to La. C.Cr.P. art. 797(2), a prospective juror may be challenged for cause on the ground that the juror is not impartial, whatever the cause of his partiality. A defendant cannot complain of an erroneous grant of a challenge to the State unless the effect of such a ruling is the exercise by the State of more peremptory challenges than it is entitled to by law. La. C.Cr.P. art. 800(B). A challenge for cause should be granted, even when a prospective juror declares his ability to remain impartial, if the juror's responses as a whole reveal facts from which bias, prejudice, or inability to render judgment according to law may be reasonably implied. A trial court is vested with broad discretion in ruling on challenges for cause and these rulings will be reversed only when a review of the voir dire record as a whole reveals an abuse of discretion. **State v. Martin**, 558 So.2d 654, 658 (La. App. 1st Cir.), writ denied, 564 So.2d 318 (La. 1990).

First, the defendant notes that the trial court did not allow any rehabilitation before releasing Martin Lawson because he knew the defendant and heard about the case. Lawson confirmed that he was the defendant's neighbor, that they sometimes talked in the neighborhood, and that he knew some of the defendant's family members. When asked if the fact that he was the defendant's neighbor would affect his ability to be fair and impartial, he stated, "I would say so, yes, sir." In excusing Lawson, the trial court noted that he learned about the case from "neighborhood talk" and that he knew the family. In objecting, the defense attorney argued that

Lawson could be fair and impartial. In overruling the defendant's objection, the trial court reiterated that Lawson knew facts about the case.

Second, juror Damien Verdin had a criminal background, was related to a police officer, and had transportation issues. The defendant notes that transportation could have been arranged, and that Verdin stated that he would be fair and impartial. Verdin also stated, however, that he was arrested for a fight as a teenager and later stated that he felt that he did not get a fair chance from the district attorney's office. The trial court interrupted Verdin as he further explained his issue in that situation. The trial court noted that it was inclined to just release Verdin since he also had transportation problems. In objecting, the defense counsel stated, "I just object to it." When asked for grounds for the objection, the defense counsel stated in part, "he's obviously saying everything he can say to get you to release him. I think he wants out, but I don't think that means he can't be fair and impartial."

Third, the defendant notes that his cousin, Vernice Pertuit, was released although she thought she could be fair and impartial, was not closely related to the defendant, and had never met the defendant before the trial. The defendant also argues that Pertuit was subjected to improper questioning when the trial court asked her how she would feel if the victim was her child. When asked if she knew what the case was about, Pertuit stated that the defendant's mother is her first cousin. She stated that she did not know the facts of the case, but when asked if she could be fair and impartial, she stated. "I really can't say. I really don't know." When asked if she would hold the State to a higher standard, she stated, "Not really, no. If it has to be fair, what I know is fair and square." When questioned about the possibility of her family members testifying and whether that would

affect her, she stated, "I don't know how to answer this." The State explained the duty to be fair and impartial and asked if she was able to do so and she stated, "I guess."

Horace Davis, the fourth prospective juror at issue, knew the defendant from childhood and was related to a trial witness, but stated these factors would not affect his judgment. Davis also stated that he knew about the case, although he did not realize before the trial that it involved the defendant, adding that he lived close to the same neighborhood. Davis stated that he did not know the defendant well enough to make any judgment against him. When asked if he could be fair and impartial, he stated, "Should be, I guess, to be honest about it." Davis also stated that his first cousin Willie Harris was dating the defendant's sister at the time of the trial. As noted by the defendant, James Price, the fifth prospective juror at issue, was released even though he stated that he could be fair despite knowing the defendant for three years. The defendant also notes that while Price had misgivings about judging people, he stated that he could find the defendant guilty. Price specifically stated that the defendant lived right behind him, that he knew the defendant's sister Karen Harris, but that he did not know the victims. He further stated that Harris was his nurse. Price stated that he could be fair and impartial but added, "But like I say, I'm not the one that judge. The Bible say not to judge no one, you know." He further stated that it would be hard for him to find the defendant guilty since he did not like to see people go to jail.

Finally, as noted by the defendant, while Teika Dominique professed the innocence of her brother-in-law who was accused of child abuse in Lafourche Parish, she stated that her opinion of this case depended on the evidence. When asked if that would affect her in this case, Dominique

responded positively. She confirmed that she would not be fair to the State because she would feel that the State could be prosecuting an innocent person and would not fairly consider a child's testimony. When rehabilitation was attempted, she still stated that she was not sure if she could be fair and impartial.

Reviewing the transcript of voir dire as a whole, we find that the trial court did not err or abuse its discretion in granting the State's six challenges for cause at issue. Despite the defendant's attempt to minimize the prospective jurors' statements, we find that the responses revealed facts from which bias, prejudice, or inability to render judgment according to law could reasonably be inferred. Accordingly, the trial court properly excused the jurors at issue. See La. C.Cr.P. art. 797(2). This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER THREE

In the final assignment of error, the defendant argues that the trial court committed reversible error in denying the defense's challenge for cause of Onda Templeton, noting that a defense peremptory challenge was used to excuse the prospective juror. The defendant notes that Templeton was challenged because the prosecutor in this case had represented him in a child custody case several years before the trial. The defendant notes that Templeton further revealed that his father had just finished the police academy and was an employee of the Lafourche Parish Sheriff's Office. As further noted, Templeton had served on a jury in a civil case. Conceding that Templeton claimed he could be impartial, the defendant argues that Templeton was not capable of doing so. The defendant also argues that Templeton was not qualified to serve as a juror due to his relationship with the prosecutor and his father's employment as a deputy sheriff. The

defendant argues that Templeton would have naturally been predisposed to side with the State before hearing any evidence. The defendant further contends that it is "highly doubtful" that Templeton could have put aside these feelings in spite of being directed to do so by the trial court.

An accused in a criminal case is constitutionally entitled to a full and complete voir dire examination and to the exercise of peremptory challenges. La. Const. art. I, § 17(A). Prejudice is presumed when a challenge for cause is denied erroneously by a trial court and the defendant has exhausted his peremptory challenges. **State v. Robertson**, 92-2660 (La. 1/14/94), 630 So.2d 1278, 1280; **State v. Ross**, 623 So.2d 643, 644 (La. 1993). An erroneous ruling depriving an accused of a peremptory challenge violates his substantial rights and constitutes reversible error. **Ross**, 623 So.2d at 644. Nonetheless, a defendant is permitted to complain of a ruling refusing to sustain his challenge for cause even if he had not thereafter exercised all of his peremptory challenges. **State v. Vanderpool**, 493 So.2d 574, 575 (La. 1986). See also **State v. Copeland**, 530 So.2d 526, 535 (La. 1988), cert. denied, 489 U.S. 1091, 109 S.Ct. 1558, 103 L.Ed.2d 860 (1989). In such a case, the defendant must be able to show some prejudice in order to overcome the requirement of La. C.Cr.P. art. 921 that "[a] judgment or ruling shall not be reversed by an appellate court because of any error ... which does not affect substantial rights of the accused." **Robertson**, 630 So.2d at 1280. A trial court is accorded great discretion in determining whether to seat or reject a juror for cause, and such rulings will not be disturbed unless a review of the voir dire as a whole indicates an abuse of that discretion. **Martin**, 558 So.2d at 658.

At the outset we note that the defendant had twelve peremptory challenges and according to our review of the record, only ten were used in

picking the twelve jurors (one additional defense peremptory challenge was used during the selection of the alternate juror).[6] Thus, prejudice is not presumed in this case. See La. C.Cr.P. art. 799. Moreover, the defendant has not alleged or shown how he was prejudiced. Further, as the defendant concedes, Templeton stated that he could be fair and impartial and none of his responses conflicted with this claim. Considering Templeton's answers and the deference that must be given to the trial court's ruling, we find no abuse of discretion in the trial court's denial of the defendant's challenge for cause at issue. Accordingly, this assignment lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.

[6] As the State notes in part in its appeal brief, the record is inconsistent as to the number of peremptory challenges used by the defendant. Specifically, the minutes allocated two peremptory challenges to the defense regarding the excusal of prospective jurors Cathy Hebert and Ellen Howes. However, according to the transcript, Cathy Hebert was actually excused for cause on the motion of the defense, and Ellen Howes was excused upon the State's peremptory challenge. Further, the trial court informed the defense counsel that the defendant had used nine peremptory challenges at the point where only eight defense peremptory challenges had been used. Thus, by the time the defendant used his ninth peremptory challenge, the parties were under the impression that he had used ten. The defendant was aware of the availability of and declined to use a back strike after twelve jurors were accepted. Likewise, the defense counsel was repeatedly made aware of the fact that the twelve peremptory challenges had not been exhausted. We note that when there is a discrepancy between the minutes and transcript, the transcript prevails. **State v. Lynch**, 441 So.2d 732, 734 (La. 1983).