NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0790

STATE OF LOUISIANA

VERSUS

JARET PAUL FRANCIS

Judgment Rendered: October 29, 2010

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Appealed from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne, Louisiana
Trial Court Number 504,828

Honorable George J. Larke, Jr., Judge

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Jaret Paul Francis

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

The defendant, Jaret Paul Francis, was charged by bill of information with felony carnal knowledge of a juvenile, K.S. [1], in violation of La. R.S. 14:80. He pled not guilty. Following a trial by jury, the defendant was found guilty as charged. The defendant was sentenced to imprisonment at hard labor for five years. The court also ordered that the defendant register as a sex offender for fifteen years. The defendant now appeals. In two counseled briefs, the defendant raises the following three assignments of error:

1. The evidence presented by the State at trial was insufficient to convict the defendant of carnal knowledge of a juvenile.

2. The trial court erred in denying the defense motions to excuse two jurors for cause (Mona Trahan and Carlene O'Bryan). [2]

3. The sentence imposed is unconstitutionally excessive.

Finding no merit in any of the assigned errors, we affirm the defendant's conviction and sentence.

FACTS

On January 7, 2008, S.S. contacted Detective Keith Breaux of the Houma Police Department and reported that she had just learned that her daughter K.S. (who had turned seventeen approximately four months earlier) had been involved in sexual relationships with two older men when she was only sixteen years old. The men were identified as K.S.'s eighteen-year-old boyfriend Jasmaine Brumfield and the twenty-six-year-old defendant. In response to questioning by the police, K.S. stated that she had sexual relations with Brumfield and the defendant at separate times during the summer of 2007.

When questioned by the police regarding the allegations made by K.S., the

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[1] In accordance with La. R.S. 46:1844(W), the victim herein is referenced only by her initials. To further protect the identity of the victim, her mother is also referenced by initials.

[2] In a separate counseled brief, the defendant also assigns as error the trial court's denial of the defendant's cause challenges against these two jurors.

defendant initially claimed he was unsure if he knew K.S. He later admitted that he was acquainted with the young lady, but denied ever having any type of sexual relationship with her. The defendant was arrested and charged with felony carnal knowledge of a juvenile.[3]

At the trial, K.S. testified that she met the defendant during the summer of 2007 through her older sister. K.S. had just ended her relationship with Brumfield when she began seeing the defendant. K.S. explained that the defendant would enter her bedroom through the window and they would engage in sexual intercourse in her bed while her parents were asleep in their bedroom. She stated she and the defendant also had sexual intercourse once while her parents were away from the home. According to K.S., the sexual encounters occurred repeatedly during the summer months of 2007, when she was sixteen years old. K.S. further testified that she turned seventeen in September of 2007. S.S. testified K.S. disclosed the information regarding these sexual relationships to her in January 2008. S.S. immediately reported the matter to the police.

The defendant testified on his own behalf and denied ever having a sexual relationship with K.S. The defendant confirmed that he did meet K.S. through her older sister. The defendant claimed he and K.S. developed somewhat of a friendship. They periodically spoke on the telephone and he sometimes visited her at her place of employment. The defendant claimed he discontinued his friendship with K.S. after she expressed that she was interested in a romantic relationship with him. According to the defendant, he told K.S. she was too young and explained that he was not interested in her in that way. The defendant denied ever entering K.S.'s bedroom through the window or ever having sexual intercourse with her. The defendant theorized that K.S. fabricated the allegations of a sexual

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[3] The record suggests that Brumfield was also questioned and charged with misdemeanor carnal knowledge of a juvenile. He is not a party to the instant appeal.

relationship because she was upset at him for declining her advances. However, the defendant admitted that several months elapsed between the time he discontinued his friendship with K.S. and the time he was questioned by the police.

SUFFICIENCY OF THE EVIDENCE

The defendant argues the evidence presented at the trial of this matter was insufficient to support the carnal knowledge of a juvenile conviction. Specifically, he asserts the State's evidence against him, which primarily consisted of K.S.'s testimony, failed to prove that he had sexual intercourse with K.S. He notes that K.S. stated, in her testimony, that she had a "sexual intercourse relationship" with the defendant, but she failed to explain her appreciation of the term. The defendant further argues that the State failed to definitively prove the dates upon which the alleged sexual intercourse took place. He argues that this information is critical since K.S. turned seventeen "during the possible time frame set forth by the State."

The standard for reviewing the sufficiency of evidence is set forth in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), see La. C.Cr.P. art. 821. Under **Jackson**, the standard for testing the sufficiency of evidence requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. **Jackson**, 443 U.S. at 319, 99 S.Ct. at 2789; **State v. James**, 2002-2079, p. 3 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 579.

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. **State v. Woods**, 2000-2147, p. 5 (La. App. 1st Cir. 5/11/01), 787 So.2d 1083, 1088, writ denied, 2001-2389 (La. 6/14/02), 817 So.2d 1153. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. See **State v.**

Johnson, 99-0385, p. 9 (La. App. 1st Cir. 11/5/99), 745 So.2d 217, 223, writ denied, 2000-0829 (La. 11/13/00), 774 So.2d 971. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. **State v. Marshall**, 99-2884, p. 5 (La. App. 1st Cir. 11/8/00), 808 So.2d 376, 380.

Prior to the amendment by 2008 La. Acts. No. 331 § 1, La. R.S. 14:80 provided, in pertinent part, as follows:

> A. Felony carnal knowledge of a juvenile is committed when:
>
> (1) A person who is nineteen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of the age, when the victim is not the spouse of the offender; or
>
> (2) A person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than fifteen years of age, when the victim is not the spouse of the offender; or
>
> (3) A person commits a second or subsequent offense of misdemeanor carnal knowledge of a juvenile, or a person who has been convicted one or more times of violating one or more crimes for which the offender is required to register as a sex offender under R.S. 15:542 commits a first offense of misdemeanor carnal knowledge of a juvenile.
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> B. As used in this Section, "sexual intercourse" means anal, oral, or vaginal sexual intercourse.
>
> C. Lack of knowledge of the juvenile's age shall not be a defense. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.

In the instant case, the State sought to prove that K.S. was under seventeen years of age at the time she had sexual intercourse with the twenty-six-year old defendant. The evidence of the existence of a sexual intercourse relationship between K.S. and the defendant consisted primarily of K.S.'s testimony. The defendant testified that his date of birth is May 30, 1981. K.S. testified that her date of birth is September 4, 1990.

Evidence of intercourse

The defendant contends that the State did not present sufficient evidence of sexual intercourse as required by the statute. We disagree. Throughout the trial, K.S., then nineteen years old, responded affirmatively when asked if she had a sexual intercourse relationship with the defendant. Although she did not specifically state that the defendant penetrated her, K.S. testified that she and the defendant engaged in "sexual intercourse," the exact activity criminalized under the carnal knowledge of a juvenile statute. K.S. further explained that during the "sexual intercourse" the defendant used protection sometimes and other times he did not. According to K.S, when he was not wearing protection, the defendant ejaculated on her stomach and then wiped it off with a towel. K.S. also testified that she feared possibly becoming pregnant as a result of having "sexual intercourse" with the defendant. Viewing K.S's testimony in its entirety, particularly the testimony regarding the existence of a "sexual intercourse relationship," the defendant's ejaculation at the conclusion of the intercourse, and K.S.'s fear of possibly becoming pregnant, it is clear that any rational juror could find that vaginal intercourse occurred on each of the sexual intercourse encounters described by K.S. even absent any specific mention of penetration.

Dates of encounters

Insofar as the defendant argues the State failed to definitively prove the dates of the alleged sexual encounters, we find such proof is not necessary to support the conviction. K.S. testified that she was sixteen-years-old when the sexual relationship with the defendant began. According to K.S., she and the defendant had sexual intercourse on various occasions during the months of July and August of 2007. As previously noted, K.S. turned seventeen in September of 2007. Therefore, it is clear that the two-month sexual relationship between the defendant and K.S. occurred when K.S. was only sixteen and the defendant was

twenty-six. The fact that the exact dates of the encounters were not proven is of no moment.

It is well settled that if found to be credible, the testimony of the victim of a sex offense alone is sufficient to establish the elements of the offense, even where the State does not introduce medical, scientific, or physical evidence to prove the commission of the offense by the defendant. See **State v. Hampton**, 97-2096, pp. 3-9 (La. App. 1st Cir. 6/29/98), 716 So.2d 417, 418-421. Therefore, the victim's testimony, which the jury obviously found credible, was sufficient to prove all elements of carnal knowledge of a juvenile.

This assignment of error lacks merit.

CHALLENGES FOR CAUSE

Next, the defendant contends the trial court erred in denying the defense challenges for cause against prospective jurors Carlene O'Bryan and Mona Trahan. Specifically, he notes that Ms. O'Bryan is a reserve deputy for the Lafourche Parish Sheriff's Office and is married to a sergeant with the Houma Police Department. He contends that Ms. O'Bryan's close association with law enforcement made it unreasonable to conclude that the relationship would not influence her in arriving at a verdict. The defendant asserts Ms. Trahan also should have been excluded for cause based upon the fact that she worked at the Waitz and Downer Law Firm, where the Terrebonne Parish District Attorney was "of counsel."

The grounds upon which a challenge for cause can be made are set forth in La. C.Cr.P. art. 797, which provides:

> The state or the defendant may challenge a juror for cause on the ground that:
>
> (1) The juror lacks a qualification required by law;
>
> (2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant

shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;

(3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;

(4) The juror will not accept the law as given to him by the court; or

(5) The juror served on the grand jury that found the indictment, or on a petit jury that once tried the defendant for the same or any other offense.

A defendant must object at the time of the ruling on the refusal to sustain a challenge for cause of a prospective juror. La. C.Cr.P. art. 800(A). Prejudice is presumed when a challenge for cause is erroneously denied by a trial court and the defendant has exhausted his peremptory challenges. To prove there has been reversible error warranting reversal of the conviction, the defendant need only show: (1) the erroneous denial of a challenge for cause; and (2) the use of all his peremptory challenges. **State v. Robertson**, 92-2660 (La. 1/14/94), 630 So.2d 1278, 1280-1281. It is undisputed that defense counsel exhausted all of the allotted peremptory challenges in this case. Therefore, we need only determine the issue of whether the trial judge erred in denying the defendant's challenges for cause regarding the prospective jurors in question.

Carlene O'Bryan

Service on a criminal jury by one associated with law enforcement must be closely scrutinized and may justify a challenge for cause; however, such association does not automatically disqualify a prospective juror. A juror's relationship to one associated with law enforcement only disqualifies him if the relationship is such that one might reasonably conclude that it would influence the juror in arriving at the verdict. The trial judge is vested with wide discretion in

appraising the impartiality of prospective jurors, and his ruling will not be disturbed on appeal absent a clear showing of abuse of that discretion. **State v. Comeaux**, 514 So.2d 84, 95 (La. 1987).

In the instant case, although he acknowledges that law enforcement officers are no longer automatically disqualified from jury service, see **State v. Ballard**, 98-2198, pp. 3-5 (La. 10/19/99), 747 So.2d 1077, 1079-1080, the defendant argues that Ms. O'Bryan did not indicate that she could be an impartial juror. We disagree. First, the trial court specifically asked the panel of prospective jurors whether there was any reason why they would not give both the accused and the State a fair trial and, "decide this case based solely upon the evidence presented and in accordance with the law?" None of the jurors indicated they could not remain fair and impartial. When questioned by the trial court on whether her relationship with law enforcement would affect her ability to be fair, Ms. O'Bryan indicated it would not. She indicated she would listen to both sides and be fair to all parties. In further questioning, Ms. O'Bryan assured the court that she would afford the defendant all of his constitutional rights. The judge denied the cause challenge and stated he was convinced Ms. O'Bryan could be fair. Based upon our review of the entire voir dire transcript, we are satisfied that the trial court did not abuse its discretion in denying the challenge for cause as to this prospective juror. This argument lacks merit.

Mona Trahan

The defendant argues that Ms. Trahan's employment relationship with the District Attorney's private law practice and the fact that the firm works closely with law enforcement should have resulted in her being excused for cause. We again disagree. Initially, we note Ms. Trahan's voir dire responses revealed that the law firm where she is employed is actually owned by the District Attorney's father, Joseph Waitz, Sr. According to Ms. Trahan, the District Attorney, Joseph

Waitz, Jr., remains listed "of counsel" but does not actively practice and rarely visits the office.

Relationships, whether by blood or marriage, between a juror and other participants in criminal cases (*i.e.*, defendant, victim, district attorney, and defense counsel) are considered grounds sufficient to support a cause challenge provided the relationship is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict. See **State v. Allen**, 95-1754, pp. 13-14 (La. 9/5/96), 682 So.2d 713, 724. To support a challenge for cause based upon the existence of such a relationship, the juror's responses to examination must reveal facts from which bias, prejudice, or partiality may be reasonably inferred. **State v. Frost**, 97-1771, p. 9 (La. 12/1/98), 727 So.2d 417, 426, cert. denied, 528 U.S. 831, 120 S.Ct. 87, 145 L.Ed.2d 74 (1999). The mere existence of the relationship alone would not serve to disqualify the related jurors from jury service absent a showing that the relationship would influence the jurors in arriving at a verdict. No such showing was made in this case.

The trial court questioned Ms. Trahan as follows regarding her employment relationship:

> **THE COURT:**
> And you work for --
>
> **MS. TRAHAN:**
> Joe Waitz.
>
> **THE COURT:**
> Joe Waitz's Office?
>
> **MS. TRAHAN:**
> He's part of our firm. Well, it's his dad's firm and he --
>
> **THE COURT:**
> Okay. So let me -- So let me kind of cover it because there will be certain – You'll -- Try to cover a couple of other questions with you because [sic] your connection.
>
> Does your employment in any way affect your ability to be fair and impartial here today?

MS. TRAHAN:
No.

THE COURT:
And even though you work with Mr. Waitz's firm, who's the district attorney --

MS. TRAHAN:
Right.

THE COURT:
-- and Mr. Hagen is prosecuting on behalf of his office, can you put that aside and give both the State and the Defense a fair trial?

MS. TRAHAN:
Yes.

THE COURT:
And without any -- You wouldn't feel prejudiced, pressured in the sense that well if I don't decide for the State, you know, they may fire me or they may –

MS. TRAHAN:
No.

THE COURT:
-- Mr. Waitz may not like me or Ms. --

MS. TRAHAN:
No.

THE COURT:
Ms. Riviere may hold it against me or Mr. Hagen or Mr. Brown or whatever?

MS. TRAHAN:
No.

* * * *

THE COURT:
Okay. You can -- You can sit here and do -- And that's all I'm asking you to do.

MS. TRAHAN:
Yes.

THE COURT:
Just sit here and listen to the facts and you decide whether --

MS. TRAHAN:
Yes.

THE COURT:

-- you believe those witnesses and you give the weight that you want, you decide and apply those facts to the law as I give it to you.

Can you do that?

MS. TRAHAN:

Yes.

While the existence of the employment relationship between the potential juror and the District Attorney should be scrutinized, as should every instance in which there is some disclosed association with a defendant, a victim, a prosecuting attorney or defense counsel, each case must be decided on its individual facts. In this case, Ms. Trahan's voir dire responses reveal that she was unequivocal in her willingness and ability to decide the case in a fair and impartial manner. She clearly indicated that she would listen to the evidence, impartially decide the credibility of the witnesses, and decide the case based upon the law and the evidence. As the State notes, the trial judge closely scrutinized the employment relationship and concluded it would not affect Ms. Trahan's ability to be an effective juror. Considering the entirety of Ms. Trahan's voir dire responses, the record supports a finding that the trial court did not abuse its discretion in denying the defendant's challenge for cause.

This assignment of error lacks merit.

EXCESSIVE SENTENCE

In his final assignment of error, the defendant argues that the trial court erred in imposing an excessive sentence. Specifically, he contends that the five-year sentence imposed in this case makes no measurable contribution to acceptable penal goals. He argues that imposing such a lengthy sentence upon him, a substantially contributing member of society, is nothing more than the needless imposition of pain and suffering.

The Louisiana Code of Criminal Procedure sets forth items which must be

considered by the trial court before imposing sentence. La. C.Cr.P. art. 894.1. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. In light of the criteria expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. **State v. Hurst**, 99-2868, p. 10 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

Article I, § 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. **Hurst**, 99-2868 at pp. 10-11, 797 So.2d at 83.

Whoever commits the crime of felony carnal knowledge of a juvenile shall be fined not more than $5,000.00, or imprisoned, with or without hard labor, for not more than ten years, or both, provided that the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of La. C.Cr.P. art. 893. La. R.S. 14:80(D). The defendant was sentenced to five years at hard labor.

Prior to imposing sentence in this case, the trial court noted that it reviewed the nature of the offense and the defendant's criminal history. The court also heard an impact statement from K.S.'s mother, S.S. S.S. noted that this situation

involved a grown man who took advantage of a child and never accepted responsibility for his actions. In sentencing the defendant, the trial court found that, considering the nature of the offense and the defendant's criminal background (which includes prior convictions for theft, possession of Xanax, and unauthorized use of a motor vehicle), there is an undue risk that during a period of suspended sentence or probation the defendant would commit another crime. The court concluded the defendant is in need of correctional treatment in a custodial environment and that a lesser sentence would deprecate the seriousness of the offense. As aggravating circumstances, the court noted that the defendant knew or should have known the victim was particularly vulnerable or incapable of resistance due to her youth, and that the defendant failed to take responsibility for his actions. In mitigation, the court noted that had the sexual encounters taken place two months later (after the victim turned seventeen) it would not have been a criminal offense.

A thorough review of the record reveals the trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentence herein. As the trial court noted, the defendant, an adult over ten years older than the young victim, took advantage of the teenage girl and refused to accept responsibility for his actions. Under these circumstances, the five-year sentence is neither grossly disproportionate to the severity of the offense committed nor shocking to the sense of justice.

PATENT ERROR REVIEW

The defendant requests that this court examine the record for patent errors. Because this court routinely reviews the record for errors patent, such a request is unnecessary. Under La. C.Cr.P. art. 920(2), our patent error 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**. 2005 -2514, pp. 18 -22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123 -25 (en banc), writ denied, 2007 -0130 (La. 2/22/08), 976 So.2d 1277.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.