NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 2330

STATE OF LOUISIANA

VERSUS

AARON D. SALTER

Judgment Rendered: SEP 2 1 2012

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On Appeal from the 22nd Judicial District Court
In and for the Parish of St. Tammany
Trial Court No. 482750, Division "E"

The Honorable William J. Burris, Judge Presiding

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BEFORE: PARRO, HUGHES, AND WELCH, JJ.

HUGHES, J.

The defendant, Aaron D. Salter, was charged by bill of information with one count of aggravated burglary, a violation of LSA-R.S. 14:60, and pled not guilty. Following a jury trial, he was found guilty as charged. Thereafter, the State filed a habitual-offender bill of information against the defendant.[1] Following a hearing, he was found to be a fourth-felony habitual offender, and was sentenced to imprisonment for the remainder of his natural life without benefit of probation, parole, or suspension of sentence. He now appeals, challenging the sufficiency of the evidence to support the verdict and the trial court's overruling of his objections to certain testimony at trial. For the following reasons, we affirm the conviction, habitual-offender adjudication, and sentence.

FACTS

Lori Lee Turner testified at trial. She was sixty-seven years old. She conceded she had used cocaine in the past. Following Hurricane Katrina, she began living in a FEMA trailer on U.S. Highway 190 in Slidell. She had known the defendant for many years because he grew up with her children and nephews.

On August 26, 2007, the defendant knocked at Turner's door. Turner opened the door and saw the defendant had a white female, later identified as J.B.,[2] with him, whom she had never seen before. The defendant wanted to smoke crack cocaine in Turner's trailer. Turner told the defendant he could not stay in her trailer. The defendant stated he and J.B. did not have any more money for a hotel. Turner told them they could park by her trailer and sleep in the defendant's car. The defendant and J.B. went to the defendant's car, and Turner locked her door and went to bed.

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[1] Predicate #1 was set forth as the defendant's September 2, 1982 conviction, under Twenty-second Judicial District Court Docket #101901, for simple burglary. Predicate #2 was set forth as the defendant's March 17, 1983 conviction, under Twenty-second Judicial District Court Docket #107209, for simple burglary. Predicate #3 was set forth as the defendant's September 16, 1986 conviction, under Twenty-second Judicial District Court Docket #149069, for first degree robbery.

[2] We reference this victim only by her initials. See LSA-R.S. 46:1844(W).

Subsequently, J.B. knocked at Turner's door and asked to use the bathroom. Turner let J.B. in and locked the door. Turner saw bruises on J.B.'s arm, neck, and back. J.B. was "very upset, crying and shaking." She stated the defendant had "kidnapped her for three days," had forced her to have sex with him, had beaten her, and had been "making her trick." J.B. claimed that if she did not bring the defendant drugs or money, he would beat her. J.B. stated, "I can't go back out there. I am scared." Turner told J.B. that she would not let her go back outside, and that the defendant "wasn't coming inside." Turner placed a hammer, which she kept in her trailer for protection, in her lap. Thereafter, the defendant began beating and pulling on Turner's door "like a madman." He pulled the door open, and Turner struck him with her hammer. The defendant pushed Turner aside, grabbed J.B. by her hair, and pulled her out of the trailer. Turner called out to her neighbors for help, and three neighbors responded. They pulled J.B. away from the defendant and began beating him. The defendant ran to his vehicle and fled from the scene. J.B. was taken to the hospital. She did not testify at trial.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number 1, the defendant argues that the evidence was insufficient to support the verdict. He concedes that the evidence sufficiently established he entered Turner's trailer without permission and committed a simple battery therein or in entering or leaving the trailer. He notes, however, simple battery is not a felony, and he was not armed and did not commit a theft. While the State's theory of the case was that the defendant entered the trailer with the intent to kidnap J.B. and leave in his car, the defendant argues the completed kidnapping offense had to occur inside the trailer, but "it was impossible for [the defendant] 'to force [J.B.] into his vehicle and leave with her' inside the trailer of Ms. Turner."

The standard of review for 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 conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove, in order to convict," every reasonable hypothesis of innocence is excluded. Positive identification by only one witness may be sufficient to support the defendant's conviction. See LSA-R.S. 15:438; **State v. Wright**, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486-87, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 and 2000-0895 (La. 11/17/00), 773 So.2d 732.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **Wright**, 730 So.2d at 487.

Aggravated burglary is the "unauthorized entering of any inhabited dwelling ... where a person is present, with the intent to commit a felony or any theft therein, if the offender, ...(3) [c]ommits a battery upon any person while in such place, or in entering or leaving such place." LSA-R.S. 14:60.

Simple kidnapping, a felony, is the intentional and forcible seizing and carrying of any person from one place to another without her consent. LSA-R.S. 14:45(A)(1). Under the statute, the distance traversed is immaterial. Nor is it necessary to specify the place to which the victim was carried. **State v. Bertrand**, 247 La. 232, 170 So.2d 386, 388 (La. 1964), cert. denied, 382 U.S. 960, 86 S.Ct. 442, 15 L.Ed.2d 364 (1965).

The defendant argues that the State had to prove he forced his way into the trailer to kidnap J.B. by forcing her back into his vehicle. However, the defendant's intentional and forcible seizing and dragging of J.B. from the trailer without her consent completed the offense of simple kidnapping and also satisfied the "intent to commit a felony ... therein" element of the offense of aggravated burglary. Additionally, the verdict rendered in this case indicates the jury rejected the defendant's theory that Turner voluntarily allowed the defendant into her trailer to use drugs with him, and that J.B. voluntarily stayed with the defendant to use drugs with him. 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 that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). No such hypothesis exists in the instant case. Further, the verdict indicates the jury accepted Turner's testimony and rejected the defendant's attempts to discredit that testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. **State v. Lofton**, 96-1429 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. In reviewing the evidence, we also cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 662. An appellate 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. **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

After a thorough review of the record, we are convinced that any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of aggravated burglary and simple kidnapping and the defendant's identity as the perpetrator of those offenses.

OBJECTIONS TO TESTIMONY

In assignment of error number 2, the defendant argues that the trial court erred and abused its discretion in overruling his objections to certain testimony from Lori Lee Turner and St. Tammany Parish Property Detective Jared Lunsford.

Hearsay is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. LSA-C.E. art. 801(C). Statements which are "events speaking for themselves under the immediate pressure of the occurrence, through the instructive, impulsive and spontaneous words and acts of the participants, and not the words of the participants when narrating the events, and which are necessary incidents of the criminal act, or immediate concomitants of it, or form in conjunction with it one continuous transaction" are not hearsay. LSA-C.E. art. 801(D)(4). Hearsay is not admissible except as otherwise provided by the Louisiana Code of Evidence or other legislation. LSA-C.E. art. 802.

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. 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, or misleading the jury, or by considerations of undue delay or waste of time. LSA-C.E. art. 403.

It is well settled that courts may not admit evidence of other crimes to show the defendant as a man of bad character who has acted in conformity with his bad character. See LSA-C.E. art. 404(B)(1). Evidence of other crimes, wrongs, or acts committed by the defendant is generally inadmissible because of the substantial risk of grave prejudice to the defendant. However, the State may introduce evidence of other crimes, wrongs, or acts if it establishes an independent and relevant reason such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. See LSA-C.E. art. 404(B)(1). Upon request by the accused, the State must provide the defendant with reasonable notice and opportunity for a hearing before trial if it intends to offer such evidence. Even when the other crimes evidence is offered for a purpose allowed under Article 404(B)(1), the evidence is not admissible unless it tends to prove a material fact at issue or to rebut a defendant's defense. The State also bears the burden of proving that the defendant committed the other crimes, wrongs, or acts. **State v. Rose**, 2006-0402 (La. 2/22/07), 949 So.2d 1236, 1243.

Any inculpatory evidence is "prejudicial" to a defendant, especially when it is "probative" to a high degree. **State v. Germain**, 433 So.2d 110, 118 (La. 1983). As used in the balancing test, "prejudicial" limits the introduction of probative evidence of prior misconduct only when it is unduly and unfairly prejudicial. **Id.**; see also **Old Chief v. United States**, 519 U.S. 172, 180, 117 S.Ct. 644, 650, 136 L.Ed.2d 574 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). **Rose**, 949 So.2d at 1244.

Louisiana Code of Evidence article 404(B)(1) also authorizes the admission of evidence of other crimes, wrongs, or acts when the evidence "relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding." In **State v. Brewington**, 601 So.2d 656, 657 (La. 1992) (per curiam), the Louisiana Supreme Court indicated its approval of the admission of other crimes evidence, under this portion of LSA-C.E. art. 404(B)(1), "when it is related and intertwined with the charged offense to such an extent that the state could not have accurately presented its case without reference to it."

The res gestae doctrine in Louisiana is broad and includes not only spontaneous utterances and declarations made before or after the commission of the crime, but also testimony of witnesses and police officers pertaining to what they heard or observed during or after the commission of the crime if a continuous chain of events is evident under the circumstances. **State v. Taylor**, 2001-1638 (La. 1/14/03), 838 So.2d 729, 741, cert. denied, 540 U.S. 1103, 124 S.Ct. 1036, 157 L.Ed.2d 886 (2004). Further, the res gestae doctrine incorporates a rule of narrative completeness by which, "the prosecution may fairly seek to place its evidence before the jurors, as much to tell a story of guiltiness as to support an inference of guilt, to convince the jurors a guilty verdict would be morally reasonable as much as to point to the discrete elements of a defendant's legal fault." **Taylor**, 838 So.2d at 743 (quoting **Old Chief v. United States**, 519 U.S. at 188, 117 S.Ct. at 654.).

Prior to trial, the defendant moved that, under LSA-C.E. art. 403 and LSA-C.E. art. 404(B), the State should be prohibited from eliciting any evidence concerning the aggravated rape and kidnapping that had allegedly occurred August 23, 2007, to August 25, 2007. The trial court denied the motion, finding that the evidence at issue was interrelated and intertwined with the charged offense to such an extent that the State could not accurately present its case without reference to it. The court noted the evidence was necessary to establish the felony intended when the

defendant entered Turner's trailer. The defendant applied to this court for supervisory relief from the ruling, but we denied his writ application. **State v. Salter**, 2011-1007 (La. App. 1st Cir. 7/5/11) (unpublished).

At trial, the defense objected on the basis of hearsay during the testimony of Turner, after she stated, "[J.B.] told me what [the defendant] did to her." The trial court overruled the objection, finding the testimony was part of the res gestae. Thereafter, Turner testified concerning J.B.'s allegations against the defendant.

The defense also objected on the basis of hearsay during the testimony of St. Tammany Parish Sheriff's Office Property Detective Jared Lunsford, after the State asked him if Turner had related what had occurred prior to his arrival at the scene. The trial court overruled the objection, citing LSA-C.E. art. 803(2).[3] Thereafter, Detective Lunsford testified Turner told him she had defended J.B. after J.B. came to her door and told her she had been raped and was being held against her will.

There was no error or abuse of discretion in denying the objection to Turner's testimony. The testimony concerning J.B.'s allegations was not offered to prove the truth of the matter asserted, but was offered to show why Turner wanted to keep the defendant out of her trailer. Moreover, the trial court correctly concluded J.B.'s allegations related to conduct that constituted an integral part of the aggravated burglary. The evidence concerning J.B.'s allegations against the defendant was related and intertwined with the aggravated burglary to such an extent that the State could not have accurately presented its case without reference to the evidence. Further, assuming, arguendo, that the balancing test of LSA-C.E. art. 403 is

[3] Louisiana Code of Evidence article 803(2) provides a hearsay exception, even when the declarant is available as a witness, for "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."

applicable to integral act evidence admissible under LSA-C.E. art. 404(B)(1),[4] that test was satisfied in this matter. The defendant claimed J.B. and Turner were both using drugs with him. Evidence that the defendant was holding J.B. against her will was highly probative of his motive, intent, and plan. Accordingly, the prejudicial effect to the defendant from the challenged evidence did not rise to the level of undue or unfair prejudice when balanced against the probative value of the evidence.

Detective Lunsford's testimony concerning Turner's claims of what J.B. had told her was cumulative of the account of those claims by Turner, which was admissible for the reasons noted above. Accordingly, error, if any, in the admission of hearsay from Detective Lunsford was harmless beyond a reasonable doubt.[5] See LSA-C.Cr.P. art. 921.

Also during the testimony of Detective Lunsford, the defense objected on the basis of "[c]alls for a legal conclusion," after the State asked Detective Lunsford, "based on the facts as you know them here today and based on your experience, is there a particular offense that you would have pursued a warrant for based on the events that occurred at that trailer park?" The trial court overruled the objection. Thereafter, Detective Lunsford testified, "In hindsight of 20/20, I would have pursued aggravated burglary." There was also no error in the admission of this testimony. A witness not testifying as an expert may provide testimony in the

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[4] The Louisiana Supreme Court has left open the question of the applicability of the Article 403 test to integral act evidence admissible under LSA-C.E. art. 404(B)(1). See **State v. Colomb**, 98-2813 (La. 10/1/99), 747 So.2d 1074, 1076 (per curiam).

[5] Confrontation errors are subject to a harmless-error analysis. **Delaware v. Van Arsdall**, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). The correct inquiry is whether the reviewing court, assuming that the damaging potential of the cross-examination were fully realized, is nonetheless convinced that the error was harmless beyond a reasonable doubt. **Van Arsdall**, 475 U.S. at 684, 106 S.Ct. at 1438. Factors to be considered by the reviewing court include "the importance of the witness'[s] testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." **Van Arsdall**, 475 U.S. at 684, 106 S.Ct. at 1438; **State v. Wille**, 559 So.2d 1321, 1332 (La. 1990), cert. denied, 506 U.S. 880, 113 S.Ct. 231, 121 L.Ed.2d 167 (1992). The verdict may stand if the reviewing court determines that the guilty verdict rendered in the particular trial is surely unattributable to the error. **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); **State v. Broadway**, 96-2659 (La. 10/19/99), 753 So.2d 801, 817, cert. denied, 529 U.S. 1056, 120 S.Ct. 1562, 146 L.Ed.2d 466 (2000).

form of opinions or inferences which are rationally based on his perception and helpful to a clear understanding of his testimony or the determination of a fact in issue. LSA-C.E. art. 701. The testimony explained why no photographs were taken of, and no physical evidence was collected in regard to, the damage to Turner's door. In its opening statement, the defense placed the absence of any such evidence at issue. The prejudicial effect to the defendant from the challenged evidence did not rise to the level of undue or unfair prejudice when balanced against the probative value of the evidence. This assignment of error is without merit.

CONVICTION, HABITUAL-OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.