NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

RHP
JEW by RHP

2012 KA 0716

STATE OF LOUISIANA

VERSUS

JERRELL DEMON PAYTON

On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, Louisiana
Docket No. 460214-4, Division "C"
Honorable Richard A. Swartz, Judge Presiding

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Jerrell Demon Payton
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Defendant-Appellant
In Proper Person

BEFORE: PARRO, HUGHES, AND WELCH, JJ.

Judgment rendered DEC 31 2012

PARRO, J.

The defendant, Jerrell Demon Payton, was charged by grand jury indictment[1] with aggravated rape, a violation of LSA-R.S. 14:42. The defendant pled not guilty. Following a jury trial, the defendant was found guilty of the responsive offense of simple rape, a violation of LSA-R.S. 14:43. The defendant filed a motion for new trial, which was denied. He was sentenced to fourteen years of imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating one counseled assignment of error and one pro se assignment of error. We affirm the conviction and sentence.

FACTS

Nineteen-year-old A.E.[2] and her friends, Nick and his girlfriend, Mary (M.C.), all from Kentucky, were visiting New Orleans for the Voodoo Festival. On the evening of October 26, 2008, the three friends went sightseeing on Bourbon Street. Sometime after 2:00 a.m. as they were walking back to their car, the defendant and his friends approached them and began talking to them. The defendant, sixteen years old, was with Chance Ross, Elroy Cooper, Ralph Robertson, and Troy (Robertson's cousin). The defendant's friends were from sixteen to eighteen years old. Someone from the defendant's group asked A.E. and her friends if they wanted to smoke marijuana. A.E. said that she did. They all walked to Ross's car, a Honda Accord, parked on Canal Street. The defendant and his friends, along with A.E., got into the Accord. Nick and Mary did not get in. The defendant was driving. A.E. testified at trial that, as the defendant began to drive off, she asked to be let out of the car so she could go back with her friends. Her request was ignored.

The defendant drove to Alton, just outside of Slidell, to the house of someone he knew, who might have marijuana. The defendant pulled into the person's driveway and

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[1] Four co-defendants were charged under the same indictment. These co-defendants were Chance Ross, Elroy Cooper, Joshua Reed, and Ralph Robertson. Ross's charge was subsequently amended to forcible rape, and he pled guilty to that charge. Cooper was convicted of simple rape, and he appealed his conviction. See **State v. Cooper**, 12-0227 (La. App. 1st Cir. 9/21/12), ___So.3d ___, 2012 WL 4335453 (unpublished). Reed was convicted of forcible rape, and he also appealed his conviction. See **State v. Reed**, 11-1539 (La. App. 1st Cir. 3/23/12), ___So.3d ___, 2012 WL 1012630 (unpublished). Robertson and the defendant were tried together. Robertson was convicted of simple rape, and he has filed a separate appeal. See **State v. Robertson**, 12-0743 (La. App. 1st Cir. 12/___/12), ___ So.3d ___.

[2] The identity of the victim is protected in accordance with LSA-R.S. 46:1844(W).

everyone got out of the car, except A.E. The defendant knocked on the door, realized no one was home, then got back into the car with A.E. As the others stood outside the car, the defendant put on a condom and had sex with A.E. When the defendant was finished, he got out of the car, and Robertson and Troy got in the car. A.E. performed oral sex on both of them. Robertson and Troy then got out of the car, and Ross and Cooper got in the car. According to Ross, who testified at trial, Cooper had sex with A.E. while A.E. performed oral sex on Ross. Everyone then returned to the car and the defendant drove to the trailer of Joshua Reed, another person who the defendant thought might have marijuana.

Reed and someone named Johnny were in the trailer. Troy did not go into the trailer, but walked home from there. The defendant led A.E. inside the trailer; after a few minutes, the three others from the car followed them inside. A.E. testified that she was brought to a back bedroom and that, over the next few hours, they all took turns raping her. She gave verbal resistance, but no physical resistance because she feared for her life. A.E. testified that at one point, Reed showed her a loaded gun and forced her to perform oral sex on him. The defendant and Ross left the trailer and drove to a store to purchase cigars. They returned to the trailer, made "blunts" with the cigars (tobacco removed and replaced with marijuana), and smoked marijuana. Finally, after repeated requests by A.E. to use a phone, they let her call Mary. The defendant told Mary they would drop off A.E. at a gas station on Brownswitch Road in Slidell. They brought A.E. to the Kangaroo gas station and left her there. A.E. went inside the store, told the person working there that she had been raped, and used the phone to call Mary and 911. An ambulance picked up A.E. from the gas station, and she was taken to Slidell Memorial Hospital. The defendant was arrested a few hours later.

The defendant testified at trial. He denied raping A.E. and stated that the sex he had with her was consensual.

COUNSELED ASSIGNMENT OF ERROR

In his counseled assignment of error, the defendant argues that the trial court erred in finding alleged impeachment evidence inadmissible. Specifically, the defendant contends that the trial court should have allowed a story written by A.E. and posted on

the internet to be admitted into evidence, because it showed that A.E. was a compulsive liar. The defendant also argues that the trial court erred in denying the motion for new trial regarding the same issue.

On cross-examination at trial, A.E. was asked, "Was there one room that you were perhaps sitting at not doing sexual things, and another room that you went into where sexual things happened?" A.E. responded:

> Honestly, the entire time there was some kind of sexual activity going on, even if I wasn't having sexual intercourse or giving someone oral sex. Even in the living room, the only time that I can remember that I wasn't having sex was when I was looking at a gun or being bent over and having a bottle stuck in my vagina and having a picture taken of it.

After the State called its last witness, but prior to resting, Melissa Valdivia, defense counsel for Robertson, felt that A.E. lied on the stand about the bottle incident, because A.E. had not mentioned the incident before in any of her prior statements or prior trial testimony. Therefore, Valdivia sought to introduce into evidence a story written by A.E. entitled "I Was A Liar" that appeared on A.E.'s personal blog site. Valdivia explained to the trial court that she had found A.E.'s story only the night before, and one of the prosecutors informed the trial court that he had just received a copy of the story "five minutes ago." Valdivia argued to the trial court that A.E.'s story said in her own words on a public forum "that she's a compulsive liar." Thus, according to Valdivia, the story was "exceptionally relevant for impeachment purposes."

At this point, outside of the presence of the jury, the trial court conducted a motion in limine hearing to determine the admissibility of A.E.'s story. Upon being recalled to the stand, A.E. testified that she had a Facebook page, which linked to her personal blogspot. A.E. had written several entries on her blog, including "I Was A Liar" by A.E., dated May 16, 2011. When Valdivia noted that her stories were written in the first person and "portrayed to the public as you're writing about yourself," A.E. responded, "They're fictional pieces. I write satire. I'm creative, and I like to make people laugh, and sometimes I've got to stretch the truth or [sic] write stories. That's what I do. I create things to make people laugh." In "I Was A Liar," Valdivia suggested that A.E. discussed her "history as a child of being a compulsive liar and creating fictitious stories." A.E. agreed that she did write the story, which was about a

child with a vivid imagination. On cross-examination, the following exchange between the prosecutor and A.E. took place:

Q This article that they refer to, that was written strictly as fiction by you?
A. Yes, sir.
Q. And it's solely written as fiction?
A. Yes, sir.
Q And you never did make any claims that this was your personal biography that was published as factually reflecting your life?
A. No.

At the conclusion of A.E.'s testimony, the trial court asked for argument and for Valdivia to point to the specific Louisiana Code of Evidence article that would permit the admissibility of A.E.'s story. Valdivia argued that Article 608 refers to truthfulness or untruthfulness and that, here, A.E. made a new statement about a bottle being inserted into her vagina. Valdivia contended this testimony by A.E. affected "her character for truthfulness or untruthfulness where she has specifically [written] something saying that she is untruthful." Valdivia asserted that the story was necessary for the jury to evaluate whether she was being credible in her testimony.

Louisiana Code of Evidence article 608 provides in pertinent part:

> **A. Reputation evidence of character.** The credibility of a witness may be attacked or supported by evidence in the form of general reputation only, but subject to these limitations:
>
> (1) The evidence may refer only to character for truthfulness or untruthfulness.
>
> * * * *
>
> **B. Particular acts, vices, or courses of conduct.** Particular acts, vices, or courses of conduct of a witness may not be inquired into or proved by extrinsic evidence for the purpose of attacking his character for truthfulness, other than conviction of crime as provided in Articles 609 and 609.1 or as constitutionally required.

The trial court noted that under LSA-C.E. art. 608, credibility is challenged as to general reputation in the community and not by particular acts or conduct. The trial court found that A.E.'s story was a particular course of conduct and, further, that A.E. testified that the story was a fictional account. Accordingly, the trial court found A.E.'s story to be inadmissible evidence.

It is well-settled that questions concerning the admissibility of evidence should be resolved by the trial court and not the jury. **State v. Martin**, 582 So.2d 306, 313 (La. App. 1st Cir.), writ denied, 588 So.2d 113 (La. 1991); see LSA-C.E. art. 104(A).

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, misleading the jury, or by considerations of undue delay, or waste of time. LSA-C.E. art. 403. Ultimately, questions of relevancy and admissibility are discretion calls for the trial court, and its determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. **State v. Duncan**, 98-1730 (La. App. 1st Cir. 6/25/99), 738 So.2d 706, 712-13.

In his brief, the defendant argues that consideration of LSA-C.E. art. 608 was "inappropriate" and that the appropriate article for consideration was LSA-C.E. art. 607(D)(1). Article 607 provides, in pertinent part:

> **D. Attacking credibility extrinsically.** Except as otherwise provided by legislation:
>
> (1) Extrinsic evidence to show a witness' bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness.

The defendant argues in his brief that Article 607(D)(1) "specifically allows any evidence which tends to prove [A.E.'s] lack of truthfulness through a larger whole [the blog by the witness], which includes her lack of truthfulness as part."

We note initially that LSA-C.E. art. 608 was the only article discussed at the motion in limine and, accordingly, is the appropriate article for our review on this appeal. Moreover, even if we were to consider LSA-C.E. art. 607(D)(1), we would find it inapplicable to the instant matter because Robertson was not trying to introduce A.E.'s story into evidence to show the witness's bias, interest, corruption, or defect of capacity. Accordingly, we find no merit in this argument.

We find no reason to disturb the trial court's ruling that A.E.'s story was inadmissible. In finding the story was in part inadmissible because it was fictional, it would appear the trial court implicitly found that the evidence was irrelevant. See **State v. Washington**, 99-1111 (La. App. 4th Cir. 3/21/01), 788 So.2d 477, 496, writ

denied, 01-1096 (La. 5/31/02), 816 So.2d 866. We agree that, whether A.E.'s story is regarded as fiction or taken at face value, it had no relevance in establishing the truthfulness or lack thereof of A.E.'s trial testimony regarding the bottle incident. Defense counsel suggested A.E.'s credibility might be impeached if the jury could read this story where A.E. admits she is a compulsive liar. But a brief review of the one-page story that A.E. wrote makes clear that, even assuming what she wrote were true, the story in no way suggests that, as an adult, she is a compulsive liar. A.E.'s story explicitly sets out that as an *eight-year-old child*, she had a vivid imagination and told her friends yarns and farfetched stories. She also told her mother that she had seen ghosts in her house. She summarizes in her story how she outgrew her childish behavior:

> "Either due to this unfortunate consequence of my habitual lying or the simple fact that I grew up, I have become disenchanted with leading a fairytale life. I realize that lies will get me nowhere and that fiction is best kept on paper."

Based on the foregoing, we find that A.E.'s story had no evidentiary value and, as such, was irrelevant. The trial court did not abuse its discretion in ruling the evidence inadmissible, and it did not err in denying the motion for new trial.

The counseled assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR

In his pro se assignment of error, the defendant argues that the evidence was insufficient to support the simple rape conviction. Specifically, the defendant contends that A.E. had not been drinking or taking drugs at any time during the night when she was having sexual intercourse. Therefore, the State did not prove that A.E. was incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent.

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; **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 the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 01-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Louisiana Revised Statutes 14:41 states, in pertinent part:

> A. Rape is the act of anal, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent.
>
> B. Emission is not necessary, and any sexual penetration, when the rape involves vaginal or anal intercourse, however slight, is sufficient to complete the crime.

Louisiana Revised Statutes 14:43(A) defines simple rape, in pertinent part, as:

> A. Simple rape is a rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of a victim because it is committed under any one or more of the following circumstances:
>
> (1) When the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity.

While not denying having vaginal intercourse with A.E., the defendant asserts in his brief that the evidence was insufficient to prove that A.E. was incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent. According to the defendant, A.E.'s own testimony established that she did not smoke marijuana that night, and that she had only one shot of alcohol before she even went to Bourbon Street with her friends. A.E. did, however, testify that she had smoked marijuana earlier in the day. Mary testified that in the Quarter, A.E. had a shot. A.E. testified on direct examination that when she met the defendant and his friends, she was not intoxicated at that point. When asked if she were feeling the effects of the alcohol or marijuana from earlier, she replied, "No."

The defendant also asserts that the evidence was insufficient to convict him of the greater crime of aggravated rape because Robertson told the police and testified at trial that A.E. was a willing participant in the sexual acts she engaged in. The defendant further points out that Robertson admitted to having sex with A.E., and that A.E. never told him (Robertson) "no" or to stop.

In **State v. Porter**, 93-1106 (La. 7/5/94), 639 So.2d 1137, 1143, the supreme court stated that there was evidence of alcohol consumption by the victim and of an alcohol-influenced state of mind, and that even though the victim denied excessive drinking and recalled the events of the ordeal, a reasonable juror could have concluded that the essential elements of simple rape had been proved. Similarly, in the instant matter, while A.E. may have denied being intoxicated, there was enough independent evidence of alcohol and drug consumption by A.E. from which a jury could have reasonably inferred that the defendant and his friends took advantage of her alcohol-influenced and/or drug-influenced incapacity to resist their advances effectively. See **Porter**, 639 So.2d at 1143. For example, Ross testified at trial that when he first met A.E. (before she got into the car), she had a drink in her hand and that she appeared to be drunk. When Ross was asked how he knew A.E. was drunk, he stated she had a drink in her hand and told them she had been drinking. When asked if A.E. showed any outward signs of being drunk when she walked, Ross answered, "Yes." Ross also testified that A.E. smoked marijuana at Reed's trailer. The defendant testified that when he arrived at Reed's trailer, only he and A.E. went inside the trailer for about five minutes while the others waited outside in the car. Thus, at that point, only the defendant, A.E., Reed, and Johnny were in the trailer. When the defendant was asked what they all were doing, he responded, "We was sitting down smoking [weed]."

Thus, the record suggests there was some drinking and drug-use throughout the day. There was trial testimony that suggested A.E. may have been intoxicated, despite her own testimony that she was not. Perhaps the jury felt A.E. was not being completely forthright in her testimony about what she drank and smoked that night; or the jury could have reasonably concluded that, while A.E., in her own mind, felt that she was not intoxicated, she, in fact, was intoxicated. Cf. **State v. Taylor**, 34,096 (La.

App. 2nd Cir. 12/15/00), 774 So.2d 379, 387 writ denied, 01-0312 (La. 12/14/01), 803 So.2d 984 (where the responsive verdict of simple rape was properly excluded for consideration by the jury because the defendant never suggested the victim was intoxicated or incapacitated in any way, the victim testified she never drank alcohol, and there was nothing in the record to suggest that the victim was under the influence of drugs or alcohol). In any event, the simple rape element of a stupor or abnormal condition of the mind produced by an intoxicating agent, such as alcohol or drugs, does not require an unaware victim with no capacity to resist, but rather an agent-influenced incapacity to resist effectively the advances of the perpetrator or perpetrators. See **Porter**, 639 So.2d at 1143. See also **State v. Fruge**, 09-1131 (La. App. 3rd Cir. 4/7/10), 34 So.3d 422, 430-32, writ denied, 10-1054 (La. 11/24/10), 50 So.3d 828; **State v. Clark**, 04-901 (La. App. 3rd Cir. 12/8/04), 889 So.2d 471; **State v. Brown**, 01-41 (La. App. 5th Cir. 5/30/01), 788 So.2d 694, 700-01.

The jury heard the testimony and viewed the evidence presented to it at trial and found the defendant guilty. The jury may have reasonably concluded that the defendant did not have consensual sex with A.E., and that because of A.E.'s intoxicated condition, she could not effectively resist the defendant's advances. We note as well that the simple rape conviction may have reflected a compromise verdict, which is a legislatively approved responsive verdict that jurors, for whatever reason, deem to be fair as long as the evidence is sufficient to sustain a conviction for the charged offense. See **State ex rel. Elaire v. Blackburn**, 424 So.2d 246, 251 (La. 1982), cert. denied, 461 U.S. 959, 103 S.Ct. 2432, 77 L.Ed.2d 1318 (1983). The trial court charged the jury on simple rape without any defense objection. Further, the defendant did not object to the verdict. Absent a contemporaneous objection, a defendant cannot complain if the jury returns a legislatively-approved responsive verdict, provided that the evidence is sufficient to support the charged offense. See **State v. Schrader**, 518 So.2d 1024, 1034 (La. 1988).

In the instant matter, the evidence was clearly sufficient to support the conviction of the charged offense of aggravated rape. Aggravated rape is a rape committed where the oral or vaginal sexual intercourse is deemed to be without lawful

consent of the victim because it is committed when two or more offenders participated in the act. LSA-R.S. 14:42(A)(5). At least five people, including the defendant, raped A.E. repeatedly throughout the early morning hours. It is clear from the record that the defendant and his friends took turns raping A.E. in the car, and then later at Reed's trailer, and that the defendant and the others passed A.E. around for a few hours, subjecting her to various sexual abuses. The record is replete with instances of protest and verbal resistance by A.E., and of non-consensual sexual acts. At the very outset of A.E.'s meeting with the defendant and the others, A.E. told them she did not want to go with them in the car. A.E. testified that when she opened the car door to get out, they closed it and locked it, and drove off. She stated that at this point, she felt terror and dread. Robertson testified that A.E. said that she did not want to go with them and wanted to be with her friends. But the defendant told A.E., "No, we gonna have fun; we just chilling." A.E. testified that when the defendant raped her in the driveway in Alton (the first rape), she realized that resistance was not going to prevent the rape:

Q. Is that something you wanted to happen?
A. No.
Q. Did you give him permission to do that?
A. I did not. And I actually at this point said that I didn't want this to happen. And I remember there was a little physical, like, pushing, resistance. And I just kind of stopped as soon as I knew that he was proceeding and --
Q. Why did you --
A. There was really nothing I felt like I could do.
Q. Why did you feel that way?
A. Because I'm a girl. And there's five men -- there's one, you know, man in the car; but I knew, you know, there were guys standing out front. I could have easily been overpowered by one, let alone five.

A.E. testified that after the defendant ejaculated, another guy got in the car and forced her to give him oral sex. A.E. did not identify this person, but according to Robertson's testimony, it was Robertson and Troy who got in the car after the defendant and had A.E. perform oral sex on both of them. Robertson also testified that when Cooper was having sex with A.E. in the car, he (Robertson) heard A.E. tell Cooper that she did not want to have sex with him. A.E. testified that when she was taken to Reed's trailer, it was in a rural area, she had no idea where she was, and that, therefore, running was not an option. A.E. then provided the following testimony:

A. I was led into the trailer.

Q. And what happened once you arrived inside that trailer?
A. There were two other men in the trailer. One was kind of a bigger guy with short dreads. And pretty much as soon as we got there, I was led into a back bedroom. And over the course of a few hours-- I mean, this is all just kind of like muddled now in my head. I don't really know details or what-- who did what. That when-- all I know for a fact is that they all raped me, was all I can say for a fact.
But I remember going into a bedroom, and just time after time for hours just having somebody inside of me. I mean, it's like they took turns.
Q. While all of this was going on, did you try to put up a fight, put up physical resistance against them?
A. There was no physical resistance. In the beginning, I remember there was verbal-- verbal resistance. I was obviously upset that this was happening. You know, I had said no-- I remember, you know, one would finish and another one would start to begin, and I just remember, like saying: "No." And then the other thing that I would say would be: "Are you serious?" Yeah.
Q. At any point during this evening, or into these early morning hours, did you begin to fear for your life?
A. I feared for my life the moment I got in the car. And at a particular point, there-- the guy-- the bigger guy with the dreads-- I hadn't done anything with him yet. And I was-- you know, the whole time I was obviously pleading that they take me back and, you know, to use a phone to call my friends. And they told me that they'd take me back, but they needed gas money. And the only way they could get gas money is if this bigger guy would give it to them.
And--but he looked at me and he said: "Have you ever gotten"-- "given something for nothing?" And he was, you know, pretty much implying that he wanted something from me. And at that point, I refused. And he pulled out a gun, and he opened-- opened it so I could see that there were bullets inside. And he said: "I kill people. Do you want to die tonight?"
Q. And how did you respond to that?
A. I said no. And he took me into the bedroom and forced me to perform oral sex on him.

Ross testified that when he got back to the trailer after buying cigars, they smoked marijuana. Reed stood up and told A.E. to come with him, and she got up and followed him into the bedroom. The defendant and Cooper then went into the bedroom, also. At this point, according to Ross's testimony, Robertson told Ross that when he (Ross) was gone, A.E. did not want to have sex with Reed, but that Reed had a gun.

The evidence established that the defendant had sexual intercourse with A.E. without her lawful consent and, moreover, the defendant knew that others, while the defendant was always nearby, were having sexual intercourse with A.E. without her lawful consent. Accordingly, since the evidence was sufficient to sustain a conviction

for the charged offense of aggravated rape, the compromise verdict of simple rape was proper.

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. 1st 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. 1st Cir. 1985). 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). Further, 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. 1st Cir. 1987), writ denied, 519 So.2d 113 (La. 1988).

After a thorough review of the record, we find that the evidence supports the jury's verdict. 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 simple rape. See **State v. Calloway**, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

The pro se assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.