NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 0743

STATE OF LOUISIANA

VERSUS

RALPH GREG ROBERTSON

Judgment Rendered: December 21, 2012

Appealed from the
Twenty-Second Judicial District Court
in and for the Parish of St. Tammany, State of Louisiana
Trial Court Number 460214-3

Honorable Richard A. Swartz, Judge Presiding

* * * * * * * * * *

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* * * * * * * * * *

BEFORE: WHIPPLE, McCLENDON AND HIGGINBOTHAM, JJ.

WHIPPLE, J.

The defendant, Ralph Greg Robertson, was charged by grand jury indictment with aggravated rape, a violation of LSA-R.S. 14:42.[1] 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. He was sentenced to twelve years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

Nineteen-year-old A.E.,[2] and her friends, Nick and Mary (Nick's girlfriend), 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, seventeen years old, was with Chance Ross, Elroy Cooper, Jerrell Payton, and "Troy" (the defendant's cousin). The others' ages ranged 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. Payton was driving. A.E. testified at trial that as Payton 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.

Payton drove to Alton, just outside of Slidell, to the home of someone he knew who might have marijuana. Payton pulled in the person's driveway and

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[1]The four other co-defendants charged under the same indictment were Chance Ross, Elroy Cooper, Joshua Reed, and Jerrell Payton. Ross's charge was subsequently amended to forcible rape. The defendant and co-defendant Jerrell Payton were tried together. Payton filed a separate appeal (2012KA0716).

[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. Payton 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, Payton put on a condom and had sex with A.E. When Payton was finished, he got out of the car, and the defendant and Troy got in the car. A.E. performed oral sex on both of them. The defendant and Troy then got out of the car, and Ross and Cooper got in the car. According to Ross's trial testimony, Cooper had sex with A.E. while A.E. performed oral sex on Ross. Everyone then returned to the car and Payton drove to the trailer of Josh Reed, another person Payton thought might have marijuana.

Reed and someone named "Johnny" were in the trailer. Troy did not go in the trailer, but walked home from there. The defendant and the three others from the car took A.E. inside the trailer. 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. At one point, Reed showed A.E. a loaded gun and forced her to perform oral sex on him. Payton and Ross left the trailer and drove to a store to purchase cigars. The defendant testified at trial that, while they were at the store, A.E. asked the defendant where the bathroom was. The defendant took A.E. to the bathroom. After she finished using the bathroom, the defendant asked her, "Can I hit?" According to the defendant, A.E. said "yes" and the defendant put on a condom and proceeded to have sex with A.E. on the bathroom counter. Only moments later, "Johnny" came in the bathroom with his penis out. The defendant then stopped having sex with A.E. The defendant took off his condom, discarded it, and left the bathroom. A.E. testified that when she walked in the bathroom, the defendant followed her in there. As she was washing her hands, she saw the defendant put on a condom. She asked, "Are you serious?" The defendant then proceeded to rape her vaginally over the sink. When Payton and Ross returned

from the store, they 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 allowed her to call Mary. Payton told Mary they would drop off A.E. at a gas station on Brownswitch Road in Slidell. They brought A.E. to a Kangaroo gas station and left her there. A.E. went inside the store, told the person working there that she was 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 short time later.

The defendant testified at trial that he did not rape A.E. He stated that A.E. was willing to have sex with him, that she agreed to perform oral sex on him in the car when he asked her to, and that she agreed to have sex with him in the bathroom when he asked her to.[3]

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues the evidence was insufficient to support the simple rape conviction. Specifically, the defendant contends that A.E. had not been drinking or taking drugs prior to any 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; La. 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

[3]There was a trial for Reed prior to the instant trial. Reed was convicted of forcible rape. State v. Reed, 2011-1539 (La. App. 1st Cir. 3/23/12), __ So. 3d __, 2012 WL 1012630 (unpublished). Cooper was convicted of simple rape (Docket No. 2012KA0227). Payton was convicted of simple rape (Docket No. 2012KA0716). Ross pled guilty to forcible rape.

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, 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, 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 the factfinder must be satisfied 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.

Louisiana Revised Statute 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 Statute 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 he had sexual 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 went to Bourbon Street with her

friends. A.E. did, however, testify that she had smoked marijuana earlier in the day. 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 points out that A.E. testified that she did not smoke marijuana when she was at Reed's trailer. The defendant also asserts that the jury rejected convictions for aggravated rape and forcible rape because there was no evidence that the sexual acts with him were not consensual. According to the defendant, A.E. never said "no" to him regarding sex and she never told him to stop.

In State v. Porter, 93-1106 (La. 7/5/94), 639 So. 2d 1137, 1143, the Supreme Court recognized that even where there was evidence of alcohol consumption by the victim and of an alcohol-influenced state of mind, and 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 sufficient independent evidence of alcohol and drug consumption by A.E. to allow the jury to reasonably infer 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. Notably, 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 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. Payton 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 Payton, A.E., Reed, and Johnny were in the

trailer. When Payton was asked what they all were doing, he responded, "We was sitting down smoking [weed]."

Thus, the record shows there was some drinking and drug use throughout the day. There was trial testimony showing that A.E. had some degree of impairment and intoxication at the time these crimes occurred, despite her testimony at trial that she was not impaired. The jury could have concluded that A.E. was 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 was, in fact, intoxicated. Cf. State v. Taylor, 34,096 (La. App. 2nd Cir. 12/15/00), 774 So. 2d 379, 387, writ denied, 2001-0312 (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 that the victim be unaware and have no capacity to resist. Instead, an agent-influenced incapacity to effectively resist the advances of the perpetrator or perpetrators is sufficient under our laws and jurisprudence. See Porter, 639 So. 2d at 1143. See also State v. Fruge, 2009-1131 (La. App. 3rd Cir. 4/7/10), 34 So. 3d 422, 430-32, writ denied, 2010-1054 (La. 11/24/10), 50 So. 3d 828; State v. Clark, 2004-901 (La. App. 3rd Cir. 12/8/04), 889 So. 2d 471, 474-75; State v. Brown, 2001-41 (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. There was proof sufficient to establish, beyond a reasonable doubt, 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. Moreover, we recognize 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). Also, 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 includes a rape 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 night. 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. As the evidence shows, the defendant and the others overpowered A.E. for several hours, during which they subjected her to various sexual abuses. The record is replete with instances of protest and resistance by A.E., and 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. The defendant, himself, testified that A.E. did not want to go with them. He stated she

said she did not want to go and wanted to be with her friends. But Payton told A.E., "No, we gonna have fun; we just chilling." A.E. testified that when Payton 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 Payton 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 the defendant's testimony, it was he and "Troy" who got in the car after Payton and had A.E. perform oral sex on both of them. The defendant also admitted that when Cooper was having sex with A.E. in the car, the defendant 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 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 the 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 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 the 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. Payton and Cooper then went into the bedroom, also. According to Ross's testimony, at this point, the defendant told Ross that while Ross was gone, A.E. did not want to have sex with Reed, but that Reed had a gun.

The evidence shows that the defendant had sexual intercourse with A.E. without her lawful consent and, moreover, that 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.

Moreover, the fact that the record contains some 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, 2003-1980 (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, 2007-2306 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues the trial court erred in denying, as inadmissible, evidence that defense counsel sought to introduce to attack A.E.'s credibility. 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 in it, she described herself as a compulsive liar.

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, defense counsel, opined that A.E. lied on the stand about the bottle incident (only) because A.E. had not mentioned the incident before in any of her prior statements or prior trial testimony. Thus, defense counsel 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. Defense counsel 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." Defense counsel argued to the trial court that A.E. said in her own words on a public forum "that she's a compulsive liar." Thus, according to defense counsel, the story was "exceptionally relevant for impeachment purposes."

At this point, and outside of the presence of the jury, the trial court conducted a hearing on the defendant's motion in limine 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 defense counsel 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," defense counsel 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 defense counsel to point to the specific Louisiana Code of Evidence article that would permit the admissibility of the story from A.E.'s blog. Defense counsel argued that Article 608 refers to truthfulness or untruthfulness and that A.E. made a new statement about a bottle being inserted into her vagina. According to the defense, this testimony by A.E. affected "her character for truthfulness or untruthfulness where she has specifically [written] something saying that she is untruthful." Defense counsel asserted that the story was necessary for the jury to evaluate whether A.E. 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.

The defendant argues in his brief that there is nothing in A.E.'s writing to indicate it was fictitious. Although A.E. testified at the hearing on the motion in limine that her story was fictional, this should have been an issue for the jury to decide. The defendant argues that the exclusion of the evidence affected his right to confront and cross-examine A.E. effectively, and that the trial court committed reversible error.

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

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, 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, 2001-1096 (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 not 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 the story, wherein A.E. admits she is a compulsive liar. Even assuming that what she wrote was true, there is nothing in the record to suggest 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."

Defense counsel had ample opportunity to, and in fact did, effectively cross-examine A.E. We note, as well, that instead of attempting to attack her credibility about the bottle incident, seeking to introduce into evidence a story by A.E. describing her conduct as a child to satisfy the relevancy requirement, defense

counsel could have sought to introduce A.E.'s previous trial transcript wherein, according to defense counsel, the bottle incident was not mentioned. However, the defense failed to do so.

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.

This assignment of error also lacks merit.

CONCLUSION

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

CONVICTION AND SENTENCE AFFIRMED.