**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 KA 1308

STATE OF LOUISIANA

VERSUS

WILLIAM STATON, JR.

Judgment Rendered: MAR 2 1 2014

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Appealed from the
20th Judicial District Court
In and for the Parish of West Feliciana, Louisiana
Trial Court Number 12 WFLN 063

Honorable William G. Carmichael, Judge

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| Stewart B. Hughes<br>Special Assistant District Attorney<br>St. Francisville, LA | Attorney for Appellee<br>Plaintiff – State of Louisiana |
| Benn Hamilton<br>Baton Rouge, LA | Attorney for Appellant<br>Defendant – William Staton, Jr. |

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**BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.**

**WELCH, J.**

The defendant, William Staton, Jr., was charged by grand jury indictment with aggravated rape, a violation of La. R.S. 14:42. He pled not guilty and, following a jury trial, was found guilty as charged. He filed a motion for postverdict judgment of acquittal, which was denied. The defendant was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, designating six assignments of error. We affirm the conviction and sentence.

**FACTS**

In the 1990s, Michelle Staton moved from Louisiana to California for a job. She became involved with a man and lived with him for the next eight years. They did not marry, but had two children together, J.M. and her younger brother. In 2004, Michelle, having ended her relationship, drove back to Louisiana with her children. About eight months later, she married the defendant, and the family lived in Ethel, East Feliciana Parish. J.M. and her brother would see their father during summer vacations. In the summer of 2009, the children were in California with their father when J.M. asked him to take her to the doctor. J.M. told the doctor her stepfather had molested her. The doctor told J.M.'s father, who took J.M. to a Los Angeles police station to file a report. The police report was forwarded to authorities in Louisiana. J.M.'s father filed an ex parte emergency order with a court to obtain full-time custody of his children. J.M. and her brother have since lived in California.

J.M. testified at trial that the sexual abuse by the defendant (her stepfather) began in August of 2007 when she was twelve years old living in East Feliciana Parish. She described various encounters with the defendant on different occasions wherein he forced her to perform fellatio and vaginally and anally raped her. Most instances of rape occurred late at night while J.M.'s mother was at work. The

defendant would tell J.M. not to tell anyone or else he would hurt her mother or brother. Michelle testified at trial that she did not think the defendant was having sex with J.M., and that J.M. lied about being raped because "[s]he has her freedom" in California.

The defendant did not testify at trial.

**ASSIGNMENTS OF ERROR NOS. 1, 2 and 5**

In these related assignments of error, the defendant argues, respectively, the verdict is contrary to the law and evidence, the verdict is not supported by sufficient evidence, and the trial court erred in refusing to grant the postverdict judgment of acquittal.

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 reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See La. 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, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. **State v. Patorno**, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

Louisiana Revised Statute 14:42 provides in pertinent part:

> A. Aggravated rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim

because it is committed under any one or more of the following circumstances:

* * *

(4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.

Louisiana Revised Statute 14:41 provides 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.

In his brief, the defendant suggests the evidence was insufficient to prove he raped J.M. because of conflicting accounts of the various instances of rape. J.M. drafted a multi-page letter to her father entitled "No More Secrets" wherein she described in detail what the defendant did to her on different occasions. The defendant contends that some of what she described in the letter was different from what was in the police report and from her testimony. The defendant also notes the lack of physical evidence, such as torn clothing or physical trauma. We note initially that comparing the police report to any other documentation or testimony is inappropriate because the police report was inadmissible hearsay, was not introduced into evidence, and therefore, was not considered by the jury. While we find some variances between the "No More Secrets" letter and J.M.'s testimony, by and large each is consistent with the other. Moreover, at trial, J.M. was confined to answering only the questions asked of her, while there are no such restrictive conditions involved in the drafting of a letter.

The defendant further notes that J.M. testified she gave her grandmother her diary, which contained accounts of the defendant's abuse, and that her grandmother read the diary, then gave the diary to J.M's mother. J.M. did not know what happened to her diary. J.M.'s grandmother testified that she never saw a diary. Another example of inconsistency, according to the defendant, is that J.M.

testified that during one of her encounters with the defendant, she was on the phone with two of her friends, and they heard what was occurring; yet Damarius Dunn, one of those friends, testified that he heard nothing. After further examination, however, Dunn testified that "That night that she talking about that we was on the phone, I got off the phone. I wasn't on the phone at the time." On cross-examination, when asked to elaborate about "that night," Dunn stated:

> It was one night that me, her, and Cory was on the phone, and like I had got off the phone that night early, so it was just them two on the phone. So the next day we had went to school or whatever, she used to come to school crying and stuff like that, but I never asked her what was wrong with her.

Regarding J.M.'s grandmother, a trier of fact could have drawn the reasonable conclusion that, while J.M. could be lying about her diary, she was truthful about being raped by the defendant; or perhaps her grandmother was lying about never seeing a diary. Regarding Dunn, a trier of fact could have drawn the reasonable conclusion that J.M. thought Dunn was still on the phone after he hung up, or that Dunn was lying.

In any case, the foregoing arguments raised by the defendant are credibility issues. 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).

When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). The jury's verdict reflected the reasonable conclusion that, based on the trial testimony of J.M., the defendant raped her when she was twelve years old. In finding the defendant guilty, the jury clearly rejected the defense's theory of innocence. See **Moten**, 510 So.2d at 61. Further, despite the defendant's claim of the lack of physical evidence, it is not necessary that there be physical evidence to prove the defendant committed aggravated rape. 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). The testimonial evidence was sufficient to establish the elements of aggravated rape, including the element of penetration. Louisiana Revised Statute 14:41(B) provides that "[e]mission is not necessary" and that "any sexual penetration, when the rape involves vaginal or anal intercourse, however slight, is sufficient to complete the crime." See **State v. Rives,** 407 So.2d 1195, 1197 (La. 1981).

After a thorough review of the record, we find 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 the aggravated rape of J.M. See **State v. Calloway**, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (*per curiam*).

The trial court did not err in denying the motion for postverdict judgment of

acquittal. Accordingly, these assignments of error are without merit.

**ASSIGNMENT OF ERROR NO. 3**

In his third assignment of error, the defendant argues the trial judge erred in denying his motion to enforce a plea agreement. Specifically, the defendant contends the trial court committed an error of law when it refused to accept the plea agreement entered into by the defendant and the State.

Prior to trial, the defendant, through his attorney, Benn Hamilton, and the prosecutor, Kathryn Jones, had agreed to a plea deal. In exchange for the defendant's nolo contendere plea to second degree cruelty to juveniles (La. R.S. 14:93.2.3), he would be sentenced to ten years imprisonment, with seven years of the sentence suspended, and five years of probation. At a status conference on November 15, 2011, the parties appeared before Judge William G. Carmichael to enter the plea. Before any plea was entered, Judge Carmichael informed the parties that J.M.'s father had contacted him with allegations that the District Attorney had a conflict of interest in this case and was biased in favor of the defendant. Continuing the case without date, Judge Carmichael stated in pertinent part:

> I have explained to the district attorney and defense counsel that I will not allow a prosecution to continue in my court under allegations that the district attorney has a conflict of interest or is in any way biased. I don't want the, my action today to indicate that I think that there is any conflict of interest or any bias on the part of the district attorney. In the prosecution of this case, I have detected no conflicts of interest, no bias by any party; otherwise I'd have stopped it myself. But faced with these allegations, this case is going to be held in abeyance until I can resolve the issues that have been raised by [J.M.'s father].

Subsequently, at a pretrial hearing on December 12, 2011, Judge Carmichael informed the prosecutor, defense counsel (and the defendant) why any plea agreements that may have been reached would be considered vacated:

> There have been well-publicized allegations in this case of racism, unnecessary delay, conflict of interest on the part of the

District Attorney, and outright deception on the part of the prosecution. Though none of these allegations have been substantiated, and the accuser has had ample time to take action, there has been no resolution of these allegations. The problem is allegations of this type just don't go away. They will linger over this prosecution. Any resolution of this case by a plea agreement will forever be tainted by the allegations that have been made. And though these allegations may be groundless, they will remain and reflect on the prosecution of this case. As the presiding judge, I will not allow that to happen. Our system demands more. I will not allow the integrity of this process to be challenged.

Therefore, any plea agreement[s] that have heretofore been reached are hereby vacated. I will not participate in any plea negotiations in this case in the future, nor will I accept any plea agreements made by the parties.

About two weeks later, Hamilton filed a "Motion To Enforce Plea Agreement." The motion was taken up at a pretrial hearing on February 14, 2012, and denied. Expounding on why he would not accept any plea agreement, Judge Carmichael stated in pertinent part:

There was a plea agreement between the defense and the district attorney that was confected and approved by the Court. There were some things of which I was not aware at the time I approved the plea agreement. By that, I don't mean to suggest that anyone withheld any information from me because they didn't, but there were some things that I was not aware of at the time that I approved the plea agreement. But that really is not the reason that I withdrew my approval. I withdrew my approval because this is the second most serious offense in the Criminal Code that would result, if convicted, of, on a, in a mandatory life sentence. It involves the alleged aggravated rape of a child over a period of a year.

There are allegations that have been made, none substantiated, of conflict of interest, racial prejudice, and some other things, and con-, and even though there is no substantiation of any of those claims, there is no way that those claims or allegations will go away. And if any plea agreement goes forward in this case without the approval of whoever is making those claims, the agreement and sentence will forever be questioned considering the nature of the case. And under those circumstances, before I made the announcement that I was not going to approve any plea agreement, when I made that announcement in December, I considered this at length, and I tried to consider what my role was, what should I do? Should I go ahead and approve the plea agreement that the parties had reached? But considering the nature of this case, the nature of the allegations, I simply don't think that I should do that because the, the question of what happens in this court ultimately is up to me. And I think that if anything, if there's any plea agreement under these circumstances in which we find ourselves, there will always be a question about what happened, what went wrong, what was done? And for that reason, I

said that I was not going to entertain any plea agreements, and for that reason, your motion is denied.

We see no reason to disturb the trial court's denial of the motion to enforce the plea agreement. In his brief, the defendant cites several cases which liken plea agreements to contracts. In applying contract principles to plea bargains, the defendant contends he is entitled to specific performance of the agreement. See **State v. Givens**, 99-3518 (La. 1/17/01), 776 So.2d 443, 455-56; **State v. Louis**, 94-0761 (La. 11/30/94), 645 So.2d 1144, 1148-51; **State v. Canada**, 2001-2674 (La. App. 1st Cir. 5/10/02), 838 So.2d 784, 786-90.

While courts do generally refer to rules of contract law for application by analogy in determining the validity of plea agreements, see **Louis**, 645 So.2d at 1148, there was no agreement between the parties in this case finalized by the trial court. Accordingly, there was no contract to which the defendant could point in demanding specific performance.

While there may have been an agreement between the prosecutor and defense counsel (the defendant), there was no final approval by Judge Carmichael in open court. None of the procedural requirements of La. C.Cr.P. art. 556.1 were met.[1] It was at the trial court's discretion to accept or reject the plea. A trial judge is under no statutory duty to accept a plea bargain, and his decision not to do so is not reviewable. See **State v. Williams**, 341 So.2d 370, 380 (La. 1976). Judge Carmichael ultimately rejected the agreement between the parties, and there was no approval of any agreement by him in open court. Accordingly, there was no plea bargain, or contract, to enforce.

This assignment of error is without merit.

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[1] Article 556.1 provides in pertinent part:
A. In a felony case, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, all of the following:
(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.

## ASSIGNMENT OF ERROR NO. 4

In his fourth assignment of error, the defendant argues the trial court erred in refusing to allow him to introduce certain evidence into the record. Specifically, the defendant contends he should have been allowed to introduce the police report into evidence.

Detective Don McKey, with the East Feliciana Parish Sheriff's Office, testified at trial that he became aware of J.M.'s case when he received a police report in July of 2009 from the Los Angeles Police Department. Detective McKey explained that after reviewing the police report, which included an interview with J.M., he referred the case to the District Attorney's Office. On cross-examination, Hamilton gave Detective McKey the police report, asked him to review it, then asked him specific questions about the report, such as whether J.M. had stated that each incident happened the same way. Hamilton then sought to introduce the police report into evidence. The State objected on hearsay grounds, and the objection was sustained. Hamilton subsequently proffered the police report.

Hearsay is an out-of-court, unsworn, oral or written statement by a third person, which is offered for the truth of its content. La. C.E. art. 801(A) and (C). Hearsay statements are inadmissible unless they fit into one of the recognized exceptions. **State v. Gremillion**, 542 So.2d 1074, 1077 (La. 1989). There is no hearsay exception under the Louisiana Code of Evidence for information contained in police investigative reports. The contents of a police report are based on hearsay and are not admissible as a business record. See La. C.E. art. 803(8)(b)(i); **State v. Berry**, 95-1610 (La. App. 1st Cir. 11/8/96), 684 So.2d 439, 453, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603.

In his brief, the defendant, noting that while a police report is "ordinarily considered to be hearsay," states that he tried to introduce the police report for impeachment purposes and to show internal contradictions in J.M.'s testimony.

(We note J.M. had not yet testified.) The defendant further asserts the police report "should have been allowed because the prosecution opened the door to its introduction and without its introduction, the defendant is denied the right to confront his accuser." These assertions are baseless.

The prosecution did not open the door. Detective McKey did not reference any specific statements in the police report, but indicated only that he received an out-of-state police report, which alleged the defendant committed a sex crime. Only defense counsel addressed the specific contents of the police report when he cross-examined Detective McKey over statements J.M. made to the Los Angeles police officer. Regarding the denial of his right to confront his accuser, the defendant confronted his accuser. J.M. took the stand and was subjected to intense cross-examination by defense counsel.

The trial court did not err in ruling the police report was inadmissible. Accordingly, this assignment of error is without merit.

**ASSIGNMENT OF ERROR NO. 6**

In his sixth assignment of error, the defendant argues the trial court erred when it refused to vacate the jury verdict for jury misconduct. Specifically, the defendant contends the jury verdict should have been vacated because some jurors during deliberations discussed the defendant's failure to testify.

Ten days after the guilty verdict was returned, defense counsel filed a "Motion To Vacate Jury Verdict," which indicated that the presiding judge had been contacted by a juror, who alleged that during the jury's deliberations, certain comments were made by some jurors concerning the defendant's failure to testify during the trial. Defense counsel further stated in the motion that these comments were unduly prejudicial to the defendant and, more than likely, deprived him of a fair trial. Further, the motion states, "The defendant now specifically requests that a hearing is held so that the entire jury panel can be examined as to the extent of

any improper discussions, comments or considerations that may have arisen during jury deliberations."

Subsequently, all twelve jurors from the defendant's trial, having been subpoenaed, were examined over the course of two hearings (ten in October of 2012 and two in December of 2012). Following the testimony of all the jurors, Judge Carmichael denied the motion to vacate the jury verdict.

Louisiana Code of Evidence article 606(B) provides, in pertinent part:

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether any outside influence was improperly brought to bear upon any juror, and, in criminal cases only, whether extraneous prejudicial information was improperly brought to the jury's attention.

The prohibition in this article is intended to preserve the finality of jury verdicts and the confidentiality of discussions among jurors. However, the jurisprudence has established the prohibition against juror testimony is not absolute and must yield to a substantial showing that the defendant was deprived of his constitutional rights. Well-pleaded allegations of prejudicial juror misconduct violating a defendant's constitutional rights will require an evidentiary hearing at which jurors shall testify. **State v. Smith**, 2006-0820 (La. App. 1st Cir. 12/28/06), 952 So.2d 1, 15, writ denied, 2007-0211 (La. 9/28/07), 964 So.2d 352; **State v. Duncan**, 563 So.2d 1269, 1272 (La. App. 1st Cir. 1990).

Thus, to pierce the so-called jury shield law, thereby requiring an evidentiary hearing, there must be a well-pleaded allegation that a juror's verdict was compromised by outside influence or extraneous prejudicial information. However, communications among jurors, although violating the trial court's instructions, do not amount to "outside influences" or "extraneous" information. See **State v. Horne**, 28,327 (La. App. 2nd Cir. 8/21/96), 679 So.2d 953, 956-58,

writ denied, 96-2345 (La. 2/21/97), 688 So.2d 521. See also **State v. Emanuel-Dunn**, 2003-0550 (La. App. 1st Cir. 11/7/03), 868 So.2d 75, 82, writ denied, 2004-0339 (La. 6/25/04), 876 So.2d 829.

In **State v. Richardson**, 91-2339 (La. App. 1st Cir. 5/20/94), 637 So.2d 709, 712-13, the defendant filed a motion for new trial based on juror misconduct. According to the defendant, although the trial court gave an instruction to the jury that during deliberations they were not to consider the fact that the defendant did not testify, the jury nevertheless considered his failure to testify. Subsequently, the defendant filed a motion to issue subpoenas and attached four affidavits to the motion. Three of the affidavits were from jurors stating that the jury in the defendant's trial discussed during their deliberations the fact that the defendant did not testify. The jurors further stated in their affidavits that they felt that the defendant's failure to testify was a significant factor in the conviction of the defendant. The trial court denied the motion for new trial and the motion to issue subpoenas. In affirming the trial court's rulings on the motions, this court discussed La. C.E. art. 606(B), then concluded that the pleadings filed by the defendant did not meet the requirements of specificity and that, although his complaints did become more specific upon his filing of the affidavits, none of the complaints alleged juror misconduct in the nature of constitutional violations with sufficient particularity to require or allow members of the jury to testify. Finally, this court found that the defendant failed to present a substantial claim that his constitutional rights were violated.

It is in light of the foregoing discussion that we question in this matter the propriety of the trial court's ordering an evidentiary hearing in the first instance. Under **Richardson**, even juror affidavits, which stated that the jury discussed during deliberations the defendant's failure to testify, did not afford the defendant the right to compel the jurors who had already served on his case to be hauled back

into court to be examined about matters discussed in the privacy of their deliberations. Moreover, there was no "outside influences" or "extraneous" information complained of by the defendant in the instant matter; instead, his complaint was confined entirely to the deliberative process of the jurors. See La. C.E. art. 606(B).

In any event, we see no reason to disturb the trial court's ruling. Following the two hearings, the trial court stated in pertinent part:

> There has been a Motion to Vacate the Jury Verdict on the issue of whether or not the jury considered Mr. Staton's failure to testify in its deliberations. I have allowed the jurors, all of the jurors, to testify about that particular issue only, and all twelve have testified.
>
> Seven jurors testified that they didn't remember any discussion about the defendant's failure to testify, or they didn't hear any such discussion.
>
> Five jurors, two of which testified this morning, testified that they heard mention of the fact that the defendant didn't testify but four testified that following that assertion a discussion followed in which someone said that they were not to consider his failure to testify. Ms. Weage is one of the ones who said she heard it mentioned that if the defendant would have been innocent he would have testified. She-- no one asked her whether or not there was a discussion afterward as to whether or not the jury should consider that in its deliberation, however she indicated that she did not consider that in her deliberation.
>
> Two of the jurors, Mr. Odom and Mr. Cazabat, testified that they specifically heard one person say that if the defendant had been innocent he would have testified. However, Mr. Cazabat, himself testified that he reminded the jurors that they were not to consider that, and Mr. Odom testified that after that discussion there was a discussion that they "[*sic*]" jury was not to consider that.
>
> There has been no testimony from any juror that the defendant's failure to testify was a factor in their verdict, or that they drew an unfavorable inference from the failure of the defendant to testify, therefore the Motion to Vacate the Jury Verdict is denied.

We have thoroughly reviewed the transcripts of both evidentiary hearings. The overriding narrative of these hearings was that, of the entire deliberative process, minimal consideration was afforded the defendant's failure to testify. When one or two jurors remarked that the defendant had not testified or that if he was innocent he would have testified, those jurors were reminded by another juror of the trial court's instructions that they were not permitted to hold against the

defendant his failure to testify. Following this reminder, it appears there was no more discussion regarding the defendant not taking the stand. In any case, as the trial court noted, there was no testimony that the defendant's failure to testify was a factor in any juror's verdict, or that any juror drew an unfavorable inference from the failure of the defendant to testify. The defendant made no showing that a constitutional violation occurred and that a reasonable possibility of prejudice existed and, accordingly, the trial court did not err in denying the motion to vacate the jury verdict. See **State v. Ingram**, 2010-2274 (La. 3/25/11), 57 So.3d 299, 303 (*per curiam*); **State v. Graham**, 422 So.2d 123, 131 (La. 1982).

This assignment of error is without merit.

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

**CONVICTION AND SENTENCE AFFIRMED.**