NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0534

STATE OF LOUISIANA

VERSUS

CHRISTOPHER ODIS

Judgment Rendered: November 7, 2014

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Appealed from the
17th Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
Case No. 501149

The Honorable Walter I. Lanier, III, Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

THERIOT, J.

The defendant, Christopher Odis, was charged by bill of information with sexual battery (victim under thirteen years of age and offender over seventeen years of age), a violation of Louisiana Revised Statutes 14:43.1. He pled not guilty and, following a jury trial, was found guilty as charged. He filed a motion for post-verdict judgment of acquittal, which was denied. The trial court sentenced the defendant to seventy-five years at hard labor, and ordered that the first twenty-five years were to be served without the benefit of parole, probation, or suspension of sentence. The defendant now appeals, alleging one pro se and two counseled assignments of error. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On April 25, 2011, the victim, A.D., disclosed to her mother that her mother's live-in boyfriend, the defendant, had been touching her inappropriately for the past year or one-and-one-half years.[1] After the disclosure was made, A.D.'s mother took her to church to discuss the matter further. After their conversation at the church, A.D.'s mother brought her to Terrebonne General Hospital, and hospital personnel contacted Detective Sean Scott with the Lafourche Parish Sheriff's Office. Detective Scott spoke with A.D. and scheduled an interview at the Children's Advocacy Center in Thibodaux, Louisiana.

SUFFICIENCY

In his first counseled assignment of error, the defendant challenges the sufficiency of the evidence in support of his conviction. Defendant argues that the conviction was based solely on the testimony of A.D., that there was

[1] The minor victim herein, born September 15, 1997, is referenced only by her initials. See La. R.S. 46:1844W.

no corroborating evidence, and that A.D.'s testimony provided a motive as to why she would make up the allegations. He further contends that the State failed to prove that he touched A.D., that A.D. touched him, and even if that were proven, the State failed to prove that it occurred before A.D. reached age thirteen.

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, after 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. Code Crim. P. art. 821. 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, in order to convict, the factfinder must be satisfied that 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.

At the time of the offense, La. R. S. 14:43.1 provided:

> A. Sexual battery is the intentional engaging in any of the following acts with another person where the offender acts without the consent of the victim, or where the act is consensual but the other person, who is not the spouse of the offender, has not yet attained fifteen years of age and is at least three years younger than the offender:
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> (1) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender; or

(2) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.

The defendant is correct that the State's case against him hinged primarily on A.D.'s testimony at trial. At the trial of this matter, A.D. testified that she was twelve years old when the defendant began touching her. She stated that the abuse usually occurred in her bedroom and that the defendant would touch her vagina with his hand when her mother was at work or asleep. When asked how many times the defendant had touched her, A.D. responded, "Too many." On her thirteenth birthday, she made a wish that he would stop.

A.D. testified that on the Thursday prior to the date she disclosed the abuse to her mother, she was swimming in the pool with her two younger brothers and the defendant. It was evening and was beginning to get dark outside. When A.D. would swim by the defendant, he would put his hands between her legs and "rub on [her] down there." According to A.D., the defendant told her brothers to get out of the pool and take their baths. When A.D. attempted to get out of the pool, the defendant pulled her back in. He rubbed her between her legs on top of her swimsuit. Every time she attempted to get out of the pool, the defendant would pull her back in. This went on for about ten minutes, then her brothers came back outside, and the defendant told A.D. to go take a bath. According to A.D's testimony, on another occasion, the defendant went into the bathroom and watched her take a shower.

A.D. admitted that she did not like the fact that the defendant lived with her mother and that she wanted him to move out. A.D. also admitted that she was jealous that her older sister and the defendant got along well. However, while she indicated that she once denied that the defendant had

watched her taking a shower in order to not disrupt the relationship between the defendant and her mother, she confirmed with her testimony at trial that the shower incident did occur as well as all the other acts of abuse.

In A.D.'s interview with Shannon Gros at the Lafourche Children's Advocacy Center (LCAC), which was videotaped and played for the jury, she indicated that she knew the difference between the truth and a lie and understood that she had to tell the truth. A.D. clearly stated that the first time the abuse occurred was when she was twelve years old and it happened in her room. At night, the defendant would make her pull down her pants, sit on her bed, and spread her legs open. He used his hand to spread her "middle spot" open. Sometimes, he would just look. Once, he took a picture using his cellular phone. Another time, he inserted his finger.

The defendant would occasionally pull out his "middle spot" and make A.D. put it back into his pants. A.D. indicated that she would do everything he asked because she was nervous and scared. She also indicated that the defendant usually gave her money. She again stated that the most recent incident occurred in the swimming pool, and it happened many times in the swimming pool.

A.D. was examined by Dr. Owen Grossman at Terrebonne General Hospital. Dr. Owen did not make any physical findings, but testified that was not surprising given this type of case.

A.D. testified at trial and in her LCAC interview that the defendant intentionally touched her vagina using his hand when she was twelve years old. She also testified that the defendant made her touch his penis. Therefore, the victim's testimony, which the jury obviously found credible, was sufficient to prove all the elements of sexual battery.

The State also presented the testimony of Jon Barbera, a probation and parole specialist with the Department of Public Safety and Corrections. Barbera testified that he served as the defendant's parole supervisor for a 1998 sexual battery conviction wherein the defendant was charged with unlawfully and intentionally committing sexual battery upon a juvenile by touching the juvenile's vaginal area.[2]

The defendant did not testify at trial, but presented the testimony of A.D.'s older sister. A.D.'s sister testified that she was two years older than A.D. and that the defendant never touched her sexually. She also testified that she never observed the defendant fondling A.D.

The testimony of the victim alone is sufficient to prove the elements of the offense. *State v. Hampton*, 97-2096 (La. App. 1st Cir. 6/29/98), 716 So.2d 417, 418. The jury chose to believe A.D.'s testimony and found her to be credible. Although A.D. admitted that she wanted the defendant to move out of her mother's house, she indicated that her allegations about the sexual abuse were true. We observe that A.D. maintained that the defendant touched her using a finger or hand, on her vagina, either in her room or in the swimming pool, and that she was scared and nervous not to do as he told her. 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

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[2] The State presented this evidence pursuant to Louisiana Code of Evidence article 412.2A, which provides:

> When an accused is charged with a crime involving sexually assaultive behavior, or with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403.

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. Additionally, in reviewing the evidence, we 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).

Therefore, after carefully reviewing the record in this case, we find that any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have concluded beyond a reasonable doubt that the defendant committed the crime of sexual battery upon A.D. Therefore, this assignment of error is without merit.

EXCESSIVE SENTENCE

The defendant argues in his second counseled assignment of error that the district court erred in imposing an excessive sentence. The defendant contends that the sentence imposed is too severe given the allegations and that a lesser sentence would be sufficient to ensure that he would not reoffend.

The record before this court does not contain a copy of a motion to reconsider sentence or evidence that the defendant orally moved for reconsideration of the sentence. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to

reconsider sentence may be based, including a claim of excessiveness, shall preclude the State or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review. La. Code Crim. P. art. 881.1E. Thus, the defendant is procedurally barred from having this assignment of error reviewed. See *State v. Duncan*, 94-1563 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1142-43 (en banc per curiam); *State v. Myles,* 616 So.2d 754, 758-59 (La. App. 1st Cir.), writ denied, 629 So.2d 369 (La. 1993).

VENUE

In his sole pro se assignment of error, the defendant argues that the district court, in Lafourche Parish, did not have jurisdiction over his case because the alleged misconduct occurred in Terrebonne Parish.

"Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law." La. Const. art. I, § 16. Improper venue shall be raised in advance of trial by a motion to quash, and shall be tried by the judge alone. Venue shall not be considered an essential element to be proven by the State at trial, rather it shall be a jurisdictional matter to be proven by the State by a preponderance of the evidence and decided by the court in advance of trial. La. Code Crim. P. art. 615. If the defendant fails to properly raise the issue prior to trial, the issue of venue is considered waived. *State v. Clark*, 2002-1463 (La. 6/27/03), 851 So.2d 1055, 1080, cert. denied, 540 U.S. 1190, 124 S.Ct. 1433, 158 L.Ed.2d 98 (2004). See also *State v. Amato*, 96-0606 (La. App. 1st Cir. 6/30/97), 698 So.2d 972, 989, writs denied, 97-2626 and 97-2644 (La. 2/20/98), 709 So.2d 772. Because the defendant failed to properly raise the issue of venue prior to

trial, he waived review of this issue on appeal. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.