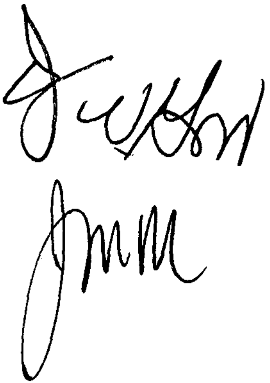
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 KA 1013



STATE OF LOUISIANA

VERSUS

KEITH JOSEPH LAFRANCE

DATE OF JUDGMENT: FEB 16 2018

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 557635, DIVISION A, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE RAYMOND S. CHILDRESS, JUDGE

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Warren L. Montgomery District Attorney Mary Watson Smith Assistant District Attorney Covington, Louisiana	Counsel for Appellee State of Louisiana
Holli Herrle-Castillo Marrero, Louisiana	Counsel for Defendant-Appellant Keith Joseph LaFrance

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BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

CHUTZ, J.

The defendant, Keith Joseph LaFrance, was charged by grand jury indictment with aggravated rape, a violation of La. R.S. 14:42 (prior to amendment, which redesignated aggravated rape as first degree rape). He pled not guilty and, following a jury trial, was found guilty of the responsive offense of forcible rape, a violation of La. R.S. 14:42.1 (prior to amendment, which redesignated forcible rape as second degree rape). He filed a motion for a postverdict judgment of acquittal, which was denied. The defendant was sentenced to twenty years imprisonment at hard labor with the first two years of the sentence to be served 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

The defendant and his girlfriend, A.H.,[1] dated for several years and, at one point, were engaged. Their volatile relationship was marked with recurring breakups and reconciliations. After A.H.'s father died in 2011, she became addicted to opiates. During their first year together, the defendant became verbally and physically abusive. In 2014, the defendant and A.H. rented a house together on Slemmer Road in Covington. On September 21, 2014, following a recent breakup, the defendant and A.H. began arguing at their house. The defendant attacked A.H. and repeatedly struck her in the face and body. He forced her to perform oral sex on him and vaginally raped her. Although over the next couple of days, the defendant went to work, A.H. stayed in the house and did not leave because she did not have a phone or a car. On September 23, 2014, based on a third-party complaint that the female living there had visible injuries, St. Tammany

[1] Victims of sex offenses are referred to by their initials. See La. R.S. 46:1844(W).

Parish Sheriff's Office detectives went to the Slemmer Road house. The defendant was subsequently arrested.

The defendant did not testify at trial.

COUNSELED ASSIGNMENT OF ERROR

In the counseled assignment of error, the defendant asserts that the evidence was insufficient to support the conviction for forcible rape. Specifically, he contends there was no physical evidence that a rape occurred, and that the testimonial evidence was contradictory and untrustworthy.

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 also La. C.Cr.P. art. 821(B); ***State v. Ordodi***, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660. 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. See ***State v. Patorno***, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

At the time the crime was committed, La. R.S. 14:42.1 provided in pertinent part:

> A. Forcible rape is rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:

(1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.

La. R.S. 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.

Forcible rape is a general intent crime. See ***State v. Smith***, 35,699 (La. App. 2d Cir. 4/5/02), 815 So.2d 412, 421, writ denied, 2002-1502 (La. 4/4/03), 840 So.2d 1200. General intent requires a showing that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. La. R.S. 14:10(2). In general intent crimes, the criminal intent necessary to sustain a conviction is shown by the very doing of the acts which have been declared criminal. ***State v. Howard***, 94-0023 (La. 6/3/94), 638 So.2d 216, 217 (per curiam).

On appeal, the defendant suggests his conviction was based on "the uncorroborated word of a troubled, jealous young woman, who was addicted to opiates and had a penchant for revenge, and a jailhouse snitch zealously pursuing a five-year reduction in his own sentence." He maintains that A.H.'s delayed report evinces that she lied about having been raped. The defendant points out that A.H. did not ask for help from either the Aaron's furniture rental store workers, who came by to pick up furniture the day after the rape; or the pizza driver, who delivered pizza the day after that. When A.H. finally revealed that the defendant had attacked her to the detectives who came to her house, the defendant suggests A.H.'s disclosure was "not indicative of [her] fear that no one would believe the truth, [rather] this was manipulation by A.H. to ensure [that] everyone believed the story she told." The defendant also points out that A.H. did not disclose the rape

when she went to the hospital. He further avers A.H.'s lack of credibility was revealed when she initially told law enforcement that she was wearing pants during the rape but later changed her story, claiming she had been wearing a dress.

Defendant additionally notes that eight days after the incident, A.H. saw Dr. Rachel Murphy. A.H. testified on cross-examination that she spoke with Dr. Murphy about why she did not initially remember she was wearing a dress, and that the doctor told her "with posttraumatic stress, sometimes your body blocks out things so that you have coping mechanisms." When asked if she had been diagnosed with PTSD by Dr. Murphy, A.H. responded, "Yes, I have. It's in the medical report." The defendant points out that Dr. Murphy testified to the contrary at trial, indicating that she had not diagnosed A.H. with PTSD and that she would not make a PTSD diagnosis within the first thirty days of the trauma.

The defendant suggests that A.H. was a jealous person, who he had spurned and, therefore, that she fabricated the rape charges. He avers A.H. had an opiate addiction and suffered from depression -- mental health issues she had when she made the rape allegation -- which cast doubt on the veracity of her complaint. According to the defendant, "A.H. doggedly pursued [him] after their breakups, with a barrage of Facebook messages, text messages, and voicemails." After their most recent breakup, the defendant claims that he had no desire to get back together with A.H., but she continued to contact him, going so far as sending a message, asking if he was "down to f--k." Although she was seeing another man, the defendant maintains that A.H. "could not get over" him. The defendant further suggests that the "inciting incident, the one mistake [he] made, was in sending a photo of his new girlfriend, barely clad" on a sofa that he and A.H. had acquired together. According to the defendant, that "one photo was a catalyst that made A.H. spiral further down the dark abyss."

The defendant also challenges the credibility of the testimony of Lewis Smith, who was his jail cell mate. The defendant maintains that Smith was not credible because he had three prior convictions and received a deal from the State. According to the defendant, the information that he supposedly told Smith while they were in jail was "practically verbatim A.H.'s version of the story," and he suggests that Smith's testimony was "worded so precisely" that Smith could have been the author of the police reports or the discovery responses. The defendant urges that what gives Smith "away as a fraud" is Smith's testimony that the defendant told him he had a pipe wrench and some dumbbells. Since the dumbbells had no role in this case, the defendant claims that Smith must have looked through his paperwork, court documents, and discovery.

At trial, A.H. testified that she was living with the defendant at the Slemmer Road house on July 31, 2014. She was in the kitchen and they began arguing. The defendant grabbed a knife and waved it in A.H.'s face. The defendant then went to the bedroom, returned with his handgun, and put it to her face while yelling at her. When he stopped and walked away, A.H. grabbed her purse and ran out the front door. The defendant followed her outside and pointed his gun at the window in her car as she backed out of the driveway and left. The following day, A.H. went to the courthouse and obtained a protective order against the defendant. During the next two weeks, A.H. stayed with friends and by August 15, 2014, she was staying at a Best Western hotel. On August 15, she went back to the Slemmer Road house to retrieve her belongings. Although she did not have a key to the house because the defendant had changed the locks, the defendant expected her and let her into the house. A.H. went into the bedroom, and they began arguing. The defendant, while standing behind A.H., took a sheet from the bed, and twisted it. He brought the twisted-up sheet down over her face and onto her throat. As he choked her with the sheet, A.H. began "seeing stars" and heard popping in her neck. She could not

breathe or speak. The defendant finally loosened his grip and let her go. A.H. grabbed her purse and fled, unable to collect any of her belongings.

When A.H. was allowed back into the Slemmer Road home on September 21, 2014, she noticed that her car was gone. She went into the bathroom, closing and locking the door. The defendant pounded on the bathroom door, and A.H. opened it. The defendant was enraged and cursing. He took her cell phone from her and wanted the password so he could access the contents of her phone. A.H. did not give him the password. The defendant repeatedly demanded she give him the password, but she refused. The defendant then started striking her with her cell phone. A.H. ran from him into the bedroom. The defendant followed her, took off his belt, and struck her with it. At some point, the defendant pushed A.H., and she fell to the ground. The defendant stood over her and kicked her, including in her ribs. A.H. managed to get to her feet and run to the front door and open it. The defendant ran after her and closed the door. A.H. ran toward the living room. The defendant picked up a pipe wrench and said, "I bet you want to get hit with this, bitch." They struggled again and the defendant got A.H. on the ground. He sat on top of her and pinned her face with his knees and repeatedly struck her with his hands in the face and head. A.H. gave the defendant the password to her phone and he got off of her.

A.H. went to the bathroom and spit up blood. Her nose was bleeding and her ears were hurting. There was a video on A.H.'s phone of her and her new boyfriend that she did not want the defendant to see. Apparently, the defendant saw the video, went into the bathroom, and forced A.H. to perform oral sex on him. The defendant then turned A.H. around, lifted her dress, pulled down her panties, and told her that if she was going to act like a whore, he was going to treat her like a whore. He then raped A.H. vaginally. During this attack, she told the defendant to stop and that he was hurting her.

The following day, the defendant went to work and A.H. stayed in the house. Later that evening, two movers from Aaron's went to A.H.'s house to pick up some furniture. They saw the bruises on her face and asked if the person who did that to her was home. A.H. told them he was not, but was worried because he would be coming home soon. A.H. told them to come back another time to pick up the furniture.

James Moore, Jr., was one of the movers for Aaron's. He testified at trial that when they arrived at the house, A.H. would not open the door and asked them, through the door, if they could reschedule their pickup. When Moore explained that, per company policy, he needed a reason why he was unable to pick up the furniture, A.H. opened the door. Moore testified A.H. had two black eyes, a busted lip, and bruising around her face. He asked A.H. to tell him who had done that to her, and she indicated that it was her boyfriend. Moore left the house and called the police.

The following day, September 23, 2014, based on Moore's call, Detective Lawrence Hudson, with the St. Tammany Parish Sheriff's Office, along with three other detectives, went to A.H.'s house to speak with her.[2] At her home, A.H. informed Detective Hudson how the defendant had beat her. A day or two later, the defendant was arrested in Plaquemine.

Photographs introduced into evidence of the bruises on A.H.'s face, arms, and leg were consistent with her testimony that the defendant violently beat her with her cell phone, his hands and feet, and a belt on September 21, 2014, just before he sexually assaulted her. Additionally, A.H.'s multiple injuries were

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[2] Detective Hudson had some familiarity with the defendant and A.H. from a police report that documented the August 15, 2014 incident, which had been called in by A.H.'s sister. Based on the police report, Detective Hudson testified that on August 15, 2014, A.H. was at a hotel, getting some of her belongings. The defendant met her there, allegedly came on to her, and she rejected him. The defendant then took a blanket and choked A.H. with it. Although the defendant correctly points out that this testimony contradicts A.H.'s version of events, we note that Detective Hudson based his testimony solely on the police report.

corroborated by several witnesses who saw A.H. the day after, or within several days of, the attack.

Dr. Murphy treated A.H. about a week after she was attacked and raped by the defendant. Dr. Murphy testified A.H. had swelling on her face and around her eye, and both jaws were swollen. A.H. had thoracic, lumbar, and cervical pain, as well as facial and rib contusions. She had bruising on both of her arms, right thigh, and buttocks. She also had a hemotympanum of the left ear, which is bleeding behind the left tympanic membrane. Dr. Murphy testified that this type of ear injury is indicative of blunt trauma.

To sustain a conviction for forcible rape, actual resistance is not required; rather, all that is necessary is that the victim be prevented from resisting by force or threats of physical harm to such an extent that she reasonably believed resistance to be futile. ***State v. Carter***, 2014-926 (La. App. 3d Cir. 4/1/15), 160 So.3d 647, 654, writ denied, 2015-0859 (La. 6/17/16), 192 So.3d 770. While A.H. may not have strenuously or vigorously resisted during the actual rape, she had just been repeatedly beaten by the defendant and threatened with a pipe wrench moments before he orally and vaginally raped her. As such, any rational factfinder could have readily concluded that at the point of being raped, A.H. would have thought that resistance was futile. When asked if she felt threatened during the attack, A.H. testified, "I felt threatened; yes. I mean, he was beating me repeatedly." A.H. further indicated she was afraid for her life. Based on the foregoing physical evidence, coupled with A.H.'s testimony, a trier of fact could have reasonably concluded that the defendant attacked A.H. and forcibly raped her. Moreover, despite the defendant's argument regarding the lack of physical evidence, such evidence is not required under a sufficiency of evidence standard. 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).

All of the other issues raised by the defendant involve credibility determinations. These issues were all brought out at trial and it was left to the jury to determine the veracity of A.H.'s version of events. Thus, whereas the defendant suggests that the lack of immediate disclosure of the rape to people she came into contact with over the next several days indicates that she lied about being raped, A.H. testified about her reluctance to reveal what the defendant had done to her. For example, A.H. indicated she stayed at the Slemmer Road house after being raped because she was scared. She had no car or phone, since her cell phone had been broken when the defendant beat her with it. A.H. testified the defendant told her it would be a good idea if she stayed home until the bruises went away. A.H. stated the defendant also told her that if she left, he would know she left because people were watching the house, and that if she told anyone, he would kill her.

When four detectives went to the Slemmer Road residence on September 23, two days after the attack, A.H. would not answer the door, despite several minutes of knocking. When one of the detectives saw A.H. peering through the blinds, the detectives told her to open the door, which she did. Detective Hudson testified he saw some bruising on A.H.'s arms and that she was wearing a moderate amount of makeup. When he began talking to A.H., he noticed swelling and a purplish color under her left eye. When he asked what happened to her, she said she had been in a car crash on her way back from Arkansas. A.H. testified that she asked Detective Hudson if she could just get her belongings and leave. Not believing this explanation for her injuries, according to Detective Hudson, he continued to question her until she finally acknowledged that the defendant caused her injuries. A.H. did not disclose that the defendant had sexually assaulted her, and Detective Hudson never asked her about that. Detective Hudson took several pictures of her

injuries at the house. He offered to take A.H. to a shelter for abused and battered women, but she declined and asked instead that they call her brother, a police officer, to come pick her up. After her brother picked her up, A.H. stayed with him for several days until she went into a rehabilitation program.

On September 24, the day after Detective Hudson had gone to the Slemmer Road residence, A.H. went to the police station in Slidell to speak to Detective Hudson. She told the detective that in addition to physically abusing her, the defendant had also forced her to perform oral sex on him and had sexually assaulted her vaginally. A.H. gave a recorded audio statement to Detective Hudson. In the statement, A.H. indicated that she was wearing pants when the defendant raped her. However, A.H. testified at trial that she was wearing a blue dress at the time of the rape. When questioned about this on cross-examination, A.H. said that when she initially spoke with Detective Hudson, which was shortly after the incident and while she was upset, she did not recall that she had been wearing a dress at the time the defendant attacked her. Later on, as more time had passed, she was able to remember that detail.

The defendant and A.H. had a history of breaking up and reconciling. A few weeks before the attack, A.H. sent messages to the defendant, asking to see him or asking him to call her. The defendant either did not respond or sent profanity-laced messages, telling A.H. to leave him alone or that he hated her. A.H. admitted that several days prior to the attack, A.H. texted the defendant, "Are you down to f--k." But she explained that everything she owned was at their home and she had no way of getting in the house. Therefore, she sought to reconcile long enough for the defendant to let her in the house so she could retrieve her belongings. A.H. explained that the offer for sex was simply to get the defendant to respond to her. According to A.H., the defendant did respond to her, messaging, "F-U. I hate you.... You F-ing skank."

Shortly before the attack, A.H. had gone to Arkansas with her new boyfriend and his family. Still unable to get into the Slemmer Road house, A.H. and the defendant messaged each other while she was returning from Arkansas. A.H. testified that in order to get possession of her belongings, she told the defendant that she wanted to start over with him. As such, the defendant was under the impression that they were going to try to make things work. Regarding A.H.'s motive, the follow exchange on direct examination took place:

> Q. So, were you telling him that you wanted to get back together with him?
> A. Yes, ma'am.
> Q. Okay. And did you really want to get back together with him?
> A. No, ma'am.
> Q. Then why would you tell him all of these things?
> A. Because I was scared that, if under different circumstances or stipulations, that things wouldn't go the way they needed to go.

The defendant also challenges the testimony of his former jail cell mate, Smith, as not credible because he had been offered a deal by the State. According to Smith, he was serving a fifteen-year sentence after having pled guilty to possession with intent to distribute drugs. The plea agreement signed by Smith in May of 2015 stated, "Prior to sentencing, the State of Louisiana agrees to bring to the attention of this Honorable Court any and all cooperation rendered by the defendant." The agreement further stated, "If the defendant renders 'substantial cooperation,' the State of Louisiana will consider filing a motion . . . to reduce his sentence to no lower than 10 years." Smith testified that his sentence had not been reduced. On cross-examination, despite defense counsel's efforts to elicit testimony that he had obtained a deal from the State for testifying, Smith refused to concede that his testimony resulted in a lesser sentence for him. Smith testified that the 15 year sentence was his plea deal before he testified in this case, "15 [years] or take it to trial, 15 [years] with a bill."

Smith testified that he shared the same jail dormitory with the defendant and that the defendant told him that "after he broke the phone, he raped [A.H.]. Well, he didn't say he raped her. He said that she --." Before Smith finished his response, the prosecutor asked him another question. Smith then said that the defendant told him he had had sex with A.H. from the back, and that the defendant did not consider it rape because she did not "tighten up." Smith testified that the defendant said that after he broke her phone, "he said if you want to act like a whore, I'm going to treat you like a whore."

Whether A.H.'s and Smith's testimony was persuasive was a credibility call made by the jury. 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 on 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). 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). The jury's verdict reflected the reasonable conclusion that, based on A.H.'s testimony and the physical evidence, the defendant forcibly raped A.H. In finding the defendant guilty, the jury clearly rejected the defendant's theory of innocence. See ***Moten***, 510 So.2d at 61.

After a thorough review of the record, we find that the evidence supports the jury's unanimous 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 forcible rape of A.H. See ***State v. Calloway***, 2007-2306 (La. 1/21/09), 1 So.3d 417 (per curiam).

The counseled assignment of error is without merit.

PRO SE ASSIGNMENT OF ERROR

In his pro se assignment of error, the defendant claims he had ineffective assistance of counsel. Specifically, the defendant contends defense counsel was ineffective for failing to investigate how A.H.'s mother obtained photographs that were introduced into evidence; and further, for failing to object to the introduction of these photographs into evidence.

The U.S. Supreme Court has established a two-part test for review of a convicted defendant's claim that his counsel's assistance was so defective as to require reversal of a conviction. In ***Strickland v. Washington***, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), the Court stated:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the

> defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction ... resulted from a breakdown in the adversary process that renders the result unreliable.

In evaluating the performance of counsel, the "inquiry must be whether counsel's assistance was reasonable considering all the circumstances." ***Strickland***, 466 U.S. at 688, 104 S.Ct. at 2065. The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. ***Strickland***, 466 U.S. at 694, 104 S.Ct. at 2068. It is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. ***State v. Serigny***, 610 So.2d 857, 860 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993).

The photographs identified by the defendant as Exhibits 14-19 show A.H.'s injuries shortly after the defendant beat and raped her. The defendant avers that these photographs were not taken by the investigating detective and were not authenticated, but that A.H.'s mother provided the photos, and she "did not even testify to the evidence that she produced or when she even took the photos."

The defendant is incorrect about the origin of these photographs. Detective Hudson went to A.H.'s house two days after the defendant attacked and raped her. After A.H. acknowledged that the defendant caused her injuries, Detective Hudson took several pictures of A.H. At trial, Detective Hudson was shown State's Exhibits 14-19 by the prosecutor, and the detective confirmed that he had taken these pictures of A.H. at her house that day. The photographs were introduced into evidence and published to the jury. Thus, contrary to the defendant's assertions, these photographs were taken by Detective Hudson and were authenticated through

his testimony. Accordingly, there was nothing objectionable about the introduction into evidence of these photographs.

The defendant may have intended to challenge State's Exhibits 6-13, which are additional photographs that depict A.H.'s injuries. These exhibits were introduced by the prosecutor through A.H. on direct examination. A.H. identified the pictures as depicting her injuries on September 24 when she gave her statement to Detective Hudson and stated that they had been taken at the Sheriff's Office. A.H. did not identify who took the pictures. The prosecutor introduced the pictures into evidence without objection.

Detective Hudson testified that A.H's mother was the secretary for the Investigative Division of Slidell's Brownswitch branch of the Sheriff's Office. Since this was the same office where A.H. gave her statement to Detective Hudson, State's Exhibits 6-13 may have been taken by A.H.'s mother and given to Detective Hudson as the defendant contends. The defendant urges that if defense counsel had properly investigated, there is "a real good probability" she would have found that A.H.'s mother had "a personal vendetta" against him.

Assuming *arguendo* that it was the authenticity of State's Exhibits 6-13 that the defendant intended to challenge, he has made no showing that the result of the proceeding would have been different had the photographs been excluded. Although defense counsel could have objected to introduction of the photographs for the lack of a proper foundation, we are convinced that publishing these photographs to the jury did not affect the outcome of the guilty verdict in any way, particularly since the jury also had seen State's Exhibits 14-19, which were properly introduced into evidence. The photographs contained in State's Exhibits

6-13 were virtually indistinguishable from those in State's Exhibits 14-19, which were duly introduced into evidence through Detective Hudson.[3]

Similarly, the defendant has made no showing of a deficient performance by defense counsel's failure to investigate whether A.H.'s mother took photographs of A.H.'s injuries" because she had "a personal vendetta" against him. A defendant who asserts a claim of ineffective counsel based on a failure to investigate must allege with specificity what the investigation would have revealed and how it would have altered the outcome of a trial or sentencing. General statements and conclusory charges will not suffice. See ***State v. Castaneda***, 94-1118 (La. App. 1st Cir. 6/23/95), 658 So.2d 297, 306. Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness under all the circumstances, applying a heavy measure of deference to counsel's judgments. ***Strickland***, 466 U.S. at 690-91, 104 S.Ct. at 2066.

Claims of ineffective assistance of counsel, by their very nature, are highly fact-sensitive. ***State v. Henry***, 2000-2250 (La. App. 1st Cir. 5/11/01), 788 So.2d 535, 540, writ denied, 2001-2299 (La. 6/21/02), 818 So.2d 791. Moreover, once a defendant has the assistance of counsel, the vast array of trial decisions, strategic and tactical, which must be made before and during trial rest with an accused and

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[3] The single photograph between the two sets that is noticeably different is State's Exhibit 6, which shows a close-up of A.H's bruised left eye. But the State did not rely solely on this photograph of A.H.'s injuries to support its case, since it also introduced the testimony of Smith, Moore, Detective Hudson, and A.H to establish that A.H. had been physically attacked by the defendant. Thus, State's Exhibit 6 does not support a finding that the result of the proceeding would have been different had it been excluded from evidence.

his attorney, and the fact that a particular strategy is unsuccessful does not establish ineffective assistance of counsel. ***State v. Folse***, 623 So.2d 59, 71 (La. App. 1st Cir. 1993).

Because A.H.'s mother was a secretary for the Investigative Division of the Sheriff's Office in Slidell, it is likely that she would have taken pictures of *any* recently injured victim who came to her office to be interviewed by a detective. The defendant has provided only general statements and conclusory assertions, failing to set forth with any specificity how A.H.'s mother had a vendetta against him. He has not shown in any way how a more thorough pretrial preparation about this issue would have resulted in a different outcome. Thus, even had the defendant shown deficient performance, he has failed to demonstrate how such deficiency would have prejudiced his defense.

Based on the foregoing, the defendant has not made the required showing of deficient performance by defense counsel and, as such, counsel's performance did not prejudice the defendant's case. Accordingly, we find baseless the defendant's claim of ineffective assistance of counsel.

The pro se assignment of error is without merit.

DECREE

For these reasons, we affirm the conviction and sentence of defendant-appellant, Keith Joseph LeFrance.

CONVICTION AND SENTENCE AFFIRMED.