NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 KA 0027

STATE OF LOUISIANA

VERSUS

COREY J. DILLON

Judgment rendered September 21, 2018.

******

Appealed from the
22nd Judicial District Court
In and for the Parish of Washington, State of Louisiana
Trial Court No. 13 CR8 123787
Honorable William Knight, Judge

******

WARREN L. MONTGOMERY
DISTRICT ATTORNEY
JAY ADAIR
ASSISTANT DISTRICT ATTORNEY
FRANKLINTON, LA
AND
MATTHEW CAPLAN
ASSISTANT DISTRICT ATTORNEY
COVINGTON, LA

ATTORNEYS FOR
STATE OF LOUISIANA

CYNTHIA K. MEYER
NEW ORLEANS, LA

ATTORNEY FOR
DEFENDANT-APPELLANT
COREY DILLON

******

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

PETTIGREW, J.

The defendant, Corey J. Dillon,[1] was charged by an amended bill of information with three counts of molestation of a juvenile, violations of La. R.S. 14:81.2(A)(1). At his arraignment, the defendant pled not guilty, but following a jury trial, was found guilty of the responsive verdict of attempted molestation of a juvenile, a violation of La. R.S. 14:27 and 14:81.2(A)(1), on count I, and not guilty on counts II and III. Motions for a new trial and post-verdict judgment of acquittal were filed, but denied by the district court. The defendant was sentenced to imprisonment at hard labor for twelve and one-half years without the benefit of probation, parole, or suspension of sentence. He now appeals, assigning error to the sufficiency of the evidence presented at trial and to the trial court's ruling on certain evidentiary matters during trial. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

The victim, H.V.,[2] a ten-year-old girl at the time of trial, testified that on three separate occasions, the defendant inappropriately touched her. Regarding the first occasion, H.V. stated that when she was five years old,[3] and living in Tylertown, Mississippi, with her mother and siblings, the defendant called her into the living room, stating the two were "supposed to talk." H.V. said her siblings were taking a nap in their bedroom. H.V. testified that the defendant sat on one end of the couch, she sat on the other, and he then called her to stand in front of him. The defendant instructed her to remove her clothes; he applied some cream to his finger, and then inserted it into her "back private." H.V. testified she did not have a rash or infection requiring application of medicine, and that the defendant said they would "get in a lot of trouble" if she told anyone what happened. H.V. continued testifying that on a second occasion, when she was six years old and still living in Tylertown, the defendant again called her into the

---

[1] The amended bill of information also references the defendant's name as "Cory Dillon," but he does not challenge his identity on appeal.
[2] We reference the victim only by her initials. See La. R.S. 46:1844(W).
[3] H.V. was born on April 13, 2006.

living room while her siblings were playing in another room, and inserted his finger into her "back private." Similar to the first incident, the defendant first applied a cream to his finger. H.V. did not mention the incident to anyone "[b]ecause he said that [she] would get in trouble." Regarding the charged offense, on a third occasion, after the defendant, H.V., her siblings, and her mother moved to Bogalusa, Louisiana, H.V. testified that while she was in her mother's room, the defendant stood behind her, instructed her to remove her clothes, and then inserted his thumb into her "back private." While this was taking place, H.V.'s mother returned to the house, and the defendant gave H.V. a "wedgie" because "he pulled my shorts and underwear up fast." H.V.'s sister eventually told her mother about the defendant's actions.

H.V.'s mother, Ashley Dillon, testified that she met the defendant in February 2008, and they began living together; H.V. was one year old at the time. The two were married on June 25, 2013, but after the defendant reported himself for violating conditions of his parole, the two filed for divorce in July 2013. In October 2013, while staying at her mother's house in Bogalusa, one of Ms. Dillon's other children (and H.V.'s younger sister) C.D., "came inside, screaming and throwing a fit, saying she didn't want to be left alone with a boy and all that." Ms. Dillon testified that as she questioned C.D. and H.V. about what upset them, H.V. began to cry, and "said someone had touched her." Eventually, H.V. told her mother that the defendant touched her. At that point, Ms. Dillon drove to the Bogalusa Police Department to report the matter. After the report of the incident to law enforcement, Ms. Dillon continued to maintain communication with the defendant. On one occasion, the defendant asked Ms. Dillion "to tell [the district attorney's office] that someone else had done it, to just get his name off of it and let it go."

Ms. Dillon testified that, initially, she did not believe the defendant attempted to molest H.V. In fact, in a series of text messages between herself and the defendant's mother, Ms. Dillon stated she believed her boyfriend at the time, Dustin Cothern, encouraged H.V. and her siblings to report that the defendant inappropriately touched them, as "none of this ever come up until he came around." In the text message

exchange, Ms. Dillon indicated she considered having the charges dropped against the defendant. However, Ms. Dillon testified she did not drop the charges and, after observing the emotional change in H.V. as a result of her counseling sessions, had no doubts the defendant molested H.V. She also stated that Cothern "made it very clear that he does not want to know anything about this case." Ms. Dillon also testified that H.V. required vaginal surgery as a young girl, and that recovery included the application of a steroid cream, but that the defendant never applied it to H.V., and the "original tube of that medication [is] sitting at my grandma's house[.]"

JoBeth Rickels, a forensic interview specialist with the Children's Advocacy Center, was accepted at trial as an expert in the field of forensic interviewing. She testified that on October 10, 2013, she conducted a forensic interview with H.V. In the interview, H.V. again confirmed that the defendant "touched me" when she was seven years old while living in Bogalusa. H.V. stated that, while she was playing with some friends, the defendant called her into her mother's bedroom. H.V. said the defendant told her younger sister, C.D., "we're just talking, leave us alone." H.V. told Rickels the defendant took her clothes off, and "then he took some kind of gross cream ... [and] he tried to rub it on my butt and I didn't let him." However, later in the interview, H.V. stated the defendant placed his finger inside her "back private." H.V. said that her mother then returned home, and the defendant pulled her pants up, giving her a "wedgie." H.V. stated she asked the defendant why he tried to apply cream to her skin, but he did not give her an answer, only that she would get in trouble if she told her mother. H.V. told Rickels she did not have a rash or other medical condition requiring the application of a cream.

Theresa Terrell, the defendant's aunt, testified at trial on his behalf that while her two daughters were growing up, they were "typical cousins [with the defendant] playing around, running around the yard playing, laughing, [and] joking," and that her daughters got along with the defendant. Terrell also testified that from November 2011 to April 2012, the defendant, Ms. Dillon, and the three children lived with her at her house in Bogalusa. During that time, Terrell described the defendant as a "good father" towards

the children, the children "loved him," and that she never suspected or witnessed any type of inappropriate sexual behavior. Terrell did state she was neither aware of any situation in which any of the three children required the application of ointment to their buttocks, nor did she observe the defendant applying medicine to the children's backsides.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant, in sum, argues "the State failed to prove that [his] alleged act of pulling down H.V.'s pants and underwear was a 'lewd or lascivious' act or was done with 'the intention of arousing or gratifying the sexual desires of either person' beyond a reasonable doubt." See La. R.S. 14:81.2(A)(1). Accordingly, the defendant asserts his conviction should be reversed and his sentence vacated.

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 sufficiency of the evidence to support a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime, and defendant's identity as the perpetrator of that crime, beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 318-319, 99 S.Ct. 2781, 2788-2789, 61 L.Ed.2d 560 (1979); **State v. Patton**, 2010-1841 (La. App. 1 Cir. 6/10/11), 68 So.3d 1209, 1224. In conducting this review, we must also be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." La. R.S. 15:438; **State v. Millien**, 2002-1006 (La. App. 1 Cir. 2/14/03), 845 So.2d 506, 508-509.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime.

State v. Wright, 98-0601 (La. App. 1 Cir. 2/19/99), 730 So.2d 485, 487, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157 & 2000-0895 (La. 11/17/00), 773 So.2d 732.

Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age is not a defense. La. R.S. 14:81.2(A)(1).

Thus, in order to commit molestation of a juvenile, the offender must possess the specific intent of arousing or gratifying the sexual desires of himself or the child upon whose person he committed a lewd or lascivious act or in whose presence he committed such an act. However, specific intent need not be proven as a fact. It may be inferred from the circumstances of the transaction and the actions of the defendant. **State v. Babin**, 93-1361 (La. App. 1 Cir. 5/20/94), 637 So.2d 814, 817-818, writ denied, 94-1563 (La. 10/28/94), 644 So.2d 649, abrogated on other grounds, **State ex rel. Olivieri v. State**, 2000-0172 (La. 2/21/01), 779 So.2d 735, certs. denied, 533 U.S. 936, 121 S.Ct. 2566, 150 L.Ed.2d 730 & 534 U.S. 892, 122 S.Ct. 208, 151 L.Ed.2d 148 (2001). Specific criminal intent is that "state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Lavy,** 2013-1025 (La. App. 1 Cir. 3/11/14), 142 So.3d 1000, 1005, writ denied, 2014-0644 (La. 10/31/14), 152 So.3d 150.

"[The Louisiana Supreme Court] has defined 'lewd and lascivious conduct' very broadly as any conduct which is 'lustful, obscene, indecent, tending to deprave the morals in respect to sexual relations, and relating to sexual impurity or incontinence carried on in a wanton manner.'" **State v. Jones**, 2010-0762 (La. 9/7/11), 74 So.3d

197, 204. Further, consistent with the language of La. R.S. 14:81.2, which requires not just the potential for influence but its use, Louisiana courts have required proof of specific acts constituting an exertion of control or supervision. See **State v. Lambert**, 2016-0344 (La. App. 1 Cir. 9/20/16), ___ So.3d ___, 2016 WL 5115493.

Furthermore, La. R.S. 14:27(A) provides that to attempt a crime, an accused must do an act for the purpose of and tending directly toward accomplishing his object, having a specific intent to commit the crime. Thus, the elements of attempted molestation of a juvenile include (1) a person with the specific intent to commit a crime, (2) does or omits an act, (3) for the purpose of tending directly toward the accomplishing of his object, the molestation of a juvenile, the elements of which are set forth above. **State v. Forbes**, 97-1839 (La. App. 1 Cir. 6/29/98), 716 So.2d 424, 427.

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 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 fact finder's determination of guilt. **State v. Taylor**, 97-2261 (La. App. 1 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 that 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. 1 Cir. 1985).

Any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable

doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of attempted molestation of a juvenile and the defendant's identity as the perpetrator of that offense. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987).

No such hypothesis exists in the instant case. H.V. testified both at trial, and in her interview with Rickels, that the defendant instructed her to remove her clothes, that he applied a cream to his finger, and that he inserted it inside her. Both H.V. and Ms. Dillon testified that H.V. did not have a medical condition requiring the application of a cream. Additionally, H.V. identified previous instances where the defendant performed the same action, and in the same manner, on her. Moreover, the defendant told H.V. to not tell her mother what occurred between her and the defendant, implying they would get in "trouble." Actions on the part of the defendant that are designed to prevent witnesses from testifying will give rise to an inference that the defendant acted from an awareness or consciousness of his own guilt. See **State v. Johnson**, 426 So.2d 95, 102 (La. 1983).

After reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. **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).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues that the trial court erred in allowing H.V. to testify about the two prior molestation acts while living in Tylertown,

claiming that while "these acts may have been admissible under [Louisiana Code of Evidence] article 412.2, this statute requires that the State provide 'reasonable notice in advance of trial ... ,'" and "the record reflects that no notice was given to the defense that H.V. would testify regarding any acts that occurred outside of the time period in the bill of information." He concluded, asserting that "the trial court's error in allowing H.V. to testify regarding other alleged acts of molestation when absolutely no notice had been given to the defense, rendered these proceedings constitutionally unfair."

Louisiana Code of Evidence article 412.2(A) states:

> 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.

Additionally, Article 412.2(B) provides that "In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes." Article 412.2 was a legislative response to earlier decisions from the Louisiana Supreme Court refusing to recognize a "lustful disposition" exception to the prohibition of other crimes evidence under La. Code Evid. art. 404. **State v. Buckenberger**, 2007-1422 (La. App. 1 Cir. 2/8/08), 984 So.2d 751, 757, writ denied, 2008-0877 (La. 11/21/08), 996 So.2d 1104. Further, legislative committee minutes indicate that the "reasonable notice" requirement was inserted into this article because "the senators were concerned with the defendant's right not to be ambushed with evidence of prior sexually deviant behavior ...." This reasonable notice requirement, however, does not require that the trial court conduct a hearing on the admissibility of that evidence prior to trial. **State v. Williams**, 2002-1030 (La. 10/15/02), 830 So.2d 984, 987. Ultimately, however, questions of relevancy and admissibility of evidence are within the discretion of the trial court. Such determination regarding relevancy and admissibility should not be

overturned absent a clear abuse of discretion. See **State v. Mosby**, 595 So.2d 1135, 1139 (La. 1992); **State v. Olivieri**, 2003-563 (La. App. 5 Cir. 10/28/03), 860 So.2d 207, 218.

Herein, the defendant moved for pretrial discovery, specifically requesting notice of "other criminal offenses under exceptions outline[d] in **Code of Evidence articles 404(B) and/or 412.2**[.]" Later, defense counsel and the State entered into a "Joint Stipulation" whereby the defendant agreed that the prosecution had "provided a copy of the entire file in this matter to the defendant" and the State agreed "to provide to the defense any additional file material subsequently obtained." Additionally, on two separate occasions prior to trial, the counsel for the defendant signed a "Receipt for Videotape Discovery" and "Receipt for CAC Videotaped Statement(s) and Acknowledgment of Legal Restrictions."

During the trial, however, H.V. testified about the charged incident in Bogalusa, as well as two previous incidents occurring in Tylertown. Subsequent to defense counsel's objection, the prosecutor responded, stating "[t]here was a disclosure, a more general disclosure, that was made in [H.V.'s] CAC tape with regards to more than one incident, one being in Bogalusa, one being in Tylertown. It's a more vague nature than she is disclosing on the witness stand. The details of this particular type of abuse came to the State's attention last night after court was recessed." The trial court overruled defense counsel's objection. Defense counsel also objected when H.V. testified about the second incident occurring in Tylertown. The prosecutor reiterated his previous explanation: "We've known that there was something in Tylertown as well, based on her vague disclosure on the CAC. She elaborated and went into greater detail last night for the first time on these issues." The trial court again overruled defense counsel's objection, stating "sometimes with child witnesses, this is precisely what happens."

During her interview with JoBeth Rickels at the Children's Advocacy Center, Rickels asked H.V. "Is that the only time [the defendant] did something like that? Or did he ever do anything like that any other times?" H.V. responded, "when we lived in Tylertown." H.V. then stated she did not remember details about any incident occurring

in Tylertown. Upon later questioning, Rickels said, "I remember one question I forgot to ask. Like, where were you whenever [the defendant] did that? Whose house were you at?" H.V. answered "ours." Rickels followed up, asking, "the house where you live right now?" H.V. answered, "no, not the house that we live in right now. The two old houses ... one is in Bogalusa and one is in Tylertown." Therefore, based on H.V.'s CAC interview, and in accordance with Article 412.2(B), we find the defendant was on notice H.V. alleged the defendant committed prior acts of molestation against her while living in Tylertown.

Moreover, the defendant suffered no prejudicial surprise from H.V.'s testimony and did not request any relief, other than exclusion of the evidence, at trial. Any harm from the nondisclosure by the State regarding the two Tylertown incidents was mitigated by the State presenting H.V.'s testimony as part of its case-in-chief, thus providing the defense a full opportunity to cross-examine H.V. and present its own witnesses to challenge the accuracy of her testimony. See La. Code Crim. P. art. 921. Accordingly, the trial court did not err in refusing to exclude testimony of the Tylertown incidents and, as such, this assignment of error lacks merit.

ASSIGNMENT OF ERROR NO. 3

In his third assignment of error, the defendant argues the trial court erred in denying the introduction of a screenshot of a Facebook message, allegedly sent by Dustin Cothern to the defendant's mother, Crystal Withrow, in support of his contention that Cothern "told the children to make these allegations against [the defendant]." Upon defense counsel's attempt to introduce the message, the following colloquy took place outside the presence of the jury:

> [The State]: Objection, Your Honor. May we approach?
>
> The Court: Yes, you may.
>
> . . . .
>
> [Defense counsel]: This was part of what I gave them. Corey, I want you to remain silent. This is part of what I gave them before that was part of 5.
>
> The Court: This was allegedly communicated between Dustin and who?

[Defense counsel]: This was a message from Dustin Cothern.

The Court: To whom?

[Defense counsel]: To this lady sitting on the bench.

The Court: You're going to substantiate that's from him how?

[Defense counsel]: She's going to tell me it is from him.

The Court: If I go online as Dustin Cothern, how can she tell the difference? You're obviously not very text [sic] savvy, Mr. Dillon. Sorry, I am. How are you going to substantiate it?

[Defense counsel]: I'm going to ask her if she got this message. She either got it or she didn't get it.

The Court: But that does not say who it came from.

[Defense counsel]: Who does she perceive it came from?

The Court: Doesn't matter who she perceives, it's facts. It's who it did or did not come from. That's the problem with electronic evidence. You can call Dustin Cothern. You're welcome to do that.

[Defense counsel]: She can testify it was from Dustin Cothern because she received it. If it's not from Dustin Cothern, that's a good argument to make.

The Court: Keep your voice down.

[Defense counsel]: You can make that argument.

The Court: You simply cannot substantiate the authenticity of that Facebook page.

[Defense counsel]: You're going to sustain the objection?

The Court: Absolutely.

As noted above, questions of admissibility of evidence are discretion calls for the trial court and should not be overturned absent a clear abuse of that discretion. See **Mosby**, 595 So.2d at 1139. Louisiana Code of Evidence article 901 provides, in pertinent part:

> **A. General provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
>
> **B. Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Article:
>
> **(1) Testimony of witness with knowledge.** Testimony that a matter is what it is claimed to be.

. . . .

> **(4) Distinctive characteristics and the like.** Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

For admission, it suffices if the custodial evidence establishes that it was more probable than not that the object is the one connected to the case. A preponderance of the evidence is sufficient. Moreover, any lack of positive identification or a defect in the chain of custody goes to the weight of the evidence rather than its admissibility. Ultimately, a chain of custody or connexity of the physical evidence is a factual matter to be determined by the jury. **State v. Berry**, 95-1610 (La. App. 1 Cir. 11/8/96), 684 So.2d 439, 455, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603.

In **State v. Jones**, 2015-1931 (La. App. 1 Cir. 6/29/16), 2016 WL 3569911 (unpublished), this court considered the authentication of Facebook messages, allegedly sent by the defendant to his victim of domestic abuse, stating:

> In the instant case, [the victim] testified about the source of the Facebook screenshots outside the jury's presence. According to her testimony, the messages were sent from the defendant's Facebook account to her Facebook account and were sent prior to the instant offense in response to a post she made on her Facebook account. [The victim] explained that she knew the defendant was the author of the messages because no one else knew his Facebook account password and because of the contents of the messages, which aligned with the state of their relationship and what the defendant told her in his motel room on the night of the incident. We find no error or abuse of discretion in the district court's ruling that the messages were admissible.

In contrast to the evidence presented in **Jones**, we find the defendant did not present sufficient evidence to allow the trier of fact to conclude that Dustin Cothern sent the Facebook message. According to Withrow's testimony, she only received one communication allegedly from Cothern, and such communication was made in April 2014, nearly a year after the defendant's attempted molestation of H.V. As correctly noted by the State, the only showing made at trial "concerned [Withrow's] subjective perception of the origin of the message." The defendant provided no other evidence to indicate or substantiate the authenticity of the Facebook message. Accordingly, we find no error or abuse of discretion in the trial court's ruling that the message was inadmissible.

Right to Present a Defense

The defendant further argues that "[t]he evidentiary ruling prohibiting the introduction of this message violated [his] constitutional right to present his defense." A defendant has a constitutional right to present a defense. U.S. Const. amend. VI; La. Const. art. I, § 16; **State v. Van Winkle**, 94-0947 (La. 6/30/95), 658 So.2d 198, 201. As the Supreme Court found in **Chambers v. Mississippi**, 410 U.S. 284, 302, 93 S.Ct. 1038, 1049, 35 L.Ed.2d 297 (1973), few rights are more fundamental than that of an accused to present witnesses in his own defense. A defendant has the right to present any and all relevant evidence bearing on his innocence, unless prohibited by our federal and state constitutions, by law or by jurisprudence. **State v. Ludwig**, 423 So.2d 1073, 1077 (La. 1982); **State v. Vaughn**, 431 So.2d 358, 370, nn.3-7 (La. 1982) (on rehearing); **State v. Patch**, 470 So.2d 585, 588 (La. App. 1 Cir.), writ denied, 475 So.2d 358 (La. 1985). It is well settled that evidentiary rules may not supersede the fundamental right to present a defense. **Van Winkle**, 658 So.2d at 202. However, the right to present a defense does not mandate that the trial court permit the introduction of irrelevant evidence or evidence that has little probative value so that it is substantially outweighed by other legitimate considerations in the administration of justice. **State v. Shaw**, 2000-1051 (La. App. 5 Cir. 2/14/01), 785 So.2d 34, 45, writ denied, 2001-0969 (La. 2/8/02), 807 So.2d 861 (citing **Ludwig**, 423 So.2d at 1079). A trial court's determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. See **Mosby**, 595 So.2d at 1139.

Despite the defendant's argument that the Facebook message "may well have been sufficient to plant reasonable doubt in the jury's mind," upon review of the proffered Facebook message, we find the trial court did not otherwise err in excluding the message. The single message, stating that Withrow and her "child molesting kid" are "both pieces of [expletive]" and "not worth the gun powder it will take to blow yall both away[,]" does not lend any weight to the defendant's theory that Cothern "had told the children to make these allegations against him." As noted above, we again find no error or abuse of discretion in the trial court's determination that the Facebook message was inadmissible.

Assignment of error number three lacks merit.

CONVICTION AND SENTENCE AFFIRMED.