STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 1352

STATE OF LOUISIANA

VERSUS

DENNIS CHARLES MISCHLER

Judgment Rendered: MAY 3 1 2019

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Docket Number 553758

Honorable August J. Hand, Judge Presiding

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| Warren L. Montgomery<br>Matthew Caplan<br>Butch Wilson<br>Covington, LA | Counsel for Appellee,<br>State of Louisiana |
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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

TMH Higginbotham, J. concurs in the result.

**WHIPPLE, C.J.**

Defendant, Dennis Mischler, was charged by bill of information with oral sexual battery, violations of LSA-R.S. 14:43.3 (counts one and two), molestation of a juvenile, a violation of LSA-R.S. 14:81.2 (count three), and possession of pornography involving juveniles, a violation of LSA-R.S. 14:81.1[1] (counts four through fifty-seven). Shortly thereafter, the State amended counts four through fifty-seven to more specifically allege possession of pornography involving juveniles under the age of thirteen. He pled not guilty to both bills. After a trial by jury, defendant was found guilty as charged on the first thirty-two counts. For the remaining twenty-five counts, the jury found defendant guilty of the lesser-included offense of pornography involving juveniles under the age of seventeen. The trial court imposed concurrent terms of ten, ten, and fifteen years imprisonment at hard labor, to be served without the benefit of probation, parole, or suspension of sentence on the first three counts. Those terms were ordered to run consecutive to twenty-nine concurrent terms of forty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence and twenty-five concurrent terms of fifteen years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The terms for pornography involving juveniles were all to run concurrently to each other. Defendant now appeals. For the following reasons, we affirm defendant's convictions and sentences.

## STATEMENT OF FACTS

Following complaints to the National Center for Missing and Exploited Children, in October 2010 the United States Postal Inspector and Toronto Police Service conducted an investigation into a Canadian movie studio alternately called

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[1]Defendant was charged with the version of LSA-R.S. 14:81.1 effective between August 1, 2012 and July 31, 2014. Although the statute has since been amended four times, the changes are not relevant here.

the "Toronto Company" and "Azov Films." The investigation revealed the company was producing and distributing child pornography. A search warrant was executed and the company's business records were recovered, including customer names and shipping addresses. Defendant's name, physical address, and email address were found in company records showing multiple purchases of child erotica[2] and child pornography billed and shipped to defendant. A postal inspector then conducted a forensic investigation to confirm defendant was the person actually accessing the company's website. Ultimately, the inspector's investigation also determined that defendant's email address was used to set up an account on a website known for child pornography exchange. Further investigation revealed defendant had been implicated in at least two formal allegations of child sex offenses, and he was also a known "educational worker." Having developed this information, a local postal inspector, with the assistance of the St. Tammany Parish Sheriff's Office, obtained a search warrant for defendant's residence.

On May 29, 2014, upon execution of the search warrant, law enforcement officers recovered from defendant's bedroom a large amount of physical and electronic child erotica and child pornography that exclusively featured juvenile boys, in addition to items matching those listed as sold to defendant by the "Toronto Company." Specifically, there were about 5,000 images[3] and 26 videos found on two thumb drives located in a nightstand next to defendant's bed. Some of the files had been accessed as recently as three to fifteen days before the search was conducted. Files had been created on the thumb drives over the course of five-

[2]"Child erotica" was described at trial as being not explicitly pornographic, but still featuring "half-dressed, partially dressed" children of the same type as those featured in a suspect's child pornography collection.

[3]Fifty-four images were presented to the jury to correspond with the fifty-four counts of possession of child pornography. Those images shared the same range of creation dates as the larger volume of files.

and-a-half years. The creation dates, however, pertained to when the files were created on the thumb drives, not when the original image or video had been generated. Periods of relative inactivity on the thumb drive roughly corresponded with defendant's claimed medical issues that put him in repeated hospital care. The State also introduced testimony for demonstrative purposes, and over defendant's objection, about two videos that defendant was shown as ordering from Azov, but which were not physically found in his residence during the search.

Defendant, who was home at the time of the search, and after having voluntarily signed a waiver of his Miranda[4] rights, explained the child pornography was not his, that he had "been hacked on," and that he had caught "William" "seeing things on that computer before[.]" Defendant claimed "William" had put the photos on the thumb drives. After ascertaining "William" was W.G.,[5] defendant's nephew and victim, investigators interviewed him and obtained names of other possible victims, including J.S. and A.E. Subsequent police interviews with witnesses revealed victims M.M., G.W.,[6] and A.P. Further, following media coverage of the story, two more victims, S.L. and J.B., came forward. R.L., the final victim to testify, was involved in the only prior allegation against defendant to go to trial.

J.S., 25 years old at the time of trial, testified that defendant is his great-uncle. J.S. described how he would frequently go to defendant's house in New Orleans when he was about 11 years old and continued to do so later in St. Tammany Parish. J.S. testified in detail that while at defendant's house in New Orleans, defendant, unbidden, got into a shower with him and began to soap J.S.'s genitals with his bare hands. J.S. explained that after Hurricane Katrina, while

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[4]Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[5]In accordance with LSA-R.S. 46:1844(W), the initials for then-minor victims will be used.

[6]It is unclear from the record how G.W. came to the attention of law enforcement.

defendant was living in St. Tammany Parish in a FEMA trailer, defendant would give him and other boys gifts and take them to the movies "[a]ny time [they] wanted to." During one visit to defendant's trailer, J.S. testified that defendant "performed oral pleasure on a sensitive area" while J.S.'s friend was out at the store and only stopped upon the friend's return. During his testimony at trial, however, J.S. said he did not "know the specifics" of that event.

J.S. described a later incident, still within a year of Katrina, where defendant took him to a hotel and again performed oral sex on him. On that occasion, defendant also attempted to anally penetrate J.S., but stopped when J.S. told him to stop. Defendant characterized his behavior to J.S. as being "a way of expressing love." According to J.S., defendant had a desktop computer that J.S., his friends, and defendant's family could use at his house, but that defendant had a password-protected laptop that no one else was ever allowed to use. J.S. conceded he had done some prison time for felony possession with intent to distribute marijuana and also admitted that he had only recently been released from prison. J.S. also had stolen money from defendant "a couple of times." Moreover, J.S. testified that he told no one of the abuse until the prosecutor approached him to talk about it in 2014. J.S. also was aware that defendant's house had been burglarized in the month before defendant was arrested. The State presented prison records indicating that, among other periods, J.S. was incarcerated between December 20, 2013 and July 14, 2014.

Defendant stated that up until the allegations for which he was then being tried, he had a "wonderful" relationship with J.S. Defendant denied ever touching J.S. in the shower in New Orleans, contended that J.S. was never alone with him in his St. Tammany FEMA trailer and said that he never took J.S. alone to a hotel off US Hwy. 190. He acknowledged that J.S. had stolen from him.

S.L. related his experience as a Boy Scout with defendant, then a scout leader, nearly 40 years prior. At a scouting event, S.L., who was then 14 years old, was housed in a tent with defendant, who was 28 years old at the time. One evening, after defendant had pushed the bunks in the tent closer together, defendant took S.L.'s hand and placed it on defendant's penis three different times. S.L. first attempted to tell a 15 or 16-year-old about the incident, but was told by him "[d]on't say anything[,]" and "[y]ou'll get us all in trouble." The next day, S.L. was able to tell his father, a DEA agent. After no action was taken by the camp directors, S.L. and his father notified the local Sheriff's Department. Although defendant was initially arrested at the camp, the District Attorney eventually chose to not prosecute the case. Thirty years later, S.L. saw a news story about the allegations against defendant and chose to come forward with his own story.

Defendant testified at trial and reaffirmed he had been "found innocent of all of those charges." Defendant contended that S.L. had been previously caught with another staff member in bed, who was fired on the spot. He denied knowing S.L. would be in defendant's tent, and claimed that S.L. was mad at him because the staff member had been fired.

A.E., also a relative of defendant's, testified about an occasion when he was six or seven years old and spent the night with defendant at his home in New Orleans. A.E. was taking a bath, and defendant entered the bathroom asking if A.E. needed help. Defendant then used his bare hands to touch A.E.'s genitals under the pretense of washing him. A.E. also recalled that he would sit on defendant's lap, and defendant would place his hand on A.E.'s crotch. Defendant denied ever groping A.E. in the shower and stated that A.E. was infrequently at his house.

A.P., another family member of both J.S. and defendant, testified about time spent at defendant's home in New Orleans, which he confirmed was "a gathering point" for the family. A.P. explained that defendant purchased him clothes, shoes, and toys because his family was financially troubled. A.P. reported that he noticed defendant would be "pacing back and forth" in front of the bathroom while he showered. When A.P. was 10 or 11 years old, defendant would "rub the backside or the front side of his hand would rub up against the crack of [A.P.'s] butt." A.P. also said defendant would give him and his underage male family members alcohol to drink. During at least one of those nights, when A.P. was around 12 or 13 years old, defendant performed oral sex on A.P. and had A.P. engage in anal sex with him. Following one incident, defendant asked A.P. if he had enjoyed the night before, and defendant said to him, "You're either gay or you're not. There's no in between" and that defendant "was very happy about it."

Defendant said he caught A.P., J.S., and W.G. smoking marijuana in his house, and he reprimanded them. He denied ever giving A.P. alcohol or engaging in sex acts with him.

W.G., J.S.'s half-brother, was 27 years old at the time of his testimony at defendant's trial. W.G. described defendant as the "patriarch" of the family and stated that his home in New Orleans was the "family home," where holidays and summer vacations would be spent. During one such trip, when W.G. was nine years old, he and defendant were scrolling through photos on defendant's password-protected computer when a photo of a naked boy briefly popped up. The next evening, after W.G. found the photos again on the computer, defendant woke up, and began fondling and performing oral sex on W.G. W.G. said over his lifetime, defendant had engaged in sexual activities such as oral sex, masturbation, and anal sex with him more than ten times. In another evening of drinking with defendant, A.P. and W.G. engaged in sex acts with each other, with defendant

eventually joining them. W.G. testified that he witnessed defendant engaging in oral and anal sex with A.P. The sexual activities with defendant stopped when W.G. was about 16 years old, but he was aware that some occurred in St. Tammany Parish.

W.G. stated that he had never made any purchases on defendant's computer or with defendant's credit card and that defendant's computer was "locked down tight." W.G. also stated that he remembered seeing several thumb drives near defendant's computer and that defendant had once told him if defendant died, W.G. was to destroy them. W.G. acknowledged and described his five misdemeanor convictions for the jury. According to W.G., defendant would purchase alcohol and cigarettes for him and other young male acquaintances, if asked. The State presented jail records indicating W.G. was incarcerated or under close State supervision from April 30, 2012 until April 1, 2015. Among other periods within that span, W.G. was in jail from May 16, 2014 to June 12, 2014.

Defendant described a more tumultuous relationship, where W.G. said he hated defendant because of a financial transaction gone wrong between defendant and his sister, W.G.'s mother. He claimed W.G. had stolen from him. He denied any kind of sexual relationship with W.G. and contested the dates W.G. lived at his house. Defendant claimed he never allowed alcohol in his house due to his brother being killed by a drunk driver. Defendant explained his computer was not password-protected until after a break-in in 2014, shortly before the search warrant was carried out on his house. Defendant's house was open to "a lot of people who [he] didn't know[.]"

G.W., who was about 25 years old at the time of trial, testified about the time period when he lived in Arkansas and his family hosted evacuees from Louisiana following Hurricane Katrina. Then 12 years old, G.W. shared his bedroom with defendant during defendant's time in Arkansas. G.W. remembered

defendant bringing a laptop with him on which they, and sometimes others, would watch movies together. Defendant would sit uncomfortably close to G.W., sometimes placing a hand on G.W.'s leg. On one occasion, defendant placed his hand on G.W.'s genitals on the outside of G.W.'s shorts. A couple of days after the defendant and his family left G. W.'s home, G.W. told his mother, who then helped him report the incident to police. However, the case ultimately was never prosecuted.

Defendant suggested that he bought clothing for G.W.'s family. Defendant said G.W. stayed in another house while he was in Arkansas, that G.W. and his friends watched movies without him, and that he was never alone with G.W. Defendant said the case was dismissed because he "wasn't there." However, defendant later admitted he was "assigned to sleep" in G.W.'s room.

R.L., who was 42 years old at the time of trial, testified regarding his interactions with defendant in fifth grade, when defendant taught math at a public school in New Orleans. One day, while helping then 12-year-old R.L. alone at his desk, defendant began to rub R.L.'s inner leg and moved his hand to R.L.'s testicles. R.L. told his parents, and although the case went to a bench trial, defendant was found not guilty. R.L. related that he had two prior misdemeanor convictions for DUI and purse snatching.

Defendant alleged that R.L. was actually being molested by his father and claimed that he attempted to intervene to help R.L. The result of that attempted intervention, defendant posited, was the unfounded accusation against himself. Defendant testified that with the way the classroom was set up, he could not have touched R.L. without everyone else in the classroom seeing, implying they were never alone.

J.B., who was 59 years old at trial, testified regarding his experience with defendant while in Boy Scouts. Defendant was an assistant Scoutmaster in J.B.'s

troop. J.B. recounted one evening where the defendant, then 21 years old, slept between J.B., who was 13 years old, and another scout in a tent. While in the tent, defendant reached down into J.B.'s pants and began to grab and manipulate J.B.'s penis with his hand. On another occasion, during an overnight visit by defendant to J.B.'s home when he was 14 years old, J.B. woke up to defendant performing oral sex on him. J.B. was prompted to come forward after hearing a report of defendant's arrest on the instant charges.

Defendant claimed that a storm happened on the night of the alleged incident and that the storm kept him awake all night. He denied ever sleeping in a tent with "any child" or sleeping at J.B.'s home.

M.M.,[7] who was 50 years old at trial, is defendant's nephew and godchild. M.M. described defendant as the patriarch of the family, who would at times provide financial assistance to other family members. M.M. testified that when he was about three years old, defendant took him into a room at a family home and put his penis through M.M.'s thighs from behind, but that there was no penetration. Later, after M.M. began living with defendant, defendant and defendant's brother would perform oral or anal sex on M.M. "two times a week or more," totaling "over a hundred times," until M.M. moved out at the age of 13. M.M. recounted how defendant made him swallow his ejaculate on each occasion of oral sex and how painful the anal sex was every time. Defendant told M.M. that if he told anyone, no one would believe him and that he would end up going to a boys home and would never see his mother again. M.M. testified he told no one until he disclosed the past events to his first wife, after he was having issues with alcohol and anger. Several years later, when meeting with defendant in a New Orleans restaurant, defendant confessed to both M.M. and his first wife that he had

[7]In addition to witness B.M. being referred to by defense counsel as "M.M." in brief, the transcript reveals B.M. preferred to go by another first name. Therefore, in this opinion, he will be referred to as M.M.

perpetrated the abuse, and that it was his "way of showing love" and "the only way he understood to show love." Defendant soon thereafter gave M.M. money to pay for therapy. M.M. admitted to three misdemeanor convictions.

Defendant admitted that he saw M.M. frequently as a child. Defendant claimed he did not hear of M.M.'s allegations until 2015, in a recording made subsequent to M.M. coming forward. He acknowledged that M.M. had once borrowed $1,500.00 from him and that M.M.'s ex-wife had once asked him for $400.00. He admitted going to the restaurant with M.M. and his ex-wife, but denied ever talking to her about M.M.

Additionally during his testimony, defendant explained his medical issues, dating back to 2003, some of which continued to the day of trial. Defendant claimed to have been in the hospital for periods of time through 2008-2012.

Defendant described how on the day the search warrant was executed, five police officers entered his house and began to search through everything. Defendant said his Miranda rights were not explained to him. Defendant denied ever implicating W.G. during the execution of the search warrant. Defendant claimed he had been "hacked" at the time the materials were ordered from the Toronto Company using his credit cards and email address and were sent to his home in New Orleans. He also claimed W.G. had been to his house at that same time to "help [him] pack and help [him] move." Defendant acknowledged that the Azov movies police found, which he claimed he did not order, were somehow transported from his old address to his new address and that the mailing address Azov had for the account created with his email address was changed when he moved.

Defendant claimed that he kept "stick drives" around his house so his students could copy things with them, and that he would find them scattered all over his house. Defendant claimed the stick drives were by his bed as a result of

being temporarily put there after having originally been in the study, but were moved when his house was burglarized in May 2014. He stated that due to illness, he put things where he could reach them easily. Defendant admitted that after the robbery and until four weeks before the search warrant was executed, the only way to have used his laptop was to use it on the nightstand next to his bed. Defendant alleged that his laptops had been stolen in a robbery, and claimed that the one found by his bed was purchased to replace them.

Defendant denied ever hearing of Azov films and claimed anyone had access to his laptop, that he shared the passwords to his email accounts with his family members, and that his postal mailbox was accessible to anyone. He acknowledged that his main email account, the one used to purchase items from Azov, was nearly exclusively accessed from the IP address associated with his home. Although defendant claimed he complained to the credit card company about hundreds of dollars of fraudulent charges, he denied knowing that charges to Azov films constituted some of those, and stated that the first time he became aware of those purchases was during the search of his house.

Explaining that he slept alone in his bed the night of the last recorded access of the thumb drive containing child pornography, he claimed that someone else "must have" accessed it at 4:30 in the morning, the "last accessed" time stamp on some of the files. Photographs introduced into evidence show a thumb drive on the nightstand on May 3, 2014, just after defendant's house had been robbed, and again on May 29, 2014, the day of the search warrant execution. Defendant argued that the photos showed two different thumb drives. Time stamps on some files on the drive seized by police indicate they were created during the early morning hours of May 23, 2014 and again accessed on May 26, 2014, while defendant was purportedly sleeping in the bed next to his computer. Defendant initially

speculated he could have been in the hospital overnight when that occurred, but later admitted he had not been.

Dr. Benton Scott, accepted by stipulation as an expert in child abuse pediatrics, testified out-of-order, with the consent of defense counsel. Dr. Benton discussed delayed disclosure by children of sexual abuse. Additionally, Dr. Benton went through each of the photos supporting a count against defendant and gave an opinion as to whether the child subject was under the age of 17 and, if so, whether the child was also under the age of 13. He was unable to make a conclusive determination of the child being under 13 for all of the photographs, and he conceded that he had not interviewed any of the victims in the photographs or in the instant case.

Defendant's sister, Darlene Smith, testified. She said she had never seen or heard of inappropriate contact between defendant and children. She reported that W.G. had access to a computer in defendant's St. Tammany house and that "to her knowledge," there was no password on it. According to her, both J.S. and W.G. had stolen from defendant and would be around to help when defendant was ill. Darlene reported that defendant had replaced the two stolen laptops with a new one after the robbery and that he purchased clothes and shoes for any of the family's children when asked.

Amber Giordano, defendant's great-niece, also testified on his behalf. She stated she never saw any sexually inappropriate behavior involving defendant or inappropriate behavior involving anyone else in the family. She admitted to forging a check written on defendant's account with W.G. She said that while defendant initially did not have a password on his laptop, he eventually put one on, but told the family what it was so that anyone could use it. She also acknowledged she was responsible for the robbery of defendant's house in May 2014.

## IMPROPER ADMISSION OF "LUSTFUL DISPOSITION" EVIDENCE (Assignment of Error No. 1)

In his first assignment of error, defendant contends the trial court erred by permitting the State to present testimony from five (out of eight) LSA-C.E. art. 412.2 witnesses, R.L., S.L., G.W., W.G., and M.M that "did nothing more than inflame the jury" and did not provide "outweighing probative value." Additionally, defendant alleges the trial court erred when it permitted the State to introduce the titles and still images of pornographic media not found at defendant's residence during the execution of the search warrant. Finally, defendant argues the trial court erred by failing to rule on the State's motion to introduce evidence under LSA-C.E. art. 412.2 until after the conclusion of testimony and the jury had begun deliberations. The State counters that the testimony of M.L., S.L., G.W., W.G., and M.M. was properly admitted probative evidence and that there was no prejudice, where the trial court made a formal statement recording its pre-trial decision to permit the admission of the evidence.

Timeliness of the court's ruling on the State's motion

As an initial matter, the State filed a motion to introduce "lustful disposition" evidence under LSA-C.E. art. 412.2. The trial court granted that motion during a bench conference, but the court's ruling was not placed on the record at that time. Instead, following the jury being charged and sent to deliberate, the trial court put its ruling on the record, referencing the fact it had been ruled upon pre-trial, and defendant objected. However, his objection apparently was directed to the granting of the motion and was not objected to on the basis that the ruling was untimely noted on the record. Accordingly, this assignment lacks merit and was not presented for review.

Five 412.2 witnesses

Generally, courts may not admit evidence of other crimes or bad acts to show defendant is a man of bad character who has acted in conformity with his bad character. LSA-C.E. art. 404(B)(1). However, the State may introduce evidence of other crimes if the State establishes an independent and relevant reason, i.e., to show motive, opportunity, intent, or preparation, or when the evidence relates to conduct which constitutes an integral part of the act or transaction that is the subject of the present proceeding. LSA-C.E. art. 404(B)(1). Even when the other crimes evidence is offered for a purpose allowed under Article 404(B), the evidence is not admissible unless it tends to prove a material fact at issue or to rebut a defendant's defense. State v. Prieur, 277 So. 2d 126, 130 (La. 1973), abrogated on other grounds by State v. Taylor, 2016-1124 (La. 12/1/16), 217 So. 3d 283, 292. Moreover, the State must provide the defendant with notice that it intends to offer prior crimes evidence. Prieur, 277 So. 2d at 130. Additionally, the State must prove by a preponderance of the evidence that defendant committed the other acts. LSA-C.E. art. 1104; Huddleston v. United States, 485 U.S. 681, 690-91, 108 S. Ct. 1496, 1501-02, 99 L. Ed. 2d 771 (1988); State v. Brue, 2009-2281 (La. App. 1st Cir. 5/7/10), 2010 WL 1838383 *6 at n.4 (unpublished), writ denied, 2010-1317 (La. 1/7/11), 52 So. 3d 883.

Further, LSA-C.E. art. 412.2(A) provides in pertinent part:

> 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.

Under LSA-C.E. art. 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time." Evidence is deemed relevant if such evidence has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. LSA-C.E. art. 401. A trial court's ruling on the admissibility of the additional other crimes evidence will not be disturbed absent an abuse of discretion. State v. Jackson, 2018-0261 (La. App. 1st Cir. 11/2/18), 2018 WL 5732842 *8 (unpublished).

Defendant claims that while M.M. and W.G. accused defendant of both oral and anal rapes on multiple occasions, J.S. never alleged anal rape. Defendant argues that consequently, the mere allegation would only serve to inflame the jury. Defendant further asserts that in each of the cases of R.L., S.L., and G.W., defendant was either never charged with, or was acquitted of, an offense by authorities.

Regarding the testimonies of M.M. and W.G., defendant relies upon State v. Jackson, 625 So. 2d 146 (La. 1993) in support of his contentions.[8] In Jackson, the Court found in that specific circumstance that the prejudicial effect of introducing evidence a defendant raped one daughter, exposed his penis to another, and fondled the vaginas of both outweighed the probative value in a case where the defendant was only accused of kissing and fondling his granddaughters. Jackson, 625 So. 2d at 152.

However, both this court and the Louisiana Supreme Court have held that a defendant's statement "to his neighbor's child that he had seen her naked in his bedroom with her arms and legs open" was admissible to show an intent to molest his niece and "to show that the molestation was not an accident." State v. Miller,

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[8]As noted by defendant and the State in brief, Jackson was decided before the promulgation of LSA-C.E. art. 412.2. See State v. Layton, 2014-1910 (La. 3/17/15), 168 So. 3d 358, 359-60.

98-0301 (La. 9/9/98), 718 So. 2d 960, 966 (affirming State v. Miller, 97-0037 (La. App. 1st Cir. 12/29/97), 704 So. 2d 1279). Additionally, courts in Louisiana have consistently held that prior crimes differing from those at issue in their respective cases are still probative to establish a defendant's "lustful disposition." See State v. Floyd, 51,869 (La. App. 2nd Cir. 6/27/18), 250 So. 3d 1165, 1171, writ denied, 2018-1292 (La. 2/25/19), ___ So. 3d ___; State v. Kurz, 51,781 (La. App. 2nd Cir. 2/28/18), 245 So. 3d 1219, 1227, writ denied, 2018-0512 (La. 1/18/19), 262 So. 3d 285; State v. Friday, 2010-2309 (La. App. 1st Cir. 6/17/11), 73 So. 3d 913, 927, writ denied, 2011-1456 (La. 4/20/12), 85 So. 3d 1258.

Moreover, unlike the instant case, the conduct found overly prejudicial in Jackson was significantly different than that with which that defendant was charged. The "difference" in conduct in this case is not distinctly or significantly different. Instead, J.S. testified that defendant unsuccessfully attempted to anally rape him during their visit to the hotel where the second oral sexual battery was alleged to have occurred; the State presented testimony that defendant was successful in anally penetrating W.G. and M.M.; and J.S. testified that defendant "merely" attempted to do so with J.S. Thus, the trial court did not abuse its considerable discretion when permitting the introduction of prior bad acts involving M.M. and W.G.

Moreover, the fact that defendant was not convicted for his prior actions involving R.L., S.L., and G.W. does not render them irrelevant or inadmissible. See State v. Cox, 2015-0124 (La. App. 4th Cir. 7/15/15), 174 So. 3d 131, 138, writ denied, 2015-1557 (La. 10/10/16), 207 So. 3d 407 (evidence of defendant's uncharged crimes was relevant to issues of defendant's intent, plan, knowledge, and absence of mistake or accident). No testimony was adduced explaining the reasons for the ultimate dispositions of the cases not brought to trial. Also, notwithstanding defendant's proclamations to the contrary, only one case, R.L.'s,

was resolved with a "not guilty" verdict. The burden on the State at the instant trial regarding the prior acts was to prove them by a preponderance, not beyond a reasonable doubt required to obtain a conviction. Cf. State v. Harris, 2011-253 (La. App. 5th Cir. 12/28/11), 83 So. 3d 269, 278, writ denied sub nom., State ex rel. Harris v. State, 2012-0401 (La. 8/22/12), 97 So. 3d 376. The language of LSA-C.E. art. 412.2 is broad enough to include previous allegations of misconduct, even if they did not result in final conviction. Cf. State v. Cotton, 2000-0850 (La. 1/29/01), 778 So. 2d 569, 578; see also Dowling v. United States, 493 U.S. 342, 349, 110 S. Ct. 668, 673, 107 L. Ed. 2d 708 (1990) (acquittal does not preclude Government from re-litigating issue in subsequent action governed by lower standard of proof). Moreover, defendant presents nothing to suggest the "jury would be lured by the evidence of the uncharged offenses . . . into convicting [defendant] based on anything less than a reasonable doubt[.]" Cox, 174 So. 3d at 138. In fact, defendant himself highlighted that the allegations did not result in convictions on multiple occasions, thus arguing that the jury should afford the testimony little weight. Consequently, on the record before us, the admission of the prior allegations was not an abuse of the trial court's discretion.

Further, moving beyond the five witnesses highlighted by defendant, there is a clear pattern in the ages, gender, and status of all of defendant's victims notwithstanding that the abuse occurring over decades. Specifically, R.L. was 12 years old and a student of defendant; S.L. was 14 years old and in scouting under defendant's supervision; G.W. was 12 years old and living with defendant as his family hosted defendant's family after Katrina; and J.G. was 13 years old and in scouting under defendant's care. Also, W.G., who was 9 to 16 years old during the abuse; M.M., who was 3 to 13 years old during the abuse; A.P., who was 10 to 13 years old during the abuse; and A.E., who was 6 or 7 years old during the abuse, were all family members who were placed under defendant's care or supervision at

some point in their lives. Here, the trial court evidently concluded that defendant's hebephillic preferences were substantially similar enough as to be both probative and not unduly prejudicial. All of defendant's victims were in their early-to-mid teens, and defendant was in a position of authority over them as a caregiver, "patriarch," teacher, or scout leader. R.L., S.L., and G.W. found themselves alone with defendant in a classroom, tent, or bed, where he began to fondle their genitals with his bare hand. W.G. and M.M. were family members and in defendant's care when he repeatedly raped them. Accordingly, we find no error in the trial court's admission of all eight witnesses' testimony into evidence.

Demonstrative evidence

Defendant posits the trial court erred in permitting the State to introduce testimony and still images from copies of the movies "Ken Park" and "The Children's Island." In defendant's view, the demonstrative evidence was unduly prejudicial as copies were not found in defendant's possession during the search of his home.

However, as noted above, the prior bad acts, namely, the purchase of child erotica featuring boys in their early teenage years, need only be proven by a preponderance of the evidence presented. The State put forth ample evidence that defendant, through his own email address and his home internet access, purchased these films from the Toronto Company, and had them mailed to his addresses. In order to introduce demonstrative evidence, it suffices if the foundation laid establishes that it is more probable than not that the object is the one connected to the case. State v. Smith, 2015-0186 (La. App. 1st Cir. 9/18/15), 181 So. 3d 111, 116, writ denied, 2015-1870 (La. 9/16/16), 206 So. 3d 204. Consequently, evidence from the titles presented bore probative value regarding the State's contention defendant had a well-established sexual preference for young teenage boys. This foundation was supplemented by the presentation of two other videos

actually found in defendant's house, containing similar themes of young boys discovering their sexuality.

This claim is also without merit.

**INSUFFICENT EVIDENCE**
**(Assignment of Error No. 2)**

In his second assignment of error, defendant contends he was convicted with insufficient evidence. Regarding the charges involving J.S., defendant asserts that J.S. could not remember any details of the events and that the jury only convicted him on the weight of evidence presented under LSA-C.E. art. 412.2. Regarding the possession of child pornography charges, defendant primarily argues that the State did not prove beyond a reasonable doubt that his house was not burglarized and the incriminating evidence was left by someone else. Defendant also makes assertions without citations to the record that there were "discrepancies in dates of when pornographic media was added to the thumb drives and when appellant was ill" thereby making it impossible for him to do so. The State argues the evidence submitted to the jury was sufficient to support the convictions.

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, 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 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); State v. Kitts, 2017-0777 (La. App. 1st Cir. 5/10/18), 250 So. 3d 939, 948. The Jackson standard of review, incorporated in LSA-C.Cr.P. art. 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When

analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, in order to convict, the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See State v. Dyson, 2016-1571 (La. App. 1st Cir. 6/2/17), 222 So. 3d 220, 228, reh'g denied (July 13, 2017), writ denied, 2017-1399 (La. 6/15/18), 257 So. 3d 685. 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 defendant was guilty of every essential element of the crime. State v. Thaddius Brothers., 2017-0870 (La. App. 1st Cir. 11/1/17), 233 So. 3d 110, 113, writ denied sub nom., State v. Brothers., 2017-2160 (La. 10/8/18), 253 So. 3d 803; State v. Wright, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So. 2d 485, 487, writ denied, 99-0802 (La. 10/29/99), 748 So. 2d 1157, writ denied sub nom., State ex rel. Wright v. State, 2000-0895 (La. 11/17/00), 773 So. 2d 732.

An appellate court is constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact. State v. Moultrie, 2014-1535 (La. App. 1st Cir. 12/14/17), 234 So. 3d 142, 146, writ denied, 2018-0134 (La. 12/3/18), 257 So. 3d 1252. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness, including an expert. State v. Leger, 2017-0461 (La. App. 1st Cir. 11/15/17), 236 So. 3d 577, 585. The fact that the record contains evidence that conflicts with the testimony accepted by the trier of fact does not render the evidence accepted by the trier of fact insufficient. State v. Morgan, 2012-2060 (La. App. 1st Cir. 6/7/13), 119 So. 3d 817, 826. Unless there is internal contradiction or irreconcilable conflict with

the physical evidence, the testimony of a single witness, if believed by the fact finder, is sufficient to support a factual conclusion. State v. Malarcher, 2017-1497 (La. App. 1st Cir. 4/13/18), 249 So. 3d 837, 844.

Oral sexual battery, as defined by the version of LSA-R.S. 14:43.3 in effect at the time of the offenses, reads in pertinent part:

> A. Oral sexual battery is the intentional engaging in any of the following acts with another person, who is not the spouse of the offender when the other person has not yet attained fifteen years of age and is at least three years younger than the offender:
>
> 1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender; or
>
> 2) The touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim.

Moreover, molestation of a juvenile is defined in LSA-R.S. 14:81.2(A)(1) as:

> 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 shall not be a defense.

Finally, pornography involving juveniles is defined in LSA-R.S. 14:81.1 and provides in pertinent parts:

> A. (1) It shall be unlawful for a person to produce, promote, advertise, distribute, possess, or possess with the intent to distribute pornography involving juveniles.

The penalty for violation of LSA-R.S. 14:81.1 differs between possession of pornography depicting those under the age of 17 and possession involving juveniles under the age of 13. See LSA-R.S. 14:81.1(E)(1)(a); 14:81.1(E)(5)(a).

Defendant does not contest that the actions alleged constituted the offenses, only that the evidence was insufficient to establish that he perpetrated them. However, regarding the offenses against J.S., given the great discretion afforded to the factfinder, defendant merely highlights the fact that J.S. said he could not remember the detailed specifics of each event. As the trier of fact, the jury was

free to accept or reject J.S.'s incomplete recollection of events. Moreover, the jury was aware of his criminal history, and the jury evidently believed J.S.'s version of events over defendant's assertions that nothing occurred and that he was wholly unaware of J.S.'s claims until he was arrested on May 29, 2014. Moreover, given the consistency of J.S.'s allegations with defendant's prior acts with other boys of similar age as detailed in the previous assignment of error, when viewed in a light most favorable to the prosecution, the jury had sufficient evidence to find the essential elements of the charges beyond a reasonable doubt. Thus, the jury had sufficient evidence to return convictions on all three counts.

Similarly, in addition to defendant's internally inconsistent or incredulous testimony and the consistent testimony from witnesses that defendant's computer was password-protected and others were not allowed to use it, the State presented forensic evidence that showed either that defendant possessed the child pornography or that someone had used his laptop while he slept next to it. Although he claimed at trial and again on appeal, that he was in the hospital at the time the photographs were downloaded, it was within the province of the jury to accept or reject his testimony. Similarly, although defendant argued below, and presented testimony from his sister and niece to confirm his claim that his computer and email accounts were always open and available to anyone who entered his house, whether he knew them or not, the jury apparently and reasonably found this explanation implausible. Given the weight of the evidence against defendant, the jury was not unreasonable in rejecting defendant's claims that someone else put the child pornography in his bedroom or in finding him guilty of every count of possession of child pornography beyond a reasonable doubt.

This claim is also without merit.

**EXCESSIVE SENTENCE**
**(Assignment of Error No. 3)**

In his final assignment of error, defendant argues he received an excessive sentence from the trial court, and that portions of it should not have been imposed consecutively. Defendant contends that the lengthy sentence imposed will result in his never being released from prison and that, as a first-time offender, his case warranted a lesser term of incarceration. The State argues that defendant's lengthy sentence is appropriate given his "monstrous actions over a 40-year period."

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of cruel or excessive punishment. Although a sentence falls within statutory limits, it may be excessive. State v. Sepulvado, 367 So. 2d 762, 767 (La. 1979); State v. Dufrene, 2017-1496 (La. App. 1st Cir. 6/4/18), 251 So. 3d 1114, 1125. A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. State v. Spikes, 2017-0087 (La. App. 1st Cir. 9/15/17), 228 So. 3d 201, 204. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See State v. Ford, 2017-0471 (La. App. 1st Cir. 9/27/17), 232 So. 3d 576, 587. Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of LSA-C.Cr.P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. State v. Letell, 2012-0180 (La. App. 1st Cir. 10/25/12), 103 So. 3d 1129, 1138, writ denied, 2012-2533 (La. 4/26/13), 112 So. 3d 838.

The articulation of the factual basis for a sentence is the goal of LSA-C.Cr.P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with LSA-C.Cr.P. art. 894.1. State v. Lanclos, 419 So. 2d 475, 478 (La. 1982); State v. Ducote, 2016-1457 (La. App. 1st Cir. 4/12/17), 222 So. 3d 724, 727. The trial judge should review defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See State v. Jones, 398 So. 2d 1049, 1051-52 (La. 1981); State v. Scott, 2017-0209 (La. App. 1st Cir. 9/15/17), 228 So. 3d 207, 211, writ denied, 2017-1743 (La. 8/31/18), 251 So. 3d 410. On appellate review of a sentence, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. State v. Thomas, 98-1144 (La. 10/9/98), 719 So. 2d 49, 50 (per curiam); State v. McCasland, 2016-1178 (La. App. 1st Cir. 4/18/17), 218 So. 3d 1119, 1123.

Concurrent rather than consecutive sentences are the general rule for multiple convictions arising out of a single course of criminal conduct, at least for a defendant without a prior criminal record. See LSA-C.Cr.P. art. 883. Consecutive sentences are justified where an offender poses an unusual risk to public safety. State v. Riles, 2006-1039 (La. App. 1st Cir. 2/14/07), 959 So. 2d 950, 956, writ denied, 2007-0695 (La. 11/2/07), 966 So. 2d 599. Additionally, this court has stated that maximum sentences permitted under statute may be imposed only for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. State v. Parker, 2012-1550 (La. App. 1st Cir. 4/26/13), 116 So. 3d 744, 754, writ denied, 2013-1200 (La. 11/22/13), 126 So. 3d 478.

In sentencing defendant, the trial court noted that the court observed no signs of "any remorse, no sympathy for the victims, in fact the opposite." The trial court also opined that considerations that would have ordinarily gone in mitigation, such as defendant's work in scouting and school, instead provided the means by which he perpetrated his offenses. On the record before us, given defendant's clear history of horrors inflicted on young boys over the course of nearly 40 years, it is difficult to imagine a higher risk posed to public safety than defendant. Moreover, defendant had an extensive collection of child pornography that consisted of thousands of photographs of abuse, diligently collected over the course of many years. While defendant received his first convictions for the instant offenses, the State established at trial that these were far from his first offenses. Defendant does not show nor do we find that the trial court abused its discretion in sentencing him to maximum and consecutive sentences as one of the worst offenders whose conduct constituted the worst of offenses. See also State v. Thomas, 572 So. 2d 681, 685 n.3 (La. 1990), writ denied, 604 So. 2d 994 (1992) ("noting the well-settled proposition that sentences must be individualized to the particular offender and the offense committed, we find little value in making such sentencing comparisons").

Thus, this claim is also without merit.

**DENIAL OF CAUSE CHALLENGE**
**(Pro Se Assignment of error No. 1)**

In a supplemental pro se brief, defendant argues he was denied due process when the trial court erroneously denied his challenge for cause of venire member Maykut thereby forcing him to use a peremptory challenge for Maykut. Defendant complains specifically that Maykut "clearly let it be known that he would be in favor of the [S]tate" and only agreed to be fair after "excessive badgering by the Court." Defendant further claims that he was prejudiced when he was forced to

accept juror Latapie, who expressed that service would be difficult for her, and his peremptory challenges had been exhausted. Defendant also mentions that he had advised counsel to use a peremptory challenge through a back strike on juror Triche, who had worked with the Clerk of Court, but "failed to reveal that she knew anyone involved in the case when asked" even though it is "very hard to believe" she did not.

The minutes of trial do not record any unsuccessful attempts at challenges for cause by either party, but instead, records only the names of jurors successfully challenged by either party. The transcript indicates that on the first day of voir dire, defendant was successful in his sole challenge for cause. On the second day of voir dire, defendant successfully challenged three panel members for cause, but had one cause challenge denied. The unsuccessful challenge for cause was of venire member Maykut. The minutes indicate defendant exhausted his peremptory challenges.

During voir dire, venire member Maykut revealed he had been an employee for Atmos Energy for 28 years. Maykut had also been a reserve deputy for the St. Bernard Sheriff's Department. Maykut admitted he would "struggle with" keeping his history separate from his consideration of the instant case and that he understood the large amount of work and evidence involved in getting a case to trial. During a sidebar, he explained to the court that while he was not saying he would be unfair, due to his history in law enforcement, he would have a tendency to "persuade towards the law side." However, when further questioned he stated "I think I could be fair[,]" although he would "pull more on the [S]tate's side." After some initial confusion, Maykut acknowledged his understanding that the State still had to prove all elements of its case beyond a reasonable doubt and stated that he would "make the [S]tate do its job[.]" Finally, Maykut explained that he would not hold it against a victim if they did not do what he would have done in a situation.

In denying the cause challenge, the trial court agreed with the State that no grounds for a cause challenge existed as Maykut eventually acknowledged he would have to hold the State to its burden, notwithstanding his prior experience in law enforcement. Maykut was defendant's eleventh peremptory challenge.

Under LSA-C.Cr.P. art. 797(2), in relevant part, a defendant may challenge a juror for cause if "[t]he juror is not impartial, whatever the cause of his partiality." A challenge for cause should be granted, even if the juror declares an ability to remain impartial, when the juror's responses reveal facts from which bias, prejudice or impartiality may be reasonably inferred. State v. Anthony, 98-0406 (La. 4/11/00), 776 So. 2d 376, 392, cert. denied, 531 U.S. 934, 121 S. Ct. 320, 148 L. Ed. 2d 258 (2000). A charge of juror bias may be removed if the prospective juror is rehabilitated, that is, if the court is satisfied that the juror can render an impartial verdict according to the evidence and instructions given by the court. Anthony, 776 So. 3d at 392. The trial judge has broad discretion and reviewing courts will not disturb its rulings absent an abuse of that discretion. State v. Dotson, 2016-0473 (La. 10/18/17), 234 So. 3d 34, 39, writ denied, 2018-0177 (La. 12/17/18), 259 So. 3d 340. An appellate court grants great deference to a trial court's evaluation of juror responses and "should not attempt to reconstruct the voir dire by a microscopic dissection of the transcript in search of magic words or phrases that automatically signify the jurors' qualification or disqualification." State v. Miller, 99-0192 (La. 9/6/00), 776 So. 2d 396, 405-06, cert. denied, 531 U.S. 1194, 121 S. Ct. 1196, 149 L. Ed. 2d 111 (2001). The trial court must look at the juror's responses during his or her entire testimony, not just isolated answers. State v. Johnson, 2016-0514 (La. App. 1st Cir. 10/31/16), (unpublished), writ denied, 2016-2185 (La. 9/15/17), 225 So. 3d 477. Thus, only where it appears that the judge's exercise of that discretion has been arbitrary or unreasonable, resulting in prejudice to the accused, will the ruling of the district court be reversed. See

State v. Dorsey, 2010-0216 (La. 9/7/11), 74 So. 3d 603, 625, cert. denied, 566 U.S. 930, 132 S. Ct. 1859, 182 L .Ed. 2d. 658 (2012); State v. Mills, 2013-0573 (La. App. 1st Cir. 8/27/14), 153 So. 3d 481, 487, writ denied, 2014-2027 (La. 5/22/15), 170 So. 3d 982, writ denied sub nom., State ex rel. Mills v. State, 2014-2269 (La. 9/18/15), 178 So. 3d 139. However, if the judge erroneously denies a cause challenge and defendant exhausts his peremptory challenges, prejudice is presumed. See e.g. State v. Ball, 2000-2277 (La. 1/25/02), 824 So. 2d 1089, 1102, cert. denied, 537 U.S. 864, 123 S. Ct. 260, 154 L. Ed. 2d 107 (2002). Moreover, a defendant must use a peremptory challenge, should he still have one, on the venire member in question lest he waive the complaint on appeal. State v. Sparks, 88-0017 (La. 5/11/11), 68 So. 3d 435, 460, cert. denied, 566 U.S. 908, 132 S. Ct. 1794, 182 L. Ed. 2d 621 (2012).

Although defendant preserved the error on appeal by using a peremptory challenge on the unwanted juror, he fails to demonstrate how the trial court abused its considerable discretion in denying his challenge for cause. The fact that Maykut had been a part-time volunteer law enforcement officer is not determinative. A law enforcement officer is not automatically excluded from service by nature of his job, but rather a trial court should determine a potential juror's impartiality on a case-by-case basis. State v. Murphy, 2016-0901 (La. App. 1st Cir. 10/28/16), 206 So. 3d 219, 225. The record reflects that Maykut acknowledged that if the State could not prove an element of the offense beyond a reasonable doubt, he would return a verdict of not guilty. While Maykut stated it would be a "struggle," he also told the court that he could not say he could not give defendant a fair trial. When a juror expresses a predisposition as to the outcome of a trial, a challenge for cause should be granted. However, if after further inquiry or instruction (i.e., "rehabilitation"), the prospective juror exhibits the ability and willingness to make a decision based on the law and evidence presented at trial, the

challenge is properly denied. See State v. Mickelson, 2012-2539 (La. 9/3/14), 149 So. 3d 178, 187.

A trial court is vested with broad discretion in ruling on challenges for cause, and these rulings will be reversed only when a review of the voir dire record as a whole reveals an abuse of discretion. State v. Smith, 2014-0456 (La. App. 1st Cir. 12/23/14), (unpublished). Given that discretion, and after reviewing the voir dire in its entirety, we cannot say the trial court abused its discretion in denying defense counsel's challenge for cause of venire member Maykut.

Because the challenge for cause of venire member Maykut was not erroneously denied, this court need not determine whether defendant was prejudiced by not having peremptory challenges remaining to challenge jury members, Latapie and Triche.

Thus, defendant's claims also without merit.

## CONCLUSION

For the above and foregoing reasons, defendant's convictions and sentences are affirmed.

**CONVICTIONS AND SENTENCES AFFIRMED.**