

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2008-KA-0198**
VERSUS *
DAVID S. SANTOS * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 466-002, SECTION "K"
Honorable Arthur Hunter, Judge

Charles R. Jones
Judge

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr., and Judge Edwin A. Lombard)

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AFFIRMED

David Santos appeals his conviction and sentence for the crime of forcible rape. We affirm.

The State charged Santos with one count of forcible rape. He pled not guilty at his arraignment, and heard and denied his motion to suppress his statement. At the end of a two-day trial, a twelve-person jury found him guilty as charged. Santos subsequently filed motions for new trial and for post-verdict judgment of acquittal. The State responded and the court denied the motions, sentencing Santos to serve twenty-five years at hard labor. The court granted his motion for appeal, and Santos filed a motion to reconsider sentence, which the court denied. This timely appeal follows.

Det. Alicia Wright testified that in May 2006 she was assigned to the New Orleans Police Department's Sex Crimes Unit. She testified that on May 17, 2006, she responded to a call concerning a rape victim who was being examined at the Medical Center of Louisiana, which at the time was housed in the New Orleans Center. There, she met the victim, A.E.¹ Det. Wright testified that A.E. spoke no English, but a fellow officer, Ofc. Louis Rivas, translated for A.E. Det. Wright

¹ The victim's initials will be used herein.

testified that when she interviewed A.E., A.E. was lying on her side in a bed because of pain in her genital area. Det. Wright testified that A.E. told her that she had arrived in New Orleans at 11:00 p.m. the night before and had gone to the home of her childhood friend, whom she identified as the defendant, David Santos. Det. Wright testified that A.E. told her that she had known Santos for many years in their native Honduras, and he had convinced her to come to New Orleans to make money. Det. Wright testified that A.E. told her that after she arrived at Santos' house at 2241 Kraft Place, she saw several men sleeping on the floor in the common areas of the house. A.E. told Det. Wright that she and Santos went into a bedroom and talked of their childhood in Honduras.

Det. Wright testified that A.E. told her that at some point, Santos told her that he had always liked her, and he told her he wanted to have sex with her. A.E. testified that she told him that if that was the reason he brought her to New Orleans, she was leaving. A.E. testified to Det. Wright that a man came into the room, saw them inside, and left. A.E. told Det. Wright that at that point, both she and Santos were lying fully-clothed on beds in the room, and Santos came up to her and put his hand over her mouth and nose. A.E. testified that Santos' hand was wet, and she passed out. A.E. testified that when she woke up the next morning, she was naked and was bleeding from her vagina. In addition, her anal area was sore. A.E. told Det. Wright that Santos was lying next to her. She testified that Santos told her that he did not do anything to her. A.E. told Det. Wright that Santos left for work and returned that evening. At that time, Santos allowed A.E. to use his cell phone to call her brother-in-law, who lived in the area. A.E. told her that her brother-in-law picked her up and took her to his house, where he notified his neighbor, whose brother was Ofc. Rivas.

Det. Wright testified that she, Ofc. Rivas, and other officers went to the Kraft Place address, where they found Santos and other men. She testified that the officers interviewed the men, and she arrested Santos, handcuffed him, and advised him of his rights. She testified that in response to her question as to whether Santos wanted to give a statement, he told her that he brought A.E. to New Orleans because she was his woman, and he insisted that they had had consensual sex. Det. Wright testified that Ofc. Rivas translated for Santos and the other men at the residence. She testified that one of the other men present was Pablo Sandoval, who identified himself as Santos' brother and testified that when he was in the room with Santos and A.E. during part of the previous night, nothing happened between them. Det. Wright testified that she obtained a search warrant for the residence, and pursuant to this warrant she seized a red bandana from the window sill in the bedroom. Det. Wright identified the clothing seized from A.E. at the hospital. Det. Wright testified that she also searched a van at the residence a few days later when she learned from one of the men at the residence that ether might be in the van, but she found nothing in the van.

Det. Wright testified that A.E. was crying and in pain when she interviewed her at the hospital. She testified that A.E. told her that she did not contact the police sooner because Santos had threatened to harm her family in Honduras. A.E. also told her that Santos threatened to kill her if she told her brother-in-law what had happened.

On cross-examination, Det. Wright testified that when confronted, Santos claimed to be a member of Saddam Hussein's family and claimed to have taken part in the 9-11 attacks on New York City and the Pentagon. She testified that she did not believe that any of the other men staying at the house were involved in the

rape. She also testified that she received no test results from A.E.'s clothing. She testified that Santos' brother also testified that A.E. was Santos' girlfriend.

Ofc. Louis Rivas testified that he was fluent in Spanish. He testified that on May 17, he got a call from his brother, who told him that a neighbor had come to his house with a woman who alleged she had been raped. Ofc. Rivas testified that less than an hour later, he went to his brother's house in Gretna where he met with A.E. and her brother-in-law, who was the neighbor of Ofc. Rivas' brother. A.E. told him that she had arrived in New Orleans the day before, brought here by Santos, who also went by the name of Donaldo Sandoval, and who was a childhood friend from Honduras. She told Ofc. Rivas that Santos told her he was making a lot of money and wanted her to come here to make money as well. Ofc. Rivas testified that A.E. told him that after she arrived at Santos' house, they spoke of Honduras, and then Santos told her that he had always had a crush on her and wanted to have sex with her. A.E. told Ofc. Rivas that she refused to have sex with Santos, and he then placed his hand over her mouth and nose, and she passed out.

Ofc. Rivas testified that when she woke up the next morning, she was naked, bleeding, and in pain. She testified that Santos told her that she must be having her period, but she pointed out that she had had a hysterectomy. She testified that Santos left the house to go to work, warning her not to call anyone or he would harm her or her family in Honduras. Ofc. Rivas testified that A.E. told him that when Santos returned home that evening, he let A.E. use his cell phone. She testified that she called her brother-in-law, who picked her up and took her to his house. Ofc. Rivas testified that after A.E. told him what had happened, she and her brother-in-law directed him to the house where she alleged the attack happened. He testified that during the ride, A.E. was sitting sideways because she was in pain.

Ofc. Rivas testified that he then took A.E. to the Fourth District police station, and then to the hospital where he translated for A.E. when she met with Det. Wright. Ofc. Rivas testified that he remained with A.E. until he left the room while she was being medically examined. He then went with Det. Wright and other officers to Santos' house, where he again translated for the men there who could not speak English. He testified that he remained outside talking to Santos and the other men while other officers executed the search warrant. He testified that he advised Santos of his rights in Spanish, and Santos told him that A.E. was his girlfriend and that they had had consensual sex.

On cross-examination, Ofc. Rivas testified that A.E. told him at some point that Santos had been her best friend, but she had not been in contact with him for fifteen years prior to his calling her in Texas to invite her to come to New Orleans. He testified that A.E. never told him that Santos had told her that other women would be staying in the house. He insisted that he translated the rights to arrestee form to Santos before Santos signed it. On redirect, Ofc. Rivas explained that as a traffic officer, he had translated such forms thousands of times while making DWI arrests.

Joan Rooney testified that she worked as a sexual assault examiner at the Medical Center of Louisiana in New Orleans. Qualified as an expert, she testified that she examines rape victims, collects forensic evidence from sexual assault victims, and takes statements from them. She testified that she examined A.E. in May 2006. At that time, A.E. was upset and crying, and she was lying on her side on the examination bed, complaining of pain in her vagina and on her external genitalia. Ms. Rooney testified that she found several locations where A.E. had injury and tenderness, including on her right breast, in her vaginal canal, on her

outer genitalia, and in her anus. She testified that the injuries to A.E.'s vagina were not consistent with blunt force trauma, such as that inflicted by a penis, but rather were consistent with those possibly made by a fingernail or something else sharply inserted there. Ms. Rooney testified that A.E. was bleeding, even though A.E. told her that she had had a hysterectomy. Ms. Rooney testified that she also spoke Spanish, and A.E. told her that she had been brought to New Orleans by an acquaintance who told her she could find work. A.E. told Ms. Rooney that she had arrived late at that person's house, and there were people sleeping on the floor in several of the rooms. A.E. told her that she and the person who brought her to New Orleans were in a room talking when that person put a rag over her face. A.E. told her that when she awoke the next day, she had pain in her genital area. Ms. Rooney testified that A.E. told her that the man said he would kill her if she told anyone what happened. Ms. Rooney testified that she gave A.E. an antibiotic, pain medication, and a hepatitis B vaccination.

On cross-examination, Ms. Rooney testified that although a doctor was present when A.E. was examined, generally the physician does not write a separate evaluation. Ms. Rooney testified that it was possible that A.E.'s injuries were a day old, but it was unlikely that they were two days old. She testified that she had no knowledge of the results of the rape kit that was taken from A.E. On redirect, Ms. Rooney testified that A.E. told her that she had showered and changed clothes before contacting the police.

Via an interpreter, A.E. testified that she knew Santos in Honduras, but she had not seen him for fifteen to twenty years. She testified that she was living in Houston, and Santos called her and convinced her to come to New Orleans where she could get a job in housekeeping making more money than she was making in

Houston. A.E. testified that Santos told her that she could live at his house, where other workers and their women also lived. She testified that Santos arranged for her ride to New Orleans. When she arrived, she only saw Santos, his brothers, and other men at the residence, but she thought the other women he mentioned were not there because they were working. She testified that she went through the living room into the kitchen, where she sat talking to Santos and his brothers about Honduras. She testified that Santos then took her into a room that had two beds and told her that this was where she would sleep. She testified that Santos went out of the room to get a drink, and she shut the door and locked it. She testified that she lay down on the bed to pray, then she changed into a T-shirt and shorts and went to sleep. She testified that she awoke around midnight when she felt a hand on her. She testified that she did not fully awaken, but she could hear Santos' voice, and he put his hand over her mouth and nose. She testified that Santos' hand was wet, and she could smell a strong odor on his hand. A.E. testified that when she awoke the next morning around 4:00 a.m., she was bleeding from her vagina and was in a lot of pain. She testified that she began crying, and Santos told her that she had been "real pretty" the night before. She testified that she did not tell Santos she was bleeding.

A.E. testified that before Santos left for work, he told her that something could happen to her family in Honduras if she told anyone what happened. She testified that Santos also refused to allow her to use his cell phone before he left for work. However, after he returned that evening, he allowed her to use his cell phone to call her brother-in-law. She testified that her brother-in-law picked her up and took her to his house, where she told him what happened. She testified that she later spoke with a policeman, and she showed him where Santos lived. She

testified that the officer then took her to the police station and then to the hospital, where she met a female officer. She testified that a nurse examined her at the hospital where she insisted that she was still in a lot of pain.

On cross-examination, A.E. testified that she came to New Orleans of her own free will. She testified that although Santos told her that other women were living at his house, she would not have to pay rent there because she would be able to get a housekeeping job where she would be allowed to live. She testified that she had never been to New Orleans before, and the only people at Santos' house spoke Spanish. She denied being naked when she awoke, insisting that she was wearing a different pair of shorts when she awoke from those she was wearing when she went to sleep. She testified that she remained inside all day when Santos was at work because she could not open the door, but she admitted that she did not tell the police she was trapped inside the residence. She testified that Santos had never threatened her before this incident, and he did not harm her family. She also testified that Santos told her that he was a member of Saddam Hussein's family and had participated in the 9-11 attacks.

Also via an interpreter, David S. Santos testified and denied raping A.E., contending that any sexual activity between them was consensual. He testified that although they had known each other in Honduras, they had not spoken for twenty-four years. He testified that he contacted A.E. while she was in Houston, and although they started out as just friends, their relationship developed into one of girlfriend/boyfriend. He testified that A.E. agreed to come to New Orleans because she had been working in Houston for a family that was leaving the country. He testified that his brother and another man drove A.E. to New Orleans, and they arrived at 11:45 p.m. on May 14, 2006. He testified that A.E. stayed with

him for a few days. At first, he, A.E., and his two brothers shared a room, but then the brothers left the room. He testified that A.E. changed clothing in front of him, modeling underwear for him.

Santos testified that A.E. got angry at him soon thereafter because he was speaking with his sister on his cell phone concerning a lost money order he had sent her, and A.E. assumed that he was speaking with an ex-girlfriend. He testified that A.E. grabbed the phone from him. He maintained that he did not rape A.E; rather, they engaged in consensual sex.

On cross-examination, Santos testified that he and A.E. became romantically involved two months before she came to New Orleans. He testified that many people knew they were a couple, and she had free access to his cell phone while she was in New Orleans. He testified that they had argued late on the evening of May 16th, when she became convinced that he was speaking with an ex-girlfriend, with whom he has a child. At that point, she called her brother-in-law to come get her and told Santos that he would regret what he was doing. He testified that there were no other women in the house. He testified that the bedroom where A.E. slept had two beds, but his brothers did not sleep in that bedroom. He testified that the police came to his house at approximately 2:00 a.m., on May 18th, and at that time he told them that A.E. was his girlfriend. He denied telling her that he was related to Saddam Hussein or that he was involved in the 9-11 attacks. He also denied threatening to harm A.E. or her family.

A review of the record reveals one patent error. When imposing sentence, the trial court did not order that at least two years of the sentence to be served without benefit of parole, probation, or suspension of sentence as mandated by La. R.S. 14:42.1. As such, the sentence is illegally lenient. However, as per La. R.S.

15:301.1A, and State v. Williams, 2000-1725 (La. 11/28/01), 800 So. 2d 790, the sentence is deemed to have been imposed with these restrictions of benefits, even in the absence of the trial court's failure to delineate them. Thus, there is no need for this court to correct the sentence. See State v. Phillips, 2003-0304 (La. App. 4 Cir. 7/23/03), 853 So. 2d 675.

There were no other patent errors.

By counsel's assignment of error one and the appellant's pro se assignment of error two, the defense asserts that the evidence was insufficient to support Santos' conviction for the forcible rape of A.E. The defense contends that the evidence does not prove that Santos was the perpetrator of the offense.

The Louisiana Supreme Court set forth the standard for evaluating a claim of insufficient evidence in State v. Brown, 2003-0897, p. 22 (La. 4/12/05), 907 So. 2d 1, 18:

When reviewing the sufficiency of the evidence to support a conviction, Louisiana appellate courts are controlled by the standard enunciated in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Under this standard, the appellate court "must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt." State v. Neal, 00-0674, (La.6/29/01) 796 So.2d 649, 657 (citing State v. Captville, 448 So.2d 676, 678 (La.1984)).

When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 requires that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." Neal, 796 So.2d at 657. Ultimately, all evidence, both direct and circumstantial must be sufficient under Jackson to prove guilt beyond a reasonable doubt to a rational jury. *Id.* (citing State v. Rosiere, 488 So.2d 965, 968 (La.1986)).

See also State v. Batiste, 2006-0875 (La. App. 4 Cir. 12/20/06), 947 So. 2d 810; State v. Sykes, 2004-1199 (La. App. 4 Cir. 3/9/05), 900 So. 2d 156.

Santos was charged with and convicted of forcible rape, which is defined in pertinent part by La. R.S. 14:42.1A(2) as “anal, oral, or vaginal sexual intercourse” that is “deemed to be without the lawful consent of the victim” “[w]hen the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim.”

Here, Ms. Rooney testified in detail as to the injuries sustained by the victim during the sexual attack, including injuries to her breast, her vagina, her genitalia, and her anus. Although the versions of the incident testified to by Det. Wright, Ofc. Rivas, and Ms. Rooney as to what the victim told them differed from the victim’s testimony, all four established that by their testimony that prior to the rape, Santos told the victim that he had had romantic feelings for her for some time and that he wanted to have sex with her, and she rejected this advance. In addition, in the testimony of all four, the victim indicated that someone put their wet hand over the her face and she became unconscious, and when she awakened the next morning she was bleeding from her vagina, and had pain in her external genitalia and her anus. Although the other three witnesses testified that the victim told them that Santos put his hand to her face, the victim testified that she was awakened and had heard Santos’ voice as the wet hand was placed over her face. Thus, the evidence established that the victim was unable to resist the sexual assault due to the administration of some anesthetic to her.

Counsel for Santos argues that the evidence was insufficient because there was no corroboration of the victim's story. He argues that the victim waited three days to report the rape. However, he bases his argument on the time frame given by Santos that the victim arrived at his house on May 14th, but did not report the attack until May 17th. Contrary to the Santos' testimony, the victim testified that she arrived at his house on May 16th, and that the attack occurred sometime after midnight on May 17th. Ofc. Rivas testified that his brother contacted him on the evening of May 17th concerning the rape, and Ms. Rooney testified that she examined the victim that night.

Counsel next argues that there was no physical evidence that the victim was drugged. He also points to the fact that there was no testimony concerning the results of the rape kit taken by Ms. Rooney. He maintains that someone else in the house may have assaulted the victim and that the conviction was based solely on Santos' proposition of the victim.

Nonetheless, the testimony of the victim alone is sufficient to establish the elements of the offense of forcible rape, even where the state does not introduce medical, scientific, or physical evidence to prove the commission of the offense by the defendant. State v. Lewis, 97-2854 (La. App. 4 Cir. 5/19/99), 736 So.2d 1004, 1023; State v. Carter, 97-1096 (La. App. 4 Cir. 5/20/98), 713 So. 2d 796. In addition, this court has repeatedly held that a factfinder's credibility decision should not be disturbed unless it is clearly contrary to the evidence. State v. Huckabay, 2000-1082 (La. App. 4 Cir. 2/6/02), 809 So. 2d 1093; State v. Harris, 99-3147 (La. App. 4 Cir. 5/31/00), 765 So. 2d 432. Here, although as noted above, the victim's testimony differed somewhat from what she told the officers and Ms. Rooney, a reasonable factfinder could have found these differences were not so

great that it rendered her testimony incredible, nor was it contrary to the evidence. In addition, although counsel now argues that Santos was not the assailant, Santos appellant admitted at trial that he and the victim had sex, but he insisted that it was consensual. Finally, the victim told the other witnesses and testified that Santos threatened to harm her or her family if she told anyone what had happened.

In his *pro se* brief, Santos compares the victim's trial testimony to information he contends is in the police reports. However, these police reports were not introduced at trial and thus were not considered by the jury. As such, they cannot be considered by this court on appeal. Further, he refers to a statement by someone in the report about the Santos' possession of ether, but as this witness was not called at trial, this evidence also was not considered by the jury. In addition, the jury was aware that no ether was found at Santos' residence nor in his van. Santos points to other inconsistencies in the victim's testimony, including that she apparently told the other witnesses that she was naked when she awoke, but at trial she denied that she was naked when she awoke, but rather she was dressed in shorts other than those she was wearing when she passed out. However, the jury was aware of any discrepancies, and still chose to believe her testimony.

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for the jury to find beyond a reasonable doubt that Santos forcibly raped the victim. These assignments of error have no merit.

By counsel's second assignment of error, he contends that the trial court imposed an excessive sentence. He argues that the sentence imposed is not supported by the record, given that the court did not order a presentence investigation nor state reasons for the sentence it imposed. The court sentenced Santos to serve twenty-five years at hard labor; the maximum sentence the court

could have imposed on the appellant as a first offender was forty years at hard labor. La. R.S. 14:42.1.

In State v. Smith, 2001-2574, p. 7 (La. 1/14/03), 839 So. 2d 1, 4, the Supreme Court set forth the standard for evaluating a claim of excessive sentence:

Louisiana Constitution of 1974, art. I, § 20 provides, in pertinent part, that “[n]o law shall subject any person to … *excessive… punishment.*” (Emphasis added.) Although a sentence is within statutory limits, it can be reviewed for constitutional excessiveness. State v. Sepulvado, 367 So.2d 762, 767 (La.1979). A sentence is unconstitutionally excessive when it imposes punishment grossly disproportionate to the severity of the offense or constitutes nothing more than needless infliction of pain and suffering. State v. Bonanno, 384 So.2d 355, 357 (La.1980). A trial judge has broad discretion when imposing a sentence and a reviewing court may not set a sentence aside absent a manifest abuse of discretion. State v. Cann, 471 So.2d 701, 703 (La.1985). On appellate review of a sentence, the relevant question is not whether another sentence might have been more appropriate but whether the trial court abused its broad sentencing discretion. State v. Walker, 00-3200, p. 2 (La.10/12/01), 799 So.2d 461, 462; *cf.* State v. Phillips, 02-0737, p. 1 (La.11/15/02), 831 So.2d 905, 906.

See also State v. Johnson, 97-1906 (La. 3/4/98), 709 So. 2d 672; State v. Baxley, 94-2982 (La. 5/22/95), 656 So. 2d 973; State v. Batiste, 2006-0875 (La. App. 4 Cir. 12/20/06), 947 So. 2d 810; State v. Landry, 2003-1671 (La. App. 4 Cir. 3/31/04), 871 So. 2d 1235.

In Batiste, at p. 18, 947 So. 2d at 820, this court further explained:

An appellate court reviewing a claim of excessive sentence must determine whether the trial court adequately complied with the statutory guidelines in La. C.Cr.P. art. 894.1, as well as whether the facts of the case warrant the sentence imposed. State v. Landry, *supra*; State v. Trepagnier, 97-2427 (La. App. 4 Cir. 9/15/99), 744 So.2d 181. However, as noted in State v. Major, 96-1214, p. 10 (La. App. 4 Cir. 3/4/98), 708 So.2d 813:

The articulation of the factual basis for a sentence is the goal of Art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, resentencing is unnecessary even when there has not been full compliance with Art. 894.1. State v. Lanclos, 419 So.2d 475 (La.1982). The reviewing court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La.C.Cr.P. art. 881.4(D).

If the reviewing court finds adequate compliance with art. 894.1, it must then determine whether the sentence the trial court imposed is too severe in light of the particular defendant as well as the circumstances of the case, “keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged.” State v. Landry, 2003-1671 at p. 8, 871 So.2d at 1239. See also State v. Bonicard, 98-0665 (La. App. 4 Cir. 8/4/99), 752 So.2d 184.

Here, at sentencing the court merely reiterated that Santos was convicted of forcible rape. It incorrectly noted that the sentencing range was ten to forty years; the actual range is five to forty years. The court then imposed a twenty-five year sentence. The court did not delineate the factors it considered in imposing sentence, yet it was present during trial and was aware of the facts of the case and the harm to the victim.

Counsel argues that the court erred by failing to order a presentence investigation before imposing sentence. However, although La. C.Cr.P. art. 875 authorizes a trial court to order a presentence investigation report, a defendant does not have the right to demand one. See State v. Bell, 377 So. 2d 275 (La. 1979); State v. Hollins, 2007-0114 (La. App. 4 Cir. 7/25/07), 964 So. 2d 422. In both Hollins and State v. Allen, 2003-2156 (La. App. 4 Cir. 5/19/04), 876 So. 2d 122, this court found no error in the trial court’s failure to order a presentence

investigation where the defendant did not request one prior to sentencing or object to its absence at sentencing. Here, there is no indication that Santos requested a presentence investigation. Thus, the trial court did not err by failing to order one.

With respect to the court's failure to give reasons for the sentence it imposed, such failure is not fatal to the legitimacy of the sentence because the record supports the sentence imposed. The defense presented no mitigating evidence at the sentencing hearing, nor does counsel on appeal specify what, if any, mitigating factors the court could have considered. Given that the same judge presided over the trial, and that counsel presented no mitigating factors, neither at sentencing nor in brief, it cannot be said that the court was unaware of the factors needed to be considered for sentencing, factors that can be gleaned from the record.

It was reasonable for the jury to believe that Santos used a chemical to incapacitate the victim and then raped her. Thus, the trial court did not abuse its discretion by imposing a twenty-five-year sentence in this case. This assignment of error has no merit.

By his remaining *pro se* assignment of error, Santos contends that his conviction must be reversed because the evidence presented at trial of the victim's "words of first utterance" was not an accurate rendition of what she told her brother-in-law, who was the first person to whom she reported the rape. He notes that the brother-in-law did not testify at trial, and he points to the police reports to show that the victim's testimony differed from what information was in the reports. However, as noted above, these reports were not introduced at trial; thus, reference to any information contained in them cannot be considered by this court. In addition, no objection was made to any testimony by Det. Weber, Ofc. Rivas, or

Ms. Rooney as to what the victim told them. Thus, Santos cannot now raise any claims with respect to the validity of this testimony. See La. C.Cr.P. art. 841; State v. Lee, 2002-1793 (La. App. 4 Cir. 4/2/03), 844 So. 2d 970; State v. Young, 2002-1280 (La. App. 4 Cir. 1/22/03), 839 So. 2d 186. As noted by this court in State v. Taylor, 91-2496, p. 5 (La. App. 4 Cir. 3/29/94), 635 So. 2d 416, 420: "The contemporaneous objection rule exists, not only so that a trial judge may correct the error at the time it is made, but it also serves notice in the record that the complained of conduct was so noticeable as to create prejudice in the minds of the jurors."

In any event, the discrepancies to which Santos points were generally known to the jury through the victim's testimony and that of the three witnesses to whom she reported the rape. As noted above, the victim's testimony differed in some points from that of the witnesses. Nevertheless, even with these discrepancies, as noted above there was a more than adequate basis for the jury to believe that Santos was the person who may have administered a chemical agent that incapacitated the victim, and then raped her. Thus, this claim also has no merit.

DECREE

For the foregoing reasons, the conviction and sentence of David S. Santos is affirmed.

AFFIRMED