NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0285

STATE OF LOUISIANA

VERSUS

CHARLES E. HOWARD

Judgment Rendered: September 10, 2010

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On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 348690, Division "C"

Honorable Richard A. Swartz, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

The defendant, Charles E. Howard, was charged by bill of information with aggravated oral sexual battery of A.P. from March 1, 1991 to January 31, 1997 (count 1), a violation of LSA-R.S. 14:43.4.[1] He pled not guilty and, following a jury trial, was found guilty as charged. The defendant filed a motion for post-verdict judgment of acquittal, which was denied. The defendant also filed a motion for new trial. A hearing was held on the matter, and the motion was denied. The defendant was sentenced to twenty years at hard labor without benefit of parole, probation, or suspension of sentence. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating four assignments of error. We affirm the conviction and sentence.

FACTS

The defendant and Kathy were married and had a daughter, A.P., born January 31, 1985. The defendant and Kathy divorced in 1992. Kathy had domiciliary custody of A.P., and A.P. would visit the defendant at his house every other weekend. Before the divorce, when the defendant and Kathy were separated, A.P. would also visit the defendant at his house.

A.P. testified at trial that during her visits the defendant drank a lot of alcohol and smoked marijuana frequently. She slept in the defendant's bed with him. When she was about six or seven years old, the defendant began touching her breasts and vagina. When she was about eight years old, the defendant began inserting his fingers into her vagina. When she was about nine years old, the defendant performed oral sex on her and would force her to perform oral sex on him. The defendant also had her look at pornographic magazines and watch pornographic movies. A.P. testified that she was on

[1] The defendant was also charged with molestation of a juvenile (count 2). The counts were severed and the State proceeded to trial only on count 1.

the A/B honor roll in elementary school, but by the seventh and eighth grades, she began failing classes. In the seventh grade, she was arrested for fighting. She began inflicting cut wounds on herself. In high school, she was bulimic and anorexic. During her high school years, A.P. went to French Camp, a nondenominational Christian boarding school in French Camp, Mississippi. At trial, A.P. described French Camp as a school that provided stability for children from broken homes. Kathy testified at trial that A.P. went to French Camp because A.P. was acting out. She was being disrespectful and getting into a lot of trouble.

Because of the defendant's extensive marijuana use, A.P. drafted two handwritten "contracts" signed by her and the defendant, wherein the defendant would agree to stop using marijuana. Pictures that A.P. drew when she was about nine years old were introduced at trial. The drawings were of naked females, penises, and the defendant touching A.P. in the breast area. Also introduced at trial was a letter written to Kathy by A.P. when she was twelve years old. The letter indicated that when A.P. was six and one-half years old, she and the defendant played a game wherein he would kiss her on her lips and face very hard. The defendant told her not to tell anyone, especially Kathy.

Kathy testified at trial that when A.P. was in the third grade, she told Kathy that the defendant had grabbed her breasts. Kathy contacted the Office of Community Services (OCS). Kathy testified that OCS investigated the matter. The OCS investigator told Kathy that what the defendant did to A.P. was determined to be an inappropriate touch. According to the investigator, the defendant was going to be sent to alcohol abuse and sexual abuse awareness programs and parenting classes. However, according to Kathy, the defendant was never made to attend any program or class.

Dr. Scott Benton, an expert in forensic evaluation of child sexual abuse, testified at trial that he examined A.P. when she was sixteen years old. He testified that delayed reporting was so common by sexually abused children that it is probably the rule rather than the exception. Dr. Benton testified that A.P. told him that her father had molested her. She told Dr. Benton that the defendant touched her everywhere. She also told Dr. Benton that the defendant performed oral sex on her and forced her to perform oral sex on him. She told Dr. Benton that the defendant had her look at pornographic magazines and movies. Dr. Benton testified that exposure to pornography is a commonly used grooming tool because it normalizes the behavior the abuser engages in with his victim.

The defendant did not testify at trial.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues that the trial court erred in allowing evidence of alleged other crimes of the defendant where no **Prieur** hearing was held. Specifically, the defendant contends that evidence of his use of marijuana was inadmissible other crimes evidence.

At trial during direct examination, A.P. testified that the defendant drank a lot of alcohol during visitation with him. The prosecutor asked A.P. if the defendant took anything else. The State sought to introduce into evidence two "contracts" written by A.P., and signed by her and the defendant, which were intended by A.P. to induce the defendant to agree to stop using marijuana. The defendant objected on the grounds that this was inadmissible other crimes evidence, namely the crime of possession of marijuana. The prosecutor contended, and the trial court agreed, that the defendant's marijuana use was an integral part of the crime at issue. We agree with the trial court's ruling.

Louisiana Code of Evidence article 404(B)(1) provides:

> Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

The doctrine of res gestae is designed to complete the story of the crime on trial by proving its immediate context of happenings near in time and place. Integral act (res gestae) evidence in Louisiana incorporates a rule of narrative completeness without which the State's case would lose its narrative momentum and cohesiveness. See **State v. Taylor**, 2001-1638, p. 11 (La. 1/14/03), 838 So.2d 729, 741-42, cert. denied, 540 U.S. 1103, 124 S.Ct. 1036, 157 L.Ed.2d 886 (2004); see also **State v. Brewington**, 601 So.2d 656 (La. 1992) (per curiam). To constitute res gestae, the circumstances must be necessary incidents of the criminal act, or immediate concomitants of it, or form in conjunction with it one continuous transaction. See **State v. Addison**, 551 So.2d 687, 690-91 (La. App. 1st Cir. 1989), writ denied, 573 So.2d 1116 (La. 1991).

A.P. testified that the defendant sexually abused her. He touched her breasts and vagina and inserted his fingers into her vagina. He performed oral sex on her and forced her to perform oral sex on him. She testified that the defendant used marijuana on a daily basis when she was visiting him. She stated that he would smoke several joints. When asked on direct examination what the defendant's condition was when he would sexually abuse her, A.P. stated that he was very intoxicated from alcohol or

marijuana. She often tried to get him to stop using marijuana "[b]ecause of the way he acted differently." When A.P.'s first "contract" did not induce the defendant to stop using marijuana, she drafted another "contract" to persuade him to stop. When asked at trial why she wanted him to stop smoking marijuana, A.P. responded, "For protection for me, mainly."

From A.P.'s testimony, it appears that the defendant was often under the influence of marijuana when he molested her. Further, A.P. felt that if the defendant stopped smoking marijuana when she visited him, then he would stop molesting her. Accordingly, we find that the defendant's use of marijuana was an integral part of the sexual abuse he inflicted upon A.P. See **State v. Edwards**, 412 So.2d 1029, 1032 (La. 1982), where drug use was admissible evidence since it was an integral part of the events immediately preceding the criminal act (second degree murder) and part of the res gestae; **State v. Trosclair**, 584 So.2d 270, 278 (La. App. 1st Cir.), writ denied, 585 So.2d 575 (La. 1991), where testimony about the defendant's marijuana usage on the night of the incident (aggravated rape) was admissible as part of the res gestae.

The defendant asserts that a **Prieur** hearing should have been held to determine the admissibility of his use and possession of marijuana. The defendant also asserts that the State was required to give notice, pursuant to LSA-C.E. art. 404(B)(1), of its intent to use the res gestae evidence of his marijuana use. This assertion is baseless. Notice required under LSA-C.E. art. 404(B)(1), and under **State v. Prieur**, 277 So.2d 126, 130 (La. 1973) is not mandated when the evidence relates to "conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding." LSA-C.E. art. 404(B)(1). **State v. Duncan**, 2002-0509, p. 13

(La. App. 1st Cir. 9/27/02), 835 So.2d 623, 632, writ denied, 2003-0600 (La. 3/12/04), 869 So.2d 812. See **Prieur**, 277 So. 2d at 130.

We find, further, that even had the other crimes evidence been inadmissible, the admission of such evidence would have been harmless error. See LSA-C.Cr.P. art. 921. The erroneous admission of other crimes evidence is a trial error subject to harmless-error analysis on appeal. **State v. Johnson**, 94-1379, p. 17 (La. 11/27/95), 664 So.2d 94, 102. The test for determining if an error is harmless is whether the verdict actually rendered in this case "was surely unattributable to the error." See **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); **Johnson**, 94-1379 at p. 14, 664 So.2d at 100.

In the instant matter, we find that the defendant could not have been prejudiced by testimony of his marijuana use several years ago. The State's evidence clearly established the defendant's guilt with reference to the aggravated oral sexual battery of A.P. As such, the guilty verdict rendered would surely have been unattributable to any testimony that suggested the defendant possessed and used marijuana, and any error in allowing such testimony to be presented to the jury would have been harmless. See **Sullivan,** 508 U.S. at 279, 113 S.Ct. at 2081. 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 misapplied the law concerning the use of polygraph results on a motion for new trial. The defendant contends that this matter should be remanded to the trial court with instructions to consider the polygraph results under the applicable law.

At the hearing on the motion for new trial, defense witness Judith Goodman, an expert in the field of polygraph examination, testified that she administered a polygraph examination to the defendant on September 11, 2007 to determine whether his claim that he had not engaged in any inappropriate activity with A.P. was truthful. The results of the examination indicated that the defendant was truthful.

In **State v. Catanese**, 368 So.2d 975 (La. 1979), the supreme court held that evidence of a polygraph examination was not admissible in criminal trials. However, the supreme court found that the reasons for the exclusion of polygraph evidence from criminal trials do not prevent its use in a post-trial proceeding such as a hearing on a motion for new trial.

Prior to the trial court's ruling, defense counsel argued, in pertinent part, the following:

> Your Honor, if I may, just briefly, as the Court knows from reviewing **Catanese**, the polygraph examination is one of the tools that the Court can use in deciding a Motion for New Trial and can, in and of itself, should the Court use its discretion in that matter, form the basis for granting the new trial.

In denying the motion for new trial, the trial court stated:

> The Court has listened closely to the testimony at this proceeding. I have reviewed the exhibits that have been introduced into evidence. And I additionally reviewed the law in connection with this matter.
>
> The Court finds that no evidence was submitted at this hearing that would serve as grounds for the granting of a new trial under Code of Criminal Procedure Article 851. The results of a polygraph test are not admissible evidence at a trial. The Court listened to the testimony and the evidence that was presented at the trial and finds that the unanimous jury verdict in connection with that trial was appropriate.

We find that the trial court had a clear appreciation of the law when it made its ruling. Defense counsel informed the trial court of the **Catanese** case, and the trial court specifically noted in its ruling that it reviewed the

law in connection with the matter. Nevertheless, the defendant asserts that, because the trial court stated in its ruling that the results of a polygraph test are not admissible evidence at a trial, the trial court did not understand that such results were admissible on a motion for new trial. As a result of this misreading, according to the defendant, he was deprived of the opportunity to have the results of his polygraph considered on his motion for new trial. However, the results of the polygraph were considered. This was precisely the purpose of the hearing on the motion for new trial, wherein the trial court permitted the testimony of a polygraph expert, and the results of the defendant's polygraph test. At the hearing, the trial court considered the evidence before it and made the discretionary determination that the defendant was not entitled to a new trial. See **State v. Hammons**, 597 So.2d 990, 994 (La. 1992). This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 3

In his third assignment of error, the defendant argues that his sentence was excessive. Specifically, the defendant contends that the trial court did not consider mitigating circumstances and that he should not have received the maximum sentence allowable under the law.

The Eighth Amendment to the United States Constitution and Article I, section 20, of the Louisiana Constitution prohibit the imposition of excessive punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). 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. Andrews, 94-0842, pp. 8-9 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. 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. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). 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 that the trial court adequately considered the criteria. **State v. Brown**, 2002-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

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). The trial judge should review the 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).

In the instant matter, the defendant was sentenced to the maximum sentence of twenty years at hard labor. 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. Hilton**, 99-1239, p. 16 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 2000-0958 (La. 3/9/01), 786 So.2d 113.

At sentencing, the trial court stated, in pertinent part:

> The Court will now sentence Mr. Howard, in accordance with the sentencing provisions under Code of Criminal Procedure Article 894.1.
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> The Court listened to the testimony in the trial of this matter which indicated that Mr. Howard had sexually abused his minor child for a period in excess of five years. Such conduct that was testified to at the trial today would constitute aggravated rape and a mandatory life sentence. Mr. Howard was convicted of aggravated oral sexual battery. And the Court is limited to the penalty that was in effect at the time of his offense. That was a maximum sentence of 20 years. The Court finds that Mr. Howard's conduct clearly merits imposition of the maximum sentence and more, considering the damage that he caused to his own daughter, which the Court finds irreparable.
>
> Thus, the Court sentences Mr. Howard to serve 20 years with the Department of Corrections without benefit of probation, parole, or suspension of sentence. The Court finds that any lesser sentence would deprecate the seriousness of this offense.

The trial court adequately considered the factors set forth in Article 894.1. Considering the trial court's careful review of the circumstances and the nature of the crime, we find no abuse of discretion by the trial court. The trial court provided ample justification in imposing the maximum sentence on the defendant for the repeated aggravated oral sexual battery of his daughter, the one person he was supposed to protect from such evils. He instead exploited a position of trust; thus, the maximum sentence was not excessive. See **State v. Kirsch**, 2002-0993, pp. 8-10 (La. App. 1st Cir. 12/20/02), 836 So.2d 390, 395-96, writ denied, 2003-0238 (La. 9/5/03), 852 So.2d 1024. We find this to be the worst type of incident of aggravated oral sexual battery and the defendant to be the worst type of offender. See **State v. Mickey**, 604 So.2d 675, 679 (La. App. 1st Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). See also **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So.2d 942 (La. 1990). Accordingly, the sentence

imposed is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 4

In his fourth assignment of error, the defendant argues that the evidence was insufficient to support the conviction. Specifically, the defendant contends that the State did not prove the essential elements of the crime beyond a reasonable doubt.

A conviction based on insufficient evidence cannot stand as it violates due process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See LSA-C.Cr.P. art. 821(B); **State v. Ordodi**, 2006-0207, p. 10 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, in order to convict, the factfinder must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585, pp. 4-5 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

At the time of the offense, LSA-R.S. 14:43.4 provided, in pertinent part:

> A. Aggravated oral sexual battery is an oral sexual battery committed when the intentional touching of the genitals or anus of one person and the mouth or tongue of another is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:
>
> * * * *
>
> (4) When the victim is under the age of twelve years. Lack of knowledge of the victim's age shall not be a defense.
>
> * * * *
>
> C. Whoever commits the crime of aggravated oral sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than twenty years.[2]

Aggravated oral sexual battery is a general intent crime. **State v. Driggers**, 554 So.2d 720, 725 (La. App. 2nd Cir. 1989). See **State v. Kennedy**, 2000-1554, p. 11 (La. 4/3/01), 803 So.2d 916, 923-24. General criminal intent is present whenever there is also specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. LSA-R.S. 14:10(2). The trier of fact is to determine the requisite intent in a criminal case. **State v. Crawford**, 619 So.2d 828, 831 (La. App. 1st Cir.), writ denied, 625 So.2d 1032 (La. 1993).

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the

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[2] LSA-R.S. 14:43.4(C) was amended by 1995 La. Acts, No. 946 Section 2, effective August 15, 1995, to include the provision that the sentence was to be served "without benefit of probation, parole, or suspension of sentence." LSA-R.S. 14:43.4 was repealed by 2001 La. Acts No. 301, § 2. As noted by the trial court at sentencing, such contact now constitutes aggravated rape. See LSA-R.S. 14:42(A)(4).

evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932.

The testimony elicited by A.P. at trial established that between the ages of six and twelve, she stayed at the defendant's house every other weekend for visitation purposes. During those visits, the defendant drank alcohol and smoked marijuana. She slept with the defendant in his bed. Over several years, the defendant repeatedly touched A.P.'s breasts and vagina, inserted his fingers into her vagina, and performed oral sex on her. The defendant also forced A.P. to perform oral sex on him. When the defendant ejaculated, he demanded that A.P. swallow. If she did not, the defendant would become very angry. When A.P. was about nine years old, the defendant began showing her pornographic movies and magazines.

Marcus Bell and his wife, Donna Bell, testified at trial. Marcus, who was a friend of both Kathy and the defendant, had at one time been a private investigator. Kathy had suspicions that the defendant was mistreating A.P. As a favor to Kathy, Marcus agreed to observe the defendant when he was with A.P. At a New Orleans Zephyrs game in 1994, Marcus was there with Donna, and the defendant was there with A.P. and his girlfriend. The Bells sat above the defendant in the bleachers about fifty feet away. Donna observed the defendant rub A.P.'s body almost to the point of fondling her. When he rubbed her back, he rubbed down to her buttocks. She described the defendant's touching of A.P. not as affectionate, but as sensual. She stated that she was horrified by what she saw.

Marcus testified that he observed very inappropriate touching, fondling, hugging, and kissing of A.P. by the defendant. He testified that the more beer the defendant drank, the friendlier he became with A.P. At a second Zephyrs game, Marcus went with his son instead of Donna. At that game, Marcus observed the defendant and A.P. engaged in highly inappropriate kissing.

In brief, the defendant contends that A.P.'s sexual abuse by the defendant was not real, but rather manufactured memories. According to the defendant, A.P. had a long history of difficulty in school and relationships following the difficult divorce of her parents. A.P. described herself as "a little troublemaker," and Kathy described A.P. as "a wild teenager." Thus, while the State's position was that A.P.'s behavioral problems were a result of the alleged abuse, it is equally likely, argues the defendant, that A.P.'s allegations were the product of being a troubled teenager.

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 which raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). In finding the defendant guilty, it is clear that the jury believed the testimony of A.P. Further, the jury's verdict reflected the reasonable conclusion that, based on the trial testimony of A.P., Marcus Bell, Donna Bell, Dr. Benton, and Kathy; the documentary evidence of the pictures drawn by A.P.; the "contracts" written by A.P.; and A.P.'s letter to her mother, the defendant committed aggravated oral sexual battery on A.P. when she was less than twelve years old. See **Moten**, 510 So.2d at 61.

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, p. 8 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

It is not necessary that there be physical evidence to prove that the defendant committed aggravated oral sexual battery. The testimony of the victim alone is sufficient to prove the elements of the offense. **State v. Orgeron**, 512 So.2d 467, 469 (La. App. 1st Cir. 1987), writ denied, 519 So.2d 113 (La. 1988). The testimonial evidence of A.P. was sufficient to establish the elements of aggravated oral sexual battery. There was no physical evidence of the crime because Dr. Benton did not examine A.P. until she was sixteen years old. According to Dr. Benton, the history A.P. gave him of the sexual abuse she underwent by the defendant was consistent with the physical findings of his examination of A.P.

After a thorough review of the record, we find that the evidence supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of aggravated oral sexual battery of A.P. See **State v. Calloway**, 2007-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.