NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0205

STATE OF LOUISIANA

VERSUS

CONRAD JOSEPH CHIASSON

Judgment Rendered: June 11, 2010

Appealed from the
Thirty-Second Judicial District Court
in and for the Parish of Terrebonne, State of Louisiana
Trial Court Number 506,123

Honorable George J. Larke, Jr., Judge Presiding

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BEFORE: WHIPPLE, HUGHES AND WELCH, JJ.

WHIPPLE, J.

Defendant, Conrad Joseph Chiasson, was charged by grand jury indictment with: aggravated rape, a violation of LSA-R.S. 14:42(A)(4) (Count One); molestation of a juvenile, a violation of LSA-R.S. 14:81.2 (Count Two); aggravated oral sexual battery, a violation of LSA-R.S. 14:43.4 (Count Three);[1] and molestation of a juvenile, a violation of LSA-R.S. 14:81.2 (Count Four). Defendant entered a plea of not guilty to all counts.

After a jury trial, the jury determined that the defendant was guilty as charged on all counts. The trial court subsequently sentenced defendant to a term of life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence for his conviction for aggravated rape (Count One.) The trial court further sentenced defendant to a term of ten years at hard labor for his conviction for molestation of a juvenile (Count Two); twenty years at hard labor for his conviction of aggravated oral sexual battery (Count Three) to be served without benefit of parole, probation, or suspension of sentence[2]; and ten years at hard labor for his conviction of molestation of a juvenile (Count Four), with the sentences for Counts Two, Three and Four to run consecutively to each other, and concurrently with Count One.

Defendant appeals, citing the following as error:

> The trial court erred in overruling defendant's objection to photographs which were not relevant and were more prejudicial than probative.

Finding no error, we affirm defendant's convictions and sentences.

FACTS

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[1]This statute was repealed by 2001 La. Acts No. 301, § 2, but was in effect at the time of the offenses.

[2]See LSA-R.S. 15:301.1.

L.A.[3] lived with her parents in a small apartment complex in Terrebonne Parish until she completed the fourth grade.[4] Also living in the complex were S.G. and her family, and defendant and his wife.[5] Defendant was a relative of both L.A. and S.G.'s families. L.A. and S.G. often played together and would visit defendant's apartment on a regular basis.

According to L.A.'s trial testimony, when she was approximately seven years old, she would visit defendant at his apartment. During this time period, defendant would initiate a card game called high card/low card where he and L.A. would turn over a card and whoever had the lowest card would remove an article of clothing. L.A. described how the very first time she played this game with defendant, they both ended up naked, with defendant pulling her into his bedroom and kissing her in her vaginal area. L.A. further described how defendant vaginally raped her during this episode, despite her efforts to resist it.

L.A. stated that the defendant vaginally raped her between five and twelve times during the time she lived next door to him. Out of fear, L.A. never reported these incidents to law enforcement until she was a college student in 2008. As an example of how defendant used fear to ensure her silence, L.A. testified that once, as she tried to fight defendant off, he put a knife in the wall next to her head. L.A. was eight years old at the time.

L.A. further described how she and S.G. would play hide and seek, with the person who was the "counter" having to stay in defendant's apartment. During the time she was counting in the apartment, defendant would molest her by fondling her and making her touch his penis.

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[3]The victims' initials are used pursuant to LSA-R.S. 46:1844(W).

[4] L.A. was born on July 31, 1989.

[5] S.G. was born on November 13, 1990.

L.A. testified she was sure defendant had used his penis to penetrate her vagina because she remembers the pain. Under cross-examination, L.A. explained that "it wasn't a pain that I was used to, not like I go to the doctor and get a shot pain. It was like something that I wasn't familiar with."

S.G. testified that she lived in the same complex as defendant until she completed the third grade. S.G. testified that defendant would molest her by touching her vagina underneath her clothing during games of hide and seek with L.A. S.G. testified that defendant would sometimes spit on his finger and put it in her vagina during the episodes where he would molest her. S.G. explained that sometimes defendant would invite her to his apartment to play video games, then proceed to molest her. S.G. was afraid to tell anyone about defendant's actions out of fear he would hurt her and because he told her it was a secret.

On April 21, 2008, Dawn Foret, a detective with the Terrebonne Parish Sheriff's Office, was assigned to investigate sexual-abuse allegations against defendant. Foret met with L.A. and S.G. after being assigned the case. On April 29, 2008, defendant voluntarily met with Foret.

At trial, the State played the audiotape of defendant's statement given to Foret on April 29, 2008. During this statement, defendant admitted engaging in sexual encounters with S.G. and L.A. when they resided at the same complex. Defendant acknowledged he fondled both L.A. and S.G. and performed oral sex on L.A. However, defendant denied engaging in vaginal sexual intercourse with L.A., and claimed to have only rubbed his penis on her vagina. Defendant admitted he had used KY jelly to decrease friction, but maintained that he never penetrated L.A. Defendant estimated that he fondled L.A. approximately once a week during a two-year period and that he fondled S.G. approximately five times during a one-year period. Defendant did not testify at trial.

ADMISSION OF PHOTOGRAPHS

In his sole assignment of error, defendant contends the trial court erred in denying his motion in limine seeking to exclude the State's use of photographs depicting L.A. and S.G. at the ages that the offenses occurred. The trial court denied the motion, finding the photographs were relevant and had probative value. In his brief, defendant acknowledges that he was guilty of aggravated oral sexual battery and molestation of both L.A. and S.G. Thus, defendant notes that the only issue before this court is whether the State proved he was guilty of aggravated rape.

Noting the conflicting accounts wherein L.A. testified defendant vaginally raped her, and defendant's own taped statement to the police that he never attempted to penetrate, defendant argues that the photographs of the victims as children were not relevant because they had no tendency to establish whether penetration occurred. Defendant also presents factual arguments in support of his contention that the photographs unfairly prejudiced him by eliciting sympathy for the victims.[6]

Louisiana Code of Evidence article 403 provides that otherwise 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. Photographs that illustrate any fact, shed light upon any fact or issue in the case, or are relevant to describe the person, place, or thing depicted, are generally admissible, provided their probative

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[6]Specifically, defendant argues that the jury obviously had a "difficult" time determining his guilt of aggravated rape because after deliberations began, the jury requested a written list of definitions for aggravated rape and lesser offenses, and after receiving such, deliberated for approximately one more hour before determining he was guilty of aggravated rape. Moreover, defendant argues the photographs were unduly prejudicial given the lack of physical evidence supporting the offense, lack of evidence L.A. suffered from post-traumatic stress syndrome, common to many child rape victims, and the fact that despite this pattern of abuse by defendant, L.A. continued to voluntarily go to defendant's apartment.

value outweighs any prejudicial effect. State v. Brunet, 95-0340, p. 3 (La. App. 1st Cir. 4/30/96), 674 So. 2d 344, 346, writ denied, 96-1406 (La. 11/1/96), 681 So. 2d 1258.

A defendant cannot control the State's method of proof. In a criminal prosecution, the State has the burden of proving each element of the crime beyond a reasonable doubt. A defendant may not exclude from the jury's consideration relevant evidence concerning a crime merely by offering to stipulate. State v. Taylor, 2001-1638, p. 16 (La. 1/14/03), 838 So. 2d 729, 744-745, cert. denied, 540 U.S. 1103, 124 S. Ct. 1036, 157 L. Ed. 2d 886 (2004). Moreover, the State cannot be robbed of the moral force of its case merely because the stipulation is offered. State v. Ball, 99-0428, p. 10 (La. 11/30/99), 756 So. 2d 275, 280. The trial court's admission of photographs will not be overturned on appeal unless the reviewing court finds that the photographs are so inflammatory as to overwhelm the jurors' reason and lead them to convict the defendant without sufficient other evidence. See State v. Berry, 95-1610, p. 16 (La. App. 1st Cir. 11/8/96), 684 So. 2d 439, 454, writ denied, 97-0278 (La. 10/10/97), 703 So. 2d 603.

In the present case, the photographs at issue depict L.A. and S.G. as they appeared during the time period in which these offenses were committed. The use of these photographs was probative of the age of the victims and the size discrepancy between the victims and the defendant. We note L.A.'s testimony included several references to her attempts to fight defendant away, despite the fact she was much smaller than the defendant. Moreover, we note that in a prosecution involving sexual offenses committed against a minor, the age of the victim is not only an element of the offense, but is also an integral part of the moral force of the State's case. Thus, these photographs had probative value that outweighed any prejudicial effect. This portion of the assignment of error is without merit.

We further reject defendant's suggestion that these photographs improperly bolstered L.A.'s credibility where there was no other evidence to support her allegation that defendant had penetrated her vagina during the incidents where he participated in sexual conduct with her. As noted above, the photographs were properly admitted. Therefore, they did not improperly bolster the credibility of the victim. Furthermore, the trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. When there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. Thus, the trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder's determination of guilt. State v. Taylor, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So. 2d 929, 932. In sum, 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 a record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. State v. Quinn, 479 So. 2d 592, 596 (La. App. 1st Cir. 1985).

While there was no physical evidence to prove the rape had occurred, nor evidence presented to show that L.A. had been diagnosed with a psychiatric condition following the abuse by defendant, such evidence is not necessary to prove the defendant committed aggravated rape. 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 jury's

guilty verdict on the count of aggravated rape indicates the jury accepted L.A.'s version of what occurred and rejected defendant's version.

This portion of the assignment of error is also without merit.

CONVICTIONS AND SENTENCES AFFIRMED.