STATE OF LOUISIANA	NO. 24-KA-250
VERSUS	FIFTH CIRCUIT
SHANNON SIMPSON	COURT OF APPEAL
	STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 22-2884, DIVISION "G"
HONORABLE E. ADRIAN ADAMS, JUDGE PRESIDING

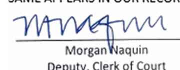
April 16, 2025

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Stephen J. Windhorst

AFFIRMED

FHW
MEJ
SJW

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

Morgan Naquin
Deputy, Clerk of Court

COUNSEL FOR DEFENDANT/APPELLANT,
SHANNON SIMPSON
Holli A. Herrle-Castillo

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA
Honorable Paul D. Connick, Jr.
Thomas J. Butler
Darren A. Allemand
Brittany Beckner
Zachary L. Grate

DEFENDANT/APPELLANT,
SHANNON SIMPSON
In Proper Person

WICKER, J.

Defendant-appellant, Shannon Simpson, appeals his conviction for sexual battery in violation of La. R.S. 14:43.1.[1] In this appeal, Mr. Simpson's appellate counsel has assigned three errors and Mr. Simpson has also filed a *pro se* brief, asserting two additional assignments of error. For the following reasons we affirm defendant's conviction.

STATEMENT OF THE CASE

On October 20, 2022, Mr. Simpson was indicted by a Jefferson Parish Grand Jury for first degree rape upon W.W.,[2] while armed with a dangerous weapon, in violation of La. R.S. 14:42. Mr. Simpson was arraigned and pled not guilty on October 21, 2022.

On September 10, 2023, prior to trial, the State filed a Notice of Intent to Introduce Evidence under La. C.E. Article 412.2 or in the Alternative 404(B) (the "Article 412.2 Notice"). Following a hearing on May 11, 2023, the district court ruled that the State would be permitted to introduce evidence of other acts of sexually assaultive behavior of which Mr. Simpson had been accused unrelated to the crime for which he was charged in this case.

A jury trial was held in the district court on January 22, 23, and 24, 2024. Mr. Simpson was found guilty of the lesser included charge of sexual battery (La. R.S. 14:43.1). On March 1, 2024, Mr. Simpson filed a Motion for Acquittal

---

[1] As discussed, *infra,* Mr. Simpson does not appear to challenge his original sentence herein for excessiveness. However, his third counselled assignment of error alleges that the district court erred in failing to rule on Mr. Simpson's Motion to Reconsider his sentence of 20 years at hard labor, without benefit of probation, parole or suspension of sentence, with credit for time served, imposed by the district court on the State's multiple bill of information, charging him as a second felony offender.

[2] The victim, as well as two witnesses who testified at trial about separate allegations of sexual misconduct committed by Mr. Simpson, will be identified by their initials in compliance with La. R.S. 46:1844 (W)(3), which protects the identity of victims of sexual offenses and comports with *State v. R.W.B.,* 12-453 (La. 12/4/12), 105 So.3d 54; Uniform Rules Courts of Appeal, Rule 5-2. Additionally, W.W., an adult victim whose gender assignment was male at birth, is a transgender female whose pronouns are "she," "her," but who is referred to in the record using male pronouns. W.W. is the victim's male identity and K.W. is her female identity. M.H., another adult victim whose gender assignment was male at birth, is one of the two witnesses that provided other acts evidence against Mr. Simpson. She also identifies as a transgender female and is sometimes referred to in the record as M.H. (the witness' male identity) and other times as K.H. (the witness' female identity).

Notwithstanding the Verdict (the "Motion for Acquittal") and a Motion for a New Trial. A sentencing hearing was conducted on March 7, 2024, at which the following occurred:

1. The district court took up and denied Mr. Simpson's Motion for Acquittal;
2. The district court took up and denied Mr. Simpson's Motion for New Trial;
3. The State filed its Article 412.2 Notice;
4. A victim impact statement was made by W.W.;
5. The district court stated that it would be sentencing the defendant to 10 years;[3]
6. A discussion ensued relative to harassment being perpetrated against defense counsel by an unknown individual associated with the trial;
7. The district court then sentenced Mr. Simpson to 10 years on the crime of sexual battery, without benefit of parole, probation or suspension of sentence, with a recommendation for enrollment in self-help and work-release programs, and stated that the State had indicated that it would be filing a multiple offender bill of information (a "Multiple Bill");[4]
8. The State represented that the Multiple Bill would be filed prior to the end of the sentencing hearing;
9. Defense counsel argued for a more lenient sentence;
10. The district court then sentenced the defendant on his conviction for sexual battery, to serve 10 years at hard labor in the Department of Corrections, without benefit of probation, parole or suspension of sentence, to run concurrently with any other sentence the defendant might be serving. The defendant was given credit for time served. The district court recommended

[3] At that time, the district court did not state that the sentence was at hard labor, that the defendant was being given credit for time served, whether the sentence was to be served consecutively or concurrently, or that the sentence was being imposed without benefits of probation, parole or suspension of sentence.

[4] Again, at this stage of the proceedings, the district court did not state that the sentence was at hard labor, whether it was to be served consecutively or concurrently, or that the defendant was being given credit for time served.

that the defendant be enrolled in any self-help, work-release, re-entry and/or drug programs;

11. The State noticed its intent to file a Multiple Bill;
12. The district court set the Multiple Bill Hearing for March 21, 2024, and called a recess to give defense counsel an opportunity to review the sex registry requirements with the defendant;
13. Following the recess, the district court informed the defendant that upon his release, he would be required to register as a sex offender for 15 years. Defendant received a copy of the sex registry packet and signed to acknowledge that he had been provided with the sex registry information;
14. Defense counsel then filed a written Motion to Reconsider Sentence, which was denied. The district court pointed out that the oral Motion to Reconsider Sentence had already been denied earlier in the hearing;
15. Defense counsel filed a Notice of Appeal and the parties and the district court entered into a discussion about whether the granting of an appeal would be voided by the Multiple Bill;
16. The State filed the Multiple Bill;
17. The district court granted defendant an appeal, stating that the return date would be as provided by law;
18. Defense counsel filed a Designation of the Record on appeal, which was signed by the district court.

A hearing on the Multiple Bill was conducted on March 27, 2024. The district court found Mr. Simpson to be a second felony offender, vacated Mr. Simpson's original sentence and sentenced him as a second felony offender to 20 years in the Department of Corrections, at hard labor, without benefit of probation, parole or suspension of sentence, to run concurrently with any other sentences he might be serving, and with credit for time served. The district court advised Mr. Simpson of

the delays for appealing the sentence and seeking post-conviction relief and recommended him for any self-help, work-release, re-entry and/or drug programs. Mr. Simpson was further ordered to register as a sex offender for 15 years upon his release. Defense counsel orally moved the district court to reconsider Mr. Simpson's sentence and stated that she would follow up with a written motion. The State orally presented its objection to any reconsideration of the sentence. On the same day (March 27, 2024), defense counsel filed a written Motion to Reconsider Sentence. The record does not reflect that that motion was ever ruled upon by the district court and thus, remains pending. Mr. Simpson's counsel has assigned as error the district court's failure to rule on Mr. Simpson's Motion to Reconsider Sentence (defense counsel's Assignment of Error No. 3).[5]

This appeal follows.

FACTS

Testimony of the Victim, W.W.:

The victim, W.W. testified at trial that she was sexually assaulted, at gunpoint, by Mr. Simpson in her apartment on August Avenue in Marrero, Louisiana, on November 28, 2021. At the time, W.W. was working as a prostitute. Mr. Simpson responded to an ad posted by W.W. on TextNow ("TextNow"),[6] a software app, offering to provide sex for money.[7] W.W. stated that, on a telephone call completed through TextNow, she agreed to perform oral sex on Mr. Simpson for $150.00.[8] W.W. testified that there was no agreement between her and Mr. Simpson to participate in role-playing and none for Mr. Simpson to bring a gun into the sex act.

[5] As discussed, *infra,* no issues relative to Mr. Simpson's sentence are before us because the district court has not yet ruled on Mr. Simpson's Motion to Reconsider Sentence and Mr. Simpson has raised no issue in this appeal related to his sentence other than the district court's failure to rule on his Motion to Reconsider.
[6] Calls and texts may be made and received through the TextNow app, without these appearing in the cell phone records of the participants
[7] W.W. had been posting such ads for approximately two years.
[8] Mr. Simpson testified that he only agreed to pay W.W. $100.00 for oral sex.

Mr. Simpson texted W.W. that he was in New Orleans and W.W. texted Mr. Simpson her address. Mr. Simpson asked W.W. in a text whether she was alone and she replied that she was. Mr. Simpson texted W.W., indicating that he was about 15 minutes away. While Mr. Simpson was *en route* to W.W.'s address, she texted him additional information regarding where to park. When he arrived at her address, at approximately 5 a.m., W.W. texted Mr. Simpson further instructions directing him to her apartment.

When the W.W. opened the door to Mr. Simpson, he pushed through into her living room without being invited in. W.W. observed the extended magazine of a gun sticking out of Mr. Simpson's waistband on his left hip. W.W. stated that about five seconds after entering her apartment, Mr. Simpson pulled the gun (which she described as being tan or khaki-colored with an army green clip), pointed the gun at her and began repeatedly asking whether there was anyone else in the apartment. W.W. responded that there was no one else there. Mr. Simpson then stated that he was about to "jerk off," to which W.W. replied, "No, you are not." At that point, Mr. Simpson, who was holding the gun in his left hand, pointed the gun at W.W.'s head and ordered her to undress. Mr. Simpson then, with the gun pointed at W.W.'s head, ordered her to get on her knees. W.W. at first refused but Mr. Simpson ordered her to get down on her knees, while still pointing the gun at her.

W.W. complied with defendant's directions. Mr. Simpson was very fidgety and began pulling down his pants and telling her not to do anything else, not to "f*ing move" and to "get down." W.W. stated to Mr. Simpson that he did not have to do this and told him to just leave. Mr. Simpson, still armed with the weapon and pointing it at W.W., then told W.W. not to move, that he would "blow this b*tch, and not to do anything crazy. W.W. testified that Mr. Simpson then ordered W.W. to "give him oral," and to catch his ejaculate in her mouth. W.W. told Mr. Simpson that she does not do that and it was going too far, whereupon Mr. Simpson told her

that she was going to do it or he would "blow this b*tch and not to f*ing tell [him] anything". Mr. Simpson then forced W.W. to perform oral sex, while holding the gun a couple of inches from her head.

Afterwards, Mr. Simpson told W.W. not to f*ing move when she attempted to grab some napkins to clean herself up with. Mr. Simpson was pulling up his pants and touching W.W.'s head with the gun. W.W. thought that Mr. Simpson felt like he had lost control at that point.

W.W. was able to grab her robe and some baby wipes and she spit Mr. Simpson's semen into one of the baby wipes and threw it on the floor. W.W. stated that Mr. Simpson, who was then fully dressed, continued to hold the gun on her while walking around the room asking her who was there and whether she knew anybody. W.W. told Mr. Simpson that he had done what he did and that it was time for him to go, but he did not leave; instead, Mr. Simpson pushed W.W. down the hallway toward the back room of the apartment while repeatedly asking her if she knew anyone and threatening to shoot her if she told anyone.

Ultimately, Mr. Simpson told W.W. not to move and exited the apartment, but seconds later "busted" back in, pointed the gun at her and told her not to f*ing move. According to W.W., Mr. Simpson then repeatedly (about seven times) went out and immediately back in the door of her apartment, slamming it, prompting her to beg him to leave. Mr. Simpson then stated that he was going to "jerk off" again and ordered W.W. to "dance" for him. Although Mr. Simpson tried to "go a second round," W.W. refused and he left.

W.W. stated that during her encounter with Mr. Simpson, she was terrified and thought that he was going to kill her. She thought that Mr. Simpson was "getting a kick" out of torturing and controlling her. W.W. testified that at the time, she did not know Mr. Simpson's name and that she had never seen him before this encounter.

W.W. did not call the police after Mr. Simpson left her apartment. She felt that these types of assaults happen to transgender people a lot and that the police do not take them seriously. Additionally, she thought she might be arrested for prostitution if she reported the incident.

On the date of the incident, W.W. also did not share what had happened to her with friends or family members. The next day, W.W.'s grandmother, Linda Perez, stopped by W.W.'s apartment to check on her. Upon being questioned by Ms. Perez as to whether there was anything wrong, W.W. told her grandmother what had happened to her the previous morning, although she did not tell her grandmother that the encounter was supposed to have been a prostitution date. W.W.'s grandmother and another family member encouraged W.W. to report the incident to the police, which she did.[9]

On November 29, 2021, about 36 hours after the incident, W.W. called 9-1-1 and reported that she had been raped at gunpoint.[10] In her initial interview with Deputy Ashleigh Broussard of the Jefferson Parish Sheriff's Office (the "JPSO"), who responded to W.W.'s apartment in response to the 9-1-1-call, W.W. did not tell the deputy that the incident started out as a prostitution date. In her second interview, on the same date, with Detective Nicholas J. Vega of JPSO's Special Victim's Section, who also interviewed W.W. at her apartment, she also did not tell him that the incident began as a prostitution date. It was only after being taken to the Investigations Bureau for a further interview that W.W. admitted to Det. Vega that the incident began as a prostitution date. W.W. acknowledged that she had not been truthful about how she met Mr. Simpson when she first reported the incident to her

[9] Ms. Perez also testified, over the objection of defense counsel, that W.W. had reported the incident to her on the morning of November 29, 2021. Defense counsel's objection was based on the fact that Ms. Perez had not been disclosed as a witness in discovery, voir dire or opening statement. Ms. Perez stated that, when relating what had happened to her the previous morning, W.W. had not told her that the incident occurred on what was supposed to have been a prostitution date. According to Ms. Perez, W.W. reported to her that a date had pushed his way into her apartment and had forced her, at gunpoint, to perform oral sex on him. Ms. Perez admitted that she was convicted of misdemeanor theft in 1996, distribution of marijuana in 2000 and possession of cocaine and marijuana in 2006.

[10] A recording of the 9-1-1 call was played to the jury.

grandmother, and in her initial interviews with the Deputy and the Detective, but stated that she had always been truthful and consistent about the details of the incident.

Testimony of Dy. Ashleigh Broussard

About 15 minutes after W.W.'s call to 9-1-1, Dy. Ashleigh Broussard of the Jefferson Parish Sheriff's Office responded to W.W.'s residence. W.W. told Dy. Broussard that she was transgendered. W.W. informed Dy. Broussard that she had met Mr. Simpson (whose name she did not know at the time) at a club in New Orleans approximately two weeks prior to the incident. W.W. stated that this man whom she had met two weeks previously came to her apartment at approximately 5:25 a.m. on November 28, 2021, held her at gunpoint, and forced her to perform oral sex on him. W.W. described the gun as being tan with an olive green or army green magazine. She could not provide any identifying information as to the alleged perpetrator. After taking W.W.'s statement, Dy. Broussard contacted her sergeant and then, Detective Nicholas Vega of the Special Victim's Section.

Testimony of Det. Nicholas Vega

Det. Vega, the lead investigator in the case, arrived at W.W.'s apartment on November 29, 2021, after being contacted by patrol with respect to a reported sexual assault by an unknown Black male that occurred the previous night. He interviewed W.W., who reported that she had met the suspect at a bar a couple of weeks earlier and that they remained in contact after they met. W.W. told Det. Vega that on the morning in question, the man that she had met two weeks before had contacted her and asked to come to her house to "hang out" and that she had agreed.[11] W.W. informed Det. Vega that the suspect arrived at her apartment armed with a semi-automatic pistol and forced her, at gunpoint, to perform oral sex on him. W.W. stated

[11] At the time, W.W. did not know the suspect's name.

that after the suspect ejaculated in her mouth, she spit out the semen into a baby wipe and threw it on the floor.

The baby wipe into which W.W. had spit the suspect's semen was collected by Mr. Toups of the crime scene investigation team. While Det. Vega was interviewing W.W., photographs were taken of W.W.'s apartment by Mr. Toups and deputies on the scene attempted, unsuccessfully, to interview W.W.'s neighbors. They also looked for surveillance cameras on W.W.'s apartment building and the building next door, but found none.

After initially interviewing W.W. at the scene, Det. Vega brought W.W. to the Investigations Bureau to do a more in-depth interview and to retrieve text messages from her phone. Once they arrived at the Investigations Bureau, Det. Vega told W.W. that he did not believe that she had told him the truth about how she met the suspect. At that point, W.W. admitted to Det. Vega that, in fact, she had not met the suspect at a bar in New Orleans, but that she met him through an app she used to advertise herself as a sex worker. Apart from that admission, W.W.'s statement was consistent with the earlier statements that she had made to Dy. Broussard and Det. Vega.

Det. Vega, who is a cellphone forensics examiner, then searched W.W.'s phone and photographed its contents, particularly, communications that took place through TextNow. The TextNow communications contained a thread with a contact saved as "Assault with a Deadly Weapon." W.W. explained that she had assigned this name to the suspect after the incident. Det. Vega, reviewing the photographs of W.W.'s phone that he had taken on November 29, 2021, observed that the date and time associated with the contact, identified in W.W.'s phone as "Assault with a Deadly Weapon," was November 28, 2021, at 5:25 a.m. and that the communication was a TextNow phone call. He also observed that there were follow-up TextNow text messages between W.W. and the contact. In the text messages, W.W. sent the

contact her address and the contact texted back inquiring whether W.W. was alone in her apartment. Det. Vega testified that he found no evidence in the text messages between W.W. and the contact requesting or agreeing to the use of a weapon in conjunction with the encounter. Det. Vega did not find any communications on W.W.'s phone that evidenced the agreement between W.W. and the contact.

After photographing W.W.'s phone, Det. Vega conducted a search geared towards identifying the individual associated with the texts that W.W. had identified to Det. Vega as being between her and the man who had attacked her. Det. Vega discovered that the subscriber to the number used by the contact was the defendant, Mr. Simpson. Det. Vega then obtained search warrants directed to AT&T Global Demand Center ("AT&T," the defendant's cell-phone provider) and TextNow. . TextNow indicated to Det. Vega that it was unable to provide any information to Det. Vega in conjunction with the search warrant without the original screen name used by the contact. As W.W. testified, she had changed the contact name in her phone to "Assault with a Deadly Weapon," following the incident and could not recall the defendant's original screen name.

In response to the search warrant, AT&T provided Det. Vega with responsible financial party, billing, user, and subscriber information. The subscriber/responsible financial party was Mr. Simpson. The email address associated with the Mr. Simpson's account was lefthandnightmare@gmail.com. AT&T also provided the GPS locator information consisting of the phone calls and text messages placed/received by the phone, the dates and times of the calls/messages and the latitude and longitude of where the phone was located at the time of the calls/messages. Det. Vega explained that the GPS information was not precise but only allowed him to determine a range within which the phone was located at a particular time. Upon receipt of the information from AT&T, Det. Vega was able to plot the latitude and longitude coordinates, which showed that Mr. Simpson's

phone was in the Marrero area on November 28, 2021 at around the time of the incident. Det. Vega also testified that the phone records did not show any calls having been made by the defendant on his cell phone between 3:00 a.m. and 8:00 a.m. on the morning of the incident. Calls that were made through TextNow would not have shown up on the defendant's phone. TextNow does not require an actual cellphone number, it can go through a VoIP (*i.e.,* voice over internet protocol). According to Det. Vega, the whole point of TextNow is to conceal information relative to communications from cell phone records.

Det. Vega stated that once he had identified Mr. Simpson, he ran a criminal history check, which revealed prior arrests, including an arrest in Lafayette, Louisiana, in October 2017, involving victim, M.H., and another arrest in Lafayette, Louisiana in April, 2020, involving victim, D.C.

Det. Vega prepared a photographic line-up which he had presented to W.W. by another officer, Det. Mike Wible, who was not involved in the case and did not know the identity of the suspect. W.W. selected the photograph of Mr. Simpson as being the perpetrator who forced her, at gunpoint, to perform oral sex on him on the morning of November 28, 2021.[12] Thereafter, Det. Vega obtained an arrest warrant for Mr. Simpson and Mr. Simpson was ultimately arrested and brought to the Jefferson Parish Correctional Facility.

Testimony of April Solomon

Ms. Solomon is a forensic DNA analyst with the JPSO Regional DNA Laboratory (the "DNA Lab") and the parties stipulated to her being an expert in DNA analysis. She testified that she had analyzed the evidence in this case containing DNA.[13] Two fractions were extracted, an E (epithelial) fraction and an

---

[12] This information was confirmed by Det. Wible, who testified at trial.
[13] The evidence consisted of the disposable wipe, a blood sample oral and buccal swabs taken from W.W. and a buccal swab of the defendant. The buccal swabs were the "reference" swabs, the DNA extracted from which was compared against the DNA extracted from the disposable wipe.

S (semen) fraction. Tests concluded that there were two donors of the DNA on the disposable wipe. The epithelial fraction was found at least 80 million times more likely to have originated from the defendant and one unknown contributor than two unknown contributors,[14] while the semen fraction was found to be 100 billion times more likely to have originated from the defendant and an unknown contributor than two unknown contributors. The value of 100 billion is the highest likelihood ratio that is used at the DNA Lab.

Testimony of M.H. (a/k/a K.H.)

M.H. provided Article 412.2/404(B) testimony that, on October 26, 2017, she visited Lafayette for the purpose of engaging in prostitution. An individual, whom she identified in court as the defendant, responded to a Craigslist advertisement that she had posted offering her services.[15] According to M.H., on that date, the defendant agreed to pay her $200 to perform oral sex on him.[16]

M.H. arranged to meet the defendant at a residential address in Lafayette. Once she arrived at the residence, she entered the residence through the garage, walked through an empty living room and then, she and the defendant went into the defendant's room. M.H. asked the defendant for the "donation," referring to her fee, whereupon the defendant stated that she took too f*ing long to arrive and that he was not paying her anything. According to M.H., the defendant very forcefully slapped her across the face and instructed her to take her clothes off. The defendant then instructed M.H. to get on the bed and perform oral sex on him. M.H. testified that

---

[14] It was 2 million times likely that the epithelial fraction originated from W.W. and an unknown contributor, as opposed to two unknown contributors. Since there were only two contributors of epithelial DNA, it is highly likely that those two contributors were W.W. and the defendant. W.W.'s DNA appears in the sample at a much lower level than the defendant's. According to Ms. Simpson, this demonstrates that it is highly likely that W.W.'s DNA could have been contributed to the sample when W.W. spit the semen into the disposable wipe.

[15] M.H. stated that she currently lives in New York City, where she has lived for the last six or seven years. She also stated that she no longer works as a prostitute but owns vending machines and creates internet content for men who love transgendered women. M.H. admitted that she had several criminal convictions over the period from 2013 to 2019, three of which were for theft offenses, one of which was for providing a false identification to the police and one of which involved driving with a suspended license. M.H. further testified that she is legally blind and has been prescribed medical marijuana for this condition in New York and further, that she had smoked marijuana in the early morning hours of January 23, 2024. M.H. denied that she was high or impaired in any way while testifying, however.

[16] On cross-examination, the defendant testified that he only agreed to pay M.H. $150 for oral sex on that date.

while she was doing as instructed by the defendant, he continued to slap her and criticize her for not performing to his satisfaction. M.H. also testified that the defendant threatened, more than one time, to shoot her and that, although she did not see a gun, the defendant was very aggressive and she was afraid that he might, indeed, shoot her. According to M.H. the defendant held her head down and forced her to allow him to ejaculate in her mouth. M.H. claimed that throughout the encounter, the defendant slapped her in the face and struck her on the head to "torture" her. M.H. testified that she never received any money from the defendant.

When the encounter was over, the defendant instructed her to get dressed and get out. She then spit the defendant's semen into a napkin that she picked up off the floor, dressed and exited the residence through the garage door but did not leave; instead, M.H. called 9-1-1 and reported the incident.[17] She remained on the scene until the police arrived and she reported to the police what had just occurred. M.H. testified that she refused to permit the police to inspect the messages contained in her phone and denied that she had tried to delete any messages from her phone, stating that she had no reason to delete anything because she did not allow the police access to her phone.

M.H. testified that the defendant was still on the scene when the police arrived and that they interviewed him. She further stated that the defendant had tried to delete messages from his phone while being interviewed by the police.

M.H. did not believe that she was taken seriously by the Lafayette Police because she was transgendered and a prostitute. The police took her back to her hotel room and she later learned that the defendant had been arrested, not for the alleged assault, but on an outstanding warrant. M.H. testified that she was informed

[17] M.H. testified that she did not know the victim in this case, that she did not know the substance of the allegations being made by the victim in this case against the defendant and that she had not discussed the case or her testimony with the victim.

by the Lafayette District Attorney's Office that her case was being dropped for lack of evidence. She further testified that she was contacted at a later time to assist the Lafayette District Attorney's Office in an unrelated case involving the defendant.

M.H. testified that the reason she called 9-1-1 on October 26, 2017 and the reason that she volunteered to testify against the defendant was because she did not want him to harm anyone else.

Testimony of D.C.

D.C. also provided Article 412.2/404(B) testimony. D.C. testified that, on April 27, 2020, the defendant, whom she identified in court, responded to an ad that she had posted on a prostitution website called "Skipthegames," advertising herself to provide sex for money.[18] The defendant requested an hour date for which he agreed to pay her $200 to perform oral sex on him.[19] This date was to be an "outcall," and the defendant texted D.C. a residential address. She was driven to the address by a friend, for safety reasons.

D.C. testified that when they arrived at the address, the defendant came out through the garage and told them to park on the side, not in the driveway. She stated that they did as instructed by the defendant. She then entered the residence with the defendant, through the garage, while her friend remained in the car. D.C. testified that she and the defendant went into his room and she sat on the bed. The defendant sat on a white or beige bench that was in the room. He was dressed in black and white Adidas pants. D.C. testified that she asked him whether he was ready to start, whereupon he indicated that he was, removed his pants and told her to take her money out of his pants pocket so he would know that she was not a cop.

---

[18] D.C. was living in Lafayette, Louisiana at the time. D.C. testified that although she was advertising on a prostitution website in April, 2020, she did not consider herself to be a prostitute then or now. She stated that she was 18 years old at the time and had a six month old baby to support and so she acted as a prostitute because she needed the money.

[19] Mr. Simpson testified that the agreed upon price was $150.

According to D.C., she got up, turned around, and started to remove the money from the defendant's pants, which he had placed on the bed. D.C. stated that the defendant then grabbed her from behind, started choking her and asking whether she remembered him. D.C. told him that she did not remember him to which he responded, "B*ch, you tried to rob me." D.C. stated that she told the defendant that she did not try to rob him, she didn't know him, to let her go and that he didn't need to do what he was doing; he did not have to choke her. Then, the defendant threw her on the ground and using the force of his body, pinned her down. He forced his penis into her mouth and masturbated until he ejaculated on her face. D.C. testified that she was terrified and did not know how she did it, but during the encounter she tried to call her mother. However, defendant saw her hand moving and jerked the phone out of her hand. According to D.C., when defendant finished, he appeared disgusted with her and when he got up to go clean himself up, she grabbed her phone and ran out of the residence. She testified that she was never paid anything by defendant. D.C. stated that she got into the car with her friend and they pulled the car to the front of the house, where she called 9-1-1.

D.C. testified that when the police arrived at the scene and interviewed her, she did not initially tell them that she was a prostitute because she thought they might arrest her and she wanted to get back to her baby. She testified that the police collected a swab of ejaculate from her face. D.C. also stated that she had scratches on her neck and a broken fingernail from trying to fight the defendant off. The police also interviewed the defendant at the scene, who informed the police that D.C. was a prostitute and that she was lying about the encounter. When the defendant came out to speak to the police, D.C. saw that the defendant had changed his clothes and told the police, hoping that they could seize the clothing that the defendant had worn during the incident. The defendant was arrested but the charges were eventually dropped because they said she missed a court date.

D.C. testified that she did not know the victim, W.W., she did not know the facts of the allegations being made by the victim, and she had not discussed her testimony with the victim.[20] D.C. testified that the reason she had agreed to testify against Mr. Simpson is that he "needs to stop doing what he doing, it's sick and he always get[s] away with it."

Testimony of Mr. Simpson:

Mr. Simpson testified that, on November 28, 2021, he was living in Baltimore, Maryland, where he had relocated to from his hometown of Lafayette, Louisiana, for work. According to Mr. Simpson, he had spent the weekend of November 28, 2021 in New Orleans attending the Bayou Classic football game and associated festivities. Mr. Simpson stated that he had shared a room with his good friend, "Malik," at the Sheraton Hotel on Canal Street that weekend.

Mr. Simpson stated that at about 5:00 or 5:30 a.m. on November 28, 2021, he had contacted W.W. for prostitution services. He testified that he was familiar with W.W. because he had utilized her services in the past, but that their other encounters took place in Lafayette.[21]

According to Mr. Simpson, he agreed to pay W.W. $100 for a ten to twenty-minute, "quick visit" "bareback" oral sex date.[22] W.W. inquired about his location, which he told her was near Harrah's Casino. W.W. texted Mr. Simpson her address and told him to call or text when he got closer to the address for further instructions. Mr. Simpson testified that his friend, Malik, drove him from Harrah's to the location in Mr. Simpson's white Ford pickup truck.

[20] D.C. admitted that there was a warrant against her for 2nd degree battery, to which she had pled guilty and had been sentenced to five years' probation, which she was currently serving. She further testified that she had not been offered anything for her testimony. D.C. also admitted that she had come to court from a drug rehab center to testify. She explained that she was pregnant and addicted to Lortab and Percocet. She tried to stop on her own, but experienced withdrawals for which she was hospitalized. She had run out of the hospital and the police got her and brought her back. At that point, she voluntarily entered a drug rehab. D.C. also stated that she had been hospitalized in 2020 because she was in jail and pregnant. When the police were transporting her back to jail, she attempted to run away.

[21] On rebuttal, W.W. testified that she had never met Mr. Simpson prior to November 28, 2021, that she had not had any previous sexual encounters with Mr. Simpson prior to the incident in question and denied that she had ever been to Lafayette, Louisiana in her life.

[22] W.W. testified that the agreed upon price was $150.

Mr. Simpson stated that, when they were about five minutes away from the address provided by W.W., he called her and was instructed to park on the left side near the dumpster, which Mr. Simpson claims that they did. He claims that he then called W.W. and informed her that he was outside and she directed him to her apartment. Mr. Simpson stated that Malik stayed in the car and he went up and knocked on W.W.'s door. W.W. peeked out through the blinds and then admitted him into the residence. Mr. Simpson denied that he brandished a firearm or had a firearm in his waistband. He testified that "[a]t no point in my life have I ever carried a firearm or forced anyone to do anything against their will sexually."

Mr. Simpson then related that after entering W.W.'s apartment, she asked him for the money, which he pulled out and gave to her before they walked into her bedroom. Once in W.W.'s bedroom, Mr. Simpson testified that he and W.W. got undressed and proceeded with the sexual services but, during the encounter, a tall African-American male of athletic build, wearing a black COVID mask, came out of the bathroom inside of W.W.'s bedroom. Mr. Simpson stated that he asked what was going on and the man replied that he was not trying to interrupt them and for them to continue. The man then walked into the living room and W.W. apologized and informed Mr. Simpson that it would not happen again.

Mr. Simpson stated that he and W.W. then continued their sexual encounter and he claimed that W.W. agreed to let him ejaculated in her mouth. He testified that, when he was finished, W.W. got up, went to the bathroom, spit out the semen and cleaned her mouth. Mr. Simpson stated that W.W. then handed him some baby wipes which he used to clean himself up and then discarded in the bathroom trashcan. Mr. Simpson then dressed and intended to leave the apartment. He testified that he was not in W.W.'s apartment for longer than fifteen minutes.

Mr. Simpson stated that as he proceeded to exit W.W.'s apartment, another individual was present. The individual proceeded at an abnormal pace to try to get

to the door prior to Mr. Simpson. At that point, Mr. Simpson stated that he asked what was going on and the individual who was standing in front of the door informed Mr. Simpson that he had "overlapped his time" and that he would have to "compensate us for missing our next appointment." Mr. Simpson testified that he refused, informing the individual that he "did not overlap his time". He claims that the individual persisted and demanded that Mr. Simpson pay an additional $150.00, which he refused to do.

Mr. Simpson related that the individual in the COVID mask was standing in front of Mr. Simpson and W.W. was behind him. Mr. Simpson testified that he believed his life was in danger and he felt he had to get out of there. Mr. Simpson stated that he again moved to exit the apartment and the individual told him that he was not leaving and Mr. Simpson, who was a former boxer, hit the individual on the chin, knocked him out and then ran out of the apartment. Mr. Simpson stated that he could not call Malik, who was waiting for him in the truck because he had not brought his cell phone with him into the apartment.

Once Mr. Simpson and Malik left W.W.'s apartment complex, Mr. Simpson stated that they stopped for gas and headed back to Lafayette. Mr. Simpson had a flight from Lafayette to Baltimore that afternoon. Mr. Simpson testified that he left his truck at his mother's house in Lafayette.

According to Mr. Simpson, he was not aware that there was a warrant for his arrest until he arrived at his hotel in Hanover, Maryland, where his job had provided him with accommodations. There, he was informed by the Hanover police that they had been called about a suspicious act. Mr. Simpson was then arrested and extradition proceedings commenced in Maryland. Mr. Simpson claimed that he did not fight extradition, but the extradition process took four months.

Mr. Simpson testified that when he arrived at the Jefferson Parish jail, detectives came to see him. They requested a buccal swab, which Mr. Simpson

refused to provide without a warrant.[23] Once the detectives obtained a warrant, Mr. Simpson claims that he voluntarily cooperated with the process and allowed them to take the swab. Mr. Simpson denied threatening W.W. with a gun or sexually assaulting her.

Mr. Simpson admitted that he had three prior convictions, all of which resulted in probationary sentences that he had served. The latest occurred in 2020 and was a conviction for pandering, for which Mr. Simpson was sentenced to and served two years' probation.

Mr. Simpson addressed the incidents to which M.H. and D.C. had testified. He stated that he met M.H. in October, 2017 on a prostitution website. He stated that he and M.H. entered into an agreement for her to provide him with oral sex, at his residence in Lafayette, for $150.[24] Mr. Simpson stated that M.H. arrived late to the appointment, so he refused to go through with the appointment. Mr. Simpson testified that the only way into his residence was through the garage, but denied that M.H. entered the residence. He stated that he met M.H. outside his residence and told her that she took too long and that he was not going to keep the appointment but that they could meet another time. According to Mr. Simpson, M.H. never entered his residence. He further stated that M.H. wanted him to give her money to get an Uber and accused Mr. Simpson of wasting her time. He testified that he refused to give M.H. any money and that she became irate and was hollering and screaming at him about wasting her time.

Mr. Simpson stated that he went back into his residence and that approximately fifteen to twenty minutes later, Lafayette police officers knocked on his door and informed him that someone had reported being sexually and physically assaulted. Mr. Simpson testified that he cooperated with the police and permitted

---

[23] Det. Vega testified that no law enforcement officer ever asked Mr. Simpson for a buccal swab prior to obtaining a search warrant.

[24] M.H. had testified that the agreed upon price was $200.

them to search his residence where they found no evidence. Mr. Simpson explained that he was arrested on an outstanding warrant for theft and soliciting a prostitute.

Mr. Simpson denied that he forced M.H. to perform oral sex on him or that he had any type of sexual encounter with M.H. He claimed that the semen in the napkin that was provided to Lafayette police by M.H., claiming that it contained Mr. Simpson's semen, was not a match for him. He also claimed that he never deleted any text messages from his phone when the police showed up at his door, that the police report did not say that he did and that he voluntarily provided his phone to the police in conjunction with their investigation of M.H.'s claims.

Mr. Simpson testified that he and D.C., whom he called "Cocoa," had grown up together and had been in a prior romantic relationship that ended because of D.C.'s addictions. Mr. Simpson stated that on April 27, 2020, he ran into D.C. at the M&F grocery store and that they exchanged phone numbers. Mr. Simpson stated that they started texting one another and that he invited D.C. to come over to his residence. Mr. Simpson denied that he had made any agreement for D.C. to perform oral sex on him or that he offered her marijuana, as D.C. had testified. He stated that when D.C. arrived, she had a friend with her. Mr. Simpson testified that he met D.C. at the garage and told her that her friend could not come into his house.

Mr. Simpson stated that D.C. came inside and that they were on the couch talking, hugging, and kissing, while fully clothed. He stated that he pulled down his pants and began to masturbate and that D.C. rubbed his testicles while he did so. He stated that after about three minutes, he ejaculated and went into the bathroom to clean up. According to Mr. Simpson, when he came back into the living room, D.C. asked him to pay her $150 in exchange for oral sex. Mr. Simpson asked D.C. whether she was out prostituting to support her drug habit and she said that she was. Mr. Simpson claimed that he then told D.C. he was not going to pay her any money and

asked her to leave. He denied that D.C. ever performed oral sex on him or that they had any other sexual encounter other than as he had described.

Mr. Simpson claimed that when he refused to pay D.C. any money for sex and asked her to leave, D.C. became belligerent and irate and started screaming at him. He said that D.C. threatened to call the police and he told her to go ahead. At that point, Mr. Simpson claimed that he exited the residence and sat on the porch waiting for the police. Mr. Simpson stated that shortly thereafter, the Lafayette police arrived at his residence and told him the narrative of D.C.'s claims. According to Mr. Simpson, the police officers advised him not to put himself in that situation again. He stated that the officers requested to search his residence, but he refused, stating that they would need to obtain a search warrant in order to search his house.

Mr. Simpson testified that D.C.'s case was dismissed because her allegations were not true and because she decided not to pursue the matter. Mr. Simpson also claimed that he had cooperated thoroughly with the investigation into D.C.'s allegations as he claimed he did each and every time he was investigated.

According to Mr. Simpson, he contacted D.C. in November 2020 and arranged for her to provide sexual services to him for money. Mr. Simpson claimed that on that subsequent occasion, his transaction with D.C. was strictly business, with no romance or intimacy. Mr. Simpson testified that this subsequent encounter occurred at D.C.'s trailer in Scott, Louisiana and that they had agreed that he would pay her $150.00 for her to perform oral sex on him.

Mr. Simpson stated that he went to D.C.'s residence and called her and told her to meet him outside. He and D.C. then went into her residence and into her bedroom whereupon two men jumped out of the bathroom attached to her bedroom, wearing black ski masks and brandishing guns. Mr. Simpson stated that the men demanded money and he threw about $500 in cash, which was all the money he had in his possession at the time, onto the bed. The men demanded more money and

when Mr. Simpson told them that he didn't have any more money, they accused him of lying and pistol-whipped him. Mr. Simpson stated that he fell to the ground, with his head bleeding, as they ripped off his shirt and robbed him at gunpoint, demanding that he give it up. The men then shot Mr. Simpson in his left leg, breaking his femur. Mr. Simpson testified that he was fighting and begging for his life and that he believed the men were going to kill him.

Mr. Simpson claims that he crawled to his truck and drove himself to the hospital, where he had surgery the following day. Mr. Simpson stated that the Lafayette police were notified that he had been shot and came to interview him in the emergency room. At that time, Mr. Simpson claimed that he informed the officers that he was soliciting a prostitute and it turned into a botched armed robbery. According to Mr. Simpson, the police told him that he knew what he was getting himself into when he solicited a prostitute and that there was nothing that they could do. Mr. Simpson said that the officers told him they could arrest him for soliciting a prostitute but that they did not do so. Mr. Simpson stated that the police never made an arrest related to the incident and that he never saw D.C. again.

Mr. Simpson stated that the investigation into W.W.'s allegations had been one-sided and nothing but lies. He said that he testified because he wanted the jurors to hear his side of the story.

On cross-examination, the State questioned Mr. Simpson about incidents of violent sexual encounters of which he had been accused involving unrelated victims, D.M., F.A., A.R., N.S., S.J. and T.C. The prosecutor used police reports to question Mr. Simpson but did not introduce the police reports into evidence. According to the State, Mr. Simpson's testimony regarding the accusations of the other victims was being elicited to rebut Mr. Simpson's claim that he had never in his life forced anyone to do anything sexually. Mr. Simpson denied sexually or physically assaulting any of the other victims. While Mr. Simpson admitted that he regularly

solicited prostitutes, he testified that all of his encounters with prostitutes were consensual.

Based upon the evidence presented, the jury convicted Mr. Simpson of the lesser included offense of sexual battery. Mr. Simpson was thereafter sentenced as discussed above. Mr. Simpson has now perfected this appeal, assigning a total of five errors.

DISCUSSION

Defense Counsel's Assignment of Error No. 1

In defense counsel's first assignment of error, Mr. Simpson argues that the State failed to prove that the sexual activity that occurred between W.W. and Mr. Simpson was non-consensual. Mr. Simpson asserts that the DNA evidence only proved that the parties had sex, not that the sex was non-consensual. He also challenges W.W.'s credibility, citing her delayed report, her initial lies about how she met Mr. Simpson and contradictions during cross examination. Defense counsel argues that, given the lack of corroborating evidence and W.W.'s admitted dishonesty, no rational fact-finder could have found the defendant guilty beyond a reasonable doubt. In response, the State contends that the evidence was sufficient to convict Mr. Simpson of sexual battery because the victim's testimony alone is sufficient to support a conviction and that credibility determinations are within the province of the jury.

The question of sufficiency of the evidence is properly raised in the trial court by a motion for post-verdict judgment of acquittal pursuant to La. C.Cr.P. art. 821; *State v. Williams,* 20-46 (La. App. 5 Cir. 12/30/20), 308 So.3d 791, 816, *writ denied,* 21-316 (La. 5/25/21), 316 So.3d 2. In this case, defense counsel filed a Motion for Post-Judgment Verdict of Acquittal, which was denied.

In reviewing the sufficiency of the evidence, an appellate court must determine that the evidence, whether direct, circumstantial, or a mixture of both,

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 have been proven beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Baham,* 14-653 (La. App. 5 Cir. 3/11/15), 169 So.3d 558, 566, *writ denied,* 15-40 (La. 3/24/16), 190 So.3d 1189. La. R.S. 15:438 provides that when circumstantial evidence is used to prove the commission of the offense, such evidence, after assuming every fact to be proved that the evidence tends to prove, must exclude every reasonable hypothesis of innocence. The reviewing court is not required to determine whether another possible hypothesis of innocence suggested by the defendant offers an exculpatory explanation of events; rather the reviewing court must determine whether the alternative hypothesis is sufficiently reasonable that a rational trier of fact could not have found proof of guilt beyond a reasonable doubt. *Baham,* 169 So.3d at 566; *State v. Mitchell,* 99-3342 (La. 10/17/00), 772 So.2d 78, 83; *State v. Washington,* 03-1135 (La. App. 5 Cir. 1/27/04), 866 So.2d 973, 977.

Credibility determinations are within the sound discretion of the trier of fact, which may accept or reject, in whole or in part, the testimony of any witness. The weight given to the evidence is also within the sound discretion of the trier of fact. Thus, all credibility determinations and determinations of the weight to be given to the evidence, as well as all inferences drawn by the trier of fact from such evidence are to be given deference by the reviewing court. *State v. Clifton,* 17-538 (La. App. 5 Cir. 5/23/18), 248 So.3d 691, 702; *State v. Caffrey,* 08-717 (La. App. 5 Cir. 5/12/09), 15 So.3d 198, 202, *writ denied,* 09-1305 (La. 2/5/10), 27 So.3d 297; *State v. Gonzalez,* 15-26 (La. App. 5 Cir. 8/25/15), 173 So.3d 1227, 1233. An appeals court may not overturn a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *State v. Lane,* 20-181 (La. App. 5 Cir. 1/17/21), 310 So.3d 804. This court will not overturn a verdict

unless, upon review of the record as a whole, we are convinced that any rational trier of fact could not have found guilt beyond a reasonable doubt. *Lane,* 310 So.3d at 804; *State v. McKinney,* 20-19 (La. App. 5 Cir. 11/4/20), 304 So.3d 1097, 1103.

The testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *Clifton,* 248 So.3d at 703. In cases involving sexual offenses, the testimony of the victim alone, if believed, is sufficient to establish the elements of the offense. *Id.*; *State v. Raye,* 17-136 (La. App. 5 Cir. 10/25/17), 230 So.3d 659, 666, *writ denied,* 17-1966 (La. 6/15/18), 257 So.3d 674.

In this case, the defendant was convicted of sexual battery, a responsive verdict to the charged crime of first-degree rape. When a defendant fails to object to a legislatively responsive verdict, the defendant's conviction will not be reversed, whether or not that verdict is supported by the evidence, provided the evidence is sufficient to support the offense charged. *State ex rel. Elaire v.* Blackburn, 424 So.2d 246, 252 (La. 1982), *cert. denied, sub nom, Elaire v. Blackburn,* 461 U.S. 959, 103 S.Ct. 2432, 77 L.Ed.2d 1318 (1983); *State v. Austin,* 04-993 (La. App. 5 Cir. 3/1/05), 900 So.2d 867, 878, *writ denied,* 05-830 (La. 11/28/05), 916 So.2d 143. Here, there is no indication that the defendant objected to the legislatively responsive verdict of sexual battery, but even if he had, the evidence is sufficient to sustain the defendant's conviction for sexual battery.

Pertinent to this case, La. R.S. 14:43.1(A)(1) defines sexual battery as:

> A. Sexual battery is the intentional touching of the anus and genitals of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through the clothing, when any of the following occur:
>
> (1) The offender acts without the consent of the victim.

The defendant admitted that W.W. performed oral sex on him but claimed that they were engaged in a consensual business transaction. Oral sex falls within the

scope of the statute's first prong, as it involves the intentional touching of the offender's genitals by the victim. *Clifton,* 248 So. 3d at 703 (forced oral sex constitutes sexual battery). In this case, the jury heard the testimony of W.W., who stated that the defendant forced her to perform oral sex on him while he was armed with a dangerous weapon, *i.e.,* a gun. She also told Dy. Broussard and Det. Vega the same version of events, even though she initially told them a false story of how she met the defendant.

According to W.W., the defendant pushed his way into her apartment, while armed with a semi-automatic pistol, pointed the gun at her head and ordered her to get undressed, despite her repeated objections. She also stated that the defendant threatened to shoot her and she was afraid for her life. She testified that the defendant struck her and that she believed resistance would only escalate the violence. W.W. also testified that while the defendant held a gun to her head, she complied with his demand that she perform oral sex on him and that he ejaculated in her mouth. She told the jury that she spit the ejaculate into a disposable wipe and that the defendant continued to threaten her with violence after the act was completed.

The jury's verdict reflects that the jury believed W.W.'s testimony that she did not consent to the act and was forced to comply out of fear and threats made by the defendant and did not believe the defendant's testimony that the act was a consensual business transaction. W.W. was thoroughly cross-examined by defense counsel and the inconsistencies in W.W.'s account of the incident were placed before the jury at trial. It was within the sound discretion of the jury to weigh the evidence and determine W.W.'s credibility. This Court will not second guess the jury's credibility determinations. *State v. Chinchilla,* 20-60 (La. App. 5 Cir. 12/23/20), 307 So.3d 1189, 1197, *writ denied,* 21-274 (La. 4/27/21), 314 So.3d 838, *cert, denied,* -- U.S. --, 142 S.Ct. 296, 211 L.Ed.2d 138 (2021).

Under the circumstances, W.W.'s testimony alone was sufficient to sustain the defendant's conviction of sexual battery. This assignment of error is without merit.

Defense counsel's Assignment of Error No. 2:

In this assignment of error, defense counsel asserts that the district court erred in admitting, over defense counsel's objections, evidence under La. C.E. arts. 412.2 and 404(B) of eight alleged other crimes. According to defense counsel, this evidence was unfairly prejudicial and served to confuse the jury, warranting a reversal of the defendant's conviction. Defense counsel complains that the State gave pre-trial notice that it was going to introduce seven prior allegations of sexual assault of which the defendant was accused but at trial introduced evidence of eight previous allegations.

As discussed above, at trial, the State introduced testimony M.H. and D.C.. Defense counsel claims that their testimony was contradictory and not credible, given their admissions of prostitution and criminal histories. Defense counsel further asserts that the State should not have been permitted to cross-examine Mr. Simpson with police reports of the remaining six other allegations because the police reports were inadmissible hearsay. Counsel asserts that the district court's error in admitting the evidence was not harmless because it unfairly influenced the jury's verdict.

The State contends that the testimony of M.H. and D.C. was admissible under Article 412.2 and that the evidence of the six remaining accusations of sexual offenses having been committed by Mr. Simpson were admissible to rebut and impeach his testimony on direct that he had never forced anyone to do anything against their will sexually. According to the State, it is permissible under La. C.C. art. 607(D), to impeach a defendant's testimony with inadmissible hearsay. The State further argues that the police reports were not admitted as evidence at trial and

that, in any event, defense counsel failed to preserve its hearsay objections for appeal.

When the State filed its Notice of Intent to Introduce Evidence under Article 412.23 or in the Alternative, 404(B), it attached police reports of seven prior allegations of sexual assault that had been leveled against Mr. Simpson that the State intended to introduce at trial. The State argued that the evidence of the prior allegations was admissible under Article 412.2 to show the defendant's pattern of sexually assaultive behavior and that he uses force or threats of violence to accomplish his crimes. Alternatively, the State asserted that the prior allegations were admissible under Article 404(B) to show the defendant's knowledge, intent and absence of mistake.

As stated above, a hearing was conducted on May 11, 2023. At that time, the State also argued that the evidence was admissible under Article 412.2 to show the defendant's "lustful disposition."[25] The State introduced the police reports for each of the incidents as evidence at the hearing and argued that, although Article 412.2 does not require similarity between the charged crime and the prior allegations, the incidents were, in fact, very similar to the charged crime. Defense counsel contended that the only purpose of the evidence of other allegations was to portray Mr. Simpson as a bad man and that, although such evidence might be admissible under Article 412.2, the district court was required, under Article 403 to determine whether the evidence would be unfairly prejudicial.

The district court ruled in favor of admitting the evidence, stating that it had considered La. C.E. arts. 412.2, 404(B) and 403 and found that the probative value of the evidence outweighed the potential for unfair prejudice. Defense counsel noted an objection, particularly, as to the hearsay nature of the police reports. Defense

[25] The "lustful disposition" exception to Rule 404(B) relates to sex crimes involving children. The exception does not apply here, where the victim is an adult.

counsel also noted that if the State intended to introduce the prior allegations of sexual assaults at trial, it would need to do so by direct evidence.

At trial, the State presented the evidence of Mr. Simpson's actions involving M.H. and D.C. through their testimony. It did not attempt to introduce the police reports of their allegations or of any of the remaining six incidents into evidence. After the defendant elected to testify at trial and after the defendant testified on direct examination that he had never forced anyone to do anything against their will sexually, the State cross-examined the defendant on the remaining six allegations, utilizing the police reports of the allegations.

During the State's cross-examination of the defendant, defense counsel repeatedly objected, asserting variously that the State's questions involved arrests not convictions, that the acts of alleged violence that were the subject of the State's questions did not relate to sex acts and that the State was improperly impeaching the defendant with reports that he did not prepare. The district court overruled all but one of defense counsel's objections. It sustained defense counsel's objection to the State reading verbatim from a police report in conjunction with allegations made by A.R.

In conjunction with the State's questions, the defendant testified that all of the individuals who had accused him of sexual assaults were lying and asserted that none of the individuals had reported any sexual assaults alleged to have been committed by him. The defendant also reiterated that he had never forced anyone to do anything sexual against their will.

Following the trial, defense counsel filed a Motion for New Trial assigning as grounds therefor that prejudicial error occurred due to the court's rulings on the defendant's pre-trial and contemporaneous objections to other crimes evidence. Defendant's counsel argued that the allegations were too remote in time and that the State should not have been permitted to cross-examine the defendant with

allegations made by individuals who were not present in court to testify. Defendant's counsel also argued that, even if the district court's decision to permit the State to cross-examine the defendant about allegations of sexual assaults were correct, the State had exceeded the scope by questioning the defendant regarding acts of violence that did not constitute sexual assaults.

Following a hearing on March 7, 2024, the district court denied Mr. Simpson's Motion for New Trial. The district court found that there was no prejudicial error in the rulings on defense counsel's objections to the admission of the prior allegations of sexual assault made against Mr. Simpson either prior to or during the trial. Mr. Simpson's counsel again raises these issues on appeal.

Generally, La. C.E. art. 404(B) prohibits the introduction at trial of evidence of other crimes or bad acts committed by a criminal defendant to demonstrate that the accused committed the charged crime because he has committed other such crimes in the past. *State v. Williams,* 09-48 (La. App, 5 Cir. 10/27/09), 28 So.3d 357, 363, *writ denied,* 09-2565 (La. 5/7/10), 34 So.3d 860. Article 404(B) provides that such evidence may, however, be admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident, provided that the prosecution provides reasonable advance notice to the defense of the nature of the evidence or when it relates to conduct, formerly referred to as *res gestae,* that constitutes an integral part of the act or transaction that is the subject of the present in which the accused has been charged. La. C.E. art. 404(B)(1); *State v. Prieur,* 277 So.2d 126, 128 (La. 1973); *State v. Joseph,* 16-349 (La. App. 5 Cir. 12/14/16), 208 So.3d 1036, 1046, *writ denied,* 17-77 (La. 4/7/17), 218 So.3d 109). Thus, in order for other crimes evidence to be admissible under Article 404(B)(1), one of the factors enumerated in the article must be at issue, have some independent relevance, or be an element of the crime charged. Additionally, the probative value of the evidence

must outweigh its prejudicial effect. *Joseph,* 203 So.3d at 1047, citing La. C.E. art. 403.

Article 412.2 is an exception to Article 404(B) and provides, in pertinent part that:

> A. 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.[26]
>
> B. In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.

(Emphasis added).

In *State v. Wright,* 11-141 (La. 12/6/11), 79 So.3d 309, 317, the Louisiana Supreme Court stated that there is no "restriction requiring [Article 412.2] evidence to meet a stringent similarity requirement for admissibility. See also *State v. Montero,* 18-397 (La. App. 5 Cir. 12/19/18), 263 So.3d 899, 907. Article 412.2 does not require that the prior act be identical in nature to the charged offense. *State v. Williams,* 11-876 (La. App. 5 Cir. 3/27/12), 91 So.3d 437, 441, *writ denied sub nom. State ex rel. Williams v. State,* 12-1013 (La. 9/21/12), 98 So.3d 334. Evidence of a defendant's sexually assaultive behavior is admissible under Article 412.2 and it is not necessary for purposes of Article 412.2 that the defendant was charged with, prosecuted for, or convicted of the "other acts" described. *State v. Smith,* No. 19-607 (La. App. 5 Cir. 1/21/20), 2020 WL 356010, *writ denied,* 20-328 (La. 5/1/20), 295 So.3d 945).

---

[26] As can be seen and as stated above, the "lustful disposition" exception applies in cases in which the victim was less than seventeen years old at the time of the crime, not to cases in which the victim is an adult.

The Louisiana Supreme Court, referencing Revision Comment (e) to Article 412.2, has held that although "sexually assaultive behavior" is not defined in Article 412.2, the term is a "general expression," which the legislature used intentionally in order to reference a broad range of behavior not limited by any list of "technical" statutory definitions. *State v. Layton,* 14-1910 (La. 3/17/15), 168 So.3d 358, 361-62.[27] Even if independently relevant, however, evidence may nevertheless be excluded under La. C.E. art. 403 if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or waste of time.

We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Wright,* 79 So.3d at 316. The same standard applies to rulings on the admission of other crimes evidence and evidence under La. C.E. art. 412.2. *Id.; State v. Merritt,* 04-204 (La. App. 5 Cir. 6/29/04), 877 So.2d 1079, 1085, *writ denied,* 04-1849 (La. 11/24/04), 888 So.2d 228. After review of the record and the law, we find no error in the trial court's admission of the evidence relative to allegations of prior sexually assaultive behavior against Mr. Simpson.

The testimony of M.H. and D.C. reveals similarities with the defendant's conduct towards W.W. Each victim testified that she worked as a prostitute at the time of her encounter with Mr. Simpson, as did W.W. Each described being contacted by the defendant relative to consensual encounters in exchange for money, as was W.W. Each testified that when they then

[27] Revision Comment (e) to Article 412.2, provides that crimes involving sexually assaultive behavior include but are not limited to rape (R.S. 14:41), aggravated rape (R.S. 14:42), forcible rape (R.S. 14:42.1), simple rape (R.S. 14:43), sexual battery (R.S. 14:43.1), aggravated sexual battery (R.S. 14:43.2), carnal knowledge of a juvenile (R.S. 14:80), indecent behavior with a juvenile (R.S. 14:80), pornography involving juveniles (R.S. 14:81.1), molestation of a juvenile (R.S. 14:81.2), crime against nature (R.S. 14:89), aggravated crime against nature (R.S. 14:89.1) or attempt of any of those crimes (R.S. 14:27). Revision Comment (f) to Article 412.1 also states that the article applies not only to direct examinations but also to evidence adduced on cross-examination.

encountered the defendant, he used violence, coercion, threats and intimidation to assault them, and force them to perform oral sex on him and that he never paid for their services, just as W.W. testified. This evidence also highlighted the defendant's pattern of perpetrating violence upon and exploiting vulnerable individuals.

As we have found with regard to W.W.'s testimony, M.H. and D.C. were thoroughly cross-examined by defense counsel. Any inconsistencies, lack of supporting physical evidence, and any other matters bearing on the credibility of M.H. and D.C. were placed before the jury. Additionally, the defendant testified at trial and provided the jury with his own version of the events that transpired involving M.H. and D.C., and denied ever having assaulted them sexually or otherwise or engaging in sex of any nature with either of them.

The trial court, in its discretion, found that the testimony of M.H. and D.C. was probative and not outweighed by the risk of substantial prejudice. We find no abuse of discretion in the district court's findings. Further, as stated above, the evaluation of the credibility of witnesses is within the sound discretion of the trier of fact, in this case, the jury and we will not reweigh its credibility evaluations on appeal.

Additionally, once the defendant elected to testify and stated under oath that he had never forced anyone to do anything sexually against their will, the State had the right to test that assertion on cross-examination. As stated above, defense counsel repeatedly objected to the State's questioning of Mr. Simpson about the other six allegations of sexually assaultive behavior. The first such objection was made to the State's questioning of the defendant relative to D.M., an individual and incident not disclosed in the State's Notice of Intent. Counsel also objected on the grounds that the defendant had not been

convicted of anything in conjunction with that incident, a requirement that is not contained in Article 412.2. The district court overruled the defendant's objection on the basis that the defendant's testimony that he had never forced anyone into any sexual acts had opened the door to such questioning.

Defense counsel also objected to the State's questions concerning F.A., arguing that questions relative to choking F.A., pulling her into a car and striking her were irrelevant to the sexual act that was involved in that incident, in which F.A. alleged that the defendant had exposed himself to her in the car and had attempted to make her touch his penis. The district court overruled this objection on the basis that the violent acts were within the scope of sexually assaultive behavior.

The district court sustained defense counsel's objection to questions related to A.R. on the basis that the police report used to question the defendant was not authored by him and was hearsay. However, objections concerning N.S. on the basis that the State's questions were irrelevant and prejudicial were overruled. Further, the State's questioning of the defendant relative to incidents involving S.J. and T.C. did not draw any objections from defense counsel.

La. C.Cr.P. art. 841 requires that a contemporaneous objection must be made to any claimed violation of the confrontation clause in order to preserve the issue for appeal. *State v. Harris,* 17-303 (La. App. 5 Cir. 12/20/17, 2235 So.3d 1354, 1368, *writ denied,* 18-160 (La. 6/15/18), 257 So.3d 675; *State v. Smith,* 11-638 (La. App. 5 Cir. 3/13/12), 90 So.3d 1114, 1123 ("[a]n irregularity or error cannot be availed of after verdict unless it was objected to at the time of the occurrence" and the grounds for the objection are stated on the record); *State v. Snyder,* 12-896 (La. App. 5 Cir. 10/9/13), 128 So.3d 370, 377, *writ denied,* 13-2647 (La. 4/25/14), 138 So.3d 643 (a defendant is

limited on appeal to those grounds articulated at trial). Our review of the record reveals that defendant's hearsay objections, asserted for the first time with this Court, were not properly preserved for appeal.

Further, defense counsel admitted that they were provided with the police reports well in advance of trial and that the defendant was aware that he could be cross-examined at trial on the basis of the information contained in the police reports. La. C.E. art. 611(B) provides that a witness may be cross-examined on any matter relevant to any issue in the case, including credibility. Although as a general rule, a witness may only be cross-examined on offenses for which the witness has been convicted, the Louisiana Supreme Court has sanctioned the introduction of any evidence when the defendant has opened the door. *See State v. Edwards,* 420 So.2d 663, 675 (La. 1982). Additionally, if one side has partially gone into a matter during its direct examination, the other side may fully explore the matter in cross-examination. *Id.* Any doubt as to the propriety or extent of cross-examination is to be resolved in favor of allowing the cross-examination. *Id.* at 675.

The defendant specifically denied having ever engaged in any sexually coercive conduct. We find that this denial opened the door to questioning relative to other allegations of sexually coercive conduct made against the defendant. Thereafter, the State's questions on cross-examination were directly tied to the issue of consent raised by the defendant's testimony which was proper subject of cross-examination for impeachment purposes.

Even if the trial court erred in admitting the testimony of M.H. and D.C. and in permitting the State to cross-examine the defendant relative to other allegations of sexually coercive or assaultive behavior, we find such errors to be harmless. See *State v. Frickey,* 22-261 (La. App. 5 Cir. 3/1/23), 360 So.3d 19, 50, *writ denied,* 23-468 (La. 11/8/23), 373 So.3d 59. In determining

whether an error is harmless, the question is not whether had the trial occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in the trial was surely unattributable to the error. *Id.* An error is harmless beyond a reasonable doubt if it is unimportant in relation to the whole. *State v. Brown,* 16-998 (La. 1/28/22), 347 So.3d 745, 791, *reh'g denied,* 16-998 (La. 3/25/22), 338 So.3d 1138, and *cert. denied,* -- U.S. --, 143 S.Ct. 886, 215 L.Ed.2d 404 (2023).

As we discussed above, the jury's verdict is a clear indication that it believed W.W.'s testimony to the effect that the defendant procured oral sex from her through violence, threats and intimidation. We have found that W.W.'s testimony alone was sufficient, beyond a reasonable doubt, to convict the defendant of the crime of sexual battery. Accordingly, any error of the trial court in admitting the testimony of M.H. and D.C. and in permitting the State to cross-examine the defendant about prior allegations of sexually assaultive behavior made against him by non-testifying witnesses was harmless.

Defense counsel's Assignment of Error No. 2 is without merit.

Defense Counsel's Assignment of Error No. 3:

In this assignment of error, defense counsel contends that the district court erred in failing to rule on defendant's Motion to Reconsider Sentence filed on March 27, 2024, following the habitual offender sentencing hearing. Counsel contends that the defendant received the maximum twenty-year sentence as a second felony offender, but without a ruling on his Motion to Reconsider Sentence, he cannot properly challenge the sentence of appeal. Counsel asks us to remand the matter for a ruling on his Motion to Reconsider Sentence, preserving his right to appellate review of his sentence.

Since the district court has not ruled on the defendant's Motion to Reconsider the Sentence, his sentence on the Multiple Bill is not before us.

The defendant is entitled to have the district court rule on his Motion to Reconsider Sentence, after which, he may preserve his right to appeal that sentence. See *State v. Mosley*, 10-266 (La. App. 5 Cir. 11/9/10), 54 So.3d 692, 697.

Pro Se Assignment of Error No. 1:

In his first assignment of error, the defendant contends that the State violated his constitutional rights when it improperly used his post-arrest silence to impeach his statements, made under oath, that he had always fully cooperated with the police any time he has been investigated and that he fully cooperated with the detectives in this case. On cross-examination, the State impeached the defendant by questioning his failure to make a statement to the detectives investigating this case, despite the fact that no request for a statement was made to the defendant. Defense counsel objected to this question and moved for a mistrial, which the trial court denied. After an approximately one-hour lunch break, the district court admonished the jury that they could not consider defendant's silence against him in its deliberations. Herein, the defendant contends that the State's reference to his silence unfairly prejudiced the jury and violated his right to a fair trial, warranting reversal and remand.

On direct examination, the defendant emphasized his cooperation with law enforcement in incidents involving W.W., M.H., D.C. and others. He stated that he voluntarily cooperated in the investigation of the incident involving W.W., but admitted that he asked to be presented with a search warrant prior to providing a buccal swab. According to the defendant, after the warrant was presented, he cooperated fully with law enforcement's investigation of the incident.

Defendant further testified that, when M.H. accused him of sexual assault in October 2017, he fully cooperated with the investigation and allowed a search of his residence without requiring a search warrant. Regarding the April 2020 incident involving D.C., the defendant again claimed thorough cooperation with law enforcement's investigation after requiring a search warrant in order to search his residence.

On cross-examination, the defendant testified that "all the reports" indicated that he had always cooperated with law enforcement. Defendant highlighted incidents in which he voluntarily provided officers with access to his cellphone, consented to searches and fully explained events to the investigating officers, including the investigation of an incident involving N.S. The State then questioned the defendant's claims of cooperation by asking whether he had refused to provide a buccal swab in this case until he could observe a warrant. Defendant admitted that he had asked for a search warrant prior to providing a buccal swab in this case but maintained that his request for a search warrant did not conflict with his overall cooperation. The State then asked the defendant whether he had made a statement to Det. Vega once the detective had taken the defendant's buccal swab so that he could cooperate and be completely up front. Defendant never answered the State's question and defense counsel objected.

When defense counsel objected to this question, the State contended that the defendant had opened the door to the question by stating that he was fully cooperative with law enforcement. The district court denied the defendant's motion for a mistrial and then called a recess for lunch. During the lunch recess, defense counsel asked the district court to admonish the jury that they could not consider any questions or comments relative to whether the defendant made any statements to police investigating the crime for which

he was on trial. Once the jury was brought back in, the district court did admonish the jury to disregard any questions or statements made by the Assistant District Attorney relative to whether or not the defendant gave a statement to the investigating detectives in this case and explained that the Assistant District Attorney's statements were not evidence and could not be considered by the jury.

Following the admonishment, the State asked the defendant whether he had ever told anyone prior to trial that there had been a man in W.W.'s apartment who tried to rob him. The defendant stated that he had told this to his counsel.

In *Doyle v. Ohio,* 426 U.S. 610, 620, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976), the United States Supreme Court held that reference for impeachment purposes to a defendant's silence at the time of his arrest and after he has been Mirandized violated the defendant's due process rights. The Court explained that "[e]very post-arrest silence is insolubly ambiguous because of what the State is required to advise the person arrested…it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial." 426 U.S. at 617-18, 96 S.Ct. at 2244-45. Accordingly, a prosecutor cannot make reference to the fact than an accused exercised his constitutional right to remain silent after he had been advised of the right, solely to ascribe a guilty meaning to his silence or to undermine, but inference, an exculpatory version related by the accused for the first time at trial. *State v. Robinson,* 04-964 (La. App. 5 Cir. 2/15/05), 896 So.2d 1115, 1126, citing *State v. Arvie,* 505 So.3d 44, 46 (La., 1987).

Not every mention of the defendant's post-arrest silence is proscribed by *Doyle*, however. An oblique and obscure reference to a defendant's post-

arrest silence, where the examination does not stress the right to remain silent or attempt to elicit testimony regarding the defendant's failure to respond to police questioning does not constitute reversible error. *State v. Longo,* 08-405 (La. App. 5 Cir. 1/27/09), 8 So.3d 666, 672. The State may pursue a line of questioning that attempts to summarize the extent of the investigation when such questions are not designed to exploit the defendant's failure to claim his innocence after his arrest in order to impeach his testimony or attack his defense. *State v. Ledesma,* 01-1413 (La. App. 5 Cir. 4/30/02, 817 So.2d 390, 393. The State may also refer to the defendant's post-arrest silence where the post-arrest silence is relevant to rebut an assertion by the defense that the arresting officer failed to properly investigate or that the defendant actively cooperated with the police when he was arrested. *State v. Bell,* 446 So.2d 1191, 1194 (La. 1984).

Article 770(3) of the Louisiana Code of Criminal Procedure prohibits the judge, the district attorney or a court official, within the hearing of the jury, from directly or indirectly commenting, during the trial or in argument, on the defendant's failure to testify in his own defense. If such a reference or comment is made, the district court must grant a mistrial on a motion by the defense, unless defense counsel requests only an admonishment. If an admonishment is requested, the district court must promptly give it. This article does not address comments on the defendant's post-arrest silence after being *Mirandized,* which are controlled by C.Cr.P. art. 771. *State v. Barr,* 18-1111 (La. App. 1 Cir. 2/28/19), 275 So.3d 9, 12-13, *writ denied,* 19-706 (La. 10/15/19), 280 So.3d 599.

Article 771 provides that when a comment, not within the scope of Article 770, is made by the judge, the district attorney, a court officer or a witness, the district court, upon request of the defendant or the State must

promptly admonish the jury to disregard the comment or remark. If the district court is convinced that an admonishment is insufficient to ensure that the defendant will receive a fair trial, the district court may, on motion of the defendant, grant a mistrial. *State v. Olivieri,* 03-563 (La. App. 5 Cir. 10/28/02), 860 So.2d 207, 213. Further, following a brief reference to post-arrest silence, a mistrial is not required, nor is a reversal of the defendant's conviction warranted on appeal, where the record reflects that the trial as a whole was fairly conducted, the proof of guilt is strong, and the prosecution made no use of the silence for impeachment purposes. *Ledesma,* 817 So.2d at 393.

In this case, the State's question to the defendant inquiring whether the defendant ever made a statement to Det. Vega after his buccal swab was taken falls within the ambit of Article 771. Based on our review of the record, the State's question was designed to impeach the defendant's repeated assertions of full cooperation with law enforcement in every instance. In *United States v. Fairchild,* 505 F.2d 1378 (5th Cir. 1975), the Court found that questions of the prosecutor regarding the defendant's post-arrest, post-*Miranda* silence may be introduced to rebut the false impression given by the defendant that he actively cooperated with the police when, in fact, he has not. The Court stated:

> Assuming the law would have excluded from evidence [the defendant's] silence had he not broached the subject of cooperation, once he did broach it the bar was lowered and he discarded the shield which the law had created to protect him.

505 F.2d at 1383, citing *Michelson v. United States,* 335 U.S. 469, 69 S.Ct. 213, 93 L.Ed. 168 (1948); *Walder v. United States,* 347 U.S. 62, 74 S.Ct. 354, 98 L.Ed. 503 (1954).

Accordingly, we find that the defendant opened the door to the State's question relative to whether he had made a statement to Det. Vega once his buccal swab had been taken and that State was permitted to rebut the defendant's portrayal of complete cooperation. We find no abuse of the district court's discretion in failing to grant the defendant's motion for a mistrial. Moreover, even if the district court had abused its discretion by denying the defendant's motion for a mistrial, its actions in this regard are subject to a harmless error analysis. *State v. Duong,* 113-763 (La. App. 5 Cir. 8/8//14), 148 So.3d 623, 643, *writ denied* 14-1883 (La. 4/17/15), 168 So.3d 395. Because the evidence was sufficient, beyond a reasonable doubt, to convict the defendant of sexual battery, we find that the verdict was "surely unattributable to [any] error" that might have been made by the trial court in denying the defendant's motion for a mistrial. See *State v. Johnson,* 94-1379 (La. 11/27/95), 664 So.2d 94, 102, citing *Sullivan v. Louisiana,* 508 U.S. 275, 279, 113 S.Ct. 2078, 2081m 124 L.Ed.2d 183 (1993).

Finally, immediately after denying the defendant's motion for a mistrial, the district court called the lunch recess. Prior to the jury being brought in after lunch, defense counsel, for the first time, requested an admonition, which the district court immediately gave to the jury upon their return to the courtroom. We find that the trial court's admonishment of the jury was sufficient to ensure that the defendant was able to obtain a fair trial. See *State v. Steward,* 95-1693 (La. App. 1 Cir. 9/27/96), 681 So.2d 1007, 1018 (admonishment by the district court was sufficient to ensure that the defendant could obtain a fair trial); *State v. Franklin,* 23-524 (La. App. 5 Cir. 8/28/24), 2024 WL 3963967, *clarified on reh'g,* 23-524 (La. App. 5 Cir. 9/19/24) (district court's admonishment to jury to disregard the prosecutor's reference

to the defendant's post-custodial silence after obtaining counsel was sufficient to ensure that the defendant could obtain a fair trial).

Defendant's pro se Assignment of Error No. 1 is without merit.

Pro Se Assignment of Error No. 2:

In this assignment of error, the defendant contends that the State's untimely disclosure of W.W.'s grandmother, Linda Perez, as a witness violated his constitutional rights to due process and a fair trial. The State did not inform defense counsel prior to trial that the State would be calling Ms. Perez as a witness. Nor did the State question potential jurors during *voir dire* whether any of them knew Ms. Perez. It was not until after the jury was selected and sworn in that the State divulged that it would be calling Ms. Perez as a witness.

According to the defendant, the testimony of Ms. Perez was particularly damaging because she testified about W.W.'s emotional state after the incident and implied that he had committed prior bad acts. The defendant claims that the district court should have excluded Ms. Perez's testimony or reopened *voir dire* and that its failure to do either of those things deprived him of a fair opportunity to defend himself. This assignment of error lacks merit.

The State, while initially contending that the police reports provided to the defense in discovery contained Ms. Perez's initials, it ultimately conceded that no such initials appeared in any police report and that she was referred to therein simply as "a relative." Nevertheless, although the defense had requested in discovery to be provided with the identity of each witness of the alleged offense, the State contended that it was not required to provide the defense with a witness list and was not required to inform the jury during *voir dire* of the identity of its witnesses since it did not know for certain which witnesses it would call.

A defendant is not entitled to a pretrial list of the State's witnesses. La. C.Cr.P. art. 716(F) provides that the State is not obligated to provide any defendant with a witness list for any trial or pretrial matter. The prosecution's witness list is not generally discoverable unless the district court determines that there exist peculiar and distinctive reasons why fundamental fairness dictates the discovery of such material. *State v. Weathersby,* 09-2407 (La. 3/12/10), 29 So.3d 499, 501 (*per curiam*). A defendant must also show prejudice to warrant relief based on the State's late identification of a witness. Absent prejudice or demonstrated juror conflict, there is no basis to reopen *voir dire* once the defendant learns of the identity of a previously undisclosed witness. See *State v. Berry,* 95-1510 (La. App 1 Cir. 11/8/96), 684 So.2d 439, *writ denied,* 97-278 (La. 10/10/97), 703 So.2d 603; *State v. Vice,* 22-51 (La. App. 3 Cir. 4/19/23), 365 So.2d 155, 159-60, 163, *writ denied,* 23-669 (La. 11/21/23), 373 So.3d 457.

In this case, the defendant made no showing in the district court, nor does it make any before this Court, of any extraordinary circumstances sufficient to require the exclusion of Ms. Perez as a witness, or to justify the reopening of *voir dire* by the district court once Ms. Perez was disclosed as a witness. The police reports referring to a "family member" had been provided to defense counsel far in advance of the trial. Thus, the defense was at least on notice that there was a potential unidentified witness. Although the State acknowledged that its omission of Ms. Perez's name during *voir dire* was inadvertent, the defendant has made no allegation nor has he produced any evidence that any juror was familiar with Ms. Perez. Defendant has also not shown how her testimony impaired the ability of his counsel to prepare for trial, or his ability to receive a fair trial. In fact, defense counsel stated that

the defense did not believe that Ms. Perez's testimony added anything to the State's case.

Ms. Perez was the first person to whom W.W. reported the sexual assault and the one who encouraged W.W. to report the incident to the police. Her testimony relative to W.W.'s mental state was cumulative of W.W.'s own testimony in that regard. Ms. Perez did not possess any knowledge or information that was not possessed by W.W. and, as we have already discussed, W.W.'s testimony, standing alone, was sufficient beyond a reasonable doubt, to convict defendant of the crime of sexual battery of W.W.

Admission of evidence is subject to the discretion of the district court. *Denton v. Vidrine,* 06-0141 (La. App. 1 Cir. 12/28/06), 951 So.2d 274, 285. We find no abuse of discretion by the district court in permitting Ms. Perez to testify or in denying the defendant's request to reopen *voir dire.*

Defendant's Pro Se Assignment of Error No. 2 is without merit.

ERRORS PATENT REVIEW

We have reviewed the record for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux,* 312 So.2d 337 (La. 1975); *State v. Weiland,* 556 So.2d 175 (La. App. 5 Cir. 1990). We have previously discussed the scope of appeal and the defendant's outstanding motion to reconsider sentence involving the multiple bill proceedings in our discussion of defense counsel's Assignment of Error No. 3. Additionally, the district court failed to observe the twenty-four-hour delay between denial of the defendant's Motion for New Trial and Motion for Acquittal and the imposition of defendant's original sentence. The record does not reflect that defendant expressly waived delays, which would generally require us to vacate defendant's sentence and remand the matter for resentencing. *State v. Taylor,* 20-215 (La. App. 5 Cir. 4/28/21), 347 So.3d 2008, 1023. When, as here, the original sentence has been set aside

in a habitual offender proceeding, however, the failure to observe the twenty-four-hour delay is harmless. *State v. Cummings,* 10-891 (La. App. 5 Cir. 10/25/11), 79 So.3d 386, *writ denied,* 11-2607 (La. 4/9/12), 85 So.3d 693. Accordingly, no corrective action is required.

DECREE

For all of the reasons stated above, defendant's conviction for sexual battery is affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES

FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. WISEMAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 16, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-KA-250

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE E. ADRIAN ADAMS (DISTRICT JUDGE)
HOLLI A. HERRLE-CASTILLO (APPELLANT)
THOMAS J. BUTLER (APPELLEE)
DARREN A. ALLEMAND (APPELLEE)
MATTHEW R. CLAUSS (APPELLEE)

MAILED
SHANNON SIMPSON #753150 (APPELLANT)
ALLEN CORRECTIONAL CENTER
3751 LAUDERDALE WOODYARD ROAD
KINDER, LA 70648

BRITTANY BECKNER (APPELLEE)
HONORABLE PAUL D. CONNICK, JR. (APPELLEE)
ZACHARY L. GRATE (APPELLEE)
ASSISTANT DISTRICT ATTORNEYS
TWENTY-FOURTH JUDICIAL DISTRICT
200 DERBIGNY STREET
GRETNA, LA 70053