Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-388

STATE OF LOUISIANA

versus

PAUL J BEEBE JR

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 23-5160, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

April 29, 2026

FREDERICKA HOMBERG WICKER

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Scott U. Schlegel, and Timothy S. Marcel

CONVICTION AND SENTENCES AFFIRMED,
REMANDED FOR CORRECTION OF UCO

FHW
SUS
TSM

COUNSEL FOR DEFENDANT/APPELLANT,
PAUL J. BEEBE, JR.
Richard J. Richthofen, Jr.

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA
Honorable Paul D. Connick, Jr.
Thomas J. Butler
Darren A. Allemand
Lindsay L. Truhe
Brendan Bowen

WICKER, J.

Appellant, Paul Beebe, appeals his conviction and sentence for first degree rape, a violation of LSA-R.S. 14:42.[1] For the reasons stated below, Appellant's conviction and sentence are affirmed.

PROCEDURAL HISTORY

Appellant, Paul Beebe ("Appellant") was indicted, on February 29, 2024, by a Jefferson Parish grand jury, for the first degree rape of T.B., in violation of La. R.S. 14:42. He was arraigned and pled not guilty.

On February 7, 2025, the State filed a Motion in Limine asking that certain evidence be excluded under La. C.E. art. 412.[2] The case proceeded to trial on February 10, 2025. Prior to jury selection, the trial court heard the State's Motion in Limine. The State informed the court that its motion sought to exclude evidence of prior false allegations of sexual assault, even though the defense had not urged any such incident or its admissibility. At that point, defense counsel informed the court that the defense understood Article 412 and did not intend to offer any such evidence. Thereafter the trial court granted the State's Motion in Limine as requested. Jury selection then proceeded and opening statements were presented.

Testimony and evidence were presented on February 11, 2025. On the following day, the jury found Appellant guilty as charged. Appellant filed a Motion for a New Trial on February 18, 2025, asserting that the verdict was contrary to the law and evidence and that his defense was prejudiced when he was not permitted to cross-examine the victim, T.B., about a similar incident that

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[1] Appellant assigned no error relative to his sentence. A conviction of the crime of first-degree rape carries an automatic life sentence, without benefit of parole, probation or suspension of sentence.

[2] Relevant to this appeal, La. C.E. art. 412 excludes certain evidence such as the past sexual behavior of the victim and the victim's attire at the time of the alleged offense; provided, however, that prior false allegations of sexual assault may be admissible for impeachment purposes if certain procedures are followed, certain evidence presented, and certain findings made by the district court, after a hearing. *See State v. Smith,* 98-2045 (La. 9/8/99), 745 So.2d 199, 202-04.

involved domestic battery. The trial court denied the Motion for New Trial the same day and proceeded directly to sentencing. On February 20, 2025, the trial court vacated Appellant's sentence due to the court having not observed the required twenty-four-hour delay between the denial of a motion for new trial and sentencing. The court then sentenced Appellant to the mandatory sentence of life in prison, at hard labor, without the benefit of probation, parole, or suspension of sentence, with credit for time served. Appellant was informed that the crime of first degree rape was designated as a crime of violence and that he was required to register as a sex offender for life. He was then advised of the delays for appeal and for seeking post-conviction relief.

Motions for Reconsideration of Sentence and for appeal were filed on February 24, 2025. The Motion for Reconsideration of Sentence was denied and the Motion for Appeal was granted on May 7, 2025. This appeal timely followed.

ASSIGNMENTS OF ERROR

Appellant assigns two errors in this appeal. First, he asserts that the trial court erred by misapplying the Rape Shield Law, La. C.E. art. 412, to prohibit him from introducing evidence of T.B.'s previously withdrawn allegations of improper sexual behavior for impeachment purposes. Second, he contends that the trial court erred in denying his Motion for a New Trial on the grounds that the contradictory evidence and testimony presented at trial was insufficient to support his conviction on the charge of first degree rape, a violation of La. R.S. 14:42.

INITIAL DISCUSSION

When the issues on appeal relate to both sufficiency of the evidence and one or more trial errors, the reviewing court should first determine the sufficiency of the evidence by considering the entirety of the evidence, under the standard set forth in *Jackson v. Virginia,* 450 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). *State v. Hearold,* 603 So.2d 731, 734 (La. 1992); *State v. Mouton*, 22-444 (La.

App. 5 Cir. 12/29/22), 358 So.3d 106, 113.[3] Accordingly, we first address Mr. Beebe's second assigned error. In so doing, we initially set forth the testimony and exhibits introduced at trial.

STATEMENT OF FACTS

The facts were presented through the testimony of the witnesses at trial. Their testimony is discussed below.[4]

T.B.

Direct Examination

The victim, T.B., who was sixty years old at the time of trial, testified that in May 2023, she was homeless and was staying with her good friend, John (JJ) Beebe ("John") at his apartment located in Metairie, Louisiana. John, who was Appellant's brother, would often allow T.B. to stay at his apartment and she had been staying there for some time prior to May 13, 2023.

During the daylight hours of May 12, 2023, Appellant arrived at John's apartment. John was not at home at that time but T.B. was there. According to T.B., she had only met Appellant on a couple of occasions prior to that time. After John arrived home from work, the three sat around drinking beer and talking. While Appellant and John were engaged in a conversation, T.B. sat in the recliner and watched television or listened to music. At some point, Appellant stood up as if to leave but fell to the floor and passed out. John covered him with a blanket and left him on the floor to sleep. T.B. fell asleep in the recliner. She was fully clothed and covered with a blanket.

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[3] 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. Appellant did not file such a motion but did challenge the sufficiency of the evidence post-trial through a Motion for New Trial. Therefore, we will address his claim of insufficiency.

[4] Adrian Mitt, who was called as a witness by the defense had no information regarding the incident and his testimony is not discussed herein.

On two separate occasions during the night, T.B. felt someone (Appellant) touching her body. She told him to "Stop!" and he did.[5] The next morning, T.B. awoke to find Appellant's hands on her neck, squeezing. He stated, "I told you I would get you by yourself, spend time by ourselves."[6] He then started dragging her by her hair towards the back of the apartment, at the same time, tearing at her pants and pulling his own down. She kicked him and he went "flying into the bicycles." She then tried to run, but Appellant caught her and dragged her by her hair to the bedroom. He threw her on the bed and tried to turn her over. At that time, Appellant penetrated her anus with his finger.

T.B. stated that she was trying to keep her legs tightly closed, but Appellant punched her in her "bad hip" several times, trying to get her legs open.[7] T.B. was yelling, hoping that one of the neighbors would hear, but Appellant repeatedly slapped and punched her in the face and told her the more she yelled, the more he would hit her. He then vaginally raped her. According to T.B. the vaginal rape occurred in the bedroom when she was lying on her back.

T.B. testified that she did not consent to Appellant inserting his finger into her anus or his penis into her vagina. Nor did she consent to being beaten and strangled. T.B. described being strangled so hard by Appellant that she saw white spots and urinated on herself. T.B., who is under five feet tall, stated that Appellant overpowered her. She denied having taken off any items of clothing herself.

After Appellant ejaculated inside her vagina, he got up, got dressed, walked out of the bedroom, and sat on a chair. T.B. was still on the bed. A few minutes

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[5] When first testifying about the incident at trial, T.B. did not mention these two touching incidents. At the time of the incident, however, T.B. had related this to the individuals investigating her allegations. At trial, she only mentioned these two touching incidents after being reminded of her prior statements to these individuals.

[6] John was not in the apartment at this time; he had gone to work.

[7] T.B. later testified that Defendant repeatedly punched her in her right hip.

later, she grabbed a bedspread to cover her naked body and ran out of the apartment to a neighboring apartment where she banged on the door and yelled for help. She did not recall whether she ran to the apartment of "Mr. Jerry" or "Ms. Fran;" T.B. told both, however, that Appellant had raped her.[8] T.B. refused to call 9-1-1 because she was terrified. Later, "Ms. Fran" called 9-1-1. When the investigating deputies and medical professionals arrived on the scene, T.B. informed them that Appellant had raped her and described to them how the attack unfolded, just as she had to Jerry and Ms. Alleman. She signed the back of a photograph of Appellant, stating that Appellant was the person who raped her. T.B. identified the photograph and her signature in court. She also identified Appellant in court as the person who raped her on May 13, 2023.

Cross-Examination

On cross-examination, T.B.'s testimony was much the same as her testimony on direct. She testified about the events of the evening of May 12, 2023, and said that Appellant was pleasant and polite to her during the evening. He did not flirt with her or express a desire to be intimate with her. Drinking did not change Appellant's pleasant demeanor. She and Appellant did not argue that evening.

Asked about the touching incidents that she had described to law enforcement and/or medical personnel, T.B. stated that Appellant had touched her leg during the night before he choked her in the morning. She told Appellant to "Stop!" and to wake John up because he had to go to work. She explained that she asked Appellant to wake John because then John "would be in the same room [with Appellant] after [Appellant] did that," referring to the touching incident(s). T.B. then went back to sleep and did not know whether John had left for work.

[8] "Ms. Fran" refers to Francine Alleman, John's next-door neighbor, who was T.B.'s friend. "Mr. Jerry" was John's next-door neighbor on the other side.

She subsequently awoke to Appellant strangling her, which she told the deputies and medical personnel at the scene.

T.B. further elaborated that she fought back against Appellant as hard as she could – ultimately, to no avail. T.B. stated that glass was broken during the initial struggle that occurred in the front of the apartment when she kicked Appellant in her attempt to escape.

T.B. stated that she could not recall which piece of her clothing was torn off first or where it occurred. She only knew that while she was in the bedroom all her clothes were off. T.B. described yelling and thrashing about while she was being dragged to the bedroom and "[e]specially in the bedroom . . . because the neighbors' bedrooms are, you know, on each side the walls. So, I'm screaming, screaming, screaming, trying to hit the wall. I'm hitting the wall and every time I do that, he's hitting me worse, more and more on [my] face, hip, everywhere." T.B. stated that she was yelling "at the top of [her] lungs." Asked whether Appellant hit her with a closed fist, T.B. stated that Appellant hit her face hard with the back of his hand more than once, but she was not sure whether he struck her with a closed fist. After a brief period, T.B. stopped resisting and let him do what he wanted because she was afraid that Appellant would break her jaw or kill her.

T.B. also testified that when Appellant stuck his finger in her anus, she defecated. She stated that she kept clinching her legs and holding them "tight, tight, tight," and Appellant kept punching her in her right hip.

T.B. stated:

> You know, it just – everything happened so fast. You know, but it should have never happened. He should have never touched me. I never gave that man no kind of leeway, no – I never teased that man, nothing. I was sleeping. He shouldn't have never touched me.

T.B. reiterated that she did not go to the bathroom and did not shower or clean herself up after the incident. She hid in the bathroom doorway to ascertain when it would be safe for her to leave. When she thought that it was safe, she ran out of the apartment, wrapped in a blanket or bedspread, to a neighboring apartment.

Although T.B. went back inside John's apartment after the deputies arrived on the scene, she did not stay at John's apartment again following the incident. Her belongings were given to Ms. Fran and she picked them up from her apartment.

Francine Alleman

Ms. Alleman testified that she lives in the apartment next door to John's. Their apartments share a wall. On the other side, John's apartment shares a wall with an apartment which, at the time of the incident, was occupied by a tenant named "Jerry."

Ms. Alleman stated that she had lived at the apartment complex for approximately nine years and was living there on May 13, 2023. John had lived there for approximately eight years. He and Ms. Alleman were friends.

Ms. Alleman met T.B. when T.B. was in the apartment complex staying at John's apartment and had known T.B. for approximately three to four years. Ms. Alleman stated that T.B. had been living with John in his apartment on and off for about a year prior to the date of the incident. She was friendly with T.B. but had only met Appellant in passing on a couple of occasions.

Ms. Alleman stated that on the morning of the incident, she did not hear T.B. screaming, did not hear John's dog barking, and did not hear any other commotion on the other side of her bedroom wall. She stated that she normally would hear any loud noises on the other side of the wall in John's apartment, noting that the "walls [were] thin."

At approximately 10:00 a.m., on May 13, 2023, Ms. Alleman saw, through her Ring doorbell video footage, T.B. outside her apartment, wrapped in a blanket. She went out to see what was going on with T.B., who then informed her that she had been raped by John's brother. About two hours later, Ms. Alleman called and reported the rape. The recording of Ms. Alleman's 9-1-1 call was introduced into evidence without objection and played to the jury. Ms. Alleman identified her voice on the recording and confirmed that she had made the 9-1-1 call on May 13, 2023.

In the 9-1-1 call, Ms. Alleman informed the dispatcher that she was calling for her neighbor. T.B., who had been raped and related the following:

At about 10 a.m., Ms. Alleman was sleeping in the back bedroom of her apartment when her dog started barking and running around. She was expecting a package, so she looked at her Ring doorbell footage to see whether the package had been delivered. What she observed was T.B. standing in front of her apartment, wrapped in a blanket, leaning over to knock on Ms. Alleman's door.[9] T.B. was homeless and had been staying on-and-off with Ms. Alleman's neighbor, John, for several years. Ms. Allman quickly dressed and ran to the door to see what was wrong.

When Ms. Alleman went outside, she saw T.B. talking to Jerry.[10] Ms. Alleman saw that T.B. had been beaten. T.B. was crying and shaking. T.B. stated that John's brother, "Paul," had raped her.[11] The left side of T.B.'s face was bloody, her jaw and left hip were bruised, and she had red marks and scratches on her left shoulder. T.B. told Ms. Alleman that she was sleeping in the recliner in John's apartment earlier that morning and woke to find Appellant on top of her.

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[9] Ms. Alleman described T.B. as a "tiny." She stated that T.B. was fifty-nine years old at the time of the incident.

[10] Jerry did not testify at trial. Ms. Alleman stated that Jerry moved out of the apartment complex a couple of months after the incident and that she did not know where he had gone.

[11] T.B. had also told Jerry that Appellant had raped her.

T.B. stated that she had requested that John take Appellant with him when he left for work because she did not want to be alone with Appellant in the apartment, but that did not happen.

T.B. told Ms. Alleman that she fought back against Appellant, and he dragged her to the bedroom, where he penetrated her anus with his finger and penetrated her vaginally with his penis. T.B. stated that Appellant said words to the effect of "I've been waiting for this all night;" and "We can do this all day." T.B. also said that during the rape, Appellant was holding his hand over her mouth, holding her down and beating her.

Ms. Alleman saw Appellant leave John's apartment at approximately 10:10 a.m. but he immediately went back to the apartment, then left again. This was captured on Mr. Alleman's Ring doorbell footage (which was introduced into evidence without objection and published before the jury). The second time he left John's apartment, Appellant got into a red sports car with white stripes on it and drove off.

Ms. Alleman took T.B. into her apartment and told her that she needed to call 9-1-1 to report the incident. T.B. refused, stating that she was scared to call the police. T.B. repeatedly asked what she did to "deserve this."

John's apartment was in a state of complete disarray when Ms. Alleman saw it. There was broken glass "everywhere." At T.B.'s request, Ms. Alleman called John and asked him to come home, which he did, about thirty to forty-five minutes later. Melvin Favor, John's boss, brought him back to the apartment, entering John's apartment with him. T.B. went back to John's apartment to talk to him. Ms. Alleman also went to John's apartment where she found John "freaking out" and picking things up in the apartment. Ms. Alleman told him not to move anything. Mr. Favor took some photographs of the apartment and T.B.'s face. Ms.

Alleman took photographs of T.B.'s hip and shoulder. She then went back into her own apartment to call 9-1-1.

T.B. was in shock, crying and terrified when Ms. Alleman left John's apartment. She was still in that state when Ms. Alleman called 9-1-1 a couple of hours after the incident. T.B. continued to say that she was afraid to call 9-1-1 and did not know that Ms. Alleman was calling them to report the rape.

Ms. Alleman was shown photographs of T.B. taken on the date of the incident and confirmed that they depicted T.B.'s injuries on that date. The photographs were admitted without objection and published to the jury. Ms. Alleman was unable to identify Appellant at trial, stating that she had only seen him briefly on a couple of occasions and had not seen him at all since May 13, 2023.

John Beebe

Direct Examination

John stated that when he arrived home from work at around 5:00 or 6:00 p.m., on May 12, 2023, Appellant and T.B. were outside talking. T.B. did not appear to have been injured in any way at that time. Once John arrived, they all went into John's apartment and "had a couple of beers and joked around."

Later, Appellant fell asleep on the living room floor of John's apartment. T.B. asked John to take Appellant into the bedroom, but John refused, telling T.B. that Appellant "was used to sleeping on the floor." John then went to sleep on the sofa, leaving T.B. sitting in the recliner, watching television. John denied having sex with T.B. that night or injuring her in any way on the evening of May 12, 2023, or the morning of May 13, 2023.

John had to work the following day at Farber Awards, which is about a fifteen-minute drive from the apartment. His boss, Mr. Favor, picked John up at around 8:00 or 9:00 a.m. on Saturday, May 13, 2023. When John left for work,

T.B. and Appellant were in the apartment. John would not agree that they were the only ones in the apartment when he left but stated that they were the only ones he *saw* in the apartment. John testified that T.B. was not injured when he left for work. About thirty minutes after they arrived at work, Ms. Alleman called and said that John needed to come home because his brother had raped his fiancé.[12] He and Mr. Favor immediately went back to John's apartment and found T.B. in Ms. Alleman's apartment. Appellant was not on the scene.

John was shown photographs of T.B. taken by the police on the day of the incident and asked whether they accurately depicted the way T.B. looked when John got back to the apartment. He said that they did not; according to him, she did not look that bad when he arrived. He stated that Mr. Favor had taken photographs of T.B. that did not show her being beaten up as badly as the police photos presented to him at trial.

John testified that after Mr. Favor left, he and T.B. went back to his apartment. According to John, T.B. did not tell him that Appellant had beaten her or raped her; nor did he ask her what happened. John only knew that T.B. was accusing Appellant of beating and raping her through Ms. Alleman's having told that to Mr. Favor when she called for John to come home. Once inside John's apartment, T.B. started "gathering her little stuff."

Law enforcement had not arrived on the scene when they re-entered John's apartment because Ms. Alleman did not call 9-1-1 until John and T.B. were already in the apartment. According to John, Ms. Alleman had not called 9-1-1 to report the rape; she had only called to get an ambulance to come out and make sure that T.B. was okay; the "police officers came out because the ambulance showed up."

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[12] John testified that he and T.B. were engaged, although she denied this. According to John, he and T.B. were to have been married in February 2025.

John later saw Appellant at the trophy shop where John worked, and Appellant denied having beaten or raping T.B. and John believed him. When questioned as to how his brother's semen got into T.B.'s vagina, John stated that Appellant had told him that T.B. had performed oral sex on Appellant and had played with his privates. John testified that T.B. had probably spread Appellant's semen on herself and got some in her vagina.

Cross-Examination

On cross-examination, John testified that he and T.B. and been in a relationship for ten or twelve years. He confirmed that, at the time of the incident, he had lived at the apartment where the incident occurred for about eight years. T.B. would come to the apartment periodically and stay with him, but bounced around the apartment complex, staying with various of her friends.

John testified that he referred to T.B. as his "fiancé" because she was always asking him to marry her. He told her that he would marry her in 2025 after he obtained a driver's license because he did not "want to be a married man riding a bicycle around." John stated that the last time he had been intimate with T.B. prior to the incident that occurred on May 13, 2023, was about a month prior.

John said that when he arrived home from work on May 12, 2023, T.B. and Appellant were outside the apartment. Appellant had a six-pack of beer with him and about three beers were missing out of the pack. Once inside all three of them were in good spirits; there were no arguments or issues. At some point, he and Appellant went to the store to get another six-pack of beer. When they returned, the two men continued drinking beer and laughing and talking until Appellant "passed out on the floor" at about nine or ten o'clock.

John testified that he and T.B. stayed up until eleven or twelve o'clock and then he went to sleep on the sofa in the living room, where he stayed all night until he got up to get ready to go to work the next morning. At that time, Appellant was

sleeping on the other sofa in the living room and T.B. was sleeping in the recliner. John later admitted that there was only one sofa in the living room at that time and that Appellant had been asleep on the sofa when John left for work on May 13, 2023.

John did not observe Appellant making any advances toward T.B. during the evening that they spent together. Nor did he observe Appellant flirting with T.B. or attempting to touch her. While he was sleeping on the sofa, he also did not hear T.B. telling anyone "Stop!"[13] John admitted, however, that he has a hearing problem.

He does not recall T.B. asking him to take Appellant with him when he left for work. It was his understanding that while he was at work, T.B. was going to the apartment of one of her two girlfriends who lived in the same complex to hang out until he came home. Appellant was sleeping, fully clothed, when John left for work.

Prior to May 12, 2023, Appellant had been to John's apartment only once or twice; they did not see each other often. According to John, Appellant had met T.B. on only one or two occasions prior to May 12, 2023.[14]

John stated that "Fran" had the apartment on one side of his apartment and, at the time, the apartment on the other side was occupied by "Mark." He later identified the person who occupied the apartment on the other side of his as "Jerry," who lived there with his nephew, Ike. John testified that he could hear everything going on in the two adjoining apartments.

John said that when he got home after receiving Mr. Alleman's call, his apartment looked the same as it had when he left for work, except there was glass on the living room floor from a broken vase that had sat on the top tier of a three-

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[13] As stated above, John ultimately testified that he was not sleeping on the sofa in the living room.

[14] This is contrary to Appellant's testimony, discussed below, wherein Appellant stated that he had been to John's apartment six or seven times within a year and a half of the incident and that he had met T.B. on those occasions.

tier shelf near the door. John stated that the shelf was "like bowling pins" and that if anyone bumped against it, the shelf would "fall all over the place."

When John entered his apartment following the incident, he did not observe any blood on anything inside his apartment. T.B. did not stay with him after the incident. She took all her belongings and went to a battered women's shelter.[15]

On the Monday following the incident, which had occurred on the previous Saturday, Appellant showed up at John's place of employment. Both John and his boss were present when the defendant presented himself to John's place of business. John did not observe Appellant to have any cuts or scratches on his face or hands.

Melvin Favor

Direct Examination

John's boss, Mr. Favor, testified that Appellant had been employed by his company for forty years, having first been employed by Mr. Favor's father. John, Appellant, and Mr. Favor are all friends.

Mr. Favor picks John up every morning, drives him to work, and drops him off in the evenings. Mr. Favor picked John up for work at about 8:45 a.m. on the morning of May 13, 2023. He did not go inside the apartment.

Mr. Favor testified that as soon as they arrived at work at approximately 9:00 – 9:05 a.m., he received a call from Ms. Alleman during which she stated that T.B. had been raped.[16] Mr. Favor and John then went back to John's apartment to see what was going on. When they arrived, T.B. was in Ms. Alleman's apartment; she was injured and very upset; her jaw and her "whole right hand side was all bruised up." He took photographs of T.B.'s injuries.

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[15] Ms. Crockett, the SANE (sexual assault nurse examiner), testified that they assisted T.B. in securing safe housing.

[16] Ms. Alleman testified that she did not call Mr. Favor until after T.B. presented at her apartment at approximately 10:00 a.m.

He and John then walked over to John's apartment, where he saw "a bunch of furniture that was disrupted and some broken glass." Appellant was not at John's apartment when they arrived. Mr. Favor "stayed around a little bit" and then went back to work, leaving John at the scene. The following day, Appellant showed up at Mr. Favor's office. Mr. Favor asked Appellant if he had done anything to T.B. and Appellant stated that he had not. Mr. Favor asked Appellant to "take his clothes off only because he wanted to see if he got scratched." Mr. Favor testified that Appellant did not have a scratch or mark on him and that Appellant's hands were not red or swollen.

Cross-Examination

Mr. Favor admitted that he did not want to see Appellant get into trouble. He also admitted that his timeline may have been off; Ms. Alleman could not have called him before she knew that T.B. had been raped and she testified that she phoned him around 10:00 a.m., which would have put him and John back at the apartment at approximately 10:15 a.m. The police were not there when they arrived. Mr. Favor stated that he was aware that Ms. Alleman waited a long time to call the police. When he saw T.B. inside Ms. Alleman's apartment, he inquired why the police had not been called, but he did not call them himself. Mr. Favor left before the police arrived.

Appellant, Paul Beebe

Direct Examination

Appellant, after being questioned, under oath, by the trial court, relative to his knowledge and understanding of his constitutional rights and whether he was freely and voluntarily waiving them, testified in his own defense. He stated that he went to John's apartment on the evening of May 12, 2023. When he arrived there, the first person he encountered was Ms. Alleman. He then saw T.B., who told him

that John was on his way home from work. Appellant denied that he had any beers with him at the time.

T.B then asked him for a cigarette, which he gave her, and a beer, which he did not have. Before John arrived home, Appellant went to the store to get more cigarettes and told T.B. to inform John that he had stopped by, had gone to the store, and would come back. After he purchased cigarettes and a six pack of beer at the store, he sat in his car and smoked a cigarette to kill time. He then drove back to John's apartment, parked his car, went to the door, and knocked. John let him in and they began talking. T.B. was watching television and, as he and John were talking, T.B. came over to get a beer; then, they all started drinking. He continued to talk to John about a motor he was building and about moving to Mississippi. He suggested that John come to Mississippi as well. T.B. started talking to them and "one thing led to another" and he and John went to get more beer. When he and John arrived back at the apartment, they and T.B. continued talking and drinking beer and Appellant passed out on the floor. When he woke up during the night, he went and slept on the sofa.

He did not recall whether he was awakened by T.B. or by John the next morning but recalled that John told him that he was leaving for work. John then told Appellant to go back to sleep and to lock the door when he left. Appellant went back to sleep and was awakened by T.B., who was fondling him through his pants. He stated that T.B. was topless. She started running her fingers through his hair and telling him that he was better looking than his brother. T.B. then turned her back to him and took off her pants and underwear, took his hand, and led him to the bedroom.

Once in the bedroom, T.B. pushed John's covers to the side and placed a multi-colored bedspread down on the bed. She then pulled down Appellant's pants and underwear and resumed fondling him. T.B. said that Appellant could not be

on top of her because she had a bad hip. T.B got on top of Appellant, but he could not achieve an erection, so T.B. slid down and began to perform fellatio on Appellant. When he got an erection, she climbed back on top of him and began "humping" him. He was half asleep and does not remember whether he penetrated her or not, but he did not believe that he did. She then went to kiss him, but he told her that he had to go to the bathroom and that she needed to get up.

Appellant got up, pulled up his pants, and started for the bathroom. T.B. turned towards the wall. After Appellant was finished in the bathroom, he returned to the room to find no one there. He walked around the apartment looking for T.B. and found her behind the recliner digging into a pink bag. He went into the dining room, sat down, and lit a cigarette. T.B. went past him, carrying clothes in her arm and he gave her the cigarette.

T.B. went to the bathroom and when she came out, Appellant gave her twenty dollars for cigarettes and a cell phone. He offered to drive T.B. to the store, but she declined his offer. She left, slamming the door. Appellant sat at the dining room table and continued to smoke. He fell asleep at the dining room table, and Jerry came into the apartment and informed him that he was being accused of rape. He then went outside the apartment to look for T.B., walking past Ms. Alleman's doorbell camera. He thought T.B. was outside in a truck but he did not see T.B. or a truck. He then went back to John's apartment, again, walking past Ms. Alleman's doorbell camera.

Inside John's apartment Jerry told Appellant to leave. Appellant took his last cigarette from the pack on the dining room table, threw the empty pack on a table by the front door, and left through the front entrance. As he was leaving the building, Jerry followed behind him at a distance of about fifteen to twenty feet. When he left the building, he looked back to see if Jerry was still following him.

He did not see Jerry, so he got in his car and left. His car radio showed that it was shortly after ten o'clock.

Appellant called Mr. Favor on the day of the incident but did not get him. He called again on Sunday and spoke to him. On Monday, Appellant went to Mr. Favor's place of business to see him. Mr. Favor asked him to show Mr. Favor his hands, which he did. Mr. Favor then asked Appellant to take his shirt off, which he did, and Mr. Favor examined his torso. Having satisfied Mr. Favor that he had no marks on him, Appellant went home and had his son take photographs of his hands, chest and back.

Appellant stated that he had visited his brother approximately three weeks before and slept at his brother's apartment. T.B. was there at the time. Appellant said he had met T.B. approximately seven times before this occasion, over the course of about a year and six months and that he had never had any problems with her.

Appellant denied having strangled T.B. and/or having slapped and punched her. He stated that the sexual encounter that he had described lasted for about fifteen minutes.

Cross Examination

On cross-examination, Appellant related the same series of events that led to him ending up on John's living room floor on the evening of May 12, 2023, but included additional details. Once on the floor, Appellant sat there, talking to John and "eventually laid there and passed out." John and T.B. were still awake when he went to sleep. He did not know where either of them slept.

T.B and John were up watching cartoons when John woke him a little before eight o'clock. John was on his way to work. Appellant then moved to the sofa and went back to sleep after ascertaining that John did not need a ride to work. T.B. was still in the recliner when John left.

Later, T.B., who was not wearing a shirt or bra, woke him up by fondling him. After a short while, she led him to the bedroom where she put a multicolored blanket onto the bed. The blanket appeared to be a child's blanket. It was about four feet by four feet, with animated cartoon characters on it. T.B. then unbuckled Appellant's pants and pulled them down to his knees. They were trying to be quiet so that Ms. Alleman would not hear. Appellant stated that he could not achieve an erection and T.B. began to perform oral sex on him. He stated that he then achieved an erection but did not think that he ejaculated. He denied having vaginal intercourse with T.B. but stated that he was not sure whether his penis penetrated her vagina. T.B. was on top of him and his penis started hurting. He did not know whether it was from her weight on him or whether she managed "to get it in;" he did not believe that she did.

Appellant provided the same testimony relative to the immediate aftermath of the sexual encounter between him and T.B., but added that when she came out of the bathroom at about nine o'clock, she was wearing green pants and a brown shirt. Appellant gave her some money for cigarettes and a phone but T.B. got mad and cursed him out when he offered to drive her in his car. She left and slammed the door hard. Appellant just sat there and smoked half of a cigarette. He did not see T.B. again that day.

Appellant stated that nothing was knocked over during the sexual encounter between him and T.B. and that he had been unaware of any glass being on the floor, although he was told that there was glass on the floor. Appellant had no glass or cuts on his body.

Appellant admitted that Ms. Alleman's Ring doorbell footage showed T.B., wrapped in a blanket, with a bloody face, in front of Ms. Alleman's apartment at 9:58 a.m., banging on the door. He did not admit that T.B. had come from John's apartment. Appellant stated that T.B. could have come out of apartment 106

(John's apartment) or 105. The footage then showed Jerry walking out of his apartment and speaking to T.B. and Ms. Alleman. Appellant admitted that the doorbell footage showed him leaving John's apartment at 10:05 a.m. and returning shortly thereafter. Jerry then ran him out of John's apartment. Appellant grabbed his last cigarette and left, stating, "I'm out of here."

Appellant testified that at no time did he see that T.B. had been beaten up. He stated that when she stormed out of John's apartment at approximately nine o'clock, she had not been beaten; her face was not bloody.

Appellant admitted that forensic evidence showed that his semen was inside T.B.'s vagina, even though he testified that he did not think he ejaculated during oral sex or that his penis penetrated T.B.'s vagina. He explained this by stating that, "[e]vidently, I did penetrate her. I did not realize it, and I didn't think I did." He did not get on top of her and penetrate her, but he "guessed" his penis penetrated her vagina when she was on top of him "humping" him. Appellant stated that T.B. lied on the witness stand when she said that he strangled her, pulled her by her hair to the bedroom, digitally penetrated her anus, beat her, vaginally raped her and ejaculated inside her vagina.

Law Enforcement Officers and Forensic Investigators

Deputy Plaisance

Deputy Darnell Plaisance responded to the scene at approximately 12:33 p.m. on May 13, 2023. Emergency medical services were already there when he arrived. Deputy Plaisance was equipped with a body-work camera, which was activated and recording while he was on the scene. The footage recorded by Deputy Plaisance's body camera was admitted into evidence and published to the jury without objection.

T.B. told Deputy Plaisance that she had been raped by Appellant. T.B. and John were inside John's apartment when Deputy Plaisance arrived on the scene.

T.B. was bruised and had dried blood on her face. Crime Scene personnel arrived and photographed the scene. The crime scene photographs of T.B., her injuries and clothing, the apartment, including the shattered glass, and the bedding were admitted into evidence and published to the jury without objection.

Deputy Plaisance identified items of T.B.'s clothing that were collected at the scene, as well as the comforter and a sheet or blanket that she wrapped around herself when she ran out. No shards of glass were found in any of the clothing that was collected at the scene. The shirt that T.B. was wearing was not located. The clothing and other items were admitted into evidence and published to the jury without objection. Deputy Plaisance also collected the Ring camera footage from Ms. Alleman. The Ring camera footage was admitted into evidence and published to the jury without objection.

Deputy Plaisance testified that there were signs of a struggle inside John's apartment, although he did not recall seeing any blood inside the apartment, including in the bed or on the bathroom towels. He also stated that he did not know who had been inside the apartment between the reported time of the incident and the time he arrived on the scene, more than two hours later. Deputy Plaisance stated that when he entered the apartment, there was a dog inside. There were bowls for the dog's food and water, but he did not recall seeing any dog food or water on the floor.

Detective Robinson

After his initial investigation at the scene, Deputy Plaisance turned the investigation over to Detective Biana Robinson of the Special Victim Section, which investigates allegations of rape, sexual assault, child abuse and related cases. Detective Robinson testified that she became involved in the investigation approximately two days after the incident was reported. When the case was turned over to her, there was already a suspect – Appellant – who had been identified by

T.B. at the scene as the person who strangled, beat and raped her. Appellant was not in custody at that time.

When Detective Robinson interviewed T.B., she presented her with a booking photograph of Appellant. T.B. identified the man in the photograph as the man who had strangled, battered, and raped her and signed the back of the photograph so indicating. The photograph of Appellant that was shown to T.B. by Detective Robinson was admitted into evidence and published to the jury without objection. Once T.B. had identified the photograph of Appellant, a warrant was issued for his arrest. The arrest warrant was issued in May, but he could not be located. Appellant was apprehended in November 2023 by United States Marshalls.

Detective Robinson also interviewed and reinterviewed the other witnesses. She found no inconsistencies in their statements from one interview to the next. After he was apprehended, Detective Robinson obtained a search warrant for Appellant's DNA, which she executed by taking a buccal swab, which was sent for testing and comparison against DNA evidence taken from T.B. during the sexual assault exam that she underwent after the incident. Detective Robinson did not take a statement from Appellant.

Gardenia Crockett

Ms. Crockett is a registered nurse who works for the Jefferson Parish Coroner's Office as a sexual assault nurse examiner ("SANE"). In that capacity she responds to sexual assault calls, conducts examinations, collects evidence, and provides prophylactic medications to help restore patient control. The education required to be a SANE and protocols to be followed are mandatory. A SANE examination usually lasts for four to six hours, extending to six to eight hours with the required photography. Ms. Crockett stated that a strangulation examination alone takes approximately three hours.

Ms. Crockett was working as a SANE on May 13, 2023, and recalls conducting a SANE examination on T.B. In her report, Ms. Crockett indicated T.B.'s pain as a ten on a one to ten scale. She noted an old bruise at the corner of T.B.'s right eye from a previous fall. T.B. was responsive and made good eye contact. T.B. reported a short loss of consciousness during the assault. There was no indication of drug or alcohol abuse by T.B. and no toxicology testing was performed. T.B. identified her "assailant" as Appellant.

T.B. indicated to Ms. Crockett that Appellant did not use a condom during the incident; nor did he use a weapon. He hit her in the face and back and stated: "If you don't stop, I will kill you." No restraints were used and nothing was taken from her. T.B. reported that the incident occurred from approximately 8:45 to 9:45 a.m. on May 13, 2023.

T.B. stated that she was not wearing the same clothing that she had worn during the incident; however, she did not shower or douche prior to submitting to the examination. Ms. Crockett conducted a head-to-toe assessment of T.B. The examination noted redness in the vaginal area, but no tears to the vaginal or rectal areas. Ms. Crockett noted scalp tenderness with areas of hair pulled out. T.B.'s right hip showed a very red, painful bruised area and her back was tender to the touch. Ms. Crockett also noted petechiae on T.B.'s right eye, with visible red specks, consistent with strangulation and loss of oxygen. T.B. had multiple bruises on the right side of her face, especially her jaw, and bruises and abrasions on the opposite side, consistent with blunt force trauma. T.B. also had cuts on her bottom and top lips consistent with being struck. She also had a reddened right shoulder, a cut-like area on the right forearm with reddened areas, a reddened right knee, and red, tender spots on the left shin viewed from the back. Ms. Crockett identified photographs depicting T.B.'s injuries that were taken during the examination. She testified that cuts and bruises cannot be dated by timeframe. Swabs for DNA

testing were also taken in conjunction with the examination. These were identified and admitted into evidence without objection.

Ms. Crockett testified that the examination findings indicated that T.B. had been strangled. There was redness on T.B.'s neck and under her chin, consistent with a hand around her neck, applying pressure. T.B. also had scratch marks on her neck and upper chest. She stated that T.B. reported that Appellant had only strangled her with one hand, that she saw white specks, experienced a brief loss of consciousness, and experienced defecation.

Ms. Crockett stated that she relied upon the representations of the victim as to the cause of injury. Ms. Crockett recited the oral report of the incident provided to her by T.B., as follows:

Appellant came by John's apartment between 5:00 and 5:30 p.m. on Friday, May 12, 2023. John was not at home when Defendant arrived at the apartment. Appellant had been drinking beer and later passed out on the floor around 9:00 p.m. on May 12. Between 3:30 and 4:00 a.m. on May 13, T.B. felt someone touching her ankles to her calves. It was Appellant. She asked him to stop but he did not. She felt his hand moving to her breasts and made a loud noise. She asked Appellant to wake John and the two brothers talked at the kitchen table. She then went back to sleep and when she woke up, John was gone. When she awoke, Appellant was close to her face and said, "I told you I'm going to get you." Appellant backhanded her several times, dragged her to the bedroom and she tried to make noise, but Appellant punched her in the face and squeezed her skin, so she decided to let him do whatever he wanted. T.B. pretended that she had fainted so that Appellant would stop strangling her.

T.B. also related to Ms. Crockett that Appellant did not have an erection at first but achieved an erection and "got it in," after inserting his finger into her anus. T.B. related that she told Appellant that she needed to defecate and kept stalling in

the bathroom. When T.B. came out of the bathroom, Appellant was in the living room watching TV, and she found a cigarette butt and smoked it. Wearing only a blanket, T.B. ran out to Ms. Alleman's apartment to the right but got no answer. She then went to the apartment on the left of John's apartment and the occupant, Jerry, got her the clothes that she was wearing. Appellant was asleep and T.B. went back to Ms. Alleman's apartment and got dressed. T.B. was afraid to call the police but Ms. Alleman called them.

Dr. Zozaya

Dr. Marcela Zozaya is the forensic DNA analyst and DNA laboratory supervisor for the JPSO DNA lab. Dr. Zozaya testified that she prepared the DNA report for this case. Dr. Zozaya's report was admitted into evidence and published to the jury without objection. Dr. Zozaya concluded that of the DNA samples that she evaluated, it was one hundred billion times more likely that the semen found in T.B.'s vagina belonged to Appellant than to any other person. She stated that Appellant's DNA profile on T.B.'s vaginal, perineal, and cervix swabs was consistent with sexual intercourse having occurred between T.B. and Appellant.

Dr. Zozaya was also able to partially match Appellant's DNA to T.B.'s left chin and face swabs to a factor of approximately one in six thousand. Dr. Zozaya could not opine whether the DNA on the face swabs resulted from someone striking T.B., only that Appellant's DNA was present.

DISCUSSION

Assignment of Error No. 1 Sufficiency of the Evidence

Appellant contends that the testimony and evidence presented by the State was insufficient to support his conviction for first degree rape beyond a reasonable doubt. Rape is defined as the act of anal, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent. La. R.S. 14:41(A). Emission is not necessary to a rape and any sexual penetration, when

the rape involves vaginal or anal intercourse, whether the penetration is accomplished using the genitals of the offender or victim or using any instrumentality, and however, slight, is sufficient to complete the crime. La. R.S. 14:41(B). Relevant to the inquiry before us, La. R.S. 14:42 provides that first degree rape is a rape committed where the anal, oral, or vaginal intercourse is determined to be without lawful consent of the victim, where the victim resists the act to the utmost but whose resistance is overcome by force, or where the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by the apparent power of execution of the threat.

Appellant contends that the testimony and evidence introduced at trial was contradictory and inconsistent. For example, T.B. said that she screamed to the top of her lungs, fought back, and thrashed about, but Ms. Alleman, on the other side of the wall, heard nothing. Additionally, T.B. testified that Appellant dragged her by her hair from the living room to the bedroom, but the dog's bowls, which were in the hallway, were undisturbed. Further, T.B. said she was choked and suffered a beating, but the photographs showed no marks on her neck, and no blood was recovered from the scene. Appellant contends that someone else must have beaten T.B. after she left John's apartment. He further contends that the sexual contact between T.B. and him was consensual and that the evidence was insufficient to prove otherwise.

On the other hand, the State contends that T.B.'s testimony, combined with the evidence of her injuries, her flight from the apartment seeking help, and the DNA testing showing Appellant's sperm in her vagina, were sufficient to convict Appellant of first degree rape beyond a reasonable doubt. The trial court agreed with the State and ruled that the evidence was sufficient, beyond a reasonable doubt, to convict the defendant of first degree rape.

The constitutional standard for sufficiency of the evidence is whether, upon viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find that the State proved all the essential elements of the crime beyond a reasonable doubt. *Jackson, supra*; *State v. Chinchilla*, 20-60 (La. App. 5 Cir. 12/23/20), 307 So.3d 1189, 1195, *writ denied*, 21-274 (La. 4/27/21), 314 So.3d 838.

In reviewing the sufficiency of the evidence, an appellate court must determine whether the evidence, direct or 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 were proven beyond a reasonable doubt. *Jackson*, *supra*; *State v. Gonzalez*, 15-26 (La. App. 5 Cir. 8/25/15), 173 So.3d 1227, 1232. This directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *State v. Clifton*, 17-538 (La. App. 5 Cir. 5/23/18), 248 So.3d 691, 702. Deference to the fact finder, however, does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *State v. McKinney*, 20-19 (La. App. 5 Cir. 11/4/20), 304 So.3d 1097, 1102. Further, a reviewing court errs by substituting its appreciation of the evidence and the credibility of witnesses for that of the factfinder and overturning a verdict based on an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *State v. Lane*, 20-181 (La. App. 5 Cir. 1/27/21), 310 So.3d 794, 804. As a result, under the *Jackson* standard, a review of the record for sufficiency of the evidence does not require the reviewing court to determine whether the evidence at trial established guilt beyond a reasonable doubt, but whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. *Id*.

In its determination of whether any rational trier of fact would have found the defendant guilty, a reviewing court will not re-evaluate the credibility of witnesses or re-weigh the evidence. *Lane*, 310 So.3d at 804. The credibility of a witness, including the victim, is within the sound discretion of the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *Gonzalez*, 173 So.3d at 1233. Thus, in the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *Lane*, *supra.*

The testimony of the victim alone can be sufficient to establish the elements of a sexual offense, even when the State does not introduce medical, scientific, or physical evidence to prove the commission of the offense. *Gonzalez*, 173 So.3d at 1232. It is presumed that the trier of fact considered discrepancies in testimony in assessing credibility and weight of testimony. *Id.*

In this case, we have carefully reviewed the record and find, based on the testimony and evidence discussed above, that the State presented sufficient evidence to establish the elements of the crime of first degree rape to the jury, beyond a reasonable doubt. T.B. never waivered in her identification of Appellant as the person who beat, strangled, and raped her. Ms. Alleman, John and Mr. Favor all corroborated the fact that T.B. had been beaten when they first encountered her after the incident. John testified that when he left for work, T.B. had not been beaten but had been when he returned to his apartment. He further testified that to his knowledge, T.B. and Appellant were the only ones in the apartment when he left.

Ms. Alleman and Mr. Favor testified that T.B. was upset and afraid following the incident. The photographs of T.B.'s injuries taken by Ms. Alleman, Mr. Favor, law enforcement officials, and forensic investigators all documented T.B.'s injuries. Ms. Alleman's doorbell footage showed Appellant leaving John's

apartment – the same apartment that T.B. had exited moments before and where she alleged that the incident occurred – immediately after the incident. The timeline provided by the witnesses (other than Mr. Favor) is consistent.

The forensic evidence corroborated T.B.'s allegations that she had been strangled. The DNA evidence proved that Appellant's semen was inside T.B.'s vagina. Appellant's DNA was also found in one of the cuts on T.B.'s face to a certainty factor of one in six thousand. Additionally, Appellant avoided arrest for approximately six months after the incident and had to be apprehended by the U.S. Marshalls.

The contradictions and inconsistencies pointed out by Appellant were all raised at trial through his counsel's cross-examination of the witnesses and the jury was aware of them. The credibility of the witnesses and any contradictions or inconsistencies that existed in the testimony and evidence were weighed by the jury. It is clear that the jury believed T.B.'s testimony. Accordingly, T.B.'s testimony alone was sufficient to prove each element of the crime of first degree rape beyond a reasonable doubt. In light of the record as a whole, we find that a rational juror could have found the evidence sufficient to support Appellant's conviction.

Whether to grant or deny a motion for new trial rests within the sound discretion of the trial court. *State v. Williams*, 18-112 (La. App. 5 Cir. 11/7/18), 259 So.3d 563, 578, *writ denied*, 18-2038 (La. 4/22/19), 268 So.3d 295. Its ruling will not be disturbed absent a showing of an abuse of discretion. *State v. Barrosse*, 23-393 (La. App. 5 Cir. 4/17/24), 386 So.3d 333, 337. Because we have found the evidence sufficient to convict Appellant for first degree rape, we find no abuse of discretion in the trial court's denial of Appellant's Motion for a New Trial on the ground of insufficiency of the evidence.

Assignment of Error No. 2: Exclusion of Evidence in Violation of the Rape Shield Law, La. C.E. Article 412

In his second assignment of error, Appellant argues that the trial court misapplied the Rape Shield Law, La. C.E. art. 412 by prohibiting him from introducing evidence of T.B.'s previously withdrawn allegations of improper sexual behavior to impeach her credibility. Appellant contends that the introduction of such evidence for impeachment purposes is not prohibited under the Rape Shield Law.

La. C.E. art. 412 prohibits a person charged with sexually assaultive behavior from introducing evidence of the victim's past sexual behavior, except in certain circumstances set forth in Article 412. Article 412(C) requires the accused to file a motion, in camera, setting forth the evidence of past sexual behavior that he intends to introduce, providing the identity and addresses of the witnesses who will present such evidence. A hearing must be held, at which the victim may be present, and the trial court is required to make certain findings.

Appellant filed no such motion in this case and no hearing was conducted, as mandated by Article 412.[17] The State, however, filed a motion in limine to exclude such evidence. At the hearing on the State's motion in limine, Appellant's counsel stated that Appellant did not intend to introduce any evidence of the victim's past sexual behavior. Based on that representation, the trial court granted the State's motion in limine to exclude evidence of T.B.'s past sexual conduct.

During cross-examination of T.B. at trial, defense counsel sought to question T.B. about a prior non-sexual abuse incident. Specifically, defense counsel asked T.B. if she had ever reported this kind of "domestic incident." The State objected and a bench conference was held at which defense counsel alleged that "[i]t wasn't

[17] Appellant also did not file a motion under Article 404(B) of the Code of Evidence to admit evidence of other acts or wrongs.

a rape. She just reported that she got beat up by a guy " Defense counsel further stated: "I'm not saying it was false. I'm saying that the facts are so incredibly similar to this situation. She alleges being beaten up and then she ended up pooping on herself." The trial court refused, over defense counsel's objection, to permit defense counsel to continue the line of questioning.

Appellant raised the trial court's failure to permit his counsel to question T.B. about the prior incident in his Motion for a New Trial. The trial court denied Appellant's Motion for a New Trial on that ground, finding that the Rape Shield statute was controlling and that she had ruled on a pre-trial motion regarding that issue and any such testimony was inadmissible.

Generally, a party may attack the credibility of a witness by examining him or her concerning any matter having a reasonable tendency to disprove the truthfulness of his or her testimony. La. C.E. art. 607(C). As stated above, in cases involving sexually assaultive behavior, La. C.E. art. 412 prohibits the introduction of evidence regarding the past sexual behavior of the victim in sexual assault cases, except (1) when there is an issue of whether the accused was the source of semen or injury, and (2) when the past sexual behavior is with the accused and there is an issue of whether the victim consented to the charged sexually assaultive behavior.

La. C.E. art. 412 does not apply when a defendant attempts to use evidence of a victim's false allegations of improper sexual behavior to impeach the victim's credibility. *Smith*, 743 So.2d at 202-03. However, the admissibility of such evidence is still subject to all other standards for admissibility under La. C.E. arts. 403, 404, 607, 608, and 613. *State v. Bolden*, 21-283 (La. App. 5 Cir. 6/30/21), 325 So. 3d 602, 604–05; *State v. Bolden*, 03-266 (La. App. 5 Cir. 7/29/03), 852 So.2d 1050, 1061-62; *State v. Wallace*, 00-1745 (La. App. 5 Cir. 5/16/01), 788 So.2d 578, 587*, writ denied*, 01-1849 (La. 5/24/02), 816 So.2d 297.

In considering a motion in limine seeking to admit or exclude such evidence, the trial judge must evaluate the evidence presented to determine whether reasonable jurors could find, based on the evidence presented by the defendant, that the victim had made prior false accusations. *Smith*, 743 So.2d at 203. Assuming that burden has been met, all other standards for the admissibility of evidence apply. *Id.*; *See also* La. C.E. arts. 403, 404, 607, 608, and 613. The trial court's determination regarding the relevancy and admissibility of evidence will not be overturned on appeal absent a clear abuse of discretion. *State v. Hernandez*, 11-712 (La. App. 5 Cir. 4/10/12), 93 So.3d 615, 628, *writ denied*, 12-1142 (La. 9/28/12), 98 So.3d 834.

Additionally, while a defendant has a constitutional right to present a defense, constitutional guarantees do not assure the defendant the right to the admissibility of any type of evidence, but rather only that which is deemed trustworthy and has probative value. *State v. Governor*, 331 So.2d 443, 449 (La. 1976); *State v. Gaal*, 01-376 (La. App. 5 Cir. 10/17/01), 800 So.2d 938, 950, *writ denied*, 02-2335 (La. 10/3/03), 855 So.2d 294.

In this case, Appellant did not contend that the alleged withdrawn report was false. He did not convoke a pretrial hearing which would have enabled the trial court to determine the facts and circumstances surrounding the alleged withdrawn report, whether the evidence was trustworthy, or whether it had any probative value that was not outweighed by the risk of undue prejudice. Under these circumstances, we cannot say that the trial court abused its discretion in preventing defense counsel from pursuing this line of cross-examination.

Further, La. C.E. art. 103, provides that error "may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected" and, where the ruling excludes the evidence, and "the substance of the evidence was made known to the court by counsel." Here, defense counsel did not

proffer the substance of the excluded evidence. Defense counsel did not inform the trial court or opposing counsel when and where the alleged prior incident occurred, the identity of the parties involved, or of the facts surrounding the alleged prior incident. As a result, Mr. Beebe is barred from assigning the error on appeal. *See State v. Magee*, 11-574 (La. 9/28/12), 103 So.3d 285, 326, *cert. denied*, 571 U.S. 830, 134 S.Ct. 56, 187 L.Ed.2d 49 (2013); *State v. Strickland*, 11-715 (La. App. 5 Cir. 3/27/12), 91 So.3d 411, 418.

Even if defense counsel had properly preserved the issue for appeal and even were we to find that the exclusion of the evidence constituted error, the error was harmless. Appellant did not demonstrate that any of his substantial rights were affected by the exclusion of the evidence and, as we have stated above, more than sufficient evidence was introduced at trial supporting the jury's verdict.

This assignment of error is without merit.

ERROR PATENT REVIEW

We have reviewed the record for errors patent in accordance with La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337(La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5th Cir. 1990) and find the following patent errors. Appellant was originally sentenced on February 18, 2025. On February 20, 2025, his sentence was vacated because the trial court did not allow twenty-four hours between the denial of the Motion for a New Trial and sentencing. He was then resentenced. Three Uniform Commitment Orders ("UCOs") appear in the record. The most recent is dated March 17, 2025. The sentencing date reflected on the March 17, 2025 UCO is February 18, 2025; however, the actual sentencing date was February 20, 2025. Additionally, the UCO does not reflect that the sentence was vacated on February 20, 2025.

Accordingly, we remand the matter for correction of the March 17, 2025 UCO to reflect the correct date of sentencing and the date that the sentence was

vacated. Once corrected, the Clerk of the 24th Judicial District Court is ordered to transmit the original of the corrected UCO to the appropriate authorities in accordance with La. C.Cr.P. art. 892(B)(2) and the Department of Corrections' legal department. *See State v. Gilbert*, 23-121 (La. App. 5 Cir. 11/8/23), 377 So.3d 378, 388, *writ denied,* 23-1640 (La. 5/29/24), 385 So.3d 704.

DECREE

Accordingly, for all the reasons stated above, Appellant's convictions and sentence are affirmed. The case is remanded to the trial court for correction of the March 17, 2025 UCO to reflect the correct date of sentencing and the date that the sentence was vacated. Thereafter, the Clerk of Court for the 24th Judicial District Court shall transmit the corrected UCO to the appropriate authorities in accordance with La. C.Cr.P. art. 892(b) and to the Department of Corrections' legal department.

CONVICTION AND SENTENCES AFFIRMED, REMANDED FOR CORRECTION OF UCO

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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 29, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-KA-388

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)
RICHARD J. RICHTHOFEN, JR. (APPELLANT)
DARREN A. ALLEMAND (APPELLEE)
HONORABLE PAUL D. CONNICK, JR. (APPELLEE)
THOMAS J. BUTLER (APPELLEE)

MAILED
BRENDAN BOWEN (APPELLEE)
LINDSAY L. TRUHE (APPELLEE)
ASSISTANT DISTRICT ATTORNEYS
TWENTY-FOURTH JUDICIAL DISTRICT
200 DERBIGNY STREET
GRETNA, LA 70053