NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0936

STATE OF LOUISIANA

VERSUS

STEVON ARCHIE

Judgment Rendered: November 2, 2007

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Case No. 08-04-0233

The Honorable Louis R. Daniel, Judge Presiding

* * * * * * * *

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* * * * * * * *

BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

GAIDRY, J.

The defendant, Stevon Archie, was charged by bill of information with forcible rape, a violation of La. R.S. 14:42.1. He entered a plea of not guilty, and after a trial by jury, was found guilty as charged. The state filed a habitual offender bill of information. Defendant was adjudicated a second-felony habitual offender and was sentenced to twenty-six years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court denied defendant's motion to reconsider sentence. Defendant now appeals, raising the following six assignments of error:

(1) The verdict of the jury is contrary to the law and evidence;

(2) The evidence presented to the jury was insufficient to support the conviction for forcible rape;

(3) The State of Louisiana used improper procedures to influence the jury;

(4) The trial court improperly declared the defendant to be [a] habitual offender;

(5) The trial court improperly restricted the defendant's right to an appeal by limiting his access to certain transcribed material; and

(6) The sentence imposed is excessive.

For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

The victim was a student at Camelot College in Baton Rouge, Louisiana at the time of the offense at issue.[1] She had agreed to leave the campus with defendant on the evening of August 1, 2004. The victim was

[1] The victim was twenty years old at the time of the offense and twenty-two years old at the time of the trial.

familiar with defendant, as he was a previous high school acquaintance. Near 9:00 p.m., Bryan London drove defendant and the victim to an apartment located on Cedarcrest Avenue in Baton Rouge. When they arrived, John London, Bryan's brother, was present. Defendant led the victim to a bedroom. They entered the bedroom alone, sat on the edge of the bed, and conversed. At some point, John and Bryan left the apartment. Between 11:00 p.m. and midnight, as the victim was lying on the bed, defendant asked her if he could perform oral sex on her and she acquiesced. She and defendant removed her lower clothing and underwear, and defendant began performing oral sex on her. After approximately three minutes, the victim asked defendant to stop and defendant complied. The victim then got dressed, and the two talked and watched television.

According to the victim's testimony, defendant later told her that she was going to have sex with him, but she disagreed. The victim testified that she and defendant began to argue and defendant physically held her down as he repeated demands for sex. The victim repeatedly refused and told defendant that she did not want to have sex with him. As defendant restrained the victim, he forced her legs apart. After further physical force and verbal threats, he removed the victim's lower clothing and underwear, unzipped his pants, and penetrated the victim vaginally with his penis. After fleeing from the apartment, the victim immediately contacted the police.

FIRST AND SECOND ASSIGNMENTS OF ERROR

In his combined argument for his first and second assignments of error, defendant argues that the evidence was insufficient to support the conviction. He contends that there were no witnesses to the alleged rape, there was no physical evidence of a rape, neither he nor the victim was scarred or bruised, and the victim did not confirm penetration. Defendant

further argues that the victim's testimony should be disregarded and should not be considered to show lack of consent, because it was inconsistent.

The constitutional standard for testing the sufficiency of the evidence, legislatively incorporated in La. C.Cr.P. art. 821, requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). The *Jackson* standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. Louisiana Revised Statutes 15:438 provides that when analyzing circumstantial evidence, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. *State v. Graham*, 02-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. *State v. Richardson*, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a factfinder's determination of guilt. *State v. Creel*, 540 So.2d 511, 514 (La. App. 1st Cir.), *writ denied*, 546 So.2d 169 (La. 1989). When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. *State v. Captville*, 448 So.2d 676, 680 (La. 1984).

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). Any sexual penetration, however slight, is sufficient to complete the crime. La. R.S. 14:41(B). Louisiana Revised Statutes 14:42.1 defines forcible rape, in pertinent part, as follows:

> A. Forcible rape is rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:
>
> (1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.

In the absence of internal contradiction or irreconcilable conflict with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. *State v. Higgins*, 03-1980, p. 6 (La. 4/1/05), 898 So.2d 1219, 1226, *cert. denied*, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). This principle is equally applicable to the testimony of victims of sexual assault. *State v. Ponsell*, 33,543, p. 5 (La. App. 2d Cir. 8/23/00), 766 So.2d 678, 682, *writ denied*, 00-2726 (La. 10/12/01), 799 So.2d 490. *See also State v. Probst*, 623 So.2d 79, 83 (La. App. 1st Cir.), *writ denied*, 629 So.2d 1167 (La. 1993).

In her testimony regarding the nonconsensual intercourse, the victim emphasized that she pleaded with defendant to stop. As to the force used by defendant, the victim specifically testified that he used his legs to hold her down and spread her legs. As they struggled, defendant demanded sex and the victim verbally refused. Defendant placed his hands over the victim's mouth and nose and slapped her with an open hand. The victim, in turn, slapped defendant with an open hand. Defendant pinned her down harder and threatened that if she did not "shut up," he would kill her. Defendant

also warned the victim not to tell anyone. The victim stated that she became silent but added, "I was really trying to get Stevon off of me. But by Stevon's body weight being so big and heavy, I really couldn't fight him off, but I did try to fight him off." According to the victim, she was ultimately unable to resist defendant.

As to the act of sexual penetration, the victim explained, "It happened so fast, Stevon – by him holding me down and me constantly fighting, it happened so fast I didn't even know Stevon had penetrated in me [*sic*] that fast." But she confirmed that she was certain defendant penetrated her, explaining, "[h]is semen was inside of me" and that she felt it when defendant's semen entered her. The victim recalled that the act of penetration lasted approximately three to five seconds, and confirmed that the vaginal sexual intercourse took place without her consent.

According to the victim, after the intercourse occurred, defendant gave her a blue or turquoise towel and instructed her to wash herself. When she refused, defendant slapped her and she responded by slapping him. After defendant slapped her again, the victim took the towel and mildly wiped herself. The victim asked if she could leave the apartment but defendant refused, instructing her to comb her hair. The victim then escaped from the apartment when defendant left the room "to put his pants on," and she called for emergency assistance from a store telephone.

Detective Trey Walker of the Baton Rouge Police Department reported to the scene around 5:00 a.m. The crime scene unit collected evidence at the scene, including a blue hand towel located in the bathroom of the apartment, and later interviewed the victim at the police station. She informed the detective that defendant had vaginal intercourse with her without her consent. The victim did not inform Detective Walker that she

and the defendant had previously engaged in consensual oral sex. When she was called to testify again during the defense's case-in-chief, the victim explained that she was afraid to tell the police about the consensual oral sex.

The victim was examined at Earl K. Long Hospital by registered nurse Wanda Pezant, the Louisiana State Sexual Assault Nurse Examiner Program Coordinator. The victim informed Ms. Pezant that she had been vaginally assaulted. During the pelvic examination, Ms. Pezant discovered a tear at the "six o'clock" position at the posterior of the victim's birth canal. While admitting that there were several other possible causes, including vigorous consensual sex, Ms. Pezant verified that the injury could have been caused by forced sex. DNA samples from the victim were sent to the State Police Crime Laboratory.

Detective Walker interviewed John London and Bryan London. John London stated that he was at his apartment when his brother Bryan, defendant, and a female arrived. Defendant and the female went into the spare bedroom. John informed the detective that he left the apartment at approximately 2:00 a.m. Bryan informed the detective that he picked defendant up the night before (July 31), and later picked up a black female. After riding around, Bryan took defendant and the female to the apartment on Cedarcrest Avenue. Defendant and the female went into the bedroom. Shortly after Bryan left the apartment, John informed him that the police needed to speak to him.

On August 2, 2004, the victim reported to the detective that after several phone calls from defendant, she finally spoke to him and he offered to pay her to drop the case. Detective Walker asked the victim to conduct a controlled-recorded telephone conversation with defendant from the police station, and the victim agreed. The telephone call was made at

approximately 8:00 p.m. on that date. Detective Walker listened to the victim's side of the conversation during the call and reviewed the recording of the full conversation after it concluded.

During the recorded telephone conversation, defendant offered the victim money. Defendant asked if their conversation was being recorded, and the victim responded negatively. Defendant pleaded with the victim to drop the charge and stated that he would do whatever she wanted. As the victim repeatedly asked defendant why he raped her (while also stating that she had begged him to stop), defendant responded by expressing regret and sorrow. At one point, defendant stated, "I guess I'm gonna [*sic*] incriminate myself." Defendant then stated that he had never been in such a situation. Several times, defendant requested to speak to the victim in person. Those requests were made when the victim asked defendant for an explanation for his actions. The victim repeatedly described the incident as a rape and as nonconsensual. Defendant stated that he deserved "whatever comes to me." Defendant expressed concern about his telephone being tapped. Defendant ultimately asked the victim why she was repeatedly asking why he had raped her, and reiterated that he could discuss some things in person only. The victim asked defendant if he would rape her again if they spoke in person, and defendant stated that he did not want to rape her. The victim again asked defendant why he raped her, and defendant asked her if someone else was near the phone. The victim responded negatively. At the end of the conversation, when the victim stated she had to go, defendant stated, "So, I guess you got enough, you got enough information for the people."

Based on the victim's statement, the evidence collected at the scene, and the recorded telephone conversation, defendant was determined to be a rape suspect and was arrested. After his arrest, defendant was informed of

his *Miranda* rights. Defendant denied that any rape occurred, but admitted to having oral sex with the victim.

It was stipulated by the state and defense that the DNA profile obtained from the sperm fractions of the cervical and external vaginal swab of the victim was consistent with the DNA profile obtained from an oral swab of defendant.

Defendant testified that he had known the victim for about six years, but they were sporadic acquaintances. According to defendant, he had previously helped the victim with financial difficulties on several occasions. He also testified that he and the victim had sexual relations once prior to the incident in question. Defense witnesses Bryan London, Russell Mack (Bryan's cousin), and defendant testified that the victim rode with them to the apartment.[2] The victim did not know Russell Mack, and did not recall his presence on the night in question. According to Mack and defendant, the victim initially was hesitant to get into the vehicle, but did so after defendant borrowed two hundred dollars from Mack to give to the victim. Although he did not witness the exchange, Mack assumed defendant gave the money to the victim. Defendant claimed that he made an agreement with the victim to pay her four hundred dollars "to mess with all of us and to have . . . a little freak party."

When they arrived at the apartment, defendant and the victim went into the bedroom. According to Bryan London, they came out of the bedroom a couple of minutes later. Defendant, however, testified that he and the victim sat in the room and conversed for approximately thirty to forty-five minutes while the victim consumed alcohol. Mack and defendant

[2] Bryan London testified he and defendant were cousins, while his brother, John London, stated that he was related to defendant through marriage.

also claimed that the victim smoked marijuana. According to defendant, Bryan London, and Mack, an "eating contest" was discussed. Defendant and the victim then reentered the bedroom. Minutes later, defendant called Bryan London, John London, and Mack to the bedroom, where they observed defendant performing oral sex on the victim. According to Mack, the oral sex lasted for about forty-five minutes.

Defendant testified that after he performed oral sex on the victim, they closed the bedroom door and "started to have sex." According to defendant, John London briefly entered the room while he and the victim were "in the groove of having sex." Defendant explained that the victim became bashful at that point and told him that she wanted to wait until everyone left before resuming sexual contact. Bryan and Mack offered the victim money in exchange for sex,[3] but the victim refused. According to his testimony, at some point Bryan joined the victim and defendant on the bed. He stated that they were not having sex but they discussed sexual activity, and the victim "kind of played with . . . my . . . penis for a while." Bryan testified that he did not have any further sexual contact with the victim.

Before the London brothers and Mack left the apartment, Bryan asked the victim if she wanted him to take her home, but she declined, stating that she would call him later. Other than during the consensual oral sex, they were not present during any other sexual contact between defendant and the victim. According to defendant's testimony, after the other men left, he told the victim, "[Y]ou still owe me," and, he explained, "[T]hat's when the sex started." According to defendant, he and the victim then engaged in consensual sexual intercourse. Defendant then received a telephone call

[3] Bryan London and Mack testified that John London also offered the victim money in exchange for sex, but John London denied making any such offer.

from Bryan London, who informed him that defendant's "girl" was coming to the apartment. Defendant testified that he informed the victim that he had to leave and she then became hysterical, asking him how he could leave after having sex with her, and demanding the rest of the money he agreed to pay her. Defendant supposedly replied that he did not have the money at the time, and told the victim that he was not going to pay her because she did not have sex with the other men as originally planned. According to defendant, he left the apartment while the victim was still present.

When Bryan London returned to the apartment, he observed the victim run down the stairs. Bryan claimed that his interview with the police included the information provided during his trial testimony. John London could not recall the content of his statement to the police.

Detective Walker denied receiving information from Bryan London regarding an agreement to multi-partner sexual activity, or that the victim fondled him. According to the detective, Bryan London and John London did not inform him that the victim used drugs that night. Also, the detective did not detect any signs of drug use or alcohol consumption by the victim when he interviewed her. Detective Walker estimated that the interview took place approximately one hour after the reported offense. The name of Russell Mack was never mentioned during the investigation.

Defendant testified that he spoke to the victim several times after she reported the incident to the police. He claimed that the victim asked for money during those conversations. When the victim telephoned defendant around 7:00 p.m. (presumably referring to the controlled-recorded telephone call), defendant suspected that something was wrong because she was "acting real freaky on the phone…her whole conversation just done flipped, all of a sudden, just done changed." Defendant stated that the victim did not

tell him "No" or to stop during sex, and he became "emotionally disturbed" after she reported otherwise. According to defendant, during the conversation he attempted to ease the situation and persuade the victim to drop the charges.

During cross-examination, defendant denied using any force and claimed the victim did not resist, adding that the victim was in love with him. Defendant identified his voice on the recording of the controlled conversation with the victim, but explained that he was in shock during the conversation and was trying to figure out why the victim claimed he raped her. Defendant explained, "It's just like somebody telling you you done something and in the beginning your mind play tricks on you like that. Sometime your mind be playing tricks. You are trying to recollect in your mind if this actually happened and when you know it didn't happen . . . you trying to figure out, did I – did -- something I do wrong, or did she -- you know."

Defense witness Lynetta Stone (the victim's close friend) admitted that the victim informed her that money was somehow involved in the incident in question. However, Stone specifically testified that the victim stated she had been raped and was offered money. Stone also conversed with defendant regarding the incident. Defendant told Stone that the victim agreed to have sex with him in exchange for four hundred dollars, and further informed her that he did not rape the victim. During cross-examination, Stone confirmed that defendant told her that he regretted the incident, and that he wanted to give the victim money to persuade her to drop the charge.

The victim expressly denied any discussions regarding money in exchange for sex. The victim also denied fondling Bryan London,

consuming alcohol, or using drugs that night, but testified that Bryan and John London drank alcohol and used drugs.

Based on our careful review of the evidence presented during the trial, viewing that evidence in the light most favorable to the prosecution, we find that a rational trier of fact could reasonably conclude that all of the essential elements of forcible rape were proven beyond a reasonable doubt. We find that the victim's testimony was consistent. She repeatedly described an act of sexual intercourse that included physical force and threats, and her own ineffectual physical and verbal resistance. Only defendant and the victim were present during the act in question. Although defendant did not expressly admit or confess to the rape during the recorded conversation, he did not deny raping the victim while constantly being confronted with accusations of rape. We find that the jury reasonably rejected the defendant's hypothesis of innocence. Defendant's first and second assignments of error have no merit.

THIRD AND FIFTH ASSIGNMENTS OF ERROR

In a combined argument for his third and fifth assignments of error, defendant contends that during opening and closing arguments, the state improperly referred to the controlled-recorded telephone conversation as a confession. Defendant argues that the prosecutor consistently suggested that his failure to deny the rape amounted to evidence of his guilt. Defendant refers to several portions of the record to illustrate this claim. Defendant contends that this improper suggestion led to the jury's request to rehear the tape during deliberations. Defendant also argues that the trial court erred in denying his request to designate the opening and closing statements to be transcribed for the appeal record.

Louisiana Code of Criminal Procedure article 774, in pertinent part, provides: "The argument shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case. The argument shall not appeal to prejudice." A conviction will not be reversed due to an improper remark during closing argument unless the court is convinced that the remark influenced the jury and contributed to the verdict. Much credit should be accorded to the good sense and fair-mindedness of jurors who have seen the evidence, heard the argument, and have been instructed by the trial judge that arguments of counsel are not evidence. *State v. Mitchell*, 94-2078, p. 11 (La. 5/21/96), 674 So.2d 250, 258, *cert. denied*, 519 U.S. 1043, 117 S.Ct. 614, 136 L.Ed.2d 538 (1996); *State v. Dilosa*, 2001-0024, p. 22 (La. App. 1st Cir. 5/9/03), 849 So.2d 657, 674, *writ denied*, 2003-1601 (La. 12/12/03), 860 So.2d 1153.

At the outset, we note that the record does in fact contain the opening statements. During the state's opening statement, the prosecutor did not characterize the recorded conversation as a confession. The conversation was mentioned at the end of the opening statement, as follows:

> And you are going to learn that after August 1st, the next day, that Mr. Archie had contact again with the victim, this time by way of the telephone. You are going to hear what law enforcement did about that phone call in relation to that phone call, and then, finally, what they did leading to the arrest of Stevon Archie.

Defendant did not lodge an objection during the opening statement.

Defendant also cites a portion of the state's direct examination of Detective Walker. Again, the prosecutor did not state that the conversation consisted of a confession. The prosecutor asked the detective the following question: "After reviewing the tape, did you make a determination that

Stevon Archie would definitely be a suspect at that point?" The detective responded, "There was no doubt in my mind." Defendant did not object to this line of questioning. The other portion of the record noted by the defendant consists of the defense cross-examination of the detective wherein defense counsel asked, "[I]s there anything on the tape that you heard that could be considered an admission of a rape?" The detective responded positively, noting that defendant apologized to the victim and stated that he did not want to rape her. After further questioning, however, the detective admitted that defendant did not directly confess to the crime.

The closing statements were not made a part of the record. But the trial court instructed the jury that the opening and closing arguments are not evidence.

The proper inquiry for a harmless error analysis is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error. *Sullivan v. Louisiana*, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993). Even assuming the prosecutor stated during the closing argument that the recorded statement consisted of a confession, we cannot conclude that such a reference influenced the jury's verdict. The jury listened to the evidence in question and could easily determine whether the content consisted of a direct confession or not. The other portions of the record cited by defendant do not set out the type of remarks claimed in the instant appeal brief, and further contain no defense objections. Thus, the issue may not be preserved for appeal. La. C.Cr.P. art. 841. Nonetheless, we find that any error in the trial court's ruling denying the designation of the closing arguments for

transcription was harmless beyond a reasonable doubt. *See* La. C.Cr.P. art. 921. Defendant's third and fifth assignments of error are without merit.

FOURTH ASSIGNMENT OF ERROR

Defendant lists but has not briefed an argument for his fourth assignment of error, relating to the propriety of his habitual offender adjudication. Because assignments of error not briefed may properly be considered abandoned, we decline address the issue raised. Rule 2-12.4, Uniform Rules of Louisiana Courts of Appeal.

SIXTH ASSIGNMENT OF ERROR

In his sixth and final assignment of error, defendant contends that the trial court imposed an excessive sentence. He emphasizes that he successfully completed a probationary term for his prior conviction.[4] Defendant also notes that the instant case consists of conflicting claims of rape versus consensual sexual intercourse. Defendant points out that it is undisputed that the victim voluntarily went to the apartment with possibly four males, went directly to the bedroom of the apartment, and that he ceased his performance of oral sex at the victim's request. He argues that the harm to society was minimal. Defendant further argues that the victim was involved in a "sex-for-money affair": in effect, prostitution.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. C.Cr.P. art. 894.1. The trial court need not recite the entire checklist of article 894.1, but the record must reflect that it adequately considered the criteria. *State v. Herrin*, 562 So.2d 1, 11 (La. App. 1st Cir.), *writ denied*, 565 So.2d 942 (La. 1990). In light of the criteria expressed by article 894.1, a review for

[4] In his appeal brief, defendant refers to his prior conviction as possession of marijuana. However, the record establishes that a prior conviction for possession of cocaine was used to establish defendant's habitual offender status.

individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. *State v. Brown*, 02-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. A sentence will be determined to be excessive if it is grossly disproportionate to the crime, or is nothing more than the needless imposition of pain and suffering. *State v. Hurst*, 99-2868, p. 10 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, *writ denied*, 00-3053 (La. 10/5/01), 798 So.2d 962. The determination turns upon the punishment and the crime in light of the harm to society and whether or not the penalty is so disproportionate that it shocks our sense of justice. A sentence may be excessive either by reason of its length or because the circumstances warrant a less onerous sentencing alternative. *State v. Waguespack*, 589 So.2d 1079, 1086 (La. App. 1st Cir. 1991), *writ denied*, 596 So.2d 209 (La. 1992). A trial court has broad discretion to sentence within the statutory limits. Absent a showing of manifest abuse of that discretion, a reviewing court may not set aside a sentence. *State v. Guzman*, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167.

In *State v. Dorthey*, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounts to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime," he is duty bound to reduce the sentence to one that would not be constitutionally excessive. However, the holding in *Dorthey* was made only after, and in light of, express recognition by the Supreme Court that the determination and

definition of acts which are punishable as crimes is purely a legislative function. It is the legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional. *Dorthey*, 623 So.2d at 1278.

In imposing sentence, the trial court documented its review of the presentence investigation report (PSI), the statements made by defendant in letters for the report, letters written by defendant's friends and relatives, defendant's work history, and his criminal history. The trial court noted that defendant's friends and family described a person who was "much different from who [it] heard described in this court for [his] actions in this case." The trial court also noted that defendant has many job skills and talents. The trial court then considered the PSI recommendation and the guidelines of La. C.Cr.P. art. 894.1. The court took note of the sentencing range and concluded that there was an undue risk that defendant would commit another crime if eligible for probation. The trial court concluded that defendant's conduct showed a total disregard for the safety and well-being of others. It considered the facts of the instant offense, noting that it was a crime of violence and that defendant was interested in satisfying his own sexual desires with total disregard for the victim. The trial court also noted the defendant's age, twenty-eight years at the time of the sentencing. In conclusion, after consideration of the foregoing factors, a sentence of twenty-six years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence was imposed.

As a second-felony habitual offender, defendant was subject, under La. R.S. 15:529.1A(1)(a), to a minimum term of imprisonment of twenty years and a maximum term of eighty years imprisonment. *See also* La. R.S.

14:42.1B. Here, defendant received a twenty-six year imprisonment term, a relatively low-end term of imprisonment considering the range of possible sentences for the offense. We find that the trial court complied with the guidelines of La. C.Cr.P. art. 894.1 and did not abuse its discretion in imposing the enhanced sentence. Defendant raped the victim using physical force and the threat to take her life, thus committing a crime of violence. Considering the facts of the instant offense, the sentence is not shocking or grossly disproportionate to defendant's criminal behavior. This final assignment of error lacks merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.